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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for a Free Trade Agreement with Australia

{SWD(2017) 292}
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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Union (EU) has excellent political relations and mature trade and investment relations with Australia based on shared values of democracy and human rights. Australia has concluded numerous free trade agreements (FTA) with other countries. The EU does not have a bilateral FTA with Australia and that leaves the EU businesses with comparably less favourable conditions to access the Australian market.

The Joint Statement of 22 April 2015¹ by the High Representative of the European Union for Foreign Affairs and Security Policy and Vice President of the European Commission (HRVP) and the Australian Foreign Minister highlighted the need to further strengthen the bilateral trade and investment relationship. This was followed by the Joint Statement of 15 November 2015² by the leaders of the EU and Australia agreeing to commence work toward the launch of negotiations for an FTA.

The main reason for the proposal is to create more favourable conditions for further increasing trade and investment between the EU and Australia. The general objectives of this proposal include:

- promoting smart, sustainable and inclusive growth through the expansion of trade;
- creating job and labour opportunities and welfare gains;
- increasing benefits to consumer;
- improving Europe's competitiveness in global markets; and
- strengthening cooperation on trade-related issues with a like-minded partner.

This is in line with the Commission's Communication 'Trade for All - Towards a More Effective, Transparent and Responsible Trade and Investment Policy'³. The Communication highlights the need to move forward our bilateral relationships in order to deliver jobs and growth by tackling trade and investment barriers in a comprehensive way. At the same time, there is also a need to secure the EU's high level of social and environmental protection and contribute to other trade-related policy objectives, including sustainable development and the special needs of Small and Medium-sized Enterprises (SME).

In particular, the 'Trade for All' Communication highlighted that "Australia and New Zealand are Europe's close partners, share Europe's values and views on many issues, and play an important role in the Asia-Pacific region and in multilateral settings. Stronger economic ties with these countries will also provide a solid platform for deeper integration with wider Asia-Pacific value chains. Strengthening these relationships should be a priority."

Furthermore, the objectives are in line with the Council conclusions on trade of 21 November 2014⁴ which underlined that trade in goods, services and investment can make a significant contribution to achieve the aims at the core of the 'Strategic Agenda for the Union in times of change'. The conclusions also stated that building on the tangible progress made in the EU's

¹ http://eeas.europa.eu/statements-eeas/2015/150422_04_en.htm

² http://europa.eu/rapid/press-release_STATEMENT-15-6088_en.htm

³ http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145908.pdf

bilateral trade agenda, efforts should be devoted to pursuing agreements with key partners. Similarly, this objective is also in line with the Council conclusion on trade and investment of 27 November 2015⁵ that supported the conclusion of ambitious, comprehensive and mutually beneficial bilateral trade and investment agreements and calls on the Commission to advance negotiations in the Asia-Pacific region.

- **Consistency with existing provisions in the policy area**

The objectives described above are fully consistent with the Treaty on European Union (TEU) which enshrines that the EU should *encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade*⁶.

These objectives are also in line with the Communication 'Europe 2020 – A European strategy for smart, sustainable and inclusive growth'⁷ which sets out that the European trade strategy will include *"proposals for high-level strategic dialogues with key partners, to discuss strategic issues ranging from market access, regulatory framework, global imbalances, energy and climate change, access to raw materials, to global poverty, education and development"*.

The objectives are furthermore fully consistent with the objectives set out by the European Commission's Communication 'Small Business Act for Europe'⁸ (2008) and 'Small Business, Big World'⁹ (2011). Supporting SME's economic activities outside the EU is also embedded in the Union's overall competitiveness strategy as outlined in the Communication 'For a European Industrial Renaissance'¹⁰ (2014).

The objectives also comply with the principles established in the TEU stipulating that the EU's policies and actions should aim to *consolidate and support human rights*¹¹ and to *"help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources"*¹².

The objectives are consistent with other EU policies and with the Charter of Fundamental Rights of the European Union.

Finally, the objectives are consistent with the Juncker Commission's priority to get Europe growing again and to increase the number of jobs without creating new debt, the 'Investment Plan' (or 'European Fund for Strategic Investments')¹³ as well as the specific priorities set out by the Commission Work Programme 2017¹⁴.

This recommendation concerns an agreement which would cover liberalisation of trade in goods, services, public procurement and foreign direct investment, together with flanking rules dealing, for example, with intellectual property rights.

- **Consistency with other Union policies**

⁵ http://www.consilium.europa.eu/en/meetings/fac/2015/11/st14688_en15_pdf/

⁶ Article 21 para 2 (e) TEU.

⁷ <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%200007%20-%20Europe%202020%20-%20EN%20version.pdf>

⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0394>

⁹ <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52011DC0702>

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0014>

¹¹ Article 21 para 2 (b) TEU.

¹² Article 21 para 2 (f) TEU.

¹³ http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm

¹⁴ https://ec.europa.eu/info/publications/work-programme-commission-key-documents-2017_en

Description of the issue of consistency with existing provisions in the policy area is found in the section above on 'Consistency with existing provisions in the policy area'.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU. This policy includes the negotiation of trade agreements pursuant to, *inter alia*, Article 207 TFEU.

- **Proportionality**

In line with the principle of proportionality, all reasonable policy options were considered in order to assess the likely effectiveness of such policy interventions, as described in detail in the Impact Assessment Report.

- **Choice of the instrument**

Decision of the Council of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Commission actively engaged with interested partners and conducted a comprehensive online public consultation¹⁵ to gather detailed views relating to the future trade and economic relationship between the EU and Australia¹⁶.

The online public consultation was open from 11 March to 3 June 2016. It was launched on the website of the Directorate-General for Trade and was posted on 'EU Survey' (the Commission's on-line public consultations portal). Interested parties from within and outside the EU were invited to answer questions covering a wide range of themes on trade and investment between the EU and Australia.

The Commission received 108 replies from a wide range of respondents. A summary of the responses is included in the Impact Assessment Report and the individual responses were published unless the respondent has indicated otherwise.

- **Collection and use of expertise**

¹⁵ http://trade.ec.europa.eu/consultations/index.cfm?consul_id=195

¹⁶ The public online consultation also covered the future trade and economic relationship between the EU and New Zealand

An external consultant was commissioned to carry out an *ex-ante* analysis on the potential impacts of envisaged scenarios for the FTA.

The Commission has also been in contact with various interested parties who provided their views on specific market access and other trade barriers they face in their trade and investment relationship with Australia.

- **Impact assessments**

Though the scope of the impact assessment, covering trade, investment and other issues, was broader than the present Recommendation, its conclusions remain valid with respect to this Recommendation.

The Impact Assessment Report and its accompanying executive summary and the positive opinion with reservations of the Regulatory Scrutiny Board will be made public.

In addition to the impact assessment, the potential economic, social, human rights and environmental impacts of the FTA will be examined in an independent Sustainability Impact Assessment, which will be carried out by external consultants. The Sustainability Impact Assessment will be carried out in parallel with the FTA negotiations and will rely on a wide-ranging consultation of interested parties, notably civil society. The Sustainability Impact Assessment will be finalised ahead of the initialling of the FTA and its findings will feed into the negotiating process.

- **Regulatory fitness and simplification**

SMEs should benefit from new business opportunities and see savings under the FTA due to liberalisation, enhanced legal framework, improved customs procedures, and increased regulatory transparency. The Impact Assessment Report contains detailed information on the potential impacts on stakeholders and economic sectors.

- **Fundamental rights**

The Impact Assessment Report addresses the issues of fundamental rights under social, environmental and human rights aspects.

The FTA should contain a chapter on Trade and Sustainable Development in line with established EU policy.

4. BUDGETARY IMPLICATIONS

The FTA will have limited negative impact on the budget of the EU in the form of customs duties due to tariff liberalisation. Indirect positive impacts are expected in terms of increases in resources linked to value added tax and gross national income.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In line with the commitment made in the 2015 'Trade for All' Communication, there will be an in-depth *ex-post* evaluation of the effects of the FTA to be concluded with Australia when it will have been in force for sufficient time to ensure availability of meaningful data. The Impact Assessment Report contains detailed information on the envisaged monitoring and evaluation arrangements.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

- **Procedural aspects**

The Commission will negotiate for the EU.

In accordance with Article 218(4) TFEU, it is suggested that the Council of the European Union designates the Trade Policy Committee as the committee in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission welcomes the fact that the Members of the Council of the European Union are increasingly engaging at an early stage with their parliaments on trade negotiations in line with their institutional practices. It encourages the Members of the Council of the European Union to do the same with regard to this Recommendation for a Council decision having due regard to Council Decision 2013/488/EU on the security rules for protecting EU classified information¹⁷.

The Commission will inform Australia of the EU's internal rules on transparency and access by the Council of the European Union and the European Parliament to negotiating documents.

The Commission makes this Recommendation and its Attachment public immediately after its adoption.

The Commission recommends that the negotiating directives be made public immediately after their adoption.

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0488>

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for a Free Trade Agreement with Australia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

WHEREAS negotiations should be opened with a view to concluding a Free Trade Agreement with Australia,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is authorised to negotiate on behalf of the Union a Free Trade Agreement with Australia.

Article 2

The negotiating directives are set out in the Attachment.

Article 3

The negotiations shall be conducted in consultation with the Trade Policy Committee.

Article 4

This Decision and its attachment will be made public immediately after their adoption.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*