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NOTE

From: Presidency
To: Council

Subject: Draft Council conclusions on the negotiation and conclusion of EU trade agreements
- Adoption

1. On 12 February 2018, the Presidency proposed draft Council conclusions on the negotiation and conclusion of EU trade agreements. The draft conclusions were discussed in the Trade Policy Committee on several occasions.
2. At its meeting on 8 May 2018, the Permanent Representatives' Committee reached an agreement on the draft Council conclusions, as set out in [Annex](#).
3. In light of the above, the Foreign Affairs Council (Trade) is invited to adopt these conclusions at its session on 22 May 2018.

**DRAFT COUNCIL CONCLUSIONS
ON THE NEGOTIATION AND CONCLUSION OF EU TRADE AGREEMENTS**

1. The EU is committed to a robust, effective and credible trade policy, upholding an open and rules-based multilateral trading system. The EU will pursue an ambitious free-trade agenda that supports millions of jobs and contributes to prosperity, while taking into account the expectations of its citizens regarding trade liberalisation in a fast-moving globalised world. This includes the need to promote EU values and standards, including the Paris Agreement on climate change, and to preserve the right of governments to regulate in the public interest. In this context, the Council strongly supports the negotiation of ambitious, balanced and mutually beneficial free-trade agreements (FTAs), ensuring a level playing field. The Council also recalls that, in line with the European Council conclusions of 22 March 2018, the Commission, will examine how to strengthen the enforcement of commitments undertaken by third countries. All trade agreements should be applied in a full, effective and non-discriminatory manner towards all EU Member States, which is a necessary component of processes of upgrading those agreements.
2. The Council takes note of the opinion of the European Court of Justice 2/15 on the division of competences between the Union and its Member States for the conclusion of the EU-Singapore FTA. The Council also recalls the 2017 trade and investment package of the Commission, including the Commission's Communication on "*A Balanced and Progressive Trade Policy to Harness Globalisation*".

3. The Council notes that in the future the Commission intends to recommend draft negotiating directives for FTAs covering exclusive EU competence on the one hand and separate mixed investment agreements on the other, with a view to strengthening the EU's position as a negotiating partner. It is for the Council to decide whether to open negotiations on this basis. It is equally for the Council to decide, on a case-by-case basis, on the splitting of trade agreements. Depending on their content, association agreements should be mixed. The ones that are currently being negotiated, such as with Mexico, Mercosur and Chile, will remain mixed agreements.
4. Negotiating EU-only trade agreements should not lead to a loss of negotiation leverage for the EU to obtain ambitious standalone investment agreements. A first reflection in the Council on the need for investment protection rules with the negotiating partner concerned should take place at the earliest possible stage of the scoping exercise. EU investment agreements, where deemed necessary, should in principle be negotiated in parallel to FTAs.
5. Regarding future trade negotiations with Australia and New Zealand, the Council notes that the Commission has not presented in these two specific cases recommendations for negotiating directives for investment agreements, alongside the recommendations it has proposed for the negotiation of FTAs. The Council considers that this should not set a precedent for the future.
6. The Council looks forward to the signature of the Economic Partnership Agreement with Japan, after the adoption of the relevant Council decisions. In the meantime, the Council calls on the Commission to continue negotiations with Japan for a separate investment agreement. The Council is considering the separate agreements on trade and investment with Singapore, as proposed by the Commission, with a view to adopting the decisions on their signature as soon as possible.

7. The Council should be kept fully informed by the Commission and be duly consulted throughout all the stages of the negotiating process of FTAs, namely from the scoping exercise until after an agreement in principle is reached, including where the agreement falls entirely within the EU's competence. The decisions on signature and conclusion are taken by the Council; this process allows Member States' governments to consult their national parliaments and other stakeholders. As a result, for FTAs falling entirely within the EU's competence, which are approved at EU level and do not require ratification by Member States, the roles of the Council and the European Parliament ensure legitimacy and inclusiveness of the adoption process. Investment agreements, which include areas of shared competence, will continue to require approval at the EU level, as well as ratification at national level. In the case of ongoing negotiations for trade agreements, the Council will regularly discuss and take stock of the progress of negotiations and may consider the possibility of reviewing negotiating directives if needed.

8. The Council considers that Member States' parliaments, as well as civil society and other interested stakeholders, should be kept duly informed from the beginning of the process of preparation for negotiating trade agreements. Member States should therefore continue to involve their parliaments and interested stakeholders appropriately, in line with their respective national procedures. More generally, the Council reiterates the importance it attaches to addressing citizens' concerns and expectations and recognises the need to keep citizens continuously informed of the progress and contents of trade agreements under negotiation, thereby strengthening the legitimacy and inclusiveness of EU trade policy. The Council notes the information and transparency measures of the Commission and encourages the Commission and Member States to further intensify efforts to keep interested stakeholders continuously and adequately informed. In this context, the Council recalls that it also has made public a number of negotiating directives. Such a decision is exclusively for the Council to make, on a case-by-case basis.

9. Finally, whilst respecting the voting rules applicable under the Treaties, the Council will continue endeavouring to obtain, to the greatest extent possible, a consensus in order to ensure that all Member States' interests and concerns are adequately respected in trade agreements.
