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P8_TA(2017)0419

Negotiating mandate for trade negotiations with Australia

European Parliament resolution of 26 October 2017 containing the Parliament's recommendation to the Council on the proposed negotiating mandate for trade negotiations with Australia (2017/2192(INI))

(2018/C 346/27)

The European Parliament,

- having regard to the Commission Communication of 14 October 2015 entitled 'Trade for All — Towards a more responsible trade and investment policy' (COM(2015)0497),
- having regard to the joint statement of 15 November 2015 by the President of the Commission, Jean-Claude Juncker, the President of the European Council, Donald Tusk, and the Prime Minister of Australia, Malcolm Turnbull,
- having regard to the EU-Australia Partnership Framework of 29 October 2008 as well as to the EU-Australia Framework Agreement concluded on 5 March 2015,
- having regard to other EU-Australia bilateral agreements, in particular the Agreement on mutual recognition in relation to conformity assessment, certificates and markings and the Agreement on trade in wine,
- having regard to the Commission's Trade Package published on 14 September 2017 in which the Commission committed to making all future trade negotiating mandates public,
- having regard to its earlier resolutions, in particular that of 25 February 2016 on the opening of free trade agreement (FTA) negotiations with Australia and New Zealand ⁽¹⁾, and its legislative resolution of 12 September 2012 on the draft Council decision on the conclusion of the Agreement between the European Union and Australia amending the Agreement on mutual recognition ⁽²⁾,
- having regard to the communiqué issued following the G20 meeting of Heads of State or Government held in Brisbane on 15-16 November 2014,
- having regard to the joint declaration of 22 April 2015 by the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy and the Australian Foreign Minister entitled 'Towards a closer EU-Australia Partnership',
- having regard to Opinion 2/15 of the Court of Justice of the European Union (CJEU) of 16 May 2017 on the Union competence to sign and conclude the Free Trade Agreement with Singapore ⁽³⁾,
- having regard to the Commission's study of 15 November 2016 on the cumulative effects of future trade agreements on EU agriculture,
- having regard to Articles 207(3) and 218 of the Treaty on the Functioning of the European Union (TFEU),

⁽¹⁾ Texts adopted P8_TA(2016)0064.

⁽²⁾ OJ C 353 E, 3.12.2013, p. 210.

⁽³⁾ ECLI:EU:C:2017:376.

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- having regard to Rule 108(3) of its Rules of Procedure,
- having regard to the report of the Committee on International Trade and the opinion of the Committee on Agriculture and Rural Development (A8-0311/2017),
- A. whereas the EU and Australia work together in tackling common challenges across a broad spectrum of issues and cooperate in a number of international fora, including on trade policy issues in the multilateral arena;
- B. whereas the EU is Australia's third largest trading partner, with annual bilateral trade amounting to more than EUR 45,5 billion in 2015, with a positive trade balance of more than EUR 19 billion on the EU side;
- C. whereas in 2015 EU foreign direct investment stock in Australia amounted to EUR 145,8 billion;
- D. whereas Australia is in the process of acceding to the Agreement on Government Procurement;
- E. whereas the EU concluded negotiations on the EU-Australia Framework Agreement (FA) on 22 April 2015;
- F. whereas the European agricultural sector and certain agricultural products, such as beef, lamb, dairy products, cereals and sugar — including special sugars — are particularly sensitive issues in these negotiations;
- G. whereas Australia is the world's third largest exporter of both beef and sugar, and is a major player in the global export market for dairy products and cereals;
- H. whereas the EU and Australia are engaged in plurilateral negotiations to liberalise further trade in green goods (Environmental Goods Agreement) and trade in services (Trade in Services Agreement);
- I. whereas Australia is a party to the concluded negotiations for a Trans-Pacific Partnership (TPP), the future of which remains uncertain, and the ongoing negotiations on a Regional Comprehensive Economic Partnership (RCEP) in the Asia-Pacific region, uniting Australia's most important trading partners; whereas Australia has had a free trade agreement in place with China since 2015;
- J. whereas Australia made significant commitments in TPP to promote the long-term conservation of certain species and to tackle illegal wildlife trafficking through enhanced conservation measures, and whereas it also laid down requirements for the effective enforcement of environmental protection and to engage in enhanced regional cooperation; whereas such commitments should serve as a benchmark for the EU-Australia FTA provisions;
- K. whereas Australia is among the EU's oldest and closest partners, sharing common values and a commitment to promoting prosperity and security within a global rules-based system;
- L. whereas Australia has ratified and implemented the main international covenants on human, social and labour rights and on environmental protection and fully respects the rule of law;
- M. whereas Australia is one of only six WTO members which has no preferential access as yet to the EU market or negotiations in progress to that end;

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N. whereas, following the joint statement of 15 November 2015, a scoping exercise was launched to investigate the feasibility of and shared ambition towards launching negotiations for a free trade agreement between the EU and Australia; whereas the scoping exercise has been concluded;

O. whereas Parliament will be required to decide whether to give its consent to the potential EU-Australia FTA;

The strategic, political and economic context

1. Underlines the importance of deepening relations between the EU and the Asia-Pacific region, among other things, in order to foster economic growth within Europe and stresses that this is reflected in the EU's trade policy; recognises that Australia is a key part of this strategy and that widening and deepening trade relations can help to meet this goal;

2. Commends Australia for its strong and consistent commitment to the multilateral trade agenda;

3. Considers that the full potential of the Union's bilateral and regional cooperation strategies can only be realised by adhering to rules- and values-based trade and that concluding a high-quality, ambitious, balanced and fair FTA with Australia in a spirit of reciprocity and mutual benefit, while under no circumstances undermining the ambition to achieve progress multilaterally or the implementation of already concluded multilateral and bilateral agreements, is a crucial part of those strategies; believes that deeper bilateral cooperation can be a stepping stone for further multilateral and plurilateral cooperation;

4. Believes that the negotiation of a modern, deep, ambitious, balanced, fair and comprehensive FTA is a suitable way of deepening the bilateral partnership and further reinforcing the existing, already mature bilateral trade and investment relationships; takes the view that these negotiations could serve as an example for a new generation of free trade agreements, stressing the importance of raising ambitions further, pushing the boundaries for what a modern FTA entails, considering Australia's highly developed economy and regulatory environment;

The scoping exercise

5. Notes the conclusion of the EU-Australia scoping exercise on 6 April 2017 to the mutual satisfaction of the Commission and the Government of Australia;

6. Welcomes the Commission's timely conclusion and publication of the impact assessment, with a view to being able to provide a comprehensive evaluation of possible gains and losses resulting from enhanced EU-Australia trade and investment relationships for the benefit of the population and businesses on both sides, including the outermost regions and the overseas countries and territories, while paying special attention to social and environmental impacts, including on the EU labour market and to anticipate and take into account the impact that Brexit might have on the trade and investment flows from Australia to the EU, in particular when preparing the exchange of offers and calculating quotas;

A mandate for negotiations

7. Calls on the Council to authorise the Commission to start negotiations for a trade and investment agreement with Australia on the basis of the outcome of the scoping exercise, the recommendations set out in this resolution, the impact assessment and clear targets;

8. Welcomes the Commission decision to emphasise that green box payments are not trade distortive and should not be targeted by anti-dumping or anti-subsidy measures;

9. Calls on the Council to fully respect the distribution of competences between the EU and its Member States, as can be deduced from CJEU Opinion 2/15 of 16 May 2017, in its decision on the adoption of the negotiating directives;

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10. Calls on the Commission and the Council to put forward a proposal as soon as possible about the general future architecture of trade agreements taking into account CJEU Opinion 2/15 on the EU-Singapore FTA, and to clearly distinguish between a trade and liberalisation of foreign direct investment (FDI) agreement, containing only issues that fall within the EU's exclusive competence, and a potential second agreement which covers subjects whose competences are shared with Member States; stresses that such a distinction would have implications for the parliamentary ratification process and that it is not intended to circumvent national democratic processes, but is a matter of democratic delegation of responsibilities based on the European treaties; calls for Parliament to be closely involved in all ongoing and future FTA negotiations at all stages of the process;

11. Calls on the Commission, when presenting the finalised agreements for signature and conclusion, and on the Council, when deciding on signature and conclusion, to fully respect the distribution of competences between the EU and its Member States;

12. Calls on the Commission to conduct negotiations as transparently as possible while not undermining the Union's negotiating position, guaranteeing at least the level of transparency and public consultation implemented for the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the USA through constant dialogue with social partners and civil society, and to fully respect best practice as established in other negotiations; welcomes the Commission's initiative to publish all its recommendations for negotiating directives for trade agreements and considers this a positive precedent; urges the Council to follow suit and publish the negotiating directives immediately after their adoption;

13. Stresses that an FTA must lead to improved market access and trade facilitation on the ground, create decent jobs, ensure gender equality for the benefit of the citizens on both sides, encourage sustainable development, uphold EU standards, safeguard services of general interest, and respect democratic procedures while boosting EU export opportunities;

14. Emphasises that an ambitious agreement must address, in a meaningful way, investment, trade in goods and services (drawing on recent European Parliament recommendations as regards policy space reservations and sensitive sectors), customs and trade facilitation, digitalisation, e-commerce and data protection, technology research and support for innovation, public procurement, energy, state-owned enterprises, competition, sustainable development, regulatory issues, such as high-quality sanitary and phytosanitary standards and other norms in agricultural and food products without weakening the EU's high standards, robust and enforceable commitments on labour and environmental standards, and the fight against tax avoidance and corruption while remaining within the scope of the Union's exclusive competence, all while giving special consideration to the needs of micro-enterprises and SMEs;

15. Calls on the Council to explicitly recognise the other party's obligations towards indigenous peoples in the negotiating directives and to allow for reservations for domestic preference schemes in this regard; emphasises that the Agreement should reaffirm both parties' commitment to ILO Convention 169 on the Rights of Indigenous Peoples;

16. Stresses that inadequate fisheries management and illegal, unreported and unregulated (IUU) fishing can have significant negative impacts on trade, development and the environment, and that the parties must undertake meaningful commitments to protect sharks, rays, turtles, and marine mammals and to prevent overfishing, overcapacity, and IUU fishing;

17. Underlines that the principle of the Three Rs (3R), to replace, reduce and refine the use of animals for scientific purposes, is firmly anchored in EU legislation; stresses that it is vital that existing EU measures on animal testing and research are not dismantled or diminished, that future regulations on animal use are not restricted and that EU research establishments are not put at a competitive disadvantage; contends that the parties must seek the regulatory alignment of 3R best practice in order to increase testing efficiency, reduce costs and reduce the need for animal use;

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18. Insists on the need to include measures designed to eliminate the counterfeiting of agro-food products;

19. Stresses that, for an FTA to be truly advantageous to the EU's economy, the following aspects should be included in the negotiating directives:
 - (a) liberalisation of trade in goods and services and real market access opportunities for both sides in each other's goods and services market through the elimination of unnecessary regulatory barriers, while ensuring that nothing in the agreement prevents either side from regulating, in a proportionate manner, with a view to achieving legitimate policy objectives; this agreement must (i) not prevent the parties from defining, regulating, providing and supporting services in the general interest and must include explicit provisions thereon; (ii) neither require governments to privatise any service nor preclude governments from expanding the range of services they supply to the public; (iii) not prevent governments from bringing back under public control services that governments have previously chosen to privatise such as water, education, health and social services, or decrease the high health, food, consumer, environmental, labour and safety standards in the EU or limit public funding of the arts and culture, education, health and social services as has been the case with previous trade agreements; commitments should be made on the basis of the General Agreement on Trade in Services (GATS); highlights in this respect that the standards required of European producers must be preserved;
 - (b) as far as the agreement may include a domestic regulation chapter, the negotiators must not include necessity tests;
 - (c) commitments on anti-dumping and countervailing measures that go beyond WTO rules in this area, possibly excluding their application where sufficient common competition standards and cooperation are in place;
 - (d) reducing unnecessary non-tariff barriers and strengthening and extending regulatory cooperation dialogues on a voluntary basis wherever practicable and mutually beneficial, while not limiting the ability of each party to carry out its regulatory, legislative and policy activities, given that regulatory cooperation must aim to benefit the governance of the global economy through intensified convergence and cooperation on international standards and regulatory harmonisation, for example, through the adoption and implementation of the standards set by the UN Economic Commission for Europe (UNECE), while guaranteeing the highest level of consumer (e.g. food safety), environmental (e.g. animal health and welfare, plant health), social and labour protection;
 - (e) significant concessions on public procurement at all levels of government, including state-owned enterprises and undertakings with special or exclusive rights guaranteeing market access for European companies in strategic sectors and the same degree of openness as that of the EU's public procurement markets, given that simplified procedures and transparency for bidders, including those from other countries, can also be effective tools for preventing corruption and fostering integrity in public administration while providing value for money to taxpayers, in terms of the quality of delivery, efficiency, effectiveness and accountability; guarantees that ecological and social criteria are applied in awarding public procurement contracts;
 - (f) a separate chapter taking into account the needs and interests of micro-enterprises and SMEs with regard to market access facilitation issues including, but not limited to, increased compatibility of technical standards, and streamlined customs procedures with the aim of generating concrete business opportunities and fostering their internationalisation;
 - (g) in view of CJEU Opinion 2/15 on the EU-Singapore FTA that trade and sustainable development fall within the EU's exclusive competence and that sustainable development forms an integral part of the EU's common commercial policy, a robust and ambitious sustainable development chapter is an indispensable part of any potential agreement; provisions for effective tools for dialogue, monitoring and cooperation, including binding and enforceable provisions which are subject to suitable and effective dispute settlement mechanisms, and consider, among various enforcement methods, a sanctions-based mechanism, while enabling social partners and civil society to participate appropriately, as

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well as close cooperation with experts from relevant multilateral organisations; provisions in the chapter covering the labour and environmental aspects of trade and the relevance of sustainable development in a trade and investment context, encompassing provisions that promote adherence to, and effective implementation of, relevant internationally agreed principles and rules, such as core labour standards, the four ILO priority governance conventions and multilateral environmental agreements, including those related to climate change;

- (h) the requirement that the parties must promote corporate social responsibility (CSR), including with regard to internationally recognised instruments, and the uptake of sectoral OECD guidelines and the UN Guiding Principles on Business and Human Rights;
- (i) comprehensive provisions on investment liberalisation within the Union's competence taking into account recent policy developments, for example, CJEU Opinion 2/15 on the EU-Singapore FTA of 16 May 2017;
- (j) strong and enforceable measures covering the recognition and protection of intellectual property rights, including geographical indications (GIs) for wines and spirits and other agricultural and foodstuff products, taking as a benchmark the EU-Australia agreement's provisions on the wine sector, while striving to improve the existing legal framework and to ensure a high level of protection for all geographical indications; simplified customs procedures and simple and flexible rules of origin that are suitable for a complex world of global value chains (GVCs), including in terms of enhancing transparency and accountability within them, and applying wherever possible multilateral rules of origin or in other cases non-burdensome rules of origin such as a 'change of tariff subheading';
- (k) a balanced and ambitious outcome in the agriculture and fisheries chapters which can only boost competitiveness and be beneficial to both consumers and producers, if it gives due consideration to the interests of all European producers and consumers, respecting the fact that there are a number of sensitive agricultural products which should be given appropriate treatment, for example, through tariff-rate quotas or allocated adequate transition periods, taking into proper consideration the cumulative impact of trade agreements on agriculture and potentially excluding from the scope of the negotiations the most sensitive sectors; the inclusion of a usable, effective, suitable and quick bilateral safeguard clause enabling the temporary suspension of preferences, if, as a result of the entry into force of the trade agreement, a rise in imports causes or threatens to cause serious injuries to sensitive sectors;
- (l) ambitious provisions allowing for the full functioning of the digital ecosystem, and promoting cross-border data flows, including principles such as fair competition and ambitious rules for cross-border data transfers, in full compliance with, and without prejudice to, the EU's current and future data protection and privacy rules, given that data flows are crucial drivers of the services economy and are an essential element of the GVC of traditional manufacturing companies, and therefore unjustified localisation requirements should be curbed as much as possible; data protection and privacy are not a trade barrier but fundamental rights, enshrined in Article 39 TEU and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union;
- (m) specific, unambiguous provisions on the treatment accorded to overseas countries and territories (OCTs) and the outermost regions (ORs) so as to ensure that due account is paid to their particular interests in the negotiations;

The role of Parliament

20. Stresses that following CJEU Opinion 2/15 on the EU-Singapore FTA, Parliament should see its role strengthened at every stage of the EU-FTA negotiations from the adoption of the mandate to the final conclusion of the agreement; looks forward to the launch of negotiations with Australia and to following them closely and contributing to their successful outcome; reminds the Commission of its obligation to inform Parliament immediately and fully at all stages of the negotiations (before and after the negotiating rounds); is committed to examining the legislative and regulatory issues that may arise in the context of the negotiations and the future agreement without prejudice to its prerogatives as a co-legislator; reiterates its fundamental responsibility to represent the citizens of the EU, and looks forward to facilitating inclusive and open discussions during the negotiating process;

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21. Recalls that Parliament will be asked to give its consent to the future agreement, as stipulated by the TFEU, and that its positions should therefore be duly taken into account at all stages; calls on the Commission and the Council to request the consent of the Parliament before its application, while also integrating this practice into the interinstitutional agreement;

22. Recalls that Parliament will monitor the implementation of the future agreement;

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23. Instructs its President to forward this resolution to the Council and, for information, to the Commission and to the governments and parliaments of the Member States and the government and parliament of Australia.
