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Proposal for a

COUNCIL DECISION

**on the conclusion of the Free Trade Agreement between the European Union and the
Republic of Singapore**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The dynamically growing Southeast Asian economies, with their over 600 million consumers and a rapidly rising middle class, are key markets for European Union exporters and investors. With a total € 208 billion of trade in goods and € 77 billion of trade in services (2016), the Association of Southeast Asian Nations (ASEAN) taken as a whole is the EU's third largest trading partner outside Europe, after the US and China. At the same time, a total € 263 billion foreign direct investment stock (2016) in the ASEAN makes the EU the first foreign direct investor in the ASEAN, while the ASEAN as a whole is in its turn the second largest Asian foreign direct investor in the EU – with a total foreign direct investment stock of € 116 billion (2016).

Within the ASEAN, Singapore is by far the EU's largest partner, accounting for slightly under one-third of EU-ASEAN trade in goods and services, and roughly two-thirds of investments between the two regions. Over 10,000 EU companies are established in Singapore and use it as a hub to serve the whole Pacific Rim.

On 23 April 2007, the Council authorised the Commission to enter into negotiations for a region-to-region Free Trade Agreement (FTA) with Member States of the ASEAN. It being understood that the objective was to negotiate a region-to-region FTA, the authorisation provided however for the possibility of bilateral negotiations in the event that it was not possible to reach an agreement to negotiate jointly with a grouping of Member States of the ASEAN. In light of difficulties encountered in the region-to-region negotiations, both sides acknowledged that an impasse had been reached and agreed to pause these.

On 22 December 2009, the Council agreed on the principle of launching bilateral negotiations with individual ASEAN Member States, based on the authorisation and negotiating directives of 2007, whilst preserving the strategic objective of a region-to-region agreement. The Council also authorised the Commission to start bilateral negotiations on a free trade agreement with Singapore, which would serve as a first step towards the objective of the timely launch of such negotiations with other relevant ASEAN Member States. Bilateral negotiations with Singapore commenced in March 2010 and the EU has since opened bilateral FTA negotiations with other ASEAN Member States: Malaysia (2010), Vietnam (2012), Thailand (2013), the Philippines (2015) and Indonesia (2016).

On 12 September 2011 the Council authorised the Commission to extend the on-going negotiations with Singapore to cover also investment protection, based on a new EU competence under the Lisbon Treaty.

On the basis of the negotiating directives adopted by the Council in 2007, and supplemented in 2011 to include investment protection, the Commission has negotiated with the Republic of Singapore an ambitious and comprehensive FTA and an Investment Protection Agreement (IPA), with a view to creating new opportunities and legal certainty for trade and investment between both partners to develop. The legally reviewed texts of the agreements have been made public and can be found on the following link:

<http://ec.europa.eu/trade/policy/countries-and-regions/countries/singapore/>

The Commission is putting forward the following proposals for Council decisions:

- Proposal for a Council Decision on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and the Republic of Singapore;
- Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore;
- Proposal for a Council Decision on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore of the other part;
- Proposal for a Council Decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore of the other part.

In parallel to these proposals, the Commission will put forward a proposal for a horizontal safeguard regulation that will cover the EU-Singapore FTA among other agreements.

The European Commission will verify that a satisfactory outcome as regards the protection of EU geographical indications in Singapore prior to the entry into force of the Agreement has been achieved in accordance with the principles set out in the letter of the Minister of Trade and Industry of Singapore of 21 January 2013¹ and in light of the result of the informal public consultation undertaken by the Singaporean authorities in 2012.

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore.

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

The negotiation of the FTA and the IPA was accompanied by the negotiation in parallel, by the European External Action Service, of a Partnership and Cooperation Agreement (PCA) between European Union and its Member States and the Republic of Singapore, which was initialled in October 2013. Once in force, the PCA will provide the legal framework to further develop the already longstanding and strong partnership between the EU and Singapore, in a broad range of areas, including political dialogue, trade, energy, transport, human rights, education, science and technology, justice asylum and migration.

The EU and Singapore's longstanding trade and economic relationship has until now developed in the absence of a specific legal framework. The FTA and IPA that have been negotiated will constitute specific agreements giving effect to the trade and investment provisions of the PCA and will be an integral part of the overall bilateral relations between the EU and Singapore.

From the date of its entry into force, the EU-Singapore IPA will replace and supersede the bilateral investment treaties between the Republic of Singapore and EU Member States that are listed in Annex 5 (Agreements Referred to in Article 4.12) to the IPA.

¹ http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151779.pdf

- **Consistency with other Union policies**

The EU-Singapore FTA and IPA are fully consistent with Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area (e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, rules on GMO's, environmental protection, consumer protection, etc.).

Furthermore, like all other trade and investment agreements the Commission has negotiated, the EU-Singapore FTA and IPA fully safeguard public services and ensure that governments' right to regulate in the public interest is fully preserved by the agreements and constitutes a basic underlying principle to them.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In July 2015, the Commission seized the Court of Justice of the EU for an Opinion under Article 218(11) TFEU on whether the Union had the necessary competence to sign and conclude alone the agreement that had been negotiated with Singapore, or whether the participation of the EU Member States would be necessary, or at least possible, in respect of certain matters.

In its Opinion 2/15 of 16 May 2017, the Court confirmed the EU's exclusive competence with regard to all matters covered by the agreement that had been negotiated with Singapore, except for non-direct investment and investor-to-state dispute settlement where the Member States are defendants that the Court considered to be of shared competence of the EU and the Member States. The text on investor-to-state dispute settlement was subsequently replaced by the Investment Court System in the IPA. The Court drew the EU exclusive competence from the scope of the Common Commercial Policy under Article 207(1) TFEU and from Article 3(2) TFEU (based on the affectation of existing common rules contained in secondary legislation).

In view of the Court Opinion, and in light of the wide-ranging discussions on the architecture with the Council and the European Parliament following the Opinion, the initially negotiated text has been adjusted to create two self-standing agreements: an FTA and an IPA.

According to the Opinion 2/15, all the areas covered by the EU-Singapore FTA fall within the competence of the EU and, more particularly, within the scope of Articles 91, 100(2) and 207 TFEU. All substantive provisions on investment protection under the IPA, to the extent that these apply to foreign direct investment, are covered under Article 207 TFEU.

The EU-Singapore FTA is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent.

In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve the position of the Union on certain modifications to the FTA given that the FTA provides for expedited and/or simplified procedures to approve such modifications. Therefore, the Commission should be authorised to approve modifications or rectifications to be adopted by the Trade Committee pursuant to Article 9.18 (Modification and Rectification of Coverage) as regards Annexes 9-A to 9-I and pursuant to Article 10.17 (System of Protection of Geographical Indications) and 10.18

(Amendment of List of Geographical Indications) of the FTA as regards Annexes 10-A and 10-B.

The EU-Singapore IPA is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent and ratification by the Member States in accordance with their respective internal procedures.

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

As confirmed by Opinion 2/15, the EU-Singapore FTA as presented to Council does not cover any matters that fall outside of the EU's exclusive competence.

With regard to the IPA, the Court confirmed that, pursuant to Article 207 TFEU, the EU has exclusive competence with regard to all substantive provisions on investment protection, to the extent that these apply to foreign direct investment. The Court further confirmed the EU's exclusive competence with regard to the state-to-state dispute settlement mechanism in relation to investment protection. Finally, the Court stated that the EU has shared competence with regard to non-direct investment and investor-to-state dispute settlement (replaced later on by the Investment Court System in the IPA), where the Member States act as defendants.² These elements cannot be separated in any coherent way from the substantive provisions or the state-to-state dispute settlement and hence should be included in EU-level agreements.

- **Proportionality**

This proposal is in line with the vision of the Europe 2020 strategy and contributes to the EU's trade and development objectives.

- **Choice of the instrument**

This proposal is in accordance with Article 218 TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

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

After negotiations with Singapore were for its most part completed, an in-house team led by DG Trade's Chief Economist carried out a study of the economic benefits to be expected from the agreement. The analysis predicts that EU exports to Singapore could rise by some € 1.4 billion over a 10-year period, while Singapore's exports to the EU could grow by € 3.5 billion – a figure which includes shipments from the many EU subsidiaries in Singapore back to the EU.

Given the large difference in size of the two economies, as well as the relative openness of Singapore's economy, it is inevitable that the benefits of the agreement for the partners differ. The analysis predicts that EU real GDP could grow by around € 550 million over a 10-year period, whilst Singapore's economy could grow by € 2.7 billion over the same period.

² See the clarification in the judgement of the Court of Justice of the European Union in Case C-600/14 Germany vs Council (Judgment of 5 December 2017) paragraph 69.

These estimates on the possible economic impact are deemed conservative given the difficulty to precisely quantify the effects of the removal of non-tariff barriers, which is a key component of the agreement.

In view of Singapore's role as the hub for trade in goods and services between Europe and Southeast Asia, it is also likely that the gains from the agreement would grow further if and when the EU concludes agreements with other ASEAN Member States.

Moreover, estimates based on economic modelling cannot account for the strategic value of the EU-Singapore FTA and IPA for the EU as crucial agreements for the EU's wider agenda in the ASEAN region, and in Asia as a whole. Following the EU-Korea FTA, the EU-Singapore FTA will be the EU's second high calibre trade agreement with a key Asian partner, while the EU-Singapore IPA will be in its turn the first investment protection agreement the EU enters into with an Asian partner.

- **Stakeholder consultations**

Prior to the launch of bilateral negotiations with Singapore, a Trade Sustainability Impact Assessment (TSIA) of the FTA between the EU and the ASEAN³ was conducted by an external contractor to study the potential economic, social and environmental impact of a closer economic partnership between both regions.

In the framework of the preparation of the TSIA, the contractor consulted internal and external experts, organised public consultations in Brussels and in Bangkok, and held bilateral meetings and interviews with civil society in the EU and in ASEAN. Consultations in the framework of the TSIA provided a platform for the involvement of key stakeholders and the civil society in a dialogue on trade policy in relation to Southeast Asia.

Both, the TSIA report and the consultations held in the context of its preparation, provided the Commission with input that has been of great value in all bilateral trade and investment negotiations launched since with individual ASEAN Member States.

In addition, prior to the launch of bilateral negotiations with Singapore, the Commission conducted a public consultation on the future agreement that included a questionnaire prepared to obtain information from stakeholders that later helped the Commission in establishing priorities and taking decisions throughout the negotiating process. A summary of the results of the consultation was made public.⁴

Also, prior and during negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiation via the Council's Trade Policy Committee. The European Parliament was also regularly informed and consulted via its Committee on International Trade (INTA), and notably its EU-Singapore FTA Monitoring Group. The texts progressively resulting from the negotiations were circulated throughout the process to both institutions.

- **Collection and use of expertise**

A Trade Sustainability Impact Assessment of the FTA between the EU and ASEAN was carried out by the external contractor "Ecorys".

- **Impact assessment**

The TSIA, conducted by an external contractor and finalised in 2009, concluded that an ambitious EU-ASEAN FTA would deliver important positive impacts (in terms of GDP, income, trade and employment) for both the EU and Singapore. National income effects on

³ <http://trade.ec.europa.eu/doclib/html/145989.htm>

⁴ <http://trade.ec.europa.eu/doclib/html/153666.htm>

the EU side were estimated at € 13 billion and for Singapore at € 7.5 billion. These figures could underestimate the impact, as they were based on trade patterns in 2007, and trade has grown substantially since (+32%).

- **Regulatory fitness and simplification**

The EU-Singapore FTA and IPA are not subject to REFIT procedures. They nevertheless contain a number of provisions that will simplify trade and investment procedures, reduce export and investment related costs and will therefore enable more small firms to do business in both markets. Among the expected benefits are: less burdensome technical rules, compliance requirements, customs procedures and rules of origin, the protection of intellectual property rights, or the reduction in cost of litigation under the Investment Court System for claimants that are SMEs.

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

The EU-Singapore FTA will have a financial impact on the EU budget on the side of the **revenues**. It is estimated that foregone duties could reach an amount of € 248.8 million upon full implementation of the agreement. The estimate is based on average imports projected for 2025 in the absence of an agreement and represents the annual loss in revenues resulting from the elimination of EU tariffs on imports from Singapore.

The EU-Singapore IPA is expected to have a financial impact on the EU budget on the side of the **expenditures**. The agreement will be the EU's second (after the EU-Canada Comprehensive Economic and Trade Agreement) to incorporate the Investment Court System (ICS) for the resolution of disputes between investors and states. An amount of € 200,000 of additional yearly expenditure is foreseen from 2018 onwards (subject to the entry into force of the agreement) to finance the permanent structure comprising a First Instance and an Appeal Tribunal. At the same time, the agreement entails the use of administrative resources under budget line XX 01 01 01 (Expenditure related to officials and temporary staff working with the Institution), considering that it is estimated that one Administrator will be dedicated as full-time equivalent to the tasks inherent to this agreement. This is indicated in the Legislative Financial Statement and is subject to the conditions mentioned in it.

5. OTHER ELEMENTS

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

The EU-Singapore FTA and IPA include institutional provisions that lay down an implementing bodies' structure to continuously monitor the implementation, operation and impact of the agreements. The agreements being an integral part of the overall bilateral relation between the EU and Singapore as governed by the PCA, the mentioned structures will form part of a common institutional framework with the PCA.

The institutional chapter of the FTA establishes a Trade Committee that has as its main task to supervise and facilitate the implementation and application of the agreement. The Trade Committee is comprised of representatives of the EU and of Singapore who will meet every two years or at the request of either side. The Trade Committee will be in charge of supervising the work of all specialised committees established under the agreement (Committee on Trade in Goods; Committee on Sanitary and Phytosanitary Measures;

Committee on Customs; and Committee on Trade in Services, Investment and Government Procurement).

The Trade Committee has also the task to communicate with all interested parties, including private sector and civil society, in relation to the functioning and implementation of the agreement. In the agreement, both sides recognise the importance of transparency and openness and commit to consider the views of members of the public in order to draw on a broad range of perspectives in the implementation of the agreement.

The institutional chapter of the IPA establishes a Committee with the main task to supervise and facilitate the implementation and application of the agreement. Among other tasks, the Committee may, subject to the completion of each side's respective legal requirements and procedures, decide to appoint the Members of the ICS Tribunals, fix their monthly retainer and fees, and adopt binding interpretations of the agreement.

As emphasised in the "Trade for All" Communication, the Commission is dedicating increasing resources to the effective implementation and enforcement of trade and investment agreements. In 2017, the Commission published the first annual FTA Implementation Report. The main purpose of the report is to convey an objective picture on the implementation of EU FTAs, highlighting the progress made and the shortcomings that need to be addressed. The objective is for the report to serve as the basis for open debate and engagement with Member States, the European Parliament and the civil society at large on the functioning of the FTAs and their implementation. As an annual exercise, the publication of the report will allow regular monitoring of developments, registering also how identified priority issues have been addressed. The report will cover the EU-Singapore FTA as of its entry into force.

- **Explanatory documents (for directives)**

Not applicable.

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

The **EU-Singapore FTA** establishes the conditions for EU economic operators to take full advantage of the opportunities created in Singapore as the business and transport hub of Southeast Asia.

In negotiating this agreement, the Commission pursued two principal objectives: first, to provide the best possible terms of access for EU operators to Singapore's market; and, second, to set a valuable point of reference for the EU's other negotiations in the region.

Both of these objectives have been fully met: the agreement goes beyond existing WTO commitments in many areas, such as services, procurement, non-tariff barriers and the protection of intellectual property including geographical indications (GI). In all of these areas Singapore also agreed to new commitments which go significantly above what Singapore has so far been willing to accept, including in its FTA with the United States.

The agreement satisfies the criteria of Article XXIV GATT (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade in goods between the parties) as well as of Article V GATS, which provides for a similar test with respect to services.

In line with the objectives set by the negotiating directives, the Commission secured:

- (1) the comprehensive liberalisation of services and investment markets, including cross-cutting rules on licensing and for the mutual recognition of diplomas, and sector-specific rules designed to ensure a level playing field for EU businesses;

- (2) new tendering opportunities for EU bidders, and especially in the utilities market where there are many leading EU suppliers;
- (3) the removal of technical and regulatory trade barriers to trade in goods, such as duplicative testing, in particular by promoting the use of technical and regulatory standards familiar in the EU in the sectors of motor vehicles, electronics, pharmaceuticals and medical devices as well as green technologies;
- (4) based on international standards, a more trade-facilitative regime for the approval of European meat exports to Singapore;
- (5) Singapore's commitment not to raise its tariffs (which are currently mostly not applied on a voluntary basis) on imports from the EU, as well as cheaper access of European businesses and consumers to products made in Singapore;
- (6) a high level protection of intellectual property rights, including with regard to the enforcement of these rights, including at the border;
- (7) a TRIPs-plus level of protection to EU GIs following their registration in Singapore once Singapore has established a GI register (which it has committed to do following the European Parliament's consent to the FTA);
- (8) a comprehensive chapter on trade and sustainable development, which aims at ensuring that trade supports environmental protection and social development and promotes the sustainable management of forests and fisheries. The chapter also sets out how social partners and civil society will be involved in its implementation and monitoring;
- (9) a swift dispute resolution mechanisms through either panel arbitration or with the help of a mediator; and
- (10) a comprehensive and novel chapter to promote new opportunities in the "green growth sector", in line with the EU's 2020 strategy.

The **EU-Singapore IPA** will ensure a high level of investment protection, while safeguarding the EU's and Singapore's rights to regulate and pursue legitimate public policy objectives such as the protection of public health, safety and the environment.

The agreement contains all the innovations of the EU's new approach to investment protection and its enforcement mechanisms that are not present in the 12 existing bilateral investment treaties between Singapore and EU Member States. It is a very important feature of the IPA that it replaces and hence improves the 12 existing bilateral investment treaties.

In line with the objectives set by the negotiating directives, the Commission ensured that EU investors and their investments in Singapore will be granted fair and equitable treatment and not be discriminated against compared to Singaporean investments that are in like situations. At the same time, the IPA protects EU investors and their investments in Singapore from expropriation, unless it is for public purposes, in accordance with due process, on a non-discriminatory basis and against payment of prompt, adequate, and effective compensation according to fair market value of the expropriated investment.

Also in line with the negotiating directives, the IPA negotiated by the Commission will offer investors the option of a modern and reformed investment dispute resolution mechanism. This system ensures that investment protection rules are adhered to and seeks to strike a balance between protecting investors in a transparent manner and safeguarding the right of a State to regulate in order to pursue public policy objectives. The agreement sets up a standing international and fully independent dispute resolution system, consisting of permanent First

Instance and Appeal Tribunals that will conduct dispute settlement proceedings in a transparent and impartial manner.

The Commission is mindful of the balance to be struck between moving forward with the reformed EU investment policy and the sensitivities of the Member States as regards the possible exercise of shared competence on these matters. The Commission has not, therefore made a proposal to provisionally apply the investment protection agreement. Nonetheless, should Member States wish to see a proposal for provisional application of the investment protection agreement, the Commission stands ready to make such a proposal.

Proposal for a

COUNCIL DECISION

on the conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, 100(2), and 207, in conjunction with Article 218(6)(a)(v) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision No [XX], the Free Trade Agreement between the European Union and the Republic of Singapore (“Singapore”), hereinafter referred to as “the Agreement”, was signed on [XX XXX 2018].
- (2) Pursuant to Article 218(7) of the TFEU, it is appropriate for the Council to authorise the Commission to approve on the Union’s behalf the position to be adopted in the Trade Committee on certain modifications to the Agreement that are to be adopted by a simplified procedure. The Commission should be authorised to approve modifications to be adopted by the Trade Committee pursuant to Article 9.18 (Modification and Rectification of Coverage) as regards Annexes 9-A to 9-I to the Agreement, and pursuant to Article 10.17 (System of Protection of Geographical Indications) and 10.18 (Amendment of List of Geographical Indications) as regards Annexes 10-A and 10-B to the Agreement.
- (3) The Agreement should be approved on behalf of the European Union.
- (4) In accordance with Article 16.16 (No Direct Effect) of the Agreement, it should not confer rights or impose obligations on persons, other than those created between the Parties under public international law,

HAS ADOPTED THIS DECISION:

Article 1

The Free Trade Agreement between the European Union and the Republic of Singapore is hereby concluded.

Article 2

For the purposes of Article 9.18 (Modification and Rectification of Coverage), the position of the Union on the modifications or rectifications of Annexes 9-A to 9-I to the Agreement shall be approved by the Commission.

Article 3

For the purpose of Articles 10.17 (System of Protection of Geographical Indications) and 10.18 (Amendment of List of Geographical Indications) of the Agreement, the position of the Union on the modifications of Annexes 10-A and 10-B to the Agreement shall be approved by the Commission.

Article 4

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to send the notification provided for in Article 16.13(2) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.⁵

Article 5

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

⁵ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.