

## PART II

### “Case study: Chilean labour policies on international trade agreements”



## 5. CHILEAN BASIC DATA<sup>1</sup>

**Country name:** Republic of Chile (Republica de Chile)

**Nationality:** Chilean

**Official language:** Spanish

**Other languages:** Mapudungun, German, English

**Geographic coordinates:** 30,00 S/71,00 W

**Capital:** Santiago (33 37 S / 70,40 W)

**Administrative regions:** 15 regions: Aisen del General Carlos Ibanez del Campo, Antofagasta, Araucania, Arica y Parinacota, Atacama, Biobio, Coquimbo, Libertador General Bernardo O'Higgins, Los Lagos, Los Rios, Magallanes y de la Antartica Chilena, Maule, Region Metropolitana (Santiago), Tarapaca, Valparaiso

**Independence:** 18 September 1810

**Constitution:** September 11<sup>th</sup>, 1980 (amended in 1989, 1991, 1997, 1999, 2000, 2003 and 2005)

**Suffrage:** 18 years old, universal and compulsory

**Chief of State/Head of government:** President Sebastian Piñera Echenique (since 11 March 2010)

**Legislative branch: bicameral:** Senate (38 seats) and Chamber of Deputies (120 seats)

**Area:** 756.102 sq km (twice the size of Germany)

*Land:* 743.812 sq km - *Water:* 12.290 sq km

**Boundaries:** 6.339 km - with Argentina (5.308 km), Bolivia (860 km) and Peru (171 km).

**Coastline:** 6.435 km

**Climate:** temperate; desert in North; Mediterranean in Central region; cool and damp in South

**Population:** 16.746.491 (July 2010 est.)<sup>2</sup>

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<sup>1</sup> Source: CIA, the World Factbook, 2010.

<sup>2</sup> 17.133.000 (2010 est.) in accordance with the *2009 Statistical Yearbook for Latin America and the Caribbean*. CEPAL/ECLAC. Santiago de Chile: United Nations Publication, 2010.

**Religion:** Roman Catholic 70%, Evangelical 15.1%, Jehovah's Witness 1.1%, other Christian 1%, other 4.6%, none 8.3% (2002 census)

**Ethnical composition:** white and white-Amerindian 95, 4%, Mapuche 4,0%, other indigenous groups 0,6% (2002 census)

**Population growth rate:** 0,856% (2010 est.)

**Fertility rate:** 1,9 children born/woman (2010 est.)

**Urbanization:** urban population 88% (2008)

**Infant mortality rate:** 7,52 deaths/1000 live births

**Live expectancy at birth:** 77,54 years (male 74,26 years, female 80,96 years) (2010 est.)

**Median age:** 31,7 years (male 30,7 years, female 32,8 years)

**HIV – adult prevalence rate:** 0,3% (2007 est.)

**School life expectancy (primary to tertiary education):** 14 years (2006)

**Education expenditures:** 3,2% of GDP (2006)

**Literacy (age 15 and over who can read and write):** 95,7% (male 95,8%, female 95,6%) (2002 census)

**Population below poverty line:** 18,2% (2005)

**Household income or consumption by percentage share:** lowest 10% - 1,6%, highest 10% - 41,7% (2006)

**Gini index:** 54,9 (2003)

**Investment (gross fixed):** 20,5% of the GDP (2009 est.)

**Budget:** revenues – 31,31 billion, expenditures 37,87 billion (2009 est.)

**Public debt:** 9% of the GDP (2009 est.)

**Inflation rate (consumer prices):** 1,7% (2009 est.)

**Current account balance:** -50 million (2009 est.)

**Natural resources:** copper, timber, iron ore, nitrates, precious metals, molybdenum, hydropower

**Agriculture (products):** grapes, apples, pears, onions, wheat, corn, oats, peaches, garlic, asparagus, beans; beef, poultry, wool, fish; timber

**Industries:** copper, other minerals, foodstuffs, fish processing, iron and steel, wood and wood products, transport equipment, cement, textiles

**Industrial production growth rate:** -3% (2009 est.)

**GDP (PPP):** \$243.7 billion (2009 est.)

**GDP (official Exchange rate):** \$152,1 billion (2009 est.)

**GDP per capita (PPP):** \$14,700 (2009 est.)

**GDP (composition):** *agriculture:* 4,8% , *industry:* 50,5% , *services:* 44,7% (2009 est.)

**Labour force:** 7,42 million (2009 est.) - (*agriculture:* 13,2% , *industry:* 23% , *services:* 63,9% (2005)

**Unemployment rate:** 10,0% (2009 est.)

**Exports:** \$48,85 billion (2009 est.)

**Export partners:** China 14,1%, US 11,3%, Japan 10,4%, Brazil 5,9%, South Korea 5,7%, Netherlands 5,2%, Italy 4,4% (2008)

**Export commodities:** copper, fruit, fish products, paper and pulp, chemicals, wine

**Imports:** \$40,91 billion f.o.b. (2009 est.)

**Import partners:** US 19,1%, China 11,9%, Brazil 9,2%, Argentina 8,8%, South Korea 5,5%, Japan 4,6% (2008)

**Import commodities:** petroleum and petroleum products, chemicals, electrical and telecommunications equipment, industrial machinery, vehicles, natural gas

## 6. CHILEAN TRADE POLICIES

*“No nation was ever ruined by trade.”*  
Benjamin Franklin (1706-1790) one of the  
Founding Fathers of the United States

For more than three decades, Chile had been pursuing significant steps in order to liberalize its economy, being strongly inspired by the Chicago School of Economics<sup>3</sup>, in particular by FRIEDMAN's and STIGLER's teachings. Free-market oriented policies in Chile started during Pinochet's regime which, contrariwise of other Latin American dictatorships, focused its foreign policy in unilaterally opening its market to foreign capital, products and services<sup>4</sup>. Therefore, it is noteworthy punctuate that structural reforms were promoted, a flexible exchange rate was implemented and privatization programmes took place in Chile many years before other Latin American countries.

Nonetheless, it was only after the re-democratization that the Chilean economic growth suffered its real increment<sup>5 6</sup>.

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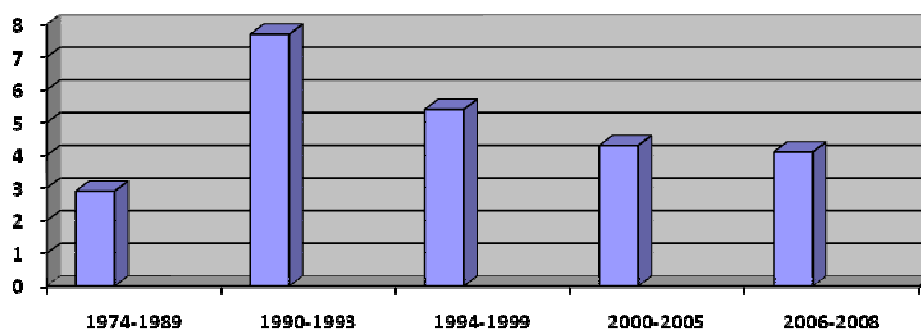
<sup>3</sup> The “Chicago Boys” were a groups of Chilean economists who had studied in Chicago and, inspired by liberal precepts, had implemented an open-market policy in Chile during Pinochet's regime.

<sup>4</sup> *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008. p. 140. “Si bien dicho proceso de apertura se inició a mediados de los años setenta, éste adoptó un carácter unilateral; es decir, no tuvo como contrapartida una apertura equivalente de los mercados de los socios comerciales, restringiéndose así las posibilidades de aprovechar plenamente sus beneficios, puesto que ello depende no sólo de las políticas internas que adopte un país, sino que muy fundamentalmente de las que apliquen los países con los cuales comercia. Y ésta ha sido la base sobre la cual se ha desarrollado una nueva fase de apertura desde los inicios de los años noventa, orientada a profundizar la apertura mediante una activa participación en instancias multilaterales y, especialmente, bajo la modalidad de construir acuerdos comerciales. Estos últimos permiten reducir costos de transacción mediante el establecimiento de reglas y obligaciones específicas destinadas a proporcionar estabilidad a los compromisos adquiridos.”

<sup>5</sup> CASTRONOVO, Valerio. *Piazze e caserme: I dilemmi dell'America Latina dal Novecento a oggi*. Laterza, 2007. p. 268. “In realtà, se non si potevano disconoscere i risultati positivi raggiunti durante gli anni della dittatura grazie all'opera dai ‘Chicago Boys’ per debellare l'inflazione e aprire il paese agli investimenti esteri, tuttavia la modernizzazione del Cile era iniziata dopo la caduta della satrapia di Pinochet. Non solo perché dai primi anni Novanta l'economia cilena aveva conosciuto una forte accelerazione e la bilancia commerciale aveva accumulato attivi consistenti, ma perché da allora s'era diffuso il convincimento che democrazia politica ed economia di mercato erano complementari e costituivano altrettanti fattori essenziali di progresso sociale e di evoluzione civile”.

<sup>6</sup> *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008. p. 139. “(...) el alto grado de apertura que Chile exhibe en la actualidad tuvo su origen en el proceso de apertura comercial y financiera iniciado a mediados de los años setenta, por lo que se trata de un proceso que se ha consolidado en el tiempo, y su profundización ha sido un objetivo explícito de los distintos gobiernos, desde la recuperación de la democracia en los inicios de los años noventa.”

## GDP growth (%)



1974-1989	1990-1993	1994-1999	2000-2005	2006-2008
2,9	7,7	5,4	4,3	4,1

Source: ALVARADO M. Macarena. JÉLVEZ M., Maurício. *¿Cómo continuar avanzando hacia el desarrollo? Propuestas para una política nacional de empleo.* Santiago: Oficina Internacional del Trabajo, 2009, with Chilean Central Bank data.

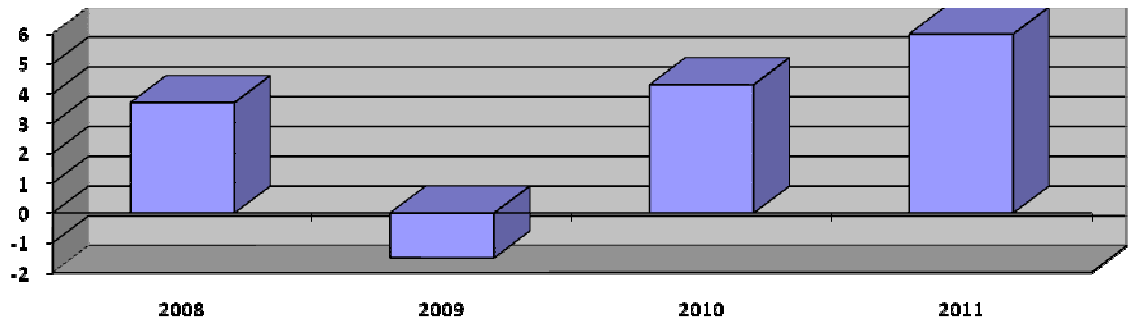
On the last two years, however, the recent global financial crisis and the consequent contraction of important foreign markets acutely affected the Chilean GDP growth rates<sup>7</sup>, which fundamentally depend on exports. Notwithstanding, the ECLAC<sup>8</sup> stresses that already in 2010 – in spite of the negative effects of the earthquake which affected the country<sup>9</sup> – the Chilean economy will start a solid recovery cycle.

<sup>7</sup> *Estudio económico de América Latina y el Caribe 2009-2010*. Comisión Económica para América Latina y el Caribe (CEPAL). Santiago de Chile: CEPAL, 2010. “En 2009 la economía de Chile se contrajo un 1,5% del PIB como consecuencia de los efectos de la crisis financiera internacional que se desencadenó en el último trimestre de 2008. En efecto, a partir de esa fecha y durante los primeros meses de 2009, a raíz del deterioro de las perspectivas en los mercados de los países desarrollados y en especial en el ambiente financiero internacional, las exportaciones experimentaron una fuerte reducción, tanto en los volúmenes exportados como en los precios. Como resultado, disminuyeron las expectativas de crecimiento, empleo e ingreso y se redujo significativamente el gasto privado, tanto en inversión como en bienes de consumo duraderos. En consecuencia la tasa de crecimiento del PIB se contrajo significativamente, lo que se tradujo en el descenso de la producción, la reducción de los inventarios y el aumento del desempleo.”

<sup>8</sup> Economic Commission for Latin America and the Caribbean.

<sup>9</sup> *Estudio económico de América Latina y el Caribe 2009-2010*. Comisión Económica para América Latina y el Caribe (CEPAL). Santiago de Chile: CEPAL, 2010. “(...) a fines de febrero de 2010, cuando la economía chilena se encontraba en franca recuperación, el país se vio afectado por un terremoto y maremoto. Dada su intensidad y extensión, este sismo se considera el quinto más fuerte en la historia mundial desde que es posible realizar mediciones. El terremoto afectó principalmente a tres regiones de la zona centro-sur del país cuya actividad representa un 16% del PIB y cerca del 9% de las exportaciones, principalmente de madera, celulosa, sus derivados y harina de pescado. Los resultados de las primeras mediciones realizadas 2 Comisión Económica para América Latina y el Caribe después de que ocurriera el terremoto y maremoto indicaban un claro descenso de la producción durante marzo y abril, que en los meses siguientes se recuperó parcialmente.”

## GDP growth (2008-2011)



Source: ECLAC. *Estudio económico de América Latina y el Caribe 2009-2010*. Comisión Económica para América Latina y el Caribe (CEPAL). Santiago de Chile: CEPAL, 2010.

This sustained positive economic growth opened the door for a deeper internationalization process. Since the early 90's Chile has been acquiring a net of different sort of commercial agreements<sup>10</sup> with its most significant trade partners. Nowadays, Chilean trade treaties include FTAs<sup>11</sup> (United States<sup>12</sup>, China<sup>13</sup>, Canada<sup>14</sup>, Japan<sup>15</sup>, South Korea<sup>16</sup>, Mexico<sup>17</sup>, the EFTA<sup>18</sup> zone<sup>19</sup>), economic association<sup>20</sup> agreements (European Union<sup>21</sup>, P-4<sup>22</sup>), economic complementation<sup>23</sup> accords under the

<sup>10</sup> In spite of the fact that all those treaties have the objective to liberalize trade between the parties, they differ among themselves with relation to their specificity level.

<sup>11</sup> Free trade agreements are designed to liberalize trade and investments, but it is noteworthy pointing that they do not deal exclusively with purely economical questions. FTAs build up bilateral associations which consider not only trade integration but also important aspects related to political dialogue and cooperation.

<sup>12</sup> *U.S.-Chile Free trade agreement*, signed in Miami on June 6<sup>th</sup>, 2003. In effect since January 1<sup>st</sup>, 2004.

<sup>13</sup> *Chile-China Free Trade Agreement*, signed on November 18<sup>th</sup>, 2005. In effect since October 1<sup>st</sup>, 2006.

<sup>14</sup> *Chile- Canadá Free Trade Agreement*, signed on December 5<sup>th</sup>, 1996. In effect since July 5<sup>th</sup>, 1997.

<sup>15</sup> *Chile-Japan Free Trade Agreement*, signed on March 27<sup>th</sup>, 2007. In effect since September 3<sup>rd</sup>, 2007.

<sup>16</sup> *South Korea – Chile Free Trade Agreement*, signed on February 15<sup>th</sup>, 2003. In effect since April 1<sup>st</sup>, 2004.

<sup>17</sup> *México – Chile Free Trade Agreement*, signed on April 17<sup>th</sup>, 1998. In effect since August 1<sup>st</sup>, 1999.

<sup>18</sup> Islandia, Liechtenstein, Norway and Switzerland.

<sup>19</sup> *Chile – EFTA Free Trade Agreement*, signed on June 26<sup>th</sup>, 2003. In effect since December 1<sup>st</sup>, 2004.

<sup>20</sup> Economic Association agreements are the most advanced category of trade treaties, going further than FTAs, putting great emphasis on cooperation. Those treaties, also, embrace important measures including information exchange (particularly on issues related to good practices and legal structures), the promotion of joint investigations on sensitive areas of common interest, transparency and general social and environmental protection.

<sup>21</sup> *Chile-European Union Association Agreement*, signed on November 18<sup>th</sup>, 2002. In effect since February 1<sup>st</sup>, 2003. Complete effect since March 1<sup>st</sup>, 2005.

<sup>22</sup> The P-4 group is composed by Chile, New Zealand, Singapur and Brunei Darussalam.

<sup>23</sup> Economic complementation agreements are signed on the ALADI framework, and their main goal is the trade relationship, through the elimination of tariffs.

ALADI framework<sup>24</sup> (Ecuador, MERCOSUR, Bolivia, Venezuela) and partial scope<sup>25</sup> (India, Cuba) agreements<sup>26</sup>.

Comparing the degree of economic openness of different States, it is observable that since the 1990's the Chilean economy already presents an elevated rate of imports and exports regarding its GDP, superior to developing countries such as China, India, Brazil and Argentina and to developed countries such as the United States, Japan, Germany, the United Kingdom and Canada. More, those numbers were strengthened after the entry into force of the most relevant FTAs signed by Chile.

The information of 2005 shows a significant increment of the exports/GDP and imports/GDP proportions in several emerging economies – such as Argentina, Brazil, China and India. Nonetheless, the Chilean rates remained superior, as a proof of the deep vocation of the Chilean economy to focus on external trade.

#### **Exports/GDP and imports/GDP (1990/2005)**

	<b>1990</b>		<b>2005</b>	
	<b>Exports/GDP</b>	<b>Imports/GDP</b>	<b>Exports/GDP</b>	<b>Imports/GDP</b>
<b>Developed countries</b>				
<b>United States</b>	9,6	10,9	10,5	16,2
<b>Japan</b>	10,4	9,5	14,3	12,9
<b>Germany</b>	24,6	24,8	40,1	35,1
<b>United Kingdom</b>	24,0	26,6	26,1	30,0
<b>Canada</b>	26,0	26,0	37,9	34,1
<b>South Korea</b>	28,0	29,0	42,5	40,0
<b>Finland</b>	22,7	24,0	38,7	35,2
<b>Hong Kong</b>	130,9	123,2	197,5	186,3
<b>Israel</b>	31,0	34,9	43,8	44,1
<b>Developing countries</b>				
<b>China</b>	17,7	12,2	33,0	30,5
<b>India</b>	7,2	8,6	14,9	16,1
<b>Brazil</b>	7,9	6,1	16,5	12,7
<b>Argentina</b>	10,2	4,6	24,6	19,1
<b>Venezuela</b>	39,5	20,2	33,5	18,4
<b>Chile</b>	33,1	29,4	43,2	35,5
<b>Egypt</b>	28,1	36,2	20,7	26,9
<b>Burkina Faso</b>	11,2	28,8	9,6	23,9

<sup>24</sup> Asociación Latinoamericana de Integración, created in 1980 by the Montevideo Treaty. Nowadays the ALADI members are: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

<sup>25</sup> Partial scope agreements, on the other hand, are limited to the establishment of preferential regimes concerning the trade of a limited number of products or services.

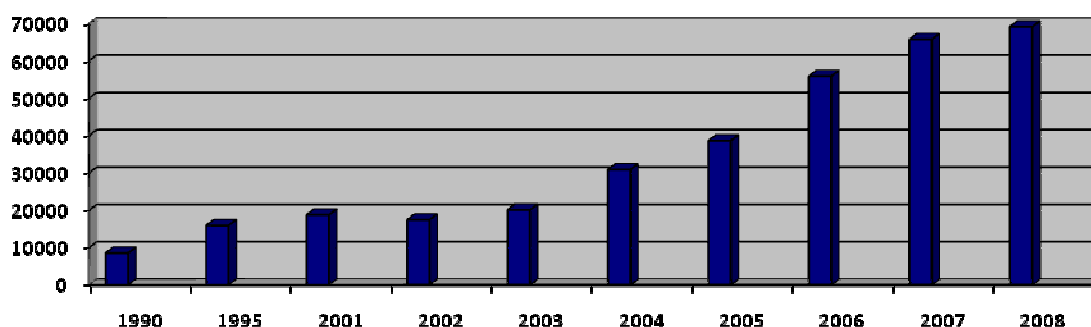
<sup>26</sup> For a list of all Chilean trade treaties, see appendix.



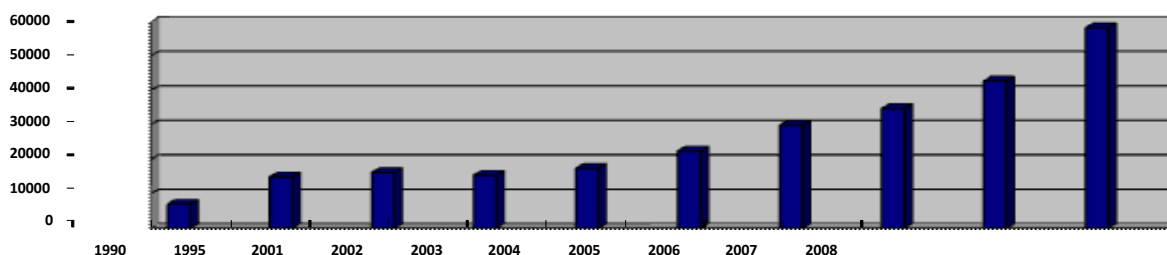
Source: UN (2005). In: *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008. p. 46.

As a result of this liberal posture, Chilean international trade had grown vigorously during the last few years, flourishing both on exports and imports, and on different fields, such as goods, services and investments, with impressive results.

### Chilean exports 1990-2008 (US\$ millions)



### Chilean imports 1990-2008 (US\$ millions)



### Chilean exports/imports (US\$ millions)

	1990	1995	2001	2002	2003	2004	2005	2006	2007	2008
<b>Exports</b>	8.522	15.901	18.745	17.423	20.077	30.895	38.596	55.881	65.739	69.085
<b>Imports</b>	7.022	14.903	16.136	15.383	17.376	22.401	2.9857	34.726	42.732	58.173
<b>Balance</b>	1.500	998	2.609	2.040	2.701	8.494	8.738	21.155	23.007	10.912

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

Again, the recent global financial crisis affected both Chilean exports and imports, particularly during 2009. However, the reduction on the volatility of the price of commodities, the economic recovery already observable in important buyers of Chilean products – especially China – summed with the necessity to rebuild great part

of the infrastructure destroyed by the earthquake, provoke the expectation of a significant increment on external trade during the 2010-2011 period<sup>27</sup>.

The Chilean liberalized trade scheme contributed to increment commercial exchanges with a diversified net of trade partners all around the globe. Regarding Chilean exports, all of its top 10 trade partners ensure preferential access to Chilean products on their internal markets by some kind of trade agreement.

#### Chilean exports, by country, top 10 (2008) (US\$ thousands)

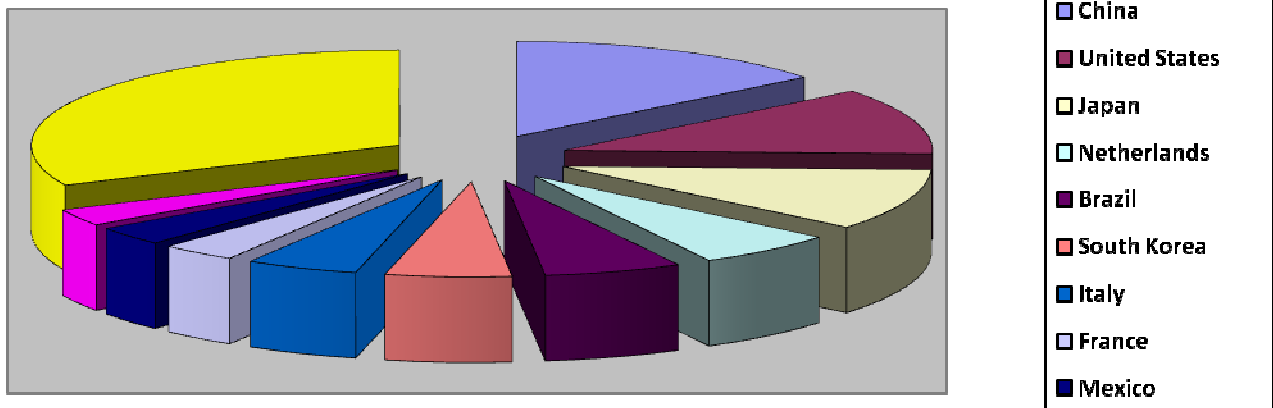
<b>World</b>	<b>69084971</b>	<b>100%</b>
<b>China</b>	9851075	14,26%
<b>United States</b>	7793291	11,28%
<b>Japan</b>	7233500	10,47%
<b>Netherlands</b>	4242598	6,14%
<b>Brazil</b>	4164373	6,03%
<b>South Korea</b>	3881309	5,62%
<b>Italy</b>	3404697	4,93%
<b>France</b>	2278558	3,3%
<b>Mexico</b>	2218509	3,21%
<b>Spain</b>	1978470	2,86%

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

<sup>27</sup> *Estudio económico de América Latina y el Caribe 2009-2010*. Comisión Económica para América Latina y el Caribe (CEPAL). Santiago de Chile: CEPAL, 2010. “En 2009 los precios externos de las exportaciones e importaciones chilenas de productos básicos registraron fluctuaciones significativas. Luego del desplome de los precios de las materias primas como consecuencia de la crisis financiera internacional durante el último cuatrimestre del año anterior, en 2009 se observó una notoria recuperación de los precios de las principales exportaciones chilenas. El promedio de los valores unitarios de exportación para el año se redujo un 18%. Por su parte el promedio de los valores unitarios de importación lo hizo un 16%. A su vez, el volumen exportado decreció un 5%, mientras que las importaciones, en particular de bienes duraderos, maquinaria y bienes de capital, disminuyeron un 19%. Como resultado, el superávit de la cuenta corriente se situó en torno al 2,6% del PIB.

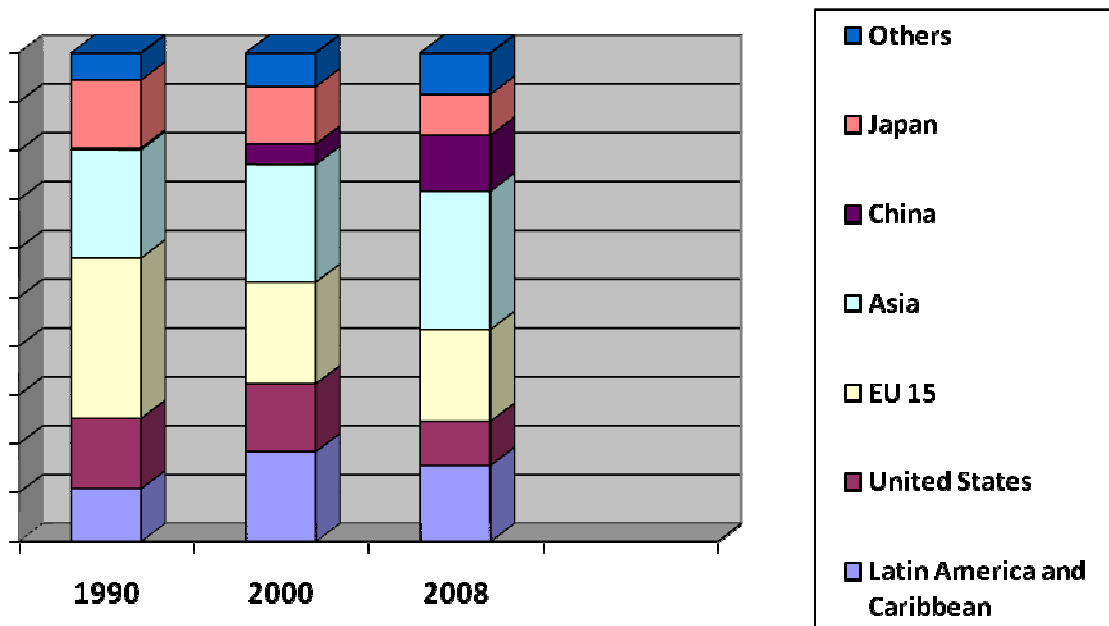
Durante 2010 los precios externos de las exportaciones chilenas se incrementaron nuevamente y alcanzaron niveles máximos históricos, similares o superiores a los registrados antes de la crisis. Los precios del petróleo mostraron un comportamiento parecido, aunque alcanzaron niveles aún alejados de los máximos observados antes de la crisis. No obstante, los precios de las exportaciones exhibieron nuevamente una alta variabilidad como resultado de las turbulencias en los mercados internacionales causadas por la situación de la deuda soberana de algunos países europeos.

Para 2010 se proyecta un crecimiento de los volúmenes exportados, producto de la continuidad de la dinámica de los principales mercados de destino, en particular China. Asimismo, se espera un fuerte repunte de las importaciones, incluso mayor que el de las exportaciones. Ello obedece principalmente a la recuperación de la demanda interna en un contexto de bajos niveles de inventarios, la destrucción parcial de la capacidad productiva interna a causa del terremoto y maremoto que hace necesario recurrir a fuentes importadas para suplir las necesidades normales de producción y consumo, y el aumento del gasto para la reconstrucción.”



Concerning the regions which are destiny of the Chilean exports, during the last twenty years we may observe an outstanding growth on the Chilean exports to Asia, and particularly to China. In 1990 China was the destiny of only 0,03% of all Chilean exports, and currently it represents a share of 14,2%. The Latin American relative participation also incremented, from 12,6% to 19,4%. On the other way, in spite of significant positive trade outcomes, Europe lost relative participation on the Chilean exports (from 38,3% to 23,4%), the same happening with the United States (16,7% to 11,2%) and Japan (16,2% to 10,4%).

**Chilean exports, by region (US\$ millions)**



	1990	1995	2000	2006	2007	2008
<b>Latin America and Caribbean</b>	1078	3086	3988	9399	10962	13417
<b>United States</b>	1428	2138	3008	8947	8419	7793
<b>EU 15<sup>28</sup></b>	3265	4241	4510	14696	15418	16202
<b>Asia<sup>29</sup></b>	2204	5400	5221	16955	23975	24394
<b>China</b>	34	287	902	4942	9980	9851
<b>Japan</b>	1384	2840	2547	6038	7092	7233
<b>Others</b>	547	1035	1487	5884	6965	7279
<b>Total</b>	8522	15901	18215	55881	65739	69085

*Source:* CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

In imports, Chile has the United States as its main partner (19,89%), followed by China (11,99%). It is relevant the contribution of South American countries such as Brazil (9,09%), Argentina (8,67%), Colombia (3,66%) and Peru (3,17%). More, Angola appears as a major source of oil to Chile.

Again, concerning Chilean imports, during the last twenty years we may infer a significant growth of the Chilean imports from Asia (13,7% of the Chilean imports in 1990, 25,4% in 2008), specially because of China (0,8%, 11,9%). The Latin American share also increased, from 24% to 32,1%. The United States remained with a stable portion of Chilean imports(19,5%, 19,8%), while Europe (26,8%, 11,9%) and Japan (8,0%, 4,8%) declined.

#### **Chilean imports, by country, top 10 (2008) (US\$ thousands)**

<b>World</b>	<b>58173226</b>	<b>100%</b>
<b>United States</b>	11568974	19,89%
<b>China</b>	6972134	11,99%
<b>Brazil</b>	5287968	9,09%
<b>Argentina</b>	4984124	8,57%
<b>South Korea</b>	3354981	5,77%
<b>Japan</b>	2799072	4,81%
<b>Colombia</b>	2130471	3,66%
<b>Germany</b>	1925584	3,31%
<b>Peru</b>	1846067	3,17%

<sup>28</sup> Austria, Belgium, Denmark, Finland, France, Germany, Freece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK.

<sup>29</sup> Australia, China, Hong Kong, Indonesia, Japan, South Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand and others.

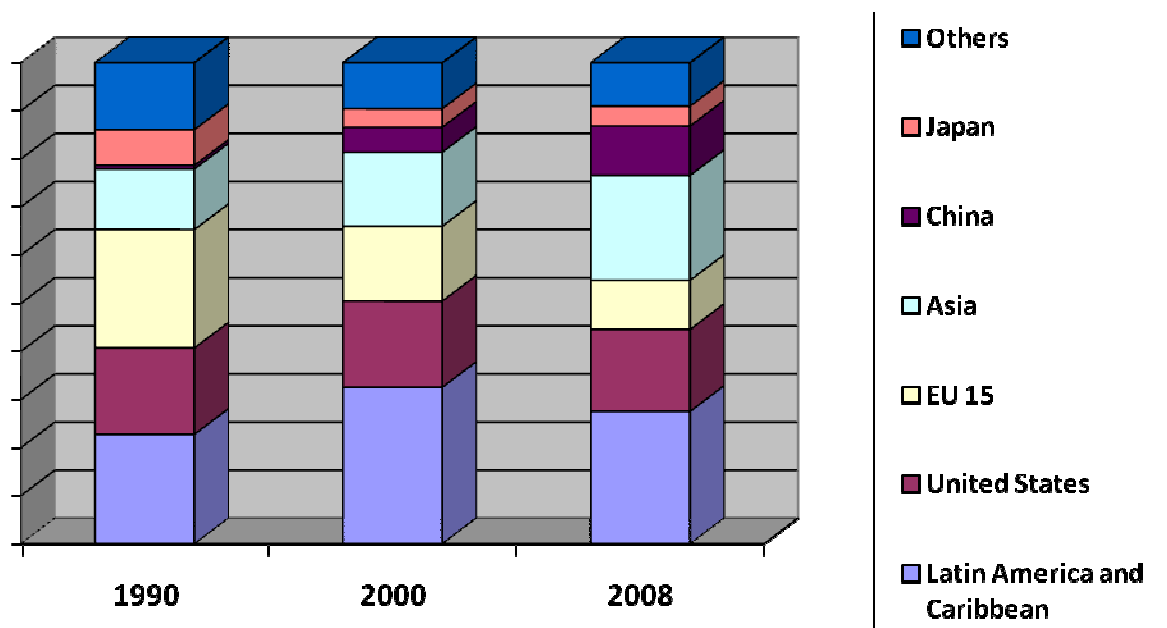
<b>Angola</b>	1771522	3,05%
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Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

### Chilean imports, by region (US\$ millions)

	1990	1995	2000	2006	2007	2008
<b>Latin America and Caribbean</b>	1742	4109	5947	12756	14200	18725
<b>United States</b>	1372	3793	3273	5569	7274	11569
<b>EU 15<sup>30</sup></b>	1882	3155	2840	5080	5854	6942
<b>Asia<sup>31</sup></b>	964	2687	2814	7464	10924	14809
<b>China</b>	57	390	949	3483	4881	6972
<b>Japan</b>	568	1013	702	1147	1583	2799
<b>Others</b>	1062	1160	1745	3857	4480	6129
<b>Total</b>	7022	14903	16620	34726	42732	58173

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.



Notwithstanding, in spite of the great diversity on Chilean trade partners, its exports are still concentrated on a few commodities, particularly on copper-related

<sup>30</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK.

<sup>31</sup> Australia, China, Hong Kong, Indonesia, Japan, South Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand and others.

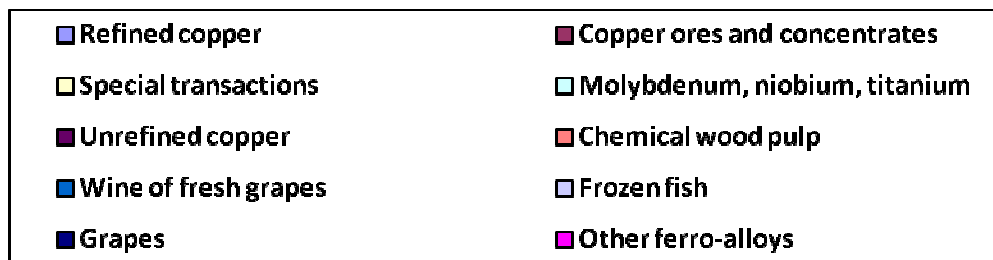
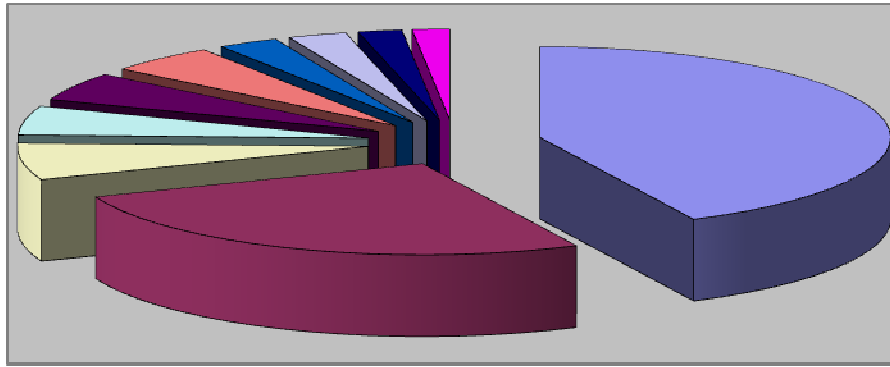
goods – such as refined and unrefined copper, copper ores and concentrates – and other minerals, such as molybdenum. There is also a relevant share of chemical wood pulp, frozen fish, wine and grapes. This concentration on primary products<sup>32</sup> is a major difficulty that the Chilean economy has tried to overcome, since it results in an undesirable scenario of strong dependency on the price fluctuation of only a few products on the international market.

#### Chilean exports, by product (2008) (US\$ thousands)

<b>All commodities</b>	69084971	100%
<b>Refined copper (including alloys except master alloys), unwrought</b>	20967069	30,35%
<b>Copper ores and concentrates</b>	12865558	18,62%
<b>Special transactions, commodity not classified according to class</b>	3181432	4,61%
<b>Ores and concentrates of molybdenum, niobium, titanium, etc.</b>	2529571	3,66%
<b>Unrefined copper (blister copper but excluding cement copper)</b>	2472716	3,58%
<b>Chemical wood pulp, soda or sulphate; bleached or semi- bleached</b>	2472716	3,56%
<b>Wine of fresh grapes</b>	2456748	1,98%
<b>Fish frozen, excluding fillets</b>	1370608	1,91%
<b>Grapes fresh</b>	987718	1,43%
<b>Other ferro-alloys</b>	840939	1,22%

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

<sup>32</sup> European Commission – External relations directorate general. *Chile: country strategy paper*. p.3. “The Chilean production and exports are in general too concentrated on few commodities and the price fluctuation of these commodities has an impact on the overall economy” p.14. “Even if the share of non-traditional products in total exports has increased and that of copper has declined, Chilean exports remain very concentrated on natural resources.”



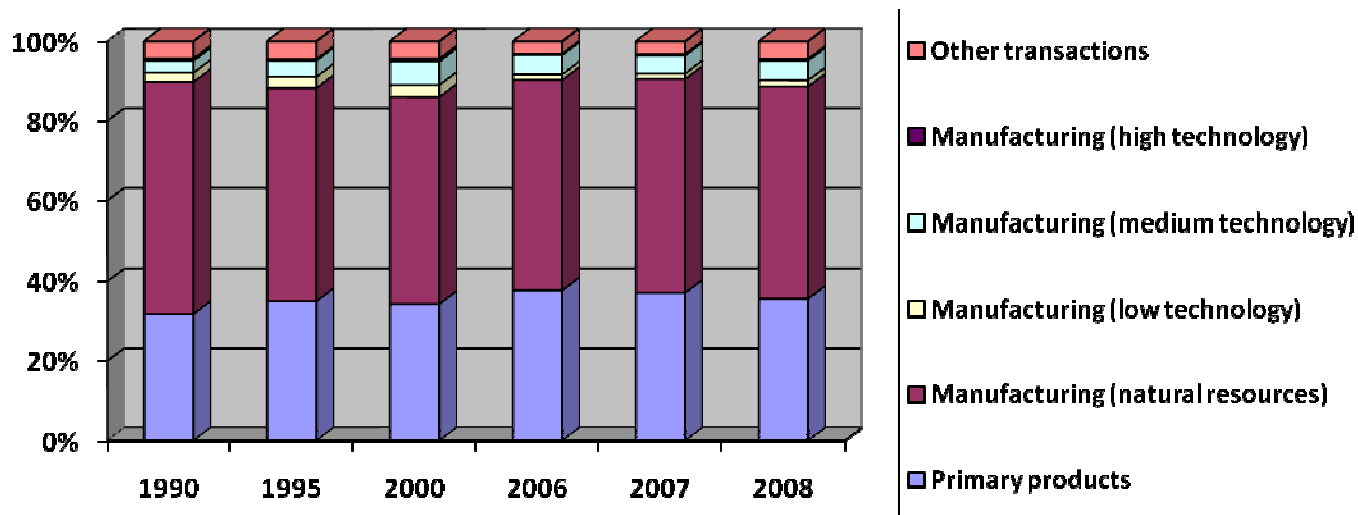
As we may see, the most part of Chilean exports are related to primary products (35,6%) and manufactured goods directly linked to the exploitation of natural resources (52,9%). In spite of the Chilean efforts to modify this panorama, this situation is basically the same of twenty years ago, when the respective percentages were 31,8% (primary products) and 57,9% (manufactured goods directly linked to the exploitation of natural resources). Actually, critics of the free trade model argue that the establishment of trade agreements with developed countries tends to perpetuate the Chilean condition of being a mere exporter of minerals.

#### Exports, by category (US\$ millions)

	1990	1995	2000	2006	2007	2008
<b>Primary products</b>	2713	5570	6252	21095	24403	24633
<b>Manufacturing (natural resources)</b>	4940	8467	9418	29379	35123	36592
<b>Manufacturing (low technology)</b>	200	450	547	789	921	1099
<b>Manufacturing (medium technology)</b>	254	648	1084	2706	2970	3411
<b>Manufacturing</b>	49	56	124	193	252	309

<b>(high technology)</b>						
<b>Other transactions</b>	366	710	790	1718	2070	3041
<b>Total</b>	8522	15901	18215	55881	65739	69085

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.



More, it is important to highlight that 58% of the Chilean exports of manufactured products with medium or high intensive technology have Latin America as destiny, corresponding to 16,09% of the exports to that region. On the other hand, 99,08% of Chinese imports from Chile are of primary products or manufactured goods linked to natural resources.

#### Imports, by category and region (US\$ millions)

	Latin America and Caribbean	United States	UE 15 <sup>33</sup>	China	Japan	Total
<b>Primary products</b>	2730	2261	4436	3547	6114	24633
<b>Manufacturing (natural resources)</b>	7122	4518	10966	6214	958	36592
<b>Manufacturing (low</b>	835	121	73	14	1	1099

<sup>33</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK.



<b>technology)</b>						
<b>Manufacturing (medium technology)</b>	1948	276	506	72	148	3411
<b>Manufacturing (high technology)</b>	211	46	30	1	3	309
<b>Other transactions</b>	570	571	191	3	9	3041
<b>Total</b>	13417	7793	16202	9851	7233	69085

*Source:* CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

Primary products also represent a relevant share of the Chilean imports, particularly crude petroleum and oils. However, products such as vehicles, communication equipment and machinery also represent important shares of it.

#### **Chilean imports, by product (2008) (US\$ thousands)**

<b>All commodities</b>	58173226	100%
<b>Special transaction, commodity not classified according to class</b>	8367147	14,38%
<b>Crude petroleum and oils obtained from bituminous materials</b>	7281506	12,52%
<b>Passenger motor vehicles (excluding buses)</b>	2194773	3,77%
<b>Motor vehicles for the transport of goods or materials</b>	1713605	2,95%
<b>Ores and concentrates of molybdenum, niobium, titanium, etc.</b>	1020382	1,75%
<b>Other coal, not agglomerated</b>	863499	1,48%
<b>Television, radio-broadcasting; transmitters, etc.</b>	810230	1,39%
<b>Liquefied propane and butane</b>	645898	1,11%
<b>Mechanical shovels and excavators, self-propelled</b>	524741	0,9%
<b>Polyethylene; in primary forms</b>	483745	0,83%

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

Actually, medium and high-technology goods represented 40,7% of all Chilean imports, coming especially from most developed Latin American States, the United States, the European Union, China and Japan.

#### Imports, by category (US\$ millions)

	1990	1995	2000	2006	2007	2008
<b>Primary products</b>	1200	2069	3527	8773	10216	14016
<b>Manufacturing (natural resources)</b>	896	1962	2284	5511	8612	13032
<b>Manufacturing (low technology)</b>	772	2257	2584	4510	5242	7026
<b>Manufacturing (medium technology)</b>	3237	6601	5642	11537	13618	17707
<b>Manufacturing (high technology)</b>	797	1732	2327	4143	4776	5997
<b>Other transactions</b>	119	282	256	252	267	395
<b>Total</b>	7022	14903	16620	34726	42732	58173

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

#### Imports, by category and region (US\$ millions)

	Latin America and Caribbean	United States	UE 15 <sup>34</sup>	China	Japan	Total
<b>Primary products</b>	10005	565	167	33	2	14016
<b>Manufacturing (natural resources)</b>	2327	5350	919	616	1114	13032
<b>Manufacturing (low technology)</b>	1375	535	894	3070	56	7026

<sup>34</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK.

<b>Manufacturing (medium technology)</b>	3760	3854	3675	1903	1436	17707
<b>Manufacturing (high technology)</b>	1149	1139	1201	1338	182	5997
<b>Other transactions</b>	108	125	85	13	8	395
<b>Total</b>	18725	11569	6942	6972	2799	58173

Source: CEPAL, División de Comercio Internacional e Integración, sobre la base de cifras oficiales obtenidas de UN Comtrade, United Nations Commodity Trade Statistics Database, DESA/UNSD.

Following the same tendency of exports and imports, the foreign direct investment (FDI) received by Chile has been suffering a remarkable increment on the last two decades and particularly after the 2003-2005 period, when some of the main Chilean FTAs entered in force, incrementing considerably the flow of FDIs<sup>35</sup>. In fact, the FDI/GDP proportion in Chile was – in 2004 – superior to the rates of countries which are considered to be among the major destinies of FDIs, such as China, India, Mexico and Malaysia.

#### Foreign direct investment received (% GDP)

Countries	1990	2000	2003	2004
Brazil	8,0	17,2	25,8	25,2
<b>Chile</b>	<b>33,2</b>	<b>60,7</b>	<b>65,0</b>	<b>58,2</b>
China	5,8	32,2	35,6	14,9
Spain	12,8	25,7	27,4	34,9
United States	6,9	12,4	14,1	12,6
France	7,1	19,8	24,7	26,5
Hungary	1,7	49,3	51,8	60,7
India	0,5	3,8	5,4	5,9
Indonesia	34,0	40,4	27,5	4,4
Ireland	71,5	144,1	129,7	126,3
Malaysia	23,4	58,5	57,2	39,3
Mexico	8,5	16,7	26,5	27,0
New Zealand	18,2	45,0	49,1	51,5
United Kingdom	20,6	30,4	37,4	36,3
South Africa	8,2	33,9	18,5	21,7

<sup>35</sup> Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p. 74. "(...) entre 2003 y 2005 entraron en vigencia los acuerdos comerciales más importantes para Chile desde el punto de vista del volumen de comercio de exportación e importación, así como de captación de IED."

South Korea	2,1	7,3	7,8	8,1
<b>Developing countries</b>	<b>14,7</b>	<b>29,3</b>	<b>31,4</b>	<b>29,1</b>
<b>World</b>	<b>9,3</b>	<b>19,3</b>	<b>22,9</b>	<b>21,7</b>

Source: UNCTAD (2005). In: *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008. p. 75.

During the 2001-2005 period, Chile was the second country in South America on the attraction of FDI, just after Brazil. Nonetheless, considering the proportion with the GDP or with the number of inhabitants, Chile occupied the first place. In 2004-2005, Chile received FTAs of an average of 7% of its annual GDP, superior to Colombia (6%), Ecuador (4%), Uruguay (3%) and all other countries. The FDI per capita in 2005 was US\$ 445, also superior to every other country of the region<sup>36</sup>.

The 2008 crisis provoked a reduction on the flux of FDI globally, consequently affecting Chile. Nonetheless, recent figures demonstrate that on the first three months of 2010 the FDI in Chile achieved a record sum – particularly on the mining and on the retail sectors – totalizing more than US\$ 5,7 billion, overcoming Brazil and Mexico. The estimation for 2010 is that the FDI in Chile will reach a value superior to US\$ 15 billion<sup>37</sup>.

In sum, it is doubtless that the results of those ‘neoliberal’ policies and the consequent signature of free trade agreements were successful for Chile, at least economically.

But what about the social outcomes of those policies?

It is essential verifying if the increment on international trade and FDIs has effectively brought better life conditions for the Chilean society as a whole. It is

<sup>36</sup> *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008. p. 68. “En el quinquenio 2001-2005 Chile ocupó el segundo lugar en términos absolutos, detrás de Brasil, como país receptor de Inversión Extranjera Directa, aunque en términos relativos, ya sea con relación al PIB o al número de habitantes, Chile ocupó el primer lugar. En el bienio 2004-2005, específicamente, la IED neta canalizada hacia Chile resultó en promedio equivalente a un 7% del PIB anual, versus un 6% en Colombia, un 4% en Ecuador, un 3% en Uruguay y los demás países por debajo de 3% del PIB. En términos per capita, la entrada neta de IED hacia Chile en 2005 fue de US\$ 445 por habitante, versus US\$ 221 en Colombia, US\$ 188 en Uruguay, US\$ 123 en Argentina, US\$ 116 en Ecuador, US\$ 112 en Venezuela y los demás países por debajo de US\$ por habitante.”

<sup>37</sup> *El Mercurio*, 22/07/2010. “Datos comerciales de Naciones Unidas del primer trimestre: Chile supera a Brasil y México en inversión extranjera, y alcanzaría una cifra récord en 2010 - De la mano de negocios mineros y del retail, el país totalizó US\$ 5.708 millones, frente a los US\$ 5.656 millones de los brasileños. Cámara de Comercio de Santiago prevé que la inversión extranjera en Chile llegaría este año a entre US\$ 15 mil millones y US\$ 20 mil millones.”

frequent that – even with favorable trade indicators and a positive balance of payments – Latin American States still face deep structural problems, particularly on areas like the establishment of satisfactory social policies, the implementation of significant reforms (particularly on tax systems), the fighting against corruption, the wealth distribution, the setting up of clear and effective rules on the environmental and labour areas, among others.

This research will focus on the major impacts of the Chilean open-trade policies – and the consequent signature of FTAs – on the labour market.

A first step to comprehend this panorama is verifying the concrete effects of this ‘neoliberal’ economic strategy on the creation/destruction of employment in Chile. Hence, the next chapter of this research will present the main conclusions of a recent ILO study describing the quantitative impacts of those trade policies on different economic sectors. However, this will be only the first step of this investigation, which aims to go much further than purely quantifying the number of jobs before and after the implementation of an FTA-based trade policy.

As already mentioned, the major purpose of this investigation is determining if the recent social advances in Chile are exclusive consequences of the favorable economic results of free trade agreements (exports/imports/foreign investments) or if the inclusion of labour regulations (social clauses) on bilateral FTAs also positively contributed to the Chilean social development.

Therefore, this research will get into the specificities of the most relevant Chilean FTAs, analyzing particular features of the social clauses stated in each one of them.

Afterwards, there will be a discussion about the legal aspects of the Chilean labour and social security systems, as well as into the particularities of their enforcement mechanisms which aim to guarantee the accomplishment with the core ILO labour rights. Finally, we will notice how the establishment of social clauses influenced Chilean policies and recent legal reforms on those fields.

In brief, it was demonstrated that the Chilean open-trade policies and the signature of free trade agreements brought positive economic results. But what are the effects of those policies on the Chilean labour market? Are the recent developments on the labour field a mere consequence of those favorable economic results? And what is the concrete role of the establishment of social clauses on bilateral FTAs?

Answering those questions is precisely the key importance of the next chapters of the present research.

## 7. IMPACTS OF THE CHILEAN FREE TRADE POLICIES ON THE EMPLOYMENT LEVEL

The main scope of this thesis is presenting a critic and qualitative analysis about the impacts of the inclusion of social clauses on bilateral agreements signed by Chile on the Chilean domestic legislation and on the accomplishment with the ILO core labour standards.

Nevertheless, before entering into specific legal issues, on this point of the research it is necessary bringing up some quantitative considerations regarding the effect of this open economic policies on the creation (destruction) of employment in Chile.

In order to accomplish with this objective, this chapter will make use data stated on a 2008 ILO investigation on this subject<sup>38</sup>, comparing employment records between the period pre-signature of FTAs (1996) and the first year after two of the most significant trade agreements signed by Chile came into force, the FTA with the United States and the Association agreement with the European Union (2003).

A first table demonstrates the number of job positions in Chile on those two years, discriminated by economic activity. It is unambiguous that the 1996/2003 total variation rate (4,5%) includes expressive increments on the employment on certain sectors – such as the manufacture of wines (+238,3%) – as well as significant retractions on other segments, such as the manufacture of sugar (-76,2%), distilling, rectifying and blending of spirits; ethyl alcohol production from fermented materials (-72%), manufacture of prepared animal feeds (-71,5%) and manufacture of tobacco products (-68,7%).

### Employment in Chile (by economic activity, 1996/2003)

<b>Economic activity</b>	<b>1996</b>	<b>2003</b>	<b>Variation (%)</b>
Manufacture of wines	3.898	13.188	238,3
Supporting and auxiliary transport activities	38.067	67.796	78,1
Air transport	7.561	12.448	64,6
Manufacture of bakery products	20.897	32.734	56,6

<sup>38</sup> *Chile: los acuerdos de libre comercio y su impacto en el empleo*. Santiago: Oficina Internacional del Trabajo, 2008.

Manufacture of basic metals	19.322	29.376	52,0
Post and telecommunications	39.991	59.793	49,5
Production, processing and preserving of meat and meat products	18.887	26.829	42,1
Real estate, renting and business activities	315.944	440.941	39,6
Hotels and restaurants	103.042	122.364	18,8
Education	275.369	323.489	17,5
Public administration and defense; compulsory social security	213.246	245.630	15,2
Manufacture of vegetable and animal oils and fats	1.857	2.129	14,7
Manufacture of rubber and plastics products	16.286	18.627	14,4
Land transport; transport via pipelines	150.341	167.700	11,5
Other community, social and personal service activities	146.050	159.964	9,5
Health and social work	182.944	200.213	9,4
Retail trade	678.527	741.585	9,3
Manufacture of chemicals and chemical products	31.323	33.317	6,4
Manufacture of fabricated metal products	53.864	54.684	1,5
Publishing, printing	29.087	29.087	0,0
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	128.543	121.744	-5,3
Agriculture, cattle raising, hunting and related service activities	398.889	377.339	-5,4
Construction	429.562	404.258	-5,9
Recreational, cultural and sporting activities	46.503	42.056	-9,6
Financial	114.603	103.204	-9,9



intermediation, insurance and pension funding			
Manufacture of machinery and equipment n.e.c.	34.590	30.500	-11,8
Manufacture of grain mill products	6.238	5.443	-12,7
Water transport	9.373	8.172	-12,8
Processing and preserving of fruit and vegetables	22.217	19.357	-12,9
Mining of metal ores	53.476	44.153	-17,4
Manufacture of dairy products	15.240	12.456	-18,3
Electricity, gas and water supply	40.912	32.895	-19,6
Manufacture of other food products	16.904	12.935	-23,5
Fishing, aquaculture and service activities incidental to fishing	145.060	110.192	-24,0
Manufacture of textiles	31.452	23.105	-26,5
Manufacture of furniture; manufacturing n.e.c.	66.249	47.355	-28,5
Manufacture of other non-metallic mineral products	22.906	15.293	-33,2
Extraction of crude petroleum and natural gas	4.176	2.788	-33,2
Mining of coal and lignite; extraction of peat	25.929	15.567	-40,0
Manufacture of beers and non-alcoholic beverages	18.572	10.771	-42,0
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	22.243	11.877	-46,6
Manufacture of wearing apparel; dressing and dyeing of fur	57.084	27.305	-52,2
Manufacture of	1.152	360	-68,7

tobacco products			
Manufacture of prepared animal feeds	11.701	3.332	-71,5
Distilling, rectifying and blending of spirits; ethyl alcohol production from fermented materials	8.824	2.470	-72,0
Manufacture of sugar	4.369	1.038	-76,2
<b>Total</b>	<b>4.083.272</b>	<b>4.267.862</b>	<b>4,5</b>

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p.87. With data from INE and Chilean Central Bank.

Nevertheless, those numbers do not represent *per se* if the Chilean free trade policies influenced those results or not. Therefore, in order to achieve a better comprehension of those figures, it is necessary verifying the exporting rates of each one of those economic segments, so as the participation of them in the total of Chilean exports.

Hence, the next table shows the main economic activities in Chile split between three main categories: *exporters* (sectors which export more than 30% of the total production), *semi-exporters* (which export between 20 and 30 per cent of the total production) and *activities associated with the internal market* (which export less than 20% of the total production).

Between the activities labeled as *exporters* – which represented 69,7% of the total of Chilean exports in 2003 – it is necessary highlighting the sector of mining of metal ores, which was responsible for almost one third of the Chilean total exports in that year. More, silviculture, manufacture of wood and of products of wood, manufacture of paper and paper products, fishing, aquaculture and service activities incidental to fishing also represented an important share of Chilean exports.

Moreover, the following chart presents the direct and indirect employment rates (calculated dividing the number of workers by the increment of one billion Chilean pesos on the final demand of total production) by economic activity.

*Exempli gratia*, on the *exporter* sector, for every billion pesos of increasing on the demand of final production, twenty-five direct employment positions and twenty-four indirect ones were created. It is significant that mining of metal ores – in spite of being the most important activity on the Chilean economy – is not among the economic

sectors which have higher direct and indirect employment rates (seven and twenty-two, respectively).

Concerning activities of the *semi-exporters*, the indirect employment rate (twenty-five) is basically the same of the “exporter” sector (twenty-four), but there is a more intensive creation of direct jobs (sixty-two), particularly because of the influence of activities related to agriculture, cattle raising, hunting and the manufacture of textiles.

At last, on *activities basically devoted to the Chilean internal market*, the indirect employment rate is the same (twenty-four) which may be found on the *exporter* (twenty-four) and on the *semi-exporter* sector (twenty-five).

On the other hand, the economic segments which are not particularly linked to exports present a more intensive creation of direct working positions (fifty-two) than the *exporter* branch, even if it inferior to the *semi-exporter* sector. On that category the employment rates fluctuate a lot, depending on the economic sector. Among the sector with lower employment rates are the extraction of crude petroleum and natural gas, so as activities related to electricity, gas and water supply. Contrariwise, the sector with higher rates of employment creation – considering an increment of one billion Chilean pesos on the final demand of total production – are manufacture of fabricated metal products, production, processing and preserving of meat and meat products and retail trade.

#### **Exports, direct and indirect employment rates (by economic activity, 2003)**

<b>Economic activity</b>	<b>Exports (% of the total production)</b>	<b>% of total exports</b>	<b>Direct employment rate (workers/1 billion Chilean pesos)</b>	<b>Indirect employment rate (workers/ 1 billion Chilean pesos)</b>
Water transport	89,1	5,8	7	11
Mining of metal ores	81,6	31,4	7	22
Processing and preserving of fruit and vegetables	76,5	2,0	35	60
Manufacture of wines	69,6	2,7	21	50
Fishing, aquaculture and service activities incidental to fishing	68,8	8,4	61	27
Mining of coal and lignite; extraction of	66,2	4,2	15	22

peat				
Air transport	58,8	3,6	11	19
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	45,3	9,6	45	22
Manufacture of basic metals	34,8	2,1	37	23
<b>Exporters</b>		<b>69,7</b>	<b>25</b>	<b>24</b>
Manufacture of machinery and equipment n.e.c.	27,8	1,6	25	22
Agriculture, cattle raising, hunting and related service activities	24,9	4,5	130	24
Manufacture of chemicals and chemical products	24,2	3,7	14	24
Supporting and auxiliary transport activities	21,4	1,8	48	24
Manufacture of textiles	20,8	0,4	63	28
Manufacture of other food products	20,2	0,8	26	38
<b>Semi-exporters</b>		<b>12,8</b>	<b>62</b>	<b>25</b>
Extraction of crude petroleum and natural gas	17,0	2,3	1	5
Production, processing and preserving of meat and meat products	16,0	1,1	24	104
Manufacture of furniture; manufacturing n.e.c.	15,3	0,3	143	33
Manufacture of rubber and plastics products	15,1	0,8	20	19
Retail trade	11,3	6,6	76	27
Manufacture of vegetable and animal oils and fats	9,1	0,1	17	37
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and	7,3	0,1	49	29

footwear				
Manufacture of tobacco products	6,5	0,0	4	47
Manufacture of sugar	6,5	0,0	8	91
Manufacture of fabricated metal products	6,5	0,3	53	24
Manufacture of dairy products	6,3	0,2	19	70
Manufacture of wearing apparel; dressing and dyeing of fur	5,6	0,1	63	33
Manufacture of grain mill products	5,2	0,1	19	77
Publishing, printing	5,2	0,2	46	32
Manufacture of other non-metallic mineral products	4,9	0,3	18	19
Post and telecommunications	4,6	0,6	31	25
Real estate, renting and business activities	3,6	2,0	61	13
Land transport; transport via pipelines	3,4	0,9	39	19
Financial intermediation, insurance and pension funding	3,0	0,6	29	15
Distilling, rectifying and blending of spirits; ethyl alcohol production from fermented materials	2,8	0,0	35	64
Manufacture of beers and non-alcoholic beverages	2,2	0,1	13	31
Manufacture of bakery products	1,5	0,1	48	45
Hotels and restaurants	0,6	0,0	86	49
Education	0,5	0,0	102	20
Manufacture of prepared animal feeds	0,4	0,0	5	57
Electricity, gas and water supply	0,0	0,0	15	13
Construction	0,0	0,0	55	27
Public administration and defense; compulsory social	0,0	0,1	71	12

security				
Health and social work	0,0	0,0	77	16
Recreational, cultural and sporting activities	0,0	0,3	62	23
Other community, social and personal service activities	6,4	0,0	103	19
<b>Internal market</b>		<b>17,5</b>	<b>52</b>	<b>24</b>
<b>Total</b>		<b>100,0</b>	<b>50</b>	<b>24</b>

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p.90.

A following step of this study is presenting the precise number of employees directly associated to Chilean exports. Unsurprisingly, the economic sectors linked to exports with more employees are the mining of metal ores (particularly copper), fishing, aquaculture and service activities incidental to fishing (particularly salmon), agriculture, cattle raising, hunting and related service activities, and silviculture, manufacture of wood and of products of wood, manufacture of paper and paper products. Together, those activities represented, in 2003, 77,1% of all working positions related to Chilean exports.

Moreover, relevant increases on the 1996/2003 occurred on segments connected to the manufacture of wines (12.407/ 33.226), the production, processing and preserving of meat and meat products (2.885/ 24.357), manufacture of chemicals and chemical products (9.503/ 24.292) and manufacture of basic metals (7.989 / 21.625).

On the other hand, decreasing number of working positions were observed on the fields of fishing, aquaculture and service activities incidental to fishing (131.715 / 129.414), processing and preserving of fruit and vegetables (36.064 / 32.727), manufacture of other food products (11.168 / 9.021), manufacture of fabricated metal products (4.730 / 4.655), publishing, printing (5.551 / 2.685), manufacture of wearing apparel; dressing and dyeing of fur (4.867/ 2.444), tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear (1.860/ 1.473), and manufacture of vegetable and animal oils and fats (1.625/ 881).

#### **Employment associated to exports (by economic activity, 1996/2003)**

<b>Economic activity</b>	<b>Employment 1996</b>			<b>Employment 2003</b>		
	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>
Mining of metal	123.528	45.841	77.687	156.663	37.504	119.160

ores						
Fishing, aquaculture and service activities incidental to fishing	131.715	104.948	26.767	129.414	90.162	39.252
Agriculture, cattle raising, hunting and related service activities	85.058	72.118	12.940	120.558	101.762	18.796
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	85.078	58.581	26.497	113.156	75.678	37.478
Manufacture of wines	12.407	2.224	10.183	33.226	9.730	23.496
Processing and preserving of fruit and vegetables	36.064	11.433	24.631	32.727	12.188	20.539
Production, processing and preserving of meat and meat products	2.885	419	2.466	24.357	4.584	19.773
Manufacture of chemicals and chemical products	9.503	4.385	5.119	24.292	8.865	15.427
Manufacture of basic metals	7.989	5.080	2.910	21.625	13.261	8.365
Manufacture of machinery and equipment n.e.c.	13.475	7.699	5.775	13.618	7.162	6.457
Manufacture of furniture; manufacturing n.e.c.	8.718	7.098	1.620	9.110	7.411	1.699
Manufacture of other food products	11.168	4.474	6.695	9.021	3.698	5.323
Manufacture of textiles	4.871	3.640	1.230	5.801	3.987	1.815
Manufacture of	3.137	1.541	1.596	5.618	2.856	2.763

rubber and plastics products						
Manufacture of fabricated metal products	4.730	3.324	1.406	4.655	3.199	1.455
Manufacture of dairy products	1.950	491	1.460	3.637	775	2.863
Publishing, printing	5.551	2.956	2.595	2.685	1.594	1.090
Manufacture of wearing apparel; dressing and dyeing of fur	4.867	3.641	1.226	2.444	1.605	839
Manufacture of other non-metallic mineral products	1.211	613	599	1.659	805	854
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	1.860	1.290	570	1.473	925	548
Manufacture of vegetable and animal oils and fats	1.625	526	1.099	881	275	606
<b>Total</b>	<b>557.393</b>	<b>342.323</b>	<b>215.070</b>	<b>716.621</b>	<b>388.025</b>	<b>328.596</b>

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008.p.93

The higher percentage losses took place in activities related to publishing, printing (-51,6%), manufacture of wearing apparel, dressing and dyeing of fur (-49,8%) and manufacture of vegetable and animal oils and fats (-46,8%).

On the contrary, the most significant positive variations in percentage were verified on the segments of manufacture of chemicals and chemical products (155,6%), manufacture of wines (167,8%), manufacture of basic metals (170,7%) and production, processing and preserving of meat and meat products (744,3%).

#### **Employment associated to exports (% variation 1996/2003)**

Publishing, printing	-51,6
Manufacture of wearing apparel; dressing	-49,8



and dyeing of fur	
Manufacture of vegetable and animal oils and fats	-45,8
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	-20,8
Manufacture of other food products	-19,2
Processing and preserving of fruit and vegetables	-9,3
Fishing, aquaculture and service activities incidental to fishing	-1,7
Manufacture of fabricated metal products	-1,6
Manufacture of machinery and equipment n.e.c.	1,1
Manufacture of furniture; manufacturing n.e.c.	4,5
Manufacture of textiles	19,1
Mining of metal ores	26,8
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	33,0
Manufacture of other non-metallic mineral products	36,9
Agriculture, cattle raising, hunting and related service activities	41,7
Manufacture of rubber and plastics products	79,1
Manufacture of dairy products	86,5
Manufacture of chemicals and chemical products	155,6
Manufacture of wines	167,8
Manufacture of basic metals	170,7
Production, processing and preserving of meat and meat products	744,3

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008.p.94.*

It is also important that on that period the proportion of direct working positions in comparison with indirect ones increased (0,63 / 0,85). This tendency is observable in the sectors of manufacture of dairy products, mining of metal ores, manufacture of vegetable and animal oils and fats, manufacture of chemicals and chemical products, manufacture of other non-metallic mineral products, manufacture of machinery and equipment n.e.c., manufacture of basic metals, tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear, manufacture of wearing apparel; dressing and dyeing of fur, silviculture, manufacture of wood and of

products of wood, manufacture of paper and paper products, manufacture of textiles, manufacture of fabricated metal products and fishing, aquaculture and service activities incidental to fishing.

The opposite tendency is verified in economic activities such as the production, processing and preserving of meat and meat products, manufacture of wines, processing and preserving of fruit and vegetables, manufacture of other food products, manufacture of rubber and plastics products, publishing and printing.

**Relationship between direct and indirect employment associated to exports (by economic activity, 1996/2003)**

<b>Economic activity</b>	<b>1996</b>	<b>2003</b>	<b>Variation</b>
Production, processing and preserving of meat and meat products	5,88	4,31	-
Manufacture of dairy products	2,98	3,69	+
Mining of metal ores	1,69	3,18	+
Manufacture of wines	4,58	2,41	-
Manufacture of vegetable and animal oils and fats	2,09	2,2	+
Manufacture of chemicals and chemical products	1,17	1,74	+
Processing and preserving of fruit and vegetables	2,15	1,69	-
Manufacture of other food products	1,5	1,44	-
Manufacture of other non-metallic mineral products	0,98	1,06	+
Manufacture of rubber and plastics products	1,04	0,97	-
Manufacture of machinery and equipment n.e.c.	0,75	0,9	+
<b>Total</b>	<b>0,63</b>	<b>0,85</b>	<b>+</b>
Publishing, printing	0,88	0,68	-
Manufacture of basic metals	0,57	0,63	+
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	0,44	0,59	+
Manufacture of wearing apparel; dressing and dyeing of fur	0,34	0,52	+
Silviculture, Manufacture of wood and of products of wood, manufacture of paper	0,45	0,5	+

and paper products			
Manufacture of textiles	0,34	0,46	+
Manufacture of fabricated metal products	0,42	0,45	+
Fishing, aquaculture and service activities incidental to fishing	0,26	0,44	+
Manufacture of furniture; manufacturing n.e.c.	0,23	0,23	0
Agriculture, cattle raising, hunting and related service activities	0,18	0,18	0

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p. 95.

If we consider only the number of employments associated to exports with destination to countries which had free trade agreements in force with Chile on those years, the results are quite similar. Once more, the economic sectors with more employees are the mining of metal ores (particularly copper), agriculture, cattle raising, hunting and related service activities, silviculture, manufacture of wood and of products of wood, manufacture of paper and paper products and fishing, aquaculture and service activities incidental to fishing (particularly salmon). Particular mentions shall be done to segments with significant increases, such as the manufacture of wines, the manufacture of chemicals and chemical products, the manufacture of basic metals, the production, processing and preserving of meat and meat products, the manufacture of furniture; manufacturing n.e.c., the manufacture of machinery and equipment n.e.c. and the manufacture of dairy products.

#### **Employment associated to exports (FTAs only) (by economic activity, 1996/2003)**

<b>Economic activity</b>	<b>Employment 1996</b>			<b>Employment 2003</b>		
	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>
Mining of metal ores	39.332	14.596	24.736	107.382	25.706	81.676
Agriculture, cattle raising, hunting and related service activities	40.794	34.588	6.206	92.878	78.398	14.481
Silviculture, Manufacture of wood and of products of	62.936	43.335	19.601	68.643	45.908	22.735

wood, manufacture of paper and paper products						
Fishing, aquaculture and service activities incidental to fishing	57.546	45.851	11.694	65.490	45.627	19.864
Manufacture of wines	4.050	726	3.324	25.748	7.540	18.208
Processing and preserving of fruit and vegetables	23.085	7.319	15.767	19.736	7.350	12.386
Manufacture of chemicals and chemical products	5.334	2.461	2.873	14.629	5.339	9.290
Manufacture of basic metals	3.210	2.041	1.169	13.129	8.051	5.078
Production, processing and preserving of meat and meat products	1.163	169	994	12.657	2.382	10.275
Manufacture of furniture; manufacturing n.e.c.	235	191	44	6.510	5.296	1.214
Manufacture of machinery and equipment n.e.c.	1.003	573	430	5.228	2.749	2.479
Manufacture of dairy products	298	75	223	2.663	567	2.096
Manufacture of rubber and plastics products	0	0	0	2.589	1.316	1.273
Manufacture of other food products	0	0	0	2.264	928	1.336
Manufacture of textiles	0	0	0	1.929	1.325	603
Manufacture of wearing apparel; dressing and dyeing of fur	1.625	1.215	409	1.664	1.093	571
Manufacture of fabricated metal products	0	0	0	1.555	1.069	486

Publishing, printing	0	0	0	943	560	383
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	401	278	123	680	427	253
Manufacture of other non-metallic mineral products	0	0	0	546	265	281
Manufacture of vegetable and animal oils and fats	662	214	447	234	73	161
<b>Total</b>	<b>241.672</b>	<b>153.632</b>	<b>88.040</b>	<b>447.097</b>	<b>241.969</b>	<b>205.128</b>

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p. 97.

More, also on this case there was also a significant variation between the economic activities analyzed, from relevant job losses – manufacture of vegetable and animal oils and fats (-64,7%) - until major job creation on sectors such as manufacture of basic metals (309,0%), manufacture of machinery and equipment n.e.c. (421,5%), manufacture of wines (535,7%), manufacture of dairy products (794,3%), production, processing and preserving of meat and meat products (988,2%) and manufacture of furniture, manufacturing n.e.c. (2.672,9%).

#### **Employment associated to exports (FTAs only) (% variation 1996/2003)**

Manufacture of vegetable and animal oils and fats	-64,7
Processing and preserving of fruit and vegetables	-14,5
Manufacture of wearing apparel; dressing and dyeing of fur	2,4
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	9,1
Fishing, aquaculture and service activities incidental to fishing	13,8
Tanning and dressing of leather; manufacture of luggage, handbags,	69,7

saddlery, harness and footwear	
<b>Total</b>	<b>85,0</b>
Agriculture, cattle raising, hunting and related service activities	127,7
Mining of metal ores	173,0
Manufacture of chemicals and chemical products	174,2
Manufacture of basic metals	309,0
Manufacture of machinery and equipment n.e.c.	421,5
Manufacture of wines	535,7
Manufacture of dairy products	794,3
Production, processing and preserving of meat and meat products	988,2
Manufacture of furniture; manufacturing n.e.c.	2.672,9

Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p. 98.

Furthermore, the relationship between direct and indirect employment positions associated to exports to those preferential trade partners is also very similar to the same data concerning the total exports.

**Relationship between direct and indirect employment associated to exports (FTAs only) (by economic activity, 1996/2003)**

<b>Economic activity</b>	<b>1996</b>	<b>2003</b>	<b>Variation</b>
Production, processing and preserving of meat and meat products	5,88	4,31	-
Manufacture of dairy products	2,98	3,69	+
Mining of metal ores	1,69	3,18	+
Manufacture of wines	4,58	2,41	-
Manufacture of vegetable and animal oils and fats	2,09	2,2	+
Manufacture of chemicals and chemical products	1,17	1,74	+
Processing and preserving of fruit and vegetables	2,15	1,69	-
Manufacture of other food products	-	1,44	
Manufacture of other non-metallic mineral products	-	1,06	
Manufacture of rubber and plastics products	-	0,97	

Manufacture of machinery and equipment n.e.c.	0,75	0,9	+
<b>Total</b>	<b>0,57</b>	<b>0,85</b>	<b>+</b>
Publishing, printing	-	0,68	
Manufacture of basic metals	0,57	0,63	+
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	0,44	0,59	+
Manufacture of wearing apparel; dressing and dyeing of fur	0,34	0,52	+
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	0,45	0,5	+
Manufacture of textiles	-	0,46	
Manufacture of fabricated metal products	-	0,45	
Fishing, aquaculture and service activities incidental to fishing	0,26	0,44	+
Manufacture of furniture; manufacturing n.e.c.	0,23	0,23	0
Agriculture, cattle raising, hunting and related service activities	0,18	0,18	0

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo. Santiago: Oficina Internacional del Trabajo, 2008. p. 99.*

Many critics of FTAs argue that the increasing number of jobs associated to the increment on exports would be compensated by a loss of employment in other sectors, particularly in those linked to products which are imported from the Chilean preferential trade partners.

For this reason, the ILO developed an investigation aiming to define the estimated number of workers which would be employed in Chile if Chile stopped importing from its FTA partners. The most part of those workers would be employed on sectors associated to agriculture, cattle raising, hunting and related activities and silviculture, manufacture of wood and of products of wood, manufacture of paper and paper products.

**Employment associated to imports (FTAs only) (by economic activity, estimated, 2003)**

<b>Economic activity</b>	<b>Total employment</b>	<b>Direct employment</b>	<b>Indirect employment</b>
Agriculture, cattle raising, hunting and related service activities	13.433	11.281	2.152
Silviculture, manufacture of wood and of products of wood, manufacture of paper and paper products	13.420	11.633	1.787
Fishing, aquaculture and service activities incidental to fishing	907	637	270
Mining of coal and lignite; extraction of peat	2.767	2.276	491
Production, processing and preserving of meat and meat products	603	505	99
Processing and preserving of fruit and vegetables	652	466	186
Manufacture of vegetable and animal oils and fats	737	576	161
Manufacture of dairy products	992	802	190
Manufacture of grain mill products	683	570	113
Manufacture of sugar	485	405	81
Manufacture of other food products	2.859	2.185	674
Manufacture of wines	61	49	12
Manufacture of beers and non-alcoholic beverages	287	217	70
Manufacture of tobacco products	284	215	69
Manufacture of textiles	13.318	8.434	4.883
Manufacture of wearing apparel; dressing and dyeing of fur	31.256	12.185	19.070
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	10.933	7.503	3.430
Publishing, printing	4.456	3.321	1.135
Manufacture of rubber and plastics products	9.864	7.580	2.284
Manufacture of other non-metallic mineral products	3.899	3.193	705
Manufacture of basic metals	8.140	6.907	1.234



Manufacture of fabricated metal products	19.276	16.838	2.439
Manufacture of furniture; manufacturing n.e.c.	23.005	19.007	3.998
<b>Total</b>	<b>162.317</b>	<b>116.785</b>	<b>45.532</b>

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo.* Santiago: Oficina Internacional del Trabajo, 2008. p. 109.

In addition, the ILO study demonstrated that the net employment (positions created because of the increment on exports minus positions lost because of the increment on imports) is positive. Of course some economic sectors were constrained to reduce their working force, such as the cases of Manufacture of vegetable and animal oils and fats, manufacture of grain mill products, manufacture of sugar, manufacture of beers and non-alcoholic beverages, manufacture of other food products, manufacture of tobacco products, manufacture of textiles, manufacture of wearing apparel; dressing and dyeing of fur, tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear, publishing, printing, manufacture of rubber and plastics products, manufacture of other non-metallic mineral products, manufacture of fabricated metal products and manufacture of furniture; manufacturing n.e.c..

However, there were significant gains on activities such as agriculture, cattle raising, hunting and related service activities, silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products, fishing, aquaculture and service activities incidental to fishing, mining of coal and lignite; extraction of peat, mining of metal ores, production, processing and preserving of meat and meat products, processing and preserving of fruit and vegetables, manufacture of dairy products, manufacture of wines, manufacture of chemicals and chemical products, manufacture of basic metals and manufacture of machinery and equipment n.e.c..

After all calculations, the ILO estimation is that FTAs brought, in 2003, an increment of 273.440 job positions, being 124.558 direct ones and 148.882 indirect ones.

**Net employment, considering employment associated to exports and imports (FTAs only) (by economic activity, 2003)**

Economic activity	Employment (exports FTAs)			Employment (imports FTAs)			Net employment		
	Total	Direct	Indirect	Total	Direct	Indirect	Total	Direct	Indirect
Agriculture, cattle raising, hunting and related service activities	94.354	79.603	14.751	13.433	11.281	2.152	80.921	68.322	12.599
Silviculture, Manufacture of wood and of products of wood, manufacture of paper and paper products	62.507	41.799	20.708	13.420	11.633	1.787	49.087	30.166	18.921
Fishing, aquaculture and service activities incidental to fishing	67.186	47.258	19.928	907	637	270	66.279	46.621	19.658
Mining of coal and lignite; extraction of peat	20.428	8.156	12.272	2.767	2.276	491	17.661	5.880	11.781
Mining of metal ores	81.493	19.509	61.984				81.493	19.509	61.984
Production, processing and preserving of meat and meat products	11.786	1.564	10.222	603	505	99	11.183	1.059	10.124
Processing and preserving of fruit and vegetables	20.193	7.534	12.659	652	466	186	19.541	7.068	12.473
Manufacture of vegetable and animal oils and fats	123	40	83	737	576	161	-615	-537	-78
Manufacture of dairy products	1.786	360	1.426	992	802	190	794	-442	1.236
Manufacture of grain mill products				683	570	113	-683	-570	-113
Manufacture of sugar				485	405	81	-485	-405	-81
Manufacture of other food	2.334	1.087	1.247	2.859	2.185	674	-524	-1.098	573

products									
Manufacture of wines	26.243	7.684	18.559	61	49	12	26.183	7.635	18.547
Manufacture of beers and non-alcoholic beverages				287	217	70	-287	-217	-70
Manufacture of tobacco products				284	215	69	-284	-215	-69
Manufacture of textiles	2.111	1.450	660	13.318	8.434	4.883	-11.207	-6.984	-4.223
Manufacture of wearing apparel; dressing and dyeing of fur	1.600	1.050	549	31.256	12.185	19.070	-29.656	-11.135	-18.521
Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear	743	469	275	10.933	7.503	3.430	-10.190	-7.034	-3.156
Publishing, printing	1.097	651	446	4.456	3.321	1.135	-3.359	-2.670	-689
Manufacture of chemicals and chemical products	12.684	4.626	8.058				12.684	4.626	8.058
Manufacture of rubber and plastics products	2.000	1.017	984	9.864	7.580	2.284	-7.864	-6.564	-1.300
Manufacture of other non-metallic mineral products	623	302	321	3.899	3.193	705	-3.275	-2.891	-384
Manufacture of basic metals	12.006	7.362	4.644	8.140	6.907	1.234	3.866	455	3.410
Manufacture of fabricated metal products	2.122	1.458	663	19.276	16.838	2.439	-17.155	-15.379	-1.775
Manufacture of machinery and equipment n.e.c.	5.821	3.061	2.760				5.821	3.061	2.760
Manufacture of furniture; manufacturing n.e.c.	6.517	5.302	1.125	23.005	19.007	3.998	-16.488	-13.705	-2.782
<b>Total</b>	<b>435.757</b>	<b>241.343</b>	<b>194.414</b>	<b>162.317</b>	<b>116.785</b>	<b>45.532</b>	<b>273.440</b>	<b>124.558</b>	<b>148.882</b>

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo.* Santiago: Oficina Internacional del Trabajo, 2008. p. 110.

Furthermore, the study demonstrated that for every US\$ million<sup>39</sup> exported, twenty job positions were created in 1996, a number which increased to 33,1 in 2003.

Contrariwise, the number of employments created for each US\$ million of foreign direct investment in Chile declined from 92,8 in 1996 to 58,5 in 2003. Even tough, it is still a significant rate, which shows the key importance of increasing FDI on the labour market.

	1996	2003
<b>Number of employments for each US\$ million (of 2003) exported</b>	20,0	33,1
<b>Number of employments for each US\$ million (of 2003) of FDI</b>	92,8	58,5

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo.* Santiago: Oficina Internacional del Trabajo, 2008. p. 141.

Other conclusions of the ILO study are expressed on the table below:

Years		Employment (total)	Employment (direct)	Employment (indirect)
<b>Exports</b>				
<b>1996</b>	Number	557.393	342.322	215.070
	% of total	100	61,4	38,6
<b>2003</b>	Number	716.624	388.026	328.598
	% of total	100	54,1	45,9
<b>Foreign Direct Investments (FDI)</b>				
<b>1996</b>	Number	64.513	39.696	24.817
	% of total	100	61,5	38,5
<b>2003</b>	Number	59.728	37.282	22.446
	% of total	100	64,2	37,6
<b>Exports + Foreign Direct Investments</b>				
<b>1996</b>	Number	621.906	382.018	239.887
	% of total	100	61,4	38,6
<b>2003</b>	Number	776.352	425.308	351.044
	% of total	100	54,8	45,2
<b>Exports related to FTAs</b>				
<b>1996</b>	Number	241.600	153.300	88.000
	% of total	100	63,5	36,4

<sup>39</sup> Currency of 2003.

<b>2003</b>	Number	447.100	242.000	205.100
	% of total	100	54,1	45,9

*Source: Chile: los acuerdos de libre comercio y su impacto en el empleo.* Santiago: Oficina Internacional del Trabajo, 2008. p. 141.

In sum, the ILO investigation demonstrated that – on a quantitative perspective – the establishment of Chilean free trade policies and the consequent signature of FTAs produced an environment favorable to the creation of new job positions, particularly because of the increment on exports and on the increment of foreign investment in Chile. Even if some sectors were constrained to reduce personnel, the total net employment is favorable to the South American country.

However, an increment on the employment level must not be the only objective of the Chilean authorities on the establishment of its economic policies. More than creating jobs it is necessary reducing social inequalities, implementing better work conditions, setting up an efficient social security system and ensuring the accomplishment with fundamental ILO rights.

Therefore, after those considerations, we are ready to get into the core part of this thesis: a qualitative analysis of the influence of social clauses on the Chilean labour and social security laws and policies. Consequently, the next steps of our research will be the analysis of the formal and the material contents of the labour regulations established on the most relevant bilateral free trade agreements signed by Chile, so as its enforcement mechanisms, topics which will be developed on the following chapters of this thesis.

## 8. LABOUR PROVISIONS ON THE CHILEAN MOST RELEVANT TRADE AGREEMENTS

*“Peace is a natural effect of trade.”*

Charles de Montesquieu (1689-1755), French political thinker

Chile is a pioneer on the insertion of labor issues on free trade agreements, and, in some way, overlapped the traditional exclusive domain of the ILO on this field. If the ILO counts in praxis only on moral sanctions, and the WTO does not interfere on labour rights protection (e.g. the deadlocks faced by the Doha Round), the Chilean trade model may be an example for an international society in constant evolution.

Therefore, it is significant proceeding a comparative investigation concerning the treatment of labour regulations on recent trade agreements signed by Chile. At a first glance, there is a particular interest on the analysis of the treaties involving the United States and the European Union, not just because of the economic importance of those agreements, but peculiarly because they represent completely diverse perspectives on labour provisions. This scrutiny is remarkable since those agreements typify two extremes of a spectrum which includes several other international trade treaties which will be discussed on a further moment.

By one side, the U.S. – Chile FTA may be considered an example of a pragmatic, objective and case-oriented treaty, with an Aristotelian approach of labour regulations. Its teleological nature may be clearly inferred by the fact that it sets up the possibility of concrete sanctions on violations concerning the labour area, considering labour provisions as objective elements of a pluralistic trade relationship. The main concern is to establish a dispute settlement system able to ensure the accomplishment of international labour principles, and rules must be seen as important measures in order to avoid unfair commercial competence (the so called “social dumping”). Therefore, the parties compromise themselves on the accomplishment of their own national regulations (which, moreover, must be compatible with international standards), aiming to build up a credible, stable and previsible bilateral trade system.

On the other hand, the agreement signed between Chile and the European Union is an example of an idealist conception of labor protection, based on declarations of non-mandatory principles, without the imposition of penalties on the case of infringements. This non-binding conception is certainly more convergent with the ILO Declaration of Philadelphia (“*labour is not a commodity*”), nevertheless, this moral dimension lacks on trenchancy. Its main strengths are related to the increment of cooperation and the promotion of common values, but, *in praxis*,

it does not overcome the challenge of imposing international labour standards and avoiding breaches of peremptory labour norms, remaining on the same abstract level of general ILO provisions, with non-binding content.

Nonetheless, the principal scope of this section is to realistically analyze the roots of those different labour policies and their consequences *in concreto*, and peradventure, try to assimilate the best characteristics of every model, overcoming their apparently dichotomical nature, in order to set up bilateral trade systems able to effectively guarantee the accomplishment of international labour standards.

## 8.1. CHILE – UNITED STATES FREE TRADE AGREEMENT

### 8.1.1. Antecedents

The first attempt to conclude a free trade agreement between Chile and the United States was proposed still on the early 90's, just after the Chilean redemocratization, as a consequence of the "*Initiative for the Americas*"<sup>40</sup> promoted by the President George H. Bush<sup>41</sup>.

Nevertheless, it was only during Clinton's Administration that some kind of formal negotiations started out. In 1994, President Bill Clinton unilaterally invited the Chilean President, Eduardo Frei, to take part of arrangements looking for the Chilean adherence on the North American Free Trade Agreement. Initially, the U.S. had the purpose to make Chile NAFTA<sup>42</sup>'s fourth friend<sup>43</sup>, notwithstanding, the radical opposition of relevant social actors - particularly American Trade Unions like the AFL-CIO and several environmental NGOs -

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<sup>40</sup> CUGAT, Alejandro Marisio. *Una cronica de la aprobación del TLC en el Congreso de los Estados Unidos*. P. 80. "Las conversaciones para la suscripción de un TLC entre Chile y los Estados Unidos de América se remontan a los inicios de los años 90, cuando el entonces Presidente George H. Bush dio a conocer la 'Iniciativa para las Américas' (...)".

<sup>41</sup> VARGO, Regina. *La negociación del Acuerdo de Libre Comercio EEUU- Chile*. p. 72. "(...) las discusiones conceptuales sobre lazos comerciales más estrechos entre los EEUU y Chile comenzaron ya durante la primera Administración Bush, no mucho después de que el proyecto NAFTA tomaba cuerpo y Chile estaba retornando a la democracia."

<sup>42</sup> NAFTA: North American Free Trade Agreement, in force since January 1<sup>st</sup>, 1994.

<sup>43</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 80. "(...) en noviembre de 1994, con ocasión de la Primera Cumbre de las Américas, el Presidente Bill Clinton – junto al Presidente de México y el Primer Ministro de Canadá – invitaron a Chile a convertirse en el 'cuarto amigo' del NAFTA. Chile vio frustrado su deseo, pues esa propuesta tampoco prosperó al no lograr la Administración Clinton, en 1997, obtener del Congreso la renovación del fast-track."



against the NAFTA enlargement, summed with Clinton's lack of *fast-track* authority<sup>44</sup> on the period after 1997, constrained the American government to renounce of this first idea.

Even tough, the Chilean government followed its primary strategy and decided to establish bilateral negotiations with all NAFTA members one by one, and eventually signed FTAs with Canada, in 1996<sup>45</sup>, and Mexico, in 1998<sup>46</sup>. Those two trade agreements were deeply delimited by the NAFTA framework, with labour commitments being regulated by side understandings based on the provisions stated by the NAALC (North American Agreement on Labour Cooperation).

*Exempli gratia*, Chile and Canada subscribed a Labor Cooperation Agreement<sup>47</sup> - the first treaty ever signed by the Chilean government linking trade and labour norms – with a fundamentally equal structure than the one stated on the NAALC. Its main scope is to promote labor rights on both parties, raising labor standards in specific areas. Also, cooperation must be enforced by a bilateral ministerial Labor Cooperation Commission. Moreover, Chile and Canada commit themselves with the accomplishment of their own national labour legislations, with mutual supervision. In the case of unaccomplishment of labor provisions there is a possibility of the constitution of a Panel<sup>48</sup>, which may impose a fee<sup>49</sup> that must be assigned to a fund aiming to promote labour rights on both parties. In accordance with this treaty, withal, there is no possibility to impose concrete trade sanctions on the parties for breaches on labour standards.

Notwithstanding, at the end of Clinton's Administration, there was a growing social consensus against the NAFTA model – and specially against the NAALC regulations – which was taken as the main ground of millions of job losses and less secure job positions. Therefore, the U.S. authorities were processing a brand new negotiation scheme for their future FTAs, binding ILO labour standards and trade sanctions. The first countries chosen to subscribe this model of FTA with the United States were Jordan, Singapore and Chile, all of them small countries, with small impact on the American trade balance, but with remarkable geopolitical importance.

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<sup>44</sup> *Id.* p. 87. “Para solucionar los problemas de competencia se ideó el fast-track, mediante el cual el Congreso otorga al Presidente la facultad de negociar acuerdos comerciales y le asegura una tramitación expedita, a cambio de un amplio proceso de consultas entre el Ejecutivo y el Congreso. Pero la característica esencial del fast-track o TPA es que impide la introducción de enmiendas luego de concluida una negociación entre Estados y ésta se somete a un voto de aprobación o rechazo, up or down vote.”

<sup>45</sup> Signed on December 5th, 1996. In force since July 5th, 1997.

<sup>46</sup> Signed on April 17<sup>th</sup>, 1998. In force since August 1<sup>st</sup>, 1999.

<sup>47</sup> Which also entered into force in July 5<sup>th</sup>, 1997.

<sup>48</sup> Composed by five members, indicated by the parties.

<sup>49</sup> The fee must be enforced by competent national courts.

### 8.1.2. Why Chile?

The United States have many non-commercial, yet geopolitical interests on the Chilean trade agreement. Chile has been chosen by the United States as their commercial partner *par excellence* in South America for several reasons, such as:

a) Signing and FTA with Chile may be analyzed as the first step of a new American trade policy, which privileges bilateral and regional liberalization arrangements, taking into account the deadlocks faced by multilateral trade negotiations, particularly the ones of the Doha Round on the WTO;

b) Moreover, it is a way to elude the resistance of some Latin American countries regarding to the FTAA/ALCA<sup>50</sup> agreement<sup>51</sup>. A net of bilateral trade agreements could be an alternative to this strategy;

c) Also, the U.S. - Chile FTA is an outcome for the crescent presence of foreign capitals in Latin America, particularly European and Asian ones. So, the agreement may be seen as a countermeasure against that competence, an attempt to keep the American economic supremacy on the continent, “a later development of the Monroe Doctrine”;

d) Furthermore, the agreement with Chile debilitates regional arrangements such as the MERCOSUR and the Andean Community, trade blocs which could create or accentuate difficulties for the American economic interests in South America<sup>52</sup>.

e) And finally, the United States have great interest in strengthening the Chilean political model, whose stability and transparency decisively contribute to increase its competitiveness on the international market. The United States support certain Chilean characteristics, as the liberalized economy, the low corruption levels, the political stability, the juridical security, and efficient regulation sector<sup>53</sup>. On this sense, United States have interest to impulse the Chilean development, setting it up as a political and economical framework to other Latin American countries<sup>54</sup>.

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<sup>50</sup> Free Trade Area of the Americas.

<sup>51</sup> VARGO, Regina. *Op. cit.* p.78. “El TLC ha elevado, igualmente, las esperanzas e intensificado el interés en el libre comercio a través de América Latina.”

<sup>52</sup> CADERMATORI, José. *Chile: El Tratado de Libre Comercio con EEUU, un balance después de la firma*, 2003. p.1.

<sup>53</sup> BIANCHI, Andres.

<sup>54</sup> VARGO, Regina. *Op. cit.* p. 73. “Desde el punto de vista de los Estados Unidos, una de nuestras más altas prioridades era abrir mercados y expandir nuestras oportunidades, así como enviar una señal a los países en desarrollo, particularmente en América Latina, en cuanto a que los países que, como Chile, llevaban a cabo reformas económica orientadas a la liberalización del mercado, recibirían nuestro fuerte apoyo.”

### 8.1.3. Starting the negotiations

In November 2000 the Clinton Administration announced the beginning of negotiations with Singapore and Chile, and the intention to include significant commitments on the labour and on the environmental fields on the main body of those innovative free trade agreements what, inspired on the U.S. –Jordan FTA<sup>55</sup>, could be directly linked to trade sanctions.

The formal negotiations with Chile started on December 6<sup>th</sup> 2000, on a commercial meeting between the US Trade Representative (USTR) Robert Zoellick and the Chilean External Relations Minister, María Soledad Alvear.

#### 8.1.3.1. *The Chilean leap of faith:*

It is meaningful that in spite of the deep consensus among the Chilean society that the U.S.-Chile FTA would be a relevant tool in order to proceed with the successful Chilean liberal trade agenda, and that many significant economic opportunities would be developed by this agreement, the experienced Chilean negotiation team<sup>56</sup> was reticent in order to immediately start negotiations, because of their uncertain and unpropitious status on that time.

At first because Chile did not agree with the American imposition to include on the main body of an FTA a labour chapter with the incorporation of an enforcement mechanism with the concrete possibility of employing trade sanctions. Chilean authorities would better adopt a separate agreement based on the NAFTA/NAALC template or on the cooperation agreement that was being negotiated between Chile and the European Union<sup>57</sup> – with a Labour Chapter giving emphasis on cooperation activities and with the establishment of non-binding principles and general objectives.

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<sup>55</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 81. “La diferencia surgió por el deseo de los Estados Unidos de mencionar que ellas estarían basadas en el modelo jordano, algo que en ese momento Chile no estaba dispuesto a aceptar, pues podría significar adquirir compromisos en materias laborales y medioambientales, sin siquiera haberlos evaluado.”

<sup>56</sup> VARGO, Regina. *Op cit.* p. 74. “En muchos sentidos, los negociadores chilenos aportaron más de tal experiencia en las negociaciones, pues Chile había desarrollado una agenda de negociaciones más activa a fines de los 90”.

<sup>57</sup> The Chile-European Union Association Agreement was signed on November 18<sup>th</sup>, 2002, and it is in effect since February 1<sup>st</sup>, 2003 (complete effect since March 1<sup>st</sup>, 2005). Complementary agreements were also signed with the inclusion of new European countries in 2004 and in 2007.

More, there was a double leap of faith<sup>58</sup> by the Chilean authorities, since (1) there was an imminent change on the U.S. Administration - what could easily obstruct negotiations - and (2) there was no warranty that President George W. Bush would get the necessary *fast-track* authority from the Congress – a *conditio sine qua non* for a successful FTA negotiation – which would be another obstacle that could embarrass and postpone even more this already complex process.

### 8.1.3.2. *First reactions*

#### 8.1.3.2.1. *Republicans x Democrats*

Again, the main discussion mark between Republicans and Democrats was the introduction of a labour chapter on the body of the FTA with a sanctionatory mechanism able to enforce condemnations in case of ILO labour standards violations.

Democrats supported the Jordan model, with the addition of an efficient mechanism in order to enforce environmental and labour standards, since they believed that commercial and social matters could not be treated separated from each other.<sup>59</sup> Therefore, they were still reticent with the US-Chile FTA, since the Chilean authorities expressly declared their preference for an FTA based on the NAFTA/NAALC framework<sup>60</sup>.

On the other hand, Republicans supported the Chilean position, arguing that trade and labour topics should be treated on separate documents<sup>61</sup>, and without the possibility of trade sanctioning on social matters.<sup>62</sup> Nevertheless, the GOP had the concern that the sudden beginning of the negotiations – at the nearly end of Clinton’s mandate – would necessarily create complications and constrains for the next (Republican) Administration, preferring to let the initiative of starting the negotiations on the convenience of President George W. Bush.

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<sup>58</sup> CUGAT, Alejandro Marisio. *Op.cit.* p.81. “Para Chile aquí hubo un doble leap of faith: Primero, porque era inminente el cambio de gobierno en los EE.UU., de manera que iniciábamos con Clinton y debíamos seguir con Bush. Segundo – y muy importante- que aceptábamos negociar sin fast-track, algo eminentemente arriesgado.”

<sup>59</sup> *Id.* p. 82. “Pero predominaba entonces, entre los legisladores demócratas, una actitud que podría denominarse ‘fundamentalista’ (...) en el mundo contemporáneo, no se podían separar los temas comerciales de cuestiones sociales tan trascendentes como los asuntos laborales y el medioambiente.”

<sup>60</sup> *Id.* p. 85. “Un aspecto contencioso era, precisamente, el entonces explícito y público rechazo de Chile a incluir los temas laborales y medioambientales dentro del cuerpo principal del TLC, ya que al adoptarse esta modalidad el tema de las sanciones quedaría también fuera del cuerpo principal.”

<sup>61</sup> *Id.* p. 82. “(...) la inclusión de temas laborales y medioambientales (...) era algo a lo que ellos se oponían permanentemente, argumentando que dichas materias debían ser objeto de instrumentos separados.”

<sup>62</sup> VARGO, Regina. *Op cit.* p.75. “Divergencias en cuanto a si debían incorporarse, y de qué manera, salvaguardias en materia laboral y de protección ambiental en los acuerdos, por ejemplo, detuvieron por años la sanción parlamentaria de la aprobación rápida (...).”

#### **8.1.3.2.2. Trade Unions and NGOs**

A blue/green (trade unions/environmental sectors) coalition was formed against the U.S. FTAs policy, and specially against the agreements which did not contemplate an effective mechanism in order to enforce social clauses.

American trade unions utterly rejected all sorts of free trade agreements, and remained with a negative attitude during the whole negotiation process with Chile and Singapore. Particularly on that moment, the AFL-CIO<sup>63</sup> - the most influential American worker's organization – defended that both Chile and Singapore did not comply with ILO standards, and strongly suggested that those countries should reform their legislations before that any agreement could be taken into force<sup>64</sup>.

#### **8.1.3.2.3. Employers**

The Chilean Embassy in the U.S. performed a relevant lobby before American employers, and consequently received a major support of several key actors of that category, peculiarly the ones linked to non-agricultural products and to the services sector. Nevertheless, it is important mentioning that many employers – particularly on the textile sector - were deeply concerned with the possibility that the Chilean FTA could be used as a model for future negotiations with other partners, defending that this would not be convenient for the protection of economic U.S. interests, since many countries do not count with the same protection level of labor standards than Chile and could easily promote *social dumping*.

#### **8.1.4. The TPA challenge (2000-August 2001)**

In accordance with the U.S. Constitution, the President is the authority responsible to conduct external relations, and has the full competence in order to subscribe international treaties, but it is the American Congress which is the responsible to regulate topics related to international trade.

In order to solve this discrepancy, the infra-constitutional U.S. federal legislation encompasses a mechanism named *fast-track* (or Trade Promotion Authority - TPA), in which

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<sup>63</sup> American Federation of Labour – Congress of International Organizations.

<sup>64</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 86. "Para la AFL-CIO, Chile y Singapur no cumplían con dicho requisito y sugería que ambos países debían reformar sus leyes antes de la entrada en vigencia de los acuerdos, o bien el lenguaje que se incluyera en los tratados implicara que ello ocurriría oportunamente."

the Congress grants the President the power to negotiate international trade agreements with the condition that the final text – which must acquire the status of American legislation, and therefore it is known as an *implementation law* – must be subject to an “up or down” vote before the Congress, without the possibility to include any kind of formal amendments.

On 11<sup>th</sup> May 2001 the President Bush solicited the TPA, sending his reasons to the Congress, which included a toolbox that mentioned the incorporation of labor and environmental clauses on negotiations, but without making reference to any kind of commercial sanctions<sup>65</sup>.

Important democrat politicians like Senators Thomas Daschle and Max Baucus publically defended that a *fast-track* authority would not be desirable unless there was a legal guarantee that every trade agreement negotiated by the U.S. Administration would be based on the Jordan model, with the concrete possibility to recur to trade sanctions to breaches on labour and environmental standards.

The Administration was deeply engaged in order to approve the TPA before the WTO’s Ministerial Meeting in Doha, scheduled for November<sup>66</sup> but, in spite of the many efforts in order to convince the Congress to approve the authority<sup>67</sup>, many important economic sectors – as agriculture and textiles – still opposed intense resistance, and the *fast-track* seemed to remain far.

Those divergences between Republicans, Dems and the civil society built up an unsought panorama for the Bush Administration, full of uncertainties concerning the future of the TPA and the U.S. “governability”, bringing up the consequent formal stop on all American international trade negotiations. Nonetheless, after the terrorist attacks on September 11<sup>th</sup>, the political circumstances were thoroughly modified<sup>68</sup>.

#### **8.1.5. The September 11<sup>th</sup> and the TPA approval (September 2001 – August 2002)**

The seventh negotiation round between Chile and the United States was taking place in Washington D.C. when the September 11<sup>th</sup> terrorist attacks fell out. Attending a personal

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<sup>65</sup> *Id.* p. 88 “Incluyó una “caja de herramientas” (toolbox) para considerar, conjuntamente con las negociaciones comerciales, normas referidas a rabajo y medioambiente, pero sin ninguna referencia a sanciones comerciales o multas, consideradas indispensables por los demócratas para aprobarla.”

<sup>66</sup> 9-13 November 2001.

<sup>67</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 89. “A fines de agosto de 2001 – aproximándose la fecha de la reunión Ministerial de la OMC en Doha – la Administración se esforzaba para obtener la TPA, herramienta considerada esencial para avanzar en la agenda comercial internacional.”

<sup>68</sup> *Id.* p. 89 “Los trágicos sucesos del 11 de septiembre de 2001 (...) abrieron nuevas y más auspiciousas perspectivas para la aprobación del fast-track.”

request of President Bush to President Lagos<sup>69</sup> the negotiations were not interrupted, as a clear evidence that the U.S. Administration firmly inferred that the FTA was an important symbol that countries may progress when working together. On that moment free trade became not only an economic issue, but more than that, it became a matter of National Security, being one of the most important American weapons against terrorism<sup>70</sup>.

A first consequence of the attacks was the overcoming of the Republican resistance - against trade sanctions on social clauses - and the consequent quick approval of the U.S. - Jordan FTA, as a clear attempt to send a positive message to the Arab World<sup>71</sup>.

Afterwards, the Executive became a nationalist campaign, building up a unifying national alliance and, on this new scenario, Democrats, trade unions and NGOs had no choice than supporting all governmental efforts taken against the “common enemy”<sup>72</sup>, what included the strengthening of the free trade policies and the necessary approval of the TPA at the Congress.

A new bipartite TPA proposal, denominated “Thomas/Dooley Project”<sup>73</sup>, was then put forward. This new project comprehended an enforcement mechanism for social clauses – a Democrat claim –, among other relevant subjects such as as the preservation of the American Anti-dumping legislation, achievements on the fields of intellectual property, e-commerce, transparency and the elimination of agricultural subsidies<sup>74</sup>.

Only a few days before the scheduled vote day, the Administration was still uncertain whether it had already the necessary number of votes in order to approve the TPA or not. On

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<sup>69</sup> VARGO, Regina. *Op cit.* p.76. “La mañana del 11 de septiembre de 2001, un grupo de negociadores norteamericanos y chilenos trabajaba intensamente en la Universidad Howard, en Washington (...) Todos podemos aún recordar cómo nuestro trabajo se detuvo, mientras nos íbamos dando cuenta de la gravedad de lo que los terroristas habían hecho (...) Pero el Presidente Bush habló con el Presidente Lagos y ambos estuvieron de acuerdo: las negociaciones tenían que continuar. Pese a que era un momento difícil, para el equipo norteamericano en particular, ambos Presidentes estaban fuertemente convencidos de que un TLC Estados Unidos-Chile era un símbolo importante para el mundo del progreso que es posible cuando dos naciones trabajan unidas.”

<sup>70</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 90. “(...) la nueva etapa político-estratégica existente en el país y en el mundo y transformando al libre comercio en una herramienta más en la lucha contra el terrorismo.”

<sup>71</sup> *Id.* p. 89.”Un primer efecto de los atentados fue la rápida aprobación en el Congreso del TLC con Jordania, a pesar que contaba con fuerte oposición republicana, la cual fue dejada de lado a la luz de los acontecimientos y por los deseos de la Administración de enviar señales positivas al mundo árabe.

<sup>72</sup> *Ibid.* p. 90. “Los sindicatos y ONG ambientalistas, tradicionalmente opositores a la TPA, se encontraban inmovilizados” (...) “El liderazgo demócrata también se esforzaba por mostrar espíritu unitario y sus congresistas se sentían de una o otra forma inhibidos ante la campaña nacionalista del Ejecutivo.”

<sup>73</sup> HR 3005.

<sup>74</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 91. “La propuesta bipartidista Thomas/Dooley buscaba respaldar la eliminación de barreras en las áreas de servicios e inversiones, agricultura y comercio electrónico; mejorar la transparencia y resguardar la propiedad intelectual; reducir o eliminar los subsidios que restaran mercados a la agricultura estadounidense; permitir nuevos acuerdos comerciales, incorporando como un objetivo negociador los temas laboral y ambiental y su cumplimiento (enforcement); preservar la legislación anti-dumping estadounidense; y, promover las consultas entre el Ejecutivo y el Legislativo estableciendo un ‘Grupo Legislativo de Supervisión’, amplio, bipartidista y permanente.”

that moment the USTR and the President Bush personally tried to influence and to convince reticent groups such as the *New Democrats*<sup>75</sup> and protectionist Republicans, offering series of personal concessions in key-areas such as agriculture, textiles and steel industry.<sup>76</sup>

Finally, on December 6<sup>th</sup> 2001, the TPA Thomas/Dooley was approved at the Chamber of Representatives by only one vote (215x214<sup>77</sup>).

Concomitantly, at the Senate, a distinct TPA project was proposed by Senators Max Baucus and Charles Grassley<sup>78</sup>, expressly referring to the current negotiations with Chile and Singapore.

It is noteworthy that the Senate was divided concerning the future approval of the Chilean FTA. On March 2001 a group of 54 Congressmen (which included Senators Baucus and Grassley) communicated the USTR that Chile should eliminate barriers to several American agricultural products, and fended for negotiations based on the Jordan model, with guarantees of enforcement for labour clauses<sup>79</sup>.

Another group, defending the Chilean FTA, argued that many firms had lost opportunities in Chile with the absence of an FTA - citing the *Caterpillar* case - and stated that Chile was already concluding negotiations with the EU, what would make the trade competition even harder<sup>80</sup> at the region.

It was only on the end of May 2002 that the TPA was approved at the Senate by 66 votes against 30, after last-minute negotiations that included the *Trade Adjustment Assistance* (TAA – aiming to help workers that lose their jobs because of trade agreements) and the *Andean Trade Preference Act* (ATPA – binding preferences for Andean countries and the fight against drug trafficking).

Having approved different TPA projects at the Senate and at the House of Representatives, it was necessary harmonize those projects on a Conference, what brought up

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<sup>75</sup> Ideologically moderated .

<sup>76</sup> CUGAT, Alejandro Marisio. *Op.cit.* “(...) el President Bush y el USTR Zoellick sostenían conversaciones con congresistas demócratas y republicanos indecisos (...) ofreciendo apoyos – y fondos – para las iniciativas específicas de cada congresista, acambio de su voto. (...) La oposición del sector agrícola, inicialmente la más dura, fue en gran parte neutralizada mediante el ofrecimiento de apoyo doméstico (ley Agrícola) y de apertura de mercados externos (OMC). Otros sectores, como el textil y el de acero también pidieron concesiones.”

<sup>77</sup> There were 5 abstentions and two Republicans changed their votes on the last minute.

<sup>78</sup> On December 11<sup>th</sup>, 2001.

<sup>79</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 94. “(...) surgían iniciativas preocupantes para el proceso negociador, como la de 54 senadores (...) quienes (...) solicitaban al USTR a principios de marzo de 2001 que se exigiera a Chile la eliminación de las prácticas que injustificadamente restringían el acceso al mercado chileno de los productos agrícolas estadounidenses – refiriéndose a las bandas de precios y a las inspecciones sanitarias de la carne – y a la homologación de sus cortes.

<sup>80</sup> *Id.* p. 94. “La historia de la pérdida de oportunidades de algunas empresas – como por ejemplo Caterpillar – debido a la ausencia de un TLC con los EEUU y la existencia de acuerdos de nuestro país con Canadá, México y el MERCOSUR, así como la finalización de las negociaciones de Chile con la Unión Europea, mientras los EEUU permanecían paralizados, eran algunos de los argumentos que empleaban.”



new incessant debates concerning the loss of jobs that would happen as a necessary result of FTAs<sup>81</sup>.

But in July 27<sup>th</sup> 2002 the TPA was approved at the House of Representatives 215<sup>82</sup>x212<sup>83</sup>) and at the Senate, and President George W. Bush finally formalized it on the *Trade Act* signed on August 6<sup>th</sup>, 2002.

### 8.1.6. The Iraq's case and the FTA signature

After the *Trade Act* promulgation, negotiations with Chile were restarted<sup>84</sup> in September 2002, and were concluded on December 12<sup>th</sup> of the same year<sup>85</sup>. On January 30<sup>th</sup>, 2003, the Executive sent a notification to the Congress, communicating about the intention to subscribe the treaty with Chile<sup>86</sup>.

Notwithstanding, on March 2003 the United States presented a resolution condemning Iraq at the UN Security Council, and many Congressmen publically asked for Chilean support<sup>87</sup>, even conditioning the approval of the FTA on the Chilean vote at the United Nations.

In April 2003 the American government began to suffer pressure from the press and from Democrats (particularly from the *New Democrats*), who claimed against the political use of trade agreements<sup>88</sup>, since the Administration was deliberately postponing the Chilean FTA, while the treaty with Singapore (a wartime ally) was following the normal procedures. At the

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<sup>81</sup> *Ibid.* p. 96. “Los demócratas (...) llamaron en todos los tonos a votar en contra, usando como principal argumento la pérdida de fuentes laborales que a su juicio acarrearán los acuerdos comerciales.”

<sup>82</sup> 25 Democrats and 190 Republicans.

<sup>83</sup> 27 Republicans, 183 Democrats and 2 Independants.

<sup>84</sup> VARGO, Regina. *Op cit.* p.76. “Nuestras conversaciones recibieron un fuerte impulso por la aprobación, por el Congreso norteamericano, de la Facultad de Promoción del Comercio (...) dotó a los negociadores de los EEUU del mandato y orientación para resolver una serie de asuntos de concepción avanzada, incluyendo el sector laboral (...).”

<sup>85</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 98. “Una vez aprobada la vía rápida, las negociaciones con Chile – que se encontraban en compás de espera – se vieron finalmente destrabadas, reiniciándose en septiembre de 2002.” “(...) las negociaciones con Chile finalizaron en la madrugada del 12 de diciembre de 2002.”

<sup>86</sup> *Id.* p. 109 “La notificación del Ejecutivo – a ambas Cámaras del Congreso – de su intención de suscribir los acuerdos con Chile y Singapur, si bien no tenía plazo definido, se produjo el 30 de enero de 2003. De acuerdo a la TPA, el acuerdo no podía ser suscrito antes que hubiesen transcurrido 90 días calendarios desde esta notificación.”

<sup>87</sup> *Ibid.* p. 99. “Algunos parlamentarios solicitaban abiertamente el apoyo de Chile a la resolución presentada por España, los Estados Unidos y el Reino Unido. Se apreciaban manifestaciones directas sobre la preocupación existente en el Congreso acerca de como Chile emitiría su voto en el Consejo de Seguridad.”

<sup>88</sup> *Ibid.* p. 111 “Algunos comentaristas sostenían que el uso político de los TLC – para gratificar o penalizar a los Estados por sus posiciones en política exterior – generaba críticas en los círculos académicos, en los medios empresariales y entre algunos miembros del Congreso, poniendo en peligro no sólo la creación del ALCA, sino también la credibilidad de los Estados Unidos en materia de negociaciones comerciales. La demora en la suscripción del TLC con Chile era abiertamente cuestionada, sobre todo por considerarse a nuestro país como un líder exitoso en la aplicación de políticas económicas de libre mercado y como ejemplo de democracia estable y moderada.”

end, trade interests overcame the American “disappointment” with one of its “true friends”, inasmuch as the FTA approval continued to have major importance for both countries<sup>89</sup>.

This process culminated with a meeting, on April 28<sup>th</sup> between the U.S. Secretary of State Colin Powell and the Chilean Foreign Affairs Minister María Soledad Alvear, in which the American government re-ensured the commitment with Chile<sup>90</sup>, a statement which was repeated on May 6<sup>th</sup> and 8<sup>th</sup> by the President Bush himself<sup>91</sup>.

After several revisions rounds and an accurate translation process<sup>92</sup>, on June 6<sup>th</sup> 2003 the FTA was finally signed, in Miami<sup>93</sup>.

The next step would be the necessary “up” vote at the U.S. Congress.

#### **8.1.7. The FTA negotiation process at the U.S. Congress (August 2002/June 2003)**

The Chilean Embassy in Washington developed a plan in order to promote the Chilean cause among the American Congressmen, facilitating the approval of the FTA and its correspondent *Implementation Law*<sup>94</sup>, promoting series of seminars, conferences and roundtables, the release of issue papers on controversial topics, a website with mail lists, visits of Congressmen and staffers to Chile, etc.

Also, pro Chile lobby groups like the *Whip Team* and the *U.S. - Chile Free Trade Coalition*<sup>95</sup> – representing more than 400 American companies - played a major role on the

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<sup>89</sup> *Ibid.* p. 101. “El mensaje que la Embajada de Chile en Washington transmitía a sus interlocutores era que – al igual que antes de las deliberaciones del Consejo de Seguridad – la aprobación del TLC entre Chile y los EE.UU. continuaba siendo un objetivo muy importante para ambos países”.

<sup>90</sup> *Ibid.* p. 112. “El Secretario Powell sostuvo que el TLC sería firmado de todas maneras, por tratarse de un muy buen acuerdo, pero la Administración estaba esperando el momento más apropiado para hacerlo, de manera de asegurarse de que existieran en el Congreso los votos suficientes que garantizaran su aprobación.”

<sup>91</sup> *Ibid.* “El 6 de mayo de 2003 se realizó la ceremonia de firma del TLC entre los Estados Unidos y Singapur, con la participación del Primer Ministro Goh Chok Tong y el Presidente George W. Bush. Este último hizo una referencia breve y directa a Chile en su discurso: ‘estamos finalizando nuestro pacto con Chile’(…) con ocasión de la visita a Washington del Presidente del Gobierno español, José María Aznar, el 8 de mayo de 2003, el Presidente Bush formuló la siguiente declaración a la prensa: ‘tenemos un importante acuerdo de libre comercio con Chile, que vamos mover hacia adelante.’”

<sup>92</sup> VARGO, Regina. *Op cit.* p. 77. “Luego de varios meses más de revisión legal, el Representate de Comercio de los Estados Unidos Robert B. Zoellick y la Ministra de Relaciones Exteriores de Chile Soledad Alvear se encontraron en la Mansión Vizcaya, en Miami, el 6 de junio de 2003, para firmar el acuerdo.”

<sup>93</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 115. “Finalmente, la Administración propuso que la firma del TLC se celebrara en Miami, el 6 de junio de 2003, por la Ministra Soledad Alvear y el USTR Robert Zoellick.”

<sup>94</sup> *Id.* p. 101. “(...) la Embajada diseñó – en coordinación con la Cancillería – un Plan de Acción destinado a promover y facilitar la aprobación, en el Congreso estadounidense, del TLC y su correspondiente Legislación de Implementación.”

<sup>95</sup> *Ibid.* p. 106. “Esta agrupación, creada en enero de 2003 para impulsar la aprobación del TLC en el Congreso de los EE.UU., estuvo integrada por la US. Chamber of Commerce, la National Association of Manufactures NAM, el Council of the Americas y la Business Round Table.

negotiations. Important American Senators also played as champions for the Chilean cause<sup>96</sup>, on a particular intense effort in order to convince reluctant groups as the *New Democrats*, the *Hispanic caucus* and the *New Dogs*<sup>97</sup>.

Concerning the AFL-CIO it was evident that they would never support a free trade agreement, and particularly one signed by the Republican Administration of George W. Bush. Nevertheless, the Chilean lobby achieved its goal, since the FTA received only moderate criticisms from them<sup>98</sup>. The AFL-CIO stated on a public hearing, on June 10<sup>th</sup>, that it will not be possible supporting the FTA, since the current experiences, particularly the NAFTA, had been harmful for workers, with thousands of job losses. More, American unionists (who were in deep touch with the Chilean CUT) argued that the current Chilean government was able to protect workers, but that it was not possible to predict what could occur on a near future. Furthermore, they stated that the Chilean model could not be used as a template for future negotiations, on a “one-size-fits-all” logic, since different countries have their own specificities on the treatment of labour issues on their internal legislations<sup>99</sup>.

This position found echoes among some labour protectionist democrat Congressmen, such as John Coyers, Sherrod Brown, Rosa deLauro, Marcy Kaptur and Janice Schakowsky<sup>100</sup>, and among NGOs, remarkably the *Public Citizens-Global Trade Watch for Fair Trade*.

However, on that time, after the intense Chilean lobby, there was a general conviction among American Congressmen that the Chilean agreement had treated labour issues on a satisfying manner<sup>101</sup>, in spite of a certain concern that the agreement could serve as a template for future negotiations<sup>102 103</sup>.

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<sup>96</sup> *Ibid.* p. 105. “Al respecto, algunos representantes y sus asesores cumplieron un rol fundamental en la promoción del TLC y en la obtención de los votos. Destacó la labor desarrollada por los representantes republicanos Judith Biggert, David Dreier y Pete Sessions, y por los demócratas Calvin ‘Cal’ Dooley, Earl Blumenauer y Jim Davis, entre otros.”

<sup>97</sup> Conservative group of Democrats.

<sup>98</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 109. “En cuanto a la AFL-CIO, esta poderosa confederación sindical se encontraba comprometida en todas las luchas contra los acuerdos comerciales – y se sabía que continuaría con su campaña de rechazo-, más aún si el acuerdo era negociado por una Administración republicana. Se consideró, por lo tanto, necesario intentar a lo menos atenuar el nivel de su campaña contra el TLC, lo que en alguna medida se logró, pues finalmente sus ataques al TLC con Chile fueron moderados.”

<sup>99</sup> *Id.* p. 115. “(...) la AFL-CIO señalaba que – a diferencia del respaldo otorgado al TLC con Jordania -, no apoyarían el de Chile. Sostenían que los acuerdos vigentes, como el NAFTA, no habían sido beneficiosos para los trabajadores y que, por el contrario, se traducían en pérdidas de empleos. Los sindicalistas estadounidenses que mantenían un buen diálogo con la CUT creían que el actual gobierno chileno protegía adecuadamente a los trabajadores, pero no podían saber lo que ocurriría en el futuro. Además, sostenían que si bien Chile era un país pequeño y distante, por lo que no representaba un serio peligro, el TLC estaba siendo presentado como un ‘modelo’ a ser empleado en futuras negociaciones.”

<sup>100</sup> *Ibid.* “(...) que se oponían a las iniciativas pro libre comercio, por estimar que ellas generan pérdida de fuentes laborales”.

<sup>101</sup> *Ibid.* p. 114. “Se estimaba que los temas laborales y medioambientales habían sido adecuadamente abordados y que no serían más controversiales, al obligarse las partes al cumplimiento de las provisiones laborales domésticas

Eventually, the TLC was approved at the House of Representatives with 270<sup>104</sup> votes (against 156<sup>105</sup>) on July 24<sup>th</sup>, 2003, and at the Senate by 66 votes (against 31) on August 1<sup>st</sup>. After that, on September 3<sup>rd</sup> 2003, the President George W. Bush signed the *Implementation Law*<sup>106</sup>. The U.S. Administration underlined the Chilean regional leadership and its political and economical stability; stressed the high expectations concerning the future of U.S.- Chilean cooperation<sup>107</sup>; and demonstrated its satisfaction with the satisfying treatment of labour regulations on the agreement<sup>108</sup>.

### 8.1.8. General trade results

The U.S. – Chile Trade had a remarkable increase since the FTA signature. *Exempli gratia*, just analyzing the trade on goods, in 2003 the U.S had imported US\$ 3,7 billion from Chile, and had exported US\$2,7 billion . On 2008, those numbers were US\$ 7,7 billion and US\$ 10,9 billion, respectively<sup>109</sup>.

#### Trade - Chile-United States– (US\$ millions)<sup>110</sup>

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	6.248	8.940	8.420	7.793,54	5.646,32
<b>Chilean imports</b>	4.708	5.570	7.269	10.939,17	7.183,87
<b>Trade balance</b>	1.540	3.370	1.150,7	-3.145,63	-1.537,54

y al establecerse el cumplimiento de los estándares de la OIT, algo que en Chile ocurría. También existía conformidad entre los republicanos con el mecanismo acordado para resolver las disputas, el cual en el caso de incumplimiento por una de las partes incluía la posibilidad de multas – es decir, no sólo sanciones comerciales.”

<sup>102</sup> *Ibid.* p. 113. “Al mismo tiempo, se nos comentó que no era prudente que el USTR pretendiera utilizar el TLC con Chile como modelo o plantilla para futuras negociaciones, pues no todos los países poseían una normativa laboral equivalente a la chilena.”

<sup>103</sup> VARGO, Regina. *Op cit.* p.78. “El TLC EEUU-Chile será especialmente importante en dar forma a los acuerdos de alto nivel, plurilaterales, que hemos comenzado a explorar en el marco de la ALCA.

<sup>104</sup> 195 Republicans and 75 Democrats.

<sup>105</sup> 27 Republicans, 128 Democrats and one independent.

<sup>106</sup> Law 108-77/2003.

<sup>107</sup> CUGAT, Alejandro Marisio. *Op.cit.* p. 124. “Destacó los beneficios del Acuerdo para los trabajadores y las empresas estadounidenses. Se referió a Chile como un amigo, que había demostrado las virtudes del libre comercio y de políticas sólidas. Por último, señaló que, al ser Chile un pionero en la región, no sólo progresaría como país, sino que con ello impulsaría el crecimiento en todo el Hemisferio”

<sup>108</sup> VARGO, Regina. *Op cit.* p. 77. “ (...) alcanzamos acuerdos en disposiciones de vanguardia que incorporan, entre otras materias, fuerte protección a los derechos laborales y al medioambiente protegiendo, al mismo tiempo, la soberanía de cada país. Pusimos, igualmente, en movimiento algunas valiosas iniciativas bilaterales de cooperación para mejorar prácticas laborales (...).”

<sup>109</sup> *Source:* U.S. Census Bureau.

<sup>110</sup> *Source:* Direcon.

<b>(Chilean)</b>					
<b>Total trade</b>	10.956	14.510	15.688,5	18.732,71	12.830,19

### 8.1.9. Labor contents

#### 8.1.9.1. Labor rights protected by the FTA

The labour chapter of the Chilean-U.S. Free Trade Agreement (Chapter 18) starts with a shared commitment made by the parties in which they reaffirm their obligations as ILO members, with a special reference to the 1998 Declaration on Fundamental Principles and Rights at Work<sup>111</sup>. In addition, the agreement sets forth a list<sup>112</sup> of internationally recognized labour rights which should be recognized and protected by both domestic legislations<sup>113</sup>, including:

- (a) the right of association;
  - (b) the right to organize and bargain collectively;
  - (c) a prohibition on the use of any form of forced or compulsory labor;
  - (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor;
- and

<sup>111</sup> Article 18.1.1. – “The Parties reaffirm their obligations as members of the *International Labor Organization* (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law.”

<sup>112</sup> Article 18.8 – “Definitions - For purposes of this Chapter: labor laws means a Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party’s obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

statutes or regulations means: (a) for the United States, acts of the Congress or regulations promulgated pursuant to acts of the Congress that are enforceable by action of the federal government; and (b) for Chile, acts or regulations promulgated pursuant to acts that are enforceable by the agency charged with enforcing Chile’s labor laws.”

<sup>113</sup> Article 18.1.2 – “Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 18.8 and shall strive to improve those standards in that light.”

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Those registered rights, however, are not the only ones which are protected by the agreement, since from that first joint statement it is possible to infer that the FTA encompasses all labour rights acknowledged as fundamental by the ILO.

A first aspect to highlight is that this list brings up, on the items (a), (b), (c) and (d), rights incorporated on the referred ILO Declaration. Nevertheless, one of the leading ILO principles, the “*elimination of any form of discrimination in respect to employment and occupation*” – expressly protected by the 1998 Declaration – is not mentioned on the FTA text.

There is no potential interpretation unless considering the Article 18.8 a mere exemplificative clause, *numerus apertus*, an open passage that gives to the interpreter the possibility to incorporate other worldwide recognized labour rights. Therefore, the principle of non-discrimination in employment and work must be considered as an integrant element of the FTA, being guaranteed by it<sup>114</sup>.

A second remark is that the agreement states that the parties shall ensure “*acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health*” – a rule which has no fundamental status accordingly to the ILO Declaration.

Consequently, since there is no pre-established interpretation for that clause, it is possible to conclude that, concerning “minimum wage”, Chile and the United States must guarantee the existence and effective application of a general minimum wage, nevertheless, the parties assume no commitment in order to ensure a specific pay level, and are not even prohibited to low the current minimum wage<sup>115</sup> – at least on acceptable levels.

Moreover, regarding working hours, occupational safety and health, there are also no specific norms or parameters to be applied by the parties<sup>116</sup>. The only commitment assumed by the States is to have internal legislation and policies on those fields – in accordance to standard ILO criteria – respecting the countries particularities and economic conditions.

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<sup>114</sup> LOPEZ, Diego. *Labour Rights in the Free Trade Agreement between Chile and the United States*. Santiago de Chile: Oxfam, 2004. p. 59. “(...) it is correct to state that the obligation imposed by the Agreement on both States to recognize and protect fundamental labour rights, also includes non-discrimination in employment and occupation, as this is a labour principle of the highest order for the ILO (...) and is considered as one of the fundamental rights that constitutes US labour legislation”.

<sup>115</sup> *Id.* p. 60. “The Agreement only compels the Parties to provide a valid guaranteed general minimum wage and to effectively and completely apply such a wage throughout each State. (...) there is no attempt to establish obligatory minimum wage levels or to progressively improve working conditions (...) the Chilean State is not compelled by the FTA to maintain a specific level of minimum wage (...) although strictly speaking, the Agreement prevents either Chile or the US from lowering their minimum wages to an unacceptable level.”

<sup>116</sup> *Ibid.* p. 61. “As regard acceptable conditions in relation to working hours and occupational health and safety, the Agreement’s clauses make the same reference: neither the Chilean nor the US State is obliged to respect a set number of working hours in each day or week, or specific parameters of health and safety in the workplace.”

### 8.1.9.2. *The prohibition of social dumping*

The labour regulations presented on the agreement are directly and exclusively linked to trade objectives. That is to say that the main scope in order to include the protection of labour standards is not the human dimension, but the economic one. The clauses have the essential aim to avoid unfair competition through a unilateral withdrawing or debilitation of elementary labour standards – on a praxis known as social dumping. Therefore – unfortunately – the FTA brings no labour protection for workers on fields which are not bound to bilateral trade or investments.

Article 18.2.2 ensures that “*it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws.*” More, the parties “*shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.8 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.*”

### 8.1.9.3. *Ensuring law’s enforcement*

More than merely guaranteeing the subsistence of an adequate labour legislation, the FTA aims to certify the effective enforcement of those laws.

Article 18.2.1.(a) prescribes that the parties “*shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties*”.<sup>117</sup> However, this obligation is not absolute, since the lack of enforcement may generate no penalty whether it is practiced with good faith, on a regular exercise of sovereignty. *Exempli gratia*, the FTA stipulates that the both parties retain the discretion on their decisions concerning the allocation of funds on labour matters, respecting the existence of additional internal priorities<sup>118</sup>.

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<sup>117</sup> *Article 18.2.1.-* “(a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.”

<sup>118</sup> *Article 18.2.1.-* “(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.”

#### 8.1.9.4. Procedural guarantees

Furthermore, the treaty states that the parties must strive to ensure minimum levels of procedural guarantees and public awareness of their respective labor regulations.

At first, each party shall make certain that every person with a legally recognized interest under its law in a particular topic have proper access to tribunals (judicial tribunals of general, labor or other specific jurisdictions, quasi-judicial tribunals, or administrative tribunals)<sup>119</sup>, in accordance with fair, equitable, and transparent procedures<sup>120</sup>. More, the FTA guarantees the access to jurisdictional remedies<sup>121</sup> in order to enforce the internal labor legislations, which must be public<sup>122</sup>. As well, there is a clause prohibiting the revision or reopening of judicial decisions considering the provisions of the FTA<sup>123</sup>.

Those clauses were doubtless one of the deepest challenges for Chile on the labour field, since it faced up enormous difficulties regarding its labor justice.<sup>124</sup> For that reason, Chilean authorities had to promote several imperative reforms on the labour legal system – which are described on the particular chapter of this investigation.

#### 8.1.9.5. Individual claims

The FTA brings no possibility to individual judicial actions against his/her respective State or against the counterpart<sup>125</sup> arguing breaches on the labour chapter of the agreement. Also, there is no possibility to use FTA labour clauses on a private hearing, since the agreement

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<sup>119</sup> Article 18.3.1. - “Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial tribunals of general, labor or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, for the enforcement of the Party’s labor laws.”

<sup>120</sup> Article 18.3.2. - “Each Party shall ensure that its proceedings for the enforcement of its labor laws are fair, equitable, and transparent.”

<sup>121</sup> Article 18.3.3.- “Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws.”

<sup>122</sup> Article 18.3.5. - “Each Party shall promote public awareness of its labor laws.”

<sup>123</sup> Article 18.3.4.- “For greater certainty, decisions by each Party’s judicial tribunals of general, labor, or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate, or pending decisions, as well as related proceedings, shall not be subject to revision or reopened under the provisions of this Chapter.”

<sup>124</sup> LOPEZ, Diego. *Op.cit.* p. 66. “There is no doubt that such provisions regarding procedural guarantees present a significant challenge for a Chilean judicial system that has shown numerous deficiencies regarding labour matters. In effect, the inefficiency of judicial protection for labour rights is well known in Chile. An employer’s legal obligations are not costs that are automatically taken into account when hiring or firing workers; and along with the difficult access to labour-related justice procedures, is added the slowness and extended length if labour hearings. And even when a sentence is passed that is favourable to a worker or workers rights, the possibilities of obtaining any type of financial or other compensation ordered by a judge are slim to say the least.”

<sup>125</sup> *Id.* “The FTA does not specifically envisage that a person in Chile or the United States may bring a judicial action against his or her respective State. The governments of both states made reciprocal agreements to each other, but did not recognise any specific labour rights for the citizens of their respective countries.”



binds only States, and private actors – such as employers – cannot be compelled to observe higher standards than the ones prescribed on the respective internal legislations, even in cases of patent deficiencies.

Also, there is no possibility for Chile to bring a case before the US courts – or vice-versa – and also, in accordance to the principle of territoriality, it is not possible to submit a State to the jurisdiction of the counterpart<sup>126</sup>.

Notwithstanding, one interesting point is that it is possible for individuals to bring a legal case against their own governments whether they are directly affected by unfair competition. Even if this right is not expressly stated of the FTA, “*the right to compensation is legally recognized within both the Chilean and the US legal systems*”, defined as “*a State has the responsibility to provide compensation if by its actions it has violated some right, with a detrimental affect on a person, whether it has acted as an administrative State, via acts of government, or as a legislative State approving or repealing laws.*” That is to say that if a certain State, by lowering labor standards on its domestic legislation, acquires comparative advantages in a manner that it affects companies of the other party, it is possible to think that those companies may demand on their respective States for negligence – a particular *faute du service*. More, even workers, if affected by that unfair competition, may argue for correspondent compensation<sup>127</sup>.

#### 8.1.9.6. Cooperation

The agreement alludes, on its annex 18.5, to mechanisms of cooperation between the parties, at ministerial level, on areas such as: fundamental rights and their effective application, labor relations, working conditions, issues related to small and medium enterprises, social protection, technical issues, information exchange and implications of economic integration between the parties<sup>128</sup>.

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<sup>126</sup> *Ibid.* p. 67. “(...) the Chilean government cannot bring a legal action against the US authorities in Chilean courts, or the US government make a demand on Chile in North American courts, basically because there is no higher court with authority over both countries, and neither the US or Chile can compel the other state to submit to the jurisdiction of the counterpart country.”

<sup>127</sup> *Ibid.* p.69. “(...) the company affected (by such exports) can bring a legal action for damages and compensation against the negligent or guilty State, if such unfair competition proved to be effectively damaging. And even workers of said company can bring a legal action (...)”.

<sup>128</sup> “(a) *fundamental rights and their effective application*: legislation, practice, and implementation related to the core elements of the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor, including the worst forms of child labor in compliance with

Some of the proposed activities (*numerus apertus*) are:

- “(a) exchanging government delegations, professionals, and specialists, including through study visits;
- (b) sharing information, standards, regulations and procedures and best practices, including through the exchange of pertinent publications and monographs;
- (c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (d) developing collaborative projects or demonstrations;
- (e) undertaking joint research projects, studies, and reports, including by engaging independent experts with relevant expertise;
- (f) drawing on the expertise of academic and other institutions in their territories in developing and implementing cooperative programs and by encouraging relationships between such institutions on technical labor issues; and
- (g) engaging in technical exchanges and cooperation.”

#### 8.1.9.7. Dispute settlement system

##### 8.1.9.7.1. Institutional bodies

One of the most important attributes of the Chile- U.S. Free Trade Agreement is the possibility to recur to a foreseeable dispute settlement mechanism in order to solve controversies raised on the labour field which directly affect bilateral trade.

The agreement privileges diplomatic arrangements, looking for mutual consensus in order to solve possible disputes. There are several mechanisms at ministerial level which

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the ILO Convention N°182 on the *Worst Forms of Child Labour* (1999), and elimination of employment discrimination);

(b) *labor relations*: forms of cooperation among workers, management, and governments, including the resolution of labor disputes;

(c) *working conditions*: legislation, practice, and implementation related to occupational safety and health; prevention of and compensation for work-related injuries and illness; and employment conditions;

(d) *issues related to small and medium enterprises*: promotion of fundamental rights at work; improvement of working conditions; forms of cooperation between employers and worker representatives; and social protection services agreed between workers’ organizations and employers or their associations;

(e) *social protections*: human resource development and employment training; work benefits; social programs for workers and their families; migrant workers; worker adjustment programs; and social protection, including social security, income security, and health care services;

(f) *technical issues and information exchange*: programs, methodologies, and experiences regarding productivity improvement; labor statistics, including comparable data; current ILO issues and activities; consideration and encouragement of best labor practices; and the effective use of technologies, including those that are Internet-based; and

(g) implications of economic integration between the Parties (...)”

include good offices, bilateral consultation, negotiation and mediation. However, in extreme cases of non adequate enforcement of domestic labour legislations, even arbitration procedures may be used.

One of the highlights of the FTA is that it creates a pre-established institutional system to deal with the main topics related to its labour chapter.

At first, each party should nominate cabinet-level or equivalent representatives<sup>129</sup> to compose the Labour Affairs Council (LAC), a bilateral organ responsible to oversee the implementation and review the progress of the labour issues at the parties, on periodical meetings<sup>130</sup>, with the advice of NGOs or independent experts<sup>131</sup>, if necessary. All LAC decisions are taken by mutual agreement<sup>132</sup> a clear sign of the important role of mutually negotiated measures on this subject.

Also, both Chile and the US shall constitute an office within the respective Labor Ministries to serve as a contact point<sup>133</sup> with the counterpart and with the public in general<sup>134</sup>.

More, each part may establish a national consultative/advisory committee, responsible to provide information concerning bilateral relevant labour matters<sup>135</sup> to the respective governmental authorities. The agreement does not mention, but also does not prevent, that interested social organizations – such as trade unions – even without being part of the national committees, present relevant information or even request their own governments to activate dispute mechanisms<sup>136</sup>.

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<sup>129</sup> *Article 18.4.1.* - “The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.”

<sup>130</sup> *Article 18.4.2.*- “The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation Mechanism established under Article 18.5, and to pursue the labor objectives of this Agreement. Each meeting of the Council shall include a public session, unless the Parties otherwise agree.”

<sup>131</sup> *Article 18.4.4.* - “The Council shall establish its work program and procedures and may, in carrying out its work, establish governmental working or expert groups and consult with or seek advice of non-governmental organizations or persons, including independent experts.”

<sup>132</sup> *Article 18.4.5.* - “All decisions of the Council shall be taken by mutual agreement of the Parties and shall be made public, unless the Council decides otherwise.”

<sup>133</sup> *Article 18.4.7.*- “Each Party’s point of contact shall provide for the submission, receipt, and consideration of public communications on matters related to this Chapter, and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with its domestic procedures.”

<sup>134</sup> *Article 18.4.3.*- “Each Party shall designate an office within its labor ministry that shall serve as a point of contact with the other Party, and with the public, for purposes of carrying out the work of the Council.”

<sup>135</sup> *Article 18.4.6.*- “Each Party may convene a national consultative or advisory committee, as appropriate, comprising members of its public, including representatives of its labor and business organizations and other persons to provide views regarding the implementation of this Chapter.”

<sup>136</sup> LOPEZ, Diego. *Op.cit.* p.71 “(...) there are no parts of the FTA which impede either social organizations or those interested in improving labour rights, who are based in either country party to the Agreement, from requesting their respective government to activate the aforementioned dispute mechanisms.”

Another important institutional body is the Free Trade Commission (FTC), which is “made up of cabinet-level representatives of the respective governments” and is “the body in charge of permanently supervising the implementation of the FTA, along with all the established committees and working groups, with the Commission being the highest responsible body regarding the interpretation and application of the Agreement and dispute resolutions (art.21.1.)<sup>137</sup>”

#### **8.1.9.7.2. Dispute settlement procedures**

If one of the parties verifies any problem concerning the application of the FTA’s labour chapter, the first step is to start bilateral cooperative consultations, by delivering a written consultation request to the Counterpart’s designated contact point<sup>138</sup>.

Then, the defendant State has the duty to present specific and sufficient information concerning the controversial points<sup>139</sup>.

The first opportunity in order to settle the dispute is when – afterwards – both parties examine the issue by using all the necessary means and making efforts in order to find a mutually satisfactory resolution of the matter<sup>140</sup>.

In cases in which no agreed decision is set, there is a second chance for conciliating, when the parties request<sup>141</sup> to the Labour Affairs Council the resolution of the controversy – through good offices, conciliation and meditation<sup>142</sup>.

If once again no solution is arranged, the parties may recur to the Free Trade Commission, a third attempt to reach an agreement, “convening groups of advisors, setting up working groups, recurring to good offices, conciliation and mediation or other procedures for dispute resolution, and preparing recommendations (art.22.5).<sup>143</sup>”

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<sup>137</sup> *Id.* p. 74.

<sup>138</sup> *Article 18.6.1.*- “A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the point of contact that the other Party has designated under Article 18.4(3).”

<sup>139</sup> *Article 18.6.2* - “The Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.”

<sup>140</sup> *Article 18.6.3* - “The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.”

<sup>141</sup> *Article 18.6.4.*- “If the Parties fail to resolve a matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party’s point of contact.”

<sup>142</sup> *Article 18.6.5* - “The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.”

<sup>143</sup> LOPEZ, Diego. *Op.cit.* p. 75

Nevertheless, the FTC only decides cases of non-enforcement of domestic labour legislation concerning the rights stated as fundamental by the agreement (the ones stated on article 18.8 summed to “non-discrimination”), and, if no positive outcome is achieved within sixty days by the LAC<sup>144 145</sup>.

In cases concerning any other situation – such as the absence of internal laws on one of the rights protected by the FTA, or the weakening of labour standards under a reasonable level which affects bilateral trade – the controversy shall not be presented before the FTC<sup>146</sup>, and must be decided exclusively by cooperative consultations and, on extreme cases, may be a reason to annul the agreement<sup>147</sup> - by the lack of good faith and violation of the principle of *pacta sunt servanda*.

As a last remedy, when no agreement is reached, the case may be sent to an arbitral panel, composed by three arbitrators selected on a previous list in accordance to pre-established criteria<sup>148</sup>.

The panel may accept written information given by non-governmental organizations – like unions and employers’ associations – and, within 120 days after the selection of the arbitrators, the panel will submit a preliminary report<sup>149</sup>. Subsequently, the parties have a final opportunity to, within fourteen days, submit written comments.

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<sup>144</sup> Article 18.6.6. - “If the matter concerns whether a Party is conforming to its obligations under Article 18.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.”

<sup>145</sup> Article 18.6.8.- “Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 18.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.”

<sup>146</sup> Article 18.6.7. - “Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 18.2(1)(a).”

<sup>147</sup> LOPEZ, Diego. *Op.cit.* p.75. “As a consequence, if Chile or the US were to reduce the protection offered at work, and weaken fundamental working rights in such a way as to influence bilateral trade, it could be legitimately understood that the good faith of the contracting parties had been broken, so allowing a conscientious counterpart to annul the Agreement.”

<sup>148</sup> Article 18.7.1.- “The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to 12 individuals who are willing and able to serve as panelists in disputes arising under Article 18.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Labor roster members shall be appointed by mutual agreement of the Parties and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.”

Article 18.7.2. - “Labor roster members shall:

(a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

(c) be independent of, and not affiliated with or take instructions from, either Party; and

(d) comply with a code of conduct to be established by the Commission.”

Article 18.7. 3. “Where a Party claims that a dispute arises under Article 18.2(1)(a), Article 22.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.”

<sup>149</sup> Article 22.12.

The board may make further examinations<sup>150</sup> and, within thirty days of the presentation of the preliminary report will submit its final report, which must be made public on the following fifteen days (subject to the protection of confidential information)<sup>151</sup>.

Afterwards, the parties may convene on a plan of action in order to apply the panel's decision. If within 45 days of receiving the final report the non-enforcement has not been corrected yet, nor the plan of action put in practice, the complaining party may request to the panel the establishment of an annual monetary assessment to the violating State<sup>152</sup>. This amount cannot be superior to US\$ 15 million<sup>153</sup> and must be paid to a fund "*to provide for appropriate labour initiatives, including efforts to enhance law enforcement.*"<sup>154</sup>,

As a final alternative, if the violating party does not pay the monetary assessment, trade sanctions may be applied in order to collect the analogous amount<sup>155</sup>.

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<sup>150</sup> Article 22.12.6.

<sup>151</sup> Article 22.13.

<sup>152</sup> Article 22.16.

<sup>153</sup> In accordance with annex 22.16.

<sup>154</sup> Article 22.16.4.

<sup>155</sup> Article 22.16.5.

## 8.2. CHILE – EUROPEAN UNION ASSOCIATION AGREEMENT

### 8.2.1. Antecedents

The roots of the Association Agreement are found on the 1990 Community Cooperation Framework Agreement, which was an effective instrument on the implementation of an intense relation between the parties developed after the Chilean re-democratization<sup>156</sup>. On this treaty the parties fostered cooperation on economic, environmental, industrial and social fields, recognizing the importance of common efforts on the persecution of shared goals – especially on sensitive areas such as human rights protection.

Next, another Framework Agreement was signed in 1996, running in parallel with the Intra-regional Framework Cooperation Agreement signed between the European Union and the Mercosur. Nevertheless, after the Chilean refusal to become a full Mercosur member, the negotiations become independent.

Finally, the Chile-European Union Association Agreement was signed on November 18<sup>th</sup>, 2002, and it is in effect since February 1<sup>st</sup>, 2003 (complete effect since March 1<sup>st</sup>, 2005). It was the first agreement of this kind ever signed by Chile<sup>157</sup>. Complementary agreements were also signed with the inclusion of new European countries in 2004 and in 2007.

### 8.2.2. European interests

First of all, the agreement with Chile may be understood as an ‘entrance door’ in Latin America, a pioneer agreement with a country which belongs to a region historically kept under American economic influence, and which has a growing geopolitical importance on a globalized scenario<sup>158</sup>.

More, following American steps, Europe also has the scope to encourage trade liberalization policies and, considering the difficulties faced under the WTO system, bilateral trade agreements are instruments with relevant and crescent significance.

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<sup>156</sup> Before 1990 great part of the European policy for Chile was developed through the action of NGOs, in particular with the scope to restore the democracy. The most significant donors were Germany, Belgium, France, Spain and Sweden.

<sup>157</sup> “El Acuerdo de Asociación Económica entre Chile y la Unión Europea (UE) fue firmado durante el Gobierno del Presidente Ricardo Lagos Escobar. Fue el primer Acuerdo de Asociación firmado por Chile y se encuentra vigente desde febrero de 2003.” *Source*: Direcon.

<sup>158</sup> VICUÑA, Francisco Orrego. *Op. Cit.* “ (...) the current process of economic globalization is having a potentially decisive impact on the structure of international society and the evolving role of international law”.

Furthermore, Europe has interest on the strengthening of several common values shared with the Chilean society, reaffirming central principles which must be universally recognized and accomplished. Therefore, the great emphasis on cooperation clauses between the parties represents an attempt of setting up an international model of economic and social rights protection.

It is important pointing that Europe recognizes Chile as a trade partner, and that the EU-Chile Agreement is based on mutual interest, on reciprocity, differently that what occurs on other European treaties with developing countries which are not based on isonomic premises<sup>159</sup>.

### 8.2.3. General view

The bilateral trade between Europe and Chile had suffered a significant increment since the association agreement entered into force. The European imports, *e.g.*, boomed from € 4,9 billion in 2003 to € 12,1 billion in 2006. On the same period, European exports to Chile grew from € 3,2 billion to € 4,3 billion. Chile is, nowadays, the 34<sup>th</sup> major European trade partner, being the 42<sup>th</sup> on exports and the 26<sup>th</sup> on imports. Europe, on the other hand, represents 22% of the Chilean world trade<sup>160</sup>.

The average annual growth on the Chilean-European Union bilateral trade balance is 19,4%, far superior of the European general trade rate, which grows, in average, 8,1% per year<sup>161</sup>.

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<sup>159</sup> “La Asociación entre Chile y la UE se basa en la reciprocidad, el interés común y la profundización de las relaciones entre Chile y la Unión Europea en todos sus ámbitos y se construye sobre la base de tres pilares: político, cooperación y económico.

En el ámbito político se busca fortalecer el diálogo a través de promover, difundir y defender los valores democráticos, especialmente, el respeto de los derechos humanos, la libertad de las personas y los principios del estado de derecho. Sin embargo, se mantiene la autonomía de decisión en estos temas y ninguna decisión será vinculante.

El ámbito de cooperación, tiene por objetivo contribuir a la aplicación de los objetivos y principios del Acuerdo. Se destacan cinco áreas: económica y financiera; ciencia, tecnología y sociedad de la información; cultura, educación y audiovisual; reforma del Estado y administración pública; y, la cooperación social. Uno de los elementos más significativos establece la posibilidad para Chile de participar en programas de cooperación a los cuales hoy sólo tienen acceso los Estados Miembros de la Unión Europea.

El ámbito económico y comercial, tiene por finalidad liberalizar en forma progresiva y recíproca el acceso a los mercados para los bienes, servicios y compras gubernamentales; establece disciplinas comunes para el mejor desarrollo de los intercambios comerciales; consolida un ambiente de confianza para los inversionistas; y establece un mecanismo de solución de controversias más expedito y directo que el que hoy rige en la Organización Mundial de Comercio (OMC).” *Source:* Direcon.

<sup>160</sup> *Source:* Dirección General de Relaciones Económicas Internacionales del Ministerio de Relaciones Exteriores de Chile.

<sup>161</sup> *Source:* European Commission.



### Trade - Chile-European Union– (US\$ millions)<sup>162</sup>

	2004	2005	2006	2007	2008
<b>Chilean exports</b>	7.882,05	9.266,96	15.346,22	16.128,59	17.006,89
<b>Chilean imports</b>	3.583,44	5.032,57	5.201,83	5.972,06	7.159,46
<b>Trade balance (Chilean)</b>	4.138,07	4.059,34	9.731,58	10.156,53	9.847,43
<b>Total trade</b>	11.291,97	14.079,61	20.104,63	22.100,65	24.166,35

#### 8.2.4. Labour provisions

The Chile-UE Association agreement does not contemplate a chapter specifically dealing with labour issues. This posture is explained by the fact that the main scope of the agreement is to raise up the cooperation between the parties, with a perspective that goes far beyond mere trade aspects.

Obviously, labor relationships are significant variables on both social and economical development. The “decent labor”<sup>163164</sup> must be seen as a *conditio sine qua non* on the development of international trade.

The Chile-EU treaty does not create concrete mechanisms to enforce labor rights, but, on the other hand, stimulates the persecution of those objectives by increasing cooperation.

The mutual commitment on the promotion of labor rights is ensured on the article 44, which is concerned with social cooperation:

*“Article 44 - 1. The Parties recognize the importance of social development, which must go hand in hand with economic development. They will give priority to the creation of employment and respect for fundamental social rights, notably by promoting the relevant conventions of the International Labour*

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<sup>162</sup> Source: Direcon.

<sup>163</sup> VEGA-RUIZ, Maria-Luz. *Libertad de asociación, libertad sindical y el reconocimiento efectivo del derecho de negociación colectiva en América Latina*. . p. 7 “Es evidente que existe un vínculo entre las libertades democráticas (plasmado en lo social en los derechos humanos en el trabajo) y los resultados económicos. Hay ejemplos de buenos y malos resultados económicos en entornos políticos tanto democráticos como autoritarios (...) Amartya Sen (1999) ha vuelto sobre el tema insistiendo en la democracia como factor de desarrollo económico y en la universalidad de los valores democráticos; valores que (...) no pueden y no deben ser relativizados (...) argumentando las diferencias culturales entre países”.

<sup>164</sup> *Trabajo decente*. p. 4 “No se trata simplemente de crear puestos de trabajo, sino que han de ser de una calidad aceptable.”

***Organization*** covering such topics as the freedom of association, the right to collective bargaining and non-discrimination, the abolition of forced and child labour, and equal treatment between men and women.

(...)

*The Parties will give priority to measures aimed at:*

(...)

***(c) developing and modernizing labour relations, working conditions, social welfare and employment security; (...)***”

It is clear to infer that this approach is significantly different than the one adopted on the US-Chile FTA, which had a whole chapter prescribing instruments to enforce labor rights.

Based on dialogue, the main idea of the Chile-EU Agreement is not to handle with labor issues as “chips of bargain”. More coherent with the ILO principles and the Declaration of Philadelphia, the treaty is, nevertheless, mere abstract and based on a declaration of mutual trust on the enforcement of general labor principles.

8.3. CHILE-CANADA

As already mentioned, during the early 90’s Chile was invited to become NAFTA’s fourth member. Since the negotiations did not advance, Santiago decided to initiate separate bilateral arrangements with the three North American countries.

The first of these bilateral agreements – deeply influenced by the NAFTA model – was the one with Canada, signed in 1996<sup>165</sup>, and in force since July 5<sup>th</sup>, 1997.

The Canadian-Chile FTA (CCFTA) is a great historical mark for both countries, since it was the first free trade agreement ever signed by Canada with a South American State and, on the same way, it was the first comprehensive free trade agreement (covering trade in goods and services, so as bilateral investments) signed by Chile<sup>166</sup>.

Chilean-Canadian trade is basically composed by machinery, electronics, vegetables, minerals, chemicals, wood pulp and paper products (Chilean exports), mineral, animal and vegetable goods, groceries, beverages, tobacco, metals and live animals (Canadian exports).

The parties have been developing the agreement during the last few years, with an important mention to the inclusion of chapters regarding financial services (2007) and government procurement (2009)<sup>167</sup>. More, this successful partnership will get even stronger since, in the words of Canadian authorities of foreign affairs: *“as the bilateral trade relationship moves forward, Canada will continue to look for ways to further enhance its trade and economic relationship with Chile”*<sup>168</sup>.

Even more than ten years after the FTA’s signature the CCFTA keeps raising substantially the trade between the parties, which more than tripled since the agreement’s signature.

**Trade - Chile-Canada– (US\$ millions)<sup>169</sup>**

	2005	2006	2007	2008	2009
<b>Chilean</b>	1.069,0	1.288,7	1.201,0	1.414,6	1.213,2

<sup>165</sup> December 5<sup>th</sup>, 1996.  
<sup>166</sup> Signed on December 5, 1996, and implemented on July 5, 1997, the CCFTA is a comprehensive agreement that covers trade in goods and services, as well as the bilateral investment relationship. The CCFTA was Canada’s first Free Trade Agreement (FTA) with a South American country, while for Chile it was the first comprehensive FTA concluded with any country. *Source:* Foreign Affairs and International Trade Canada.  
<sup>167</sup> Adicionalmente, durante los años de vigencia de este Acuerdo, ambos países han trabajado en la profundización del TLC. Es así que en el año 2007 finalizó la negociación del Capítulo de Servicios Financiero y en enero de 2009, entró en vigencia el capítulo de Compras Públicos. *Source:* Direcon.  
<sup>168</sup> *Source:* Foreign Affairs and International Trade Canada.  
<sup>169</sup> *Source:* Direcon.

<b>exports</b>					
<b>Chilean imports</b>	405,3	482,0	973,6	960,8	722,1
<b>Trade balance (Chilean)</b>	663,7	806,8	227,3	453,8	491,2
<b>Total trade</b>	1.474,3	1.770,7	2.174,6	2.375,3	1.935,3

Nonetheless, the relationship between the parties is not restricted to trade. Chile and Canada also subscribed two important complementary agreements: the Canada-Chile Agreement on Environmental Cooperation (CCAEC) and the Canada-Chile Agreement on Labour Cooperation (CCALC), strengthening the mutual cooperation between the parties on those topics<sup>170</sup>.

The labor topics on the CCALC are basically the same which are established by the NAALC (North American Agreement on Labor Cooperation) provisions, the complementary labour agreement of the NAFTA scheme.

Regarding this issue, it is noteworthy that the CCFTA/CCALC was the first trade arrangement which included labor norms ever signed by the Chilean government.

Its main scope is to promote labor rights on both parties, raising labor standards in specific areas. Cooperation must be enforced by a Labor Cooperation Commission (article 8<sup>171</sup>), which comprises a Labour Council (articles 9<sup>172</sup>, 10<sup>173</sup>) and shall be assisted by the

<sup>170</sup> En paralelo, el éxito de esta relación fue complementado con la firma del Acuerdo de Cooperación Ambiental Chile-Canadá (ACACHC) y el Acuerdo de Cooperación Laboral Chile-Canadá (ACLCC), ambos en vigencia a igual fecha que el TLC. En suma los tres convenios se han transformado desde esa fecha en elementos y herramientas importantes de una fuerte relación bilateral entre Canadá y Chile. *Source*: Direcon.

<sup>171</sup> *Article 8* – “The Canada-Chile Commission for Labour Cooperation - 1. The Parties hereby establish the Canada-Chile Commission for Labour Cooperation. 2. The Commission shall comprise a ministerial Council and shall be assisted by the National Secretariat of each Party.”

<sup>172</sup> *Article 9* - “Council Structure and Procedures - 1. The Council shall comprise labour ministers of the Parties or their designees. 2. The Council shall establish its rules and procedures. 3. The Council shall convene: (a) at least once a year in regular session, and (b) in special session at the request of either Party. Regular sessions shall be chaired alternately by each Party. 4. The Council may hold public sessions to report on appropriate matters. 5. The Council may: (a) establish, and assign responsibilities to, committees, working groups or expert groups; and (b) seek the advice of independent experts. 6. All decisions and recommendations of the Council shall be taken by mutual agreement, except as the Council may otherwise decide or as otherwise provided in this Agreement.”

<sup>173</sup> *Article 10* – “Council Functions - 1. The Council shall: (a) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within three years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience; (b) direct the work and activities of any committees or working groups convened by the Council; (c) establish priorities for cooperative action and, as appropriate, develop technical assistance programs on the matters set out in Article 11; (d) approve the annual plan of activities of the Commission; (e) approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by independent experts or working groups; (f) approve any reports or studies prepared jointly by the National Secretariats at the request of the Council; (g) facilitate consultations through the exchange of information; (h) address questions and differences that may arise regarding the interpretation or application of this Agreement; and (i) promote the collection and publication of comparable data on enforcement, labour standards and labour market indicators. 2. The Council

*National Secretariat of each party* (articles 13<sup>174</sup> and 14<sup>175</sup>). Moreover, Chile and Canada commit themselves with the accomplishment of their own national labor legislations – which shall *‘provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light’* – (article 2<sup>176</sup>).

The treaty also establishes detailed procedures concerning cooperative consultations between National Secretariats (article 19<sup>177</sup>) and on Ministerial level (article 20<sup>178</sup>) so as enact rules concerning evaluations by a Committee of Experts on labour-related topics (articles 21<sup>179</sup>, 22<sup>180</sup>, 23<sup>181</sup> and 24<sup>182</sup>).

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may periodically request the National Secretariats to undertake projects and activities, as appropriate. 3. The Council may consider any other matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may agree.”

<sup>174</sup> *Article 13* – “National Secretariat - 1. Each Party shall establish a National Secretariat at the national government level and notify the other Party of its location. 2. Each Party shall designate an Executive Secretary for its National Secretariat, who shall be responsible for its administration and management. 3. Each Party shall be responsible for the operation and costs of its National Secretariat.”

<sup>175</sup> *Article 14* - ”National Secretariat Functions - 1. Each National Secretariat shall serve as a point of contact with: (a) governmental agencies of the Party in whose territory the National Secretariat is located; and (b) the National Secretariat of the other Party. 2. Each National Secretariat shall promptly provide publicly available information requested by: (a) independent experts preparing reports and studies pursuant to a request by the Council under Article 12; (b) the National Secretariat of the other Party; and (c) an Evaluation Committee of Experts. 3. Each National Secretariat shall provide for the submission and receipt, and periodically publish a list, of public communications on labour law matters arising in the territory of the other Party. Each National Secretariat shall review such matters, as appropriate, in accordance with domestic procedures. 4. The National Secretariats shall submit joint annual reports to the Council on their activities. 5. Pursuant to a request by the Council, the National Secretariats shall periodically publish a joint list of matters resolved under Part Four or referred to Evaluation Committees of Experts.”

<sup>176</sup> *Article 2* – “General Commitments - Affirming full respect for each Party's Constitution, and recognizing the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.”

<sup>177</sup> *Article 19* – “Consultations between National Secretariats - 1. A National Secretariat may request consultations, to be conducted in accordance with the procedures set out in paragraph 2, with the other National Secretariat in relation to the other Party's labour law, its administration, or labour market conditions in its territory. 2. In such consultations, the requested National Secretariat shall promptly provide such publicly available data or information, including: (a) descriptions of its laws, regulations, procedures, policies or practices, (b) proposed changes to such procedures, policies or practices, and (c) such clarifications and explanations related to such matters, as may assist the National Secretariats to understand better and respond to the issues raised. “

<sup>178</sup> *Article 20* – “Ministerial Consultations - 1. Either Party may request in writing consultations with the other Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond. 2. In such consultations, the Parties shall make every attempt to resolve the matter, including through the exchange of sufficient publicly available information to enable a full examination of the matter. “

<sup>179</sup> *Article 21* – “Evaluation Committee of Experts - 1. If a matter has not been resolved after ministerial consultations pursuant to Article 20, either Party may request in writing the establishment of an Evaluation Committee of Experts (ECE). The requesting Party shall deliver the request to the other Party. Subject to paragraphs 3 and 4, the Council shall establish an ECE on delivery of the request. 2. The ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice of both Parties in the enforcement of their occupational safety and health or other technical labour standards as they apply to the particular matter considered by the Parties under Article 20.3. No ECE may be convened if a Party obtains a ruling under Annex 21 that the matter: (a) is not trade-related; or (b) is not covered by mutually recognized labour

More, in the case of non-compliance with the labor provisions there is a possibility to start bilateral consultations (article 25<sup>183</sup>), or event to constitute a Panel (articles 26<sup>184</sup> to 38), which shall set up an action plan in order to solve the situation, and which may impose a fee against one of the parties – which must be destined to a fund with the scope to promote labor rights.

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laws. 4. No ECE may be convened regarding any matter that was previously the subject of an ECE report in the absence of such new information as would warrant a further report.”

<sup>180</sup> *Article 22* – “Rules of Procedure - 1. The Council shall establish rules of procedure for ECEs, which shall apply unless the Council otherwise decides. The rules of procedure shall provide that: (a) an ECE shall normally comprise three members; (b) the chair shall be selected by the Council from a roster of experts developed in consultation with the International Labour Organization (ILO) pursuant to Article 42 and, where possible, other members shall be selected from a roster developed by the Parties; (c) ECE members shall (i) have expertise or experience in labour matters or other appropriate disciplines, (ii) be chosen strictly on the basis of objectivity, reliability and sound judgment, (iii) be independent of, and not be affiliated with or take instructions from, either Party, and (iv) comply with a code of conduct to be established by the Council; (d) an ECE may invite written submissions from the Parties and the public; (e) an ECE may consider, in preparing its report, any information provided by (i) the National Secretariat of each Party, (ii) organizations, institutions and persons with relevant expertise, and (iii) the public; and (f) each Party shall have a reasonable opportunity to review and comment on information that the ECE receives and to make written submissions to the ECE. 2. The National Secretariats shall provide appropriate administrative assistance to an ECE, in accordance with the rules of procedure established by the Council under paragraph 1. 3. The Parties shall agree on a separate budget for each ECE. The Parties shall contribute equally to the ECE budget. “

<sup>181</sup> *Article 23* – “Draft Evaluation Reports - 1. Within 120 days after it is established, or such other period as the Council may decide, the ECE shall present a draft report for consideration by the Council, which shall contain: (a) a comparative assessment of the matter under consideration; (b) its conclusions; and (c) where appropriate, practical recommendations that may assist the Parties in respect of the matter. 2. Each Party may submit written views to the ECE on its draft report within 30 days. The ECE shall take such views into account in preparing its final report.”

<sup>182</sup> *Article 24* – “Final Evaluation Reports - 1. The ECE shall present a final report to the Council within 60 days after presentation of the draft report, unless the Council otherwise decides. 2. The final report shall be published within 30 days after its presentation to the Council, unless the Council otherwise decides. 3. The Parties shall provide to each other written responses to the recommendations contained in the ECE report within 90 days of its publication. 4. The final report and such written responses shall be tabled for consideration by the Council. The Council may keep the matter under review. “

<sup>183</sup> *Article 25* – “Consultations - 1. Following presentation to the Council under Article 24(1) of an ECE final report that addresses the enforcement of a Party's occupational safety and health, child labour or minimum wage technical labour standards, either Party may request in writing consultations with the other Party at a special session of the Council regarding whether there has been a persistent pattern of failure by the other Party to effectively enforce such standards in respect of the general subject matter addressed in the report. 2. In such consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. 3. Unless agreed otherwise, the Council shall convene within 60 days of the delivery of the request and shall endeavour to resolve the dispute promptly. 4. The Council may: (a) call on such technical advisers or create such working groups or expert groups as it deems necessary, or (b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, as may assist the Parties to reach a mutually satisfactory resolution of the dispute. 5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the Parties are party, it shall refer the matter for appropriate action in accordance with such other agreement or arrangement.”

<sup>184</sup> *Article 26* – “Request for an Arbitral Panel - 1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 25, the Council shall, on the written request of either Party, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards is: (a) trade-related; and (b) covered by mutually recognized labour laws. 2. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part. “

In accordance with the CCALC, nevertheless, the compliance with internationally labour standards still exclusively depends on political will, since there is no possibility of direct external interference on domestic issues (articles 39<sup>185</sup> and 40<sup>186</sup>). More, the agreements prescribes no imposition of concrete trade sanctions on the parties (similarly to what happen with Canada under the NAFTA umbrella).

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<sup>185</sup> *Article 39* –“Enforcement Principle - Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.”

<sup>186</sup> *Article 40* – “Private Rights – Neither Party may provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement. “

## 8.4. CHILE-CHINA

### 8.4.1. Negotiations

Chile and China have a common history of significant relationships both on trade and on diplomatic issues. In 1961, Chile was the first Latin American State that established trade relations with China. During Allende's government, Chile was the first American continental nation that set up diplomatic relations with Beijing<sup>187</sup>. More recently, during the 90's, China and Chile strengthened their political and economic approximation with mutual presidential visits and with relevant partnerships on trade, culture, science, technology and investment protection<sup>188</sup>. More, in 1999 Chile was the first Latin American State which recognized the Chinese full market economy and which defended China's entry to the WTO, and on 2002 China supported Chile as a non-permanent Member on the UN Security Council (2003-2004)<sup>189</sup>.

On June 2002 China proposed to start negotiations of an FTA with Chile – it was the first Chinese non-Asian FTA – but it was only on April 2004 that both parties realized internal consultations in order to verify the feasibility of such Agreement.

Afterwards, on April 23<sup>rd</sup> 2004, the start of negotiations was approved, what was formally announced on November 18<sup>th</sup> 2004, during the APEC Summit in Santiago.

During ten months there were five negotiation rounds<sup>190</sup> which involved complex technical discussions – giving the significant political and cultural differences between the parties – involving several politic and diplomatic meetings, consultations involving the civil society and the participation of NGOs, trade unions and employer's associations.

The Agreement was finally signed during the 2005 APEC Summit in Busan, South Korea, and it is in force since October 2006. Additional negotiations concerning services are already

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<sup>187</sup> *Speech of Wu Bangguo, Chairman of the Standing Committee of the National People's Congress of China , in Santiago, on September 6<sup>th</sup>, 2006.* "Talking about China-Chile relations, the Chinese people are most impressed by "four first". Chile is the first Latin American country to establish diplomatic relationship with China, to reach the bilateral agreement with China on China's accession to the WTO, to recognize China's full market economy status and to sign the bilateral free trade agreement with China. The "four first" is strong evidence that China and Chile are reliable friends and partners enjoying mutual benefit and win-win cooperation."

<sup>188</sup> *Source:* Ministry of Foreign Affairs of the People's Republic of China.

<sup>189</sup> *Id.*

<sup>190</sup> (1). Beijing – 25/01/2005 – 27/01/2005; (2). Santiago – 27/04/2005 – 29/04/2005; (3). Wuxi -28/06/2005 – 30/06/2005; (4). Santiago – 12/09/2005 – 16/09/2005; (5). Beijing – 24/10/2005 – 28/10/2005.



concluded (and pending on ratification at the Chilean Congress), and negotiations are still ongoing on sectors such as investments and transports<sup>191</sup>.

The exceptional increment on trade between the parties had made that in 2007 China was the main destiny for Chilean products, with more than ten billion U.S. dollars on exports, and in 2009 – even with the emergence of the global financial crisis – this value exceeded eleven billion U.S. dollars. Chile is currently the second largest Chinese trading partner in South America, just after Brazil. Chilean basic exports to China are copper, paper, wood, pulp, fruits, potassium and red wine, and its imports are textiles, clothes, machinery and electrical products.

**Trade - Chile-China – (US\$ millions)<sup>192</sup>**

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	4.481	5.033	10.051	10.005	11.892
<b>Chilean imports</b>	2.629	3.599	4.931	6.827	5.117
<b>Trade balance (Chilean)</b>	1.853	1.435	5.120	3.178	6.775
<b>Total trade</b>	7.110	8.632	14.982	16.831	17.009

Also, it is noteworthy that the diplomatic relations between the parties are still growing significantly and China and Chile are currently planning to develop active cooperation on fields like Antarctic exploration and on policies related to climate change.

**8.4.2. Labor contents**

Even before starting formal negotiations, Chile proposed the inclusion of social regulations on the main body of the FTA with China<sup>193</sup> without the scope of sanctioning – even because *in*

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<sup>191</sup> “El Tratado de Libre Comercio entre Chile y China fue firmado durante el Gobierno del Presidente Ricardo Lagos Escobar. Fue el octavo TLC de Chile y el primero que China negoció con 1 país. Se encuentra vigente desde octubre de 2006.

Al inicio de acuerdo, en 2005, se decidió realizar las negociaciones por parte. Así en una primera instancia se concluyó el capítulo de Acceso de Mercados, y en abril de 2008 se firmó el protocolo para incorporar en el TLC el Comercio de Servicios. Actualmente este protocolo se encuentra en proceso de ratificación en el Congreso. Por otro lado, los equipos de Chile y China se encuentran negociando el capítulo de Inversiones y un acuerdo en materia de Transporte Aéreo.” *Source:* Direcon.

<sup>192</sup> *Source:* Direcon.

*praxis* Chilean sanctions would be nearly imperceptible to the Chinese economy – but in order to demonstrate Beijing’s good faith (“*bona fides*”) on this field not only to Chile, but to the international community as a whole. In fact, the general widespread conception that Chinese authorities are not aware of the problems raised by the lack of labour standards is truly false, since Beijing has been promoting several advances on its internal legislation and supervision since 1995, aiming to adequate its norms to a full open market globalized economy.

In order to convince its Chinese counterparts, the joint feasibility study concerning the Chile-China Free Trade Agreement expressly states, on its chapter VI.6.B, the Chilean reasons to include labour clauses on its FTAs:

*“FTAs negotiated by the Chilean government are cornerstones for achieving sustainable economic development lead by international trade and investment. The strategic goal is to improve the integration of Chile to the global economy and build the foundations for the participation of the Chilean population and social actors to the benefits of economic growth and development, while simultaneously laying the basis for sustainable development.*

*The policy of Chilean governments has been to address labor and environment issues, although according to different templates, so as to show the commitment of the country to these issues and to Chilean enforcement of its own laws, while at the same time adopting a realistic approach to the specific relationship with each trade partner. Chile has also sought to encourage participation of its civil society, as well as public access to procedures for the enforcement of the Parties labor and environmental laws.”*

Moreover, the document clearly states that labour clauses must respect the parties’ sovereignty, “*based on an approach that recognizes the right of each Party to establish domestically its own levels of protection, its policies and priorities and to adopt or modify its own legislation*” and “*based on each Party’s own reality, laws and systems, sharing mutual commitments already established by both countries and specially based in cooperation and transparency so as to allow the opportunity for both countries to develop their trade, investment and economic and social development.*”

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<sup>193</sup> *Documento explicativo TLC Chile-China y sus impactos estimados. Dirección General de Relaciones Económicas Internacionales – Ministerio de Relaciones Exteriores de Chile. p. 47. “Chile planteó a China incluir las materias laborales, fiel a su convicción de que El mundo del trabajo es parte esencial de los TLC, así como para obtener una mayor transparencia y predictabilidad de los nuevos escenarios que crea La relación com esse país. 163. El equipo negociador de Chile procuro ser consistente con la postura asumida por Chile de incorporar compromisos laborales en sus negociaciones comerciales internacionales (...)”*

This soft approach was finally accepted by the Chinese counterparts, which have been really reticent in order to include references to labour on the main body of the free trade agreement.

In spite of the Beijing's reserve, it is significant that the Agreement's preamble recognizes the importance of creating job opportunities and raising standards of living - what may be interpreted as incompatible with a reduction of fundamental labour standards:

*“The Government of the People’s Republic of China (“China”) and the Government of the Republic of Chile (“Chile”),  
(...) **Recognizing that this Agreement should be implemented with a view toward raising the standard of living, creating new job opportunities, and promoting sustainable development in a manner consistent with environmental protection and conservation (...)**  
Have agreed as follows:”*

More, the article 108 states that a separate memorandum would regulate cooperation on the fields of labour and social security:

*“Article 108 – Labor, Social Security and Environmental Cooperation:  
**The Parties shall enhance their communication and cooperation on labor, social security and environment through both the Memorandum of Understanding on Labor and Social Security Cooperation, and the Environmental Cooperation Agreement between the Parties.**”*

Consequently, a memorandum was set up by the Ministries of Labour and Social Security of both parties (“Memorandum of Understanding on Labour and Social Security Cooperation”<sup>194</sup>), and was signed just a few days after the Free Trade Agreement.

The document establishes a common agenda on the field of labour rights protection and brings up a permanent dialogue between Chile and China. In spite of not imposing the respect of a specific set of rights, nor binding any of the parties, the memorandum may be considered

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<sup>194</sup> Signed on November 2<sup>nd</sup>, 2005, in Chile.

an importance advance, for the reason that it was the first document that China had ever signed linking labor and trade<sup>195</sup>.

The first important topic at the Memorandum is already its preamble<sup>196</sup>, in which the parties refer to the existence of ILO objectives, and confirm that cooperation on the fields of employment, training, labour inspection policies and social security “*will serve their mutual interests and contribute to strengthening the relations of friendship between the two countries.*”

More, the preamble refers to previous cooperation activities on this field and to the mutual political will in order to “*give more dynamics and content to their bilateral relations as a whole*”, an open concept that unequivocally includes labour contents.

Nevertheless, probably the most relevant provision is the article number one, which mentions more specific cooperation areas and contains internationally recognized meaningful expressions such as “*decent work*”, “*labour inspection*” and “*improvement of working conditions*”<sup>197</sup>.

The article two states some of the means which should be used in order to promote labor cooperation, such as “*exchanges of information and expertise*”, “*reciprocal visits of experts and delegations*”, “*joint organization of seminars, workshops and meetings for experts regulatory authorities and other persons concerned*” and “*consultations within the framework of multilateral discussions on employment, training, labour and social security issues*”.<sup>198</sup> It is

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<sup>195</sup> *Documento explicativo TLC Chile-China y sus impactos estimados. Dirección General de Relaciones Económicas Internacionales – Ministerio de Relaciones Exteriores de Chile.* p. 48. “A pesar que China há rechazado vincular estos temas en todos sus negociaciones comerciales, lo que reiteró en forma particular AL momento de su ingreso a la OMC, aceptó en el caso de Chile, y por primera vez, un acuerdo em el cual se abordan los temas laborales.”

<sup>196</sup> (...) “Welcoming the development of their bilateral relations, Affirming their political will to give more dynamics and content to their bilateral relations as a whole, Considering the objectives of the International Labour Organization of which the Parties have become members, Noting the exchanges and the co-operation activities in the fields of employment, training, labour inspection policies, social security and other related labour issues that have already taken place between the Parties, Reaffirming the commitment of the Parties to develop the content of their bilateral agenda and to share the knowledge and experience gained in the fields related to employment, training, labour inspection policies and social security, Convinced that co-operation between the Parties in the above mentioned matters will serve their mutual interests and contribute to strengthening the relations of friendship between the two countries, (...)”

<sup>197</sup> *Article 1* – “The Parties shall carry out mutually agreed co-operation activities, more particularly in the following fields: a) employment and labour policies and social dialogue, including decent work, labour laws and labour inspection; b) improvement of working conditions and workers training; c) globalization and its impact on employment, the working environment, industrial relations and governance, and d) social security”.

<sup>198</sup> *Article 2* – “Co-operation between the Parties shall more particularly be carried out by means of:

- a) exchanges of information and expertise in the fields covered by the Memorandum;
- b) reciprocal visits of experts and delegations;
- c) joint organization of seminars, workshops and meetings for experts, regulatory authorities and other persons concerned; and
- d) consultations within the framework of multilateral discussions on employment, training, labour and social security issues.”

also noteworthy that this is a *numerus apertus* tabulation, that is to say that there is no interdiction that other kinds of activities may be incorporated *in praxis*.

The article three states that each party must indicate a contact point (“coordinator”), and that they shall meet on a regular basis, every two years.<sup>199</sup>

Regarding financing labour cooperation, article number four expressly mentions that it “*shall depend on the budgets available*” and “*shall be governed by the laws and regulations applicable in each country*”. Nevertheless, “*each of the Parties shall seek to secure the funds required to support co-operation activities*”.<sup>200</sup>

Moreover, article five reaffirms that the memorandum does not affect rights and obligations that the Parties assumed on other international legal instruments.<sup>201</sup> On this clause again it is clear the concern of the Chinese authorities in order to defend its sovereignty, and to avoid launching a binding mechanism applicable to the labour field.

Article six rules that the memorandum “*shall remain in force indefinitely unless either Party gives notice of termination to the other Party with six months of advance*”, and that “*the expiry of this Memorandum shall not affect the validity of arrangements already existing under this Memorandum*”<sup>202</sup>

At last, there is a note explaining that, in spite of the fact that the memorandum has official versions in Chinese and in Spanish, “*in case of divergence of interpretation, the English text shall prevail*”.<sup>203</sup>

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<sup>199</sup> Article 3 - “With a view to guaranteeing the implementation of this Memorandum, to establishing a co-operation programme to be carried out within a specified period and to coordinating the co-operation activities referred to in this Memorandum, each Party shall appoint a co-coordinator within the six months following the entry into force of this Memorandum.

As a rule, coordinators shall meet on a regular basis, every two years, in turn in the People’s Republic of China and in the Republic of Chile. Unless agreed otherwise, international travel costs resulting from participation in meetings shall be borne by the sending Party while the host Party shall assume, on a basis of reciprocity, the expenses incurred locally by the participants.”

<sup>200</sup> Article 4 - “The co-operation activities referred to in this Memorandum shall depend on the budgets available and shall be governed by the laws and regulations applicable in each country. Any specific activity or project launched by mutual agreement may, if necessary, be dealt with in a separate agreement.

Each of the Parties shall seek to secure the funds required to support co-operation activities and shall undertake the co-ordination of the departments responsible for the implementation of this Memorandum.”

<sup>201</sup> Article 5 - “Nothing in this Agreement shall affect in any way the rights and obligations of the Parties resulting from any international legal instrument. “

<sup>202</sup> Article 6 - “This Memorandum shall enter into force thirty days after the date of signature and shall remain in force indefinitely unless either Party gives notice of termination to the other Party with six months of advance. The expiry of this Memorandum shall not affect the validity of arrangements already existing under this Memorandum.”

<sup>203</sup> “Done in duplicate at Santiago of Chile, on November 2nd, 2005, in Chinese, Spanish and English languages, each version being equally authentic. In case of a divergence of interpretation, the English text shall prevail.”

### **8.4.3. Final remarks**

The most relevant aspect regarding labour protection on the Chile-China FTA is neither the agreement nor the memorandum themselves – which are basically restricted to cooperation and to general declarations of objectives – but their symbolic importance both to China and Chile.

At first, the fact that China, for the first time, included a labour topic on an FTA - and established a common agenda with an express reference to “decent work” - must be considered a noteworthy step in order to embrace labour protection on the international agenda. If it is patent that China is still reticent in order to incorporate binding commitments on this field, nevertheless, the memorandum itself is an irrefutable proof that Beijing is aware of the global importance of this topic.

Another remarkable point is that Chile, even with its relatively small economic importance, achieved to include labour contents on the trade negotiations with China. Chile proved again that it is a pioneer on the FTA arena, that bilateral agreements are not mere impositions to small countries, and that it is assuming an increasing significance as global actor.

## 8.5. P4 ASSOCIATION AGREEMENT

### 8.5.1. Negotiations

The Trans-Pacific Strategic Economic Partnership Agreement – or P-4 treaty – is the first FTA that bridges three Continents, and has its origins on the 2002 APEC Summit<sup>204</sup>, when Chile, New Zealand and Singapore entered into an agreement to start negotiations of a trilateral trade treaty, the P-3 (Pacific-3), through processes of internal consultations and feasibility studies.

The first introductory meeting took place in Wellington, on July 2003, and was followed by five technical meetings that came about on the following two years<sup>205</sup>. Since the second negotiation round Brunei Darussalam took part of the process as an observer and, on the beginning of the last round, it formally announced the decision to join the P-3 group.

The negotiation process was formally ended on June 3<sup>rd</sup> 2005 in Jeju (South Korea), during a Ministerial APEC meeting, and the treaty (then known as P-4) was signed in New Zealand on July 18<sup>th</sup> of that same year<sup>206</sup>, including Brunei as one of the founding members.

The Agreement came into force gradually - after the necessary internal arrangements; between New Zealand and Singapore the treaty came into force on May 1<sup>st</sup> 2006, in Brunei on July 12<sup>th</sup>, and in Chile only on November 8<sup>th</sup> of the same year<sup>207</sup>.

The scope of the P-4 agreement is to promote cooperation between those four emergent open economies<sup>208</sup> - which, independently, find difficulties on international discussions because of their small scale economies. The P-4 group is a way to find consensus among its Members and, through join operations and strategic cooperation, perform a more significant role on the international arena.

Therefore, the agreement is not restricted to trade, it goes far beyond that<sup>209</sup>. Currently it counts with norms on labour issues and environmental standards, and there are ongoing negotiations concerning financial services and investments<sup>210</sup>.

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<sup>204</sup> Los Cabos, Mexico.

<sup>205</sup> First technical meeting: September 2003 (Singapore); Second meeting: August 2004 (Wellington); Third meeting: December 2004 (Santiago); Fourth meeting: March 2005 (Queenstown); Fifth meeting: April 2005 (Singapore). Revision round: May 2005 (Singapore).

<sup>206</sup> And by Brunei on August 2nd 2005.

<sup>207</sup> The Chilean Congress approved the Agreement on September 5th, 2006.

<sup>208</sup> The members do not only have a positive international evaluation on economic development, but also on institutional mechanisms, stability and governability.

<sup>209</sup> “El Acuerdo, de carácter estratégico, se funda en la creación de una asociación económica que va más allá de lo estrictamente comercial. El acuerdo aborda veinte capítulos en el área comercial tales como: Comercio de Mercancías, Reglas de Orígenes, Procedimientos Aduaneros, Defensa comercial, Medidas Sanitarias y

More, the main idea behind the Agreement is to serve as a base for a wider alliance, a real Free Trade Area of the Asia-Pacific region. Actually, the treaty has an accession clause<sup>211</sup>, which aims to attract other countries to the agreement<sup>212</sup>. On September 2008 the United States launched negotiations in order to be a new member<sup>213</sup>, and Australia, Vietnam and Peru already manifested intentions on this same direction.

#### Trade - Chile - P-4 – (US\$ millions)<sup>214</sup>

	2004	2005	2006	2007	2008
<b>Chilean exports</b>	81,9	99,24	76,66	138,9	161,7
<b>Chilean imports</b>	53,06	71,65	71,33	158,13	195,2
<b>Trade balance (Chilean)</b>	28,8	27,6	5,3	-19,2	-33,5
<b>Total trade</b>	134,9	170,9	148,0	297,0	356,9

#### 8.5.2. Labor contents

In spite of the fact that the main body of the Trans-pacific Strategic Economic Partnership Agreement only mentions labour regulations on its preamble,

*“The Governments of Brunei Darussalam, the Republic of Chile, New Zealand and the Republic of Singapore (...) resolve to:*

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Fitosanitarias, Barreras Técnicas de Comercio, Política de Competencia, Propiedad Intelectual, Compras Públicas, Comercio de Servicios (Servicios Financieros, Profesionales, pagos de transferencias y DL 600 de Chile), Entrada Temporal, Transparencia, Solución de Controversias, además de disposiciones administrativas y generales. En el ámbito de la cooperación, el acuerdo contiene un Memorándum de Entendimiento sobre Cooperación Laboral y un Acuerdo de Cooperación Medioambiental.” *Source: Direcon.*

<sup>210</sup> As part of the original outcome of negotiations in 2005 it was agreed to begin negotiations on financial services and investment within two years of entry into force. Those negotiations began in March 2008, with the United States participating while it considered whether to enter into negotiations to join the Trans-Pacific Agreement on a comprehensive basis. *Source: New Zealand Ministry of Foreign Affairs & Trade.*

<sup>211</sup> One of the objectives of the Trans-Pacific Agreement was to create a trade agreement that could be seen as a model within the Asia-Pacific region and could potentially attract new members. The agreement is open to accession “on terms to be agreed among the parties, by any APEC economy or other state”. *Source: New Zealand Ministry of Foreign Affairs & Trade.*

<sup>212</sup> “Es importante destacar que el Acuerdo P4 contiene una Cláusula de Adhesión que permite que otras economías sean APEC o no, se incorporen al Acuerdo, reforzando con ello la intención original de perseguir una mayor integración y liberalización comercial en la zona Asia Pacífico. Por este motivo, algunos miembros de APEC ven al Acuerdo P4 como una importante plataforma de integración para un eventual Acuerdo de Libre Comercio entre países de Asia Pacífico (FTAAP, por su sigla en inglés), tema que se encuentra en plena discusión en el Foro APEC.” *Source: Direcon.*

<sup>213</sup> *Source: Office of the United States Trade Representative.*

<sup>214</sup> *Source: Direcon.*



(...)

**STRENGTHEN** *their strategic economic partnership to bring economic and social benefits, to create new opportunities for employment and to improve the living standards of their peoples;*

(...)

**ENHANCE** *their cooperation on labour and environmental matters of mutual interest;*

(...)"

the parties signed a separate memorandum of understanding on this area<sup>215</sup>, in which they reaffirm their commitment with the ILO fundamental rights on their internal legislation and practices<sup>216</sup>. More, this MoU aims to increase cooperation on related fields and establish a multilateral consultation mechanism.

An important highlight is that the promotion of decent work on the MoU is not only linked to the elimination of trade distortions, since it comprehends labour on its human right dimension<sup>217</sup>. That is to say that, unlike what happens on other FTAs, the parties commit themselves to promote better working conditions not only on sectors linked to the external market - or that directly compete with foreign industries - , but on the labour market as a whole. This universalizing approach is clear on the article one of the treaty, which states that:

*“The objectives of the Parties shall be to:*

*(a) promote better understanding of each Party’s labour systems, sound labour policies and practices and improve the capacities and capabilities of the Parties, including non-government sectors;*

*(b) provide a forum to discuss and exchange views on labour issues of interest or concern with a view to reaching consensus on those issues amongst the involved Parties;*

*(c) promote better understanding and observance of the principles embodied in the ILO Declaration on*

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<sup>215</sup> Memorandum of Understanding on Labour Cooperation among the parties to the Trans-pacific Strategic Economic Partnership Agreement.

<sup>216</sup> “En el Memorando de Entendimiento sobre Cooperación Laboral, los países dejaron constancia de su voluntad de mejorar las condiciones de trabajo y de vida y de proteger, mejorar y hacer cumplir los derechos básicos laborales, en la búsqueda de empleos que conlleven los principios básicos de la OIT.” *Source: Direcon – Documento explicativo Acuerdo de Asociación Estratégica P4*

<sup>217</sup> “Desiring to express an approach dealing with labour issues based on cooperation, consultation and dialogue that takes account of the unique circumstances of each Party, and meet the needs and future aspirations of the Parties; Recalling our resolve to improve working conditions and living standards in our respective countries and protect, enhance and enforce the basic workers rights, taking into account the different levels of national development; Acknowledging that all Parties share a similar commitment to high level standard of labour laws, policies and practices and are committed to uphold them in the context of economic development and trade liberalization; and Sharing the common aspiration that free trade and investments should lead to job creation, decent work and meaningful jobs for workers, with terms and conditions of employment which adhere to the core *International Labour Organization (ILO) labour principles*”.

*Fundamental Principles and Rights at Work and its Follow-up (1998);*

*(d) support the commitments made by the Parties in this Memorandum of Understanding (MOU), with a view to improving the working conditions and quality of work life amongst employees in their respective countries;*

*(e) improve the development and management of human capital for enhanced employability, business excellence, and greater productivity for the benefit of both the workers and enterprise; and*

*(f) facilitate co-operation and dialogue in order to strengthen the broader relationship between the Parties”.*

More, the parties reaffirm their commitments with ILO obligations (art.2.1<sup>218</sup>), particularly stressing the 1998 *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (art 2.2<sup>219</sup>).

Each party remains sovereign in order to “*set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations*” (art.2.4<sup>220</sup>), but they must ensure that “*its labour laws, regulations, policies and practices are in harmony with their international labour commitments*”<sup>221</sup> (art.2.3). More, the parties recognize the inappropriateness of protectionism (art.2.5<sup>222</sup>) and social dumping (art.2.6<sup>223</sup>), and commit themselves to ensure transparency (art.2.7<sup>224</sup>).

Furthermore, the parties aim to increase cooperation on the labour fields of mutual interest and benefits (art. 3.1<sup>225</sup>). The MoU also brings a list with some of the possible cooperative methods (*numerus apertus*), such as “*the exchange of best practice and information, joint projects, studies, exchanges, visits, workshops and dialogue as the Parties may agree, including in relation to international labour forums and matters*” (art 3.4<sup>226</sup>). The

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<sup>218</sup> Article 2.1 - “Parties that are members of the ILO reaffirm their obligations as such.”

<sup>219</sup> Article 2.2 - “The Parties affirm their commitment to the principles of the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998).”

<sup>220</sup> Article 2.4 - “The Parties respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations.”

<sup>221</sup> Article 2.3 - “ Each Party shall work to ensure that its labour laws, regulations, policies and practices are in harmony with their international labour commitments.”

<sup>222</sup> Article 2.5 - “The Parties recognize that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.

<sup>223</sup> Article 2.6 - “The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.”

<sup>224</sup> Article 2.7 - “Each Party shall promote public awareness of its labour laws and regulations domestically.”

<sup>225</sup> Article 3.1 - “Taking account of their national priorities and available resources, the Parties agree to cooperate on labour matters of mutual interest and benefit. The Parties shall jointly decide specific labour cooperative activities.”

<sup>226</sup> Article 3.4 - “Cooperative activities may be implemented through a variety of means, such as the exchange of best practice and information, joint projects, studies, exchanges, visits, workshops and dialogue as the Parties may agree, including in relation to international labour forums and matters.”

funding shall be decided by the parties on a case-by-case analysis (art.3.5<sup>227</sup>) taking account the available resources.

Regarding institutional arrangements, each party shall nominate a contact point for labour issues (art. 4.1<sup>228</sup>), and the parties may have periodical meetings on this topic (art.4.2<sup>229</sup>), in order to “*establish an agreed work programme of cooperative activities, oversee and evaluate cooperative activities, serve as a channel for dialogue on matters of mutual interest, review the operation and outcomes of this MOU and provide a forum to discuss and exchange views on labour issues of interest or concern with a view to reaching consensus on those issues amongst the involved Parties*”. Since the signature three Senior Labour official meetings (SLOMs) came about, the first on June 12<sup>th</sup>, 2006, the next on June 8<sup>th</sup> 2007, and the third one in June 11<sup>th</sup>, 2008.

In case of failure on the accomplishment of the norms stated on the memorandum, there is the possibility to recur to a consultation procedure, which starts with a request to the national contact points on labour matters, and on serious cases may be even communicated to a joint Ministerial meeting of the interested parties (art.5.3<sup>230</sup>). It is noteworthy that the MoU does not include any kind of formal sanctioning, but stresses that the parties shall “*make every effort to reach a consensus on the matter through co-operation, consultation and dialogue*” (art. 5.2<sup>231</sup>).

This non-sanctionatory approach is coherent with the policies of the parties. The New Zealand Ministry of Foreign Affairs & Trade stresses that “*in any provisions agreed in the context of negotiating a bilateral trade or economic agreement, **dialogue and consensus will be preferred to penalties or sanctions** as a way of making progress on labour standards issues. The government’s aim will be to focus discussion of labour issues, and provide a forum for action and progress to be made, by **consensus and not coercion**, in a bilateral context. Whether this is done in provisions in the agreements themselves, or in some other manner, is a*

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<sup>227</sup> Article 3.5 – “The funding of cooperative activities shall be decided by the Parties on a case-by-case basis.”

<sup>228</sup> Article 4.1 – “Each Party shall designate a national contact point for labour matters to facilitate communication between the Parties.”

<sup>229</sup> Article 4.2 – “The Parties, including senior officials of their government agencies responsible for relevant labour matters, shall meet within the first year of the signing of this MOU, unless otherwise agreed, and then as mutually agreed, to: (a) establish an agreed work programme of cooperative activities; (b) oversee and evaluate cooperative activities; (c) serve as a channel for dialogue on matters of mutual interest; (d) review the operation and outcomes of this MOU; and (e) provide a forum to discuss and exchange views on labour issues of interest or concern with a view to reaching consensus on those issues amongst the involved Parties.”

<sup>230</sup> Article 5.3 – “The matter may be communicated to a joint meeting of the interested Parties, which may include Ministers, for mutual discussions and consultations, to which all Parties will be invited.”

<sup>231</sup> Article 5.2 – “Should any issue arise over the interpretation or application of the MOU, a Party may request consultation with the other Party(ies), through the national contact point. The Parties will make every effort to reach a consensus on the matter through co-operation, consultation and dialogue.”

*matter on which the government is willing to show flexibility. It is interested in the content rather than the form.*<sup>232</sup>”

On the same sense, Singapore highlights the cooperation aspect of the Trans-Pacific SEP:

*“The MOU on Labour Cooperation will enable the countries to work closely together on labour and HR issues and provide opportunities for the countries to share views and experiences on these issues, with the objective of promoting and enhancing the well-being of workers in the four countries.”*<sup>233</sup>

In conclusion, the Trans-Pacific Strategic Economic Partnership Agreement may be considered a relevant model of trade agreement, which respect the human dimension of labour. The P-4 brings up several regulations on this field which, in spite of essentially having a non-binding characteristic, are consonant with the main ILO principles and may be considered important tools to – safeguarding the parties’ sovereignty – set up a rule-based competence arrangement, monitoring and promoting labour conditions and decent work, concretely improve living standards and effectively protecting internationally recognized human rights.

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<sup>232</sup> Source: New Zealand Ministry of Foreign Affairs & Trade.

<sup>233</sup> Singapore government: MEDIA INFO-NOTE – Trans-Pacific SEP.

## 8.6. CHILE-COLOMBIA

### 8.6.1. Negotiations

The present Colombian-Chilean Free Trade Agreement has its origins on the Economic Complementation Agreement<sup>234</sup> (ECA) signed under the ALADI<sup>235 236</sup> framework, established by the Montevideo Treaty<sup>237</sup>. The Colombian-Chilean ECA (ECA 24) was signed on December 6<sup>th</sup>, 1993 and entered into force on January 1<sup>st</sup> of the following year.

The ECA 24 – with its several annexes and additional protocols – is restricted to classical economic topics, following the guidelines established by the ALADI agenda. Particularly aiming bilateral tariff reductions and economic coordination methods<sup>238</sup>, the ECA did not incorporate references to topics which are part of every current FTA, such as environmental protection and social development.

Nevertheless, the ECA 24 was extraordinarily important on the increment of the bilateral economic relations between the parties, with a vigorous improvement during the 90's – in spite of the incidence of the severe Asian economic crisis during the 1998-2001 period<sup>239</sup>.

On that time, both Chile and Colombia had been pursuing a free trade strategy with the signature of several FTAs<sup>240</sup>, although a few political and economic divergences on the

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<sup>234</sup> Acuerdo de Complementación Económica (ACE).

<sup>235</sup> Asociación Latino-americana de Integración.

<sup>236</sup> “Es el mayor grupo latinoamericano de integración. Sus doce países miembros comprenden a Argentina, Bolivia, Brasil, Chile, Colombia, Cuba, Ecuador, México, Paraguay, Perú, Uruguay y Venezuela, representando en conjunto 20 millones de kilómetros cuadrados y más de 500 millones de habitantes.” (...) “La ALADI da cabida en su estructura jurídica a los más vigorosos acuerdos subregionales, plurilaterales y bilaterales de integración que surgen en forma creciente en el continente (Comunidad Andina de Naciones, MERCOSUR, etc.). En consecuencia, le corresponde a la Asociación –como marco o “paraguas” institucional y normativo de la integración regional- desarrollar acciones tendientes a apoyar y fomentar estos esfuerzos con la finalidad de hacerlos confluir progresivamente en la creación de un espacio económico común.” *Source: ALADI.*

<sup>237</sup> “El Tratado de Montevideo 1980 (TM80), marco jurídico global constitutivo y regulador de ALADI, fue suscrito el 12 de agosto de 1980 estableciendo los siguientes principios generales: pluralismo en materia política y económica; convergencia progresiva de acciones parciales hacia la formación de un mercado común latinoamericano; flexibilidad; tratamientos diferenciales en base al nivel de desarrollo de los países miembros; y multiplicidad en las formas de concertación de instrumentos comerciales.” *Source: ALADI.*

<sup>238</sup> “El Acuerdo tiene como objetivos centrales: el establecimiento de un espacio económico ampliado entre los dos países, que permita la libre circulación de bienes, servicios y factores productivos; la liberación total de gravámenes y eliminación de las restricciones de las importaciones originarias de los mismos; propiciar una acción coordinada de los Foros Económicos Internacionales así como en relación a los países industrializados; la coordinación y complementación de las actividades económicas, en especial, en las áreas industrial y servicios; el estímulo de las inversiones; y, la facilitación del funcionamiento de empresas binacionales y multinacionales de carácter regional.” *Source: Direcon.*

<sup>239</sup> “El flujo de comercio entre Chile y Colombia ha mostrado una trayectoria creciente desde la entrada en vigencia del ACE 24, el 01 de enero de 1994, acumulando un incremento de casi un 200%. En efecto, el intercambio ha presentado aumentos anuales con la salvedad del período 1998 - 2001, como consecuencia de los efectos de la crisis asiática de esos años.” *Source: Direcon.*

beginning of this new millennium caused difficulties to the mutual trade agenda, delaying the shared project of a bilateral FTA.

Nonetheless, on July 27<sup>th</sup> 2006 – during the III Extraordinary Meeting of the ECA 24 Executive Commission<sup>241</sup> - Santiago and Bogotá finally put an end on a bilateral trade controversy related to sugar<sup>242</sup>, with the scope to normalize trade relations between their countries. Following this resolution, the Chilean President Michelle Bachelet visited the Colombian President Alvaro Uribe, and in conclusion they agreed to start the negotiations of an FTA – applying the ECA 24 as its starting point.

Subsequently, the agreement was finally signed on November 11<sup>th</sup>, 2006, as an additional protocol of the ECA 24, and it came into force on May 8<sup>th</sup>, 2009, setting up a common market of more than sixty million inhabitants.

The Chilean-Colombian Free Trade Agreement is the deepest and the most advanced free trade agreement ever signed between Latin American countries<sup>243</sup>, dealing with a great variety of topics such as environmental protection, intellectual property, transparency, e-commerce, services, investments, dispute settlement and labour contents<sup>244</sup>.

The FTA has been bringing series of positive economic results, and, in spite of the global economic crisis, the trade exchange between Colombia and Chile has been constantly increasing. *Exempli gratia*, there was a growth of 29,6% on bilateral trade comparing January 2009 with the same month of the previous year, achieving an amount of US\$ 124,2 million.

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<sup>240</sup> Colombia signed FTAs with several countries, such as Canada, Central American countries, Chile, the EFTA zone and the United States, and it is negotiating other trade agreements, e.g. the European Union-Andean countries association agreement.

<sup>241</sup> III Reunión Extraordinaria de la Comisión Administradora del ACE 24.

<sup>242</sup> “El Gobierno de Colombia con el ánimo de poner fin al diferendo comercial que existía con Chile, expidió el Decreto No 2777 del 17 de agosto, a través, del cual se derogan los decretos que fijaban gravámenes arancelarios a algunas importaciones provenientes y originarias de Chile.” *Source: Ministerio de Comercio, Industria y Turismo – (Republica de Colombia).*

<sup>243</sup> “El Tratado de Libre comercio entre Colombia y Chile, presentado oficialmente hoy por ambos gobiernos, se convirtió en el más profundo y avanzado de América Latina, coincidieron en señalar hoy el Ministro de Comercio, Industria y Turismo, Luis Guillermo Plata; el viceministro de Relaciones Económicas e Internacionales de Chile, Carlos Fuche; y el Canciller de ese país, Mariano Fernández; durante el lanzamiento del acuerdo en Bogotá.” *Source: Ministerio de Comercio, Industria y Turismo – (Republica de Colombia).*

<sup>244</sup> “El Acuerdo de Libre Comercio entre Chile y Colombia fue firmado durante el Gobierno de la Presidenta Michelle Bachelet Jeria. Se encuentra vigente desde mayo de 2009. El paso de un Acuerdo de Complementación Económica (ACE N° 24 en vigencia desde 1994) a un ALC tuvo por objeto profundizar las relaciones económicas y comerciales entre ambos países. El Acuerdo tiene como objetivos centrales el establecimiento de un espacio económico ampliado entre los dos países, que permita la libre circulación de bienes, servicios y factores productivos; la liberación total de gravámenes y eliminación de las restricciones de las importaciones originarias de los mismos. Además busca propiciar una acción coordinada de los Foros Económicos Internacionales así como en relación a los países industrializados; la coordinación y complementación de las actividades económicas, en especial, en las áreas industrial y servicios; el estímulo de las inversiones; y, la facilitación del funcionamiento de empresas binacionales y multinacionales de carácter regional”. *Source: Direcon.*

Moreover, Colombian exports increased 125% on the 2007/2008 period, from US\$ 367 million to US\$ 849 million – a negative remark is that they are still very concentrated on no more than a few products, predominantly on coal (36%), crude oil (25%) and sugar (5%).

In addition, it is noteworthy that Colombia is the destiny of a significant part of Chilean exports, particularly regarding a great diversity of products with high value-added. More, the Caribbean country receives a relevant portion of Chilean foreign investments, particularly on the fields of energy supply, financial and health services, transports and retail.

**Trade - Chile-Colombia – (US\$ millions)<sup>245</sup>**

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	347,51	491,59	617,44	733,83	577,39
<b>Chilean imports</b>	344,78	363,49	882,01	2.126,32	1.354,55
<b>Trade balance (Chilean)</b>	2,73	128,1	-264,57	-1.392,5	-777,17
<b>Total trade</b>	692,29	855,08	1.499,44	2.850,15	1.931,94

**8.6.2. Labor contents**

Following the ALADI's general framework, the ECA 24 had no specific provisions regarding the labour field. Nevertheless, when Chile and Colombia decided to negotiate a Free Trade Agreement, both countries were concerned on the inclusion of efficient social clauses.

Chile had already had several experiences with the inclusion of social clauses in FTAs, and therefore it was previously compelled to apply fundamental labour standards on its export industry. Hence, Chilean authorities had the interest to bind Colombia with those same standards, avoiding possible Colombian unilateral reductions on labour standards – characterizing social dumping.

By the Colombian side, it was very important to include social clauses on the agreement, since Bogotá was concomitantly into FTA negotiations with the United States, and it aimed to send a clear message that it was able to apply on its internal legislation the same fundamental standards required by the American TPA (*Trade Promotion Authority*) approved by the 2002 *Trade Act* (regarding this topic, please see specific chapter on this research).

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<sup>245</sup> Source: Direcon.

Therefore, it is not a coincidence that the Chilean-Colombian FTA points up on numerous occasions the magnitude of a bilateral effective implementation of core ILO labour standards on the respective domestic labour legislations in order to respect a common fair trade agenda. The first mentions to this topic can be found already on the agreement's preamble:

At first, Chile and Colombia recognize the importance of creating new and better job opportunities, setting up better working conditions, looking for the establishment of decent work, and fostering an increasing quality of human resources and social capital development<sup>246</sup>.

Then, the preamble ensures that the Parties shall respect rights and obligations assumed on other bilateral and multilateral instruments<sup>247</sup>, what undoubtedly<sup>248</sup> include prior commitments taken under the ILO umbrella.

And thirdly, the parties are expressly compelled to encourage sustainable development instruments – and consequently are coerced to respect the fundamental pillars of environmental protection, economic growth and social development<sup>249</sup>.

Afterwards, the agreement's initial chapter the parties proclaim that one of the fundamental objectives of the agreement is to promote the expansion of labour policies and practices which are able to generate better working and life conditions on their territories<sup>250</sup>.

Notwithstanding, the most relevant clauses associated with labour are systematically exposed on the agreement's Chapter 17, which is entirely dedicated to labour issues.

In accordance with the article 17.1, the parties reaffirm their obligations taken as ILO members, stressing the essential meaning of the *1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*<sup>251</sup>.

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<sup>246</sup> “El Gobierno de la República de Chile (Chile) y el Gobierno de la República de Colombia (Colombia), en adelante “las Partes”, considerando: (...) La importancia de crear nuevas y mejores oportunidades de empleo y mejorar las condiciones de trabajo, en la búsqueda de asegurar “trabajo decente” para sus trabajadores y de fomentar la creciente calidad en el desarrollo de los recursos humanos y del capital social; (...)”

<sup>247</sup> (...)“El desarrollo de sus respectivos derechos y obligaciones derivados del Acuerdo de Marrakech por el que se establece la Organización Mundial del Comercio y el Tratado de Montevideo de 1980, así como de otros instrumentos bilaterales y multilaterales de integración y cooperación de los que sean parte;” (...)

<sup>248</sup> Implicitly.

<sup>249</sup> (...) “El compromiso con el logro del desarrollo sostenible y reconociendo que sus pilares son interdependientes y se refuerzan mutuamente – crecimiento económico, desarrollo social, y protección del medio ambiente”(…) Conviene en celebrar el siguiente Acuerdo.”

<sup>250</sup> *Article 1.2.-* “Objetivos - Los objetivos de este Acuerdo son los siguientes: (...) (i) Promover el desarrollo de políticas y prácticas laborales que mejoren las condiciones de trabajo, de empleo y los niveles de vida, en el territorio de cada una de las partes;”

<sup>251</sup> *Article 17.1.-* “Compromisos compartidos - 1. Las partes reafirman sus obligaciones como miembros de la Organización Internacional del Trabajo (OIT) y sus compromisos asumidos en virtud de la Declaración de la OIT relativa a los Principios y Derechos Fundamentales en el Trabajo y su Seguimiento (1998). Cada parte procurará asegurar que tales principios, así como los derechos establecidos en el Artículo 17.5, sean reconocidos y protegidos por su legislación nacional.”



Moreover, Chile and Colombia – cautiously safeguarding their own sovereign rights to establish, adapt or modify their domestic legislations – assert that they shall guarantee that their internal laws are consistent with the following internationally recognized worker’s rights<sup>252</sup>:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor;
- (e) elimination of any form of discrimination in respect to employment and occupation; and
- (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health<sup>253</sup>.

A notable remark is that the rights protected on the items (a), (b), (c), (d) and (e) have a clear inspiration on the referred ILO Declaration, which precisely recognize those rights as fundamental ones. However, the item (e) is an obvious reference to the American TPA, which contemplates the exigency to include the respect of “*acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health*” on every U.S. Free Trade Agreement. This particular point is an evident Colombian message to the U.S. authorities and negotiators, showing their commitment with the American conception of labour protection.

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<sup>252</sup> Article 17.1.2.- “Reconociendo el derecho de cada parte de establecer sus propias normas laborales internas y, consecuentemente, de adoptar o modificar su legislación laboral, cada Parte procurará garantizar que sus leyes establezcan normas laborales consistentes con los derechos laborales internacionalmente reconocidos, establecidos en el Artículo 17.5.”

<sup>253</sup> Article 17.5.- “Definiciones: Para los efectos de ese Capítulo:

Por legislación nacional se entiende leyes o regulaciones de cada Parte, o disposiciones de las mismas, que estén directamente relacionadas con los siguientes derechos internacionalmente reconocidos:

- (a) el derecho de asociación;
- (b) el derecho de organizarse y negociar colectivamente;
- (c) la prohibición del uso de cualquier forma de trabajo forzoso u obligatorio;
- (d) una edad mínima para el empleo de niños, y la prohibición y eliminación de las peores formas de trabajo infantil;
- (e) la eliminación de la discriminación en materia de empleo y ocupación;
- (f) condiciones aceptables de trabajo respecto a salarios mínimos, horas de trabajo y seguridad y salud ocupacional;”

In addition, Chile and Colombia constrain themselves to guarantee the efficient enforcement of their respective domestic labour laws – in spite of the resilience of a sovereign right to determine national priorities and internal policies<sup>254</sup> - recognizing that it is inappropriate to diminish worker’s protection in order to promote trade or investments<sup>255</sup>.

Furthermore, the agreement states that the parties shall promote bilateral and multilateral cooperation on the labour field on their mutual behalf, on a great variety of themes such as fundamental labour rights, decent work, labour relations, labour conditions, small and medium enterprises, migrant workers, human resources development, technological innovation, economic integration and social dialogue, among others<sup>256</sup>. The specific cooperation activities and chronograms shall be defined by the parties<sup>257</sup>, in the course of an open dialogue with trade unions, employer’s associations and further interested NGOs<sup>258</sup>, taking into consideration possible divergences on internal priorities, necessities, and available economic and human resources<sup>259</sup>.

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<sup>254</sup> *Article 17.2.-* “Cumplimiento de la Legislación Nacional -1. Sin perjuicio de los derechos soberanos de las Partes para establecer sus propias políticas y prioridades nacionales y para establecer, administrar y fiscalizar sus propias leyes y regulaciones laborales, la Partes se comprometen a aplicar su propia legislación laboral.”

<sup>255</sup> *Article 17.2.2.-* “Las Partes reconocen que es inapropiado promover el comercio o la inversión mediante el debilitamiento o reducción de la protección contemplada en su legislación laboral interna.”

<sup>256</sup> *Article 17.3.-* “Cooperación laboral - 1. Las partes reconocen la importancia de la cooperación bilateral para fortalecer las acciones en materia laboral. En ese sentido, las partes convienen en desarrollar actividades en las áreas de cooperación enumeradas en el listado siguiente, el cual no tiene carácter excluyente:

- (a) derechos laborales fundamentales y su aplicación efectiva;
- (b) trabajo decente;
- (c) relaciones laborales;
- (d) condiciones de trabajo;
- (e) inspección y vigilancia del trabajo;
- (f) asuntos relativos a la pequeña y mediana empresa;
- (g) trabajadores migrantes;
- (h) desarrollo de recursos humanos y capacitación en el empleo;
- (i) seguridad social;
- (j) programas de reconversión laboral y protección social;
- (k) promoción de la innovación tecnológica;
- (l) icaciones de la integración y apertura económica, y
- (m) diálogo social.

De igual forma, trabajarán en fomentar mecanismos de apoyo mutuo, en los diversos foros bilaterales y multilaterales que compartan.”

<sup>257</sup> *Article 17.3.2.-* “Las Partes se comprometen a definir, a través de los puntos de contacto designados para tal fin, los proyectos específicos de cooperación y los cronogramas de actividades.”

<sup>258</sup> *Article 17.3.3.-* “Las Partes podrán invitar a participar a organizaciones sindicales y empresariales, así como a sectores no gubernamentales y a otras organizaciones, para identificar áreas y actividades de cooperación e incorporarlas en el desarrollo de dichas actividades.”

<sup>259</sup> *Article 17.3.4.-* “Las actividades de cooperación deberán considerar las prioridades y necesidades de cada Parte y los recursos humanos y financieros disponibles y su financiamiento será decidido por ambas Partes.”

Additionally, each State shall nominate a national ministerial-level authority to operate as a connection point with the Counterpart and with the civil society of the parties, concerning all topics related to the agreement's labour chapter<sup>260</sup>.

More, Chile and Colombia must promote periodical meetings of cabinet-level authorities ("*altos funcionarios gubernamentales*") in order to identify potential cooperation fields, to serve as a dialogue forum and to revise the implementation, the operationalization and the results of the labour chapter, among other relevant tasks<sup>261</sup>.

It is also significant highlighting that controversies related to the interpretation and the application of the agreement's labour chapter are not ruled by the general FTA dispute settlement system (described on Chapter 16) but by a specific method<sup>262</sup> which does not consider the possibility to recur to an arbitration process or to economic sanctions.

If a controversy regarding the labour field comes up, the offended part shall request the start of consult proceedings through a written complain addressed to the Counterpart's ministerial contact point<sup>263</sup>. Subsequently, the demanded State shall put all efforts – including dialogue and cooperation – in order to achieve a satisfactory solution for the dispute<sup>264</sup>. Afterwards, whether no solution is agreed by the parties, the FTA states that the controversial topic must be resolved by the referred meeting of cabinet-level authorities<sup>265</sup>.

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<sup>260</sup> Article 17.4.- "Disposiciones Institucionales - 1. "Cada Parte designará un Punto de Contacto dentro de su Ministerio del Trabajo o de la Protección Social, según corresponda, que servirá de enlace con la otra Parte y con la sociedad y que canalizará todos los asuntos que surjan en relación con el presente Capítulo".

<sup>261</sup> Article 17.4.2.- "Las Partes se reunirán periódicamente por intermedio de altos funcionarios gubernamentales, cuando lo consideren necesario, a fin de:

- (a) identificar áreas potenciales de cooperación;
- (b) servir de foro para el diálogo en materias de interés común;
- (c) revisar la implementación, operación y resultados del acuerdo;
- (d) informar a la Comisión de los resultados de sus trabajos y deliberaciones;
- (e) ocuparse de cualquier otro asunto que pueda surgir."

<sup>262</sup> Article 16.2.- "Ámbito de aplicación - (...) - 2. Cualquier asunto relativo a la interpretación, aplicación o cumplimiento de los Capítulos Laboral y Ambiental, serán resueltos mediante la aplicación de los procedimientos contemplados en los respectivos Capítulos."

<sup>263</sup> Article 17.4.3.- "Si surgiere cualquier asunto sobre la aplicación de este Capítulo, una Parte podrá solicitar la realización de consultas con la otra Parte, mediante la entrega de una solicitud escrita al punto de contacto que la otra Parte haya designado conforme el párrafo 1 de este Artículo."

<sup>264</sup> Article 17.4.4. - "Las Partes realizarán todos los esfuerzos para alcanzar arreglos satisfactorios mediante el diálogo y la cooperación, pudiendo incluir consultorías".

<sup>265</sup> Article 17.4.5. - "Si las Partes no logran resolver el asunto a través de los Puntos de Contacto, aquel podrá ser tratado en las reuniones de los altos funcionarios mencionadas en el párrafo 2 de este Artículo."

## 8.7. CHILE-JAPAN

### 8.7.1. Negotiations

For Chile, beyond the obvious reason of reaching a trade agreement with the world's second largest economy, the Chilean-Japan FTA is part of its strategic commercial focus on the Asian-Pacific region. By the Tokyo side, it was a great opportunity in order to expand the Japanese net of trade agreements<sup>266</sup> and, for the first time, sign an FTA with a South American country.

The bilateral process started in 2001, when the Japan External Trade Organization (JETRO) promoted a study report concerning the feasibility of a Free Trade Agreement between Chile and Japan, which achieved positive conclusions. Three years later, on November 22<sup>nd</sup> 2004, during the APEC Summit, Chile and Japan announced a governmental joint official study concerning the pros and cons of such FTA. The Joint Study Group, after four meetings<sup>267</sup>, announced its final – also positive – report on November 2<sup>nd</sup>, 2005.

Afterwards, during the 2005 APEC Summit in Busan (South Korea), the parties formally declared the intention to start negotiations, which took place on four negotiation rounds<sup>268</sup>.

The treaty was signed in Tokyo, on March 27<sup>th</sup>, 2007, during the celebrations of the 110<sup>th</sup> anniversary of establishment of Chilean-Japanese diplomatic relations, followed by the necessary ratification by the Japanese Parliament<sup>269</sup> and by the Chilean Chamber of Deputies<sup>270</sup> and Senate<sup>271</sup>.

The FTA finally entered in force on September 3<sup>rd</sup> 2007.

The agreement brought clear positive economic results. The Chilean imports from Japan increased 72% on the first year of the FTA, totalizing more than 2 billion<sup>272</sup> US dollars, while exports increased 8,8%, reaching US\$ 7,6 billion<sup>273</sup>. More, between June/07 and June/08 Chile expanded the list of products exported to Japan<sup>274</sup> on 11,2% when compared to the previous

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<sup>266</sup> Singapore, Mexico, Malaysia, Philippines, Chile, Thailand, Brunei, Indonesia, ASEAN...

<sup>267</sup> First meeting: 01/02/2005 (Tokyo); Second meeting: 21/04/2005 (Santiago); Third meeting: 22/07/2005 (Los Angeles); Fourth meeting: 23/09/2005 (Miami).

<sup>268</sup> First round: 23/02/2006 – 24/02/2006 (Tokyo); Second round: 18/03/2006 - 24/03/2006 (Santiago); Third round: 10/07/2006 - 14/07/2006 (Tokyo); Fourth round: 28/08/2006 – 01/09/2006 (Santiago).

<sup>269</sup> On June 15<sup>th</sup> 2007.

<sup>270</sup> On July 12<sup>th</sup> 2007.

<sup>271</sup> On 31<sup>st</sup> July 2007.

<sup>272</sup> US\$ 2.222.500.000.

<sup>273</sup> US\$ 7.669.000.000.

<sup>274</sup> Chile exported to Japan 697 different products.

year<sup>275</sup>. Also, it is noteworthy that it is a very wide treaty, liberalizing the most part of the markets – e.g., only 0,4% of the Chilean exports are on the exceptions list.

#### Trade - Chile-Japan – (US\$ millions)<sup>276</sup>

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	4.535,78	6.038,10	7.091,67	7.230,91	4.481,04
<b>Chilean imports</b>	1.016,98	1.146,57	1.586,02	2.660,18	1.346,42
<b>Trade balance (Chilean)</b>	3.518,79	4.891,53	5.505,65	4.570,74	3.134,63
<b>Total trade</b>	5.552,76	7.184,66	8.677,69	9.891,09	5.827,46

Furthermore, concerning FDI and FII, between 2002 and 2007 they summed US\$ 239 million, on fields like fishing, wood/paper production and particularly on mining – on the Chilean North region – destiny of 98,4% of the Nipponese investments<sup>277</sup>. Nevertheless, the numbers show that Japanese investments still have a lot of potential growing in Chile<sup>278</sup>.

#### 8.7.2. Labor contents

Contrariwise to the major part of the Chilean FTAs, the Japan-Chile Agreement is extremely deficient on the treatment of labour contents. It does not include a labour chapter, does not mention cooperation on the labour field, and not even put labour as an objective of the Agreement.

It is true that the Agreements' preamble expresses the mutual belief that *“a strategic economic partnership between the Parties will bring economic and social benefits create new and better opportunities for employment, improve the living standards of peoples”*<sup>279</sup>. More, it declares that *“economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development and that the strategic economic partnership can play an important role in promoting sustainable*

<sup>275</sup> Between June 2006 and June 2007.

<sup>276</sup> Source: Direcon.

<sup>277</sup> Considering only 2007.

<sup>278</sup> On the period 1975-2004, Japanese investments represented only 3% of the foreign investments in Chile.

<sup>279</sup> “Japan and the Republic of Chile (...) Believing that a strategic economic partnership between the Parties will bring economic and social benefits, create new and better opportunities for employment, improve the living standards of peoples, and provide a catalyst for the liberalization of trade and investment in the Asia-Pacific region and broader cooperation at international fora;”

*development*”<sup>280</sup>. Nevertheless, those few references to labour indirectly made on the preamble are not reflected on the FTA’s main body.

*Exempli gratia*, neither social development nor the improvement of labour standards are declared as objectives of the agreements on its article 2<sup>281</sup>. More, in spite of the fact that the FTA refers several times to WTO Agreements, there is no citation to the ILO system on the whole treaty. (Just after an extended interpretation exercise it would be possible imagine that the ILO treaties could be included on the expression “*rights and obligations under (...) any other agreements to which both Parties are parties*”<sup>282 283</sup>).

The main body of the Agreement – in spite of dealing with a great diversity of topics – does not brings up any other clauses on social issues, being always restricted to a narrow conception of trade without linkages to topics related to labour or environmental protection.

However, in spite of that lack of labour contents on the FTA, a separate joint statement was made by the Parties on the occasion of the Agreement’s signature, which stresses “*the importance of appropriately taking into account (...) labor issues in strengthening our economic relationship*”<sup>284</sup>.

The labour provisions are present on the attachment number four, which already starts with important mutual declarations:

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<sup>280</sup> “Convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing pillars of sustainable development and that the strategic economic partnership can play an important role in promoting sustainable development;”

<sup>281</sup> Article 2 – “The objectives of this Agreement are to:

- (a) liberalize trade in goods between the Parties, in conformity with Article XXIV of the GATT 1994;
- (b) liberalize trade in services between the Parties, in conformity with Article V of the GATS;
- (c) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (d) enhance opportunities for suppliers of the Parties to participate in government procurement in the Parties;
- (e) provide an adequate protection of intellectual property and promote cooperation in the field thereof;
- (f) promote cooperation and coordination for the effective enforcement of competition laws and regulations in each Party;
- (g) improve business environment in the Parties; and
- (h) create effective procedures to prevent and resolve disputes.”

<sup>282</sup> “Article 3 - The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.”

<sup>283</sup> “*Japan and the Republic of Chile (...) Determined to establish a legal framework for promoting and developing the strategic economic partnership on the basis of the rights and obligations of the Parties under the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994 and other international agreements to which both Parties are parties; HAVE AGREED as follows:*”

<sup>284</sup> “1. We, the Minister for Foreign Affairs of Japan, Taro Aso, and the Minister for Foreign Affairs of the Republic of Chile, Alejandro Foxley, recalling the longstanding friendship between our two peoples (...) 5. We also stressed the importance of appropriately taking into account environment and labor issues in strengthening our economic relationship. Statements on these issues are also attached to this Joint Statement (...)”

*“Recognizing that labor and trade policies should be mutually supportive, with a view to achieving development with social justice;*

*Acknowledging that sustainable economic growth and prosperity largely depend on people’s knowledge and skills to raise productivity and competitiveness of each country;*

*Sharing the common aspiration that free trade and investments should lead to job creation, decent work and meaningful jobs for workers, with terms and conditions of employment which adhere to the fundamental principles established by the International Labor Organization (ILO);*

*Convinced of the need to protect labor rights together with strengthening trade and investment relationship;*

*Noting the existence of differences in the countries’ social, cultural, economic, technological and legal conditions;*

*Convinced of the need to increase employability by developing human capital through vocational education and training;*

*Stressing the importance of the participation of worker and employer representatives, as well as other members of civil society;*

*Aware of the importance of dealing with labor issues based on cooperation, consultation and dialogue;*

*Have confirmed as follows:*

*(...)”*

Thus, the document reaffirms the parties’ commitments as ILO members<sup>285</sup>, stressing the 1998 ILO Declaration of Fundamental Principles and Rights. (It is important to highlight that this clause does not bring up any new responsibility to the parties, since the mentioned Declaration does not depend on the parties’ ratification<sup>286</sup>).

The attachment also brings up important declarations like *“both governments share the views on the importance of having their respective countries’ labor laws, regulations, policies and practices in harmony with their countries’ commitments under applicable international*

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<sup>285</sup> *Article 1 – “Both governments reaffirm their respective countries’ obligations as members of the International Labor Organization (ILO) and their commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)”.*

<sup>286</sup> LOPEZ, Diego. *Labour rights in the Free Trade Agreement between Chile and the United States*. Santiago: Oxfam, 2004. p. 52. “The 1998 ILO Declaration on Fundamental Principles and Rights at Work points exactly in this direction, establishing that all members States are obliged to respect, promote and implement the principals related to those basic rights recognised by international labour agreements, even when such agreements have not yet been ratified by their respective governments.”

*labor agreements*<sup>287</sup> and that “*it is inappropriate to set or use labor laws, regulations, policies and practices for the purposes of disguised restriction on international trade*”<sup>288</sup>.

Moreover, concerning social dumping, Chile and Japan “*share the view that it is inappropriate to weaken, reduce or fail to enforce or administer the protections afforded in domestic labor laws solely to encourage trade or investment*”<sup>289</sup>, and highlight the importance of transparency<sup>290</sup>.

In sum, the Chilean-Japanese FTA, in spite of its relevant economic role, does not bring up labour regulations or mention labour cooperation. A joint statement, however, brings up intentions on those fields, but due to its non-binding characteristics, and particularly by its separated nature, it could be understood as just another general document which merely reemphasizes declarations and commitments already made by the parties under the ILO umbrella.

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<sup>287</sup> Article 2.

<sup>288</sup> Article 3.

<sup>289</sup> Article 4.

<sup>290</sup> Article 5 – “Both governments will promote public awareness of labor laws and regulations in their respective countries.”



## 8.8. CHILE-AUSTRALIA

### 8.8.1. Negotiations

It was expectable that Chile and Australia entered, sooner or later, into negotiations in order to sign a Free Trade Agreement, since on the last few years both States have been promoting similar economic measures, and have been successful in order to foster employment raise and proportionate better working conditions for their respective labour forces. The main strategy of both countries is focused on a deep commercial opening and economic development based on exports, particularly on primary products on the field of agriculture and mining. More, Chile and Australia have a special interest on the Asian-Pacific region, they both are part of the Cairns Group<sup>291</sup> on WTO negotiations, and they have been promoting an aggressive FTA agenda<sup>292</sup>.

The mutual belief that trade liberalization may bring up direct benefits on social standards is stated on the FTA preamble:

**“The Government of Australia and the Government of the Republic of Chile (“the Parties”), resolved to: (...)**  
**ENCOURAGE a closer economic partnership that will bring economic and social benefits, create new employment opportunities, and improve living standards for their people;”**

Since Chile and Australia have such similar economic policies and are supported by experienced negotiation teams, the FTA negotiation was fast and reasonably uncontroversial.

On November 2006 the Australian and the Chilean Ministers of Foreign Affairs announced the intention to start negotiations of a FTA between their countries, what was reinforced by the Chilean President Michelle Bachelet and by the Australian Prime Minister John Howard during the 2006 APEC<sup>293</sup> Summit in Hanoi, Vietnam.

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<sup>291</sup> The Cairns Group is a coalition of 19 agricultural exporting countries (Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philipinnes, South Africa, Thailand and Uruguay) that lobby for a global reform in order to ban protectionism from agricultural trade.

<sup>292</sup> *Exempli gratia*, Australia signed FTAs with New Zealand, the United States, Thailand, Singapore and China.

<sup>293</sup> Asia-Pacific Economic Cooperation is a forum for Pacific Rim States in order to increase cooperation and trade/investment liberalization at the Region.

Afterwards, both countries opened internal consultations with their respective civil societies and industries in order to verify the convenience of such Agreement, and no relevant objection or sensitivity was presented.

So, on July 18<sup>th</sup>, 2007, the Australian Minister for Trade, Warren Truss, publically announced the start of FTA negotiations with Chile.

The negotiations were developed in four rounds<sup>294</sup>, and were ended on May 2008. The Australian Congress approved it on July 30<sup>th</sup>, 2008, followed by the approval on the Chilean Chamber of Deputies<sup>295</sup> and Senate<sup>296</sup>.

The Agreement finally came into force on March 6<sup>th</sup>, 2009<sup>297</sup>.

#### Trade - Chile-Australia – (US\$ millions)<sup>298</sup>

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	94,79	133,54	278,77	487,06	432,63
<b>Chilean imports</b>	164,55	202,44	215,99	300,3	224,36
<b>Trade balance (Chilean)</b>	-69,77	-68,90	62,78	186,75	208,27
<b>Total trade</b>	259,34	335,98	494,75	787,35	655,98

<sup>294</sup> 1<sup>st</sup> round (Canberra) – 7/08/2007 – 09/08/2007; 2<sup>nd</sup> round (Santiago) – 08/10/2007 – 12/10/2007; 3<sup>rd</sup> round (Canberra) – 11/12/2007 – 14/12/2007 and 29/01/2008 – 01/02/2008; 4<sup>th</sup> round – 31/03/2008 – 04/04/2008.

<sup>295</sup> 09/12/2008 – Approved on the External Relations Commission; 16/12/2008 – Approved on the Finances Commission; 17/12/2008 – Ratification (87 favour, 1 abstention)

<sup>296</sup> 14/01/2009 – Approved on the External Relations Commission; 23/01/2009 - Ratification

<sup>297</sup> “El Tratado de Libre Comercio entre Chile y Australia fue firmado durante el Gobierno de la Presidenta Michelle Bachelet Jeria. Es el décimo tercer acuerdo de este tipo suscrito por Chile y se encuentra vigente desde marzo de 2009. El TLC aborda materias relacionadas al comercio de bienes como de servicios, inversiones, compras públicas y propiedad intelectual. Asimismo, el documento crea una institucionalidad que permite el intercambio de experiencias, consultas y resolución de conflictos a través de Comités y puntos de contacto especialmente designados, sin perjuicio de los mecanismos de solución de diferencias que también se establecen. Además, el Tratado considera instancias para tratar, entre otros, los problemas relacionados con los obstáculos técnicos al comercio, y el establecimiento de puntos de contacto en materia de medidas sanitarias y fitosanitarias. En el ámbito de la Cooperación, se establece un marco jurídico para las actividades de cooperación entre ambas partes, incluida la promoción de la cooperación entre privados y académicos de ambos países. El Acuerdo también genera oportunidades en inversiones, ya que tanto para empresarios chilenos como australianos se abren oportunidades inéditas en áreas como la agricultura, vitivinicultura, acuicultura, el sector forestal y la energía, entre otros. Hay que destacar que las inversiones de Australia en Chile son de gran envergadura. Se trata del quinto mayor inversor extranjero en nuestro país y, a la vez, Chile es el segundo mayor inversionista latinoamericano en Australia. Ello debiera proyectarse a niveles más elevados a partir de la vigencia del Acuerdo.”. *Source*: Direcon.

<sup>298</sup> *Source*: Direcon.

### 8.8.2. Labor contents

The Chile-Australian FTA deals with labour contents on a generic framework, merely declaring general principles and non-binding objectives, and including labour as one of the several topics that should be encouraged on cooperation between the parties. The treaty reaffirms commitments taken on other fora – such as the ILO – but it does not build up an effective system in order to avoid breaches on labour standards - even on fundamental ones – excluding any possibility to start consultations proceedings, the implementation of panels nor arbitration procedures, and without coercive methods in order to enforce labour rules - even in cases when labour violations directly affect bilateral trade.

It is important highlighting that this was an unexpected position for Chile and Australia, since both countries had already experience with FTAs that go much further than that, truly implementing effective social clauses – with the concrete possibility to apply economic sanctions on violations of labour standards – as, *exempli gratia*, on the treaties that Chile and Australia<sup>299 300 301</sup> previously signed with the United States.

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<sup>299</sup> *Australia-Chile FTA*, signed on May 18<sup>th</sup>, 2004, and in force since January 1<sup>st</sup>, 2005.

*Article 18.2: Application and Enforcement of Labour Laws*

1. (a) A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
- (b) The Parties recognise that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labour matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.
2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective labour laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognised labour principles and rights referred to in Article 18.7 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

*Article 18.3: Procedural Guarantees and Public Awareness*

1. Each Party shall ensure that persons with a legally recognised interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial, or labour tribunals for the enforcement of the Party's labour laws.
2. Each Party shall ensure that the proceedings of its administrative, quasi-judicial, judicial, or labour tribunals for the enforcement of its labour laws are fair, equitable, and transparent.
3. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labour laws.
4. Each Party shall promote public awareness of its labour laws by ensuring that information is available to the public regarding its labour laws and enforcement and compliance procedures. A Party may use a variety of means available for this purpose, such as publishing information and notices in official bulletins and the mass media, publishing and distributing information manuals, undertaking compliance assistance programs, conducting meetings, and making information available through the Internet.
5. For greater certainty, nothing in this Chapter shall be construed as calling for the examination under this Agreement of whether a Party's court has appropriately applied that Party's labour laws.

In fact, Chile proposed the inclusion of a social clause on the Agreement, what was rejected by its Australian counterparts, probably because of the fact that Australia was concomitantly negotiating the AANZFTA<sup>302</sup> - which does not include a specific labour chapter - and did not want to send a different sign for that negotiation. Also, because there is an internal consensus on the Australian political arena – spread both on the Coalition parties and on the Australian Labor Party – that an effective linkage between trade and labour standards would not be convenient<sup>303</sup>, summed to the lack of influence of the main Australian trade unions<sup>304</sup>.

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*Article 18.4: Institutional Arrangements*

(...)

*Article 18.5: Labour Cooperation*

(...)

*Article 18.6: Labour Consultations*

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request for consultations to the other Party's contact point designated pursuant to Article 18.4.2.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Labour Affairs be convened. The Subcommittee shall convene within 30 days after a Party delivers a request to the other Party's contact point, unless the Parties otherwise agree. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, they shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavour to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under Article 18.2.1(a), the Party may request consultations under paragraph 1, or pursuant to Article 21.5 (Consultations).

(a) If a Party requests consultations pursuant to Article 21.5 at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavouring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 21.5, no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to Article 21.5 more than 60 days after the delivery of a request for consultations under paragraph 1 the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 21.6 (Referral of Matters to the Joint Committee).

5. Articles 21.2 (Scope of Application) and 21.5 shall not apply to a matter arising under any provision of this Chapter other than Article 18.2.1(a). (...)"

<sup>300</sup> GRIFFIN, Gerard. NYLAND, Chris. O'ROURKE, Anne. *Trade Promotion Authority and Core Labour Standards: Implications for Australia*. In: Australian Journal of Labour Law, 17(1), 2004. p. 35-63. "(...) despite the objections of the Coalition parties and the Australian Labor Party to the inclusion of labour standards in trade agreements, the draft text of the Australia-United States free trade agreement (AUSFTA) includes a chapter on labour rights."

<sup>301</sup> NYLAND, Chris. O'ROURKE, Anne. *The Australia-United States Free Trade Agreement and the Ratcheting-Up of Labour Standards: A Precedent Set and an Opportunity Missed*. In: Journal of Industrial Relations 47(4), 2005. p. 468. "(...) in 2003, it found that if it wanted a free trade deal with the USA it had to accept the inclusion of a labour rights chapter in the agreement that strengthens the legal position of labour. As a consequence, a conservative government has signed the first ever Australian trade agreement that includes provisions protecting workers rights and the ALP has been compelled to fall in behind the Coalition."

<sup>302</sup> Asean-Australia-New Zealand Free Trade Area, signed on February 27th, 2009.

<sup>303</sup> GRIFFIN, Gerard. NYLAND, Chris. O'ROURKE, Anne. *Trade Promotion Authority and Core Labour Standards: Implications for Australia*. In: Australian Journal of Labour Law, 17(1), 2004. p. 35-63. "In contrast to the United States, the two major political parties in Australia have opposed a trade-labour linkage, though there are degrees of difference between the Coalition parties and the Australian Labor Party"

<sup>304</sup> GRIFFIN, Gerard. NYLAND, Chris. O'ROURKE, Anne. *Trade Unions, the Australian Labor Party, and the Trade-Labour Rights Debate*. In: Australian Journal of Political Science, 39(1), 2004. p. 105. "Overall, we conclude that Australian unions face some hard strategic choices in seeking to promote the trade-labour demand."

More, Australia was not convinced that the model established on the FTA signed with the United States was bringing positive outcomes. On the words of the director of the Canada & Latin America Section on the Australian Department of Foreign Affairs and Trade, “Australia’s policy in general is not/not to include labour issues in the negotiation of our FTAs. We aim to ensure our FTAs are comprehensive and high quality but are focused on trade matters not on social or other related issues. In the case of the Australia-USA FTA, US policy was to include reference to labour issues and Australia agreed to their inclusion on this occasion. Chile was less concerned about labour issues and accepted in the negotiation of the Australia-Chile FTA the references negotiated in the chapter on cooperation.”

### 8.8.3. Relationship with previous agreements

The FTA expressly reinforces all commitments made by the Chile and Australia on previous agreements to which both States are parties:

*“The Government of Australia and the Government of the Republic of Chile (“the Parties”), resolved to:  
(...)*

***BUILD on their respective rights and obligations under the WTO Agreement, other agreements to which they are both parties,** and their commitment to open trade, investment and economic reform in the Asia-Pacific Economic Cooperation (APEC) forum; (...).”*

***“Article 1.2: The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are party.”***

Both Australia and Chile are ILO Members, and while Chile ratified 60 Conventions, Australia ratified 55 of them. The non-fundamental conventions signed by the parties assume a higher importance with their reaffirmation on the FTA.

Nonetheless, regarding the eight “fundamental” ILO Conventions, they were all ratified by Chile<sup>305</sup>, while Australia ratified seven<sup>306</sup> of them. Anyway, the *1998 ILO Declaration on*

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Their current strategy of relying on a union-party bonding model that seeks to capitalise on the unions’ traditional position within the ALP has failed to influence party policy on trade and labour issues. Arguably, this lack of success, and the more successful experience of US unions, suggests that Australian unions could beneficially move to a position from where they can continue trying to capitalise on their remaining influence within the ALP while combining this effort with a much more activist lobbying strategy outside the ALP.”

<sup>305</sup> Chile ratified conventions: 29 (31/05/33); 105 (01/02/99); 87 (01/02/99); 98 (01/02/99); 100 (20/09/71), 111 (20/09/71); 138 (01/02/99) and 182 (17/07/00).

*Fundamental Principles and Rights at Work* and its follow-up – expressly referred on the FTA, chapter 18 - states that both countries are bound to the fundamental rights even without previously ratifying the core Conventions.

*“1998 ILO Declaration on Fundamental Principles and Rights at Work - Article 2. Declares that all Members, **even if they have not ratified the Conventions in question, have an obligation** arising from the very fact of membership in the Organization **to respect, to promote and to realize**, in good faith and in accordance with the Constitution, **the principles concerning the fundamental rights** which are the subject of those Conventions, namely:*

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.”*

Consequently, Australia, even without ratifying Convention 138, is already obliged to comply with it for the only reason that it is an ILO member. Therefore, it is doubtless that both parties must respect, promote and realize all fundamental labour rights, even without expression mention on the bilateral FTA.

In sum, the Chile-Australia FTA does not bring up new obligations or responsibilities, but merely reaffirm and emphasize what have been already decided under the ILO framework.

#### **8.8.4. Cooperation**

The most important clauses concerning labour on the Chilean-Australian FTA are those on the cooperation chapter.

*“18.2.3. **Areas of cooperation may include** but should not be limited to: science, agriculture including the wine industry, food production and processing, mining, energy, environment, small and medium enterprises, tourism, education, **labour**, human capital development and cultural collaboration.*

***18.2.4. Cooperation on labour and employment matters of mutual interest and benefit will be based on the***

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<sup>306</sup> Australia ratified conventions: 29 (02/01/32); 105 (07/06/1960); 87 (28/02/73); 98 (28/02/73); 100 (10/12/74); 111 (15/06/73) and 138 (19/12/06). It is still missing the Convention 138 on Child Labour.

*concept of decent work, including the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).*

On the agreement the term ‘cooperation’ must be understood *latu sensu*, meaning not only activities such as “*exchanges of people and information, cooperation in regional and multilateral fora, dialogues, conferences and seminars, facilitating contacts between scientists and academia, the development of joint research programs and the encouragement of private sector cooperation*” (18.2.6), but also any other “*innovative cooperation initiatives capable of providing added value to the bilateral relationship*” in order to achieve the main scope of the agreement (18.2.1).

Also, again there is an important clear reference to ILO principles, and the reinforcement that the agreement is based on the internationally recognized concept of ‘decent work’.

More, it is stated that the parties should designate a Cooperation Committee (18.4) and nominate national contact points in order to facilitate activities on labour cooperation (18.2.7).

#### **8.8.5. Final remarks**

In summary, the Chilean-Australian FTA unfortunately does not bring up any innovative instruments or institutional mechanisms in order to effectively promote labour standards on the parties. The agreement simply states some of the clauses which are common on bilateral free trade agreements, being restricted to reaffirm the commitments already taken under the ILO system and proposing cooperation activities which in all likelihood will be *in praxis* limited to the academic field and to formal political meetings without concrete wholesome outcomes.

## 8.9. CHILE – PERU

Similarly to what happened on the Chile-Colombian FTA, the Chile-Peru agreement also has its roots on an ECA (Economic Complementation Agreement), established under the ALADI umbrella.

Signed in 2006<sup>307</sup> and in force since March 2009, the Chile-Peru FTA is a development of the ECA 38<sup>308</sup>, as part of the Chilean strategy to strength social, cultural and economic relationships with its neighbor States.

This agreement has vital importance to both countries, since there is an intense commercial exchange between them. Nonetheless, the economic outcomes of the treaty are not still clearly observable, mainly because of the global crisis which had major impacts on both parties.

### Trade - Chile-Peru – (US\$ millions)<sup>309</sup>

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	724,2	931,72	1.033,7	1.488,13	1.210,04
<b>Chilean imports</b>	1.107,00	1.426,7	1.685,8	1.839,91	688,96
<b>Trade balance (Chilean)</b>	-382,8	-495,0	-652,1	-351,78	521,08
<b>Total trade</b>	1.831,30	2.358,4	2.719,5	3.328,04	1.899,01

The agreement brings a complementary memorandum on labour (*Memorandum de entendimiento sobre cooperación laboral y migratoria*), with the objective to promote labour

<sup>307</sup> Signed on August 22nd, 2006.

<sup>308</sup> “El Tratado de Libre Comercio entre Chile y Perú fue firmado durante el Gobierno de la Presidenta Michelle Bachelet Jeria. Se encuentra vigente desde marzo de 2009. Este acuerdo fue negociado utilizando como base el Acuerdo de Complementación Económica (ACE 38) que existió entre ambos países desde 1998 hasta la entrada en vigencia del TLC. Las relaciones políticas, económicas y culturales con los países vecinos constituyen una prioridad fundamental para el Gobierno. En este contexto, la profundización del ACE 38 entre Chile y Perú, apunta no sólo al fortalecimiento de las relaciones bilaterales, sino también busca dar mayor vigor a nuestras relaciones con los países de la región, contribuyendo así a colocar a Sudamérica en el centro de nuestra estrategia internacional. De la misma manera, es importante resaltar que el Acuerdo de Libre Comercio establece un sistema más efectivo de solución de controversias, que seguramente estimulará a los agentes económicos a ampliar su accionar comercial e inversionista.” *Source*: Direcon.

<sup>309</sup> *Source*: Direcon.



rights and policies on this field, innovation, productivity, transparency, social dialogue and information exchange (article 1<sup>310</sup>).

The parties reaffirm their obligations as ILO members (article 2<sup>311</sup>), so as they commit to respect their own domestic labour legislations (article 3<sup>312</sup>) and to increase cooperation (article 5<sup>313</sup>). More, the memorandum establishes a bilateral committee (*'Comité Conjunto para la Cooperación Laboral y Migratoria'*) to handle with questions related to labour and migration

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<sup>310</sup> *Article 1* – “Objetivos - Los objetivos de las Partes en cooperación laboral y migratoria serán los siguientes:(a) promover el desarrollo de políticas y prácticas laborales y migratorias que mejoren las condiciones de trabajo y los niveles de vida en el territorio de las Partes; (b) promover la protección de los derechos establecidos en el artículo 6 del presente Memorandum; (c) promover la observancia y la aplicación efectiva de la legislación nacional de las Partes; (d) promover la innovación, así como niveles de productividad y calidad crecientes; (e) alentar el desarrollo de estadísticas y el intercambio de información sobre legislación, instituciones y políticas públicas en materia laboral, migratoria y de seguridad social de cada una de las Partes; (f) promover la difusión de su legislación nacional; (g) desarrollar actividades de cooperación laboral y migratoria en términos de beneficio mutuo; y (h) promover la participación de los actores sociales en el desarrollo de las agendas públicas a través de mecanismos de diálogo social.”

<sup>311</sup> *Article 2 - Compromisos compartidos* – “1. Las Partes reafirman sus obligaciones como miembros de la *Organización Internacional del Trabajo* (OIT) y sus compromisos asumidos en virtud de la *Declaración de la OIT relativa a los Principios y Derechos Fundamentales en el Trabajo y su Seguimiento (1998)* y de la *Convención Internacional sobre la Protección de los Derechos de todos los Trabajadores Migratorios y de sus Familiares, de Naciones Unidas (1990)*1. Cada Parte procurará asegurar que tales principios, así como los derechos establecidos en el artículo 6 del presente Memorandum, sean reconocidos y protegidos por su legislación nacional. 2. Reconociendo el derecho de cada Parte de establecer sus propias normas internas y, consecuentemente, de adoptar o modificar su legislación nacional, cada Parte procurará garantizar que sus leyes establezcan normas consistentes con los derechos establecidos en el artículo 6 del presente Memorandum y procurará mejorar dichas normas en tal sentido. 3. Cada Parte garantizará el debido proceso legal en la aplicación de su legislación.”

<sup>312</sup> *Article 3* – “Cumplimiento de la legislación nacional - 1. (a) Las Partes se comprometen a aplicar su legislación nacional. (b) Las Partes reconocen que cada Parte mantiene el derecho a ejercer su discrecionalidad respecto de la regulación y observancia de las normas, y de 1 Chile deja constancia que al momento de ratificar esta última Convención ha formulado las reservas que figuran en Anexo 1. El Perú deja constancia que al momento de ratificar esta última Convención no ha formulado reservas. 3 tomar decisiones relativas a la asignación de recursos destinados a la administración pública competente. 2. Las Partes reconocen que es inapropiado promover el comercio o la inversión mediante el debilitamiento o la reducción de la protección contemplada en su legislación laboral nacional o por la vía de abstenerse de fiscalizar su legislación laboral.”

<sup>313</sup> *Article 5* – “Cooperación - 1. Las Partes convienen que las áreas de cooperación cubrirán aquellas que mutuamente acuerden y, sin que el siguiente listado sea excluyente, podrán realizar actividades en los siguientes temas: (a) derechos laborales fundamentales y su aplicación efectiva; (b) trabajo decente; (c) derechos de los trabajadores migratorios; (d) relaciones laborales; (e) condiciones de trabajo; (f) administración del trabajo y migratoria; (g) asuntos relativos a la pequeña y mediana empresa; (h) desarrollo de recursos humanos y capacitación en el empleo; (i) seguridad social; (j) programas de reconversión laboral y protección social; (k) implicancias de la integración económica entre las Partes; (l) relación entre derechos sociales y comercio internacional; y (m) diálogo social. 2. Las Partes implementarán el programa de cooperación mediante las actividades que decidan de común acuerdo, tales como investigaciones conjuntas; capacitación de funcionarios, profesionales, técnicos y expertos; organización de conferencias, seminarios, talleres, reuniones y programas de divulgación; intercambio de información y publicaciones especializadas y cualquier otra forma que acuerden. 3. Cada Parte podrá invitar a participar a organizaciones sindicales y empresariales, así como a sectores no gubernamentales y a otras organizaciones, para identificar áreas y actividades de cooperación. 4. Las actividades de cooperación deberán considerar las prioridades y necesidades de cada Parte y los recursos humanos y financieros disponibles, y su financiamiento será decidido por las Partes. 5. Las Partes, de común acuerdo, podrán buscar el apoyo, según corresponda, de organizaciones internacionales, tales como la *Organización Internacional del Trabajo*, la *Organización Internacional para las Migraciones*, el *Banco Interamericano de Desarrollo*, la *Organización de Estados Americanos*, para avanzar con las actividades de cooperación que se desarrollen en las diferentes áreas.”

(article 4<sup>314</sup>). Nevertheless, the memorandum does not create any consult proceeding in case of labor rights violations and depends, in praxis, only on moral commitments.

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<sup>314</sup> *Article 4* –“Disposiciones institucionales - 1. Las Partes establecen un Comité Conjunto para la Cooperación Laboral y Migratoria, en adelante “el Comité”, que estará integrado por funcionarios, de nivel ministerial, de los Ministerios de Relaciones Exteriores, de Interior y de Trabajo de cada Parte o de sus representantes. Dicho Comité se reunirá dentro de los tres primeros meses de la entrada en vigor del presente Memorandum y, a partir de entonces, una vez al año. 2. Le corresponderá al Comité:

(a) establecer un programa de trabajo de actividades de cooperación; (b) servir de canal para el diálogo en materias de interés común; (c) efectuar propuestas, en coordinación con otras entidades competentes de las Partes, sobre instrumentos jurídicos bilaterales que desarrollen los adecuados mecanismos de protección de los derechos establecidos en el artículo 6 de este Memorando, a fin de ponerlos a consideración de las autoridades competentes de ambas Partes para su eventual aprobación;

(d) dar seguimiento a las actividades de cooperación y todos sus acuerdos; (e) informar a la Comisión Administradora de los resultados de sus trabajos y deliberaciones así como de sus acuerdos, para su conocimiento;

(f) propiciar el intercambio de información y estudios sobre políticas nacionales de protección de los derechos establecidos en el artículo 6 de este Memorandum; (g) acordar el desarrollo de estudios, análisis y la generación de procesos de discusión en el ámbito bilateral que puedan mejorar los mecanismos de protección de los derechos establecidos en el artículo 6 de este Memorandum; (h) proporcionar información, según sea pertinente, a los actores sociales, incluyendo organizaciones de la sociedad civil, sobre la aplicación de este Memorandum y recibir sus sugerencias para su mejoramiento;(i) establecer el mecanismo para adoptar sus acuerdos; y,(j) otras funciones que acuerde el Comité en el ámbito de este Memorandum. 3. Las Partes podrán decidir invitar a organizaciones o expertos de relevancia, a fin que puedan proporcionar informes específicos al Comité. 4. Las Partes podrán intercambiar información y coordinar actividades entre las reuniones utilizando correo electrónico, video conferencias u otros medios de comunicación.

## 8.10. CHILE- PANAMA

After almost ten years of negotiation<sup>315</sup>, the Chile-Panama free trade agreement was signed on June 26<sup>th</sup>, 2006, and it is in force since March 2008<sup>316</sup>. The treaty had an immediate effect on bilateral trade, as we may observe on the chart below. In spite of the negative impact of the global crisis during 2009, there is the expectation of continuous and solid growth on that bilateral relationship on the next few years.

### Trade - Chile-Panama – (US\$ millions)<sup>317</sup>

	2005	2006	2007	2008	2009
<b>Chilean exports</b>	111,46	178,36	178,19	311,10	124,57
<b>Chilean imports</b>	10,75	10,64	12,85	13,82	18,44
<b>Trade balance (Chilean)</b>	100,7	167,72	165,33	297,28	106,13
<b>Total trade</b>	122,21	189,00	191,06	324,92	143,01

The Chile-Panama FTA contains a complementary Labour Cooperation Agreement, which creates a joined committee on labor cooperation<sup>318</sup> (article 5<sup>319</sup>). The agreement does not

<sup>315</sup> “Los primeros acercamientos para la firma de un TLC entre Chile y Panamá se iniciaron en 1996.” *Source*: Prochile.

<sup>316</sup> “El Tratado de Libre Comercio entre Chile y Panamá fue firmado durante el Gobierno de la Presidenta Michelle Bachelet Jeria. Se encuentra vigente desde marzo de 2008. Los objetivos de este Tratado son estimular la expansión y la diversificación del comercio; eliminar los obstáculos al comercio, facilitar la circulación transfronteriza de mercancías y servicios; promover condiciones de competencia leal en la zona de libre comercio; aumentar sustancialmente las oportunidades de inversión en los territorios; y crear procedimientos eficaces para la aplicación y cumplimiento de este tratado, para su administración conjunta y para la solución de controversias.” *Source*: Direcon.

<sup>317</sup> *Source*: Direcon.

<sup>318</sup> Comité Conjunto para la Cooperación Laboral.

<sup>319</sup> *Article 5* – “Disposiciones institucionales - 1. Las Partes establecen un Comité Conjunto para la Cooperación Laboral (“el Comité”) integrado por altos funcionarios gubernamentales de ambas Partes, responsables de estas materias, el que se reunirá a lo menos cada dos años o cuando las Partes así lo acuerden, debiendo realizarse la primera reunión dentro del año siguiente a la entrada en vigencia de este Acuerdo. 2. Le corresponderá al Comité: identificar áreas potenciales de cooperación; b) servir de foro para el diálogo en materias de interés común; c) revisar la implementación, operación y resultados del acuerdo; d) informar a la Comisión de Libre Comercio del TLC de los resultados de sus trabajos y deliberaciones para su conocimiento; y e) ocuparse de cualquier otro asunto que pueda surgir. 3. Cada Parte designará una unidad dentro de su Ministerio del Trabajo que servirá de punto de contacto con la otra Parte y con la sociedad, con el fin de desarrollar los objetivos del presente Acuerdo. 4. Cada Parte podrá recibir de representantes de sus organizaciones de trabajadores y de empresarios y de otras instituciones o personas de su sociedad, aportes u opiniones sobre asuntos relativos a la aplicación de este Acuerdo. 5. Las Partes podrán decidir invitar a organizaciones o expertos de relevancia, a fin que puedan proporcionar informes específicos al Comité.”

provide arbitration proceedings, but enforces the importance of the mutual understanding on the labour field.

Similarly to what is enacted on the Chile-Peru FTA, the main scope of this agreement is the development of bilateral policies which mutually improve working conditions and living standards. More, it stresses the necessity to ensure the compliance of domestic labor laws by the parties (article 3<sup>320</sup>), increasing transparency (article 4<sup>321</sup>), social dialogue and cooperation (article 6<sup>322</sup>). The parties also commit to respect internationally recognized labour rights, particularly the fundamental ILO ones, making express reference to the 1998 ILO Declaration (article 2<sup>323</sup>)<sup>324</sup>.

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<sup>320</sup> *Article 3* – “Observancia de la legislación laboral - 1. Las Partes se comprometen a aplicar su propia legislación laboral. 2. Las Partes reconocen que cada Parte mantiene el derecho a ejercer su discrecionalidad respecto de la regulación y observancia de las normas, y de tomar decisiones relativas a la asignación de recursos destinados a la administración laboral.

3. Las Partes reconocen que es inapropiado promover el comercio o la inversión mediante el debilitamiento o reducción de la protección contemplada en su legislación laboral interna o por la vía de abstenerse de fiscalizar su legislación laboral.”

<sup>321</sup> *Article 4* – “Procedimientos y transparencia - 1. Cada Parte garantizará que los procedimientos para el cumplimiento de su legislación laboral, sean justos, equitativos y transparentes. 2. Cada Parte promoverá el conocimiento público, dentro de su territorio, de su legislación y políticas laborales.”

<sup>322</sup> *Article 6* – “Cooperación - 1. Las Partes convienen que las áreas de cooperación cubrirán aquellas que mutuamente acuerden y, sin que el presente listado sea excluyente, podrán realizar actividades de cooperación en los temas siguientes: derechos laborales fundamentales y su aplicación efectiva; trabajo decente; relaciones laborales; condiciones de trabajo; administración e inspección del trabajo; asuntos relativos a la pequeña y mediana empresa; trabajadores migrantes; desarrollo de recursos humanos y capacitación en el empleo; seguridad social; programas de reconversión laboral y protección social; promoción de innovación tecnológica; vínculo entre comercio y trabajo; implicancias de la integración económica entre las Partes y diálogo social. 2. Las Partes implementarán el programa de cooperación mediante las actividades que decidan de común acuerdo, tales como investigaciones conjuntas; intercambio de funcionarios, profesionales, técnicos y expertos; organización de conferencias, seminarios, talleres, reuniones y programas de divulgación; intercambio de información y publicaciones especializadas y cualquier otra forma que acuerden. 3. Cada Parte podrá invitar a participar a organizaciones sindicales y empresariales, así como a sectores nongubernamentales y a otras organizaciones, para identificar áreas y actividades de cooperación como asimismo podrá incorporarlas en el desarrollo de dichas actividades. 4. Las actividades de cooperación deberán considerar las prioridades y necesidades de cada Parte y los recursos humanos y financieros disponibles y su financiamiento será decidido por ambas Partes.”

<sup>323</sup> *Article 2* - “Compromisos compartidos - 1. Las Partes reafirman sus obligaciones como miembros de la *Organización Internacional del Trabajo (OIT)* y sus compromisos asumidos en virtud de la *Declaración de la OIT relativa a los Principios y Derechos Fundamentales en el Trabajo y su Seguimiento (1998)*. Cada Parte procurará asegurar que tales principios, así como los derechos laborales internacionalmente reconocidos, establecidos en el artículo 8 de este Acuerdo, sean permanentemente reconocidos y protegidos por su legislación interna. 2. Reconociendo el derecho de cada Parte de establecer sus propias normas laborales internas y, consecuentemente, de adoptar o modificar su legislación laboral, cada Parte procurará garantizar que sus leyes establezcan normas laborales consistentes con los derechos laborales internacionalmente reconocidos, establecidos en el artículo 8 de este Acuerdo y procurará mejorar dichas normas en tal sentido.”

<sup>324</sup> “La promoción de mejores normas laborales parece ser el objetivo que se persigue a nivel mundial. Por tal motivo, Panamá y Chile han celebrado un Acuerdo de Cooperación Laboral que les permitirá alcanzar dicho objetivo. El Acuerdo de Cooperación Laboral se enmarca en el respeto a la autonomía de las Partes y busca a través de la cooperación conjunta fortalecer las normas laborales y mejorar el cumplimiento de los compromisos internacionales. Los objetivos primordiales del Acuerdo están dirigidos a promover el desarrollo de políticas y prácticas laborales que mejoren las condiciones de trabajo y los niveles de vida; la observancia y aplicación efectiva de las leyes laborales; la innovación y mejoramiento de los niveles de productividad y calidad; la transparencia en la administración de la legislación laboral; la participación ciudadana; el cumplimiento de los

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compromisos internacionales; la protección de los principios laborales internacionalmente reconocidos; la cooperación mutua, el intercambio de información y la creación de un foro que permita el diálogo abierto y la participación ciudadana entre ambos países. Si se quiere avanzar con éxito en la apertura del comercio debe darse paso a una nueva visión compartida sobre la forma de seguir adelante en materia laboral, es por ello, que mirando hacia el futuro, el presente Acuerdo de Cooperación Laboral entre Chile y Panamá contribuirá al crecimiento económico y elevación del nivel de vida de ambos países.” *Source*: OAS.