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The Chilean Strategy of Trade Liberalization and Market Access

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I. Introduction

Chile has been promoted worldwide as a paradigm of an open economy fully integrated in global markets. It is less known that Chilean unilateral and multilateral trade liberalization was carried out in combination with negotiated bilateral and plurilateral free trade agreements (FTAs). Although it was one of the founding members of Latin American regional and subregional integration schemes, Chile together with Mexico stands out in the region, as pursuing FTAs, without being tied to regional customs unions or other regional trade arrangements. Chilean FTAs are broad in trade topics and in geographical coverage. Firstly, FTA disciplines encompass the whole set of post-Uruguay Round trade issues: tariff and non-tariff measures applied at the border as well as investment, trade in services, protection of intellectual property rights, competition policy, government procurement. Secondly, Chile has signed or is in the process of signing FTAs with almost all Latin American countries, but also with Canada, the European Union, United States, the Republic of Korea, and others.

Chilean authorities have been quite persuasive in diffusing the somewhat ambiguous framework of “open regionalism” under which the FTAs are supposed to operate. Theoretically, the extension to third parties of the preferences given to the specific signatories of FTAs, through the principle of Most Favored Nation (MFN), should convert those FTAs in effective building blocks toward a multilateral trade and investment liberalization. However, it is not clear that the network of FTAs operates as such and contributes to decrease transaction costs in world trade. The Chilean trade strategy should be analyzed as a pragmatic instrument for market access in a protectionist international context.

The discussion of Chilean open regionalism is part of the scope of this paper, although its main purpose is of a more descriptive nature. It basically describes the various FTAs that were signed by Chile as well as those that are being currently negotiated by the country with a view to identifying the extent and depth of contractual obligations. In other words, the document is focused on the comprehensiveness of Chilean FTAs, namely: i) the nature of trade topics included in liberalization commitments; and ii) the characteristics of liberalization disciplines. The paper attempts to shed light on the flexibility of Chilean negotiating strategy since it takes the interests and capabilities of each trading partner into account. Therefore, FTAs are tailored to the liberalization possibilities of each country or group of countries.

The paper is organized into six sections including this introduction. Section II presents some data on Chilean trade performance as well as on foreign direct investment flows. A brief review of Chilean trade policies is also provided. Section III describes the structure of Chilean FTAs with detailed information covering both trade and trade-related issues and disciplines and modalities of liberalization. Section IV summarizes elements of ongoing negotiations between Chile and the United States, the European Union, the Republic of Korea and member countries of the European Free Trade Association (EFTA). Section V discusses the costs and benefits of Chilean trade strategy in the light of recent developments at the realm of the World Trade Organization (WTO). Finally, section VI puts forward some concluding remarks.

II. Recent developments in Chilean trade performance and trade policies

Chile is a small economy when measured both in terms of population and per capita purchasing power: 15 million inhabitants and per capita income of roughly 4,500 dollars. In the early 1970s, a military coup-d'état disrupted the institutional order, overturned a democratic government and installed an authoritarian military regime that lasted for 17 years. Almost immediately, the new government adopted a new trade and investment policy and promoted the first movement of unilateral liberalization that started in 1973 but was reversed after the 1982 Mexican crisis. Only after 1985 the movement of tariff reduction was resumed. The democratic government that went into power in 1990 continued the policy of trade and investment liberalization. Over the 1990s, however, the Chilean government decided that trade liberalization should be complemented by active diplomacy based both on foreign policy and economic

considerations. In other words, that low tariffs should also be combined with a market access strategy of opening foreign markets through bilateral FTAs.

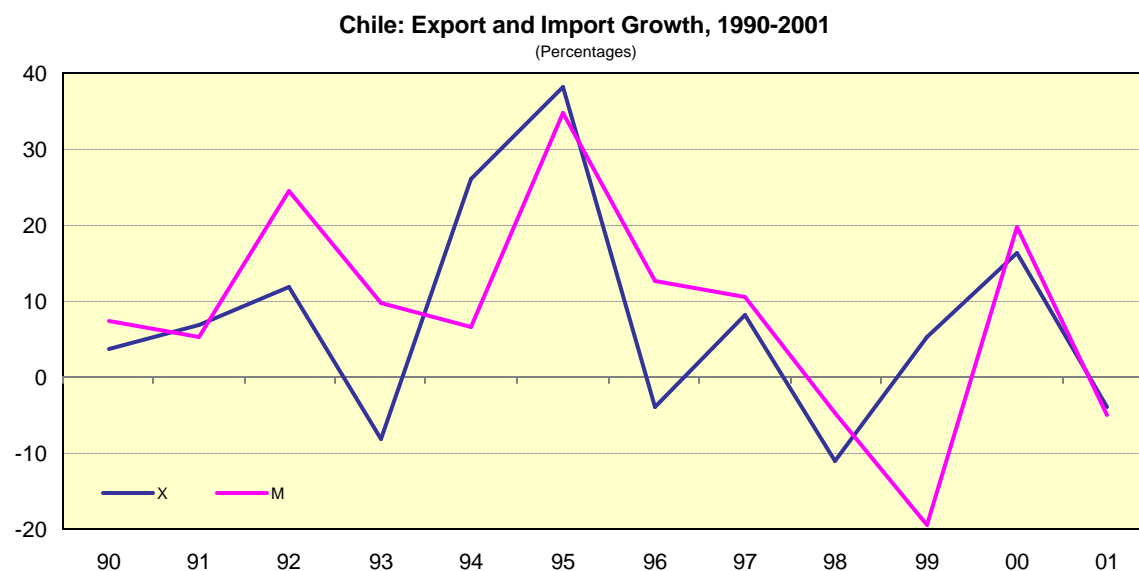
It should be added that Chile implemented sound macroeconomic policies and a rigid control of fiscal deficit. During the military regime, key sectors of the economy were deregulated and most of public utilities (electricity, water and telecommunications) were privatized. Democratic government introduced capital control on short-term portfolio investment, but otherwise has continued to promote privatization programs and encouraged private investment in public infrastructure.

1. Chilean trade and foreign direct investment

The dynamics of Chilean economic growth can be defined as “export-led” growth, particularly since 1985. Nevertheless, in the first period of the military rule (1974-1981) the impressive growth of Chilean exports (12% yearly average) did not spread to the rest of the economy. The Chilean economy expanded at modest yearly rates both in historic terms as well as compared to the average growth rates of other Latin American economies. Conversely, the first half of the 1990s was a period in which national product growth was based on a sustained level of domestic investments and promoted by a significant growth of exports (Agosin, 1997). Measured by the share of exports and imports in the domestic product, Chile presents high levels of trade openness: roughly 35% and 30% respectively for exports and imports in 1995 constant dollars. In current prices, exports of goods and services accounted for less than 15% of Chilean GDP, in 1970, whereas that coefficient had almost doubled in 1995.

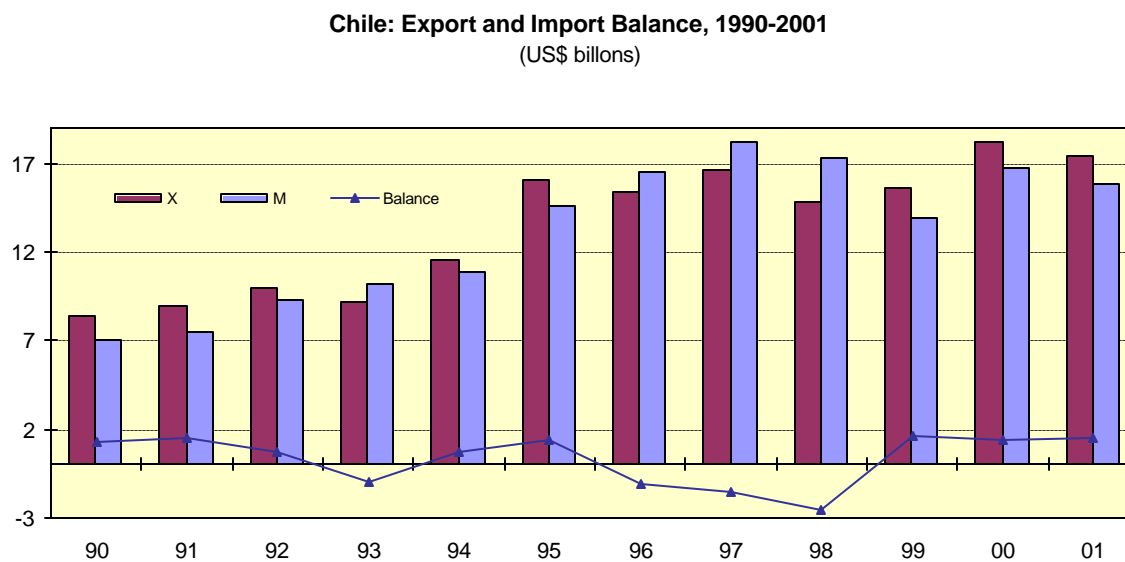
Exports have grown continuously since the mid 1980s and at very impressive rates since the beginning of the 1990s. Nevertheless, in spite of all the efforts by the business community and by democratic governments, Chilean exports remain heavily concentrated on natural resources. Therefore, the Chilean economy has shown a high vulnerability to international movements that affect the demand for and the prices of its major export products. Even before the international financial crisis of 1997, however, the evolution of Chilean exports had become more erratic (see Graphs 2.1 and 2.2). Currently, copper products constitute more than 44% of Chilean exports. Such dependency may dampen future economic growth because of the high instability of export income and the low value-added of such exports. In addition, Chilean exports originate basically in large firms, whereas small and medium-sized firms account for less than 5% of total national exports (Corfo, 2000). In particular, it still remains to solve structural problems related to low technological capabilities of the productive sector and of upgrading the labor force skills, in general and in some exporting industrial branches in particular (Silva, 2001).

Graph 2.1



Source: ECLAC on the basis of official sources.

Graph 2.2



Source: ECLAC on the basis of official sources.

Chilean exports are distinguished by a diversified market composition. The United States is the single largest trading partner but it accounts for roughly 18% of Chilean exports. The aggregate set of Asia-Pacific countries accounted for more than 28% of Chilean exports in 2000 and the European Union accounted for another 25%. Together, these three sets of countries represented more than 70% of Chilean exports. Surprisingly, the same countries accounted for less than 55% of Chilean imports. Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) accounted for less than 10% of Chilean exports but for more than a quarter of Chilean imports (see Table 2.1). The export diversification process can be also seen in number not only of market destinations but also of products and exporters (Silva 2001).¹ At the same time, several studies have shown that even though Chilean exports are concentrated on resource-based products, there have been successful efforts to diversify the product composition of exports (Silva 2001). The country is currently one of the major world producers and exporters of wines, forestry and fishery products, and fruits.

Table 2.1
Chilean Trade Flows and Share of Regions and Countries, 1990-2001
(US\$ Millions and Percentages)

Year	Andean Community	Mercosur ^b	Mexico	Canada	United States	Central America	Asia- Pacific area ^d	European Union	Total
Exports									
1990	3.55	7.60	0.67	0.65	17.12	0.15	25.17	38.22	8,580.3
1993	6.02	11.57	1.39	0.65	17.58	0.58	30.16	27.02	9,416.2
1997	6.57	10.95	2.21	0.77	15.93	0.40	33.08	24.35	17,017.0
1998	8.03	11.07	3.31	0.97	17.65	0.49	25.03	28.12	14,753.9
1999	6.66	9.55	3.91	1.09	19.40	0.60	27.14	25.91	15,914.6
2000	6.66	9.28	4.45	1.32	17.28	0.58	28.41	24.65	18,425.0
2001 (1 st half)	7.03	8.90	4.18	1.44	18.63	0.60	25.04	25.06	9,609.6
Imports									
1990	7.21	16.00	1.44	3.19	19.55	0.06	13.03	26.80	7,023.4
1993	4.28	16.57	1.97	1.91	23.31	0.18	17.44	21.75	10,629.8
1997	5.05	17.63	5.94	2.39	23.92	0.39	16.04	21.85	18,111.6
1998	4.22	18.32	4.97	2.89	23.56	0.22	16.52	22.53	17,087.4
1999	5.67	22.05	4.13	2.91	21.56	0.24	15.67	20.31	14,022.0
2000	5.90	25.75	3.66	3.04	19.82	0.11	16.16	17.10	16,842.5
2001(1 st half)	4.88	28.91	3.18	2.54	17.85	0.15	15.95	18.75	8,566.0

Source: Data compiled from the Department of Economic Studies of DIRECON, "Comercio Exterior de Chile", various years, Banco Central de Chile, "Indicadores de Comercio Exterior", various years as in Kuwayama & Kuwayama (forthcoming, p.10) *The Comprehensiveness of Chilean Free Trade Agreements (FTAs)*, and the International Monetary Fund (IMF).

^a Chile maintains an Economic Complementation Agreement (ECA) with this group.

^b Comprises figures from Argentina, Brazil, Paraguay, and Uruguay.

^c Comprises figures for Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

^d Comprises the APEC countries, excluding the United States, Canada, Mexico, Australia, New Zealand and Russia.

Although it is not easy to separate the effect of preferential trade agreements on trade flows from other explanatory factors, simple trade data suggest that managed trade liberalization worked well in the case of Mexico, Canada and Central America. The results were not impressive in the case of Mercosur (see Table 2.1). In fact, exports to Mercosur countries had increased before Chile joined the regional integration scheme as an Associated member. Exports to non-FTA members have also expanded. In this sense, FTAs did not seem to have resulted in trade diversion with third countries, mostly due to the wide spectrum of countries covered by Chilean FTAs.

¹ The number of product items exported by Chile increased from 2,300 in 1990 to almost 3,790 in 1999, while the number of exporters rose from 4,100 to 6,020 during the same period. Similarly, the destination countries for exports jumped from 122 to 174 during the decade (Chile, Foreign Investment Committee 2001).

Attention should also be given to the growing share of services in Chilean domestic economy. Between 1990 and 2000, the share of good-producing sectors (agriculture, mining, fisheries, and manufacturing) in GDP was reduced from 38% to 35% whereas that of services increased in the same proportion, from 62% to 65%. Accordingly, more than 70% of Chilean labor force is currently employed in different sectors of services (including construction). In addition, in spite of the well-known problem of inadequate measurement of trade in services, it is apparent that Chilean exports had more than doubled over the 1990s. Services trade showed a great dynamism up to 1998, when the share of those exports in the sum of exports of goods and services reached almost 22%. That share later decreased to less than 18%. Chile, as most Latin American countries is a net importer of services, but the country has been able to accumulate modest surplus in commercial service account (see Table 2.2).

Table 2.2
Chilean Trade in Services
(1990-2000)

Year	Exports	Imports	Trade Balance	Services in total exports of goods and services	Services in total imports of goods and services
1990	1848.5	2076.6	-228.1	18.1	22.7
1991	2127.0	2094.3	32.7	19.2	21.9
1992	2357.3	2534.5	-177.2	19.1	21.4
1993	2512.5	2739.7	-227.2	21.5	21.2
1994	2839.7	2988.9	-149.2	19.7	21.6
1995	3334.7	3656.1	-321.4	17.2	20.0
1996	3660.8	3921.6	-260.8	19.2	19.2
1997	4109.4	4061.0	48.4	19.8	18.2
1998	4118.9	4233.7	-114.8	21.7	19.6
1999	3790.0	4104.7	-314.7	19.5	22.7
2000	3928.7	4487.1	-558.4	17.8	21.2

Source: ECLAC/ Division of International Trade and Integration based on data from the International Monetary Fund (IMF).

Services have also attracted much foreign direct investment (FDI), partly related to the privatization process, although Chile started the privatization process earlier than the rest of Latin America. The development of these service activities was primarily carried out at a later stage by private local investors. The recent wave of FDI in Chilean services resulted from a process of mergers and acquisitions. This situation is most clearly illustrated by the electrical power industry and telecommunications (see ECLAC, 2001, chapter II).

FDI flows surged during the 1990s, climbing from an annual average of 720 million dollars in 1985-1989 to over 5 billion dollars annually in 1995-1999. From 1990 to 1999, FDI inflows to Latin American region multiplied by 10: they increased from 8.9 to 93.5 billion dollars. Chile accounted for a reduced amount of these inflows, a little less than 10% in 1999 (9 billion dollars) (see Table 2.3).² Chilean authorities were expecting that reliable economic, political and legal infrastructure would attract foreign

² In Chile, foreign investment can be made through two mechanisms, the Foreign Investment Statute, Decree Law 600, and Chapter XIV of the Compendium of Foreign Exchange Regulations of the Chilean Central Bank. The former establishes a special regime of foreign investment through which the investor opts to submit a foreign investment application and after the authorization of investment enters into contract with the Chilean State under the provisions of Decree Law 600, which grants special conditions for the investor, such as the right to transfer their capital and the net profits repatriation to other countries, the guarantee of non discrimination against the foreign investments and the companies participating therein and tax stability. The latter, on the other hand, establishes a general mechanism of registration of foreign investment and loans. This allows the free entry, use and exit of investment flows that only consist of freely convertible foreign exchange. The Central Bank may not screen or otherwise reject the foreign investment. In addition, there has been a substantial amount of foreign investment inflow through the modality of American Depository Receipts (ADRs), which amounted to 10,263 million dollars during 1990 and June 2001, in comparison to 41,825 million dollars and 5,110 million dollars under DL 600 and Chapter XIV, respectively, in the same period (www.foreigninvestment.cl).

capital and transnational corporations (TNCs) interested to use Chile as a reliable “springboard” or “gateway” to other South American markets. Other factors have intervened and it does not seem that those expectations were fulfilled except in telecommunications, financial services, and the generation and distribution of electrical energy, drinking water and sanitation services.

Table 2.3
Materialized Foreign Direct Investment by Country of Origin
1974 - June 2001
(US\$ million)

Country/period	1974-1989	1990-1995	1996	1997	1998	1999	2000	2001a/	Total
United States	2,248	4,097	2,264	935	1,358	1,909	734	1,118	14,663
Spain	527	263	488	1,498	896	4,583	711	280	9,245
Canada	499	2,376	571	811	899	450	665	103	6,375
United Kingdom	384	508	232	201	412	311	205	168	2,420
Australia	241	343	109	181	385	6	38	197	1,500
Japan	144	372	148	164	323	224	53	53	1,482
Italy	21	33	325	19	6	51	96	914	1,463
South Africa	42	419	74	476	330	40	4	10	1,395
Netherlands, The	177	126	121	363	169	181	83	84	1,305
France	95	135	66	63	150	608	43	24	1,184
Cayman Islands		121	13	194	85	214	39	1	672
Argentina	33	178	97	60	97	47	92	7	610
Finland	0.1	359	59	13	84	3	3	-	521
Switzerland	56	196	46	45	104	44	0.2	1	493
Bermuda	21	141	1	11	241	41	15	1	473
Germany	67	105	7	26	147	69	9	9	425
Belgium	11	5	80	0.1	103	104	20	20	345
Brazil	75	73	16	26	26	48	5	8	276
Other	462	742	119	145	160	150	184	127	2,089
Total per period	5,111	10,592	4,822	5,230	5,973	9,086	2,998	3,125	46,936

A/ provisional figures as of June 30, 2001

Source: Chile, Foreign Investment Committee (www.foreigninvestment.cl) as in Kuwayama and Kuwayama (forthcoming)

Since the military government enacted the Foreign Investment Statute (Decree Law 600, known as DL 600) in 1974, the same principles have regulated the conditions of market entry, capitalization and remittances of foreign capital in Chile. The legal framework guaranteed access to all production activities, tax stability and non-discriminatory treatment vis-à-vis local enterprises.³

The United States, Spain and Canada are major investors in Chile. The prevalence of North American firms in the development of mining projects was replaced by a strong presence on the part of European (particularly Spanish) firms in the services sector. Between 1990 and 1995, 40% of FDI inflows into the country – two thirds of which went to mining projects – originated in the United States and a further 22% from Canadian firms. In the second half of the 1990s, FDI began to be less concentrated in terms of geographic origin and sectoral destination. From having a marginal presence, Spain came to account for 30% of FDI inflows between 1996 and 2000, thus becoming the leading investor in Chile (ECLAC, 2001, pp. 92-93).

³ Between 1985 and 1990 private investment was also promoted through a mechanism of debt conversion (ECLAC, 2001, p. 91).

Chilean outflows of FDI to neighboring countries grew rapidly in the 1990s as the result of regional investments of transnational corporations based in the country, but also because of the internationalization of national firms. Argentina and Peru were important recipient countries for this Chilean investment that was channeled particularly to food industries (Table 2.4).

Table 2.4
Chilean Foreign Direct Investment Abroad in the 1990s^a
(US millions)

Country	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000 ^b
Argentina	11	63	640	606	1,608	2,611	3,433	2,299	839	326	220
Brazil	3	2	-	10	288	112	977	1,222	602	260	98
Peru			12	31	651	1,052	611	418	449	294	10
Colombia		2	10	1	116	28	896	133	101	59	
Venezuela	-	-	-	-	-	-	247	423	102	220	95
Mexico		1	-	3	17	20	27	18			
USA		1	-	4	30	30	-	75	45	55	
Total	15	192	671	742	2,795	4,158	6,368	4,731	2,244	1,417	552

Source: Camara de Comercio de Santiago, *Inversión Chilena detectada en el exterior, Informe 2000*, Departamento de Estudios, September 2000, as in Kuwayama and Kuwayama (forthcoming).

a/ officially recorded

b/ data cover just the first Semester of 2000.

2. Chilean trade policy

It was emblematic that one of the first economic measures of the military government after the September 1973 coup-d'état was to announce a radical program of trade liberalization. The trade reform involved the elimination of all non-tariff barriers, the gradual reduction of tariff rates and their consolidation into three tariff levels (with a maximum rate of 60%), the unification of the exchange rate, and a devaluation to compensate the reduction in the average tariff. In 1975, the authorities announced a new tariff range of 10 to 35%, to be reached progressively by 1978. Finally, the military government decided to reach a 10% tariff by mid-1979 for all imports. After the debt crisis, the flat tariff was raised again to 20% in mid-1983 and to 35% in September 1984, to be reduced gradually beginning in 1985. At the end of the military regime, the flat tariff was set at 15%, from where it was lowered in 1991 to 11% by the democratic government (Agosin, 1997).

Unilateral and Multilateral Reduction of Tariffs

The present scheme of unilateral tariff reduction (i.e., a five-year plan to reduce tariffs by one percentage point per year to 6% by January 1st, 2003) asserts the Chilean commitment to free trade policies based on the Most Favored Nation (MFN) principle. In 1991, the ruling political party of the Chilean Congress (the Democratic Coalition) promoted the reduction of the general tariff on imports from 15% to 11%. This was followed in 1998 by the approval of a scheme to reduce the tariff by one percent every year, starting in 1999, until a rate of 6% is reached in 2003. At present, Chile's applied MFN tariff is 8% across-the-board. The drop in nominal tariffs, coupled with tariff structures for those countries with which Chile has trade agreements, means that once the tariff reduction process is completed in 2003, the average effective tariff will be 3% to 4%. In terms of liberalization, this new tariff structure will place Chile on a level similar to Belgium, France, Spain and Italy (Chile Foreign Investment Committee 2001).

The country's main forum for multilateral economic cooperation is the World Trade Organization (WTO). The Chilean authorities recognize this organization as an indispensable organ for pursuing the interests of the country. Chile is a member of the Cairns Group and recognizes that market access of agricultural products is unsatisfactory. Moreover, Chilean authorities acknowledge that the international trade scene is still susceptible to arbitrary and hidden barriers to trade.

Chile is a founding member of the WTO, having joined at the Marrakech Agreement in 1995 after the approval of the national Congress. As such, it has had to implement the agreements concluded during the Uruguay Round and restructure its internal legislation. To comply with the WTO commitments, three

export subsidy programs are now being phased out within the period allowed by the Agreement on Subsidies. One such program related to the automotive sector.⁴ Another program was designed to allow duty-free entry for capital goods insofar as they were used for export purposes. The third program provided for the “simplified” system of refunds of 10% of the value of exports.⁵

Preferential Trade Liberalization

The low tariff level, as compared to that of Chilean trading partners in the region, was an important determinant for a change of emphasis in the Chilean internationalization strategy from unilateral trade liberalization to the signing of free trade agreements (FTAs). Policy makers decided to give priority to reciprocal liberalization with specific partners over unilateral integration with the world economy without reciprocity. Since the mid-1980s, the United States had signaled its intention to search for fair trade through a multi-path strategy. In 1992, the Canada-United States FTA was signed and almost immediately negotiations started with a view to creating the North American Free Trade Area (NAFTA). In 1991, the Bush Administration also launched the Enterprise for the Americas initiative with a view to creating a Free Trade Area in the Western Hemisphere. In 1991, the Southern Common Market (Mercosur) was created and by 1994 member countries had completed the FTA requirements for most of the products traded among them (Argentina, Brazil, Paraguay and Uruguay). There was also a revival of other regional integration groups such as the Andean Group that was converted into the Andean Community of Nations, and the Central American Common Market.

Therefore, there were costs associated with remaining outside FTAs when Chilean neighbors were creating new preferential trading areas. Moreover, the presence of tariff escalation in the tariff schedules of all of Chile’s trading partners converted FTAs into a valuable instrument to promote exports of processed goods. Besides, the “lock-in” or “anchoring” of policy reforms through the regional trade agreement (RTA) reduces uncertainty and improves the investment environment. A further advantage is accounted by locational components of the country for FDI.⁶

It is important to underline that the Chilean strategy of FTAs included major changes that took place in international trade treaties following the Uruguay Round of multilateral trade negotiations. Basically because of the low level of tariff and non-tariff barriers, Chilean FTAs went beyond “market access” topics to include the new areas of investment, trade in services, trade remedies, intellectual property, and competition policy, government procurement, enforcement of intellectual property rights, etc., and often have effective dispute settlement procedures. Also, in terms of negotiating partners, due to a trade highly diversified by region of origin and destination, Chilean authorities decided that the optimal strategy was to negotiate FTAs with all of its main trading partners so as to minimize possible costs of trade diversion. Almost at the same time, the Chilean government sought admission into NAFTA, negotiated a FTA with Mercosur, took the first steps toward a FTA with the European Union, and signed a host of other FTAs with Mexico, Venezuela, Ecuador, Colombia, Canada and Bolivia.

The FTAs signed by Chile with Canada and Mexico have WTO-plus characteristics, although Chile’s agreement with Mercosur goes somewhere in between, with a detailed agenda of bilateral integration, but the norms do not reach the complexity of a NAFTA-style agreement (Sáez, 2001; IDB 2000). In addition, FTAs and other agreements signed by Chile have spillover effects on other agreements resulting in increasing liberalization commitments (Devlin and Estevadeordal, 2001). Chile

⁴ More precisely, Chile did not meet the deadline of January 1, 2000 for eliminating the measures in the automotive sector that are inconsistent with the measures of local content and trade balancing of the TRIMS agreement. On December 29, 1999, the Chilean authorities requested an extension of its deadline until May 31, 2000. In July 2000, the authorities requested and were granted an additional “informal” extension until December 31, 2000.

⁵ The simplified duty drawback system, established in 1985, entitled the exporter to 10%, 5% or 3% rebate on the FOB value, depending on the total value of goods exported. Starting on January 1st 1999, reimbursement of indirect taxes on inputs incorporated into exported goods was eliminated, and the 10% rebate on the FOB value of exports not exceeding 10.5 million dollars was reduced to 9%, according to a five-year plan, reducing 1 percentage point per year, down to 6% in the year 2002. All rebate rates will be fused to a single 3% in the year 2003. This system cannot be used in conjunction with the regular drawback.

⁶ Either (1998) argues that incentives for small countries going into regional trade agreements (RTAs) with larger countries can be substantial because a reform-minded small country can more easily achieve reform after linking up with a large country, since the RTA gives the small country a significant advantage over other small countries in attracting FDI. When tariffs are low, to attract FDI developing countries may be induced to sign RTAs, although they will bear the costs of making most of market access concessions.

began the process by signing a simple FTA with Mexico under the flexible rules of the Latin American Integration Association (LAIA). Later the Chilean administration signed a number of similar agreements with other countries in Latin America. When the attempt to join NAFTA failed due to the absence of a fast-track trade-negotiating authority in the United States, Chile turned to Canada for a NAFTA-like agreement and then upgraded the Mexican FTA to NAFTA-like standards.

It should be recalled that the first agreements that were signed by Chile (Mexico, Venezuela, Colombia and Ecuador) were negotiated in parallel to the Uruguay Round. These agreements were mostly focused on traditional market access issues, principally tariff reductions and to a much lesser extent contemplated commitments on air and maritime transport. During the Uruguay Round, developing countries agreed to bind “ceiling tariffs” at rates much higher than those actually applied. For these reasons, the first agreements did not present serious problems of coordination with respect to the multilateral system. By contrast, the new agreements (with Mercosur or Canada) were negotiated after the end of the Uruguay Round and with WTO fully operational. New topics such as services and investment became part of the trade multilateral agenda. Those topics required greater coordination efforts among distinct branches of Chilean government (Jara, 2001).

III. The structure of Chilean trade agreements

The Chilean strategy of integration to world markets through Free Trade Agreements (FTAs) has improved its access to markets of roughly 434 million consumers. According to official calculations it is expected that by 2010, 90% of all potential Chilean trade will be carried under some form of preferential agreement. At present these trade agreements cover 15 countries (ten are already operational). Among the FTAs already signed, the FTAs with Canada and Mexico, which follow a NAFTA formula, are broad in scope and depth of contractual obligations (see a summary of these agreements in Table 3.1).

In signing FTAs, the Chilean government aims at a two-fold objective: firstly, to achieve mutual market access among signatory countries; and secondly, to reduce transaction costs of international transactions. This second objective will be reached by a greater stability and transparency of rules. The provision of binding rules applicable to FTA members with instruments that effectively reduce the incentives to depart from them ensures that those rules will be complied ("lock-in" effects). In short, Chilean FTAs emphasize "dynamic" effects more than "static" ones.⁷ As it is described below, the Chilean strategy to foster diversification of exports and the creation of economies of scale fall within the category of *open regionalism*. The presence of economies of scale more than compensates static losses that may result from any eventual trade diversion (Freund, 1998). Furthermore, as mentioned, Chilean low tariffs also contribute to reduce static losses and to increase dynamic gains.

Chile's FTAs and other agreements are considered to be "comprehensive" in nature and scope because they involve almost all areas of bilateral economic relations. In the case of trade in goods they include aspects such as market access, rules of origin, customs procedures and in relation to trade remedies they consider aspects related to safeguards, antidumping and countervailing duties. Chile's FTAs also cover services, investments and standards (sanitary and phytosanitary measures), trade-related issues (competition policy, intellectual property rights, government procurements), institutional issues (transparency, dispute settlement), labor and environmental issues. One aspect considered fundamental by the Chilean Government in the formulation of its policies is a participatory process that involves the civil society (Silva, 2001).

It is true that even though Chile has incorporated these new areas into the FTAs, not all of its trading partners are interested in going beyond the level of obligations they had accepted in the WTO. For instance, so far the current treaty with Canada incorporates the highest rights and obligations in FTAs signed by Chile with respect to services and investment, but it does not incorporate other issues such as intellectual property rights, technical standards, sanitary and phytosanitary measures, and government procurement.⁸ According to a Chilean negotiator, Chile and Canada considered that WTO rules, together with their own domestic legislation, already addressed these matters satisfactorily (Jara, 2001). On the other hand, the treaty with Mexico does incorporate such topics. However, in contrast to NAFTA, there are no chapters on financial services and government procurements in the FTA between Chile and Mexico. Both governments are committed to begin negotiating these chapters as well as the elimination of antidumping duties on imports in the near future.⁹

⁷ Sáez and Valdés (1999) stress that economic theory alone cannot answer the question of what type of agreements should be negotiated. In their view, international agreements have two functions. First, they promote trade openness that allows countries involved to take advantage of the benefits of trade. Such desire for openness stems from the base established by game theory, which rationalizes the increase of trade barriers if no negotiations are made. Secondly, they reduce the transaction costs that are incurred in international economic relations. These are the costs that cannot be eliminated with a unilateral decision, and require a set of rules to ensure a stable trade environment. In addition to these new dimensions of trade policy, there is a pre-established condition of international trade that must be taken into account.

⁸ Chile is not a member of the WTO Agreement on Government Procurement (USTR, Foreign Trade Barriers, Chile, p. 38).

⁹ According to the declaration of the Second Vice-Ministers Meeting of Chile/Mexico FTA in November of 2000 a series of meetings have been sustained between the two parties to advance in these areas (See <http://www.direcon.cl>).

Table 3.1
The Coverage of Chile's Trade and Investment Agreements
By Region

Region	Trade Agreement		Agreements on Double Taxation	Investment Promotion and Protection Agreements (IPPA)	Other Agreements
	FTA	ECA			
America	Canada Mexico Central America (El Salvador, Guatemala, Costa Rica, Honduras, Nicaragua)	MERCOSUR Bolivia Colombia Costa Rica Cuba ^a Ecuador Peru Venezuela	Argentina Canada Mexico Brazil	Argentina Bolivia ^b Brazil ^b Colombia ^a Costa Rica ^a Cuba Dominican Republic ^a Ecuador El Salvador Guatemala Honduras Nicaragua Panama Paraguay Peru Uruguay Venezuela	Canada
Africa				Egypt South Africa Tunisia	
Asia and the Pacific				Australia China Indonesia ^a Korea, Rep. Lebanon ^a Malaysia New Zealand ^a Philippines Vietnam ^a	
Europe			Poland ^a	Germany Austria Belgium Croatia Denmark Spain Finland France Greece Netherlands Hungary Italy Norway Poland United Kingdom Czech Republic Romania Sweden Switzerland Turkey Ukraine	

Source: Prepared with data compiled from DIRECON (www.direcon.cl)

a/ For Congress approval

b/ Approved by the Congress

FTA Free Trade Agreement; **ECA** Economic Complementation Agreement

Table 3.2
Status of Bilateral Agreements of Chile

Agreement	Tariff Reduction Programs Rules of Origin	Coverage and Status
CANADA	Came into force: 5 July 1997 18 tariff elimination programs to be applied until 2013 Rules of Origin: NAFTA type, but less demanding	Trade in goods, services, and investment based on the NATFA model Tariff reduction programs underway as scheduled; process will be completed in 2014 Opening of negotiations on financial services in 1999
MEXICO (ECA No. 17) ^a	Came into force: 1 January 1992 2 programs of linear tariff reduction lasting 4 and 6 years, respectively Rules of Origin: Based on modified LAIA and NAFTA	Trade in goods: tariff reduction program completed New treaty: services and investment; includes intellectual property, technical obstacles Sanitary and phyto-sanitary measures Air transport Opening of negotiations on financial services, anti-dumping measures, and government purchases in 1999
VENEZUELA (ECA No. 23)	Came into force: 1 July 1993 2 programs of tariff reduction lasting 4 and 6 years, respectively Rules of Origin: Based on Resolution 78 of LAIA	General rules based on the LAIA model Trade in goods: tariff elimination program completed Treaty envisages an undertaking to expand trade in services
COLOMBIA (ECA No. 24)	Came into force: 1 January 1994 2 programs of tariff reduction lasting 4 and 5 years, respectively Rules of Origin: Based on Resolution 78 of LAIA	General rules based on the LAIA model Trade in goods: tariff elimination program completed Negotiations have begun to incorporate trade in services and investment
ECUADOR (ECA No. 32)	Came into force: 1 January 1995 2 programs of tariff reduction lasting 3 and 5 years, respectively Rules of Origin: Based on Resolution 78 of LAIA	General rules based on the LAIA model Trade in goods: tariff elimination completed Treaty envisages an undertaking to expand trade in services, the matter is being studied
PERU (ECA No. 38)	Came into force: 1 July 1998 4 tariff reduction programs lasting 5, 10, 15, and 18 years, respectively 5 special tariff reduction programs for textile sector lasting 3, 6, and 8 years, respectively	General rules based on the LAIA model Trade in goods: tariff reduction program underway; to be completed 1 January 2012 Treaty envisages an undertaking to expand trade in services
MERCOSUR (ECA No. 35)	Came into force: 1 October 1996 2 tariff reduction programs started in 1997, lasting until 2013	Less elaborate rules than in the NAFTA models, but include other areas of integration Trade in goods: tariff reduction program underway; to be completed by 1 January 2014 Participation in institutional structure of MERCOSUR Physical integration Undertaking to negotiate on trade in services
BOLIVIA (ECA No. 22)	Came into force: 6 April 1993	Partial-Scope Agreement covering a specific number of products It is proposed to expand this agreement to incorporate more products

Source: Prepared with the data from the Department of Economic Studies of DIRECON; Sebastián Saéz and Juan Gabriel Valdés (1999), "Chile and its 'lateral trade policy'", *CEPAL Review*, No. 67, April, Table 3; and Sebastián Saéz (2001), "Aspectos institucionales y económicos en las negociaciones comerciales de Chile", in Antoni Estevadeordal and Carolyn Robert (eds.), *Las Américas sin Barreras*, Inter-American Development Bank, Washington D.C..

^a **ECA:** Economic Complementation Agreement

LAIA: Latin American Integration Association

Hence, the Chilean strategy of customizing FTAs according to interests and constraints of individual countries is flexible and realistic, allowing for comprehensiveness and selectiveness in the various agreements. The lack of interest of some countries to each WTO-plus agreement does not preclude reaching agreement on problems of market access in each trade direction.

In addition, it is important to reiterate that the level of commitments reached at the multilateral level constitutes the basic framework for all Chilean FTAs. In this sense, Chilean negotiators consider that deeper and stronger disciplines and commitments in many areas that go beyond traditional “border” restrictions, together with a strategy of “single undertaking” will facilitate the deepening of some specific areas in future multilateral negotiations. In this regard, the NAFTA and other agreements signed by Mexico, and to a lesser extent, some of those signed by Chile, may contribute to clarify the structure and focus disciplines and procedures in new topics to be later discussed in WTO (Jara, 2001).

1. Trade in goods

1.1. Tariff and non-tariff measures

As mentioned above, Chile's trade policy has been characterized by an aggressive reduction of the general tariff rate. In 1999 the country started a process of gradual tariff reduction of the tariffs by one percent per year that should lead the flat tariff to a level of 6% in 2003. The current Chilean MFN tariff rate is 7% across the board. When the tariff structure is calculated including the preferential tariffs originating in many preferential trade agreements (PTAs) signed by Chile the result is an average effective tariff of 3% to 4% in 2003. As a result of the various bilateral PTAs, the same product is levied by different import duties when entering the country depending where it comes from. The differences between the effective and general tariff rates are greater in imports originated in Latin American countries. Table 3.3 shows how the structure of effective tariff rate that affects Chilean imports. The higher rates affecting imports from Ecuador and Mexico can be explained by seasonal factors related to Chilean trade (Cámara de Comercio de Santiago, 2001b).

Moreover, Chile's bound tariff rates at the WTO are generally lower than those of other Latin American countries (ECLAC, 2001). As a result of the Uruguay Round, Chile reduced its bound rate from 35% to 25% for most products and to 31.5% for some agricultural products, such as dairy products, wheat and wheat flour, oilseeds and oleaginous fruit.¹⁰ However, due to internal pressures, in August of 2001 Chile notified the WTO of its decision to raise the bound rate on sugar from 31.5% to 98%, offering compensations to its main sugar suppliers (DIRECON, 2001; www.direcon.cl).

The only non-tariff measures (NTMs) allowed in Chile refer to health, sanitary and phytosanitary, and national security measures. All other non-tariff barriers such as import quotas and other quantitative restrictions, as well as licensing, surveillance mechanisms, and cartels are prohibited. Chile uses neither export licenses nor controls on exports. The only exception is the prohibition of imports of used motor vehicles excluding certain public utility vehicles.

Conversely, in 2000, according to the Ministry of Economy, Chilean exports faced 220 non-tariff measures in 14 countries or groups of countries. Among those countries or groups of countries, there are Argentina and Brazil, followed by the United States, the European Union and Mexico (Cámara de Comercio de Santiago, 2001a). NTMs are often specific to market conditions of the country/region in question. Hence, bilateral or plurilateral negotiations seem to be the most effective way to address the issue rather than the WTO, since NTMs are imposed in spite of clear multilateral rules that have already been established in the latter forum.

¹⁰ Chile applies a price-band system for a certain number of agricultural products, namely sugar, wheat, wheat flour, and vegetable oils. Under this system, in cases of imports carrying costs under the floor value, specific additional tariffs are applied to the general *ad-valorem* duty in order to equalize such value. If import costs exceed the ceiling price, tariff reductions are applied to the general *ad-valorem* duty to prevent exceeding that value level.

Table 3.3
Effective Tariffs on Chilean Imports by Country

Exporting Countries	December 2000	January 2001
Argentina	3.5%	2.4%
Bolivia	2.5%	2.3%
Brazil	4.7%	3.8%
Colombia	1.4%	0.9%
Ecuador	0.1%	4.9%
México	0.2%	0.3%
Paraguay	5.1%	6.1%
Peru	3.0%	2.5%
Uruguay	5.4%	3.7%
Venezuela	5.2%	4.7%
Australia	8.9%	7.9%
Canada	1.6%	1.0%
China, People's Republic of (PRC)	8.0%	7.7%
France	6.3%	7.6%
Germany	8.9%	7.9%
Hong Kong, China	9.0%	8.0%
Italy	8.7%	7.9%
Japan	8.8%	7.9%
Korea, Republic of	8.8%	8.0%
Nigeria	9.0%	8.0%
Spain	8.4%	7.6%
Taiwan, Province of China	7.4%	7.0%
United Kingdom	8.8%	7.7%
United States of America	7.8%	7.0%
TOTAL	6.4%	5.9%
MERCOSUR	4.0%	2.9%
Latin America	3.3%	2.7%
NAFTA	5.8%	5.7%
Europe	8.2%	7.7%
Asia	8.3%	7.7%

Source: Cámara de Comercio de Santiago

Chile Mercosur

The free trade zone established in the Economic Complementation Agreement (ECA n. 35) (under the Latin American Integration Association – LAIA) contemplates the adoption of a Trade Liberalization Program or, in other words, tariff reductions that favor the universe of products originating in the territory of the Members that have signed the Agreement. Tariff reductions are applied yearly, in a progressive and automatic manner. They are applied on the basis of current tariffs imposed on imports from third countries.

More than 90% of the items subject to reductions began their liberalization on October 1st, 1996 and will finish by January 1st, 2004. Considering the case of sensitive products, total liberalization for the tariff universe cannot go beyond the year 2014 (see below for the section on sensitive products).

Chile Peru

The Agreement (ECA n.38) starts with the immediate elimination of tariffs, once the Agreement enters into force, for the majority of products. Sensitive products will extend the tariff elimination until 10 years thereafter and, exceptionally, until 18 years (see below). Thus, more than 50% of the Chilean exports to Peru will have tariff reductions on a timeframe of five years, of which two years have already lapsed,

meaning that a large part of products have a preference margin of 40%. In this respect, 2600 of all negotiated products have benefited from the immediate elimination of tariffs. This group of products include copper concentrates, paper for newspaper, cellulose and malted barley.

Elaborated merchandise, merchandise originating in duty free zones, or from enterprises that benefit from free trade zones are excluded from the Agreement.

Chile Bolivia

On July 30, 1997 both partners signed the Seventh Additional Protocol to the original ECA n.22 that increased the Bolivian preferences to Chile from 270 to 306 items and Chilean preferences to Bolivia from 207 to 393 items.

Chile Colombia

Besides providing for the immediate elimination of tariffs in a significant part of the bilateral trade, the liberalization schedule (ECA n. 24) establishes a tariff elimination within a period that may, in some cases, extend up to 6 years.

In May 1997, the Administrative Commission of the Agreement decided the total dismantling of the exceptions, establishing different program of total tariff removal with a variable scope from 1999 to 2012. After 18 years the whole bilateral trade will be duty free.

Chile Ecuador

The Agreement (ECA n. 32) entered into force on January 1st, 1995. An important part of import duties affecting the bilateral trade was eliminated immediately. The tariff removal schedule for the rest of the products contemplates different timetables. The longest one considers a timeframe of six years (see below).

Chile Venezuela

The bilateral Agreement (ECA no. 23) was signed on April 2, 1993, entering into force 3 months later. The Agreement establishes the immediate elimination of tariffs on some products, besides other modalities that consider the liberalization of trade in seven years, which implies that currently about 95% of the tariff universe is duty free.

Chile Mexico

From January 1st, 1998, the ECA n° 17 exempted almost entirely the bilateral trade in goods from import duties, with the exception of some products such as dairy products, barley, wheat, malt, etc. The Chilean list of exceptions includes 96 items, of which 42 have tariff preferences between 12% and 71%. The Mexican list includes 89 items, of which 26 have tariff reductions between 28% and 70%. The tariff reduction program also excludes fresh apples. The tariffs that affect these products have started to decrease from January 1999, a process that will conclude in 2006 (see below).

Chile Canada

Upon entry in force of the FTA on July 5th, 1997, tariffs were immediately eliminated on more than 80% of the bilateral trade. The general program of liberalization will end in 2003 and the special program for a small number of items will conclude in 2014. In November of 1999, the Administrative Commission of the FTA agreed to accelerate the elimination of tariffs for a certain number of products, starting on January 1st, 2000. The list includes the following products: turkey meat, turkey eggs for reproduction, granulated food for animal consumption, fresh or frozen tomatoes, peach, plums, certain coloring pigments, certain plastic articles and a fixed number of textile products.

Both countries have agreed on a "standstill" principle for products covered by the FTA (not to increase the level of any existing tariff as well as refraining to adopt any new tariff). Notwithstanding these commitments, the Parties are free to modify the tariff protection of products that are not included in the Agreement. Tariff preferences granted under this Agreement benefit those products originating in one of

the two countries. The rules of origin regime that were included in the FTA follow, with some exceptions, the NAFTA regulations.

The Agreement adds new commitments that reduce important non-tariff barriers, such as subsidies, complicated customs procedures and other discretionary mechanisms. In reference to subsidies, the Parties have decided that none will keep or introduce subsidies in production and exports of those agricultural goods that are present in their mutual trade from January 1st, 2003. Chile will be able to keep its system of price targets with the commitment of not including new products in the system.

Chile Cuba (has not yet entered into force)

Through this Agreement, Cuba grants duty-free access for 750 Chilean products, while Chile agrees to offer the same benefits to 650 Cuban products. These cuts will be effective immediately upon entry in effect of the Agreement, subject to congressional ratification.

These tariff reductions will affect 75% of Chilean exports to Cuba. Hence, the Cuban effective tariff on Chilean products will drop from 10% to 4%. Among the main Chilean products that will become free of duties, there are: poultry meat, fresh tomatoes, marmalades, chewing gums, apples, plastic tubes, steel plates and some industrial machinery.

Chile-Central America (entered into force on February 14, 2002)

The Parties to the Agreement have agreed to eliminate totally and immediately non-tariff barriers, with some sanitary and phytosanitary exceptions, as well as some standardization, measuring and authorization procedures.

1.2. Rules of Origin

The proliferation of Chilean FTAs requires complex rules of origin to identify where products come from. Chile does not apply non-preferential rules of origin but the administration has to manage a complicate network of rules of origin schemes. Chile is a signatory to the Latin American Integration Association (LAIA) since 1981, and applies the specific scheme of origin contained in Resolution 78. Bilateral agreements signed afterwards are in accordance with this resolution, including ECAs with Colombia, Venezuela, Ecuador and Peru. However, the association trade agreement with Mercosur, effective as of October 1, 1996, contains a special set of rules of origin. Both the FTAs with Canada (1997), Mexico (1998) and Central American countries contain another set of specific rules of origin as well.

Those rules of origin by LAIA outlined in Resolution 78 are relatively simple and their applications in distinct agreements signed within the LAIA framework introduce uniformity (Jara 2001). Generally, in order for any good to enjoy any LAIA preferential tariff arrangement, the product must either originate or be made with inputs that originate within the territory of the signatory countries. A good that has foreign inputs will also be accorded preferential treatment if it is sufficiently transformed within the territory of a member country so as to achieve a new tariff classification heading under the LAIA's harmonized tariff schedule (NALDISA). When a new tariff heading classification is not achieved, the good will still receive preferential tariff treatment if the FOB price of the final product does not exceed 50% of the total CIF value of the foreign inputs.

The rules of origin requirements in the Chile/Canada agreement includes a liberal 35% regional content requirement when the transaction value method is employed, or 25% when the net cost method is used for a large number of manufactured goods for a duty-free treatment between the two countries. Therefore, the rules of origin in the agreement with Canada are more flexible for all products except in agriculture, textiles, clothing, footwear, and plastics and chemicals. Flexibility is added to the rules of origin by allowing change of tariff classification at the sub-tariff level and by reducing the value of regional content. In comparison, the minimal regional content requirements in the NAFTA are either 60% or 50% respectively. The rules of origin requirements in the Chile-Mexico agreement are similar to those of NAFTA, and incorporate the concepts of transaction value (50%) and net cost methodologies (40%) in determining the regional content requirement of goods.

The diversity of rules of origin in the agreements concluded by Chile can be an obstacle to their coherent application and an optimum choice of suppliers. The Chilean authorities are aware of this risk, and they make efforts to ensure uniformity and simplicity of those rules of origin. In this sense the recent tendency towards the proliferation of complex rules of origin could be considered as a step backwards from the simple arrangements that were common in the LAIA-type of agreements (Devlin and Estevadeordal, 2001).

1.3. Antidumping and Safeguards

Chilean rules and procedures in antidumping and countervailing cases are the WTO agreements¹¹ and Law 19,612 and its Regulation Decree No. 575. The Law 19,612, approved in 1999 modifies a previous one (Law 18,525) and allows the country to impose safeguard measures according to Article XIX of GATT. In Chile, the application of antidumping and countervailing rights is limited to one year, although WTO safeguards are permitted for a period of four years and are renewable for an additional four years. In the case of safeguards they shall be applied for one year, renewable only for one additional year (APEC 2001, p. 84).¹² When there is a complaint that growing imports with distorted prices are affecting domestic production and causing serious injury, then the tariff surcharges mentioned in Law 18,525 can be applied under the following conditions: it can only be imposed for one year, the surcharge plus the applied tariff cannot exceed the bound tariff rates, and it is applied on an MFN basis. Since it cannot exceed the bound rate this surcharge does not constitute a safeguard in the sense of Article XIX of GATT 1994 (WTO 1997, p. 23).

Most regional agreements in the Western Hemisphere allow for the use of antidumping measures among their members according to WTO rules. At the world level, there are only four regional trade agreements in which participating countries have abolished antidumping measures among themselves and the Canada-Chile FTA (1996) is one of them.¹³ The Parties have agreed on not applying their antidumping legislation to each other, starting on the day when tariffs are eliminated at the sub item level in each country or from January 1st, 2003, whichever comes first. Also, the member countries of Mercosur are expected eventually to eliminate antidumping. It is also one of the new issues to be discussed in the FTA Chile-Mexico.

Chapter F of the Chile-Canada Agreement provides instead special rules for safeguard actions during the transition period and states that "each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards of the WTO Agreement except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article" (Tavares, Macario and Steinfatt 2001, p.27).

All Chilean trade agreements include disciplines on safeguards. The Agreements signed with Venezuela, Bolivia, Colombia, Ecuador and Cuba are based on LAIA's system of safeguard clauses. The FTAs signed with Canada, Mexico and Central America, as well as the ECA with Peru all have provisions that limit the use of safeguard global measures (WTO) for the bilateral trade. The provisions assess the relative importance of the product in question for the trade partner member of the Agreement, and the possibility that the product can be the direct cause of the damage to the national activity. With respect to the Mercosur, a Regime of Safeguards Measures was adopted in December 1999.

¹¹ They are: the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Duties, Article VI of GATT 1994, and the WTO Agriculture Agreement.

¹² The leading targets of these investigations in the region, accounting for 63% of the cases initiated against FTAA countries between 1987 and the first semester of 2000 are the United States and Brazil, followed by Argentina, Canada, Mexico and Venezuela (about 30% of the cases), and then by other 12 countries (7% of this total). During this three-year period, Chile initiated 5 cases against FTAA countries (in comparison to 7 cases with the rest of the world), while the country was the target of 16 cases initiated by FTAA countries (none from the rest of the world). The distribution by users of antidumping had a similar profile.

¹³ The other three agreements are: the European Union (EU), the European Economic Area (EEA), that came into force in 1994 by the treaty signed between EU and the European Free Trade Association (EFTA), and the Closer Economic Relations Agreement (CER) between Australia and New Zealand. In the case of the Chile/Canada agreement, according to Tavares, Macario and Steinfatt, (2001, p. 30) "(t)he experience of particular integration agreements, including the free trade area between Canada and Chile (and possibly that between Chile and Mexico) with the replacement of safeguards for antidumping might provide further insights into additional parameters that might be needed to be taken into account when balancing the costs and benefits of different institutional alternatives to protect domestic producers from import competition".

Regarding safeguards in trade in services, two types may be defined on the text of the FTA: bilateral and global. The possibility for general *safeguard* action with respect to services is not contained in the trade and integration agreements of the Western Hemisphere, though it is found in the GATS. None of the agreements signed by Chile contain an article on general safeguard action. Some of the other agreements, however, do contain such an article or allow for future regulation to be developed.¹⁴

1.4. Standards and technical regulations

Chile's policies on standards, technical regulations and conformity assessment are based on four basic points: the principle of non-interference with freedom of trade and the free operation of markets; non-discrimination treatment between national and foreign products; the choice of international standards as the basis for national standards, whenever possible; the broad application of the principle of transparency (APEC, 2001). These principles are usually part of the international agreements that Chile has signed with its partners. Chile has 2,265 voluntary standards, 76% of which are based on international standards.¹⁵

In the Western Hemisphere the convergence among a variety of technical regulations can follow two paths: harmonization and compatibility. While the requisite of harmonization calls for identical policies among countries, as well as common physical standards and technical regulations, it also demands the creation of permanent institutions to coordinate the implementation of the standards. On the other hand, compatibility is a much simpler objective, since it only requires that standards used by countries do not create unnecessary barriers to trade. One way to eliminate these barriers is to promote the recognition of equivalence among standards, which allows countries to use traded goods and services in the same way. Also, it is possible to promote compatibility by making standards more identical or by providing integrity to the interfaces.

The use of standards tends to differ according to the nature of the integration arrangements. Customs unions tend to view harmonization as their ultimate policy objective, while FTAs are likely to pursue commitments towards compatibility. One example of the above is the pledge towards harmonization taken by Mercosur countries, while the NAFTA members are directed to "make compatible of a specific standard or conformity assessment procedure" (www.sice.oas.org/standards).

Bilateral FTAs in the region always include standards in their provisions. However, there are two ways to deal with technical measures. The first, which includes the five ECAs signed by Chile with Mexico, Bolivia, Venezuela, Colombia and Ecuador, does not consider explicit disciplines on standards, but rather a general article or chapter promoting economic cooperation in this area (Stephenson, 1998). Chile's agreements with Colombia and Ecuador go one step further, because the text mandates that member countries follow the principles of the MFN treatment, notification and exchange of information, and to utilize international standards when elaborating national ones (see Table 3.4). Furthermore, these two treaties set out the goal of trying to achieve compatibility as between parties on standards, and to seek mutual recognition of their certification system and laboratory testing results.¹⁶

The second way that standards are considered in the region is exemplified by Mexico's agreements with Bolivia and Costa Rica. In these agreements, the parties reaffirm their rights and obligations under the Technical Barriers Trade (TBT) Agreement of the WTO, such as MFN treatment, national treatment, transparency and notification, establishment of enquiry points, and use of international

¹⁴ However, most agreements contemplate safeguard action in the case of balance-of-payments difficulties including NAFTA, the Group of 3, Andean Community and Central America with the Dominican Republic. Bilateral treaties signed by Mexico with Bolivia, Costa Rica and Nicaragua specify that procedures for the establishment of disciplines on safeguards will be further negotiated.

¹⁵ The preparation of standards is carried out in accordance with the Code of Good Practice of the TBT Agreement criteria. Once standards have been approved by the National Standardization Institute (INN) Council, they are usually given official status, though remaining voluntary, by the relevant Ministry by means of Decrees or Resolutions. INN standards are usually based on international standards such as ISO (International Organization for Standardization), IEC (International Electrotechnical Commission) and food CODEX. For example, the INN participates as a member in eight ISO Technical Committees and as an observer in 135 ISO of these committees.

¹⁶ Standards and technical regulations set out specific characteristics of a product - such as its size, shape, design, functions and performance, or the way it is labeled or packaged. The difference between a standard and a technical regulation lies in compliance. While conformity with standards is voluntary, technical regulations are by nature mandatory. Conformity assessment procedures are technical procedures - such as testing, verification, inspection and certification - which confirm that products fulfil the requirements laid down in regulations and standards.

standards. The stated policy objective in these two agreements is to bring about compatibility (Stephenson, 1998).

Table 3.4
Comparison of Policy Objectives Towards Standards
in the Western Hemisphere

	Standards	Technical Regulations	Conformity Assessment Procedures	Certification
Andean Group	Harmonize	Harmonize	Follow International Guidelines	Harmonize Criteria for Certification
MERCOSUR	Harmonize ^a	Harmonize	--	--
CACM	Harmonize	--	--	--
CARICOM	Harmonize	--	--	--
NAFTA	Promote Compatibility	Make Compatible	Make Compatible Seek Mutual Recognition	Seek to Approve or Grant Licenses on Equal Terms
Group of Three	Promote Compatibility	Make Compatible	Make Compatible Seek Mutual Recognition	Seek to Approve or Grant Licenses on Equal Terms
Mexico-Bolivia	Promote Compatibility	Make Compatible	Make Compatible Seek Mutual Recognition	Seek to Approve or Grant Licenses on Equal Terms
Mexico-Costa Rica	Make Compatible	Make Compatible	Make Compatible Seek Mutual Recognition	Seek to Approve or Grant Licenses on Equal Terms
Chile-Colombia	Promote Compatibility	--	Seek Mutual Recognition	Seek Mutual Recognition
Chile-Ecuador	Promote Compatibility	--	Seek Mutual Recognition	Seek Mutual Recognition
Chile-MERCOSUR	Identify Areas for Compatibility	Identify Areas for Compatibility	Seek Mutual Recognition	--

Source: Organization of American States, 1998

^a These objectives are not explicitly set out in the MERCOSUR Treaty but are followed in practice

Chile's agreement with Mercosur presents a compatibility approach. This agreement restates the rights and obligations expressed in the TBT Agreement, although it does not mention specific provisions for standards. Moreover, the parties endeavor to achieve compatibility in the area of standards. As an associate member of Mercosur, Chile tries to retain relative sovereignty on the matter of standards. Therefore, the nature of the commitments is less ambitious than could otherwise be expected.

The Chile-Mexico agreement is guided by provisions and disciplines in Chapter 8 of the FTA that are similar to those of the WTO TBT Agreement.

In all these cases, the FTA provisions include disciplines that extend beyond the TBT Agreement provisions in areas such as transparency, equivalence, mutual recognition, and risk assessment. In addition, Chile's FTAs with Canada and Mexico include provisions on technical norms in telecommunications.¹⁷ Chile and Mercosur have also established a Working Group on Technical Regulations in three sectors: pharmaceuticals, cosmetics, and foods. In the negotiations of an FTA with Central America, a special chapter on this subject was also included. Ongoing negotiations of an FTA with the United States, the European Union and the EFTA also contemplate this topic to be included (APEC 2001). In this way, "a common multilateral basis is being reinforced in subregional arrangements,

¹⁷ Standards-related measures relate to attachment of terminal or other equipment to public telecommunications transport networks.

which would seem to make the adoption of such disciplines by the FTAA an easy matter” (Stephenson 1998).

1.5. Sensitive sectors

Chile also has several “sensitive” sectors to which the government considers it appropriate to apply differential treatment or a protracted schedule for their liberalization.

Chile Mercosur

The Agreement includes special treatment for the agricultural and automobile sectors. In relation to the agricultural sector, Chile is committed not to include new products in its Price List System, nor to modify the mechanisms or to apply them in such a way that it would mean a decrease in the conditions of access to its market by Mercosur countries. Concerning the automobile sector, the Parties expressed their wish that the Administrative Commission should evaluate and propose (before the fourth year of the Agreement, on October 1st, 2000) a treatment to improve the conditions for access to this sector on both markets. This issue is still pending due to the difficulties that Mercosur countries have had in reaching an internal agreement on the automotive regime.

Chile Peru

In reference to the Agricultural sector, a provision excludes the addition of new products either of the Price List System, in force in Chile, as well as of the Specific Variable Rights, applied in Peru.

Chile Colombia

With the operation of the Agreement, the automobile trader is free of import duties. Among the products excluded from the tariff reduction program are the following: bovine, poultry and pork meat, dairy products, leguminous vegetables, wheat, corn, rice, sugar, fish oil and flour, edible oils, chemical and petrochemical products, coal, crude oil and refined fuels, wood fiber panels, ceramics and glass. Since 1997, the whole list of excluded products has been incorporated in a liberalization calendar.

Chile Ecuador

The Agreement considers a list of exceptions that includes 200 items, among them: bovine, pork and poultry meat, dairy products, wheat, corn, rice, edible oils, sugar, coal, crude oil, refined fuels, and tires.

Chile Venezuela

The automobile sector obtained duty-free treatment immediately, starting from the 1st July 1993. The list of excluded products contained 216 items from Chile and 214 from Venezuela. Among those products, this list included milk, cheese, oil, cigarettes, sugar, chemical products, wood and motorcycles.

Chile Mexico

The FTA considers a special regime for the automobile sector, which was liberalized in its entirety on the 1st of January of 1996. Moreover, the FTA complements the market opening achieved through the Economic Complementation Agreement. The Agreement included a list of 99 excluded products from Chile and 84 from Mexico. Both lists have products like: lobster, milk, cheese, oil, and sugar.

Chile Canada

The list of excluded products includes poultry, eggs and dairy products. Chile can have access to a quota provided by Canada that allows for the entrance of these goods without payment of import duties.

2. Trade in services

2.1. Scope trade liberalization of trade in services in the FTAs

Services are increasingly becoming the main area of development of the world economy, since they affect the majority of economic activities, including some referring to the production and distribution

of goods. Among the most important sectors related to trade in services the following have to be mentioned: transportation, telecommunications, financial services, publicity, consulting engineering, energy, entertainment, and tourism. Trade in services are not subjected to tariffs, but are affected by laws, regulations and disciplines that discriminate against foreign services or service providers. The liberalization of services is a relatively new topic. Only in the early 1990s negotiations started and culminated when the General Agreement on Trade in Services (GATS) entered into force on January 1, 1995. All WTO country members are also Parties to the GATS. Fourteen sub-regional agreements contain liberalization programs on trade in services (see Tables 3.5 and 3.6).¹⁸

Chile maintains a “horizontal” limitation, applying to all sectors in its GATS schedule, under which authorization for foreign investment in services industries may be contingent on a number of factors including employment generation, use of local inputs and competition. This contrasts with the relatively open service trade regime that the country is supposed to have. Nevertheless, Chile has made WTO commitments on most basic telecommunications services, by adopting the Fourth Protocol to the GATS on Basic Telecommunications, which include commitments in domestic and international long distance, and the adoption of the reference paper on regulatory commitments. The country also signed the Fifth Protocol to the GATS on Financial Services, thus accepting obligations on market access and national treatment commitments in banking, insurance and other financial services.¹⁹ With regards to air transport services, both passenger and freight, Chile aims to implement an open skies policy through bilateral agreements (APEC, 2001).

A major difference between the WTO and the subregional negotiations on trade in services is that the former follows the “bottom-up” (positive-list) approach while the latter, the “top-down” (negative-list) approach (Prieto and Stephenson, 1998; Stephenson, 2001a). A positive list means a list of items to which the terms of the negotiations apply and everything else is excluded, whereas a negative list means the reverse: everything is liberalized but what is excepted. The former method was agreed on and applied during the Uruguay Round and is established at the multilateral level under GATS. Points of emphasis include the creation of commitments in market access and treatment of foreign providers in specific service sectors. Periodic rounds of negotiations serve to add liberalization in sectors not originally considered. MERCOSUR, with its Protocol of Montevideo on Trade in Services (December 1997), also follows this approach, pushing for common markets in specific timeframes. Mercosur service agreements hope for a higher level of services liberalization, as does GATS, but member countries are also working toward the complete elimination of all barriers affecting trade in services, whatever the sectors.

Chile is more involved in the latter “top-down” approach, which was first pioneered in NAFTA. This method commits the Parties involved to liberalizing all forms of discriminatory treatment faced by all service sectors, excluding certain sectors and measures that are clearly stated in accompanying reservations. The Chile-Mexico agreement uses this approach, as do the Chile-Canada and Chile-Central America agreements. None of the NAFTA-type agreements contain schedule modification procedures because schedules of commitments are not addressed by the agreements in the first place.²⁰

Another differentiating element is an article on *commercial presence* that is contained in the agreements signed by Chile with Mexico and Canada as well as in NAFTA, the Group of 3, Mexico's bilateral agreements with Bolivia, Costa Rica, and Nicaragua, and the Central American/Dominican Republic agreement. This article prohibits any party of a given agreement to require a foreign service

¹⁸ The other trade and integration arrangements contain no provisions specific to services or to the liberalization of trade in services, although definitions on services are set out in the annex to the CARICOM Protocol II. The Chile/Mercosur and Bolivia/Mercosur agreements include a short chapter on services, with a few provisions.

¹⁹ However, during the 1997 WTO financial services negotiations, Chile made commitments neither in asset management services, including the management of mutual funds or pension funds, nor in financial information services. Chile also reserved the right to apply economic needs and national interest tests to the licensing of foreign financial service suppliers. In practice, however, Chile has allowed foreign banks to establish as branches or subsidiaries and to provide the same range of services that domestic banks are allowed. Providers of securities and asset management services have also been allowed to establish 100% owned subsidiaries in the country (USTR, Foreign Trade Barriers, 2001).

²⁰ It is reported that there is still no consensus regarding which approach should be adopted in FTAA. Business representatives from the 34 member countries are split over the issue. Some U.S. civil society and labor groups oppose using a negative-list approach because they believe it later may limit public social policies if exceptions for particular sectors are not built into the agreement.

provider to establish itself locally in order to supply a traded service. This “right of non-establishment” is harmonized within these NAFTA-type agreements.

Table 3.5
Summary of Areas Relevant to Trade in Services (Principles)

AGREEMENT	PRINCIPLES			
	MFN Treatment	National Treatment	Transparency	No Local Presence
Chile-Canada	Yes	Yes	Yes	Yes
Chile-Central America	Yes	Yes	Yes	Yes
Chile-Mexico	Yes	Yes	Yes	Yes
Andean Community	Yes	Yes	Yes	No
GATS	Yes	Yes	Yes	No
MERCOSUR	Yes	Yes	Yes	No
CARICOM	No	Yes	Yes	No
NAFTA	Yes	Yes	Yes	Yes
Group of Three	Yes	Yes	Yes	Yes
Bolivia-Mexico	Yes	Yes	Yes	Yes
Costa Rica-Mexico	Yes	Yes	Yes	Yes
Central America-Dom. Republic	Yes	Yes	Yes	Yes
CARICOM-Dom. Republic	Yes	Yes	Yes	Yes
Mexico-Nicaragua	Yes	Yes	Yes	Yes
Mexico-Northern Triangle	Yes	Yes	Yes	Yes

Source: Sherry Stephenson (2001), “Multilateral and Regional Services Liberalization by Latin America and the Caribbean”, OAS, Washington D.C.

Table 3.5 shows that the agreements signed in the Western Hemisphere are rather homogeneous in terms of basic principles on liberalization of trade in services, and those signed by Chile are no exception. Except for the CARICOM Protocol II, all fourteen sub-regional agreements contain obligations in both Most-Favored-Nation (MFN) treatment and National Treatment. Such uniformity stresses the importance of these two principles in trade in services. Those agreements following the NAFTA model treat them as unconditional principles. One more relevant principle to service trade is *transparency*, which is mentioned in all of the agreements. Such articles require the publication of measures relevant to trade in services, and in some cases the notification of said measures. The NAFTA-type agreements go further, sometimes requiring the notification of changes in existing laws and proposals for such change. In the case of Canada-Chile FTA, both governments agree to monitor the ongoing implementation process and to seek further opportunities for liberalization following implementation (WTO 1997).

Table 3.6
Summary of Areas Relevant to Trade in Services (Rules and Disciplines)

AGREEMENT	RULES AND DISCIPLINES (AREAS OF CONVERGENCE)				
	Domestic Regulations	Recognition	Quantitative Restrictions	Subsidy Disciplines	Denial of Benefits
Chile-Canada	Yes	Yes	Yes	No	Yes
Chile-Central America	Yes	Yes	Yes	No	Yes
Chile-Mexico	Yes	Yes	Yes	No	Yes
Andean Community	Yes	Yes	Yes	No	Yes
GATS	Yes	Yes	Yes	Future	Yes
MERCOSUR	Yes	Yes	Yes	Future	Yes
CARICOM	Yes	Yes	Not Specified	No	Yes
NAFTA	Yes	Yes	Yes	No	Yes
Group of Three	Yes	Yes	Yes	No	Yes
Bolivia-Mexico	Yes	Yes	Yes	No	Yes
Costa Rica-Mexico	Yes	Yes	Yes	No	Yes
Central America-Dom. Republic	Yes	Reference: GATS	Yes	No	Yes
CARICOM-Dom. Republic	Yes	Yes	Yes	No	Yes
Mexico-Nicaragua	Yes	Yes	Yes	No	Yes
Mexico-Northern Triangle	Yes	Yes	Yes	No	Yes

Table 3.6 (continue)
Summary of Areas Relevant to Trade in Services (Rules and Disciplines)

AGREEMENT	RULES AND DISCIPLINES (AREAS OF DIVERGENCE)				
	Standard of Treatment	of Investment	Monopoly Disciplines	General Safeguards	Modification of Schedules
Chile-Canada	Yes	Separate Chapter	Yes	No	---
Chile-Central America	Yes	Bilateral Agreement	Yes	No	---
Chile-Mexico	Yes	Separate Chapter	Yes	No	---
Andean Community	No	Decisions 439 and 291	Separate Decision	No	---
GATS	No	Within GATS	Yes	Future	Yes
MERCOSUR	No	Separate Protocols	Separate Protocol	No	Yes
CARICOM	No	Within Protocol II	Separate Protocol	Yes	Not Specified
NAFTA	Yes	Separate Chapter	Yes	No	---
Group of Three	No	Separate Chapter	Yes	No	---
Bolivia-Mexico	No	Separate Chapter	No	Future	---
Costa Rica-Mexico	No	Separate Chapter	Future	Future	---
Central America-Dom. Republic	No	Separate Chapter	Yes	Future	---
CARICOM-Dom. Republic	No	Separate Chapter	Yes	No	---
Mexico-Nicaragua	No	Separate Chapter	Future	Future	---
Mexico-Northern Triangle	No	Separate Chapter	No	Future	---

Source: Sherry Stephenson (2001a), "Multilateral and Regional Services Liberalization by Latin America and the Caribbean", OAS, Washington D.C.

The *coverage* of service sectors is also comprehensive in all of the agreements concluded in the Western Hemisphere, containing substantive provisions on trade in services, with very few specific exceptions, although country-specific exceptions can be made for certain service sectors; these exceptions are stated in a list of reservations to a given agreement.²¹

With regard to the rules and disciplines in trade in services, there are also some areas that are uniform in many of the agreements. *Domestic regulation* is one of them; while GATS recognizes the need for WTO members to regulate their services to achieve national objectives, it stipulates that these regulations must be transparent and run with due process. Laws governing services must not be more obstructive to trade than necessary, and members must explain the objectives upon request, allowing trade partners to comment upon them. Mercosur follows a similar provision. Neither NAFTA nor the NAFTA-type agreements contain an article on domestic regulation *per se* in their chapter on trade in services. Instead, these agreements contain a version of the GATS provision that is more narrowly focused and applies only to the licensing and certification of professional service suppliers.

The *mutual recognition* of licenses and certificates is also an area of convergence in rules and disciplines. This allows service providers to consider different aspects of these issues and allows other WTO members their accession to the agreements. However, some critics refer to the lack of transparency

²¹ The exceptions are generally confined to air transport services (routing), and services that are carried out in the exercise of government functions on a non-competitive basis.

and the deficient application of the MFN clause in reference to *mutual recognition*, which affects market access opportunities, particularly for developing countries. *Quantitative restrictions* is another, which deals with non-discriminatory measures that, in the case of the NAFTA-type agreements, may be added or removed via negotiations and notifications. None of the agreements contain provisions in *subsidy* disciplines, while all allow member countries to deny the benefits of the agreement to services that are under its juridical power.

The possibility for general *safeguard* action with respect to services is not contained in the trade and integration agreements of the Western Hemisphere, though it is found in the GATS. None of the agreements signed by Chile contain an article on general safeguard action. Some of the other agreements, however, do contain such an article or allow for future regulation to be developed.²² On the other hand, general provisions on *dispute settlement* for services are contained in all of the agreements. The Chile/Canada agreement contains additional provisions on dispute settlement in the chapter on Temporary Entry of Business Persons.

When viewing all of the sub-regional agreements made in trade in services, there are also some areas of divergence. However, within the scope of the agreements involving Chile, these areas are consistent, and very often different from the rest of the agreements. Furthermore, these areas tend to be similar to those of NAFTA, which prove the foundational relationship between this agreement and those signed by Chile. They include a “*standard of treatment*” clause that requires members to provide service providers of other member countries the better treatment afforded by the principles of MFN and National Treatment. None of the other agreements deal with such provision.

The treaties that Chile has agreed to also consistently set out disciplines on *monopoly* service providers, ensuring that monopoly suppliers do not abuse their position in the market, or perform actions inconsistent with the WTO guidelines assumed by a member. State-owned enterprises are also included in these advanced agreements.

Many agreements have provisions that deal with the relationship between services and investment. While GATS and Mercosur include these within the agreement, NAFTA and the NAFTA-type models including the ones involving Chile set out the rules and disciplines in investment in a separate chapter. These provisions allow for incoming flows of investments from member countries, implementing country-specific exceptions when necessary. The agreement between Chile and Central America has the unique characteristic of bilateralism, containing bilateral investment treaties for each Central American country and Chile.

Chile Mercosur

The Chile/Mercosur agreement considers the treatment of services, investments, foreign trade regimes, consumer protection and physical integration. Moreover, the Agreement establishes that the International Land Transport Agreement of the Southern Cone and its amendments will regulate transportation, and recommends that the Administrative Commission should identify those Agreements celebrated under the Mercosur framework which could be of common interest.

Chile Ecuador

On a general basis, the Agreement establishes rules referring to the services sector where both sides pledge to promote the improvement of the conditions for supplying services from one country to the other.

Chile Mexico

Among the issues covered by the FTA there are institutional regulations, investments and services, air transport, telecommunications, market access, rules of origin, safeguards, etc. The inclusion of new issues such as financial services is still pending.

²² However, safeguard action in the case of balance-of-payments difficulties is foreseen in most agreements including NAFTA, the Group of 3, Andean Community and Central America with the Dominican Republic. The bilateral treaties signed by Mexico with Bolivia, Costa Rica and Nicaragua specify that procedures for the establishment of disciplines on safeguards will be developed.

2.2. E-commerce

Electronic commerce is quite a new issue that involves the interchange of goods through the Internet. At the multilateral level, there is no treatment of this subject and agreement on its regulation that it is not in place to ensure the development of related activities. In Chile, some programs have been put in place for the development of E-commerce for small and medium enterprises. The Government has intended to develop legal and administrative innovations and to introduce reforms that allow to approach this topic, advancing in different areas like the electronic signature bill that is in the final process of approval by the Congress.

3. Dispute Settlement Mechanisms

The most important advance in the area of establishing fair trade in the world economy was the introduction of new rules and effective mechanism for settlement of disputes under the framework of the WTO. The Dispute Settlement Body of the WTO is a central organ in the areas of trade dispute settlement and controversy resolution (DIRECON, 2000). Chile has availed itself of the services of the Dispute Settlement Body numerous times, both for consultation as well as at the highest levels of panels.

Regional FTAs also have disciplines related to a general mechanism to settle investment disputes between member countries. Nonetheless, sometimes a specific institutional arbitration mechanism is preferred, particularly when an investment mechanism is involved. These specific mechanisms can be, for example, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) or the United Nations Commission on International Trade Law (UNCITRAL). The rule of thumb is that most agreements urge investors and host countries to solve the dispute by themselves via consultations and negotiations. In fact, the usual procedure is to require a certain elapsed period before the dispute can be brought to arbitration, or allow the investor to bring disputes to local courts of the host state. In the case of Chile's investment agreements the right to submit a claim is assured to foreign investors, either before local courts or before international tribunals, such as ICSID or UNCITRAL.

In the bilateral agreements mechanisms for dispute settlement are not always negotiated and in some cases, when they exist, they do not have necessarily an arbitration and mandatory character, although the tendency is to advance in that direction. (Direcon, 2001)

Chile Peru

The Agreement also includes a system of dispute settlement to solve all differences that may arise between both countries.

Chile Venezuela

The ECA N°23 presents a dispute settlement scheme that defines a process with three stages: consultation, study and negotiation, and solution by arbitration, when the controversy cannot be solved in the previous stage.

Chile Mexico

This agreement also establishes an efficient system for dispute settlement that allows the resolution of the problems that may arise among the Parties in the bilateral trade in a clear and transparent way.

Chile Canada

If some conflict arises during the duration of the Agreement, the part that considers itself affected will be able to opt between a WTO dispute settlement procedure or the one of the Treaty.

4. Specific Trade-related Issues

4.1. Investments Rules

The fast increase in portfolio investment and FDI flows to Latin America and the Caribbean motivated an increasing interest towards the establishment of bilateral and regional agreements dealing with investment. More than seventy bilateral investment treaties (BITs) were signed within the hemisphere in the past decade. Most of these agreements deal with standards of treatment of investment and investors, laws and regulations of the host state regarding the admission of investments, and dispute settling mechanisms. However, several agreements go beyond this scope by including a right of establishment and a list of reservations. This is in contrast to a general exception, which deals with entire sets of obligations instead of being a country-specific list. Chile-Mexico and Chile-Canada FTAs share the same approach as NAFTA and the Group of 3. These agreements incorporate a market access component to the protection element.

During the 1990s, Chile has negotiated a large number of BITs that are officially called Investment Promotion and Protection Agreements (IPPAs) and/or Agreements on Double Taxation with almost all countries in the Western Hemisphere (see Table 3.1 again). The country is also currently negotiating or has negotiated IPPAs with a large number of countries in other parts of the world including the APEC economies. With respect to APEC, IPPAs with Australia, China, Republic of Korea, Malaysia, and the Philippines have been in force, while the ones with Indonesia, New Zealand, and Vietnam are awaiting ratification. Those under negotiation are Singapore, Thailand and Russia (APEC 2001). Japan has not entered into a BIT with Chile. In the case of Mexico and Canada, Investment Chapter of the Free Trade Agreement guarantees those rights and stipulates corresponding obligations. In recent years, Chile has implemented an active policy in Double Taxation Treaties, signing agreements with some APEC economies, among others, Mexico, Canada and Peru.

The principles that have led the development of Chile's investment regime in the 1990s are said to be the following: i) National Treatment; ii) MFN; iii) no performance requirement; iv) no restrictions on the appointment of senior management and directors; and v) a possibility of resolving disputes by international arbitration. Those remaining measures which may still restrict such general principles are found in the sectors or sub-sectors of privatization, aboriginal affairs, oceanfront land ownership, telecommunications, transport networks and services, radio communication and submarine cables, fisheries, government services (APEC 2001). Several additional issues are incorporated in some of the agreements that deal with newly discussed components of trade. For example, there are provisions in the Chile-Canada FTA that prevent investment activity from harming domestic health, safety, and environmental concerns.

A key characteristic of a BIT is its definition of investment, which makes up its substantive scope. Most agreements involving the countries in the hemisphere adopt a "broad, open-ended, asset-based" definition of investment.²³ For instance, in the Chile-Canada and Chile-Mexico agreements, the definition encompasses portfolio as well as direct investment, including loans to enterprises. However, some agreements try to avoid specific monetary and speculative flows that are not related to investments. The Chile-Canada FTA is one of them, excluding "real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes," (Robert 2001).²⁴ As for which investors are covered by an agreement, both bilateral FTAs signed by Chile consider the place of incorporation of a company to determine its nationality, as do NAFTA and the Group

²³ There are some exceptions to this rule; for instance, CARICOM's Protocol II does not define investment, while Decision 291 of the Andean Community covers only foreign direct investment.

²⁴ One of the difficult areas in negotiation relating to the definition of investment between Chile and Canada was the *encaje* policy of capital control by Chile. This policy required that a certain percentage of foreign loan funds must be placed in non-interest-bearing account at the Central Bank of Chile for one year. This policy also applied to foreign borrowings by Chilean funds. The Chilean authorities argued that the objective of this policy was to regulate speculative capital inflows. Other countries including Canada, however, argued that this raised total cost of business and could discourage foreign direct investment. The deposit requirement was reduced from 30% to 10% in June 1998 and to zero two months later. The *encaje* system was later abandoned in 2001.

of 3. Other agreements use the location of the management or seat of the company, or the nationality of the people controlling the company, as the criteria for investor coverage.

When it comes to general standards of treatment, almost all the agreements incorporate provisions on fair and equitable treatment. Such standard is unrelated to the domestic laws of member countries, and is usually combined with the principle of full protection and security or that of non-discrimination. The Chile-Canada FTA provides for disciplines on non-discriminatory treatment through national treatment and MFN clauses. In addition, this FTA carefully limits the conditions for expropriation and guarantees investors of both parties fair and adequate compensation if an expropriation were ever to occur; it insures that the interests of investors are protected when a host country expropriates their investment. It also allows investors to take advantage of investor-state dispute settlement provisions that offer access to expedient international arbitration procedures.²⁵

As mentioned earlier, the Chile-Canada and Chile-Mexico agreements add a right of “establishment” factor to this standard, and they require national treatment and MFN treatment. Most NAFTA-type agreements grant investments and investors the better of national and MFN treatment.²⁶ Most agreements also contain exceptions to the rule, such as treatment at federal and sub-federal levels in NAFTA. The Chile-Canada and Chile-Mexico agreements likewise have a general exception for taxation treaties, which covers not only the investment chapter but also the entire agreement (Robert 2001).

In addition, the NAFTA-type agreements prohibit performance requirements for both goods and services. Most bilateral agreements, however, do not address the issue. Once again, the Chile-Canada and Chile-Mexico agreements are special in that they prohibit requirements in levels of local content, purchase of local goods and services, foreign exchange balancing, domestic sales, export percentages, technology transfer, and supplier exclusivity as conditions for “establishment, acquisition, expansion, management, conduct, or operation of a covered investment.” Some of these areas are also prohibited from subsidies or investments.

Other rules in foreign investment exist, including key personnel treatment and expropriation. The former is adopted by those treaties signed by the United States and Canada (e.g. the Chile-Canada FTA), allowing temporary entry to those managers and other personnel relating to an investment.

Chile Peru

Regarding investments, the Parties committed themselves to grant national treatment to the investments of the other country and to study the possibility and convenience of celebrating an Agreement to avoid double Taxation.

Chile Ecuador

As regards investments, the countries expressed their will of promoting the establishment of companies of the other part in their territories and put themselves under a reciprocal obligation to grant in their domestic legislations the best treatment to the capitals of the other signatory country, either corresponding to national or foreign capital. Consequent with this spirit, the Parties signed an Agreement on the Promotion and Protection of Investments.

Chile Venezuela

Concerning investments, the countries committed to promoting their development with the purpose of encouraging the establishment of companies in their territories and they put themselves under a reciprocal obligation to grant in their domestic legislation the best treatment to the assets of the other

²⁵ The most controversial arrangement of this type is Chapter 11 of NAFTA (for more details see Chapter IV of this paper). This chapter provides a broad set of investor protection and investment liberalization rights to foreign investors, and obligations for governments. It contains an investor-state dispute settlement process, which has been strongly criticized by civil society groups. The investor-state arbitration process is initiated directly by the foreign investor against the host government, with little information and transparency provided to the public (IISD and WWF 2001). The results of the process are binding on both participants, and there are limited opportunities to appeal or review a decision. As of April 2001, there were 17 such cases that have been initiated.

²⁶ In contrast, the Andean Community and CARICOM do not include an MFN provision.

signatory country, either corresponding to national or foreign capital. It is necessary to point out that the Parties also subscribed an Investment Promotion and Protection Agreement (IPPA).

Chile Canada

The negotiation on services and investment in the different economic sectors does not mean for Chile any change regarding its current legislation. In general terms, non-discriminatory treatment is included to the cross-border trade of services and appropriate protection is provided to Canadian investments in Chile as well as for Chilean investments in Canada.

4.2. Intellectual Property Rights

When this topic is included in international agreements, the signatory Parties usually look for the protection of copyrights, trademarks and denominations of origin, among others. In the international scenario there are a series of agreements, some of which have been ratified by Chile like the Convention that established the World Intellectual Property Organization (WIPO) (1976).

The system of intellectual property that is in place in the country recognizes the division between Industrial Property and Copyrights. There are different juridical statutes for each one of them. As a member of the WTO and according to the commitments held with this organization, Chile is modifying its legislation to adapt it to the international normative or the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS of the WTO). At the present, there are two bills in the National Congress with the purpose of making the corresponding modifications.

Chile has identified five spheres of incompatibility: i) to specify in the legislation the right of authorizing the commercial lease of computer programs; ii) the duration of a patent is of 15 years from the date of its concession and not 20 years from the date of presentation of the application; iii) under the Chilean Patent Law there are no specific dispositions to make the patent given to the product extensive to the product manufactured with the same process; iv) it is not contemplated in the legislation the reversal of the burden of proof in the event of infraction of patents given to productive process, for this reason the judicial authorities are not authorized to order the defendant to prove that the procedure to obtain an identical product is different from the patented procedure; and v) integrated circuits do not have a legal system of protection.

Chile Mercosur

The Agreement establishes the commitment of stimulating the development of combined actions with a view to the execution of cooperation projects in the areas of scientific and technological research.

Chile Peru

The Agreement establishes the obligation of the Parties of granting an appropriate protection to the intellectual and the industrial property in the legislation of both countries.

Chile Ecuador

Both countries committed themselves to grant an appropriate protection to the intellectual and the industrial property inside their respective legislations. The Agreement contains a broad commitment of the countries to facilitate and to favor combined initiatives to promote the development and the transfer of technologies, centering on the Basic Agreement of Scientific and Technical Cooperation, signed by the Parties in 1993. Similarly, the agreement sets up the implementation of specific projects of cooperation and technical assistance in sectors of high-priority, particularly, among the national entities of science and technology, universities and research centers.

IV. The ongoing bilateral and plurilateral negotiations

Chile has started several negotiating processes comprising free trade agreements (FTAs), agreements on double taxation and investment promotion and protection agreements. In parallel to these bilateral initiatives, the country participates actively in the Asia-Pacific Economic Cooperation (APEC) Forum and in the negotiations for the creation of the Free Trade Area of the Americas (FTAA).

In addition, in April 2000, Chile began negotiations aimed at the creation of an FTA with the European Union. Similar negotiations are underway with the Republic of Korea. Efforts are also being displayed for a FTA with the European Free Trade Association (EFTA), New Zealand, Australia, Singapore and Japan. In early December 2000, Chile began negotiations on a FTA with the United States, also envisioned as a NAFTA-style pact. The negotiations for a FTA with the United States are likely to act as a catalyst on the establishment of the Free Trade Area of the Americas (FTAA). In the following sections, those four negotiating process will be discussed.

1. United States

Chile and the United States initiated negotiations for an FTA in December 6, 2000. Since that date to the end of the year 2001, nine rounds of negotiation took place. The negotiations are expected to conclude in mid 2002. The Chilean government believes that the Chile-United States agreement could provide an impetus to the FTAA negotiations since the country's objectives insofar as FTAA and the United States are concerned are similar: to open up markets, establish trade and investment norms and regulations, and implement an efficient and practical conflict-resolution mechanism (www.direcon.cl).²⁷

The complexity and the degree of comprehensiveness of ensuing negotiations can be appreciated by looking at what issues are being negotiated between the two countries. In the sphere of merchandise trade, market access, rules of origin and customs procedures are the major issues. In the area of trade remedies, safeguards, anti-dumping and countervailing duties are being negotiated. Sanitary and phytosanitary issues, technical specifications and standards, are the major negotiation areas with respect to norms and standards. In trade in services and investment, practically all areas are covered including the treatment of transport, telecommunications, advertising and consulting services. It is important to note that financial services as well as electronic commerce, and business visas are being discussed separately. Other trade-related issues include competition policy, intellectual property rights, and government procurement. As a comprehensive FTA, institutional aspects such as transparency and dispute settlement are also being considered. Furthermore, labor and environmental issues are also addressed. While all the above-mentioned standards and disciplines should be consistent with those of the WTO, the Chilean government aspires to go much further. "One of the merits of a bilateral agreement is that it allows for a much more in-depth analysis of certain topics than is possible in a scenario in which there are more than 140 members, such as the WTO" (www.direcon.cl).

In spite of many rounds of negotiations, both countries are still at odds over the extent of the initial tariff cut.²⁸ Chile has argued for an ambitious schedule that would cut tariffs to zero on 85% of trade as soon as the FTA goes into effect. Under the Chilean plan, tariffs on the remaining 15% would be phased out over five or ten years. On the other hand, the United States envisages a much more modest schedule, with an immediate zero tariff applied to two-thirds of trade. The United States is not necessarily

²⁷ The economic implications of the FTA for Chile are obvious because the United States is Chile's top trading partner. On the other hand, Chile is currently ranked 32nd in United States imports.

²⁸ The original proposal of the United States was to immediately eliminate US tariffs on two-thirds of imported Chilean products as soon as the FTA takes effect. On the other hand, the Chilean officials argued that the proposal was not sufficient since it was slightly more than the volume of Chilean products that already enter the US market duty-free under the unilateral tariff preferences or the MFN rate. The U.S. proposal divided the remaining one third of Chilean exports to the U.S. into three baskets: one which contains goods eligible for a short-term tariff phase-out; another that would be eligible for a long-term tariff phase-out; and a third which would consist of sensitive products for which tariff reduction has yet to be decided. In contrast, Chile offered a proposal with three groups each that would benefit from immediate phase-out, 5 and 10 years phase-outs, and a group of sensitive products that would be to be decided. The majority of items that the United States placed for immediate tariff elimination are already at zero tariff, which means that the U.S. basket would add actually as little as 2% of current trade to that category.

advocating or excluding a phase-in that is longer than ten years. Though the two sides have settled for three tariff phase-out phases “immediately” upon agreement, after four and eight years they will yet have to divide products among those “baskets”. More importantly, negotiators have yet to decide how to deal with products in a “fourth basket”, which on the U.S. side includes key Chilean agricultural products sensitive for U.S. producers (Inside U.S. Trade, 2001b; 2001e; 2001g; 2001j).²⁹

On agriculture, Chile made known that it will not insist on the elimination of domestic support by the United States as part of the agreement, but that it pushes for a deal to enable it to maintain the price-band system of tariffs on some of its own sensitive agricultural commodities, including sugar, vegetable oil, and wheat (2001e). Both countries will likely explore transitional tariff-quotas based on the model of NAFTA for certain agricultural products. Under NAFTA, the sugar tariff-rate quota establishes a quota for duty-free access with built-in progressive reductions for the over-quota tariff.

In the area of investment, both parties have not reached an agreement on the extent to which the U.S.-Chile FTA should reflect broad investor protections that are included in the NAFTA. Business groups in the United States call for investment provisions modeled after the NAFTA to be included in the FTAA and bilateral agreements with Chile and Singapore. The major issues include guarantees of non-discriminatory and fair and equitable treatment, protections against government actions that amount to expropriation of investment, and provisions allowing investors to sue host governments for damages at arbitration panels. U.S. environmental, labor and consumer NGOs are concerned that investment rules could undermine a government's ability to act in the public interest. Their biggest concern is over the prospect that private investors would be given direct access to investor-state dispute settlement to challenge government non-compliance with FTAs. Governments may be required to compensate for the investor monetary damages if the investor's complaint is upheld in an arbitration panel (Inside U.S. Trade, 2001f; 2001k).

The longstanding effort of Canada and Mexico to clarify Chapter 11 not only calls for a more transparent arbitration process, but also to seek to limit how expropriation prohibitions and guarantees of fair and equitable treatment can be used to limit governments' legitimate regulatory authority, especially on environmental matters. The Canadian authorities, for example, have argued that expropriation of investment, which requires compensation, is different from interference with an investment, which does not. Furthermore, Canada argues that the obligations of Chapter 11 should in no way be read to unduly restrict the governments' ability to legislate for the public good, for instance, where the environment or the health of their citizens are involved. The Bush administration will have to formulate a position on this issue if it wants to put forward modified NAFTA investment-language in the U.S.-Chile FTA.

It seems that in the negotiations to date the United States is advocating a “product-specific” approach to preferential rules of origin in the FTAA, the Chile FTA and the Singapore FTA. This approach requires negotiators to establish for each product or product sector, the degree of working or processing necessary within the parties of the agreement to transform non-originating component materials into originating goods eligible for preferential tariff treatment. As discussed earlier, the NAFTA predominantly adopts a product specific “tariff shift” approach, whereby the degree of working or processing is represented by a specified change in HS system tariff classification for each product or sector. This approach is contrasted with rules of origin based on a single generally applicable rule, such as a single uniformly applied “tariff shift” standard or a “regional value content” test that has been applied by Chile as in Mercosur. The United States thinks that the former approach not only provides more certainty and transparency, but also compensates for a deficiency of the HS tariff nomenclature in which a shift does not necessarily reflect a particular transformation for a product (USTR, Federal Register, May 4, 2001).

In the area of services, the United States and Chile reportedly have agreed to a negative list approach and the two sides have exchanged a list of reservations of service sectors that they do not want to liberalize through the FTA process.³⁰ Negotiations include financial services and temporary entry

²⁹ The U.S. proposal was reportedly to have included some key Chilean exports like wine and salmon on the U.S. “sensitive” list.

³⁰ The United States advocates the negative-list approach in FTAs, arguing that though it is ambitious, it provides countries with flexibility to deal with domestic sensitivities by scheduling reservations.

groups. In the former, one of the most difficult areas in negotiation so far has been insurance and asset-management for Chile's privatized pension system. It has been reported that the U.S. mutual fund firms and other financial companies are seeking to compete with Chilean firms in handling pension investments and wish to phase out all restrictions on where these funds can be invested. American firms want the Chilean rules changed so that Chileans will have the choice to select an American firm to handle the voluntary part of the investments (savings of additional funds). In addition, they desire to be able to be hired by AFPs (Pension Fund Administrators) to administer individual accounts in the mandatory portion (i.e., a mandatory savings program administered through employers that is administered by private Chilean financial firms). Currently, only 20% of the funds in the mandatory system can be invested abroad. On insurance business, U.S. firms are interested in being able to operate as branches, where Chile currently allows only operation through wholly owned subsidiaries or in joint venture with Chilean partners. In addition, American firms are pushing Chile to adopt "best practices" in regulating insurance to ensure transparency and speed up the introduction of new products into the market (Inside U.S. Trade, 2001a).

On government procurement, both sides agreed to exchange offer lists on what types of projects will be opened to bidding from foreign firms. Issues remaining in this area include, among others, whether foreign companies can bid on federal, state or local projects, and the extent to which bidding would be open to some aspects of defense contracts.

The United States has expressed interest in handling electronic commerce in both the Chilean and Singaporean FTA. The latest WTO ministerial declarations asked countries to work until 2003 on the institutional arrangement for discussing future rules applicable to e-commerce and, in the meantime, to refrain from imposing duties on ecommerce transactions. As of November 2001, before talks in Miami, the United States had not yet tabled a proposal for handling labor and environment issues (Inside U.S. Trade 2001c)³¹

2. European Union

The current relationship between the European Union (EU) and Chile is based on the 1996 Framework Co-operation Agreement with Chile. The institutional mechanism consists of a Joint Commission. The Framework Agreement covers political, trade and economic co-operation but aims mainly at the preparation of the Association Agreement with the EU, which should include a liberalization of all trade in goods and services, as well as an enhanced form of co-operation and a strengthened political dialogue. Later, the Heads of State and Government of the EU and Chile officially launched the EU-Chile association negotiations during their first Summit meeting on 28 June 1999 in Rio de Janeiro. Practical negotiations started in November 1999 in Brussels, when Chilean and EU negotiators adopted an agreement on the structure/methodology/calendar for the negotiations. Since April 2000 there have been nine negotiating rounds and there is a preliminary date for signing the agreement, in May 17, 2002 (www.europa.int).

Three technical groups were created: trade, services and competition policy. Their mandate was basically to facilitate exchange of information. The group on trade includes issues such as tariff and non-tariff measures, rules of origin, and customs procedures. The second group is concerned with investment, movement of capitals, services and intellectual property rights. The third group encompasses competition policy, dispute settlement mechanisms and government procurement. The first rounds of discussion led to a consensus on general principles for the whole negotiation, on the political dialogue, as well as on co-operation in economic, social and cultural matters. As for trade issues substantive discussions took place with regard to all aspects of the agenda and considerable progress was made so as to allow for the exchange of negotiating texts for many non-tariff issues at the fourth rounds.

Recently, the European Commission's negotiating mandate for an Agreement on Science and Technology with Chile was approved (European Union, 2001). In the fourth round of discussion a

³¹ The Office of USTR has sought comment on the draft environmental review of the proposed U.S.-Chile FTA (the draft review is available www.ustr.gov/environment). The Office of USTR requested public comments regarding the scope of the environmental review, including the potential environmental effects that might arise from the Chile agreement and the potential implications for environmental laws and regulations. The final review will be made publicly available on the conclusion of the agreement negotiations.

consensus was generated that the co-operation in this area shall aim in particular to promote the dialogue on the various issues of the information society, including the promotion and the monitoring of the information society emergence; co-operation on regulatory and policy aspects of telecommunications; exchange of information on standards, conformity assessment and type approval; dissemination of new information and communication technologies; joint research projects on ICT and pilot projects in the field on information society applications; promotion of exchange and training of specialists (in particular for young professionals); exchange and dissemination of experiences from government initiatives which apply information technologies in their relationship with society. Other areas of cooperation are on intellectual property rights and data protection, co-operation in services and fisheries, co-operation in agriculture and rural affairs, co-operation in customs procedures, financial and technical co-operation; social co-operation and social integration, co-operation related to gender issues, co-operation in the audio-visual area, cooperation in the participation of civil society, and on triangular and bi-regional co-operation, among others.

The basic objectives of trade negotiation include a substantial, reciprocal and bilateral trade in goods and services in conformity with WTO rules, the improvement in the conditions of access to government procurement in goods, services and public infrastructure, the creation of an open and non-discriminating environment for investment, the adequate and effective protection to intellectual property rights, the establishment of an adequate and effective competition policy and adequate disciplines in trade remedies as well as of a binding mechanism of dispute settlement.

The Chilean framework relative to tariff reduction contains ten basic principles. Among them, the compatibility with WTO rules, greater liberalization of bilateral trade, consideration for sensitive Chilean sectors, exclusion from tariff reduction subsidized products in the counterpart economy, no a priori exclusion of any product, to reach 100% of tariff items. The timetable for the liberalization in the Chilean proposal includes three tariff schedules: those for immediate liberalization, five and ten years. On the other hand, the EU contemplates the elimination of all non-tariff measures, from the implementation of the Agreement, as well as the conclusion of phytosanitary and technical measures to trade agreements.

In the agricultural sector, the European proposals for tariff reduction can be divided in six categories: the first five categories comprise a trade of roughly 650 million Euros that account for 86% of bilateral trade in agricultural products levied with import duties. The total coverage is of 708 million Euros and 93% of total agricultural bilateral trade. The categories are the following: i).immediate liberalization (apples and pears); ii) elimination of tariff in four stages over a period of four years (table grapes and plums); iii) elimination of tariffs in seven years and seven stages (currants and other berries); iv) elimination of tariffs in 10 years and 10 stages (honey, peaches, nectarines and tangerines); and v) progressive elimination of tariffs for wine and spirits in parallel to specific agreements for those products. Finally the category (vi) corresponds to the most sensitive products that will be subject to ad valorem and specific duties. In the Chilean case, the most important products in this category are goat, sheep and poultry sectors, which will be negotiated on a case-by-case basis.

In relation to manufacturing products, the European offer comprises 100% of industrial merchandize, with the total elimination of tariffs with a maximum period of seven years and in three stages, according to the type of product. At the moment of implementation of the agreement, almost 93% of Chilean exports to the EU will have duty-free access (2,636 millions Euros). After a second stage (42 millions Euros) and a third stage (160 million Euros) all Chilean industrial exports will receive a duty-free treatment.

Concerning trade in services, EU proposes that all services are included in a FTA with a substantial liberalization from the moment of implementation of the agreement, including financial services, which is a sensitive issue for Chile. The Chilean government aims at a separate chapter for this issue that will include its own mechanism for dispute settlement (*El Mercurio* 2002a). Also, the EU wants a wide program of liberalization in government procurement in goods and services, both at national and subnational levels, that will include public enterprises.

One of the controversial topics refers to sea products since the process of trade liberalization is associated with access to Chilean marine resources. The European offer covers all fishing items. All imports will be duty-free after a period of transition of 10 years and four stages of liberalization also by groups of products. The position of Chilean government is that only ships with Chilean flag can fish in Chilean waters (*El Mercurio* 2002b). Another area of contention refers to liquors and geographic origin.

3. Other negotiations process

3.1. Republic of Korea

The first step towards a Free Trade Agreement between Chile and the Republic of Korea was made in 1997 when the Korean government proposed it to Chile. The idea of an FTA was posed again to Chile during the Leaders Meeting of the APEC in November 1998. In April 1999, Chile received a formal petition from the Republic of Korea. Subsequently, it was announced at the APEC meeting in Auckland, in September 1999, that Chile and the Republic of Korea had officially decided to make all the necessary efforts in order to achieve an FTA with the purpose to strengthen and extend the economic cooperation between the two countries, to promote the material welfare of both countries, to enhance the competitiveness of their respective entrepreneurial sectors in global markets, through a closer cooperation between the two countries. The FTA should encompass substantially all trade, including trade in services, with the highest possible degree of liberalization, as well as rules in investment and the protection of intellectual property rights.

High-level working group meetings were held twice, in April and June of 1999. In December 1999, at the first official negotiation meeting, the two countries agreed to hold four more negotiation meetings in the year 2000. While the second and the third negotiation meetings were held in February and May 2000 as scheduled. The “blueprint” for this agreement was the FTA between Chile and Canada and Chile Mexico. Five technical groups analyzed the FTAs text: market access, investment and services, phytosanitary barriers, technical standards, trade matters and institutional issues.

The fourth negotiation meeting expected to be held from 25 to 28 July 2000 was postponed due to the disagreement on the issue of concessions in agricultural goods, due to the Korean request to exclude from the negotiations several agricultural products (apples, grapes, kiwi, among others). Afterwards, in the APEC meeting held in 2000, the presidents of the two countries decided that further work on technical groups should be carried out to solve those pending problems. Although the problems persist, the last meeting of the market access group was held in Santiago, in March 2001, and the negotiators are exchanging negotiation drafts.

3.2. European Free Trade Association (EFTA)³²

In 1999, started by Swiss initiative, representatives of the EFTA and the Chilean government met to analyze the possibilities of negotiating an agreement with the purpose of creating a free trade area between the two Parties. The first meeting was held in December 2000 in Geneva with an agreement that a FTA be concluded in the first half of 2002 (EFTA; www.efta.int). The first negotiating rounds established the general principles and objectives, in economic, commercial, legal and institutional areas that should be covered in the treaties, as well as the creation of a negotiating committee, as the high-level organism and four negotiating groups: trade in goods, services and investment, common rules, and legal and institutional aspects.

The first group is focused on the revision of trade and non-trade issues (for agricultural, fishing and industrial products), rules of origin, custom procedures, technical measures, sanitary and phytosanitary norms, safeguards, antidumping and countervailing measures. The Group on services and investment should negotiate the liberalization of those two areas whereas the group on common rules deals with intellectual property rights, government procurement, and competition policy. The team that will

³² The European Free Trade Association, EFTA, is an international organization comprising four states: The Republic of Iceland, The Principality of Liechtenstein, The Kingdom of Norway and The Swiss Confederation. EFTA has headquarters in Geneva and offices in Brussels and Luxembourg (www.efta.int).

negotiate legal and institutional issues will draft the structure of the agreement, institutional provisions, provisions on the mechanism of dispute settlement, final dispositions and legal revision. The negotiations between Chile and the European Union will be a parameter for the negotiations between Chile and the EFTA, although in the case of agricultural tariffs, Chile will have to deal with each country on an individual basis (DIRECON, www.direcon.cl).

V. Benefits and costs of open regionalism: external and internal dimensions of Chilean commercial strategy

After reviewing the various negotiated and negotiating FTAs, it is interesting to have a global look at all of them to understand possible inconsistencies that may arise from individual negotiations. In other words, after looking at the trees, it is proposed to verify whether there is the forest that integrates all of those FTAs. In particular, the section proposes to examine the *open regionalis* in framework under which Chilean FTAs are drafted and operated.

1. The concept of “open regionalism”

1.1. Multilateralism, regionalism and “open regionalism”

The term regionalism involves preferential reductions of trade and non-trade barriers among a subset of countries that might, but not necessarily, be geographically contiguous, while multilateralism means a non-discriminatory reduction of trade barriers extended to the whole set of countries that belong to the world trading system. Therefore, *discrimination* is an essential feature of regionalism. Nevertheless, *unilateral* reduction of such barriers is also a non-discriminatory liberalization arrangement that is extended to all and is therefore a multilateral measure of liberalization (Srinivasan, 1998). In this sense, it is necessary to distinguish between multilateralism as a liberalization “process” (i.e., multilateral trade negotiations) and multilateralism (i.e., the principle of most favored nation –MFN–) as an “outcome”, as stressed by Bhagwati (1998).

A central concern surrounding regional integration schemes, therefore, has been not only the consistency of regional trade agreements (RTAs) with the GATT/WTO commitments to global trade liberalization, but also the broadening and deepening of RTA concessions which go further beyond those made in the GATT/WTO.³³ Open regionalism is often referred to interchangeably as “new regionalism”, or “deep integration”.³⁴ Its main features are the liberalization not only of goods but also of services, movements of capital and labor, the harmonization of regulatory regimes and trade facilitation measures, and the emergence of North-South regional agreements. Another facet of the new, open regionalism refers to a multi-dimensional process of regional integration that also includes political, social and cultural aspects.

Open regionalism indicated that after the Uruguay Round market access had to be approached in a broader manner than what had prevailed before. Market access conditions embrace the continuum of trade, investment and competition policies that may affect the international contestability of markets. Whether the economies benefit from a particular FTA depends on the scope and coverage of its provisions and the nature of the enforcement mechanism. Consequently, trade policy today is typically more complex to describe, negotiate or to implement than it used to be. The new regionalism also involves new approaches to older issues, such as rules of origin, contingent measures for imports, and dispute settlement mechanisms.

³³ In several cases, the regional process may be faster in producing substantial progress toward further trade liberalization. RTAs may facilitate liberalization in areas that are too complex to be negotiated successfully in the WTO or too difficult to enforce in that setting (Krugman 1993). For instance, for activities that are presently highly protected (e.g., government procurement, anti-dumping measures and some services), liberalization in a regional context may be more feasible than through global liberalization. The same observation might apply to highly technical areas, such as industrial standards, where intensive negotiations are required. Once formed and implemented, regional agreements, in these areas might also serve as blueprints for future multilateral liberalization (Hoekman, Schiff and Winters 1998).

³⁴ In trade literature, dealing with “beyond the border” issues has been termed “deep integration.” In “shallow integration”, which revolves around reducing measures applied “at the border” (tariffs, quotas, etc.), different national regulatory policies are determined and administered at the national level. In deep integration, common rules and policies and/or supra-national implementation are adopted, and international negotiations have increasingly centered on domestic regulatory policies that are alleged to impede the ability of foreign firms and products to contest a market.

One critical, and often controversial, element of open regionalism is the interpretation of Article XXIV of the General Agreement on Tariffs and Trade (GATT). In the area of goods exports, one of the most relevant questions is whether to allow the exclusion of certain products from the tariff reduction process. In general terms, the standard form is to eliminate, within a reasonable period (ten years), customs duties and other obstacles to trade for “substantially all the trade”. The questions are whether “substantially” should be interpreted qualitatively (i.e., no major sectors such as agriculture or textiles are excluded) or quantitatively (i.e., share of trade of the member countries). The same ambiguity remains in the area of trade in services (GATS V).

1.2. The Chilean concept of “open regionalism”

The Chilean version of “open regionalism” comprises the following instruments: i) unilateral liberalization, which the country has been applying in the last three decades; ii) the multilateral trade negotiations, in which Chile has a strong and effective participation; and iii) the bilateral and plurilateral agreements which have been advocated and implemented with great intensity in recent years. In addition, the concept of “deep integration” complements the character of the bilateral and multilateral agreements of recent “generation” that have been signed by Chile. The recent Chilean FTAs precisely have this character of “intrusion” to the areas previously considered solely as domestic issues.

As described in the previous chapters, the FTAs or other agreements signed by Chile are fairly comprehensive in nature and scope since they involve almost all aspects of bilateral economic relations, namely trade in goods (market access, rules of origin, customs procedures), trade in services, investment rules, trade remedies (safeguards, antidumping and countervailing duties) norms and standards (sanitary and phytosanitary measures), trade-related issues (competition policy, intellectual property rights, government procurements), institutional issues (transparency, dispute settlement), labor and environmental issues.

In broad economic terms, the notion of open regionalism portrays a trade strategy to enhance the benefits of regional liberalization without jeopardizing the continued vitality of the multilateral system. Chilean authorities have increasingly resorted to FTAs, while also emphasizing the primacy of the multilateral system for trade liberalization.³⁵ In the country context, there is a wide consensus with regard to two general principles of trade liberalization: i) trade agreements should not divert trade in the Vinerian sense; and ii) trade agreements should increase the volume of trade among the members, while at the same time maintaining the volume of trade with the rest of the world (Kemp and Wan’s theorem). The latter implies that trade agreements should not create additional trade barriers to third countries, thus ensuring a positive movement in overall welfare. An additional criterion may be that other countries should also benefit from the concessions made by Chile, in conditions of equity and reciprocity (WTO 1997, WT/TPR/M/28, p. 21).

Expectedly, Chile’s strategy of negotiating and signing various FTAs has received mixed reviews. Many authors agree that all lateral reductions in trade barriers are beneficial, regardless of the trade liberalization arrangement. In this sense, all types of “lateral” initiatives should be supported because they provide important opportunities in trade liberalization. However, some argue such system lacks transparency since the country pretends to have a flat tariff level but in fact has a highly differentiated tariff level. Therefore, some products may end up with reduced protection whereas others enjoy a much greater level of protection.³⁶ In effect, the myriad of FTAs has converted the country’s tariff reduction into a more complicated process.

Chile has followed a strategy of sequentially negotiating bilateral FTAs with all of its significant trade partners.³⁷ This sequencing of FTAs, which was called “additive regionalism” by Harrison,

³⁵ Chile’s open regionalism policy seems to be in accordance with the spirit of Article XXIV of the GATT and V of the GATS.

³⁶ Such critics propose a uniform tariff reduction ruled by the government, which would supposedly improve Chile’s linkages to the global economy. On the other hand, Agosin, (1997), for instance, argues that Chile should reduce tariffs to zero on imported capital goods and inputs not produced in the country, and that there is no urgency to reduce tariffs on consumer good imports.

³⁷ Contrary to the typical message of RTAs, under which preferential tariff reduction is welfare inferior to non-preferential tariff reduction, Wonnacott and Wonnacott (1981) argue that RTAs could produce more gains thanks to improved market access to trading partners. If a

Rutherford and Tarr (2001), may produce gains significantly larger than unilateral free trade. Critics of this Chile's additive regionalism strategy argue that agreements with South American countries are unlikely to be beneficial for Chile, and that it is not worthwhile delaying the benefits of unilateral and multilateral liberalization to pursue these agreements. They suggest that agreements worth pursuing are those with Chilean major trading partners (i.e., the European Union, the United States and Japan) (Donoso and Hachette, 1996).

On the other hand, advocates of regionalism consider that additive regionalism would progressively reduce trade diversion costs for Chile, diminish the effective average tariff of the country and provide significant improved market access in partner countries (Butelmann and Meller, 1995). They also argue that Chile should unilaterally lower its external tariff while simultaneously pursuing additive regionalism to further reduce trade diversion costs. Harrison, Rutherford and Tarr (2001) find that this strategy is likely to provide Chile with gains many multiples of the static gains from unilateral free trade. Meller (1996) argues that given the proliferation of RTAs, the best strategy for a small country like Chile is to enjoy preferential market access in such a manner that the small country can play the "hub and spoke game".

Therefore, Chilean strategy has been comprehensive as well as selective in some areas. By selecting the areas that are important to individual countries, Chile and its trade partners not only address the access problems of each trade route, but also keep a realistic agenda in light of the lack of interest of some countries to go beyond the rules set by the WTO (Sáez and Valdés, 1999).

2. The evolution of the multilateral trading system and its effects on the Chilean trade strategy

2.1. Chilean negotiating interests in WTO trade negotiations

Chile assigns a great importance to multilateral trade negotiations given the nature of product and market composition of its trade. First of all, WTO rules and disciplines introduce stability and predictability to the international trading system since they are binding obligations for all of its members and therefore limit the use of discretionary actions in trade policies. Furthermore, the principle of non-discrimination through the double form of MFN and national treatment ensures that benefits derived from the agreements that might accrue to large member countries are extended to other members of the organization.³⁸

Chile has adopted several principles to guide its negotiations at the multilateral forum. First and foremost is the need for transparency in negotiations so that all WTO members can have an active participation in the decision-making process. Second, WTO member countries should hold to the "standstill" principle. In other words, countries should refrain from imposing new barriers on market access. And third, Chile wants the negotiation results to be compiled as a "single undertaking", meaning that nothing is decided until everything is decided. Hence, the interests of all the member countries in different negotiating sectors can have a balanced treatment. Furthermore, the forthcoming negotiations should include special and differentiated treatment for developing countries when the issues negotiated exceed these countries' capacity to implement them (DIRECON, 2000).³⁹

WTO is not free of limitations and imperfections, however. Trade negotiations tend to be long and complicated and the results of the Uruguay Round have fallen short of the Chilean expectations. Market

country were to negotiate FTAs with all of its trade partners, it would end up with zero effective tariffs on all imports, or free trade, despite the legal existence of positive MFN tariffs.

³⁸ See the website of DIRECON; *El Mercurio*, "Chile y la OMC", 19/02/2002.

³⁹ Chile has been an active participant at the WTO forums. In the area of services, for instance, together with Australia and New Zealand, the country has brought forward a proposal on its liberalization. Also, it is interesting to note that Chile, on its own, made a proposal on WTO negotiation in trade services, by way of the so-called "clusters" approach. The objective of this idea was to respond to the fact that supply of one service requires supply of other related-services. This way, a restriction in one service can affect others in a kind of "production supply-chain" of services. For example, trade in forestry should benefit in liberalization if the connected services such as transport, engineering services, etc. were to be also liberalized (DIRECON 2000).

access for agricultural products is still very unsatisfactory, and the international trading system has not been able to discipline large industrial countries in the use of arbitrary barriers to trade.

At the recent ministerial WTO conferences in Seattle in 1999 and in Doha in 2001, the Chilean authorities expressed interests in initiating a broad negotiation agenda, whose contents should include: i) an ambitious and credible mandate on agriculture with emphasis on subsidies; ii) a firm treatment of antidumping rights; and iii) environment protection measures as part of multilateral rules and disciplines that would preserve the balance between sustainable development and free trade.⁴⁰ In addition, in the preparation for the Doha Conference, the Chilean Government made –in individual or collective statements- several proposals covering areas such as: i) agriculture⁴¹; ii) revision of antidumping mechanisms; iii) trade in services; iv) fishery subsidies; and v) a reformulation of dispute settlement mechanisms.

Although the outcomes at the IV Ministerial Meeting were not up to Chilean expectations, Chilean authorities evaluated positively that the Doha Declaration have WTO members committed to comprehensive negotiations in agriculture aimed at substantial improvements in market access, in reductions and eventual elimination of all forms of export subsidies and trade-distorting domestic support. Aside from the ongoing negotiations on agriculture, there will be negotiations on anti-dumping legislation and on fisheries (as part not only of Subsidies and Countervailing Measures but also of the relations between trade and environment). The inclusion of a text on the reduction and elimination of tariffs, including tariff peaks and tariff escalation, as well as of non-tariff barriers, without *a priori* exclusions of any sector, was considered to be another achievement. Moreover, trading objectives were achieved without tradeoffs in areas such as environment protection, government procurement, and dispute settlement, because the Chilean position basically coincided with that of the developed countries.⁴²

On the other hand, the progress in future negotiations in new areas such as competition policy, investment or electronic commerce might also facilitate the country's bilateral negotiations in those areas. These are areas in which Chile is inclined to assume greater commitments.

2.2. Multilateral conditions for bilateral agreements

Chile is persuaded that the outcomes of multilateral negotiations provide a minimum level of commitments and a basic framework for other negotiations. Chilean authorities think that deeper and stronger disciplines in areas which go beyond the traditional “border” restrictions, together with a strategy of “single undertaking”, facilitate clear results in bilateral negotiations.⁴³ It is their belief that NAFTA and similar agreements signed by Mexico, and to a lesser extent the ones signed by Chile, have contributed to clarifying the structure and focus of disciplines and procedures of a more “modern” WTO (Jara, 2001).

The bilateral agreements signed by Chile are intended to fill in the gaps that still remain after the implementation of unilateral tariff reductions and multilateral negotiations in the WTO. Moreover, some authors argue that the multilateral system tends to be biased in favor of large exporting countries (Sáez, 2001). In effect, the MFN clause, which is the pillar of the international trading system, can be a limiting factor for a small exporter with scarce negotiation power.⁴⁴ In addition, the beginning of a new round of trade negotiations in WTO will imply that any other agreement that Chile undertakes may include new conditions in terms of coverage, timeframe and liberalization modalities. In fact, some areas of the bilateral negotiations will be subject to the progress of negotiations at the multilateral level. Meanwhile,

⁴⁰ Statements of Chile at the Ministerial Conference WT/MIN(01)/ST/48, 10.11.2001.

⁴¹ Chile is a member of the Cairns Group.

⁴² See the Website of DIRECON (www.direcon.cl); *El Mercurio* November 17, 2001

⁴³ For this reason, bilateral negotiations tend to assume different forms and depths of commitments in accordance with what was achieved before and after the conclusion of the Uruguay Round.

⁴⁴ For these reasons, Chile negotiated *bilaterally* the liberalization of the automotive sector towards the Mexican market in a more favorable condition. The rules of origin in Chile-Mexico FTA are simpler than those of NAFTA (see Chapter III of this paper), and since 1996 this trade is totally liberalized without any restriction. As a result, Chilean car exports to Mexico jumped from US\$ 21,480 in 1996 to US\$ 22 million in 1997 and to US\$ 41 million in 1998. The elimination of these barriers would not have been possible for Chile in a multilateral negotiation, given that the country is not an influential supplier of the good in question at the international level.

other issues may lose relevance in bilateral agreements given the possibility of having a multilateral solution, as it might be the case of antidumping mechanism.

3. Co-ordination issues for the Trade strategy

3.1. Benefits and costs of the FTA multiplicity

The strategy to sign FTAs with a large number of trade partners involves benefits and costs for Chile. As mentioned earlier, the association of Chile and its major trading partners to WTO provides a homogenous normative framework when drafting bilateral disciplines. Furthermore, due to Chile's high dependence on foreign trade, it is in the interest of the country to have clear, WTO-based procedures. Such procedures are followed by the other member countries, and ensure that the rest of the world is working toward a greater liberalization of trade.

Regional markets are sought not only to minimize major costs of bilateral FTAs -which can divert trade from more efficient sources- but also because of the "dynamic" effects that are associated with regional integration.⁴⁵ Accordingly, Chile has emphasized the importance of sub-regional, regional and hemispheric trade liberalization.⁴⁶ RTAs can enhance non-traditional exports toward products of higher value-added and more intensive in knowledge, because the typical product mix of regional exports consists of these goods and services. Hence, trade within regional schemes tends to be different from that with industrial economies characterized by a much larger share of primary products. Thus, the knowledge derived from exporting to regional markets can be used later to export to international markets (Devlin and French-Davis, 1998).

Having to administer a myriad of agreements imposes costs of coordination, providing coherence and convergence, and monitoring the negotiating and implementation processes. There are also costs in coordinating the effective use of the dispute settlement mechanisms. Also, the incorporation in this process of interrelated, multiple negotiation areas calls for the participation and articulation of government officials from various ministries and departments. These efforts should be coordinated with those from other economic agents particularly of the private sector (Jara, 2001). Hence, the multiplicity of negotiation areas requires the availability of highly capable professionals. Given the limited human and financial resources that developing countries like Chile have available for trade negotiations, it is not always wise for these countries to spread these resources thinly among simultaneous negotiations on distinct areas in different geographical fronts.

However, these costs will be more limited as long as the various agreements converge in terms of tariff structures, liberalization timeframes and similarities in norms and disciplines. Therefore, the successive bilateral and plurilateral negotiations have economies of scale and allow trade negotiators to benefit from a learning process that produces externalities at all levels.

The problems of coherence are also related to distinct priorities contained in the agreements, which taken as a whole can be contradictory not only among themselves but also to the overall orientation of national strategy. Chile also has several "sensitive" sectors to which the government considers it appropriate to apply differential treatment or a protracted schedule for their liberalization. Divergent views on policy objectives can result from proper negotiation processes and differentiated interests of each trading partner, which in turn might translate into treatments that cannot be fully justified under a long-term national strategy (Sáez, 2001).

Chilean flat tariff will gradually be reduced to 6% in 2003. Consequently, the cost of trade diversion that arises from preferential agreements tends to decline. However, at the margin, there still

⁴⁵ As one of the dynamic effects, by way of economies of scale and competitive gains under imperfect competitive and market structures and the elimination of contingent protection, membership in a RTA is more likely to promote industrialization than unilateral or multilateral liberalization (Puga and Venables, 1998).

⁴⁶ The underlying thinking is that regional trade agreements (RTAs), in a framework of open regionalism, can be a device to foster a diversification of exports, towards more connected to overall regional markets, fostering economies of scale: in the presence of economies of scale, what otherwise would be a costly trade diversion, can become a cost-reducing and welfare-enhancing trade diversion (Freund, 1998).

remain preferences for the members of bilateral and plurilateral agreements with differentiated tariff structures.⁴⁷ At the same time, as it was mentioned, FTAs have perforated the flat tariff structure of Chile. Therefore, private decision makers must cope with a complex business context due to the problem of various tariff levels affecting the same product depending on the country it comes from.

3.2. The Free Trade Area of the Americas (FTAA) and perspectives

As indicated earlier, the costs and needs of coordination that are associated with diversity of agreements can be more limited when they are structured in a similar manner. In practice, this has been happening as trade partners also apply the multilateral commitments. Meanwhile, the Chilean government has sought to incorporate elements of the NAFTA model, particularly those related to services and investment, into the ECA-LAIA agreements signed in the beginning of the 1990s.

In addition, Chilean authorities believe that the FTAA is likely to bring with it a convergence process under the NAFTA model (Sáez, 2001). From this perspective, Chile is already anticipating the task of normative harmonization, although that process conserves tariff preferences with respect to each and every trade partner. These preferences, however, would be dissolved when the market access commitments of FTAA come in effect.

3.3. The Role of Public Institutions and Social Actors in Chilean Trade Strategy

The dynamics of Chilean integration in world markets has demanded a greater role of foreign policy in public affairs and has influenced the quantity and quality of actors that intervene in the formulation of trade policy. Among the emerging actors, there are: i) the legislative branch;⁴⁸ ii) regulatory institutions regarding investment agreements; iii) professional associations (bar, medicine, etc.) in trade agreements in services; iv) the judiciary system with respect to intellectual property rights; and to a lesser extent, v) NGOs in labor issues and environment spheres. However, there is still a lack of participation of labor unions, who have maintained a relatively passive, rather than proactive, position. Meanwhile, the private sector is participating more actively in determining the scope of and depth of trade agreements, which influence their commercial opportunities. Similarly, a more marked presence of civil society is also expected in the trade negotiation processes as a consequence of the country's participation in APEC and FTAA forums where there have been concrete initiatives for their involvement (Jara, 2001; Silva, 2001).

The transformation of participating actors also induces a restructuring not only of the relationship between the public and private sectors, in order for the latter to fully benefit from FTAs and to counteract possible negative consequences, but also of the articulation mechanisms between them. As a matter of fact, during the 1990s a new institutional framework was created to coordinate negotiations among ministries and negotiating teams. A central role in this process has been performed by the DIRECON of the Ministry of Foreign Affairs. This office has also experienced a series of restructuring due to the widening coverage of trade issues and geographic areas. At the same time, in the private sector some organizations of a multi-sectoral nature have started articulating entrepreneurs' interests. However, the diverse negotiation processes have produced a variety of configurations in coordination from diverse negotiations, and have led to the emergence and restructuring of sectoral and business associations in the 1990s.⁴⁹ Finally, articulation between the private and public sectors assumes different forms depending on the negotiation in question and its complexity of issues treated, due to the fact that not all sectors establish the same priorities with respect to geographic areas with which FTAs are to be negotiated.⁵⁰ In general, when some important sectors of the national economy were involved, both

⁴⁷ This situation can explain diverse positions that business associations have adopted in favor of the unilateral tariff reduction and bilateral agreements. In this regard, the business associations that represent manufacturing sectors and small- and medium-sized firms, such as the Association of Manufactures Exporters (ASEXMA), have been more receptive to bilateral agreements with the countries of the region, in particular Mercosur. By contrast, those associations in the agricultural sector have been strong critics of the FTA policy.

⁴⁸ Especially as new agendas and commitments that go beyond the reach of the LAIA model become more decisive negotiation elements (TM80).

⁴⁹ One clear example in this respect is the leadership by the Chamber of Trade in Services (CCS) in negotiations in services.

⁵⁰ Although a series of trade associations group together in the Confederation of Production and Trade (CPC), the organization that has performed a role of articulation in the bilateral agreements is the Manufacturing Production Promotion Society (Sociedad de Fomento Fabril (SOFOFA). This can be explained by the fact that the most representative leader associations in Chile, such as those in the sectors of forestry and fisheries, are members of SOFOFA.

sectors worked closely in the negotiation process and subsequent monitoring, as well as in dispute settlement cases⁵¹ (Silva, 2001)

⁵¹ The most notorious example in this respect was the accusation by the United States of dumping and subsidies on Chilean salmon.

VI. Final Considerations: The Role of FTAs in Chilean Trade Strategy

When a government is invited by its trade partners to negotiate a FTA and/or it is on its own initiative that the process is launched, the government should take into account, implicitly or explicitly the benefits and costs of the agreement during the course of negotiations. In the context of Chilean FTAs, there are at least three relevant issues: i). the role of the particular FTA in Chile's trade strategy; ii). the impacts of the FTA on domestic policy-making;⁵² and, iii) the real possibilities and significance of the agreement, within the broad context of Chilean trade relations.

1. On agreements and the strategy

It is understood that the Chilean government is primarily interested that a particular FTA can lessen the costs and vulnerability that may derive from the integration of the country into a global economy of disputable governance. The signing of FTAs might enable the government to stabilize or minimize the adverse conditions that could affect the country, by managing market access commitments and other disciplines with one important trade partner. This objective, among others, is especially important given the high dependence of the country's exports on a limited number of products, whose international prices are volatile. Second, it is possible to establish priorities that one particular trade partner should have in relation to other FTA signatory countries, to look into the effects that the agreement may have on other agreements (e.g., need for harmonization or compensation), and to study the synergy effect that the agreement might produce.

This was the case of the FTA with Canada in relation to the Economic Complementation Agreement with Mercosur: Chile's trade relations with the Mercosur countries are markedly different from that with Canada. Finally, the signing of the agreement would raise the question regarding the role that the particular agreement can play in the overall production structure. This is important, specifically, when the agreement would lead to significant modifications of the country's specialization in trade and production. This is a delicate issue for Chile due to the predominant weight of natural resources and their processed goods have in their export structure. This is to ask which sectors of the national economy would potentially benefit or be prejudiced from the agreement by way of effects on exports as well as imports or changes in investment conditions.

2. Modifications on domestic policy

Due to the effects on sovereignty that any international agreement causes, it is important to ask in what area and how much of freedom would be lost with each agreement. In this respect, there are three areas of trade agreements that can be especially sensitive to the Chilean policy: investment, environment and labor issues, and agriculture. In the case of investment, the areas that are most sensitive are the existing regulation of financial services and selective attraction of investment to certain determined sectors. With respect to environment and labor, the government has indicated that they would prefer to address these as cooperation issues, not trade sanctions, averting the possibility that they could be transformed into highly protectionist measures. Lastly, agriculture is the sector that has the largest number of exceptions within the present trade liberalization regime. In particular, the price band is an instrument that the government tries to conserve despite all the concerns manifested by Chile's trade partners.

3. Significance and possibilities

For each agreement, it is also necessary to ask how the internal policies of trade partners will be affected. Meanwhile, taking into consideration the various levels of trade negotiations, whose effects are often mutually fed back to each other, it may be desirable to analyze the effect of an "additional" effort in a bilateral negotiation on other agreements. In particular, it would be important to assess in advance how

⁵² This is a question that arises especially in negotiations with trade partners in developed regions with stricter standards in determining trade disciplines, as in the case of the United States and the European Union.

relevant it would be to address certain issues in bilateral negotiations knowing that those issues are likely to advance more rapidly or deeply on another level, as it might be the case in FTAA or WTO.

Though Chilean export performance in the last two decades has been exceptional, there remain doubts about the ability of the current natural resource-based export structure to sustain high rates of growth over the medium and long term. Such dependency may dampen future economic growth because of the high instability of export income and the low value-added in such exports. Some non-traditional exports of the country (e.g., wines, fruits, fisheries), which have transformed the country in one of the major world exporters, are already facing strong competition from other parts. Chilean exports originate from large firms, whereas the participation of small and medium-sized firms in total exports is still very low. All these features of the country's export sector call for what the Chilean officials have termed as a "Second Phase Export" strategy.

Meanwhile, opportunities for foreign direct investment (FDI) may be depleting in some traditional areas such as mining. Those sectors that have been the main targets of FDI are not necessarily technology-intensive, or employment-creating ones. The country needs to find new, dynamic sectors to receive a new wave of FDI. In order for the country to perform as a "gateway" of South America to and from the rest of the world not only in trade of goods but also in various types of services including financial services and engineering and marketing-related services, the country should improve cross-border infrastructure in many modes of transport.

As the joint study by Japan International Cooperation Agency (JICA), Ministry of Economy, Development and Reconstruction, Chilean Economic Development Agency (Corfo) (2001) correctly suggests, to promote export and investment, to develop an export sector of high technology content, and to become a global gateway, the country should adopt a mid- and long-term national strategy that is systemic in nature, with a strong emphasis on regional development. The process of defining this new national strategy, in turn, calls for in-depth analysis on what kind(s) of bilateral and plurilateral FTAs would serve to achieve this goal in a more efficient and systematic way. Solely achieving convergence and being "GATT/WTO-plus" do not necessarily guarantee that these FTAs will be a propelling force of economic and social development of the country.

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