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Chile–Peru Services in the Free Trade Agreement

Submitted by: Chile



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**Trade Policy Dialogue on WTO-Plus Aspects of
Recently Concluded Regional Trade
Agreements and Free Trade Agreements
Boracay, Philippines
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CHILE – PERU SERVICES IN THE FREE TRADE AGREEMENT

Boracay, Phillipines
May 2015

CHILE – PERÚ SERVICES IN THE FTA

Background: the FTA

- Signed in Lima on August 22, 2006
- Entered into force on March 1, 2009
- Comprehensive agreement, including 20 chapters, such as:
 - Market Access for goods (Ch. 3)
 - Rules of Origin (Ch. 4)
 - SPS (Ch. 11)
 - Services (Ch. 12) and
 - Temporary Entry (Ch. 13)

CHILE – PERÚ SERVICES IN THE FTA

Chapter 12: Cross-border trade in services

- Scope of the Chapter
- Chapter 12 applies to all services sectors at all levels of government in modes 1,2 and 4, except:
 - Air transport services and auxiliary services. This includes air traffic rights, that are generally included in separate agreements, negotiated by air transport authorities.
 - Subsidies to service providers.
 - Government procurement of services
 - Financial services
 - Services delivered in the exercise of governmental authority.

CHILE – PERÚ SERVICES IN THE FTA

Chapter 12: Cross-border trade in services

Specific obligations

- National treatment
- Most favored nation
- Market Access: Parties may not impose numerical limitations that limit Access to their markets. Specifically, they cannot limit the ~~the~~ number of service suppliers in a particular sector, the total value of service transactions or assets, the total number of service operations that a provider can carry out or the total number of natural persons that may be employed in a particular service sector. Also, Parties cannot restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

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Chapter 12: Cross-border trade in services

Specific obligations

- Local presence: neither Party may require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.
 - Regulatory transparency: each Party shall maintain appropriate mechanisms for responding to inquiries from interested persons regarding their services regulations. Flexibility is provided for small administrative bodies, that may lack the required funding or other resources.
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Chapter 12: Cross-border trade in services

Specific obligations

- Domestic regulation: When authorization is required for the supply of a service, the competent authorities shall inform the applicant of the decision concerning the application within a reasonable time. Parties shall endeavor to ensure that any such requirements are based on objective and transparent criteria, such as competence and the ability to supply the service; not more burdensome than necessary to ensure the quality of the service; and not in themselves a restriction on the supply of the service (for licensing procedures).
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CHILE – PERÚ SERVICES IN THE FTA

Chapter 12: Cross-border trade in services

Specific obligations

- Professional services: a working group on professional services is created, to facilitate granting temporary licenses and certification to service providers of the Parties.

CHILE – PERÚ SERVICES IN THE FTA

Chapter 12: Cross-border trade in services

Non-conforming measures

- The treaty follows a negative list approach, listing:
 - Annex I: existing measures
 - Example for Chile: 85% of workers in a Company hiring at least 25 workers must have Chilean nationality.
 - Example for Peru: Only a Peruvian national by birth may supply notary services.
 - Annex II: future measures
 - Example for Chile: Chile reserves the right to adopt or maintain any measure granting rights or preferences to minorities socially or economically disadvantaged.
 - Example for Peru : Peru reserves the right to adapt or maintain any measure that gives a person or legal entity of the other Party the same level of treatment as that given to a Peruvian in the audiovisual, editorial or musical sector, by that other Party.

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Chapter 12: Cross-border trade in services

Transfers

There is no specific provision on transfers and payments in the Chapter.

Peru generally includes such a provision, as part of their ideal services chapter.

Chile does not regularly include a provision on transfers and payments, as it considers that the provisions of GATS and its own commitments under the IMF establish the necessary commitments in this regard.

CHILE – PERÚ SERVICES IN THE FTA

Relation between Ch. 12 and other chapters

- Mode 3 is covered in Ch. 11 (Investments).
- Temporary movement of Business personnel is regulated by Ch. 13.
- In case of conflict between Ch. 11 (Investment) and 12 (Services), Ch. 12 shall apply (art. 11.1.3)
- The general provisions of Ch. 1-2 and 14-20 apply to services.
 - Ch. 1: Initial Provisions
 - Ch. 2: General Definitions
 - Ch. 14: Transparency
 - Ch. 15: Administration of the Agreement
 - Ch. 16: Dispute Settlement
 - Ch. 17: Exceptions
 - Ch. 18: Cooperation and Trade Promotion
 - Ch. 19: General Provisions
 - Ch. 20: Final Provisions

