

# Chile and the TPP Negotiations:

Analysis of the economic and political impact



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## EXECUTIVE SUMMARY

The TPP<sup>1</sup> negotiations were launched in March 2010 and so far there have been 17 rounds of negotiations, with advances in several matters, even when the most complex aspects of the future treaty are pending, as are the chapters on “Intellectual Property”, “Environment”, “Services and Investment” and “Market Access”, among others.

While an initial precedent for this initiative is found in the agreement known as P4<sup>2</sup>, of which Chile was a strong promoter, the incorporation of the United States, Australia and Canada completely changes the schedule, coverage and P4 strategic direction, with **TPP becoming a completely different agreement, which should be analyzed and evaluated on its own merits.**

Likewise, though the scope of this agreement does not significantly differ from other agreements negotiated in the past by Chile (such as bilateral FTAs with the U.S. and Australia), the contents that are being incorporated in particularly sensitive areas, such as intellectual property and digital rights, services and investment, capital movements, environment, and regulatory coherence, among others, **go far beyond what at the time was negotiated in those agreements. This would mean additional concessions to those already made** as part of a negotiating balance that was once judged as well-adjusted, and in those terms understood and approved by the national Chilean Congress.

Chile is the only member of TPP that has trade agreements in effect with all other partners, including Japan which will soon join TPP<sup>3</sup>. This fact shows that it is a negotiation in which **the potential gains can only be minimal from a trading perspective. In contrast, some of the demands presented throughout the negotiation process might be very costly to Chile**, as they may limit the development of public policies that are essential for the country’s development, especially at a stage where significant changes in several aspects of the economic and social policy are being sought.

Among the most sensitive issues that are being discussed, highlights include:

- Demands to reopen the “Intellectual Property” chapter. With a request to extend the term of protection for cultural goods, from the current 70 to 95 years or even longer;
- Renewed demand to establish automatic linkage, which would require modifying the essence of the role of the Public Health Institute; also, it would administratively

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1 Known as the “Transpacific Partnership Agreement”, negotiated by 11 countries in the Pacific Rim: Australia, Brunei, Canada, Chile, United States, Peru, Singapore, Malaysia, Mexico, New Zealand and Vietnam

2 P4 stands for “Pacific Four”: an agreement signed in 2006 by Brunei, Chile, New Zealand and Singapore, which established an adhesion clause with the prospects to become a contribution towards establishing a free trade zone between the Pacific Rim countries.

3 It is confirmed the incorporation of Japan starting the upcoming round of negotiations that will take place in Malaysia, next July. Chile has an FTA with Japan in effect since 2007.

limit the possibilities of production of generic medicines, with all the negative effects that it would entail to the population, in terms of access to affordable, quality medicines and implementation of public health policies; and,

- In the digital rights field, requests to impose regulations that may affect the free access to content on the internet, which would be a clear setback in terms of democratization of knowledge and culture, and in terms of the full exercise of the right to information and the debate which allows for us to have better informed citizens.

There are other equally sensitive aspects as regards to movements of capital, where against all evidence arising from the most recent economic crisis in industrialized countries, it is being sought **to deregulate even further the entry and exit of foreign capitals**. Also, in chapters such as “Environment” or “Labor Issues” there is an attempt to **link the potential breach of commitments with trade sanctions**, which can lead to forms of trade protectionism by industrialized countries.

Among the TPP member countries, the trade and investment flows are concentrated in Chile's relationship with the United States and then to a lesser extent with Canada, Australia and Mexico, all countries with which Chile already has extensive liberalization for the exchange of goods and services. **The TPP countries are the market for 19% of Chile's exports to the world, while China (not part of this agreement) means 23% of the total value of shipments from Chile outward.**

In short, **from the point of view of economic and commercial costs and benefits of this agreement, the balance for Chile is, so far, clearly negative.**

To the latter, must be added the analysis of the political consequences of the strategic alliance that is sought with the TPP. The expansion of economic and political influence of emerging countries in Asia, led by China and India, and the consolidation of East Asia as the engine of the world economy, have led the United States to a profound redefinition of its political, military and economic strategy, at global level. This strategy seeks to create mechanisms for contention and balance to the expansion of China, and is based on several lines of action; one of whose main components is precisely TPP.

There is no doubt that the TPP is much more than a multilateral trade agreement, because **it is an initiative with a clear political intent**. The question is, then, if the alignment behind this strategy (which can also generate negative effects at the regional level, especially in our relations with Brazil), responds to the long term interests of Chile, or if on the contrary, leads us to ascribe needlessly to a bloc of economic, political and military power, precisely at a time when the world is moving to the consolidation of new centers of power, with a growing importance of emerging countries in which Chile has a part.

So far, this negotiation has been made in a framework of almost total absence of information and public debate. Our interest is to help encourage this debate, so that the decisions taken are taken with an explicit evaluation of its impact and its economic and political consequences.



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## 1. BACKGROUND.

The Negotiations for the establishment of the TPP<sup>4</sup> were officially launched in March 2010. The first negotiation meeting was held in Melbourne, Australia. Since then, there have been 17 rounds and the most recent took place in Lima in May, 2013. The first effort for the formation of the TPP had the participation of the original members of the Pacific Four (P4), joined by Australia, United States and Peru. Later on, Malaysia, Vietnam, Canada and Mexico incorporated up to the current number of 11 participants, and Japan will certainly join in the forthcoming months.

Participating countries show a high level of heterogeneity, both in terms of their income level, economic development indicators and forms of social and political organization. Therefore, and beyond the declarations of the authorities, it could hardly be identified as a group of like-minded countries that have decided to express this relationship in a far-reaching multilateral treaty.<sup>5</sup>

TABLE 1: TPP. BASIC INDICATORS  
BASIC INDICATORS ABOUT THE COUNTRIES PART OF TPP NEGOTIATIONS.

PAÍS	POBLACIÓN (MILLONES)	INGRESO/PER CÁPITA (US \$)	ÍNDICE DE DES. HUMANO	ÍNDICE DE LIBERTAD ECONÓMICA
Australia	22.7	60.642	0.929	7.97
Brunei	0.4	31.008	0.838	s.i
Canadá	34.4	50.345	0.908	7.97
Chile	17.4	14.394	0.805	7.84
Malasia	28.7	9.656	0.761	6.96
México	113.7	10.064	0.770	6.66
Nueva Zelanda	4.4.	32.620	0.907	8.27
Perú	30.0	6.009	0.725	7.61
Singapur	5.3	46.241	0.866	8.69
EE. UU.	311.9	48.442	0.910	7.69
Vietnam	89.3	1.411	0.593	6.54
Sub Total	658.2			

SOURCE: UNDERSTANDING THE TPP. PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS

4 Acronym used for Transpacific Partnership: currently negotiated by Australia, Brunei, Canada, Chile, United States, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

5 A more detailed analysis can be found in: "Understanding the Trans Pacific Partnership". Jeffrey J Schott, Barbara Kotschwar and Julia Muir. Peterson Institute for International Economics. Washington DC, January 2013.

The obvious disparity of development indicators among the participating countries, brings up a key issue in this negotiation: the flexibility to set differentiated obligations and commitments between partners; otherwise, the possible imposition of the agenda of the most powerful partner can introduce elements of infeasibility to the negotiation. This is true for less developed partners like Vietnam, and especially for intermediate development countries, such as Chile, Peru, Malaysia and Mexico, which in sensitive areas as “Intellectual Property”, “Capital Movements” or “Regulatory Consistency” should try to coordinate positions and firmly establish their limits in this negotiation.<sup>6</sup>

### 1.1. THE ROLE OF P4 IN THE TPP NEGOTIATION PROCESS.

Notwithstanding the start of the TPP negotiations in March 2010, preliminary discussions date back a few years and find their formal origin in the existence of the P4.<sup>7</sup> This treaty was originally conceived as an agreement open to the possibility of gradual incorporation of new partners, in particular of economies from the Pacific Rim. This, with the purpose of contributing to the creation of a free trade area in the Asia-Pacific region in accordance to the objectives defined by the country members of the APEC<sup>8</sup>, also known as the Bogor agreements.<sup>9</sup>

In fact, since its enactment, the original members of the TPP sought to expand the number of participants, understanding that they did not have a sufficient critical body to become an attractive pole to promote a greater economic integration in the Asia Pacific region.

In fact, Chile made systematic efforts with political and foreign trade authorities to seek the incorporation of Peru and Colombia. This, with the dual aim of increasing the weight of the initial group and to articulate joint working areas with countries in the region that shared a special interest in the Pacific Rim. Nonetheless, the interest shown by Peru and Colombia, even after a formal request to Colombia to join,<sup>10</sup> the evolution of the P4 seemed stalled and unable to play the coordinating role that had auto assigned.

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6 It is pertinent to note that the situation in Chile is particularly delicate. Unlike most partners, Chile has little or nothing to gain and is threatened to pay high costs. There is an appreciable distance between the current situation in some delicate areas and the standards that U.S. demands.

7 Acronym for Pacific Four, an agreement negotiated by Chile, Brunei, Singapore and New Zealand, for which negotiations ended in 2005, and was enacted in 2006.

8 Acronym for Asia Pacific Economic Forum.

9 The Bogor agreements were adopted in 1994, establishing as a goal a gradual liberalization of trade in goods and services between APEC member countries, and which should be completed by 2020.

10 Colombia's request was not accepted by the other members of the P4, arguing the appropriateness of the incorporation of this country to the APEC forum.

In this context, the partners started discussions to negotiate an “Investment Chapter”. This chapter was due since the original agreement, when the United States requested their participation bounded to that chapter of the agreement.

## 1.2. THE INCORPORATION OF THE UNITED STATES.

Undoubtedly, the inclusion of the United States modified the initial nature of the P4 in two ways. First, in the apparent disproportion of the economic weight of the original partners. Second, in the political intent that the U.S has given to this initiative.

Indeed, the participation of this country must be understood in the context of a sum of factors that explain its interest:

- a. The virtual suspension on the negotiations of the “Doha Development Round” in the WTO<sup>11</sup>, which after approaching a comprehensive agreement in June 2008, entered into a stage of near total paralysis;
- b. The loss of initiative of the U.S. trade policy, added to the WTO failure. To this we add the absence of greater bilateral negotiations, and the inability to push through Congress agreements negotiated previously, such as those in Colombia, Korea and Panama.
- c. The shift in U.S. foreign policy, which defines the Pacific Rim as the priority region for the development of their strategic interests, and consequently for the deployment of its political, military and economic power. Recognizing, in this way, changes in the global balances and the consolidation of emerging powers like China and India, among others.<sup>12</sup>

Added to the latter, is the incorporation of Australia to the group of countries that are starting the TPP negotiation. This reinforces the transformation of the initial project of P4 to an initiative with different strategic objectives, with unchecked prevalence of the interests and conceptions of the most developed countries.

In practice, the original P4 group never acted coordinately and never tried to even partially pre-

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<sup>11</sup> Acronym for World Trade Organization.

<sup>12</sup> There are many expressions for the redefinition of U.S. Foreign Policy priorities. Particularly it is important an article signed by the Secretary of State, Hilary Clinton: “America’s Pacific Century,” published in “Foreign Policy” in November 2011. In this article, it explicitly sets the lines of action to strengthen the presence of their country among the Asia Pacific Region, and in which the TPP is expressly mentioned.

serve the original work schedule, nor even the possibility of becoming an open contribution to a regional economic integration, while preserving the autonomy of its potential new partners and with consideration of the diversity and the development level in the Asia Pacific region.

In fact, what has happened is the dissolution of the P4 and its complete absorption by the larger economic partners in the TPP. These partners have established the scope and conditions for a new agreement, described as an “Agreement for the 21st Century”, by incorporating new issues in the negotiations and through the modification of the standards in various subject matters negotiated in previous bilateral agreements.<sup>13</sup>

For all the above, it seems unrealistic to argue, as a reason to justify the presence of Chile in this negotiation, its “paternity” on the initial project as consolidated in the P4. On the contrary, this is an initiative with a much different character and importance than the P4. Therefore, it must be analyzed and evaluated on its own merits and laid in the context of long term economic and political interests of Chile, both in its relationship with the Asian Pacific region, as in its relationship with its close neighboring countries.

### 1.3. THE PROSPECTS IN THE APEC FORUM.

The “APEC Forum”<sup>14</sup>, which gathers 21 Asia Pacific regional economies and accounts for over 50% of the worldwide GDP, nearly 60% of the global trade, and a 40% of the world population, is certainly an institutional place for dialogue and economic and political consensus of significant global importance.

Chile’s presence in this forum, realized in 1994,<sup>15</sup> was certainly a milestone of Chile’s foreign policy and was, at the time, a clear recognition of Chile’s reintegration in the International Community. The active and constructive presence in virtually all relevant issues addressed in the work of APEC, is a hallmark of Chile’s participation that is broadly recognized by the other participating countries.

The deepening of Chile’s relations with the Asia Pacific region has been facilitated and reinforced by its presence in the forum. Of course, the possibility of direct dialogue that Chile’s participation has fostered between the main Chilean authorities and their counterparts in the most dynamic economic region in the world is of great value to Chile’s international integration and has created favorable conditions to the expansion of our political and economic presence.

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13 References to a high standard agreement have resulted in proposals to incorporate new disciplines and increase the protection to enterprises in key areas such as “Intellectual Property” and “Capital Movements”.

14 Acronym for “Asia-Pacific Economic Cooperation”.

15 Chile’s participation became official in 1994, during the presidency of Eduardo Frei Ruiz-Tagle.

Thus, since we joined APEC in 1994, we negotiated trade agreements with most country members<sup>16</sup>. This has allowed broadening and diversifying the opportunities for a variety of productive sectors. In fact, currently our major trading partners are in the Asian region, which accounts for over 40% of the value of national exports.

Since this is a forum for dialogue and consensus, the agreements and lines of action decided are not binding or mandatory. Therefore, the expectations of negotiating a wider trade agreement that will transform the region into a free trade area still appear to be remote, despite the validity of the aforementioned Bogor Agreements objectives. In this context, the strategy carried out by Chile to pursue bilateral agreements with leading economies in the region, has been successful and beneficial, and grants a solid support to our presence in the Asia Pacific.

The experience shows that the flexible combination of an active multilateral presence,<sup>17</sup> among the autonomous development of bilateral relations with the leading countries of the region, has delivered positive results. This raises the question whether it is justified to modify that strategy, incorporating Chile into a bloc that is unlikely to be inclusive enough to add nations with current and future importance for our country, such as China, Indonesia, Russia or Korea.<sup>18</sup>

## 2. SCOPE AND DEVELOPMENT OF THE NEGOTIATIONS.

As noted, seventeen rounds of negotiations have been held so far since they began in March 2010<sup>19</sup>, with the seven original partners of the initiative, up to that carried out in May 2013, with 11 members. It is expected that from round number 18, Japan was incorporated as the partner number 12 of TPP, which undoubtedly is a significant event, as it is the world's third largest economy, after the United States and China, and a key country in the Asian political balance. It is likely that the arrival of the latter country stabilizes the number of members of the TPP, as Korea has apparently declined the opportunity to join.<sup>20</sup>

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16 Chile has agreements and FTA's in full effect with 13 members of the APEC, and is in negotiations at an advanced stage with two others.

17 Besides APEC, Chile participates actively in FOCALAE (Latin America Cooperation Forum - East Asia), which brings together 34 countries in these regions. Both multilateral forums shall become a priority for the administration of our foreign policy in the following years.

18 In fact, the interpretation most widely used in the Asian region is that the formation of the TPP is led by the U.S. as an attempt to neutralize or balance the growing influence of China in the region.

19 May, 2013.

20 According to information gathered by the international press, Korea has declined to participate by the invitation formulated by U.S. officials.

## 2.1. SUBJECT MATTER.

From the start, the authorities of the countries participating in the TPP have indicated their willingness to negotiate an agreement of broader scope that dynamically promotes the expansion of trade and investment.

**The main goals set for the agreement are the following:**

- i. Extensive liberalization of trade in goods and services through the elimination of tariffs and non-tariff barriers;
- ii. To promote trade and investment of innovative products and services, including “green” technologies;
- iii. Incorporation of issues that have been considered in the “APEC Forum”, such as “Regulatory Coherence”, “Competition Policy” and “Business Enablement”; and
- iv. To facilitate the articulation of value chains that will enhance economic integration and participation of private corporations.<sup>21</sup>

Taking into consideration the outlined objectives, as well as the existing treatment in many of the FTAs previously negotiated amongst most of the participants in the TPP, it was agreed to form working groups to cover the following chapters currently under negotiation:

- i. Access to Markets;
- ii. Rules of Origin;
- iii. Sanitary and Phytosanitary Measures;
- iv. Customs Procedures;
- v. Technical Barriers to Trade;
- vi. Intellectual Property;
- vii. Government Procurement;
- viii. Commercial Defense;
- ix. Competition Policies;
- x. Cross border services;
- xi. Financial Services;
- xii. Temporary admittance;

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<sup>21</sup> See: Negotiating Trade Agreements for the 21 Century: Andrew Stoler, Peter Pedersen and Sebastián Herreros. CEPAL, Serie Comercio Internacional N 116. Octubre de 2012.

- xiii. Telecommunications;
- xiv. eCommerce;
- xv. Investment;
- xvi. Environment;
- xvii. Labor;
- xviii. Cooperation;
- xix. Institutional Affairs, and
- xx. Horizontal Affairs and Dispute Resolution.

As shown, the issues incorporated in this negotiation do not differ from the ones raised in the bilateral FTA with the United States. The agreements signed with Australia and the P4 do not include chapters on “Environment” and “Labor Affairs”. In the case of the FTA with Canada, since it was negotiated in the mid-90s, it did not include a chapter on “Intellectual Property”.

**TABLE 2**  
**BILATERAL AGREEMENTS COVERAGE COMPARED WITH TPP RELATED WITH**  
**TOPICS: GOODS AND SERVICES COMMERCE, INVESTMENT, INTELLECTUAL**  
**PROPERTY, ENVIRONMENT, LABOR, PROCUREMENT.**

Cobertura de los Acuerdos Bilaterales Con Países TPP							
	Comercio de		Inversiones	Propiedad	Medio	Asuntos	Compras
	Bienes	Servicios		Intelectual	Ambiente	Laborales	Públicas
<b>Australia</b>	SI	SI	SI	SI	NO	NO	SI
<b>Brunei</b>	SI	SI	NO	SI	NO	MOU	SI
<b>Canadá</b>	SI	SI	SI	NO	SI	SI	SI
<b>Estados Unidos</b>	SI	SI	SI	SI	SI	SI	SI
<b>Malasia</b>	SI	NO	NO	NO	NO	NO	NO
<b>México</b>	SI	SI	SI	SI	NO	NO	SI
<b>Nueva Zelanda</b>	SI	SI	NO	SI	NO	MOU	SI
<b>Perú</b>	SI	SI	SI	Un Párrafo	NO	NO	NO
<b>Singapur</b>	SI	SI	NO	SI	NO	MOU	SI
<b>Vietnam</b>	SI	NO	NO	NO	NO	NO	NO
<b>China</b>	SI	SI	SI	NO	NO	NO	NO
<b>Corea del Sur</b>	SI	SI	SI	SI	NO	NO	NO
<b>Japón</b>	SI	SI	SI	SI	Side Letter	Side Letter	NO
<b>Direcon</b>							



However, even though this is a scope similarly covered in other FTAs, this time the proposals under discussion suggest the incorporation of new subjects and standards in several of the negotiating areas and chapters of greater sensitivity for developing countries. For example: “Intellectual Property,” “Regulatory coherence,” “Digital Rights,” “Movements,” “Labor Affairs” and “Environment.” These chapters reflect the priorities in the agenda of the key partners in this negotiation. In particular, the United States, which seeks to reopen the chapters negotiated in bilateral agreements and thus obtain additional concessions.

Therefore, the issue to be analyzed in Chile’s case is not the subject matter of the agreement. On the contrary, the content of the proposals seek to change the basis of the agreements in other bilateral FTAs. Particularly, the concessions granted to the United States represent the highest level of concessions granted to a business partner from Chile.<sup>22</sup>

## 2.2. PROGRESS OF THE NEGOTIATIONS.

As usual, in this type of agreement, the TPP is traded in the form of *single undertaking*,<sup>23</sup> which has allowed significant progress in several chapters. As well as to gradually identify and isolate the most complex issues in which there is no agreement over the most controversial chapters. The resolution depends on the progress and finally on the ratification in other areas.

The goal of the authorities involved in the TPP negotiations is to conclude over the course of this year, in order to announce it the upcoming APEC meeting, to be carried out in October 2013, in Bali, Indonesia.

Notwithstanding that this is an elusive goal and that it will likely become harder to achieve with the upcoming inclusion of Japan, its conclusion cannot be ruled out. Considering that in this last phase of the negotiations, it is expected that there will be direct involvement among the highest authorities of the State members, in order to unlock those issues where an agreement is not achieved among the negotiating teams.<sup>24</sup>

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22 The FTA with the United States is the only agreement signed by Chile that sets limits on the powers of relevant authorities in order to limit movements of capital. Also, it is the only one that includes a chapter of “Environment” with economic sanctions. Moreover, it is known that this treaty includes chapters on Intellectual Property not included previously on other FTAs.

23 This guarantees that nothing is agreed until everything is agreed.

24 One of the alternatives under discussion is, in case of failing to complete negotiations on the expected dates, to announce what which defined as an “early harvest” with previously made partial agreements. Due to Chile’s particular political schedule, it is foreseeable that Chile will seek to conclude negotiations during the current administration, adding an extra sense of ur-

### 3. CHILE AND THE TPP: ECONOMIC COSTS AND BENEFITS

The case of Chile is very special, as it is the only TPP negotiating country that has already trade agreements in force with each of the other trading partners. This unique condition allows to debate over the costs and benefits of this trade agreement from a different perspective than the one of other negotiating countries.<sup>25</sup>

The latter situation, though seemingly obvious, is an issue that is increasingly important in the process of negotiations. While Chile can only profit marginally from the TPP because of its trade openness and, consequently, it does not have or should not have incentives to make concessions in sensitive areas (such as in matters of “Intellectual Property”, “Digital Rights” or “Financial Transactions”), other negotiating countries have strong incentives to make such concessions.

Thus, while some countries such as the United States, Australia and Canada push their own agenda, other countries are willing to accept this agenda because they expect to gain access to markets for goods and services to which they do not have access yet. This is the case, for instance, of New and

The context described above puts Chile in a particularly difficult position in the negotiating process. The result to which some of the negotiating countries aspire, ends up pushing the negotiation far beyond what Chile should be willing to accept, because it exceeds Chile’s own negotiating limits established in other agreements and because it introduces potential limitations to the definition of public policies on priority issues, such as health, innovation, culture, public companies, or capital movements. These effects of implementing the new commitments will be caused without obtaining benefits in exchange in other areas that might justify them.

On the other hand, at least until now, the attempts to recognize the diversity of interests among TPP partners in a way that considers the creation of flexibilities that address the diversity of situations, as historically recognized in the multilateral negotiations conducted by the WTO, are unknown.

In the case of Chile the best possible bargain is the assurance that there will be no regression from what granted in past negotiations, otherwise, it would mean paying twice for the same benefit. The lack of clarity over the costs and benefits of the TPP negotiation is one of the weakest points of this process.

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gency to the discussion.

<sup>25</sup> In this regard, for example, it is evident the interest of New Zealand in obtaining an agreement with the United States. This will allow it to balance the competitive disadvantage with some of its direct competitors, such as Chile and Australia. Also in this direction is Peru’s interest in seeking an agreement with Australia considering the potential synergies in the mining sector or as Australia for access to the market of Mexico.

### 3.1. TRADE EXCHANGE AND ACCESS TO MARKETS

In regards to access to markets for goods and services, the TPP does not seem to provide benefits that add value to those already obtained in bilateral negotiations. Indeed, the most important trade partners of Chile in TPP are the United States, Mexico, Peru, Canada and Australia, countries with which Chile has achieved or is close to achieve full trade liberalization. This situation could possibly change if, once materialized the participation of Japan in TPP, Japan allows for a bilateral negotiation with Chile to deepen the agreements in an FTA negotiated between them.<sup>26</sup>

The other countries with which Chile would have interest in deepening its FTAs are Malaysia and Vietnam, and to a lesser extent Mexico and Peru. Regarding the former, the fact that these trade agreements were negotiated and enforced recently seems to indicate that it is unlikely a reopening of the section on access to markets.

Regarding Peru and Mexico, notwithstanding that the active trade agreements already provide wide market liberalization, there is currently a parallel negotiation taking place under the Alliance of the Pacific, which should lead to improvement of the agreements in much less time than TPP.<sup>27</sup>

Table number three below shows that the total exports from Chile to the group of TPP countries amounted to 19.2% on average over the last three years and more than half of them were to the United States. From all the countries in the TPP, only Peru, Mexico, Canada and Australia are relevant as destinations for Chilean exports, however, Australia and Mexico in less amount representing export quantities ranging from 1.3% and 2.3% respectively.

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26 Note that almost two-thirds of Chile's trade with TPP countries is carried with the United States, a country with which from January 1, 2014 Chile will have full trade liberalization. Member countries that follow in importance are Mexico, Peru and Australia. These countries also have well advanced trade agreements with Chile in regard to the liberalization of trade in goods and services.

27 It has been mentioned that there is a political commitment to put into writing the immediate liberalization of at least 90% of trade in the next presidential meeting during May in Cali. The purpose is to reach at least 100% of liberalization within a maximum period of three years between members of Pacific Alliance: Mexico, Colombia, Peru and Chile.

TABLE 3  
CHILEAN EXPORTS TO TPP COUNTRIES. FOB AMOUNT IN MILLION USD. FIRST  
PERCENTAGE SHOWS PARTICIPATION IN THE TOTAL OF EXPORTATIONS. SECOND  
PERCENTAGE HAS BEEN CALCULATED IN THREE YEARS AVERAGE.

Exportaciones Chilenas a los Países del TPP Monto FOB en Millones de Dólares							
	2010	% *	2011	% *	2012	% *	% Prom **
Perú	1.428	2%	1.786	2%	1.605	2%	2,1%
México	1.863	3%	1.950	2%	1.357	2%	2,3%
Estados Unidos	6.533	10%	8.782	11%	8.986	12%	10,8%
Canadá	1.397	2%	1.485	2%	1.246	2%	1,8%
Australia	776	1%	887	1%	1.194	2%	1,3%
Nueva Zelanda	25	0%	61	0%	39	0%	0,1%
Brunei							
Malasia	204	0%	216	0%	204	0%	0,3%
Singapur	66	0%	85	0%	65	0%	0,1%
Vietnam	224	0%	337	0%	371	0%	0,4%
<b>TOTAL TPP</b>	<b>12.517</b>	<b>19%</b>	<b>15.589</b>	<b>19%</b>	<b>15.066</b>	<b>20%</b>	<b>19,2%</b>
Mundo	<b>67.425</b>		<b>80.713</b>		<b>76.737</b>		100%
* Participación respecto al total de las exportaciones.							
** Calculado sobre el promedio de los tres años.							
Fuente: Servicio Nacional de Aduanas de Chile.							

Since the TPP countries that are relevant from the perspective of Chilean exports have already signed trade agreements with Chile and there are virtually no tariff restrictions, it is possible to assert with certainty that this negotiation does not lead to any additional gains for neither Chilean exporters nor consumers and therefore it appears to be of no advantage.<sup>28</sup>

<sup>28</sup> The entrance of Japan into the negotiations could mean additional benefits for the agricultural sector in the event there is a restart of the chapter of bilateral market access.

TABLE 4  
CHILEAN IMPORTATIONS FROM TPP COUNTRIES. FOB AMOUNT IN MILLION USD.  
FIRST PERCENTAGE SHOWS PARTICIPATION IN THE TOTAL OF EXPORTATIONS.  
SECOND PERCENTAGE HAS BEEN CALCULATED IN THREE YEARS AVERAGE.

Importaciones Chilenas desde Países del TPP Monto FOB en Millones de Dólares							
	2010	% *	2011	% *	2012	% *	% Prom **
Perú	1.331	3%	2.018	3%	2.027	3%	2,8%
México	2.037	4%	2.419	4%	2.464	3%	3,6%
Estados Unidos	9.375	18%	14.005	21%	15.646	22%	20,5%
Canadá	710	1%	879	1%	1.020	1%	1,4%
Australia	310	1%	520	1%	457	1%	0,7%
Nueva Zelanda	35	0%	53	0%	66	0%	0,1%
Brunei							
Malasia	126	0%	155	0%	192	0%	0,2%
Singapur	66	0%	68	0%	80	0%	0,1%
Vietnam	105	0%	150	0%	190	0%	0,2%
<b>TOTAL TPP</b>	<b>14.094</b>	<b>27%</b>	<b>20.267</b>	<b>31%</b>	<b>22.141</b>	<b>31%</b>	<b>29,7%</b>
Mundo	<b>52.872</b>		<b>66.411</b>		<b>70.725</b>		
* Participación respecto al total de las importaciones.							
** Calculado sobre el promedio de los tres años.							
Fuente: Servicio Nacional de Aduanas de Chile.							

The analysis of imports from TPP countries shows some variations. Almost 30% of Chile's total imports come from this group of countries, with a clear predominance of the United States, followed by Mexico and Peru. Again, no significant changes are possible to increase the well-being of consumers or to benefit the productive chains that use imported supplies from these sources, given the existing broad trade liberalization.

Considering the total value of trade, TPP countries represent 24% of Chile's trade exchange. Most of this exchange focuses on trade with the United States and, in much smaller scale, with Canada, Peru and Mexico. There is no doubt that the importance of the TPP for Chile is clearly determined by the presence of the United States, which is our second largest trading partner and the second largest market for Chilean exports.

### 3.2. CHILE AND ITS RELATION TO THE MAIN ASIAN ECONOMIES.

One issue to be incorporated into the analysis is Chile's relationship with the large Asian economies that are not part of TPP. It is known that the Asian region has become the main market for Chilean exports, as just over 40 % of Chilean exports are directed to that region, especially China, Japan and Korea. It should be highlighted that in recent years China has displaced the U.S. as the main destination for Chilean exports and as its largest trading partner.

In fact, as shown in the table below, exports to China stood at 23 % on average for the last three years, therefore **China alone exceeds the total value of exports to TPP countries**, which account for slightly more than 19 %, including the United States.<sup>29</sup>

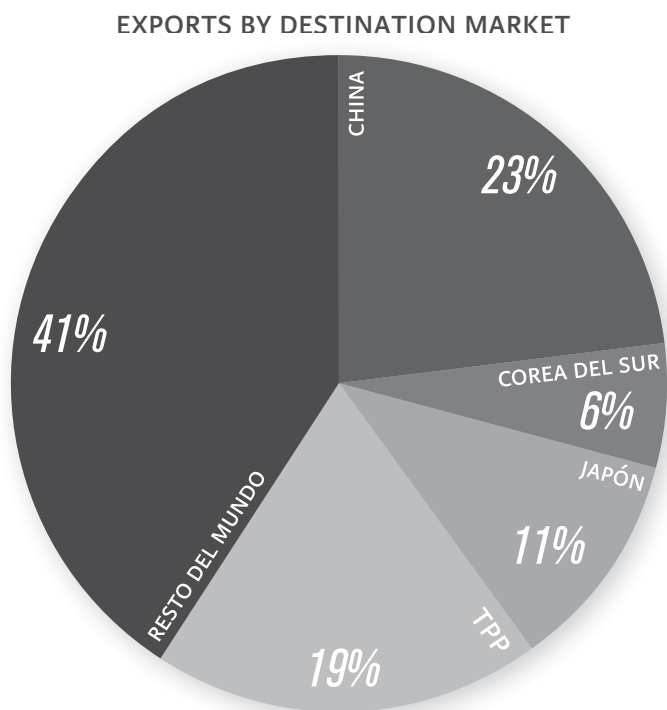
TABLE 5  
CHILEAN COMMERCIAL INTERCHANGE WITH CHINA, KOREA AND JAPAN.  
FOB AMOUNT IN MILLION USD. FIRST PERCENTAGE SHOWS PARTICIPATION  
IN THE TOTAL OF EXPORTATIONS. SECOND PERCENTAGE HAS BEEN  
CALCULATED IN THREE YEARS AVERAGE.

Intercambio Comercial de Chile con los Países del TPP Millones de Dólares							
	2010	% *	2011	% *	2012	% *	% Prom **
Perú	2.759	2%	3.804	3%	3.632	2%	2%
México	3.900	3%	4.369	3%	3.820	3%	3%
Estados Unidos	15.907	13%	22.787	15%	24.632	17%	15%
Canadá	2.107	2%	2.364	2%	2.265	2%	2%
Australia	1.086	1%	1.407	1%	1.652	1%	1%
Nueva Zelanda	61	0%	114	0%	104	0%	0%
Brunei	-		-				
Malasia	330	0%	371	0%	396	0%	0%
Singapur	132	0%	153	0%	145	0%	0%
Vietnam	329	0%	487	0%	562	0%	0%
<b>TOTAL TPP</b>	<b>26.611</b>	<b>22%</b>	<b>35.856</b>	<b>24%</b>	<b>37.207</b>	<b>25%</b>	<b>24%</b>
Mundo	120.297		147.124		147.462		
* Participación respecto al intercambio total.							
** Calculado sobre el promedio de los tres años.							
Fuente: Servicio Nacional de Aduanas de Chile.							

<sup>29</sup> These proportions may have important variations if Japan is incorporated, because it is the third largest trading partner of Chile and receives 11 % of its total exports.

The following chart shows the relative weight of the main markets for Chilean exports. It highlights the 23 % of the exports to China, 19 % to the group of TPP countries and 11 % that goes to Japan. With the eventual entry of Japan to the TPP negotiations, it will increase the exports proportion of the group of TPP countries up to 30 % of the total. In the remaining 42 %, the most important destinations are the European Union countries and Mercosur countries, especially Brazil.<sup>30</sup>

There is considerable scope for improving the access of Chilean products in the negotiations with Japan and Korea given the high level of protection of those countries on agricultural production, and therefore it should be a priority of our trade policy.<sup>31</sup> In the case of China, Chile has already negotiated a FTA including a much broader tariff reduction program; therefore, the Chilean efforts should be directed to the removal of non-tariff barriers, in particular, to the signing of the sanitary protocols that allow greater access to agricultural exports.<sup>32</sup>



SOURCE OF DATA: SERVICIO NACIONAL DE ADUANAS.

<sup>30</sup> According to the DIRECON figures, during 2012, 17.7 % of Chile’s exports went to the EU and 7.9 % to Mercosur. Source: Chilean Foreign Trade January / December 2012. Direcon, February 2013.

<sup>31</sup> The eventual opening of Japan’s agricultural exports to New Zealand, Australia and to a lesser extent, the United States, can mean the loss of benefits relating to Chilean agriculture and, therefore, should be taken into account in the TPP negotiations.

<sup>32</sup> Naturally, the progress of the bilateral agenda with China depends on the quality of Chile’s political and economic relations. This should be a matter of special consideration taking into account the fact that TPP is viewed with suspicion by China.



### 3.3. BEHAVIOR OF DIRECT FOREIGN INVESTMENT.

In this regard, there is a situation quite similar to that of “market access.” Indeed, Chile included in its agreements with most of the TPP countries, chapters of “Investment” that set standards for the protection of FDI (Foreign Direct Investment) and courts of arbitration before any disputes.<sup>33</sup>

Moreover, several evaluation studies of FTAs conducted by Direcon show that the FDI received in Chile has not suffered significant changes in their amounts and sources after the signing of the FTAs. The flows as well as the stock of FDI have not been altered in their dynamics, origin and priority production destination after the enacting of the agreements. This is consistent with the fact that the bulk of foreign investment that receives Chile is concentrated in mining, by virtue of its competitive advantages, and to the recognition of favorable macroeconomic and regulatory conditions that go beyond the FTAs.<sup>34</sup>

TABLE 6  
DIRECT INVESTMENTS STOCK DL600 1974-2012 (MILLION USD).  
TOTAL INVESTMENTS RECEIVED BY CHILE BETWEEN 1974-1990  
ARE ESTIMATED IN US\$2,000 MILLION.

Stock Inversiones Directas DL600 1974-2012 (U\$ millones)				
	De TPP en Chile 1974 - 2012	% Participación sobre Tot Invers	De Chile en TPP 1990-2012	% Participación sobre Tot Invers
<b>Australia</b>	3.807	5%	743	1%
<b>Brunei</b>		0%		0%
<b>Canadá</b>	14.822	18%		0%
<b>Estados Unidos</b>	20.157	25%	4.823	7%
<b>Malasia</b>	23	0%		0%
<b>México</b>	1.820	2%	955	1%
<b>Nueva Zelanda</b>	159	0%		0%
<b>Perú</b>	439	1%	11.637	16%
<b>Singapur</b>	4	0%		0%
<b>Vietnam</b>				0%
<b>TOTAL TPP</b>	41.231	50%	18.158	26%
<b>Mundo</b>	82.021		71.111	

SOURCE: COMISIÓN DE INVERSIONES EXTRANJERAS, DIRECON.

33 The only exceptions are the FTAs negotiated with Malaysia and Vietnam, which are not the main investors of Chile. In regard to Peru, an investment promotion agreement in full force as this country is among the top destinations for Chilean investment abroad.

34 Indeed, the 25 % of the total stock of FDI accumulated in Chile from 1974 to date comes from the USA; 18 % comes from Canada and 5 % from Australia, highly concentrated in the mining sector in all cases. Chile already has an advanced regime of investment protection with these countries.



The table shows that 50 % of the total registered FDI in Chile comes from countries that are part of the TPP, with a large predominance of the United States with 25 %, Canada 18 % and Australia with 5 %. Every mentioned country has signed already an FTA with Chile that includes investment chapters. Notwithstanding the proposals being discussed in the TPP that include further liberalization of capital movement, the favorable conditions to the existing foreign FDI in Chile shows that it does not require any encouragement to increase its flow to Chile and that this increment will depend on other factors not regulated by an FTA.

It is important to mention that the figures probably underestimate the importance of Peruvian investments in Chile, estimated at values close to US\$ 5 billion, while Chilean capital investment in Peru exceeds \$ 11 billion. The intense bilateral investment flow is protected by an «Agreement on the Promotion and Protection of Investments,» and figures show that no additional mechanisms are required to strengthen such protection or to additionally liberalize capital movements.

Therefore, from this point of view, it can be argued that TPP negotiations will change existing conditions in Chile, which are widely favorable to FDI.

TABLE 7  
DIRECT INVESTMENTS STOCK DL600 1974-2012 (MILLION USD)

Stock Inversiones Directas DL 600 1974-2012 (U\$ millones)				
	En Chile de 1974 - 2012	% Participación sobre Tot Invers	De Chile en 1990-2012	% Participación sobre Tot Invers
<b>China</b>	104	0%	-	0%
<b>Corea del Sur</b>	-	0%	-	0%
<b>Japón</b>	6.960	8%	-	0%
<b>Mundo</b>	82.021		71.111	

SOURCE: COMISIÓN DE INVERSIONES EXTRANJERAS, DIRECON.

In analyzing the situation of the three major Asian economies with respect to their investments in Chile, it is found that the only significant presence is Japan, with 8 % of the total. Japan, Korea and China equally have an investment chapter with Chile that reinforces the legal stability for investors.

### 3.4. CONVERGENCE OF TRADE DISCIPLINES.

Another point to analyze regarding the benefits of Chile's incorporation to TPP, is the possible negotiation of commitments allowing simplification and convergence of trade disciplines. These disciplines are varied in general and differ among the various FTAs that have been negotiated. This is an issue on which APEC has been working and seeks essentially to reduce transaction costs and facilitate trade.

In the case of Chile, this may be interesting precisely because it has negotiated FTAs with all other TPP members and, therefore, a simplification and harmonization of disciplines and standards might benefit its exporters and ease the work of public agencies responsible for monitoring of compliance with rules and procedures, such as customs and agricultural services. In this regard, the issues that seem of great interest are those related to "Rules of Origin", "Accumulation of Origin", "Electronic Certification" and "Sanitary and Phytosanitary Aspects."

However, the most interesting features, such as the possibility of relaxing the rules of origin and move towards accumulation of origin agreements between TPP members, offer very limited possibilities of use for Chile. This is due to Chile's productive structure, closely related to its natural resources. The low participation of Chilean firms in global chains of value probably will not show significant changes in the short term and consequently they are hardly attainable advantages.<sup>35</sup>

### 3.5. TPP AS A PLACE FOR THE DEFINITION OF REGULATORY STANDARDS.

The failure of the Doha round and the virtual shutdown of the WTO as a multilateral organization responsible for establishing the rules governing international trade and ensuring compliance, open the possibility of perfecting the essential rules for international trade in other institutional settings. This may be the case of any agreement between the European Union and the United States (who have announced an early start of negotiations), the TPP itself, as well as other important negotiations, such as those announced between Japan and the European Union.<sup>36</sup>

For Chile, this is an important issue because in the framework of these agreements there could be negotiation on aspects such as the provisions on trade in services, trade defense measures or general regulations regarding financial regulation and capital flows, as well as other related to

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35 For some TPP partners like Mexico or Asian partners, this situation can be a significant boost for the articulation of new value chains or for their integration into existing ones.

36 In that sense, it may be of greater interest for Chile to concentrate this work in APEC, which has the benefit of including all Chile's major trading partners, with the exception of the European Union and Brazil.

“Intellectual Property” or “Environment”.

Notwithstanding the traditional position of Chile in favor of multilateral venues to discuss and agree on general provisions relating to international trade, it is possible that in the local debate this is presented as an advantage of participation in the TPP. However, this opportunity to discuss in the multilateral level seems highly questionable, given the low incidence of emerging economies in the definition of the rules that are usually imposed by industrialized economies.

Ultimately, the analysis of the potential benefits that Chile could obtain from the TPP does not show significant advantages in the quality and depth of Chile’s international economic integration, as only marginal benefits on market access will be obtained.

On the contrary, as discussed below, there is a risk of acquiring additional commitments in sensitive areas that may affect Chile’s autonomy and scope for public policymaking in areas relevant to our economic and social development. The progress of the negotiations so far sets a negative correlation of costs and benefits from the economic point of view and, as discussed below, it also sets potentially unfavorable political situation for the balance and autonomy in Chile’s international integration.

#### 4. MOST SENSITIVE ASPECTS IN THE NEGOTIATION.

While aspects relating to “Intellectual Property” and “Digital Rights” have been so far those that have motivated some public debate, they are not the only ones on which special attention is needed.

The table presented below (No. 8) provides a synoptic view of the commitments made by Chile in other bilateral negotiations, and major changes to those commitments that have been debated during rounds of TPP negotiations.

It appears, evidently, that in issues identified as sensitive, the highest level of concessions granted by Chile is in the FTA with the U.S., which accounts for a bottom line of said negotiation that once was considered balanced because it allowed access to a broad market of the country that by time (2002) was our main trading partner. The current attempt to obtain new concessions, would break the balance of the bilateral agreement as there is no chance of getting a new balance to offset these additional requirements.

The argument that the changes required in areas such as “Intellectual Property” or “Capital Movements” are necessary to enhance the innovation required for our development, has no basis in reality and there are no known studies to support an assertion of that nature. On the contrary, these new requirements seem to go in the opposite direction of the country’s needs as discussed in more detail below.

**TABLE 8**  
**FTA'S COMPARATIVE TABLE BY DISCIPLINES BY CHAPTERS. COMPARING**  
**INVESTMENT, INTELLECTUAL PROPERTY, ENVIRONMENT, LABOR, PROCUREMENT.**

Comparativo Disciplinas TLCs										
TPP			Australia	Canadá	México	Estados Unidos	P4	Perú	Malasia	Vietnam
Inversiones	Liberalización total flujos de capital	Se solicita liberalización total, no aceptando mantener medidas de control interno. Sólo las aceptadas por crisis en la balanza de Pagos	Se mantienen facultades del Banco Central, encaje sólo por dos años.	Se mantienen facultades del Banco Central	Se mantienen facultades del Banco Central	Si, con restricciones después de un año de impuestos	No existe el capítulo.	Se mantienen facultades del Banco Central	No existe el capítulo.	No existe el capítulo.
	Solución de controversias	Inversionista Estado	inversionista Estado	Inversionista Estado	Inversionista Estado	Inversionista Estado	No existe el capítulo.	Inversionista Estado		
Propiedad Intelectual	Linkage	Se solicita establecimiento de un sistema automático de Linkage	NO	No existe el capítulo.	NO	Si, no hay claridad respecto a su automatización.	NO	NO	No existe el capítulo.	No existe el capítulo.
	Protección a los derechos autor, por más de 50 años	Existe una propuesta de llevarlo en determinados casos entre 95 y 120 años.	70 años desde la primera publicación autorizada.		NO	70 años desde 1era publicación autorizada	NO	NO		
Medio Ambiente	Acuerdos multilaterales	Se obliga a suscribir e incorporar siete Acuerdos Multilaterales.	No existe el capítulo.	No se afectan los derechos.	No existe el capítulo.	Reconocen importancia	Acuerdo de Cooperación	No existe el capítulo.	No existe el capítulo.	No existe el capítulo.
	Solución de controversias	Existen propuestas aplicar sanciones comerciales.		A través de un panel, que puede exigir contribuciones monetarias. Acuerdo paralelo.		Con contribuciones monetarias.				
Asuntos Laborales	Solución de Controversias	El capítulo no se cierra por que existen propuestas de aplicar sanciones comerciales.	NO	Acuerdo de Cooperación.	No existe el capítulo.	Con contribuciones monetarias.	MOU	No existe el capítulo.	No existe el capítulo.	No existe el capítulo.
Compras Públicas	Umbrales	Hay en la mesa propuesta de subirlo hasta 120.000 DEG.	50.000 DEG	50.000 DEG	50.000 DEG	50.000 DEG	50.000 DEG	No existe el capítulo.	No existe el capítulo.	No existe el capítulo.
	Cobertura	Los países federales no quieren comprometer, en la mesa, más allá de su gobierno central.	Nivel central y lista positiva a nivel subcentral.	En Canadá nivel central, en Chile central, hasta gobernaciones	En México nivel central; en Chile central, hasta municipalidades	Nivel central, más algunos Estados	Nivel central			

Fuente: Página Web Direcon, Base de Datos Acuerdos Comerciales de OEA.

#### 4.1. INVESTMENT AND FINANCIAL SERVICES.

While Chile has a general legal system and a business environment that are internationally recognized as favorable and attractive for FDI, the country has included in most of its trade agreements certain chapters that strengthen foreign investment protection and grant similar treatment to local and foreign investors. Nevertheless, it is appropriate to draw attention to some aspects that are present in this negotiation:

a) Provisions for the establishment of investor-state disputes.

Beyond the fact that this is a controversial issue that has motivated some countries in the region, such as Ecuador, Bolivia and Venezuela, to renounce their commitments in this area, in the case of Chile this is an assumed cost in other agreements, so that in terms of negotiating the TPP, this is not a new aspect to raise additional commitments to others already adopted in the past.

b) Limitations on the operation of state-owned companies.

The available information indicates that there have been proposals, by the United States, designed to regulate and limit the operation of state companies for production and distribution of goods and services, conditioning their action on the existence of private companies operating in comparable conditions in the same economic sector.

Though apparently this should not threaten the existing operation of companies such as CODELCO or ENAP, this could affect the creation of new state companies, which constitutes a serious limitation on the adoption of measures to correct of market failure, as is the case of pension funds administration (AFPs), health institutions (ISAPRES), development banking, or the impulse to strategic activities such as the production of clean energy; all options are discussed as part of proposed adjustments of the dominant economic model in Chile.

Beyond the viability of some of these proposals, or the will and consensus to push them forward, these are legitimate public policy areas that must be preserved as a space for autonomous decision of the country..

c) Movements of capital.

with the United States, Chile managed to retain powers of its Central Bank that provide a reasonable margin for the establishment of provisions to regulate the entry and exit of capital in situations of crisis in the balance of payments.<sup>37</sup>

The international crisis that began in 2008 has its origin precisely in the weakness of the regulatory framework of the financial system in the United States, which later was found also in the European Union. In both cases, publicly funded, costly bailouts have been given to the banks, which has seriously affected the economic growth and employment rates in most industrialized countries.

In contrast, regulations in emerging countries, such as Chile, have allowed them to stay out of the financial crisis. Therefore, it is not reasonable or acceptable to allow for amendments that are in the direction of further liberalizing capital flow control, as it seems to be the intention of the U.S. negotiators.<sup>38</sup>

Consequently, what is indicated in points b and c should constitute red lines for the Chilean nego-

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37 In the final stage of the negotiation of the bilateral FTA, in December 2002, this was probably the hardest issue to agree and required the direct presence of the Chilean Finance Minister. At the time, concessions given were defined as the maximum acceptable limit for Chile and in fact, in all negotiations afterwards remained as policy that ensured broad powers to the Central Bank without making concessions similar to those in the FTA with the U.S.

38 The attempt to obtain a greater liberalization of capital movement, goes even in the opposite direction from what is suggested by international organizations such as the IMF (International Monetary Fund) and what was discussed and agreed at international forums such as the G20 (Group of the Twenty.)

tiators, so as not to make additional commitments in these areas that may threaten the flexibility required either to adopt prudential economic policies or greater State involvement in the production of goods and services whose provision is not adequately guaranteed by private enterprise.

#### 4.2. ENVIRONMENT.

This is another area in which Chile has established bilateral commitments in FTAs previously negotiated. However, these commitments so far have been limited to the signing of agreements and international environmental treaties and the commitment to ensure full respect for and compliance with national legislation on environmental matters.

The available information allows to infer that there are proposals to incorporate trade sanctions proposals in the chapter on “Environment”, which can eventually make way for the expression of protectionist tendencies under the guise of environmental concerns.

Moreover, in other FTAs negotiated by the United States, for example with Peru, provisions were made that have limited the scope of action of public entities and which have resulted in conflicts between local communities, government and businesses that promote productive projects in areas with fragile ecosystems, which should be an precedent to be incorporated into the analysis of the proposals under discussion.

Again in this topic, Chile’s negotiating position should be not to make concessions that go beyond the provisions of existing bilateral agreements.

#### 4.3. REGULATORY COHERENCE.

While at first this seems to be a positive aspect of the negotiation, there is a possibility that it is sought to establish commitments that significantly limit the autonomy of the country to set regulations in relevant areas and in very different topics linked to the production of goods and services, labor and environmental issues, among others. It is therefore not only aspects related to “Technical Barriers to Trade” or “Health Matters”, but virtually all matters that are usually subject to standards and statutes, which affect or may affect, directly or indirectly, services that can be incorporated into international trade flows.

Indeed, rules such as those relating to car emissions, drug labeling, environmental provisions and, in general, everything that the authorities or companies of TPP partner countries can construe as limitations on trade, could be put into question, both in mandatory instances of public consultation and in the “Technical Administration Committees “ of the agreement.

This is not only to ensure consistency between regulatory arrangements for a specific goods and

services activity, with the existing regulatory framework in other areas or related matters, but additionally to take the commitment of large public consultation mechanisms, which would allow other members to submit regulations to the analysis of the “Technical Committee” of the treaty, introducing mechanisms to limit the scope of action of public agencies and national authorities.

According to the research, to adopt commitments in these areas could also mean the need for a complete overhaul of the existing regulatory framework, which given the vastness of the areas subject to revision, could take a long period of time and cause instability for operators who rely on these regulations for the development of their activities.

Moreover, the partners would be forced to the creation of technical and institutional capacities in place to act as agents of coordination and supervision of regulatory coherence and as technical counterpart of similar bodies of their partners.

Therefore, although it may initially appear attractive and positive to move towards systems that ensure greater coherence between the different areas under different regulations, it seems inconvenient to adopt commitments that clearly subtract local autonomy for policy decisions, and may be subject to considerations and private interests of companies and public agencies of the signatory countries of the TPP.

#### 4.4. INTELLECTUAL PROPERTY.

Without a doubt, this is the issue that arouses most interest in the public debate, given its potential impact on issues as sensitive as the price of drugs and the possibility of developing public policy on health, without limitations.<sup>39</sup> This issue is linked to the demands of the United States to negotiate a new chapter of “Intellectual Property” to replace the one already put in place in the bilateral FTA.

In this regard, it seems necessary to point out some issues of particular relevance in public debate:<sup>40</sup>

- a. The allegedly ambiguous provisions leading to different interpretations by Chile and the USA. regarding the so-called “administrative linkage”, are the consequence of the results and balance of the FTA negotiations and not the product of unclear wording or weak technical foundation.

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<sup>39</sup> Even if no recent studies are available to assess the impact of any changes to commitments on intellectual property protection that restrict the production of generic drugs, national and international consensus points in the direction of stimulating the production of generics, as a way to facilitate access to health care for low-income sectors. It is considered a public good that must be protected.

<sup>40</sup> A detailed technical reference on the objections raised to the chapter on “Intellectual Property” is in the communication of August 12, 2011, addressed to “Director General of International Economic Affairs” at the time, Jorge Bunster, by Digital Rights NGO.

- b. Pressure from U.S. authorities. to force an interpretation requiring the Public Health Institute to act as the entity responsible for protecting, by administrative means, the rights claimed by the pharmaceutical industry, has not been successful so far. In fact, the classification of Chile in the “red list” as a country that does not adequately protect intellectual property rights is clearly tied to pharmaceutical industry lobby and U.S. entertainment.

This classification has touched many countries at different times, some of which drive relevant technological innovations in various fields, such as Canada, Brazil and Israel, among others, and which have strongly rejected this pressure and denounced the pharmaceutical industry lobby. Moreover, the threat that this classification could have a negative impact on FDI in Chile, has been completely denied by the flow of capital that has received the Chilean economy in recent years.

- c. The reopening of the “Intellectual Property” chapter puts Chile in a vulnerable position, as it would force to make commitments that go beyond those established in the bilateral FTA, without receiving any compensation. Indeed, at that time Chile agreed to incorporate concessions on intellectual property understanding that they were a condition to obtain an overall favorable balance to the country’s interests. On this occasion, the need to adopt new commitments without compensation or new balancing of interests would lead us to pay twice for the same benefits, which is evidently unequal.

Additionally, it should be noted that there is no evidence that adopting new standards in this area would lead to stimulating domestic research and innovation in areas of interest to Chile.

- d. Another aspect to be modified with the new chapter of “ Intellectual Property” is the increase in the term of protection of copyright in respect of certain types of works, from 70 to 95 years, which does not seem reasonable and would establish even greater limitations on access to cultural goods to lower income sectors that are not able to pay for that access, in addition to affecting the formation of a more diverse cultural heritage.
- e. Chile has already made significant changes to the regulations and laws that protect intellectual property in general and copyright in particular. For instance, in 2006 a major reform of the industrial property laws was approved and the same happened in 2010 with copyright law. The “National Institute of Industrial Property” was created,<sup>41</sup> special mechanisms were established for a more agile handling in the judicial system of the claims of intellectual property infringements, a special-

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<sup>41</sup> INAPI formally began its activities in January 2009, and is the legal successor of the “Industrial Property Department” of the Ministry of Economy.



ized brigade of the investigative police was created to prevent crimes against intellectual property, and many international treaties were signed strengthening the protection of these rights.

In short, the protection of intellectual property rights is widely guaranteed in Chile, both by bilateral agreements as by adherence to multilateral international treaties, established under the aegis of the WTO and WIPO, as well as the provisions contained in our domestic law. Consequently, the reopening of this chapter does not respond to failures or weaknesses in our regulatory and institutional system, nor is it linked to our development needs. On the contrary, evidence shows that this reopening only aims to meet demands of some sectors of U.S. industry, which in this way seek to extend or preserve monopoly profits in their favor.

The chart below allows to appreciate comparatively a set of intellectual property provisions contained in the so-called SOPA and PIPA bills, and the proposals that, to our knowledge, are discussed in the “Intellectual Property” chapter negotiations for TPP.<sup>42</sup>

In this comparative analysis we can conclude that, a set of provisions that have not reached consensus so far in the United States (in the case of SOPA) or the European Union (in the case of PIPA), are precisely collected in TPP to try to impose them by way of a multilateral treaty.

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<sup>42</sup> SOPA stands for “Stop Online Piracy Act”. For its part, PIPA stands for “Protect IP Act”.

TABLE 9

## COMPARATIVE SUMMARY OF PROPOSALS

	PIPA	SOPA	TPP
Pone en riesgo las plataformas y comunidades en línea	√	√	√
Utiliza una definición excesiva de “piratería” que incluye sitios web y servicios que tú usas para almacenar, compartir y enlazar (a medios de comunicación).	√	√	√
Amenaza a una gran cantidad de servicios en línea legales e innovadores, como Twitter, Facebook y Youtube.		√	√
Establece un mal ejemplo para la censura de Internet a nivel global.	√	√	√
Usa las mismas herramientas técnicas que otros gobiernos – como China- ocupan para suprimir la libertad de expresión y a los disidentes.	√	√	?
Establece un ejemplo para otros países para bloquear cualquier tipo de contenido en línea desfavorable, lo que puede llevar a violaciones a los derechos humanos.	√	√	√
Quiebra la estructura de Internet.	√	√	?
Amenaza la seguridad en línea.	√	√	?
Permite requerimientos de EE. UU. a los proveedores de nombres de dominio (DNS) para bloquear que un usuario llegue un sitio web específico.	√	√	?
Interfiere con los esfuerzos en curso para mejorar la seguridad en línea, lo que hace más vulnerable a los usuarios a robos de identidad y otros tipos de seguridad informática.	√	√	?
Expone a los que tratan de evitar bloqueos de DNS a virus. Estos computadores infectados pueden ser secuestrados para su uso en ataques informáticos a otros sistemas, poniendo al país en mayor riesgo de ciberataques.	√	√	?

\* ? = NO INFORMATION.

## 4.5. DIGITAL RIGHTS.

While the proposed regulations for digital rights are contained in the discussion of the “Intellectual Property” chapter, the specific relevance of this issue and the potential media impact that could open a more explicitly discussion on the subject, make it convenient to treat them separately.

Indeed, first of all it should be noted that the Internet and access to its various content have become a **global public good**, of enormous impact on the lives of millions of people worldwide. In fact, the Internet today is a critical component of the reinforced exercise of citizens' rights, which is becoming the kind of relationship between the institutions and the political system with citizens, as well as communication between people. Similarly, the Internet is an indispensable mechanism to facilitate and democratize access to knowledge and culture that would otherwise be impossible for a large number of people in Chile and worldwide.

Consequently, the establishment of provisions restricting such access has become an issue of great social and political sensitivity, both in the developed world and among emerging countries.<sup>43</sup>

The scarce information available regarding the discussion that takes place in the TPP, suggests that, precisely, several of the issues that once were not approved in the U.S. Congress over SOPA, are being sought to be reinstated via the TPP. This is an oblique way of obtaining an internal consensus that at the time was not achieved, with the explanation that this time it is an international commitment that they are forced to support.

Thus, the aforementioned extension of certain copyright from 70 to 95 years and the hardening of technological protection measures, which can potentially restrict access to content protected by copyright, and even the establishment of new provisions to limit or prevent the parallel importation of works (which would limit their legitimate exchange) are some of the aspects that have been sought to move from SOPA to TPP negotiations. The same applies to the provisions of the failed ACTA.<sup>44</sup>

The above is joined by an even more controversial issue, as are the provisions that would require Internet providers to eventually block access to certain content, in practice restricting user access and establishing a kind of private censorship, similar to that used in countries with no democratic tradition and culture and unacceptable in societies such as Chile.<sup>45</sup>

It is, in short, a matter of high impact and citizen interest, as the commitments eventually taken in this field, can affect rights considered as acquired, and which are part of democratization of culture and access to knowledge that hardly would be understood and accepted by those affected.

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43 An example of this was the debate generated regarding "the Stop Online Piracy Act", known as SOPA, driven by the U.S. government and ultimately failed to pass in Congress under widespread rejection of civil society organizations, academia and political sectors linked to progressive and democratic visions within the U.S.

44 ACTA stands for "Anti Counterfeiting Trade Agreement", negotiated by the United States, European Union, Canada and Australia, among other countries, and which could not be put into effect because of the rejection that it caused among Internet users and citizens in general, especially in the European Union.

45 On this point, it is interesting to recall that Congress, in the discussion of the latest amendment to copyright law, rejected any provision that did not include the intervention of a judge in the process, arguing that it could seriously affect several rights protected by the Constitution, repeatedly refusing to establish a private administrative or removal or blocking of Internet allegedly infringing content. See Alvarez Valenzuela, Daniel (2011), "In search of regulatory balances: Chile and the recent reforms to copyright". International Centre for Trade and Sustainable Development. Geneva, Switzerland. In [www.ictsd.org](http://www.ictsd.org)

## 5. POLITICAL CONTEXT AND IMPACT OF TPP.

A further dimension to evaluate the suitability of Chile's participation in TPP, is the analysis of the political impact it can cause both in our relationship with the other Asian countries that are not part of this initiative, as with South American countries not participating in the negotiations.

### 5.1. FROM P4 TO TPP.

A first issue to make clear, is the argument that the origin of the TPP goes back to the provisions of P4, negotiated by Chile, New Zealand, Singapore and Brunei in 2006, and which was conceived as an instance open to accession by third countries in order to move towards the establishment of a free trade area in the Asia Pacific region. In this line of argument, Chile would have some paternity that would not be reasonable to leave.

Notwithstanding that formally this is true,<sup>46</sup> it is by now a sort of anecdotal reference, since it is clear that the incorporation of U.S. negotiations P4 changed the character of the original, to the point that the initial partners have disappeared as reference and have been forced to accept the leadership of TPP by the larger economies, especially the United States, without possibilities to influence the dynamics, coverage and content of the negotiations.

This is therefore an initiative that has a scope, political purposes and expression of public and private interests, reflected in the agenda imposed for the negotiations, which are significantly different from those that gave rise to P4.

### 5.2. TPP AND THE UNITED STATES STRATEGY IN THE PACIFIC.

This is an issue frequently cited by analysts both in Asia and in the U.S. itself, which account for a significant shift of overall priorities of this country, both politically and militarily as well as economically, defining the Pacific region as one of its main strategic occupations.

In fact, the former U.S. Secretary of State Hillary Clinton, gave formal details of the strategy being deployed by her country in the Pacific region, highlighting its main lines of action: strengthening its military presence, narrowing their ties with emerging powers, including China; the promotion of democracy and human rights and the expansion of trade and investment, mentioning the TPP

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<sup>46</sup> The process that led to the extension of the original P4 and the incorporation of the United States, is described in more detail in the first section of this article.

as the main instrument to achieve the latter.<sup>47</sup>

Beyond the fact that U.S. officials deny any such intention, there are numerous international policy analysts who understand this U.S. strategy as acknowledging the growing importance of the Pacific Rim in reordering the axes of political, economic and military globally; and at the same time, as an attempt to establish a kind of brake or balance to the expansion of China's power, increasingly assumed as a global power. In this approach, it would be a balance and containment strategy, rather than an attempt at economic integration with possibilities to include the combined economies located on both sides of the Pacific Ocean.

The end of the "Cold War" and the disappearance of the Soviet Union, enacted at the end of the global order on a pole, and gave way to the emergence of new players able to articulate their interests differently. Among them, the one that has achieved greater consolidation and identity is the group of countries known as BRICS,<sup>48</sup> who have played a very active role in the G20 and other international forums such as the WTO, where a Brazilian diplomat has just been elected as Director General.

It is safe then to assume that the adoption by the United States of a containment policy toward China, in which the TPP appears as an important tool, will very likely have negative impacts among the countries of that bloc of emerging nations and between its closest allies.<sup>49</sup>

Therefore, in that context, the question regarding the interests of Chile is pertinent. On a conceptual analysis, the convenience and pertinence to Chile to be part of the overall strategy for the deployment of U.S. interests is questionable, as additionally it is conceived as a kind of brake or containment of another nation with which Chile has a fruitful bilateral cooperation relationship, and which can also negatively impact other countries of great regional importance, as is the case of Brazil.

In a more pragmatic analysis perspective, it should be remembered that China is the main market for Chilean exports, and at the same time is our main trading partner. In fact, in the year 2012, 23 % of the total value of our exports was destined for that country, while all TPP partners, including the United States, received 20 % of our shipments.

There are many signs that China looks with suspicion the articulation of TPP. In fact, their first response has been to promote the "**Regional Comprehensive Economic Partnership**" (RCEP), involving the 10 ASEAN countries plus China, Japan, Korea, India, Australia and New Zealand.<sup>50</sup>

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47 This strategy is known as The Pivot, and a detailed presentation is in the magazine "Foreign Policy" of November 2011, in the article by the former Secretary of State Clinton: "America's Pacific Century".

48 Brazil, Russia, India, China and South Africa.

49 A U.S. policy of containing China also seems inconsistent with the fact that China is the largest creditor of the United States, one of its most important trading partners and the axis of integration of key value chains, both in traditional industries as well as in those that are on the technological end, such as electronics and computers.

50 ASEAN stands for "Association of Southeast Asian Nations." It is the grouping of 10 economies in Southeast Asia: Brunei, Burma

Notwithstanding that there are countries participating in both TPP and RCEP, as is the case in Australia, New Zealand and several ASEAN countries, there is no doubt that this is an attempt to respond to the TPP initiative, with the extra of the incorporation of India which can help it transform it into the largest negotiated agreement in the world.

A further example of the negative view of China regarding TPP, is the fact that South Korea has decided not to join the agreement, despite their obvious similarities in terms of trade and economic policies with the majority of its members, most likely by the need to maintain a high level of relations with China, given the conflicting relationship with North Korea, which would surely be affected if they decide to join TPP.<sup>51</sup>

The conclusion is that TPP is not only an economic and trade agreement that seeks to contribute to the creation of a free trade area in the Asia Pacific region. It is not a politically neutral initiative and the political impact of its conformation both in the Asian region, and in some South American countries, must necessarily be incorporated into the assessment made from Chile to define their participation, understanding that long-term strategic options are involved regarding international integration of the country.

### 5.3. TPP AND ITS IMPACT IN OUR REGIONAL ENVIRONMENT.

An additional dimension of analysis is the impact of these negotiations on Chile's relations with its closest regional environment. In this regard, it must be stated that an active presence and the strengthening of political and economic relations with the countries of the Pacific Rim is a strategic priority for which there is a broad domestic consensus.

In fact, our country is actively involved in both the TPP negotiations, as in the formation of the Pacific Alliance, the latter being an initiative promoted along with Peru, Colombia and Mexico, seeking to deepen their economic and trade integration.<sup>52</sup>

At the same time, the importance of the emerging economies of Asia is growing not only in Chile and Peru, as countries bordering the Pacific, but also for major South American Atlantic economies, such as Brazil and Argentina, countries for which China has become a vital trading partner.

Also in our region there is criticism and mistrust on both initiatives, which are often seen as part

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(Myanmar), Cambodia, Philippines, Indonesia, Laos, Malaysia, Singapore, Thailand and Vietnam.

51 Equally suggestive is the lack of interest of Indonesia in joining TPP, which has focused its presence as one of the articulators and drivers of ASEAN.

52 The agenda defined by the Pacific Alliance, presents undoubtedly positive aspects, and the participation of Chile should help this initiative remains open to new members and not consolidated as an ideological and political block alternative to others already existing in the region. It is important to note, moreover, that for Chile the margin for maneuver and opportunities to influence the content and outcome of the negotiating agenda of the Pacific Alliance is far superior to that available in the TPP.

of an overall strategy led by the United States.

Certainly, the intention is not to condition the autonomy and independence of decisions which, in a sovereign manner, correspond to our country to set priorities of its foreign policy and trade policy, which must be defined in terms of its own particularly national interest. But notwithstanding this, it seems appropriate to reflect on what is the way to maximize the potential it gives to our development prospects to be part of the Pacific Rim.

It is at this point that emerges as an important issue the possibility that Chile will consolidate as a bridge for the flow of goods and services between the MERCOSUR economies and the Asian region. Additionally, and perhaps more importantly still, is the possibility to advance in the value chain linkage between emerging Asia and South America economies, of which our businesses, especially small and medium, could be a part.

For both purposes, the conduction of our interests in the Pacific Rim should be articulated and balanced with our policy towards the MERCOSUR countries, so that our presence in initiatives like these is complemented with other regional initiatives, in the direction of deepening our integration with these countries, especially Brazil and Argentina.<sup>53</sup>

#### 5.4. THE COST OF NOT PARTICIPATING IN TPP.

This is a dimension of analysis that cannot be ignored. In fact, just as Chile's participation in the TPP negotiations cannot be evaluated under the assumption that it is a politically neutral initiative, an eventual decision from Chile to distance itself from this process would suppose political costs that must be considered.

It is highly likely that the most important cost is a distancing from the United States, which is our second largest trading partner and which has maintained a high level of constructive and cooperative relations, surpassing even the episode arisen over the invasion of Iraq 2003.

With the information available, it is no possible to evaluate a possible impact on the bilateral FTA with the United States, which obviously is an issue to consider given the importance of this agreement for the Chilean economy, although the fact that an international treaty in full force, should be sufficient guarantee of stability.

It is also important to consider that a hypothetical withdrawal of Chile from these negotiations would impact on our relationship with Peru, which would appear as the only South American

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<sup>53</sup> It is clear that Brazil deploys its international presence in close coordination with the BRICS group, as has just proven the election of a WTO Director General of Brazilian nationality.

country participating in the TPP, and which would leave evidence of a disparity in a strategic view precisely in the area where it seems desirable and possible to achieve higher levels of dialogue and cooperation with this neighboring country.<sup>54</sup>

## 6. FINAL CONSIDERATIONS.

- The TPP is one of the most important negotiations carried out at present times. This is an initiative that goes beyond its origin back in the P4 negotiated by Chile, therefore, it must be judged and evaluated as a completely different from that initiative.
- The 11 countries included in the negotiations so far, and the early accession of Japan, are a highly heterogeneous group in economic, political and cultural terms, therefore with very different incentives to participate in this agreement as well.
- The special situation in Chile, resulting from the fact that it is the only country that has existing agreements with all other partners, determines that it is certainly the country with fewer incentives to participate, precisely because there is no room for significant gains in terms of access to markets and improvement of trade disciplines.<sup>55</sup>
- The progress of the negotiation process so far, allows to notice the existence of significant pressures to increase Chile's concessions in sensitive areas, such as "Intellectual Property", "Capital Movements" and "Environment", among others, as well as the introduction of new disciplines and regulations in other areas of particular sensitivity, such as any restrictions in the areas of "Digital Rights", "Regulatory Coherence", or for the establishment and operation of State companies.
- As the lead demanding party in these issues is the United States, there is a strong possibility that this negotiation is, in practice, a way to renegotiate the FTA with that country, which would allow them this time to obtain what it did not get in that opportunity, with the additional problem that it is unable to provide compensation in any area of agreement.
- Should this situation materialize, Chile would be in the paradoxical scenario of paying twice for obtaining the same benefit, given the inability to obtain additional benefits.

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54 The situation that will open after the ruling in The Hague, surely will define the quality of our relationships in the immediate future with Peru. If the behavior of both countries is channeled in a constructive way, the strategy of action and presence in the Pacific should be part of a new stage of cooperation, and TPP appears as an obvious matter for discussion and coordination.

55 The inclusion of Japan might improve the prospects for Chile in part, if that country opens to trade issues pending from the bilateral FTA, and that would benefit the Chilean food industry.



- There is no evidence that the adoption of new commitments in the areas where they are being demanded is a necessity born of our own interests or that they are standards and regulations that promote our development. On the contrary, there are sound reasons to argue that they are commitments that would limit the room for maneuver for the adoption of public policies, in short or long term, which could be of great importance for a more balanced, sustainable and inclusive development.
- The potential benefits that could arise from regulatory convergence agreements and trade facilitation, seem insufficient to provide a favorable balance for Chile, considering the magnitude and sensitivity of the concessions that would be accepted.
- From the perspective of our political position in the international field, joining the TPP means to join a global strategy of containment and balance of China's influence in the Asian region led by the United States.
- This scenario poses a particularly complex for Chile, since both countries are our major trading partners and countries with which we maintain constructive and cooperative relations. However, it cannot be ignored that this is most likely an option that will bring about costs in our relationships with several emerging countries in Asia and Latin America.
- Chile's active presence in the Asia Pacific region is a foreign policy priority of high internal consensus. So maintaining our active presence in multilateral forums such as APEC and FOCALAE takes a central role. Along with this, the deployment of regionally based initiatives such as the Pacific Alliance, understood as an instance open to new partners that seeks to become a political reference to other existing alternative in the region, must be mechanisms that give concrete expression to that priority.
- The question of whether Chile should stay in the TPP negotiations, or the definition of the essential conditions that should be met for this to occur, has not been the subject of academic and political debate, but rather there has predominated the absence of timely and wide information that enable an informed discussion.
- To retrieve one of the keys of the Chilean experience in trade negotiations, as is the timely and truthful discussion with political, social and productive sectors and involved, is especially necessary given the importance of economic and political commitments which are at stake in this negotiation.



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## **Chile and the TPP Negotiations:**

Analysis of the economic and political impact