Baker McKenzie.

The Pacific Alliance

Guide to the Most Important Latin American Trade Bloc You Likely Don't Know

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What is the Pacific Alliance?

What is the Pacific Alliance?

THE CREATION OF THE PACIFIC ALLIANCE: Chile, Colombia, Mexico and Peru

> *Four nations are developing an initiative that could add new dynamism to Latin America, redraw the economic map of the region, and boost its connections with the rest of the world - especially Asia. It could also offer neighboring countries a pragmatic alternative to the more political groupings dominated by Brazil, Cuba and Venezuela. If the Alliance was a country, it would be the world's eighth largest economy and the seventh largest exporter.*

Moises Naim from the article "The Most Important Alliance You've Never Heard Of," The Atlantic, February 17, 2014.

With the aim of strengthening the integration between these four economies and defining joint actions to build business relations with the Asian countries of the Pacific Rim, based on existing bilateral trade agreements between Member States, the Pacific Alliance was officially created on April 28, 2011, with the Lima Declaration.

As a result of this Declaration, the countries opened negotiations to enter into a Framework Agreement, which was signed on June 6, 2012, and whereby, in addition to the four founding members (Chile, Colombia, Mexico, and Peru), Costa Rica and Panama were declared observer states, and candidates to join the bloc in the near future. The Framework Agreement did not enter into force until July 20, 2015.

Thus, the Pacific Alliance was created for the purposes of developing a fully integrated area, to move progressively towards the free movement of goods, services, capitals, and people, oriented to promote open regionalism, and to efficiently introduce signatory countries into this globalized world and join them with other regionalization initiatives.

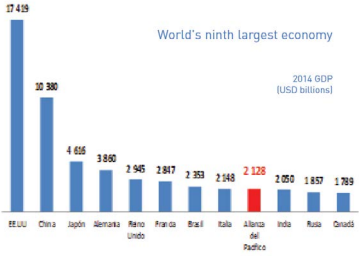
This initiative moves forward based on the political and economic affinity of Member States, which have an extensive network of trade and investment agreements between them and at world level, and see free market as a powerful tool to achieve economic and sustained development for their people, which will help solve the still persistent problems in the region, such as poverty, exclusion, and social inequality. Likewise, it should be noted that Chile, Mexico, and Peru are members of the Asia-Pacific Economic Cooperation (APEC) forum, whereas Colombia has been interested in joining them for some time now.

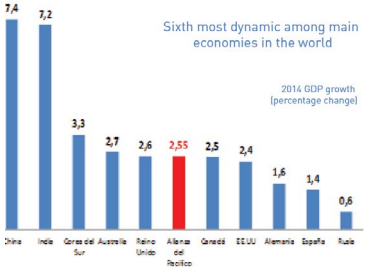
In order to give you an idea of the relevance of the Pacific Alliance, we include the main economic indicators of each country below.

MEMBER COUNTRIES	CHILE	COLOMBIA	MEXICO	PERU	COSTA RICA*	PANAMA*
GDP (USD billions)	258	385	1 283	203	48	44
Population (millions)	18	48	120	31	5	4
GDP per capita (USD)	10,715	8,076	14,477	6,576	10,083	11,559
Exports (% of GDP)	33%	19%	34%	22%	32%	59%
Imports (% of GDP)	34%	23%	32%	24%	34%	64%
Trade (% of GDP)	66%	42%	66%	46%	65%	122%
FDI (USD millions)	22 002	16 054	22 568	7 607	2 345	3 557

* Observer States
Source: IMF WEO (April 2015)
UNCTAD (2014 FDI for Chile, Colombia, Mexico, Costa Rica, and Panama), Central Bank of the Republic of Peru for Peru.

Thus, as reflected by figures in the aggregate, the Pacific Alliance, as a regional integration bloc, gains considerable relevance in the world economy. By way of illustration, we include below two comparison diagrams that show the importance of this young bloc.





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** Argentina was accepted as an Observer State in June 2016.
Source: WTO, Annual Latin America and Caribbean Statistics, Eclac, MinCIT Colombia

Unlike other integration blocs, such as the Andean Community (CAN, in Spanish), the institutions created to ensure the efficient operation of the Pacific Alliance are simple in nature.

Thus, in a first stage, we find Presidential Summits as the maximum level of government, composed of the Heads of State of each country, who meet periodically to review the Pacific Alliance progress and to determine where the integration mechanism needs to move forward. In its short life, ten Summits have already been held, which shows the dynamism of this bloc, which, in turn, explains its rapid and successful takeoff.

The coordination of the Pacific Alliance rotates annually among Member States, because it does not have a permanent secretariat. In July 2015, Peru received the presidency pro tempore from Mexico.

In a second stage, we find the Council of Ministers, composed of the Ministers of Foreign Trade and Foreign Affairs of each Member State, and one of its duties is to adopt decisions in furtherance of the specific goals and actions under the Framework Agreement, and the presidential statements, of the Pacific Alliance.

Under the Council of Ministers, we find the High Level Group (HLG), composed of the Vice Ministers of Foreign Trade and Foreign Affairs of each Member State, and it is responsible for overseeing the progress of technical groups and preparing a proposal for future partnerships with other organizations or groups.

Thus, the different technical groups that have been created to date and which have been actively working are those related to export and investment promotion agencies, institutional matters, trade and integration, government procurement, cooperation, culture, mine development, education, communication strategy, gender, innovation, regulatory improvement, people movement, intellectual property, SMEs, external relations, services and capital, international fiscal transparency, and tourism.

Likewise, the active participation of the private sectors of the four founding members is one of the Pacific Alliance pillars. Therefore, during the VII Pacific Alliance Summit, held on May 23, 2013 in Cali, Colombia, the Presidents of the Member States, based on the proposal submitted by the Business Council of the Pacific Alliance (CEAP, in Spanish), agreed on the creation of an Experts' Committee to analyze the matters proposed by business sectors through the CEAP.

The purpose of the Committee is to provide feedback to the proposals submitted for possible incorporation in Pacific Alliance works. Likewise, it intends to become a coordination, relation, and articulation point between this initiative and the CEAP.

Among the different recommendations made by the CEAP, we find initiatives related to financial integration, infrastructure development, technological and higher education projects, public-private agenda for initiatives related to innovation, approval and mutual recognition in different productive sectors (dietary supplements, pharmaceutical products, medical devices, house cleaning, and fresh and processed food), a proposal to implement a logistics observatory, an anti-smuggling and anti-money laundering strategy, as well as a proposal to achieve competitiveness and facilitation standards for doing business from and to the Pacific Alliance.

ADDITIONAL PROTOCOL: AN FTA FOR THE PACIFIC ALLIANCE

A significant step forward has been taken by Member States when signing the Additional Protocol to the Framework Agreement, which entered into force on May 1, 2016, and which contains specific provisions with the aim to create a free-trade zone, through the inclusion of key matters such as an investment guarantee regime and dispute resolution mechanisms, market access, rules of origin, trade facilitation and customs cooperation, sanitary and phytosanitary measures, technical barriers to trade, government procurement, cross-border trade in services, maritime transport, financial services, electronic commerce, telecommunications, institutional affairs, and dispute resolution.

This Additional Protocol, which builds on and expands existing bilateral trade agreements, reinforces liberalization policies on goods, services, capitals, and people of the Pacific Alliance, and has achieved a 92% liberalization on tariffs upon its entry into force, and the remaining tariffs will be reduced in different periods between 3 and 17 years, except for agreed exceptions. Likewise, the inclusion of a cumulation of origin mechanism will allow for production linkages in the region, which will lead to the restructuring of productive systems in each country, where their individual industrial conditions will be favored.

This Handbook offers a summary of the most relevant Chapters of the Additional Protocol to the Framework Agreement of the Pacific Alliance and the First Amendment Protocol to the Additional Protocol to the Framework Agreement of the Pacific Alliance, which we consider interesting and useful for our clients' business.

1

Treatment of Investments

The Pacific Alliance

1 | Treatment of Investments

Chapter 10 of the Additional Protocol to the Framework Agreement of the Pacific Alliance refers to "Investments", and is basically a Multilateral Investment Agreement applicable to the four Member States of the Pacific Alliance. This Chapter provides a series of rights and guarantees for national investors of any of the Member States in their investments in any other Member State. Section B of Chapter 10 includes a comprehensive dispute settlement mechanism for investor/State disputes, similar to other Investment Chapters of Free Trade Agreements signed by Peru.

As a starting point, Chapter 10 defines "investment" as *"every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of profit or gain, or the assumption of risk."* It further provides that the forms an investment may take include, but are not limited, to the following:

a. an enterprise;
b. shares, stock, and other forms of equity participation in an enterprise;
c. bonds, debentures, or other debt instruments issued by an enterprise, excluding debt instruments issued by a Party or a state enterprise, or a loan to a Party or a State enterprise, regardless of their original maturity date;
d. futures, options and other derivatives;
e. turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts, including those involving the presence of an investor's property in the Parties' territory;
f. licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
g. other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

On the other hand, "investor of a Party" is defined as *"a Party or a state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party."* Nevertheless, in the case of individuals with dual nationality, it provides that they shall be deemed to be exclusively nationals of the state of their dominant and effective nationality.

Likewise, it defines "enterprise of a Party" as: *"an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there." It further defines "national" as a "natural person who is a national of a Party under its applicable law."*

This Investment Chapter applies to measures adopted by a Party relating to: (a) investors of another Party; (b) covered investments; and (c) with respect to Articles 10.8 and 10.31, all investments in the territory of the Party.

Article 10.8 deals with a series of "Performance Requirements" that no Party may impose or enforce in connection with the conduct of investment in its territory. Nevertheless, it sets forth that, provided such measures are not applied in an arbitrary or unjustifiable manner, and provided such measures do not constitute a disguised restriction on trade or investment, a Party may not be prevented from adopting or maintaining measures necessary to secure compliance

with laws and regulations that are not inconsistent with the provisions of the Additional Protocol, as well as necessary to protect human health, life and the environment.

On the other hand, Article 10.31 refers to "Investment and Health and Environmental Measures and other Regulatory Objectives" and provides that *"[n]othing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives."*

With regard to the application of Chapter 10 over time, it is expressly set forth that it is non-retroactive, by stating that this Investment Chapter is not applicable to: *"any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Additional Protocol, regardless of the consequences of said facts, acts or situations."*

Now, which are the standards or rights conferred by Chapter 10 to national investors of a Member State and their investments made in the territory of another Member State?

Some of the most relevant are listed below.

National Treatment - Article 10.4
Each Party shall accord to investors of another Party and their investments treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments in its territory.

Most-Favored-Nation Treatment - Article 10.5
Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party and their investments in its territory. It is further provided that this right does not include dispute resolution mechanisms or proceedings set forth in other international trade or investment agreements.

Minimum Standard of Treatment - Article 10.6
Each Party shall accord to covered investments treatment in accordance with customary international law, including "fair and equitable treatment" and "full protection and security." It is explained that the customary international law minimum standard of treatment of aliens is the minimum standard of treatment to be afforded to covered investments.

With regard to the concepts of "fair and equitable treatment" and "full protection and security", it is mentioned that they do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights.

It is further added that "fair and equitable treatment" *"includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world."* It should be noted that the extensive development of international investment arbitration cases on this standard, especially ICSID cases, shows that this standard covers many other aspects, because its broad nature is aimed at not infringing the legitimate expectations investors had when making their investments. In the end, it will depend on a case-by-case basis and the particular analysis of the Arbitration

Tribunal deciding on a dispute to determine whether the State receiving the investment has breached this standard or not.

The concept of "full protection and security" is then defined as that which *"requires each Party to provide the level of police protection required under customary international law."* The trend is also to include not only physical but also legal protection.

Treatment in Case of Strife - Article 10.7
Each Party shall accord to investors of another Party who suffered losses in their investments in the territory of said Party owing to armed conflict or civil strife, treatment no less favorable than that it accords to its own investors or investors of any non-Party. Nevertheless, this Treatment in Case of Strife does not apply to existing measures relating to subsidies or grants that may be inconsistent with Article 10.4 (National Treatment) but for Article 10.10.7(b).

Transfers - Article 11
Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- contributions to capital;
- profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;
- proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- payments made under a contract entered into by the investor, or the covered investment, including payments made under a loan agreement;
- payments made pursuant to Article 10.7 (Treatment in Case of Strife) and Article 10.12 (Expropriation and Compensation); and
- payments arising out of the application of Section B of this Chapter, on Dispute Settlement.

Nevertheless, it is set forth that a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

- bankruptcy, insolvency, or the protection of the rights of creditors;
- ensuring compliance with orders, judgments, or awards in judicial, administrative, or arbitration proceedings;
- issuing, trading, or dealing in securities, futures, or derivatives;
- criminal offenses; or
- financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

Expropriation and Compensation - Article 10.12
No Party may expropriate or nationalize a covered investment, either directly or indirectly, through measures equivalent to expropriation or nationalization, except:

- for a public purpose;
- in a non-discriminatory manner;
- on payment of adequate compensation; and
- in accordance with due process of law and Article 10.6 on Minimum Standard of Treatment.

Compensation shall:

- be paid without delay;
- be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
- not reflect any change in value occurring because the intended expropriation had become known before the date of expropriation; and
- be fully realizable and freely transferable.

Annex 10.12 supplements Article 10.12 and gives a broader explanation about what direct and indirect expropriation mean. It states, as a general principle, that *"[a]n action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or the essential elements of ownership of an investment."*

Likewise, it draws a distinction between direct and indirect expropriation. With regard to direct expropriation, it is defined as being *"where an investment is nationalized or otherwise directly expropriated through formal transfer of title or ownership right."*

On the other hand, indirect expropriation is defined as being "where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or ownership right." The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

i. the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

ii. the extent to which the government action or series of actions interferes with distinct, reasonable investment-backed expectations; and

iii. the character of the government action.

Finally, it provides that, except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

Denial of Benefits - Article 10.13
A Party may deny the benefits of Chapter 10 in two cases:

- to an investor of another Party that is an enterprise of such other Party and to investments of that investor, if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of another Party;
- to an investor of another Party that is an enterprise of such other Party and to investments of that investor, if investors of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of another Party.

Finally, Article 10.33 of Chapter 10 provides for the creation of a Joint Committee on Investment and Services, which will be composed of an Investment Subcommittee and a Services Subcommittee. The purpose of this Joint Committee will be to ensure the implementation and administration of Chapter 10, as well as Chapter 9 on Cross-border Trade in Services.

The Joint Committee will meet at the request of any Party or the Free Trade Commission, and may issue recommendations on matters that come within its purview.

Finally, it is set forth that in the event of inconsistency between Chapter 10 and any other Chapter of the Additional Protocol, the latter shall prevail in so far as they are inconsistent.

Investor-State Dispute Settlements
Chapter 10, Section B on Investments of the Additional Protocol includes a disputes settlement mechanism available for Investor-State disputes which may arise between an investor of a Member State with another Member State which receives the investment.

As a starting point, a consultations and negotiation period is set forth, during which the opposing parties shall first try to solve the dispute amicably[1]. This may include using non-binding procedures such as conciliation and mediation.

Article 10.15 sets forth the full consultations and negotiation procedure the opposing parties shall follow; this procedure shall have a minimum term of six months. The six-month term shall begin on the date on which the written request for commencement of the consultations and negotiation period is served (or what is also known as "Direct Deal"), if after expiration of the six-month term, the parties have not been able to solve the dispute, the Claimant may commence arbitration pursuant to the procedures and mechanisms set forth in Chapter 10, Section B.

The Claimant may submit a claim to arbitration stating that any of the investor's obligations or rights stated in Section A of Chapter 10 have been breached (such as national treatment, most favored national treatment, minimum standard of treatment, expropriation, etc.) and as a result of said breach it suffered damages[2]. For further clarity, it is established that "no claim may be submitted to arbitration pursuant to this Section other than a claim for an alleged breach of an obligation set forth in Section A hereof."[3] In this way, a limit to what may be submitted to arbitration under this Investor-State disputes settlement mechanism is established.

Another relevant aspect is Article 10.18 on the "Conditions and Limitations to the Consent of the Parties". Pursuant to this Article, no claim may be submitted to arbitration "if more than three years have elapsed as of the date on which claimant noticed or should have noticed the alleged breach (...) and that claimant suffered losses or harm due to the claims filed (...)."[4]

Likewise, to obtain consent, the Claimant shall waive in writing any rights it may have to submit the same claims to any judicial or administrative court pursuant to the Law of any of the Parties,

1 See Chapter 10 of the Additional Protocol, Section 10.15: Consultations and Negotiation.
2 Section 10.16 also sets forth that any Claimant may act in representation of a Respondent's company, which is a legal entity owned or controlled, whether directly or indirectly, by Respondent.
3 See Chapter 10 of the Additional Protocol, Section 10.16: Submitting an Arbitration Claim.
4 See Chapter 10 of the Additional Protocol, Section 10.18: Conditions and Limitations to the Consent of the Parties.

or to any other dispute resolution procedure (except for those procedures in which precautionary measures of any nature are requested, provided that they do not imply payment of monetary damages before a judicial or administrative court of the Respondent Member State and that they are filed with the sole purpose of preserving claimant's rights and interests during the arbitration procedure).

Furthermore, the following arbitration options are offered to any Member State wishing to commence an arbitration proceeding against another Member State which received the investment:

- Institutional Arbitration under International Convention for Settlement of Investment Disputes (ICSID Convention) and ICSID Arbitration Rules, provided that both Claimant and Respondent are parties to this International Convention;[5]
- institutional arbitration pursuant to the ICSID's Complementary Mechanism in the event the Respondent State or the Claimant Investor of a Member State is not a member to the ICSID Convention. Of the 4 Member States of the Pacific Alliance, the only State which is not a party to the ICSID Convention is Mexico;
- ad hoc arbitration pursuant to the Arbitration Regulations of the United Nations Commission on International Trade Law (UNCITRAL); and
- if the opposing parties so agree, they may submit the dispute to any other arbitration institution or choose any other arbitration regulation.

Lastly, transparency obligations are established for the opposing parties, in accordance with which the following process documents shall be published: (a) Notice of the intention to submit a claim to Arbitration; (b) Arbitration Notice; (c) each party's records; (d) minutes or transcriptions of the Court's hearings, if any; and (e) any Court orders, awards and decisions. The hearings shall be public, but in the case of confidential information, the Court shall carry out the necessary arrangements to protect confidential information from disclosure, including closing the hearing to the public in general during any discussion about confidential information.

5 The International Centre for Settlement of Investment Disputes (ICSID) of the World Bank was created in 1965 by the ICSID Convention which entered into force in 1966 when it was ratified by 20 countries. Nowadays, the ICSID has over 161 Member States, it is the most important and most used International Arbitration Center in the world.

2

Trade: Market Access

Chapter 3 of the Protocol is divided in seven Sections: A. Definitions and Scope, B. National Treatment, C. Elimination of Customs Duties, D. Non-tariff Regulations, E. Special Customs Regime, F. Agriculture and G. Committee on Market Access. Summing up, Chapter 3 sets forth the rules the Parties shall follow to implement tariff exemptions, as well as to impose non-tariff regulations and restrictions to goods originated in the territory of any Parties.

The most relevant matters are:

B. National Treatment

- Each Party shall grant National Treatment, whether at federal, state or local level to similar, direct competitor or replaceable goods from another Party, that is to say, it shall grant a treatment no less favorable than that granted to national goods.

C. Elimination of Tariffs

- All customs tariffs on originating goods shall be progressively eliminated pursuant to the Tariffs Elimination List according to the schedule agreed upon.
- A Party which unilaterally reduces certain tariffs, may raise them to a level not higher than that set out in the Tariffs Elimination List.
- Customs Valuation standards of the World Trade Organization ("WTO") shall apply.

D. Non-Tariff Measures

- No Party shall keep non-tariff measures which limit import or export of any good from and to another Party[1].
- Export and import price requirements, import licensing conditioned on the fulfillment of a performance requirement[2] and voluntary export restraints are forbidden.
- No Party shall, as a condition for engaging in importation or for the importation of a good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor[3] in its territory.
- Any measure implemented which may affect the commercialization of any good in the territory of a Party shall be notified no later than 60 days before the measure takes effect.
- Import licenses and permits shall be issued no later than 20 business days as from the day on which they were requested.
- All fees and charges, other than customs duties, shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

E. Special Customs Regimes

- No Party shall condition the waiver of customs duties upon compliance of a performance requirement.
- Duty-free temporary admission of goods such as equipment for the press or television; broadcasting and cinematographic equipment; goods intended for display or demonstration; commercial samples and advertising films and recordings and goods admitted for sports purposes, among others, is authorized.

1 This shall not apply to the cases set forth in Article XI of GATT 1994, for example, when said measures are imposed to prevent or relieve a critical shortage of foodstuffs, to control the quality or commercialization of products for international trade, etc.

2 Pursuant to the definitions of Chapter 3, performance requirement means exporting a given level or percentage of goods or services; substituting imported goods or services with national goods; that a person benefiting from a waiver of customs duties purchase other national goods or services or relating in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows.

3 The International Centre for Settlement of Investment Disputes (ICSID) of the World Bank was created in 1965 by the ICSID Convention which entered into force in 1966 when it was ratified by 20 countries. Nowadays, the ICSID has over 161 Member States, it is the most important and most used International Arbitration Center in the world.

- No Party shall condition the duty-free temporary admission of goods in any way other than those agreed upon in the Agreement, for example, to require that those goods be used solely by national or a foreign resident; not be sold or leased; be capable of identification when imported and exported; be accompanied by a security, etc.
- Each Party shall adopt procedures providing for the expeditious release of goods admitted temporarily.
- A good temporarily admitted may be exported through a customs port other than the port through which it was admitted.
- Customs authorities of each Party shall release the importer of a good temporarily admitted from any liability for failure to export the good on presentation of sufficient evidence that the good was destroyed.
- No Party shall condition the release of any vehicle or container on the exit of that vehicle or container through any particular port.
- No Party shall apply a customs duty to a good admitted temporarily for repair or alteration.[4]
- Each Party shall grant duty-free entry to commercial samples of negligible value[5] and printed advertising material6 imported from the territory of another Party, provided that they are imported solely for the solicitation of orders for goods, or services and in packets that each contain no more than one copy of the material.

F. Agriculture

- No Party shall adopt, maintain or reintroduce any export subsidy[7] on any agricultural good.

G. Committee on Market Access

- A Committee on Market Access is established and is composed of representatives of each Party to oversee compliance of Chapter 3, serve as a forum for queries, barriers to trade issues and to make recommendations, among others.

4 Repair or alteration does not include an operation that destroys the essential characteristics of the good or creates a new or commercially different good; or transforms an unfinished good into a finished good..
5 Samples valued, whether individually or jointly, no higher than one American Dollar or its equivalent in the currency of another Party or which are marked, broken, perforated, etc.
6 Goods classified in Chapter 49, including brochures, printed materials, loose pages, commercial catalogs, etc.
7 Pursuant to Chapter 3, the term exports subsidies means those applied to exporting activities, where the government grants a direct subsidy to agricultural companies.

3

Rules of Origin and Procedures Related with the Origin

The Pacific Alliance

3 | Rules of Origin and Procedures Related with the Origin

As in other free-trade agreements, Chapter 4 of the Pacific Alliance is divided in two sections: Rules of Origin and Origin Procedures

Section A of Chapter 4 sets forth the rules to determine whether a good qualifies as originating from the territory of one or more Parties or not (Chile, Colombia, Mexico and Peru) and, therefore, whether it may enjoy customs duties preferences established in the Agreement. Only the goods qualifying as originating from the Pacific Alliance region may request preferential custom tariff treatment upon import to the territory of any of the Parties. The requirements were designed to benefit the portion of the population which produces or manufactures goods in the territory of any of the Parties. Besides defining which goods may be considered as originating, Chapter 4 also establishes certain accumulation and De minimis rules which facilitate that certain goods produced in the region qualify as originating and may request preferential custom tariff treatment upon being imported to the territory of one of the Parties. Chapter 4 also includes provisions regarding transshipments and special rules for: fungible goods or materials; accessories, spare parts and tools; indirect materials; packing materials and containers; and non-qualifying operations.

Section B sets forth (i) the requirements for issuing a certification of origin, (ii) obligations of exporters and importers requesting that a certification of origin be issued by a competent authority as well as the obligations of importers using said certification to request a preferential custom tariff treatment and (iii) the procedures the Parties may access to verify if the goods imported to their territory actually qualify as originating. The most relevant matters are:

Section A. Rules of Origin

- "Competent authority for issuing certifications of origin" means the authority responsible for issuing the certification of origin. For the purposes of this Agreement, the exporting country authority issues the certification of origin.
- "Origin determination" means a written document issued by a competent authority for verifying origin as a result of a verification of origin procedure.
- A good shall be considered as originating from one of the Parties if it is: (i) wholly obtained or produced entirely in the territory of one or more of the Parties; (ii) produced entirely in the territory of one or more of the Parties, exclusively from originating materials; and (iii) produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies the Specific Requirements of Origin.
- By definition, a good is wholly obtained or produced entirely in the territory of one or more of the Parties if it is a natural resource obtained in the territory of one or more of the Parties, including, among others, goods harvested, hunted, fished, cultivated, grown or picked in the territory of one or more of the Parties to the Agreement.
- The Regional Value Content ("RVC") shall be calculated upon the FOB or net cost value of the good at the producer's or importer's discretion. The net cost is not mandatory for the automobile industry.
- To the effects of calculating RVC value, the value of non-originating materials shall be: (i) CIF value of the material upon import, or (ii) the price paid or payable by the producer in the territory where the good is produced, without including the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good.

- The Specific Requirements of Origin included in Annex 4.2 set forth the substantial transformation which non-originating materials from the territories of the Parties to the Agreement shall undergo. Thus, each specific rule implies a change in tariff classification, a regional value content or a combination of both. Regarding RVC, the Specific Requirements of Origin establish a sole percentage of 50%, except for automotive goods classified in Chapter 87, which ranges from 30% to 35% based upon the FOB value, or from 24% to 29% on the net cost, upon the discretion of the producer or exporter of the good.
- It is established that when an intermediate material is used in the production of a good, non-originating materials contained in said material shall not be taken into account for the qualification and determination of origin of the finished good.
- Regarding indirect materials (which are those used in the production), they are considered originating materials, regardless of where they were produced.
- The minimal processes or operations which do not confer origin include, among others, the operations to ensure the conservation of goods during their transport and storage; cleansing; painting and polishing; packaging in bottles, jars, bags, cases and any packing, unpacking, wrapping or unwrapping operation; dilution in water or other substance which does not materially alter the characteristics of the goods; and a combination on any of the operations mentioned before. These provisions prevail over the Specific Requirements of Origin.
- Materials from one of the Parties may be considered originating from another Party (accumulation), provided always that the customs tariff on the good is 0% in all the Parties.
- The *De minimis* rule may be used provided that the value of all the non-originating materials which do not undergo the change in customs tariffs classification does not exceed 10% of the FOB value of the finished good. If the rule of origin is of RVC, the value of those non-originating materials shall be included in the calculation even though they do not amount to 10 %. There are limits for the goods classified in chapters 01 to 24 of the Harmonized System and in chapters 50 to 63.
- Accessories, spare parts, tools or instructional or other informational materials delivered with the good shall be considered an integral part of the good and shall be disregarded if the good complies with the applicable change in tariff classification. However, when a good is subject to a RVC requirement, the value of said materials shall be included in the calculation. Accessories, spare parts, tools or instructional or other information materials shall be classified with, but not invoiced separately from the good and their quantities and values shall be customary for that good.
- The same applies to containers and packaging materials for retail sale.
- Packing materials and containers for shipment are disregarded in determining whether a good is originating.
- A set shall be considered originating if the value of all the non-originating goods in the set does not exceed 12% of the value of the set.

Section B. Origin Procedures

- For a good imported to a Party to be considered as originating from the region, another Party shall directly export it. In the event an originating good is transported, it retains its originating status if the good has been transported through the territory of one or more non-Parties and the good: (i) does not undergo any transformation outside the territory of the Parties and (ii) remains under the control of the customs administration in the territory of a non-Party.
- The certification of origin may be written or electronic and it shall be issued by a competent authority of the exporting Party upon the exporter's request.

- A certification of origin may be issued after the goods have been shipped provided that it has not been issued on the shipment date due to justifiable involuntary mistakes or that a competent authority authorizes it accepting the reason why it was not accepted on the date of import.
- To issue a certification of origin, the competent authority may examine in the territory of origin the originating nature of the goods. In doing so, it may request supporting documents or carry out a visit to the exporter's premises.
- Any competent authority of the importing Party may conduct a verification of origin by means of: (a) written requests for information from the exporter or producer of the good by means of the competent exporting authority to issue certifications of origin; (b) written requests for information from the competent exporting authority to issue certifications of origin; (c) verification visits to the premises of the exporter or producer of the good; or (d) any other procedures as may be decided by the Parties.
- If the importer did not make a claim for preferential tariff treatment at the time of import, it may do so no later than one year after the date of import.
- A certification of origin shall be valid for one year as from the date it was issued and it may cover the export of one or several goods. The certification of origin shall be issued on the day the invoice is issued or after it has been issued.
- In the event the certification is robbed or lost, a duplicate certification of origin may be requested. The certification of origin shall not be rejected by minor format errors provided that they do not generate any uncertainty on the information provided in the certification of origin.
- Originating goods under this Agreement shall be considered as such even though they are billed by operators of a non-Party country. In that case, such condition shall be included in the observations field of the certificate of origin.
- Any importer requesting a preferential tariff treatment shall bear a valid certification of origin at the date of import and it shall pay the applicable tariffs and taxes if it considers the certification of origin has incorrect information.
- Upon request of the importing authority, the importer shall provide a copy of the certification of origin and any supporting documents.
- Upon request of the exporting authority, the producer or exporter which issued a certification of origin shall deliver a copy of said certification.
- In the event the exporting country authority issues a certification of origin based on false information provided by an exporter, it shall have the same legal consequences as those that would apply to an importer that makes a false certification of origin to claim preferential import tariffs.
- If the exporter has reason to believe that the certification contains incorrect information, it shall notify so to the authority which issued the certification of origin as well as any other person to whom the certificate was delivered.
- Any exporter requesting the exporting authority to issue a certification of origin shall keep supporting information and documents on the good's origin for a term of 5 years as of the issue of the certification. Likewise, any exporting authority which has issued a certification of origin shall keep a copy of the certification of origin and its supporting documents for five years. Lastly, the importer shall keep all documents related to the import, including the certification of origin, for 5 years. The documents may be kept in paper or electronic format.
- In the event a verification of origin is challenged, an administrative and judicial review is set forth to be determined by each Party in its state. The above subject to criminal, civil or administrative penalties related to this chapter.

- The Parties shall establish a *"Committee on Rules of Origin and Origin Procedures, Trade Facilitation and Customs Cooperation"*, the main functions of which shall be supervising the implementation and administration of chapters 4 and 5 of the Agreement, proposing to the Free Trade Commission adaptations and modifications deriving from amendments to the Harmonized System, modifications or interpretations of chapters 4 and 5 as well as solving disputes related to tariff classification. Said Committee shall meet once a year.
- A *"Committee on Scarce Supply"* shall be established which shall assess the inability to make available a material requested by a Party upon a producer's request in the event of scarcity and it shall solve any exemption requests for using non-originating materials classified in chapters 50 to 60 of the Harmonized System for producing a good classified in chapters 60 to 63.

4

Facilitation of Commerce and Customs Cooperation

4 | Facilitation of Commerce and Customs Cooperation

Chapter 5 of the Protocol is divided into two sections: Trade Facilitation and Cooperation and Mutual Assistance in Customs Matters. In summary, Section A provides the legal framework for the facilitation of trade in goods. On the other hand, Section B provides the regulations related to the interaction between different customs administrations on cooperation and mutual assistance in customs matters to facilitate exchange of information. The most relevant matters are:

Section A. Trade Facilitation

- Where a Party providing information to another Party designates the information as confidential, the other Party shall keep the information as confidential pursuant to its applicable law. A Party may decline to provide information requested by another Party where that Party has failed to keep the information as confidential.
- Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods, such as:
  - ◊ the release of goods shall occur within a period no greater than that required to ensure compliance with customs laws, and to the extent possible, within 48 hours of arrival;
  - ◊ allowing goods, to the extent possible, to be released at the point of arrival, without temporary transfer to warehouses or other facilities;
  - ◊ allowing importers to withdraw goods from customs before and without prejudice to the final determination by its customs authority of the applicable customs duties, taxes, and other applicable fees; and
  - ◊ each Party shall endeavor to use information technology that expedites procedures for the release of goods, and shall use: (i) international standards, (ii) electronic systems accessible to customs users, (iii) automated systems for risk analysis and targeting, (iv) compatible electronic systems between the Parties' customs authorities, and (v) development of a set of common data processes in accordance with World Customs Organization ("WCO") Data Model and related guidelines.
- Each Party shall adopt or maintain risk management or administration systems that enable its customs authority to focus its inspection activities on high-risk goods and that simplify the clearance and movement of low-risk goods. The inspection shall be based on adequate selection criteria and shall be made with non-intrusive instruments.
- Each Party shall adopt or maintain effective customs procedures for fast shipment and which allow for control and selection of goods.
- The implementation and development of Authorized Economic Operator ("AEO") schemes, under WCO rules, shall be encouraged.
- Parties shall be encouraged to sign mutual recognition agreements ("MRAs") of schemes prepared by the Organization of American States ("OAS").
- Parties shall establish and improve their Single Windows for Foreign Trade ("SWFT"). Appendix 5.9.1 identifies the documents that may be processed through the SWFT, such as agricultural certificates, phytosanitary certificates and certificates of origin.
- Each Party shall ensure that all persons have access to: (i) an administrative review independent of the instance or officer that issued the administrative act; and (ii) judicial review of administrative acts.
- Each Party shall adopt measures that allow for the imposition of civil, administrative or criminal sanctions for violations of its laws and regulations on entry, exit or transit of goods, including those governing tariff classification, customs valuation, country of origin and tariff treatment requests.

- Prior to the importation of goods, each Party may issue a written advance ruling with regard to:
  - ◊ tariff classification;
  - ◊ if a good qualifies as originating;
  - ◊ the application of customs valuation criteria; and
  - ◊ such other matters as the Parties may agree.
  - ◊ Advance rulings may be modified or revoked, but their effects shall not be retroactive.

  A Party may deny the issuance of an advance ruling if its facts and circumstances are under review in administrative or judicial proceedings.

  Subject to any confidentiality requirements, each Party shall make its advance rulings publicly available, including on the Internet.

  If the requester of an advance ruling provides false information or omits relevant facts or circumstances, civil, criminal, and administrative actions, as well as monetary penalties, or other sanctions, may be applied.

Section B. Cooperation and Mutual Assistance in Customs Matters

- The Parties shall provide cooperation and mutual assistance to each other to ensure the enforcement of customs law, facilitation of customs procedures, and prevention, investigation and punishment of transactions contrary to customs law.
- Assistance in the collection of duties, taxes or fines is not covered.
- If a Party suspects that a transaction is contrary to customs law, it may request information from another Party on said transaction.
- In order to comply with the information request, the required Party shall conduct an investigation to obtain the information related to the transaction potentially contrary to customs law, and shall provide the results of said investigation and such related information as it may consider pertinent.
- The Parties may provide assistance on their own in cases: (i) that imply damage to the economy, public health, public security, environment, or any other vital interests, (ii) that entail new means or methods used to perform transactions in violation of customs laws, and (iii) those mentioned in the previous paragraph.
- The Parties shall be exempted from providing mutual assistance when it may (i) harm the sovereignty of the required Party, (ii) harm public order and national security, (iii) violate an industrial, trade or professional secret duly protected under its legislation, or (iv) be unconstitutional or contrary to its laws.
- Mutual assistance may be delayed if it may be considered to interfere with an ongoing investigation, or criminal or administrative proceedings.

5

Sanitary and Phytosanitary Measures

The most relevant points of Chapter 6 of the Protocol are the following:

- It incorporates the definitions under the SPS Agreement (on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization) into the Protocol, as well as its scope and basic rights and obligations.
- It defines five main goals:
  - ◊ To protect human, animal and plant life and health.
  - ◊ To facilitate the trade in products and by-products of animal, vegetable, sea and aquatic origin.
  - ◊ To ensure that a Party's sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between their own territory and that of other Parties. Sanitary or phytosanitary measures shall not be applied in a manner that would constitute a disguised restriction on international trade.
  - ◊ To ensure that the proceedings for adopting sanitary and phytosanitary measures between the Parties are transparent, without undue delay, and treat their imported goods in a manner no less favorable than that it accords to similar national goods.
  - ◊ To provide communication and cooperation mechanisms and procedures to solve, in a rapid and timely manner, specific business concerns related to the application of sanitary and phytosanitary measures between the Parties.
- The Protocol incorporates some significant points in addition to the SPS Agreement, including:
  - ◊ the traditional risk assessment model has changed, in that:
    - it may also be conducted after the adoption of the relevant measure, rather than before said adoption;
    - the Parties shall apply the rules, guidelines and recommendations issued by competent international organizations. This obligation goes beyond the previous one to "take them into account" or "base on" them for the adoption of national measures;
    - the exporting Party is given a very active role in the risk evaluation process, since it is entitled to request an assessment, submit comments during the assessment, and submit scientific evidence, including mitigation proposals; and
    - key procedural obligations are set forth, including the obligation to adopt regulatory measures to start or continue trade within a reasonable time, or not to stop an existing importation only due to a review of a previous assessment;
  - ◊ mutual harmonization is also promoted, apart from that which will be pursued in international forums;
  - ◊ a bilateral verification mechanism is included, whereby the importing Party may verify the inspection and control systems of the exporting Party's competent authorities, with the aim to facilitate trade; and
  - ◊ a bilateral proceeding for technical consultation, in addition to the SPS Committee, with a more agile response time and form.
- A Sanitary and Phytosanitary Measures Committee is created, which shall be composed of representatives of each Party. This committee shall define its rules at its first meeting, which shall take place within 90 days following the entry into force of the Protocol. The Committee shall meet at least once a year, and some of their functions are:
  - ◊ to discuss issues related to the development or application of sanitary or phytosanitary measures that affect or may affect trade between the Parties;
  - ◊ to promote, follow up on, and ensure enforcement of the provisions of Chapter 6;
  - ◊ to follow up on technical consultations;

- ◊ to agree on the proceedings and time frames for practical and agile implementation of:
  - recognition of equivalences;
  - risk assessment procedure;
  - recognition of pest- or disease-free areas or zones and areas or zones of low pest or disease prevalence;
  - control, inspection, and approval procedures;
  - transparency obligations; and
  - other procedures agreed by the Committee;
- ◊ to establish ad hoc technical groups and set their terms, goals, duties and deadlines for submission of work program results;
- ◊ to query matters, positions and agendas for meetings of the Sanitary and Phytosanitary Measures Committee of the WTO, the Codex Alimentarius Commissions, the International Plant Protection Convention, the OIE and other international and regional forums in sanitary and phytosanitary measures;
- ◊ to set cooperation and technical assistance programs;
- ◊ to exchange information on sanitary and phytosanitary measures;
- ◊ to create work programs related to regulatory cooperation for trade facilitation between the Parties; and
- ◊ to explore mechanisms related to sanitary and phytosanitary measures in order to promote joint access of Parties' originating goods to non-Parties.

6

Technical Barriers to Trade

6 | Technical Barriers to Trade

Chapter 7 of the Protocol on Technical Barriers to Trade (TBT) adopts the rules included in the Technical Barriers to Trade Agreement and its annexes of the World Customs Organization (WCO), thereby agreeing that technical regulations, rules (standards) and conformity assessment procedures shall be transparent and non-discriminatory, ensuring that they do not create unnecessary barriers to trade, and without being more trade-restrictive than necessary to fulfill a legitimate objective.

Even though it may not be substantively considered a "WTO-plus" chapter (i.e. obligations more stringent than those agreed in the WTO), it includes certain details not included in said multilateral agreement in connection with transparency obligations.

This chapter emphasizes the approval, mutual recognition and/or equivalence, as well as the simplification of technical regulations, rules, and conformity assessment procedures of Member States. Consequently, it includes annexes related to the regulation of specific sectors to promote common regulatory approaches in the region (Cosmetics), as in the case of the declarations issued by the Business Council to approve medicine and food regulation.

Highlights:

- **Application of WTO rules: (Articles 7.3 and 7.4).-** Incorporation of TBT Agreements and its annexes of the WTO into the text of the Chapter.
- **Regulatory cooperation (Article 7.5).-** Convergence, facilitation and harmonization of technical regulations and conformity assessment procedures.
- **Equivalence of technical regulations (Article 7.6).-** A Party's possibility to demand explanations as to why that Party's technical regulations have not been accepted as equivalent despite Article 2.7 of the TBT Agreement of the WTO.
- **Compatibility of conformity assessment procedures (Article 7.7.).-** Mechanisms were agreed to facilitate approval of the results of conformity assessment procedures for conformity assessment entities. For instance, voluntary agreements or mutual recognition agreements.
- **Transparency (Article 7.8).-** The Parties shall allow public comments on proposals for technical regulations, standards and conformity assessment procedures, to inform of their regulation procedures and to ensure that users understand the rules they will need to follow. To that end, any amendments to said instruments shall be published in advance. In this regard, it has been specified that the prudential term for the other Parties to submit comments and/or proposal should be at least 60 days, except in urgent circumstances for said Party. A reasonable period of time between publication and entry into force of the technical regulations and conformity assessment procedures shall be ensured, in order for enterprises to have sufficient time to comply with new requirements. This period of time may not be less than six months, except in urgent circumstances or threats to safety, health, environment or national security.
- **Creation of the Technical Barriers to Trade (TBT) committee (Article 7.9)**
- **Removal of technical obstacles in the cosmetics sector (Annex 7.11)**

7

Public Procurement, Common Standards

The Parties both believe public procurement is a strategic element which not only allows them to dynamize the market and boost their economies, but also to achieve other goals related to public interest, such as the promotion of micro and small enterprises (MSEs), investment in innovation and technology, environmental preservation, etc. In order to ensure that this business opportunity is taken, the Parties undertook the following commitments:

2.1 Scope
The commitments undertaken in Chapter 8 of the Protocol apply to the measures that the Parties adopt in connection with procurement under the Additional Protocol, i.e., those performed by Procuring Entities under any type of contract, including purchase and lease, with or without the option to purchase, and concession contracts for public works, goods and services, with an estimated value greater than or equal to the relevant threshold, pursuant to the terms and conditions set forth in Annex 8.2.

Likewise, Chapter 8 lists the cases in which these commitments do not apply: (i) assistance provided by a Party, including, grants, loans, capital contributions, fiscal incentives, subsidies, guarantees, and cooperation agreements; (ii) public supply of goods and services to persons or governments at a regional or local level; (iii) procurement contracts to provide foreign assistance; (iv) procurement contracts funded with grants, loans and other forms of international assistance, when said assistance is subject to conditions inconsistent with the commitments under Chapter 8; (v) procurement contracts for public employees; (vi) procurement contracts for tax agencies services or deposit services, liquidation and administration services for regulated financial institutions, or services related to the sale, retirement and distribution of public debt, including loans, government bonds and other securities; banking, trust, financial or specialized services or other related services in relation to public borrowing or public debt management; (vii) procurement contracts between the Procuring Entities of a Party; and (viii) acquisition or lease of land, existing real estate, or other real estate or any interest therein.

2.2. Publication of Public Procurement regulations
Commitment to publish the legal regulations that govern public procurement, together with their amendments, through one of the electronic means listed in Article 8.17 of Chapter 8.

2.3. National Treatment and Non-Discrimination
Commitment to accord other Parties' goods and services, as well as their suppliers, with no less favorable treatment than that each Party accords to its own goods, services and suppliers.

2.4. Valuation of procurement
Commitment to estimate the value of procurement contracts taking into account their entire term and all forms of remuneration that may be provided for under the contract. Additionally, the commitment not to divide a procurement contract into different contracts or use any other mechanism to avoid the commitments under Chapter 8.

2.5. Not to direct technical specifications to a specific supplier
Commitment to set technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics, and base the technical specification on international standards, if applicable, or domestic rules, technical regulations, construction codes, etc.

2.6. Use of electronic media
Commitment to provide, by means of electronic media, information on future procurement opportunities and procurement documents, as well as receive bids.

2.7. Publication of future procurement plans
Parties' commitment to encourage their Procuring Entities to annually publish a notice in one of the electronic means listed in Annex 8.2, regarding each Entity's planned procurements, which shall include the subject matter of any planned procurement and the estimated time for the procurement process.

2.8. Notice of public procurement
Commitment to ensure Procuring Entities publish a notice in advance inviting interested suppliers to submit tenders, or if applicable, requests to participate. Such notice shall include at least the following information: (i) a description of the public procurement; (ii) the award method; (iii) the conditions to be met by suppliers to participate in the process; (iv) the name of the procuring entity publishing the notice; (v) the address and/or point of contact where suppliers may obtain all relevant documents in connection with the procurement; (vi) if applicable, the address and deadline for submission of requests to participate; (vii) the address and deadline for submission of bids; (viii) the time for delivery of the goods or services being procured or contract terms, unless such information is included in procurement documents; and (ix) a statement that the procurement is governed by Chapter 8 of the Additional Protocol.

The notice shall be published through means that offer the broadest non-restrictive access to the Parties' interested suppliers, and shall be available through one of the electronic means specified in Annex 8.2 for the entire term set for submission of bids.

2.9. Procurement procedure
Commitment to award contracts through an open trending procedure, where any interested supplier may submit a bid, as well as specific rules for selective trending.

2.10. Tender documentation
Commitment to provide suppliers with all the necessary information to prepare and submit responsive tenders, including amendments, with adequate time. These documents shall at least include:

- a description of the nature and quantity of the goods or services to be procured;
- any conditions for participation;
- the criteria to be considered in awarding the contract;
- the rules applicable to electronic bidding, if any;
- the date, time and place for the opening of bids;
- the delivery date of goods or deadline for performance of services; and
- the payment conditions.

2.11. Deadline for submission of bids
Commitment to allow suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement, which shall not be less than 30 days from the date of publication of a notice of intended procurement to the deadline for submission of tenders.

2.12. Award information
Commitment to promptly publish the contract award decision, as well as to provide unsuccessful suppliers with an explanation of the reasons for not selecting their tender. The publication shall be made electronically and include at least the name of the procuring entity, a description of the goods or services, the award date, the successful bidder, the contract value, and the procurement procedure used.

2.13. Protest procedures
Commitment to set an administrative or judicial review procedure that satisfies Due Process and allows for a reasoned and timely decision. Likewise, the commitment to set an adequate period to prepare and submit the protest in writing, which shall not be less than 10 calendar days.

2.14. Integrity in procurement practices
Commitment to impose administrative or criminal sanctions against corruption in procurement procedures, as well as establish policies and proceedings to avoid conflicts of interests within Procuring Entities.

2.15. Non-disclosure of information
The commitment of a Party, including its Procuring Entities and review authority, not to disclose confidential information without the written authorization of the supplier whenever said disclosure might prejudice the legitimate commercial interests of particular persons or prejudice fair competition between suppliers.

2.16. Other procurement procedures.
Possibility to award contracts through means other than tender procedures (whether open or selective), provided that the tendering procedure is not used to avoid competition, protect domestic suppliers, or in a manner that discriminates against suppliers of the other Parties. To that end, ten circumstances where other procurement means may be applied are listed: (i) provided that the requirements set forth in the procurement documents are not substantially modified, whenever no tenders were submitted, or no supplier requested to participate, no tenders were submitted that conform to the essential requirements in the tender documentation, no suppliers satisfied the conditions for participation, or competent authorities determined that collusion occurred in the submission of bids; (ii) where the goods or services can only be supplied by a particular supplier and no reasonable alternative or substitute goods or services exist because the requirement is for works of art; the procuring entity is obligated to protect patents, copyrights, or other exclusive rights, or proprietary information; or there is an absence of competition for technical reasons; (iii) for additional deliveries of goods or services by the original supplier that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, where a change of supplier would compel the procuring entity to procure goods or services that do not meet requirements of interchangeability; (iv) for goods purchased on a commodity market; (v) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development, not for subsequent procurements of such goods or services; (vi) when in the case of public works, construction services additional to those originally procured are required due to unforeseen circumstances, and which are strictly necessary to fulfill the purpose of the procurement contract, but such services shall not exceed 50% of the original contract amount; (vii) insofar as is strictly necessary where, for reasons of extreme urgency brought about by

events unforeseeable by the procuring entity, the goods or services could not be obtained in time by means of an open or selective tendering procedure and the use of such procedures would result in serious injury to the entity or the performance of its duties, except for the lack of planning in relation to available funds within a specific period; (viii) when a contract is awarded to the successful bidder in a design tender procedure, provided the procedure was organized in a manner consistent with the principle of Chapter 8, especially in connection with the publication of the notice of public procurement and bidders are examined or evaluated by an independent review panel or body; (ix) when purchases are made under exceptionally advantageous conditions which only arise in the very short time in the case of unusual disposals such as arising from liquidation, receivership, or bankruptcy, but not for ordinary purchases from regular suppliers; and (x) when consulting services involving confidential matters are required, the disclosure of which might reasonably compromise confidential government information, create economic instability, or be otherwise contrary to public interest.

8

Cross-border Services Commerce

Under the Additional Protocol, Chapter 9 refers to cross-border trade in services, and defines the mechanisms for the Member States of the Pacific Alliance to improve, increase, order and enhance their trade in services. Therefore, in order to understand this summary, it should be borne in mind that whenever we speak of trade, supplier, licenses or certificates, experience and other terms, they exclusively refer to services (service suppliers, licenses for the provision of services, trade in services, etc.).

Definitions and Scope of this Chapter

In order to fully understand the provisions included in this Chapter, we should note some definitions.

Cross-border trade in services or cross-border supply of services:
Supply of a service: (a) from the territory of a Party into the territory of another Party; (b) in the territory of a Party, by a person of that Party to a person of another Party; or (c) by a national of a Party in the territory of another Party (but does not include the supply of a service in the territory of a Party by a covered investment).

Service supplier of a Party:
Person of that Party that seeks to supply or supplies a service.

Specialty air services:
Any air services other than for transportation purposes.

Computer reservation system (CRS) services:
Services provided by computerized systems that contain information about air carriers' schedules, availability, and fares, and through which reservations can be made or tickets may be issued.

Professional services:
Services that require specialized higher education or equivalent experience, the exercise of which is authorized or restricted by a Party (but does not include services provided by who practices a trade, or the crew of merchant vessels and aircrafts).

Selling and marketing of air transport services:
Opportunities for the air carrier concerned to sell and freely market its air transport services, including all aspects of marketing. These activities do not include the pricing of air transport services or the applicable conditions.

This Chapter applies to measures adopted or maintained by a Party affecting trade by service suppliers of another Party. (In this paragraph, some examples are included, such as the presence in the Party's territory of a service supplier of another Party, or the purchase or use of, or payment for, a service.)

In this Chapter, measures adopted or maintained by a Party are adopted or maintained by (a) federal, regional, state, or local governments or authorities; and (b) non-governmental bodies in the exercise of powers delegated by federal, regional, state or local governments or authorities.

This Chapter does not apply to financial services; air services, and aircraft repair and maintenance services, selling and marketing of air transport services, computer reservation system services, public procurement, subsidies and grants provided by a Party or state enterprise, and services supplied in the exercise of governmental authority in each Party's territory, among others.

Everything related to market access, transparency and national regulations applies to measures adopted and maintained by a Party that affect the supply of a service in its territory by a covered investment.

This Chapter does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that employment. In the text, nothing shall be construed to impose obligations on one Party in connection with its migration measures.

Treatment Conditions, Local Presence and Market Access

With regard to National Treatment, each Party shall accord to the services and service suppliers of another Party treatment no less favorable than that it accords to its own services and service suppliers. In connection therewith, the treatment to be accorded by a Party with respect to a state or regional level of government shall be no less favorable than the most favorable treatment accorded by that government to the services of the Party of which it forms a part.

With regard to the Most-Favored-Nation Treatment, each Party shall accord to services and service suppliers of another Party treatment no less favorable than that it accords to services and service suppliers of any other Party or a non-Party.

Local presence may not be required; therefore, no Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for cross-border supply.

With regard to market access, no Party shall adopt or maintain (either on the basis of a regional subdivision or on the basis of its entire territory) measures that:

(a) impose limitations (whether on the number of service suppliers, the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, or the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test);

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Non-Conforming Measures

(a) Any existing non-conforming measure that is maintained by: (i) a central or federal government or authority of a Party (Annex I), (ii) a regional or state government or authority of a Party (Annex I), or (iii) a local government of a Party.

(b) The continuation or prompt renewal of any non-conforming measure referred to in the above paragraph.

(c) An amendment to any non-conforming measure referred to in paragraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the section on national treatment, most-favored-nation treatment, local presence and market access.

The provisions on national treatment, most-favored-nation treatment, local presence and market access shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities (Annex II).

Transparency

Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its transparency regulations (taking into account budget constraints).

When adopting final regulations in connection with this Chapter, each Party shall, to the extent practicable, respond in writing to the significant comments received from the persons interested in the regulation. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

If a Party amends any existing non-conforming measure, it shall give notice of such amendment to the other Parties as soon as practicable. If a Party adopts measures with respect to sectors, sub-sectors or activities, after entry into force of this Additional Protocol, it shall, to the extent practicable, give notice of the measure to the other Parties.

Domestic Regulation

Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. Thus, if a Party requires authorization for the supply of a service, its competent authorities shall:

a) if the application is not complete, analyze which information is missing and provide the applicant with the opportunity to correct minor errors;
b) if the application is complete, give an answer within a reasonable period of time;
c) to the extent practicable, establish an indicative time frame for the processing of an application;
d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
e) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate; and
f) if they deem appropriate and pursuant to the Party's laws, accept authenticated copies in place of original documents.

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavor to ensure that any such measures are: (a) based on objective and transparent criteria, such as competence and ability; (b) not more burdensome than necessary to ensure quality; and (c) in the case of licensing procedures, not in themselves a restriction on the supply.

Each Party shall ensure that any authorization fee charged by any of its competent authorities is reasonable, transparent and does not in itself restrict the supply.

If licensing or qualification requirements include the completion of an examination, each Party shall ensure that the examination is scheduled at reasonable intervals and a reasonable period of time is provided to submit an application.

Each Party shall ensure that there are procedures in place to assess the competency of the professionals of another Party. Likewise, and to the extent possible, it shall ensure that information on qualification and licensing requirements and procedures include (a) if the renewal of the license or qualification is necessary for the supply, (b) the contact information of the competent authorities, (c) the requirements, procedures and costs, and (d) the procedures related to appeals to, or reviews of, applications, if any.

Besides, the Parties recognize mutual obligations pursuant to Article XV of the GATS, and they undertake to develop any necessary discipline under said instrument. To the extent that any such discipline is adopted by WTO members or developed at any other multilateral forum where the Parties participate, they shall jointly review said discipline to determine if the results should be incorporated into this Protocol.

All the provisions of this section (Domestic Regulation) shall not apply to the non-conforming aspects of measures adopted or maintained by a Party pursuant to the Party's lists included in Annexes I and II.

Recognition of suppliers, grant of licenses, licenses, certificates, education or experience
For the purposes of complying with, in whole or in part, a Party's standards for the authorization, licensing or certification of service suppliers, it may recognize the recognition granted by another country. That recognition may be accorded autonomously or be based on an agreement or arrangement with the country. When such recognition is granted by a Party, either autonomously or by agreement or arrangement, to a non-Party, nothing in connection with the most-favored-nation treatment shall be construed to require the Party to accord recognition to that granted in the territory of any other Party. A Party that is a party to an agreement or arrangement of the type referred to above shall afford adequate opportunity to another Party, if interested, to accede to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that education, experience, licenses or certifications obtained or requirements met in that other Party's territory should be recognized.

A Party shall not accord recognition in a manner that would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of service suppliers, or a disguised restriction on trade in services.

It is set forth that Annex 9.10 applies to measures adopted or maintained by a Party with respect to the licensing or certification to professional suppliers, as provided therein.

Subsidies and Ancillary Services

This section provides that, notwithstanding the provisions on the scope of this Additional Protocol, the Parties shall exchange information concerning all government-supported subsidies, whether existing or future, related to trade in services. The first exchange shall occur within a maximum two-year term as from the entry into force of this Additional Protocol. Besides, the Parties recognize their mutual obligations pursuant to Article XV of the GATS, and they undertake to develop any necessary discipline under said instrument. To the extent that any such discipline is adopted by WTO members or developed at any other multilateral forum where the Parties participate, they shall jointly review said discipline to determine if the results should be incorporated into this Protocol.

With regard to Ancillary Services, the Parties shall use their best efforts to publish and exchange information on their relevant service suppliers, especially on services provided to enterprises, to encourage the creation of value chains in the business sector.

Payments and Transfers

Each Party shall permit all transfers and payments that relate to services to be made freely and without delay into and out of its territory. Besides, they shall permit said transfers and payments to be made in a freely usable currency at the market exchange rate prevailing at the time of transfer.

Notwithstanding the foregoing, a Party may use the equitable, non-discriminatory and good faith application of its laws to prevent or delay a transfer or payment that relates to events such as bankruptcy, trading in securities, financial reporting, criminal offenses, or ensuring compliance with orders or judgments, among others.

It should be noted that the provisions included in this section (Article 9.14 of Chapter 9) are not applicable to Chile. If after the Protocol enters into force, Chile affords treatment equivalent to this Article by means of an international trade agreement, it shall be extended to the other Parties.

Trade in Services Statistics and Services Subcommittee

The Parties shall use their best efforts to ensure their authorities work jointly on the exchange of information, methodologies and publication of statistics on the Parties' international trade in services, in compliance with international standards.

With regard to the Services Subcommittee, this Article makes reference to Article 10.33, which creates the Joint Committee on Investment and Services. This joint committee shall be in charge of the Services Subcommittee. This Subcommittee shall meet once a year, or as agreed by the Parties, and joint meetings with representatives of the private sector may also be held. The Subcommittee shall determine its procedural rules, promote cooperation in matters related to trade in services, assess and recommend agreements or mechanisms to the Committee to boost trade between the Parties, among other duties, all aimed at improving trade in services conditions.

Denial of Benefits
Subject to prior notice, a Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or the denying Party, and the enterprise has no substantial business activities in the territory of any Party other than the denying Party.

Development of Standards and Criteria for Provision of Professional Services
Each Party's bodies shall encourage the creation of mutually acceptable laws and criteria to grant licenses and certificates to suppliers of professional services, as well as submit recommendations to the Services Subcommittee for its recognition.

Said laws and criteria may be prepared based on the following criteria: (a) education; (b) examinations; (c) experience; (d) conduct and ethics; (e) professional development and certification renewal; (f) scope; (g) local knowledge; and (h) consumer protection.

After receiving one of the recommendations mentioned above, the Services Subcommittee shall review it within a reasonable time to decide whether it is consistent with the Protocol and inform the Free Trade Commission of its conclusions. Based on the Services Subcommittee's review, each Party shall encourage its authorities to implement said recommendation, when applicable, within a mutually agreed term.

Temporary Licensing
When so agreed, each Party shall encourage the relevant bodies in its territory to develop procedures to issue temporary licenses to professional suppliers of another Party.

Temporary Licensing of Engineers
The Services Subcommittee shall establish a work program with relevant professional bodies in the Parties' territories to develop procedures for temporary licensing by the authorities of a Party to engineers of another Party.

The Parties shall consult with the relevant professional bodies in its territory to obtain recommendations for temporary licensing procedures, to develop procedures to facilitate the issuance of licenses, or other matters of mutual interest to the Parties relating to the temporary licensing of engineers identified by the relevant Party in its consultation.

The Services Subcommittee shall review the above recommendations to ensure that they are consistent with the Additional Protocol. It shall inform the Free Trade Commission of its conclusions. Based on the review, each Party shall encourage its relevant authorities to implement said recommendation within a mutually agreed term.

Review
The Services Subcommittee shall review the implementation of the above provisions (at least once every three years).

9

Financial Services MILA

Opportunities

Even when it is true that the Protocol contains a Chapter 11 on Financial Services, the major opportunity for the Pacific Alliance in that regard relates to the effective development and implementation of MILA, as a regionally integrated capital market. MILA is not part of the Additional Protocol, but a parallel development that is taking place within the Pacific Alliance countries. Several obstacles still have to be overcome, but pending issues are on the working table of the four countries' finance ministers, and there is a genuine desire to move forward. Therefore, we consider it relevant to include a reference to MILA as a financial tool of the Pacific Alliance.

This document aims to (i) present a summary of the main pending issues that might be considered to be delaying or undermining the development of the Latin American Integrated Market (MILA, in Spanish).

Pending issues

We include below a summary of the main issues that might be delaying the development of MILA, which have not been solved yet.

Pending Issue	Comments/Remarks
The need for equal tax treatment in connection with the issuance and transfer of securities within MILA, (e.g., income tax treatment on capital gains derived from a transfer of securities in any stock exchange, or dividends paid in the case of equity securities, or interest in the case of debt securities), as well as the country where the investor is taxed, and a single rate for all cases, regardless of the investor's nationality or place of residence.	There should be tax neutrality between MILA countries for transactions carried out in MILA and tax-related arbitration cases should be avoided.
Have similar regulations applicable in every MILA jurisdiction to matters such as: (i) mandatory takeover bids, (ii) types of transactions that can be carried out in each market (e.g., reporting transactions, securities lending, etc.), (iii) the number of required credit rating agencies and minimum rating requirements, (iv) minimum reporting and disclosure obligations, (v) investment limits and restrictions on instruments applicable to private pension funds and other regulated institutional investors (i.e., local limits on investments made in instruments traded in MILA), (vi) similar offenses and sanctions, (v) DVP settlement system, and (vi) corporate governance standards.	It is necessary to standardize these issues so MILA can be a truly integrated market.

Develop and implement a currency exchange rate market for hedging purposes for local trading currencies in MILA stock exchanges, to control credit exposure of cross-border transactions.	The different currencies in which financial instruments are traded and settled in each MILA country and the volatility of said currencies against each other and the US dollar, give rise to a risk that must be controlled to attract investments in instruments traded in MILA.
Encourage liquidity of securities in MILA stock exchanges through consistent and joint regulations to include the participation of market makers in all markets.	If liquidity increases in MILA stock exchanges, the liquidity in the MILA market, seen as a whole, increases too. This issue is very relevant to attract investors from jurisdictions other than MILA.
Grant direct access to brokers of each country to enter, and trade in, other MILA markets on their own account or on their clients' account (without need for a local broker).	

10

E-Commerce: Digital Products

Chapter 13 of the Protocol on E-commerce is composed of 14 sections. The most relevant refer to rights and obligations, as well as business opportunities for Member States of the Pacific Alliance.

Scope

This Chapter is applicable to measures affecting electronic transactions of goods and services, including digital products transmitted electronically.

Objectives

Self-regulation. Implement initiatives in the private sector, such as business guidelines, model contracts, codes of conduct, and trust marks.

Interoperability, Innovation and Competence. Promote the use of systems or components to exchange information, as well as innovation and competence, to facilitate e-commerce.

Policies Applicable to all Users. Ensure that international and national policies on e-commerce include the interests of all relevant users, i.e., consumers and private and public sectors.

Micro and Medium Sized Enterprises. Facilitate the use of e-commerce to these enterprises through the implementation of measures such as paperless e-commerce.

Data Security. Promote the adoption of measures that ensure users' security, based on international data protection standards. This obligation includes the adoption of measures to protect users from unsolicited commercial electronic messages.

Barriers to E-commerce. Avoid the implementation of measures that hinder e-commerce or that treat information exchange in a more restrictive manner.

General Obligations

Customs Matters. No Party shall impose customs duties, fees or import or export charges on digital products transmitted electronically. The imposition of internal taxes or other charges on digital products shall not be prohibited provided that it is consistent with this Protocol.

Transparency. Each Party, pursuant to its legislation, shall timely publish its laws, regulations, procedures and administrative decisions of general application related to e-commerce.

Consumer Protection. Each Party shall adopt transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities in e-commerce. To this end, the Parties shall exchange information and experiences on their national systems, as well as examine alternative dispute settlement mechanisms for cross-border transactions.

Paperless Trading

Each Party shall endeavor to make all documents available to the public in electronic form and accept them as the legal equivalent of the paper version of those documents pursuant to its legislation.

Digital Certificates
No Party may adopt legislation for document authentication which would prevent any user from proving, in the relevant court and/or administrative proceeding, the validity and authentication of the electronic documents pursuant to its legislation. Therefore, the Parties shall establish approval mechanisms to encourage the use of interoperable electronic authentication based on international standards. To that end, they may consider recognition of advance or digital electronic signatures, issued by suppliers of certification services, pursuant to the procedure determined by law.

Cross-border Flow and Cooperation
In order to strengthen e-commerce relations, the Parties shall consider the future negotiation of commitments related to cross-border flow of information. For instance, the commitment to perform cooperation activities, such as the holding of forums and working group meetings with experts in the field, to share relevant information on their legislations, and to implement international codes of conduct, among other cooperation obligations described in section III.

Prevalence
It is important to mention that in the event of conflict with other Chapters of this Protocol, the other Chapter shall prevail over this Chapter in relation to conflicting terms.

11

Telecommunications

Chapter 14 on Telecommunications has 23 sections, of which the following are worth mentioning since they represent rights, obligations and business opportunities for the Parties to the Pacific Alliance.

Scope

This Chapter shall apply to any measure relating to access to and use of public networks and telecommunications services and obligations regarding suppliers of public telecommunications services of Member States.

Exception: This chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have continuous access to and use of public telecommunications networks and services.*

General Obligations regarding Access to and Use of Public Telecommunications Networks and Services

Each Party shall ensure that any company of another Party has access to and use of any public telecommunications service offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions. Relevant specifications to comply with this obligation include the following:

a) Each Party shall ensure that the companies of other Parties may purchase or lease terminals that interface with a public telecommunications network; use public telecommunications services for the movement of information in its territory or across its borders in a way that is legible by a machine in the territory of any of the Parties. Notwithstanding the above, a Party may take measures that are necessary to ensure the security and confidentiality of information.

b) Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to safeguard the public service responsibilities of suppliers of public telecommunications networks and services (such as their ability to make their networks or services generally available to the public), as well as to protect the technical integrity of networks or services. Provided that the requirements set out above are met, the Parties may establish conditions for the use of technical interfaces, including an interface protocol, for interconnections, interoperability requirements, and standardization or approval of equipment, as well as notifications, registrations and licensing.

Other Relevant Obligations

Unbundled Network Elements. Each Party shall provide its telecommunications regulatory body with the authority to require relevant suppliers in their territory to provide other Parties unbundled access to the network on reasonable and non-discriminatory terms, conditions and fees.

Provisioning and Pricing of Leased Circuits. Each Party shall ensure that major suppliers in its territory provide companies of another Party with leased circuits at reasonable rates.

Co-Location. Each Party shall ensure that major suppliers provide suppliers of public telecommunications services of other Parties with physical co-location of equipment necessary for interconnection or access to unbundled network elements.

Universal Service and Transparency. Each Party shall define the type of universal service obligations it wishes to undertake in a transparent and neutrally competitive manner.

International Roaming. Each Party shall promote transparent rates for international roaming services for voice, data and text messages, and minimize impediments to the use of alternatives to Roaming services.

Other Relevant Obligations
Each Party shall maintain appropriate measures for the purpose of preventing relevant or major suppliers from engaging in anti-competitive practices, such as using cross-subsidization, information obtained from competitors or not making available technical information essential to public telecommunications services facilities.

Independent Regulatory Bodies
Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.

Licensing
If a Party requires a license to develop the public telecommunications service, the Party shall ensure the public availability of:

a) all licensing criteria and procedures;
b) the period normally required to reach a decision; and
c) the terms and conditions of all licenses issued.

Resolution of Telecommunications Disputes
Each Party shall ensure within its territory:

Recourse. All companies from other Parties have recourse to a telecommunications regulatory body to solve disputes related to this chapter.

Reconsideration. Any company which was adversely affected by a decision of a telecommunications regulatory body may appeal said decision, without resulting in non-compliance with said resolution.

Judicial Review The adversely affected company may request a judicial review and the staying of the decision while the matter is solved.

Prevalence
It is important to mention that in the event of conflict with other Chapters of this Protocol, this Chapter shall prevail over the others in relation to conflicting terms.

12

Maritime Services

Chapter 12 of the Protocol refers to rules on Maritime Services, mainly the following two: 1. Maritime Transport Services and 2. Services related to Maritime Transport (hereinafter, jointly referred to as the "Services").

The purpose of the Protocol, like that of the Pacific Alliance, is to jointly promote and work on the development of the Member States. In this Chapter, all matters related to commercial maritime transport are included.

Definitions and Scope of the Chapter

The Chapter begins with the following definitions:

Party Vessel: A vessel under the flag of a Member State, licensed under its registers. Additionally, vessels leased or operated by companies or shipping companies of one Party and which said Party informs of (except warships, sea or hydrographic research vessels, ships used for fishing, its research and treatment, and ships providing auxiliary port services in bay traffic and port areas, including driving, towing, help and sea rescue services).

Recognized Organization: An organization empowered by one Party which complies with the regulatory tasks set forth by the International Maritime Organization conventions. Maritime Services Supplier of a Party: A person authorized or recognized by the authorities of a Party which renders maritime transport services

Services related to Maritime Transport: Any service which relates to satisfying ship, crew, passengers and/or load requirements, pursuant to the legislation of each Party (including port services).

Crew of a Party Vessel: Any person hired who is included in the crew list.

This Chapter is applied to the measures adopted or kept by one Party which affect international maritime transport services and any other related services rendered by a supplier of another Party. Any measure affecting maritime transport shall be bound by the applicable rules of Chapters 9 and 10. In the event of conflict with another protocol, this Protocol shall prevail. Notwithstanding the above, the Parties acknowledge the rights and obligations from other international documents issued, signed and ratified by UN bodies which regulate international maritime transport and related services.

Commitments and National Treatment

The Parties shall cooperate to facilitate maritime transport between them, notwithstanding any provision or obligation already undertaken by or to be undertaken deriving from international rules, conventions or laws in effect. The Parties agree that they shall grant other Parties' ships a treatment no less favorable than the most favorable treatment they grant to their own ships.

The Parties agree to maintain cross-border information flows.

To promote competitiveness, the Parties agree to evaluate joint strategies. As a result, strategies shall be prioritized and a work schedule shall be established to implement them.

This Chapter states the significance, and therefore, various commitments, of working together to overcome obstacles to the Services and share best practices, training related staff, promoting academic improvements for merchant marine students (student exchanges in educational centers, practices and trainings in Party Vessels), and sharing information and experience regarding related laws, maritime and port management and operation experiences in the regulatory field. This Chapter also signifies the importance of performing joint events which strengthen the services mentioned before, among many other commitments to facilitate related management, services and experience.

Valid Representatives and Authority or Body

In order to acknowledge the nationality of a ship by its validly issued documentation, the documentation shall be issued by (any of the following or their successors): (a) Chile: General Directorate of Maritime Territory and Merchant Marine; (b) Colombia: General Directorate of the Ministry of Defense or any other organization recognized by Colombia; (c) Mexico: Secretariat of Communications and Transportation, by means of the General Directorate of Merchant Marine; or (d) Peru: General Directorate of Captaincies and Coast Guard or any other organization recognized by Peru

To contact any Member State in relation to these matters: (a) Chile: Maritime, Fluvial and Lake Department of the Ministry of Transport and Telecommunications; (b) Colombia: General Maritime Directorate by means of the Ministry of Commerce, Industry and Tourism; (c) Mexico: General Directorate of Merchant Marine of the Secretariat of Communications and Transportation; or (d) Peru: General Directorate for Water Transport of the Ministry of Transport and Communications by means of the Minister of Foreign Commerce and Tourism.

Representatives and acknowledgment of crew documents

When a maritime services provider of one Party operates in the territory of another Party, it may appoint representatives in said territory, pursuant to the territory's legislation.

Crew documents are a valid passport and/or seaman service book. The Parties that acknowledge these documents shall grant a treatment no less favorable to that granted to nationals.

Jurisdiction

Regarding disputes over private agreements between a ship owner and a crew member of different Parties, it shall be solved by the jurisdiction of the Party under whose flag the ship sails, or as provided under the Agreement.

13

Transparency

13 | Transparency

Chapter 15 of the Additional Protocol sets forth the transparency obligations existing between the Parties regarding (i) implementation of the Additional Protocol at the national regulation level, (ii) the information each of the Parties shall provide the other Parties with regarding general internal rules related to matters included in the Additional Protocol, and (iii) the information that each of the Parties shall grant to other Parties regarding any modifications to their internal laws which impact the general internal rules related to matters included in the Additional Protocol, and the opportunity to comment thereon.

Chapter 15 sets forth the following key matters:

Definitions
Administrative ruling of general application means a general notion of internal legislation rules upon which knowledge obligations are imposed.

Point of Contact
Each Party shall inform the other Parties of which administrative office shall grant and receive the information requested in Chapter 14.

Publication
Each Party agrees to publish ahead and inform other Parties regarding any general administrative resolution it intends to implement in its national legislation, and to provide the persons concerned and the other Parties with reasonable opportunity to make comments on this resolution.

Notification and Provision of Information
Each Party shall notify the other Parties of any measure or prospective measure which may substantially affect the operation of the Additional Protocol, or the interests of another Party under the Additional Protocol.

Administrative Proceedings
Each Party agrees to keep or implement measures in its administrative proceedings which guarantee due process in administrative cases, and which specially (a) provide a third party or another Party with reasonable notice if they are directly affected by a proceeding; (b) afford a third party or another Party a reasonable opportunity to present facts and arguments in support of their position; and (c) ensure that the procedures are in accordance the laws of the Party.

Review and Appeal
Each Party shall have judicial or administrative tribunals or procedures for the purpose of correcting, if applicable, final administrative actions with respect to any matter covered by the Additional Protocol. These tribunals shall be independent of the office or authority entrusted with enforcing administrative measures.

The procedure shall always include a reasonable opportunity for the parties to an administrative proceeding to defend their respective positions; and the obligation to issue a decision by the law based on the evidence filed. The decision issued in the administrative procedure, subject to appeal or further review, shall be implemented by the office or authority in charge of enforcing administrative measures.

14

Regulatory Improvement

Chapter 15 bis of the Additional Protocol sets forth the Parties' objectives and obligations in terms of regulatory improvement, such term being understood as the use of good international regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives.

Scope

Within the three years following the entry into force of the First Amendment Protocol to the Additional Protocol to the Framework Agreement (the "First Amendment Protocol"), the Parties shall identify and make available to the public the regulatory measures to which the regulatory improvement provisions shall apply.

Coordination and Review Processes

(a) Each Party shall establish mechanisms (and, if possible, a central body) to coordinate the different agencies under its jurisdiction and centralize regulatory improvement processes.
(b) Regulatory review mechanisms shall include (i) the interested parties' right to access the proposals for regulatory change, (ii) the implementation of consultation systems between agencies, so as to avoid inconsistencies between their amendment requests, and (iii) public information systems on already reviewed regulatory measures included in the improvement program.

Implementation of Good Regulatory Practices

(a) Each Party shall establish impact assessment mechanisms when they prepare regulatory amendment proposals. This assessment shall take into account, especially, small and medium sized enterprises.
(b) Each Party shall encourage its agencies to review the regulatory progress and improvement of the other Parties, as an indirect unification mechanism.
(c) Each Party shall ensure that regulatory measures are clear and concise.
(d) Each Party shall endeavor to make all regulatory measures available to the public, including online.
(e) Each Party shall review its regulatory measures from time to time, to confirm they are consistent with its public policies.

Regulatory Improvement Committee; Cooperation

(a) The Parties agree to create a Regulatory Improvement Committee (the "Committee"), which shall meet in such manner and at such intervals as the Parties may agree, and shall take all decisions by consensus.
(b) This Committee shall endeavor to facilitate the implementation of regulatory improvement measures, by identifying the current status of the Parties' regulations, regulations to be improved and regulatory priorities.
(c) The Parties agree to cooperate so as to facilitate the implementation of the Chapter on regulatory improvement, by exchanging information, and organizing forums, training programs and other meetings they may consider appropriate.

Implementation Report

Two years after the effective date of the First Amendment Protocol, and every three years thereafter, the Parties shall submit a report on the progress of regulatory improvement.

15

Dispute Settlement Between States

15 | Dispute Resolution Between States

The most relevant points of Chapter 17 of the Protocol are the following:

- The dispute settlement mechanism shall apply when: (i) an actual or proposed measure of another Party is or would be inconsistent with an obligation of the Additional Protocol, (ii) another Party has otherwise failed to carry out an obligation under the Additional Protocol; or (iii) a Party considers that a benefit it could have expected to accrue is being nullified or impaired by an actual or proposed measure with regard to the provisions contained in Annex 17.3.
- Any Party may request, in writing, consultations with any other Party with respect to the three cases mentioned above.
- Any Party may request the intervention of the Free Trade Commission if the requirement is not duly answered and if the matter is not solved within the specified timeframe.
- The establishment of an arbitral tribunal may be requested when: (i) the Free Trade Commission fails to meet within a period of 10 days after the date of receipt of the request, (ii) the matter is not resolved within a period of 30 days after the meeting of the Free Trade Commission, or (iii) the matter is not resolved within any other term agreed by the Parties.
- The tribunal shall be composed of three arbitrators.
- The award shall be final, unappealable, and binding upon the Parties.
- The complaining Party may, upon prior notice to the other Party, suspend benefits and other obligations under the Protocol if: (i) compensation is not requested, (ii) the Parties fail to reach an agreement to comply with the award, or (iii) after having reached an agreement to comply with the award, the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.
- Any Party may request that the tribunal be reconvened to determine if the suspension is excessive or to decide on the Parties' disagreements to comply with the award.

Each Party shall bear the costs associated with the arbitrators appointed by it and their related expenses. The costs associated with the president of the tribunal and other expenses shall be borne equally by the Parties. Within 10 days following notice of the award, any Party may request its clarification. The suspension shall occur in the same sector that was affected by the measure subject to arbitration. This suspension shall be temporary and shall be applied until (i) the inconsistent measure is adjusted to the Additional Protocol standards, (ii) the tribunal decides that the responding Party has complied with the award, or (iii) the Parties have reached an agreement.

16

Exceptions

16 | Exceptions

Summary
Chapter 18 of the Additional Protocol sets forth general exceptions, as well as exceptions related to public order, essential security, taxation measures, disclosure of information, and temporary safeguard measures.

- For the purposes of Chapters 3 (Market Access), 4 (Rules of Origin and Origin Procedures), 5 (Trade Facilitation and Customs Cooperation), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade), and 13 (E-commerce), Article XX of GATT 1994 and its interpretative notes (that set forth general exceptions to the obligations under GATT) are incorporated into and made part of the Additional Protocol, mutatis mutandis. Likewise, for the purposes of Chapters 9 (Cross-Border Trade in Services), 12 (Maritime Services), 13 (E-commerce) and 14 (Telecommunications), Article XIV of GATS (that sets forth general exceptions to the obligations under the General Agreement on Trade in Services, or "GATS"), together with its footnotes, are incorporated into and made part of this Agreement, mutatis mutandis.
- In connection with the provisions set forth in Chapter 10 (Investment), it is provided that nothing shall be construed to prevent a Party from adopting or maintaining measures in connection with natural persons of another Party that are necessary to preserve public order, provided that these measures are not applied in a manner that constitutes an arbitrary or unjustifiable means of discrimination.
- Essential security exceptions include measures (i) relating to fissionable and fusionable materials or the materials from which they are derived; (ii) relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or (iii) taken in a time of war or other emergency in international relations.
- With regard to taxation measures, it is provided that nothing in the Additional Protocol shall apply to said measures. Likewise, it is provided that nothing in the Additional Protocol shall affect the rights and obligations of any Party under any double taxation convention or any other international tax conventions or arrangements. Nevertheless, in the event of any inconsistency between the provision of the Additional Protocol and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.

Notwithstanding the foregoing, Articles 3.3 (National Treatment) and 3.10 (Export Duties, Taxes or Other Charges) shall apply to taxation measures.

Articles 9.3 (National Treatment), 11.3 (National Treatment) and 11.6 (Cross-border Trade) shall apply to taxation measures on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this paragraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory.

On the contrary, Articles 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), 10.4 (National Treatment), 10.5 (Most-Favored-Nation Treatment), 11.3 (National Treatment), and 11.4 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances, and generation-skipping transfers.

16 | Exceptions

The provisions included in the previous paragraphs have different exceptions mentioned in Chapter 18.

- Finally, Article 10.12 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke said article as the basis for a claim if it has been determined that the measure is not an expropriation.

- Nothing in the Additional Protocol shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede enforcement of its laws, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

- Finally, it is set forth that the Parties may adopt or maintain temporary safeguard measures (i) to restrict transfers or payments for current account transactions and those relating to the movements of capital in the event of serious balance of payments and external financial difficulties or threats thereof; and/or (ii) to impose restrictive measures on importation of goods or services, so as to safeguard its external financial position or its balance of payments.

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