

## **High-Level IIA Conference 2017: Moving to the Next Phase of IIA Reform**

**Opening Plenary, 24 May 2017**

### **Statement by Chile**

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Thank you very much Chair for giving us this opportunity to share the evolution of Chile's approach to the negotiation of International Investment Agreements (IIAs).

In 1991, following the old and so called "Dutch gold standard model BIT", Chile began to negotiate Bilateral Investment Treaties (BITs), as short treaties with broad definitions for investor and investment, unqualified disciplines, no exceptions for special sectors, and basic investor-state dispute settlement (ISDS) rules.

In 2003, after negotiating more than fifty BITs, a moratorium by the Chilean government came into effect, under which such treaties ceased to be negotiated by Chile. The assessment made by our authorities was that, on the one hand, those agreements did not contain duly developed and delimited obligations, giving room for overly broad interpretations and decisions by arbitral tribunals, and, on the other hand, that the granting of such kind of protection to foreign investment would make sense as part of wide initiatives of economic integration.

Since the moratorium, Chile's practice regarding IIAs, has been to negotiate those instruments as chapters of Free Trade Agreements (FTAs) and following an updated "NAFTA Model". These chapters contain detailed disciplines and definitions, carve-outs for certain sectors (like financial services), transparency rules, and provisions on sustainability, environment and labor. In case of disputes, investors are given access to ISDS, through properly developed procedural rules.

These investment chapters are also used to replace old generation BITs that exist with trade partners with which FTAs are signed.

Chile is also interested in keeping its investment chapters up to date. Thus, for example, Chile and Canada have updated the Investment Chapter of their bilateral FTA, in three

occasions. In 2002, a Note of Interpretation was agreed regarding the Minimum Standard of Treatment article and the provision on Public Access to Documents. Then, in 2010, another Note of Interpretation was agreed in relation to Indirect Expropriation, and, finally, in 2017, new and progressive elements were introduced to the chapter. The negotiated updates include language clarifying the Parties understanding of existing obligations, provisions that seek to re-affirm a states' right to regulate, a new article dedicated to corporate social responsibility, improvements to the ISDS mechanism (including with respect to preliminary objections, awarding of costs, ethical considerations, third-partying funding, and transparency), encouragement of alternatives to arbitration (such as mediation and consultation), and a rendez-vous clause enjoining the Parties to adopt a permanent multilateral tribunal (including an appellate mechanism, should such be established in the future).

Since 1997, Chile has subscribed 14 investment chapters or investment agreements supplementary to FTAs. In all those negotiations, special attention has been given to the purpose of achieving instruments that strike the right balance between investment protection and the right to regulate of states.