

Documents tabled on 17 June 2008:

**National Interest Analysis [2008] ATNIA 19
with attachment on consultation and annex (summary of key obligations)**

Australia-Chile Free Trade Agreement [2008] ATNIF 6

Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Australia-Chile Free Trade Agreement [2008] ATNIF 6

Nature and timing of proposed treaty action

1. It is proposed that Australia enter into a Free Trade Agreement with Chile. The Australia-Chile Free Trade Agreement (ACI-FTA) negotiations were concluded on 27 May 2008. It is expected that the ACI-FTA will be signed after 17 July 2008, with both Governments aiming for entry into force on 1 January 2009. Article 5 of Chapter 23 (Final Provisions) states that the ACI-FTA will enter into force 45 days after an exchange of notes confirming completion of the Parties' respective domestic procedures, or at such other date as the Parties may agree. Both Governments are working towards an exchange of notes at the APEC Economic Leaders Meeting on 22 to 23 November in Peru. Tabling the ACI-FTA in Parliament is by agreement of both parties given that it will occur prior to signature.

2. The ACI-FTA applies to all levels of Government (unless specified otherwise in the agreement), State and Territory, as well as Federal. The obligations in the ACI-FTA Cross-Border Trade in Services (CBTS) and Investment chapters therefore apply to government measures at all levels, unless any such measures are excluded in a list of non-conforming measures (as was the case in Australia's FTAs with Singapore and the United States of America (US)). The list of Federal measures has been finalised and we included a general non-conforming measure for all such State and Territory measures (following the Australia-US FTA model). Chile has requested that, for greater transparency, these State and Territory measures be individually listed in the treaty (as was done for Australia's FTA with Singapore). The Department of Foreign Affairs and Trade is currently working with the States and Territories to develop their lists of measures to be included into the ACI-FTA. To allow the States and Territories adequate time to complete this work, while still allowing sufficient time to complete Australia's domestic processes to bring the agreement into force, the treaty is being tabled in Parliament without the individual listings of State and Territory measures. It is important to note that the individual listings of State and Territory measures do not change the nature of the obligations in the treaty. The listing is for transparency only. The list of measures will be added to the treaty in July and provided to JSCOT as soon as practicable.

Overview and national interest summary

3. The ACI-FTA removes most barriers to entry for Australian business into Chile. It removes almost all barriers to Australia's exports of goods and provides for a very high degree of economic integration of our markets through comprehensive commitments in a range of areas including trade in services, investment, government procurement, intellectual property, electronic commerce and competition policy.

4. The ACI-FTA will enhance Australia's broader economic and trade interests and reinforce Australia's commitment to global trade reform and liberalisation.

Reasons for Australia to take the proposed treaty action

5. Australia's investment relationship with Chile is strong. Australia is the fourth largest source of foreign direct investment in Chile with investments amounting to approximately US\$3 billion in 2007¹. Bilateral trade, however, with Chile is modest (\$856 million in 2007), but growing rapidly. There is strong support for a free trade agreement (FTA) from Australian business with an interest in Chile. The mining and energy sectors have a particular interest, seeing enhanced opportunities in supplying Chile's growing market for energy (coal and LNG) and participating in Chile's buoyant mining industry (copper and gold), including by supplying services. The meat and dairy industries believe that an FTA would increase Australia's competitiveness in the Chilean market and Australian services suppliers generally see Chile as a growing market. Industry, especially but not exclusively in those sectors, views Chile as the logical stepping stone into other significant markets in South America, particularly Brazil. Further, an FTA puts Australia on an equal footing with competitors from the USA, the European Union, Canada, Japan, and New Zealand and other Latin American countries, which currently benefit from Chile's expansive network of preferential trade agreements involving 54 countries.

6. The ACI-FTA will create immediate market access opportunities for many sectors of the Australian economy. Some of these benefits include:

- the elimination of Chile's tariffs on 91.9 per cent of lines covering 96.9 per cent of trade, including for coal and for priority dairy tariffs, all meat and wine tariffs and all other industrial tariffs identified by Australian industry of interest;
- a rules of origin system based on the change in tariff classification approach including the option for exporters to self-certify;
- a harmonised and simplified system of customs procedures which aims to facilitate trade and a system of advanced rulings which will enable exporters to ascertain whether their exports will qualify for preferential tariff treatment, before shipment;
- commitments by Chile to maintain an open and non-discriminatory market for Australian service suppliers, including in the sectors of: education, professional services, mining, engineering, telecommunications and management consulting;
- access and strong protections for Australian investment in Chile, including a right for investors to protect their investments directly through investor-state dispute settlement;
- access for financial service suppliers to Chile's pension funds system;
- non-discriminatory access for Australian suppliers of goods and services (except financial services) to Chile's government procurement market;
- temporary access and work rights for business visitors, contractual service suppliers, executives and intra-corporate transferees;
- automatic work rights for spouses of persons granted temporary entry for longer than 12 months;
- a framework for mutual recognition of professional qualifications;
- commitments regarding intellectual property rights which lock in current standards of intellectual property protection for patents, trademarks, geographical indications and copyright, including enforcement mechanisms;
- telecommunications regulatory disciplines that promote open access and competition;
- commitments to anti-competitive business practices and competitive neutrality for government owned businesses;

¹ Based on official Chilean Government statistics.

- no customs duties on electronic transmissions; and
- agreement to facilitate paperless trading in order to reduce business transaction costs.

7. In addition to the direct economic benefits, the ACI-FTA will enhance Australia's broader trade and economic interests in the region. It reinforces Australia's commitment to World Trade Organization (WTO)-plus FTAs, Australia's goal of global trade reform and liberalisation and the successful conclusion of the WTO Doha Round of negotiations. It introduces a high-quality FTA into the APEC region that will be open to other APEC members to join, which provides a model for other bilateral and regional trade and economic integration efforts among APEC members.

Obligations

8. The ACI-FTA is a broad agreement that will liberalise and facilitate trade and investment between Australia and Chile. Upon entry into force, each Party will eliminate tariffs on the imports of most goods from the other Party (Chapter 3) that meet the Rules of Origin criteria set out in the Agreement (Chapter 4).

9. Each Party will grant market access, national treatment and most-favoured nation treatment to services and investments from the other Party, under the CBTS (Chapter 9) and Investment (Chapter 10) chapters. In addition, the performance requirements obligation in the Investment chapter prohibits the Parties from attaching certain conditions to investments, while obligations on local presence (CBTS chapter) and senior management and boards of directors (Investment chapter) prohibit certain requirements as to nationality, residency and/or legal entity. These obligations do not apply to measures or sectors carved out in annexes of non-conforming measures in the Agreement. A separate financial services chapter (Chapter 12) imposes similar obligations in the financial sector.

10. The ACI-FTA also contains commitments and disciplines on Government Procurement (Chapter 15), Intellectual Property Rights (Chapter 17), Telecommunications (Chapter 11), Customs Procedures (Chapter 5), Electronic Commerce (Chapter 16), Competition Policy (Chapter 14), Temporary Entry for Business Persons (Chapter 13), Standards and Technical Regulations (Chapter 7), Sanitary and Phytosanitary Measures (Chapter 6), Cooperation (Chapter 18) and a Dispute Settlement System applicable to most of the FTA (Chapter 21), as well as Investor-State Dispute Settlement on Investment (Chapter 10).

11. The Summary of Key Obligations of the ACI-FTA provides a detailed summary of the obligations of the Agreement (Annex 1).

Implementation

12. To implement the ACI-FTA, amendments need to be made to the *Customs Act 1901* and the *Customs Tariff Act 1995* as well as associated regulations to incorporate the preferential tariff rates that will apply to goods imported from Chile under the ACI-FTA.

13. The remainder of Australia's obligations under the ACI-FTA do not require any legislative or regulatory amendments. The ACI-FTA will not effect any change to the existing roles of the Commonwealth and the States and Territories.

Costs

14. The Treasury has estimated that the loss of tariff revenue to the Australian Government resulting from the ACI-FTA, based on current levels of bilateral trade, will be approximately \$1.9 million in 2008-09 and between \$4 million to \$4.5 million per year between 2009 to 2012. This estimate assumes that the ACI-FTA will enter into force on 1 January 2009. The estimates do not take into account the scope for additional lost tariff revenue that could arise if imports from Chile displace imports from other countries. On the other hand, the estimates do not take into account the potential economic growth that the Agreement could generate and any additional taxation revenue resulting from this growth.

Regulation Impact Statement

15. A Regulation Impact Statement is attached.

Future treaty action

16. Article 3 of Chapter 23 (Final Provisions) sets out the process for amendment of the Agreement. The Parties may agree, in writing, on any modification of or addition to the Agreement, with the amendment entering into force 45 days after the date on which the Parties exchange written notification. Any amendments agreed to by the Parties would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

Withdrawal or denunciation

17. Under Article 5 of Chapter 23 (Final Provisions) either Party may terminate the ACI-FTA by the giving the other Party 180 days advance notice in writing. Termination of the ACI-FTA would be subject to the Australian treaty process.

Contact details

Trade Development Division
Department of Foreign Affairs and Trade.

Australia-Chile Free Trade Agreement [2008] ATNIF 6

CONSULTATION

1. This proposed action will have an impact on the States and Territories, as the obligations in the Agreement apply to States and Territories (except where specified otherwise in the Agreement).
2. The obligations in the Cross-Border Trade in Services Chapter, the Investment Chapter and the Financial Services Chapter apply to State and Territory measures. Where States and Territories wish to maintain measures that are inconsistent with these obligations, they must list them in the annexes of non-conforming measures to these chapters. Initially, Australia included three over-arching non-conforming measures for the States and Territories; however Chile asked, for greater transparency, having those State and Territory measures listed individually in the annexes. The Minister for Trade wrote to the States and Territories seeking agreement to list these measures individually in the ACI-FTA prior to agreeing this with Chile. A Department of Foreign Affairs and Trade officer has visited each State and Territory to assist those governments in preparing the individual listing of their measures. This visit has been supplemented by ongoing consultations and assistance by email and telephone.
3. The Government Procurement Chapter also requires commitments at the State and Territory level. The States and Territories were consulted throughout the negotiations via meetings of the International Procurement Consultative Group followed by a letter from the Minister for Trade seeking a decision of the States and Territories to participate in the Government Procurement Chapter. The States and Territories have agreed to the government procurement commitments contained in the ACI-FTA.
4. The final text of the ACI-FTA was sent to the States and Territories prior to tabling in Parliament.
5. In addition to these specific areas requiring their attention, the States and Territories were involved in the comprehensive series of consultations conducted before and during the FTA negotiations. Prior to the commencement of the negotiations, face-to-face consultations were held in Melbourne, Sydney, Brisbane, Perth and Adelaide with all interested stakeholders, including State and Territory Governments, Australian business, industry groups and non-government organisations. Telephone conferences were offered to interested organisations in Tasmania and the Northern Territory. A series of consultations were also held in Santiago.
6. The Department of Foreign Affairs and Trade called for public submissions from interested stakeholders prior to the commencement of negotiations and eighteen written submissions were received. The information provided and views expressed in each submission, and by each stakeholder, were considered during the course of the negotiations and in the development of the final agreement.
7. During the consultations, written updates were provided following each round of negotiations and the States and Territories were provided with progress reports of the negotiations via the Senior Trade Officials Group (STOG) and the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) meetings. The treaty has been on the SCOT Schedule of Treaties since February 2007.

8. Commonwealth Government departments were extensively consulted throughout the negotiations and representatives from relevant departments attended the negotiations in Canberra and Santiago.

LIST OF SUBMISSIONS RECEIVED

1. Association of Consulting Engineers
2. Australia Pork Ltd.
3. Australian Dairy Industry Council Inc
4. Australian Fair Trade and Investment Network
5. Australian Media, Entertainment and Arts Alliance
6. Australian Prune Industry Association
7. BHP Billiton
8. Dr Mark Neal, Postdoctoral Research Fellow, University of Queensland
9. Horticulture Australia Ltd (Horticultural Market Access Committee)
10. Industrial Organics Pty Ltd
11. Law Institute of Victoria
12. Meat and Livestock Australia
13. Medicines Australia
14. North American Logistics
15. Rheem Australia Pty Ltd
16. Tasmanian Salmonid Growers' Association Ltd
17. The Hon Kevin Foley MP, Deputy Premier, Government of South Australia
18. Universities Australia

LIST OF STAKEHOLDERS CONSULTED

1. ACI Services Pty Ltd
2. ACT Chief Minister's Department
3. ACT Department of the Treasury
4. Amira International Ltd
5. APRA AMCOS
6. Aran
7. Aurora Gourmet Produce
8. Austmine
9. Austrade
10. Australia Brazil Chamber of Commerce Inc

11. Australia Chile Chamber of Commerce
12. Australia Latin America Business Council
13. Australian Business Limited
14. Australian Chamber of Commerce & Industry
15. Australian Dairy Industry Council
16. Australian Electrical & Electronic Manufacturers' Association
17. Australian Industry Group
18. Australian Meat Industry Council
19. Australian Nursing and Midwifery Council
20. Australian Nursing Federation
21. Australian Pork Limited
22. Australian Services Roundtable
23. Australian Wine and Brandy Corporation
24. Avocados Australia
25. BHP Billiton
26. Bronson and Jacobs (Orica Ltd)
27. Business Council of Australia
28. Carpet Institute of Australia
29. Caterpillar Underground Mining Pty Ltd
30. Commonwealth Bank
31. Cooe Products
32. Copyright Agency Limited
33. Council on Australia Latin America Relations (COALAR)
34. Dairy Australia
35. GHD
36. Gutteridge, Haskins & Davey
37. Horticulture Market Access Committee
38. Intellection
39. International Student Centre
40. Invest Australia
41. L M Gussman and Associates
42. LiveCorp
43. Louminco Ltd

44. Ludowici Mineral Processing Equipment Pty Ltd
45. Macquarie Bank
46. Meat and Livestock Australia
47. Media Entertainment and Arts Alliance
48. Minerals Council of Australia
49. National Farmers Federation
50. New South Wales Attorney-General's Department
51. New South Wales Department of Commerce
52. New South Wales Department of Education and Training
53. New South Wales Department of Health
54. New South Wales Department of Premier and Cabinet
55. New South Wales Department of Primary Industries
56. New South Wales Department of State and Regional Development
57. New South Wales Department of the Treasury
58. New South Wales Maritime
59. New South Wales Ministry of Transport
60. Northern Territory Department of Corporate and Information Services
61. Northern Territory Department of the Chief Minister
62. Northern Territory Department of Justice
63. Note Printing Australia
64. Orica Australia Pty Ltd
65. Pacific Hydro Pty Ltd
66. Queensland Board of Professional Engineers
67. Queensland Department of Fair Trading / Justice
68. Queensland Department of Mines and Energy
69. Queensland Department of Natural Resources and Water
70. Queensland Department of Premier and Cabinet
71. Queensland Department of Primary Industries and Fishery
72. Queensland Department of Public Works
73. Queensland Department of Tourism, Regional Development and Industry
74. Queensland Education International
75. Queensland Environmental Protection Agency
76. Queensland Government Chief Procurement Office

77. Queensland Police Service
78. Queensland Treasury
79. Queensland University of Technology
80. Roche Mining
81. Royal Australian Institute of Architects
82. Runge Limited
83. SDI Limited
84. Securrency
85. Sedgman Australia
86. Sinclair Knight Merz
87. South Australian Attorney-General's Department
88. South Australian Department of Premier and Cabinet
89. South Australian Department of Primary Industries
90. South Australian Department of Trade and Economic Development
91. Springfield Hatcheries
92. Tasmanian Department of Education
93. Tasmanian Department of Infrastructure, Energy and Resources
94. Tasmanian Department of Justice
95. Tasmanian Department of Primary Industries and Water
96. Tasmania Department of Treasury and Finance
97. Tasmanian Department of Premier and Cabinet
98. Timbercorp
99. Trade Queensland
100. Transfield
101. Trios Group
102. Victorian Department of Human Resources
103. Victorian Department of Innovation, Industry and Regional Development
104. Victorian Department of Premier and Cabinet
105. Victorian Department of Treasury and Finance
106. Western Australian Department of Agriculture and Food
107. Western Australian Department of Education
108. Western Australian Department of Industry and Resources
109. Western Australian Department of Premier and Cabinet

110. Western Australian State Supply Commission
111. William Buck Pty Ltd
112. Wine Industry Suppliers Association
113. Winemakers' Federation of Australia
114. WorkCover NSW
115. Worley Parsons
116. Xstrata

Australia-Chile Free Trade Agreement [2008] ATNIF 6**SUMMARY OF KEY OBLIGATIONS****Chapter 3: Market Access for Goods**

The ACI-FTA specifies that, on entry into force, Chile will eliminate tariffs on 91.9 per cent of tariff lines covering 96.9 per cent of trade and Australia will eliminate tariffs on 90.8 per cent of lines covering 97.1 per cent of trade. All remaining tariffs on both sides will be eliminated by year six of the agreement (2015) except for one component of Chile's sugar tariff which will remain subject to its current 'price band' system.

The chapter also includes commitments on national treatment (ie to treat goods of the other Party no less favourably than a Party's own like goods), a general prohibition on import and export restrictions (with some exceptions), and agreement not to apply export taxes or agricultural export subsidies.

The agreement establishes a Committee on Trade in Goods. The Committee will meet at the request of either Party or the Joint Free Trade Agreement (FTA) Committee (see Chapter 20). The Committee's functions include promoting trade in goods and addressing barriers to trade, especially in relation to non-tariff measures.

Chapter 4: Rules of Origin

The rules of origin (ROO) chapter and associated Schedule of Product Specific Rules (PSRs) establish the criteria for determining whether goods will qualify for preferential tariff treatment under the FTA (whether a good "originates" in Australia or Chile). The chapter also sets out the procedures for demonstrating that a good qualifies for preferential treatment and, if necessary, verifying that this is the case.

The ACI-FTA establishes a ROO based on the 'change in tariff classification' model preferred by Australian industry. Under ACI-FTA, exporters with the capacity to self assess will be able to issue their own certificates of origin while others can seek certificates of origin from relevant industry bodies.

Chapter 5: Customs Administration

The Customs Administration chapter establishes a modern, harmonised and simplified system of customs procedures for trade in goods. It aims to ensure that customs procedures and practices are consistent with international standards and will be administered in a uniform, impartial and reasonable manner. In addition, the customs procedures are intended to facilitate the clearance of low-risk goods and allow the customs administrations to focus on high-risk goods.

The chapter provides for ‘advance rulings’, which enable exporters to verify with the customs administration the tariff classification of their goods and whether those goods will qualify for preferential tariff treatment before the goods are exported.

The chapter includes provisions to ensure transparency and for protecting the confidentiality of information received in accordance with the chapter. Any importer unsatisfied with any determination on customs matters will have access to administrative and judicial review of the determination. Australia and Chile have also undertaken to work towards the use of paperless trading.

Chapter 6: Sanitary and Phytosanitary Measures (SPS)

The chapter acknowledges the dual objectives of facilitating bilateral trade between the Parties and protecting human, animal or plant life or health in their territory. The Parties reaffirm their commitment to the rights and obligations of the World Trade Organization (WTO) SPS Agreement and commit to cooperation both in international bodies on SPS related work and on priority proposals which can contribute to the objectives of the chapter. The chapter acknowledges the value of exchanging information on the SPS measures in place in either Party and enshrines transparency in the implementation of those measures. The text articulates the arrangements for consultation between the Parties on any SPS matter which may arise between them including the establishment of an SPS Contact Point in each administration. The provisions of the Chapter are not subject to dispute settlement under the ACI-FTA.

Chapter 7: Technical Regulations, Standards and Conformity Assessment Procedures

This chapter applies to all standards, technical regulations and conformity assessment procedures of the central government which affect trade in goods between them and includes a commitment to take reasonable steps to ensure that other bodies with shared responsibilities (regional or local government or non-government) also comply with its provisions. The Parties reaffirm their commitment to the WTO Technical Barriers to Trade (TBT) Agreement. The chapter emphasises the use of international standards to underpin technical regulations and recognises that a range of mechanisms exist to facilitate the acceptance by a Party of the conformity assessment procedures of the other Party. The Chapter establishes a TBT Committee to facilitate its implementation which will meet by mutual agreement between the Parties.

Chapter 8: Trade Remedies

This chapter protects the Parties’ rights and obligations under the WTO relating to the application of safeguards and anti-dumping and countervailing duties in the appropriate circumstances.

Chapter 9: Cross-Border Trade in Services (CBTS)

The substantive obligations of this chapter include obligations on market access, national treatment, most-favoured-nation treatment and local presence.

The market access obligation prohibits certain limitations on market access (eg limitations on the number of service suppliers or the total value of services transactions or assets). The national treatment obligation requires each Party to accord, to services and service suppliers of the other

Party, treatment no less favourable than it accords to its own like services and service suppliers. Most-favoured nation requires each Party to provide no less favourable treatment than it applies to the services and service suppliers of any third country. The local presence obligation prohibits a Party from requiring that services suppliers of the other establish or maintain any form of enterprise or to be resident as a condition for the cross-border supply of a service.

Each Party has a list of non-conforming measures to the CBTS and Investment chapters (as well as the Financial Services chapter). Annex I to the FTA represents a standstill commitment, as a Party (at central and regional government level) will be able to maintain measures listed there that do not comply with these obligations, but it will not be able to increase the trade restrictiveness of those measures. In addition, if a Party unilaterally liberalises those measures, such liberalisation will be locked into the FTA automatically (a so-called “ratchet mechanism”). Annex II is a broader carve-out, as a Party would be able to both retain existing measures and introduce new, more trade restrictive measures for the sectors, subsectors and activities described there.

The CBTS chapter, like the WTO General Agreement on Trade in Services (GATS), respects the right of governments to adopt domestic regulation affecting trade in services, but requires these to be administered in a reasonable, objective and impartial manner. The chapter requires Parties to ensure that qualification and licensing requirements do not constitute unnecessary barriers to trade and strengthens the disciplines on the authorisation processes, and includes some innovative language to promote temporary licensing regimes and access to examinations.

There is an Annex on Professional Services designed to support any initiatives by professional bodies seeking to facilitate recognition of qualifications or registration/licensing of professionals in the other Party.

Chapter 10: Investment

The Investment chapter covers both the pre-establishment and post-establishment stages of investment.

The key obligations of the chapter are national treatment, most-favoured-nation treatment, performance requirements and obligations in respect of senior management and boards of directors.

The performance requirements obligation means that certain requirements cannot be imposed by the FTA Parties on investors setting up in either Australia or Chile. These include a requirement to make a given level of exports, achieve a given level of domestic content or to purchase locally produced goods. In addition, grants and subsidies to investors cannot be made conditional on an investment achieving a given level of domestic content or purchasing locally produced goods. However, there are exceptions for subsidies or grants which are conditioned on locating production in Australia or Chile, supplying services, constructing facilities, training or employment or research and development. There are also exceptions for measures necessary to protect human or plant life or health and for government procurement.

Senior management and boards of directors’ obligations provide that a Party cannot require that an enterprise that is a covered investment appoint individuals of any particular nationality to a senior management position. However, a Party may require that a majority, or less, of the board of

directors be of a particular nationality or be resident in its territory, provided this requirement does not materially impair the ability of that investor to exercise control over its investment.

Parallel to the chapter on CBTS, specific non-conforming measures may be taken out to the application of these key obligations through listing of measures in Annex I of the FTA or of sectors, sub-sectors or activities in Annex II. Annex I non-conforming measures are subject to ratchet provisions. As with the CBTS chapter, States and Territories are fully covered.

The chapter also provides that a Party must permit all funds of an investor of the other Party related to an investment in its territory to be transferred freely and without undue delay. It prohibits the expropriation of an investment unless it is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and accompanied by prompt, adequate and effective compensation equivalent to the fair market value.

There are detailed provisions on investor-state dispute settlement which provide that where an investor alleges that a Party has breached one of its obligations under the chapter in such a way as to cause loss or damage, and it has not been possible to resolve the dispute by consultations, the dispute may be referred for dispute settlement. Investor-state dispute settlement will not apply to investment screening or admission processes.

Chapter 11: Telecommunications Services

The chapter on Telecommunications builds on the Parties' obligations under the GATS Annex on Telecommunications and the WTO Reference Paper on Basic Telecommunications. It ensures that all service suppliers of the other Party have access to and use of any public telecommunications network or service offered in its territory or across its borders in a timely fashion, on reasonable and non-discriminatory terms and conditions.

Specifically, the chapter provides more detailed commitments on interconnection and has additional commitments in the areas of access to essential facilities and colocation, as well as resale, dialling parity, number portability, submarine cable systems and leased circuit services. The chapter contains obligations on the independence of telecommunications regulators and that decisions and the basis for such decisions, of telecommunications regulators are clear and non-discriminatory. The chapter includes procedures to resolve telecommunications disputes and is also subject to the dispute settlement procedures of the FTA.

Chapter 12: Financial services

Financial services are covered by a separate, stand alone, chapter which contains obligations on market access, national treatment, most-favoured-nation treatment, cross-border trade in financial services and senior management and boards of directors.

As per the Annexes to the CBTS and Investment chapters, specific non-conforming measures can be identified against these key obligations through listing of measures in Annex III. Section 1 of Annex III contains a standstill commitment and a ratchet mechanism. Section 2 of Annex III contains a broader carve-out.

There is also a provision on new financial services which provides that if a financial service is supplied in the territory of one Party but not the other, and the second Party would permit its own financial institutions to supply that service without additional legislative action, then it must allow financial institutions of the first Party to provide that service in its territory.

The Financial Services chapter also contains additional provisions that reflect the importance of regulation of this sector to ensure the integrity and stability of the financial system. These provisions draw on specific WTO provisions relating to financial services and recognise the right of the Parties to take measures necessary for prudential reasons while seeking to ensure that these and other regulatory actions do not become unnecessary or discriminatory barriers to trade

Chapter 13: Temporary Entry of Business Persons

The chapter sets out commitments for facilitating temporary entry for business people engaged in bilateral trade and investment. Four classes of business people are covered by the chapter: business visitors; contractual service suppliers; executives of a business headquartered in one Party establishing a branch or a subsidiary in the other Party; and intra-corporate transferees. The chapter also covers the spouses of all the categories above except for short term business visitors.

Chile's specific commitments provide that the four categories of persons will be deemed to be engaged in activities which are in Chile's interest and therefore issued a temporary visa with unlimited opportunities for renewal and with the right to obtain an identity card. Spouses of persons granted the right to enter for periods of longer than 12 months will automatically be granted work rights.

Australia has committed to providing short and long term temporary entry for periods consistent with the current Subclass 456 and Subclass 457 visas. Australia has also granted the spouses of long term temporary entry automatic work rights.

The Parties commit themselves to process expeditiously complete applications for immigration formalities and to provide information on temporary entry requirements to enable business persons to become acquainted with them. The Parties also agree to consult on suggestions to further facilitate temporary entry. Dispute settlement is available where there has been a refusal to grant temporary entry but only when: (a) the matter involves a pattern of practice; (b) the natural persons affected have exhausted the available domestic remedies regarding the particular matter; and (c) the Parties have undertaken consultations to resolve the issues.

Chapter 14: Competition Policy

This chapter affirms the Parties' commitment to proscribing anticompetitive activities, with a view to preventing distortions or restrictions of competition which may affect trade in goods or services between them. The Chapter provides for each Party to maintain a robust legal framework to prohibit anticompetitive activities; imposes disciplines on state enterprises, designated monopolies and enterprises with special and exclusive rights; and allows for exchange of information and cooperation on enforcement activity. The Chapter is not subject to the Dispute Settlement provisions of the ACI-FTA.

Chapter 15: Government Procurement

The provisions of the Government Procurement Chapter ensure that the suppliers, goods and services of each Party have non-discriminatory access to the government procurement market of the other. The Chapter covers procurement above agreed value thresholds by listed central and sub-central government entities.

Chapter 16: Electronic Commerce

The key provision of the Electronic Commerce chapter is to maintain zero customs duties on electronic transmissions between Chile and Australia. The chapter also makes commitments to maintain domestic legal frameworks governing electronic commerce that minimise the regulatory burden on electronic commerce; support industry-led development of electronic commerce; and provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce. The chapter includes articles that promote the use of and trust in cross-border e-commerce, including through electronic authentication and personal data protection and an article on paperless trading committing each Party to endeavour to accept electronic versions of trade administration documents as the legal equivalent of paper documents.

Chapter 17: Intellectual Property (IP)

The IP chapter reinforces the Parties' existing rights and obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, and builds on them in a number of areas to reflect the high standards of intellectual property protection already provided in both Australia and Chile.

Chile has agreed to ratify or take reasonable steps to ratify a number of international IP agreements to which Australia is already a signatory, such as the International Convention for the Protection of New Plant Varieties (1991) and the Patent Cooperation Treaty.

Chile and Australia have also agreed to accord national treatment in respect of all intellectual property rights covered by the Chapter, so that Australian IP rights holders will be accorded the same treatment as Chilean nationals under Chilean IP laws. The same also applies to Chilean rights holders in Australia.

The Chapter contains a number of specific obligations on protection of trade marks, patents, copyright and geographical indications as well as detailed enforcement provisions.

Chapter 18: Cooperation

The chapter establishes a framework for cooperation aimed at building on existing relationships, creating new opportunities for trade and investment, promoting competitiveness, innovation and research and development and supporting the role of the private sector to encourage economic growth and development. The provisions do not commit either party to contributing significant resources.

The chapter includes an indicative list of areas where cooperation might be of mutual benefit to the Parties. The list includes science, agriculture including wine, food production and processing, mining, energy, environment, small and medium enterprises, tourism, education, labour, human capital development and cultural collaboration. Cooperation in other areas is not excluded. The chapter includes mention of labour, environment and innovation in the context of international agreements, mutual interests and strengthening of the trade relationship.

Nothing in the chapter represents a commitment to any particular initiative. Areas of cooperation will be developed through existing agreements, through implementing arrangements and will be facilitated through the designation of national contact points.

The chapter establishes a Cooperation Committee which will meet in the first year of implementation of the FTA and thereafter as required by the parties. The Committee will consider and review activities, maintain information on cooperation between the Parties and report periodically to the Joint FTA Committee (see Chapter 20).

Chapter 19: Transparency

The transparency chapter includes obligations on the Parties to ensure that all laws, regulations, procedures and administrative rulings regarding matters covered by the ACI-FTA are made publicly available and to maintain the appropriate legal systems to ensure the prompt review of any measure concerning the ACI-FTA.

Chapter 20: Institutional Arrangements

The chapter establishes a Joint FTA Committee, to be co-chaired at officials' level, to review the operation of the ACI-FTA and to supervise the work of the subsidiary committees, working groups and contact points established under the ACI-FTA. The Joint Committee will meet in or shortly after the first year of entry into force of the FTA. The chapter reflects the need for flexible institutional arrangements to manage the FTA proportionate to the overall trade relationship between the Parties.

Chapter 21: Dispute Settlement

This chapter establishes procedures for the avoidance or settlement of disputes between the Parties in relation to the implementation, interpretation, application or operation of the FTA, unless otherwise provided. If a dispute arises under the ACI-FTA and another agreement to which the Parties are party, or the WTO, the complaining party has a choice of forum. The chapter provides procedures including timelines for consultations on measures and proposed measures, for referral of matters to the Joint FTA Committee and for the establishment, terms of reference and composition of arbitral panels and, inter alia, for their proceedings and reports. The rules established can be modified by mutual consent and the Parties can agree not to apply any provision.