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Settlement of commercial disputes

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* Submission of this note was delayed because of its late receipt.

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III. Comments received from Governments on transparency in treaty-based investor-State arbitration

1. Chile

[Original: Spanish]

Question 1: Examples of publicity or transparency of arbitral proceedings; access to documents or hearings

The three requests for arbitration submitted by a foreign investor against Chile invoked bilateral agreements relating to investment protection and promotion. Those agreements, unlike some of the free trade agreements signed recently by Chile, contained no provisions relating to the publicity or transparency of proceedings. There are therefore no examples of such requirements with regard to international arbitration proceedings brought against Chile in connection with foreign investment. However, Chile maintains a policy of making public the awards made in such cases.

Question 2: *Amicus curiae* briefs or other interventions

For the same reason as is indicated in the response above, Chile has no experience of intervention by third parties in international arbitration proceedings relating to foreign investment.

Question 3: Provision in treaties on transparency or publicity

Yes. All investment-related chapters negotiated as part of a free trade agreement contain such provisions. Chile has concluded such agreements with Canada (1997), Mexico (1999), the United States of America (2003), the Republic of Korea (2004), Japan (2007), Peru (2009), Australia (2009) and Colombia (2009).

The texts of the agreements can be viewed at http://rc.direcon.cl/acuerdo/list or at www.direcon.cl/acuerdo/list.

Question 4: Provision in treaties on third parties' involvement

Yes. All investment-related chapters negotiated as part of a free trade agreement contain *amicus curiae* provisions. Chile has concluded such agreements with Canada (1997), Mexico (1999), the United States of America (2003), the Republic of Korea (2004), Japan (2007), Peru (2009), Australia (2009) and Colombia (2009).

Question 5: Any other comment

Chile considers it appropriate to retain clauses of this type in international investment agreements. Within the framework of the mechanism for the settlement of investor-State disputes, it is established that, among other documents, the following should be made available to the public: the pleadings, statements of claim and files submitted to the tribunal by a

disputing party, the records or transcripts of the tribunal's hearings and the orders, decisions and awards issued by the tribunal. It is also established that the tribunal's hearings shall be open to the public except where a disputing party intends to use during a hearing information that is protected from disclosure under the party's domestic law. That requirement is set out in the following agreements: United States, article 10.20; Australia, article 10.22; Colombia, article 9.21; and Peru, article 11.2.

Furthermore, in both statements issued by the North American Free Trade Agreement (NAFTA) Free Trade Commission in relation to public hearings of investor-State arbitration proceedings, it is established that the parties shall consent, and shall request the consent of disputing investors and, as applicable, that of the tribunal, that hearings to which they are parties be open to the public, except to ensure the protection of confidential information, including business confidential information.