Environmental Watchdogs Take a Bite Out of Chilean Foreign Investment: Mandatory Environmental Impact Statements May Affect Foreign Investment in Chile

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Environmental Watchdogs Take A Bite Out Of Chilean Foreign Investment: Mandatory Environmental Impact Statements May Affect Foreign Investment In Chile

Jennifer Anne Scott*

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Environmental policy tends to take a back seat to economic policy in developing nations. Such is the case with Chile, a country focused on developing its economy and emerging as a stable nation well-respected in the international community. However, neglect of the environment can persist only so long before citizens stand up and take action to protect their health, welfare and surroundings. Chile, a third world nation devout with pollution, has suddenly emerged into the modern environmental arena. Recently, Chilean citizens prevented a mega-forestry project proposing to harvest their native forests. Despite the government's concentration on modernizing the economy, these citizens persevered and even took their case all the way to the Chilean Supreme Court.

This Comment examines the recent Chilean Supreme Court Decision and the subsequent environmental legislation making foreign investment and development much more difficult in Chile. Part II of this comment discusses the economic, environmental and legal background of Chile. Understanding Chile's past treatment of foreign investors enables the reader to speculate about the future treatment and impact on foreign investment as a result of the recent Supreme Court decision. Part III sets out the case and explains the Chilean Supreme Court's reasoning. Part IV discusses the impact of the decision on foreign investment. Part V concludes this Comment with some anticipated implications of the Supreme Court decision. In order to understand the fundamentals of the case and the implications of the decision, this Comment sets forth the necessary economic, environmental and legal backgrounds.

2. See generally id. at 246 (describing Chile's substantial natural resource management problems in light of its economical reliance on the exportation of raw goods).
3. Id.
4. RENACE (the National Ecology Action Network), Defensores del Bosque Chileno, Instituto de Ecologia Politica and Coprique, Senator Horvath, Senator Diaz, Deputy Girardi, and Deputy Navarro v. CONAMA and COREMA, Decision Mar. 19, 1997 by the Third Courtroom of the Supreme Court of Chile, Santiago, Chile [hereinafter CONAMA decision] (the nation of Chile is behind in publishing its Supreme Court decisions and thus decisions are published up to July of 1996, however, there is a translated copy of this decision on file with The Transnational Lawyer) (translated copy of the case obtained from Savia International, Ltd. a subsidiary of Trillium Corporation).
5. See generally Array of 'Green' Headaches for Chile, New Environmental Rules Are Put to the Test, LATIN AMERICA REGIONAL REPORTS: SOUTHERN CONE (May 20, 1997) [hereinafter Array].
II. BACKGROUND

A. Economic Background

Chile's economy has been the driving factor controlling its environmental legislation. As a developing nation, Chile manifested a desire to improve its economy by encouraging foreign investment through government subsidies and tax credits. However, such promotion of foreign investment took place without any regard for environmental protections or concerns of resource exploitation.

1. Chilean Economy

Chile maintains a strong and booming economy, surpassing its Latin American neighbors. A generous endowment of natural resources provides the foundation for the Chilean economy. Structurally, the economy is based largely on natural resources, such as mining, forestry, fishing, and agriculture. Predominately...
relying on the exportation of raw, un-processed goods,\textsuperscript{14} Chile’s economy remains primitive.\textsuperscript{15} In contrast, the exportation of manufactured goods provides increased value to a nation’s economy, because such goods create jobs requiring people to process the goods.\textsuperscript{16} Thereby, the economy as a whole prospers from the exportation of manufactured goods rather than raw materials.\textsuperscript{17}

Chile’s free market model encouraged the exploitation of its natural resources\textsuperscript{18} and discouraged governmental interference.\textsuperscript{19} The industries involved with exploiting natural resources are crucial to the Chilean economy, such that pressure to minimize environmental impacts is not very influential.\textsuperscript{20} One of the major industries facing the dangers of exploitation in Chile is the timber industry.\textsuperscript{21} The Chilean forestry industry, now the second largest export industry, generated over US$1.2 billion in exports in 1993.\textsuperscript{22} However, with dwindling forestry resources and no plans for reforestation,\textsuperscript{23} Chile’s heavy dependence on exploitation of natural resources creates many environmental and economic problems.\textsuperscript{24} Aware of its limited economy, the Chilean government attempts to strengthen its economy by enticing foreign investors to its resource-rich nation.\textsuperscript{25}


15. \textit{See generally Block & Herrup, supra note 1, at 246} (claiming that Chile faces substantial natural resource management questions because its economy is heavily weighted toward extractive industries); \textit{see also} Zahler, supra note 9, at 278; \textit{see also Chile: Overview of Recent Macroeconomic Performance and Trends Chronicle of Latin America Economic Affairs} (Sept. 21, 1995) [hereinafter \textit{Chile Overview}] (illustrating Chile's continued dependency on primary exports).

16. \textit{Id.}

17. \textit{Id.}

18. Lacunza, supra note 6, at 547. \textit{See generally Beth Ann Bivona, \textit{Regional Report: What Price Are We Willing to Pay For Our Environment?},} 5 DET. C.L. INT. L. & FRAC. 161, 172 (1996) (relating that according to the Chile Ecology Action Network, 75\% of the production forests have been destroyed, and more than half of the protected forests have been cleared).

19. \textit{See} Lacunza, supra note 6, at 543 (explaining that on September 11, 1973 General Agusto Pinochet Ugarte, commander in chief of the Chilean army, overthrew Chile’s constitutional government and seized power through a bloody coup d’etat). Pinochet was a staunch laissez-faire capitalist, who concentrated on rapid economic growth at all costs. \textit{Id.} at 544. Pinochet eliminated price controls, reduced tariffs across the board, privatized most of the state-owned enterprises, lowered taxes, liberalized investment rules, and reduced trade barriers. \textit{Id.}

20. Block & Herrup, supra note 1, at 253.

21. \textit{Id.}


23. \textit{See New Webster’s Collegiate Dictionary} 990 (9th ed. 1991) (defining reforestation as the action of planting need seeds or young saplings to replace the trees cut down).

24. Block & Herrup, supra note 1, at 253.

2. Chilean Foreign Investment

Chile's economic stability and impressive fourteen year consecutive economic growth provides encouragement for foreign investment in Chile. As a nation with few environmental restrictions and an advantageous tax system, Chile is an ideal destination for foreign investors. Chile's steady economic growth and non-discriminatory attitude towards foreign investment established reliability in the international community. In relation to other countries, Chile receives some of the largest amounts of foreign investment, despite its past legislation. Until recently, foreign capital had to stay in Chile for at least three years before it could be remitted abroad. Today, however, remittance is permitted after one year and capital can be repatriated in twenty-four hours. The ability to repatriate profits appeals to investors, who would like to receive their earnings quickly. Moreover, the repatriation of profits encourages foreign investment because an investor's gain is not required to remain in Chile. Consequently, Chile has the highest credit rating of any Latin American nation, which ultimately entices foreign investors.

26. See generally id. (setting forth that Chile has average annual GDP growth in excess of 6% since 1985, with 7.2% in 1996). The largest portion of the new investment in 1996 was in the services sector, consisting of 51%, followed by an increase of 19% in mining, and 18% in the industrial sector. In fact, in 1996 there was a 51% increase in foreign investment compared to the 1995 levels. Id.; see also Zahler, supra note 9, at 279 (declaring that in 1994, foreign investment in Chile made up approximately 4% of its GDP, which is a very high rate on a worldwide basis); see also Foreign Investment Jumps 51%, SOUTH AM. Rpt. (Apr. 1, 1997) (Vol. 2, No. 8) (declaring that the government's Foreign Investment Committee reported that foreign investment in Chile came to US$4.578 billion, up 51% from 1995 figures). The main reason for the increase was Decree Law No. 600, which made foreign investment easier. Id.; see also Chile: Economy Grows By Over 8% In Third Quarter, SOUTH AM. BUS. INFORMATION, (Nov. 25, 1997) (stating that foreign investment in the third quarter grew by 15.4% far exceeding the 9.4% growth of the second quarter). According to the Central Bank, 1997 was another prosperous year for Chile with third quarter economic activity growing by 8.1%, which resulted in an average growth rate of 6%, even higher than the predicted growth rates. Id.

27. See Chile Overview, supra note 15 (expressing that Finance Minister Eduardo Aninat emphasized that Chile has recently been rated as one of the emerging market economies with the least risk for foreign investors). In July 1995, Standard & Poor's, a major Wall Street risk analysis firm, upped Chile's rating from "Triple B plus" (BBB+) to "Single A minus" (A-), placing Chile in first place among all Latin American countries rated. Id.

28. Zahler, supra note 9, at 279.
29. Id. at 282.
30. See infra note 32 (providing the definition of remittance).
31. Zahler, supra note 9, at 283.
32. See BLACK'S LAW DICTIONARY 1294 (6th ed. 1990) (defining "remittance" as money sent by one person to another, whether in specie, bill of exchange, check or otherwise); see also Zahler, supra note 9, at 279 (establishing that remittance refers to sending Chilean money out of Chile and into other foreign nations).
33. See BLACK'S LAW DICTIONARY 1294 (6th ed. 1990) (defining "repatriation" as the return of profits from foreign investments to the investor's country).
34. Zahler, supra note 9, at 283.
35. See generally id. (addressing the process of profit remittance in Chile).
36. Id.
37. Turner, supra note 25.
B. Environmental Background

International developers invest in nations with strong stable economies and a political agenda that fosters their proposed development. Historically, Chile's lenient policy towards environmental protection, in addition to its strong economy, established an ideal location for foreign investors and developers. Such traits have enticed United States based firms wishing to escape the harsh environmental laws of their nation. However, in light of depleting resources and increased air and water pollution, Chile was forced to restructure its environmental agenda. Bearing in mind such environmental progress, it is necessary to examine the development of these environmental laws and how these new tough regulations will affect current and future business ventures in Chile.

1. Chile's Evolving Environmental Policy: From Pinochet to Present

As a developing nation, Chile's initial concern was improving its economy. Policies, such as environmental protection, were too expensive for such a poor nation, and thus were not considered by the government. The quest for international recognition and a booming economy overshadowed concerns for impacts on the environment and detriment to Chile's natural resources. As the government passed hands, attention toward environmental concerns grew despite the govern-
ment’s goal to boost foreign investment. During the Pinochet era, the rapid economic development overlooked the environment.

Despite the prosperous economy, unregulated growth saddled the country with serious environmental problems, including severe air pollution, extensive deforestation, and widespread water contamination. As described by the post-military government, Chile’s economic growth transpired at the expense of the environment. Additionally, Chile cannot sustain such growth in the context of dwindling natural resources. In light of the nature of the Chilean economy, which is heavily weighted toward extractive industries, Chile faces substantial natural resource management questions.

2. The Importance of Maintaining the Environment—Sustainable Development

In an attempt to address the problems associated with its unbridled growth, the Chilean government created the National Environmental Commission (CONAMA) and the decentralized Regional Environmental Commission (COREMA). These agencies were formed to design an environmental policy that coordinates ongoing ideas from business, academic, and public sectors. The mission statement of these two commissions calls for what has been termed “sustainable development.”

48. See generally CHILE LAW DIGEST REVISER, MARTINDALE-HUBBELL INTERNATIONAL LAW DICTIONARY (defining foreign investment as any investment made with freely-convertible foreign exchange; new and used foreign capital goods; various forms of capitalized technology and credits related to foreign investment).

49. See Block & Herrup, supra note 1, at 243, 255.

50. See id. at 250 (discussing the severity of the air pollution problem in Chile).

51. Lacunza, supra note 6, at 542; see Block & Herrup, supra note 1, at 250 (describing the extent of the water pollution problem in Chile).

52. See Block & Herrup, supra note 1, at 246 (explaining that Chile's economy, particularly its export industries, depends heavily on exploitation of its natural resources). Environmental groups estimate that 90% of Chile’s exports come from natural resources. Id. Exploitation of these resources causes many environmental problems, however the industries involved are so important to the Chilean economy, pressure to minimize environmental impacts are not as strong as in other areas. Id.

53. See Carol Heitnam, Chile-Environmental Consulting Services, 1995 NAT. TRADE DATA BANK, MARKET RPTS., at 12 (Nov. 21, 1995) (setting forth that the Comision Nacional de Medio Ambiente (CONAMA) was created on June 5, 1990, as the governmental policy coordinating agency). CONAMA’s mandate is to develop a unified environmental legislative and administrative system, to coordinate and provide advice to the ministries that regulate and enforce and whose areas of responsibility touch on environmental matters, and to supervise a national environmental plan of action to make sure it all works. Id.

54. COREMA is the regional equivalent of CONAMA.

55. Otis, supra note 9.

The Sustainable Chile program is an initiative between ecological organizations, academics, and social leaders. This program exists to encourage the social, political and economic transformation in Chile, from the current development model to one which is oriented towards sustainability.

In as early as 1994, the Environmental Framework Law provided a definition of sustainable development. It is a process of sustained and equitable improvement of the quality of life which must be founded in appropriate measures of conservation and protection of the environment without jeopardizing the expectations of the future generations. This definition, provided by Chilean law, accentuates the need to apply appropriate measures of conservation and protection of the environment to create a suitable foundation for the sustainable development of Chile’s natural resources. According to Chilean law, to satisfy the objectives of sustainable development the government must allow for the regenerative capacity of the resource, achieve an improvement of the environment and prevent the possible deterioration of the environment.

C. Legal Background

Chile’s legislation also contributes to attracting foreign investors. Two primary legal mechanisms exist for actual foreign investment in Chile: the Foreign Investment Statute and Chapter XIV of the Central Bank’s Compendium of Foreign Exchange Rules. However, in 1994 the Chilean legislature created an

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58. Id.
60. Id.
61. Id. See La Ley Bases del Medio Ambiente (Basic Law on the Environment) No. 19,300, enacted March 9, 1994, arts. 2 and 41 (hereinafter EFL). Conservationist actions are acceptable that permit the inclusion of uses, rational exploitation and restoration in some cases, of the components of the environment whose goal is to assure the permanence, regenerative capacity and associated biodiversity of the ecosystem. Id.
62. Id.
63. See generally id. (discussing that sustainable development provides for the use of resources in a permanent form without compromising the expectations of future societies).
64. Id.
65. See Turner, supra note 25.
66. See Foreign Investment Law, Decreto Ley 600 (Decree 600), enacted July 11, 1974, (amended) Mar. 9, 1993 (hereinafter DL 600); see also Orihuela, supra note 11, at 45.
67. See Orihuela, supra note 11, at 45; see also Turner, supra note 25.
Environmental Framework Law to provide for the protection of the environmental and natural resources of the nation.68

1. Chilean Investment Law

Chile's economy and legislation are designed to foster foreign investment.69 Furthermore, the process of investing in Chile furthers the nation's economic agenda.70 The most important foreign investment mechanism utilized is the Foreign Investment Statute. This statute provides for the formation of a contract between the foreign investor and the Chilean State.71

As a means of attracting foreign investment, the Foreign Investment Statute contains numerous inducements.72 First, investment is authorized by a contract between the Chilean state and the investor.73 This contract specifies the rights and duties of each party and represents the obligation of the Chilean state upon which legal relief may be sought.74 An important characteristic of such contract is that it cannot be modified unilaterally and therefore the investor is fully assured the terms will remain stable.75 This contract provision is designed to protect the foreign investor against subsequent changes in the law which might affect the terms under which the investment was made.76

The Foreign Investment Statute, via such contracts, addresses the right to choose tax invariability of ten years.77 Pursuant to the statute, the investor may opt to include in the investment contract a tax provision locking in for a ten, and in some cases twenty, year period a prescribed income tax treatment for the invest-

68. See EFL, supra note 61; see also Block & Herrup, supra note 1, at 262 (illustrating that environmental framework laws set out basic legal principles starting with declarations of policy and goals, followed by procedural principles for environmental decision making). EFL consists of 93 articles, grouped into six larger titles, and ten transitional articles. Id. According to the United Nations Environment Programme, framework laws are broader in scope than environmental laws in the United States because framework laws do not create specific regulations. Id. Framework laws organize and focus preexisting legislation. Id. The EFL is a compromise, reflecting concerns of both environmental groups and business organizations. Id.

69. Id. Leon Larrain and Stuart Palmer, Chile Struggles to be a Center For International Investment, 4 Int'l Tax'n 499 (Nov. 1993).

70. See Lacunza, supra note 6, at 544-45 (implying that liberalized investment rules allowed businesses to operate unfettered and contributed to attracting US$6 billion in foreign investment from 1985 to 1996).

71. Orihuela, supra note 11, at 46.


73. Id.

74. Orihuela, supra note 11, at 46.


76. World Bank Report, supra note 72, at 831.

77. Orihuela, supra note 11, at 46; Chile Investment Climate Statement for 1997, International Market Insight Reports, (Thur., June 5, 1997) [hereinafter Chile Investment].
ment. Foreign investors can opt for either national tax treatment or a guaranteed rate for the first ten years of an investment. Chilean tax laws also encourage foreign investment. Foreign investors and local businesses are treated equally, but foreign investors can take advantage of fixed-rate tax options to limit liability from future adverse tax changes. The desirability and flexibility of Chilean foreign investment and tax laws contribute to Chile's increasing foreign investment levels.

Secondly, the statute provides for a nondiscriminatory treatment provision within the national industry. Chile's Constitution establishes basic principles on which foreign investors may rely, such as guaranteeing uniformity in application of law to both Chileans and foreigners, and prohibiting discrimination. The investor is assured of non-discriminatory treatment in legal and regulatory provisions affecting investment activities in Chile. Therefore, foreign investors and developers have an additional incentive to invest knowing that foreign corporations will be treated no differently than resident corporations.

Thirdly, in addition to both the choice of tax and the nondiscriminatory provisions, the Foreign Investment Statute provides for the right to repatriate capital after three years subject to its previous sale or liquidation. Pursuant to recent amendments to the Foreign Investment Statute, the three year wait to repatriate capital has been reduced to just one year. Although, Chile attempts to keep capital

78. World Bank Report, supra note 72, at 832.
79. See Chile Investment, supra note 77 (discussing that foreign investors may choose to have their profits taxed at the rate that applies to local firms, the national tax rate, which is currently 35% on fully-distributed firms). Unfortunately, Chile and the United States have no tax treaty, so U.S. investors' income may be taxed in both nations. Id. However, the IRS typically grants credits for taxes paid in Chile. Id.
80. See id. (explaining that it is currently set at 42%).
81. Id.
82. Larrain & Palmer, supra note 69, at 499. See Edward A. Fallone, Latin American Laws Regulating Foreign Investment, SB04 ALI-ABA–American Bar Assoc. Continuing Legal Education (July 8, 1996) (foreign direct investment involves the ownership and control of the enterprise); see also Turner, supra note 25 (explaining that Chile has the highest credit rating of any Latin America nation). This continues to attract foreign investors to Chile. Id.
83. See generally Peter D. Byrne, Foreign Tax Problems of US Companies Doing Business in Latin America, 50 U.Miami L. Rev. 483, 489 (1996) (discussing that Chile imposes a 15% tax rate on corporate earnings and subjects dividends to personal income rates of up to 45%). A credit for tax paid at the corporate level is allowed. Id. The bulk of Chilean tax is deferred until distribution. Id.
84. Larrain & Palmer, supra note 69, at 499.
85. See Lacunza, supra note 6, at 545-46; see generally Turner, supra note 25 (noting that Chile's economic growth results from increased foreign investment).
86. See Lacunza, supra note 6, at 545-46; see also Orihuela, supra note 11, at 46.
87. Constitucion Politica De la Republica [hereinafter Constitution] [CPE] Decreto Supremo No. 1.150, DE 1980 art.19. See Orihuela, supra note 12, at 46 (referring to non-Chileans as "foreigners").
88. See Constitution, supra note 87, arts. 19, 22, and 98; see also Orihuela, supra note 11, at 46.
89. World Bank Report, supra note 72, at 832.
90. See Orihuela, supra note 11, at 46; see also Chile Investment, supra note 84.
91. See Orihuela, supra note 11, at 46; see also Chile Investment, supra note 84.
92. World Bank Report, supra note 72, at 831.
within its boundaries, it allows capital to leave the country after just one year. An investor recognizes that his capital will return to his country and thus has a greater incentive to invest in Chile.

Finally, the Foreign Investment Statute addresses the right to remit profits. Restrictions on remittance rights are limited to a twenty-four hour prohibition on profits. Chapter XIX of Banco Central de Chile’s Compendium of Rules on International Exchange enables a holder of foreign currency of Chilean debtors to convert such paper into Chilean enterprises and permits. The ability to acquire earnings within a day assures the return of profits to an investor’s country, thus motivating non-Chileans to invest in Chile.

Because foreign investors are offered favorable terms regarding taxation, expatriation of profits, legal protection, and respect for property rights, Chile has attracted US$6 billion in foreign investment since 1985. Chiles’s agenda has focused on economic growth until the twentieth century, when air and water pollution threatens the health and welfare of its citizens and depleting natural resources threatens the continued economic prosperity.

2. Environmental Frame Work Law of 1994

Although the nation has enacted more than two thousand environmental laws, until 1994 no organized framework for environmental administration or regulation existed. Chile enacted the most comprehensive environmental protection measure in the country’s history, the Environmental Framework Law (EFL) of 1994, in order to provide stability and unity to the administration. The EFL sets out basic legal principles, but does not attempt to codify all relevant statutory provisions, nor

93. See generally id. (providing that the Chilean government encourages foreign invest by imposing legislation allowing for the repatriation of capital within three years).

94. Id.

95. See Orihuela, supra note 11, at 46; see also Chile Investment, supra note 77.

96. World Bank Report, supra note 72, at 831.

97. See id. at 830 (depicting that the remittance rights provided under Chapter XIX may be an added incentive, and some Chilean residents may avail themselves of Chapter XIX procedures, perhaps utilizing shell companies). Therefore, the approval procedures of Banco Central attempt to investigate the extent to which Chapter XIX investors are indeed foreign. Id.

98. See generally Zahler, supra note 9, at 282 (setting forth profit remittance procedures in Chile).

99. See Lacunza, supra note 6, at 545-46; see also Turner, supra note 25 (noting for example that in 1996, there was a 46 percent increase in foreign direct investment, compared to 1995 levels). The largest portion of this new investment, 54% was in the services sector, followed by an increase of 19% in mining and 18% in the industrial sector. Id.

100. See generally Block & Herrup, supra note 1, at 249-50 (illustrating the dangerous pollution levels in Chile).


102. Paez, supra note 101, at 632-46.
does it create specific regulations. Nevertheless, the EFL accomplishes three expansive objectives in Chile: (1) it implements a formal system of review of environmental impacts of proposed projects; (2) it redefines the role of CONAMA and establishes regional environmental authorities; and (3) it allows for citizens suits to be filed against all polluters, including the government.

The EFL establishes a system of environmental impact review, which applies to significant investment projects. A study of environmental impact must be prepared for any activity that could pose a risk to public health, have a significant adverse effect on renewable natural resources, lifestyles, customs, or tourism, or have other specified adverse impacts. Requiring environmental impact statements (EIS) for any activity deemed a potential danger to health, tourism, or natural resources is quite expansive. Thus, an EIS may be required for any proposed development activity in Chile. The creation of EISs are both timely and expensive, serving as a potential deterrent for investment in Chile. The enactment and enforcement of such a potentially powerful law can have great effects on the economic development of Chile. CONAMA created the EFL in order to organize Chile's existing environmental laws. Most importantly, this new law changed the procedures of reviewing the industrial effects on the environment. The Framework assigned responsibility for administration of the evaluation system to the relevant Regional Commission on the Environment (COREMA) for matters affecting only one region, and to the National Commission on the Environment.

103. See Block & Herrup, supra note 1, at 262 (setting forth the relative purposes of Environmental Framework laws).
104. See Heitnam, supra note 53, at 12 (defining CONAMA as the National Environmental Commission).
106. Paul J. Schlauch & Lawrence J. Jensen, "Chilean Environmental Framework Law," 7 COLO. J. INT'L ENVTL. L. & POL'Y 319 (1996). See EFL, supra note 61, tit. II, para. 2, art. 11(a)-(f); see also Paez, supra note 101, at 634 n.63 (defining the criteria for the EIS as (a) a risk to health; (b) adverse effects on renewable natural resources; (c) resettlement of communities, or any other alteration of peoples' lifestyles and customs; (d) proximity to towns, protected areas, or resources that may be affected, considering the environmental value of the areas in which the project or activity is to be implemented; (e) significant alteration of scenic or tourist values, measured in terms of magnitude and duration; or (f) alteration of monuments).
107. See Paez, supra note 101, at 634 (detailing the criteria for an EIS); see also EFL, supra note 61, tit. II, para. 2, arts. 8, 10(a)-(r) (defining EIS).
108. Id.
109. See Schlauch & Jensen, supra note 106, at 329 (speculating that the EFL's EIS requirement may have an effect on business in Chile).
110. Paez, supra note 101, at 634.
111. EFL, supra note 68. See Ranta, supra note 105, at 423 n.80.
112. Ranta, supra note 105, at 432.
113. Id.
114. See Schlauch & Jensen, supra note 106, at 320 n.2 (explaining that the country of Chile is divided up into several regions and thus to administer environmental laws, the Framework provided for the creation of regional agencies to enforce the laws and evaluate the environmental impact studies). The COREMAs are the regional branches of the agency, known as CONAMA. Id.
CONAMA is responsible for proposing environmental policies for the government, administering the system of environmental impact review, and coordinating the process of developing environmental quality standards.\textsuperscript{117}

EISs are not mandatory for all operations, but are becoming increasingly necessary as both industry and environmental concerns grow. The EFL mandates an EIS prior to approval of timber operations in certain situations: forestry development or exploitation projects; in fragile soils or lands covered by native forests; and cellulose, paper pulp and paper industries, chip plants, plants for working wood, and sawmills, all of an industrial size.\textsuperscript{118} Furthermore, an EIS must consider the following: "(1) description of the project;\textsuperscript{119} (2) base line data; (3) detailed description of effects, characteristics or circumstances that give rise to a need for an EIS; (4) a forecast of environmental impact of the project, including eventual risks;\textsuperscript{120} (5) steps that will be taken to minimize the adverse effects of the project and restoring actions that will be performed, when pertinent; (6) a follow-up plan of the relevant environmental variables that give rise to the EIS; and (7) a plan for fulfillment of applicable environmental legislation."\textsuperscript{121}

Under this new system of environmental review and regulation, an EIS is required for proposed projects that may cause an environmental impact and major projects,\textsuperscript{122} including mines and smelters, wastewater treatment plants, reclamation projects, and tailing ponds.\textsuperscript{123}

Pursuant to Article XI of the EFL, an EIS, as opposed to a declaration, must be submitted if the project: (1) poses a risk to human health; (2) may have a significant adverse effect on the quantity or quality of renewable natural resources; (3) involves the re-settlement of human communities or alteration of their lifestyles or customs; (4) may significantly alter the landscape or value of an area for tourism; (5) may adversely affect population, resources, or protected areas; or (6) may cause

\textsuperscript{115} See id. (setting forth that CONAMA was established in 1990 and operates on a decentralized basis, subject to supervision of the President of the Republic through the Secretariat General of the Ministry of the Presidency). This agency is administered by an executive director and controlled by its executive council. Id.

\textsuperscript{116} Id. at 320.

\textsuperscript{117} Id. at 320 n.2. See EFL, supra note 61, art. LXXI; see also Heitnam, supra note 53, at 12.

\textsuperscript{118} Id. See EFL, supra note 61, tit. II, para. 2, art. 10(m).

\textsuperscript{119} See Schlauch & Jensen, supra note 106, at 320 (setting forth that an EIS must describe in detail the characteristics of the proposed activity or project); EFL, supra note 61, arts. I, II, and XIII.

\textsuperscript{120} See Schlauch & Jenson, supra note 106, at 320 (explaining that an EIS must analyze and evaluate its environmental impacts and potential risks); see also EFL, supra note 61, arts. II and XIII.

\textsuperscript{121} Id. See EFL, supra note 61, tit. II, para. 2, art. 12(a)-(g); see also Paez, supra note 101, at 634 n.64.

\textsuperscript{122} See Schlauch & Jensen, supra note 106, at 322 n.3; see also EFL, supra note 61, art. X (describing projects and activities such as airports, highways, ports, regional development plans, mining activities, oil and gas pipelines, industrial plants, activities in national parks, reserves, monuments, or other protected areas and the manufacturing, transporting, storing, disposing of, or recycling of toxic, radioactive, or dangerous substances are subject to environmental impact review).

\textsuperscript{123} Ranta, supra note 105, at 433.
alteration of monuments, places of archeological, anthropological, or historical value, or places of cultural significance.\textsuperscript{124}

Based upon legislation in effect at the time of the project, proposed projects falling into a "risk" category, such that they could negatively effect the environment, had to prepare and submit an EIS. Prior to the adoption of the EFL, many companies were already completing voluntary EISs so as to help speed up CONAMA's approval process.

After a completed study or declaration was submitted to either COREMA or CONAMA, the agency had 120 days to review any studies and sixty days to review any declarations. Once approved, COREMA or CONAMA, may require any other state organization to issue the necessary permits or determinations. This complex approval process, coupled with problems inherent in the environmental evaluation system, gave rise to the dispute between environmental groups and the governmental agencies responsible for approving EISs.\textsuperscript{125}

Finally, the EFL established citizens suits, allowing citizens and environmental groups to use the courts to challenge polluters.\textsuperscript{126} As long as the citizen can prove that the proposed project may have adverse impacts, the developer would be required to halt his project until an EIS is compiled and approved by CONAMA or COREMA.\textsuperscript{127} This law provided environmentalists with a powerful tool to prevent projects detrimental to the environment.\textsuperscript{128}

\textbf{III. THE CASE: RENANCE V. CONAMA}

On October 6, 1993 CONAMA established guidelines to evaluate EISs submitted to the agency.\textsuperscript{129} These guidelines were created in response to complaints that the draft EFL\textsuperscript{130} neglected to specify what procedures to follow when reviewing EISs.\textsuperscript{131} Since 1993, CONAMA and COREMA have approved numerous projects and subsequently approved an EIS submitted by a United States Forestry Company

\begin{itemize}
\item \textsuperscript{124} EFL, supra note 61, art. XI. See Ranta, supra note 105, at 433; see also Schlauch & Jensen, supra note 106, at 322 n.3.
\item \textsuperscript{125} Verdict in the Trillium Case to be Postponed Until March <http://www.atamericas.com/pages/news/970131/tril.htm> (Jan. 31, 1997) (translated version from El Diario) (copy on file with The Transnational Lawyer) [hereinafter Verdict].
\item \textsuperscript{126} See Block & Herrup, supra, note 1, at 263 (describing EFL's creation of citizen suits).
\item \textsuperscript{127} See generally EFL, supra note 61 (discussing the conditions under which an EIS must be filed).
\item \textsuperscript{128} See generally Block & Herrup, supra note 1, at 263 (outlining the provisions of the EFL).
\item \textsuperscript{129} CONOMA Creates Guidelines to Evaluate Environmental Impact Studies, ENVIRONMENT WATCH LATIN AMERICA CUTTER INFORMATION, Nov. 1, 1993 [hereinafter ENVIRONMENT WATCH].
\item \textsuperscript{130} As of October 1993, Chile's Environmental Law Framework was only in draft form, awaiting enactment as legislation.
\item \textsuperscript{131} ENVIRONMENT WATCH, supra note 129.
\end{itemize}
proposing to develop Chile’s Tierra del Fuego. As provided in the EFL, environmental groups, along with Chilean legislators, brought suit against the government for approving an illegal EIS.

This suit pertains to an administrative decision handed down by both CONAMA and COREMA approving an EIS. Although the central issue of the case involves Trillium’s Rio Condor Project, Trillium was not a party to the suit. The parties to the lawsuit were Chilean legislators and environmental groups, such as RENACE, who sued the governmental agencies, CONAMA and COREMA, for approving a project which would be detrimental to the Chilean environment. Environmentalists argue that CONAMA and COREMA did not have any legal authority to approve the EIS because there were no regulations setting forth approval guidelines. However, defendants, CONAMA and COREMA, argue that they have legal authority pursuant to a Presidential Order. The dispute focuses on the lack of environmental regulations and does not pertain to the virtues or deficiencies of the Rio Condor Project. The decision pronounced by the Third Courtroom of the Supreme Court of Chile dated March 19, 1997, with 3 votes in favor and 2 against, declared illegal and arbitrary the resolutions from the COREMA XII Region and CONAMA in respect to the Rio Condor Forestry Project.

132. Environmentalists Achieve Legal Decision to Stop Forestry Mega-Project CHIPER, Environmental Reports Library <http://linux.soc.uu.se/mapuche/fakta/bosqu02.html> (Apr. 28, 1997) (copy on file with The Transnational Lawyer) [hereinafter Environmentalists Achieve].

133. Senators Horvath and Diaz and Deputies Girardi and Navarro.

134. Environmentalists Achieve, supra note 132.

135. Telephone interview with Karen Cohn, an employee of Savia International, Ltd., which is a subsidiary of Trillium Corporation (Oct. 22, 1997).

136. Environmentalists Achieve, supra note 132. See Valparaiso, March 19, 1997 House of Representatives, Chile; Deputy Ivan De la Maza M., President of the Comision de Recursos Naturales, Bienes Nacionales y Medio Ambiente (Commission for Natural Resources, National Assets and Environment) [hereinafter Valparaiso].

137. Senator Horvath, Senator Diaz, Deputy Girardi, and Deputy Navarro.


139. See Environmentalists Achieve, supra note 132.

140. See CONAMA decision, supra note 4 (laying out the arguments of the parties and providing the Chilean Supreme Court’s decision); see also Environmentalists Achieve, supra note 132.

141. See CONAMA decision, supra note 4 (providing defendant’s arguments and the Supreme Court’s treatment of such arguments).

142. See Valparaiso, supra note 136 (explaining that “the mentioned decision was not directly given on the Rio Condor project, regarding its virtues, deficiencies, measures for the preservation of species or management plans but has legally objected to the application of law No. 19,300 on ‘Bases del Medio Ambiente,’ by contending that its article 1st transitory expresses that the System of Environmental Assessment, regulated in Title II of the mentioned body of law, will come in effect once the regulation referred to in article 13 of same is published in the ‘Diario Oficial’”).

143. Id.

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A. Facts

In 1994, Forestal Trillium, Ltd., a Washington State, U.S.-based corporation, proposed plans to harvest native hardwood forests in the island of Tierra del Fuego located in the extreme south of Chile. In 1993, Trillium invested US$250 million in Chile by purchasing 258,000 hectares on the island of Tierra del Fuego. Trillium received enormous support and encouragement from the Chilean government. In fact, the government sold the property to Trillium for US$48 per hectare, which was significantly lower that the market value of approximately US$117 per hectare. Additionally, government subsidies in the form of tax rebates and exemptions would provide Trillium with 55 billion pesos over the next 20 years. However, despite the government’s endorsement, environmental groups opposed Trillium proposed logging plan.

1. Trillium’s Proposed Rio Condor Project

Trillium planned to log one of the most remote places on the planet in a manner so as to potentially set a new environmental standard for the world. With a purchase price of US$42 million for 825,000 acres, Trillium can afford to try good forestry. Despite approval already granted, Trillium refrained from logging and voluntarily invited public scrutiny of their timber operation. In furtherance of Trillium’s dedication to the environment, they voluntarily submitted an EIS, in spite of Chile’s lack of comprehensive environmental laws or regulations.

Included in the voluntary EIS was a description of the project, which consisted of the exploitation of largely virginal lands, construction of hundreds of miles of...
logging road, extraction of millions of trees, and the erection of a large lumber mill. Considering that the vast exportation of raw materials dominates Chile’s economy, construction of a lumber mill enabling the exportation of finished products could be an enormous improvement for the Chilean economy. The project expected to export the lenga’s reddish brown hardwood in the form of furniture, doorjambs, and finished wood. The production of finished products is just one benefit, the development of a primitive portion of the nation, coupled with the creation of approximately 800 jobs for Chilean citizens further adds to the desirability of the Trillium Project.

Trillium employed the services of Claudio Donoso, an Austrian University researcher and one of Chile’s best-known forest ecologists, to join with a commission of 100 of Chile’s leading scientists to produce an EIS. Trillium directed the commission to comprise a plan that would allow the harvesting of 350,000 acres of the forest while at the same time limiting damage to the ecosystem. The commission’s plan provided that Trillium will “shelter cut” to maintain thirty percent of the forest in age, type, and distribution. Research comprised by the commission showed the selective cutting would allow the lenga to naturally reseed and would provide more sunlight to the grove and thereby quicken growth of the new trees. In furtherance of its commitment to ecologically sound practices, Trillium pledged to implement a permanent monitoring system and to stop harvesting if the lenga do not regenerate.

In addition to the submission of an EIS, Trillium continued its pursuit of environmental protectionism by subscribing to the Green Certificate system. Trillium planned to capitalize on the demand for environmentally sound products, by placing a green seal on the wood to indicate that it was harvested in an ecological manner. By deciding to pursue a Green Certificate from international environmental organizations, Trillium invited environmental scrutiny to a project in so remote a location only its few inhabitants were concerned about it. Chilean law clearly states that CONAMA and COREMA have the power to approve

153. Id.
154. See generally id. (discussing the benefits of the proposed Trillium project).
155. See generally id. (Syre planned to make products out of the beautiful lenga wood rather than wood chips as was the plan by the previous owner of the acres).
156. See generally id. (setting forth the positive aspects of Trillium’s proposed forestry project in Chile); see also Environmental Events, supra note 145, at 230 (discussing the proposed Trillium project).
158. See id. (claiming that in spite of Donoso’s preference to preserve Chile’s remaining forests, he saw the commission’s plan as a compromise between banning all logging and leaving timber companies unregulated).
159. See id. at 230 (defining shelter cut as selectively cutting trees in a manner so as to provide a beneficial setting for regrowth of new saplings).
160. Id.; see also Native Forests, supra note 145 (explaining Chilean forestry).
161. Environmental Events, supra note 145, at 230. But see generally Native Forests, supra note 145 (suggesting that no one really knows how the lenga ecosystem works and thus more research needs to be done before the forest can be harvested safely).
162. See Environmental Events, supra note 145.
projects, and should consider political, social, and environmental factors. In fact, Trillium announced environmental practices that go beyond the requirements of Chilean law.

2. Proceedings Regarding Trillium’s Voluntary EIS

On April 3, 1996, the Regional Environmental Commission, COREMA Region XII, approved Trillium’s Project. This decision contradicted important studies that recommended the project not be undertaken for technical reasons. The COREMA Region XII Technical Committee, made up of fourteen government professionals, along with appointees from the National Environmental Commission, CONAMA, wrote a 26-page report. This report contained over six pages relating to positive environmental aspects, however eighteen pages of the report criticized the project based upon technical shortcomings related to lenga exploitation. This report also stated that Trillium provided an EIS which included an insufficient inventory of existing trees “which is the basis for an environmental evaluation of a project.” The report found serious problems with the EIS harvest simulation model because it did not specify a plan to preserve the original biodiversity and it lacked data on tree growth and regeneration cycles. Since the lenga trees require 120 years to reach maturity, any study compiled over the course of a couple years cannot accurately depict the regeneration and regrowth of these valuable trees. The Technical Committee concluded the restoration, mitigation and monitoring measures were not adequate, thereby sufficient elements to approve the viability of the Rio Condor Project did not exist.

3. Environmental Opposition to Trillium’s Project

From the onset, environmental groups were cynical about the Rio Condor Project because of Trillium’s past record of forestry practices in the United

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163. See Otis, supra note 9 (quoting Ron Packard, Trillium’s General Manager, who said that the company has a very strong defense). Furthermore, Packard believes the environmental claims against the study are invalid since the ecological analysis done for the Rio Condor project is more than has ever been done before in Chile. Id.
164. Trillium Project, supra note 151.
165. Environmentalists Achieve, supra note 132.
166. Id.
167. Id.
168. Id.
169. Id.
170. Id.
171. See Environmentalists Achieve, supra note 132 (explaining that the study done over 18 years was not adequate according to environmental groups who argued the lenga requires hundreds of years to mature).
172. Id.
States. Environmental groups were already concerned with forestry projects because 80% of Chile's 17.5 million acres of native forests are owned by private entities such as Trillium. Focusing on the ancient pristine forests of Tierra del Fuego, environmentalists were skeptical of the proposed sustainable development plan. Ecologists argued that more research about the lenga forest ecosystem needs to be complied before sustainable development can take place. Furthermore, the difficulty of enforcing legislation in such an inaccessible location as Tierra del Fuego also contributed to skeptical attitude towards the project.

Environmental groups, along with four legislators, appealed the COREMA decision permitting the development of Tierra del Fuego. Strong opposition for the project arose because Trillium could not guarantee a sustainable exploitation of Chile's native forests. Opponents of the project argued that COREMA ignored findings by its own technical team concluding the Rio Condor Project was not environmentally sustainable. The Technical Committee of COREMA listed twenty points in Trillium's EIS as inadequate. The report from the Technical Committee found serious problems with the EIS' harvest simulation model, such that it did not specify how the original forest biodiversity would be conserved. Moreover, the Technical Committee concluded that the data on tree growth within regeneration cycles was lacking because it was based on limited experiments and thus was irrelevant to extensive forestry projects such as Rio Condor.

Environmental groups argued that CONAMA and COREMA violated the EFL by arbitrarily endorsing the Rio Condor Project without adequately studying pos-

173. See *Trillium Project*, supra note 151 (depicting the French National Forests Office and Argentine environmentalist, Jorge Morello, production of technical studies that supported arguments against the Rio Condor project).

174. See generally *Native Forests*, supra note 145 (illustrating environmental concern for Chile's depleting resources).

175. See generally id. (quoting Manuel Baquedano, director of the Political Ecology Institute in Santiago, Chile, who fears that exploitation of Tierra del Fuego could one day leave the area like central Chile, where decades of logging has reduced the once vast stands of redwood and larch to isolated pockets).

176. See generally id. (suggesting that the current research pertaining to lenga forests is inadequate).

177. *Trillium Project*, supra note 151.


179. Id.

180. See *Environmentalists Achieve*, supra note 132 (explaining that the technical committee is comprised of fourteen government professionals representing different agencies and differing areas of expertise). The twenty-six page report was written by the technical committee together with local appointees from CONAMA. Id.


182. *Trillium Project*, supra note 151. But see *Environmentalists Achieve*, supra note 132 (stating that the report contained six and a half pages related to "positive environmental aspects" of a general nature, the report also contained eighteen pages of criticism concerning technical shortcomings of the project related to lenga exploitation).


184. Id.
sible adverse impacts.\textsuperscript{185} The report from CONAMA's Technical Committee concluded that the EIS did not establish a system to weigh the extraction impacts, nor did it allow for impact mitigation.\textsuperscript{186} A Chilean newspaper, La Nacion, that published the Technical Committee's conclusions, proved to be a key document for opponents of COREMA's approval of the EIS for the Rio Condor forestry project.\textsuperscript{187}

4. CONAMA and COREMA's Defense

In response to the suit brought by environmentalists, CONAMA and COREMA argue that appellants did not have standing to sue and that they had authority to approve of EISs pursuant to a Presidential Order.\textsuperscript{188} Defendants assert appellants\textsuperscript{189} lacked standing because they were not residents of the island of Tierra del Fuego and therefore did not demonstrate a legitimate interest in preventing the proposed Rio Condor Project.\textsuperscript{190} The conflicts between environmentalists wishing to prevent the project and the government wanting to encourage investment and development led to the battle over the approval of Trillium's EIS.\textsuperscript{191}

B. Procedural History

In February 1995, COREMA\textsuperscript{192} approved Trillium's first EIS.\textsuperscript{193} On May 8, 1996, the National Ecology Action Network (RENANCE) and three member organizations: Defensores del Bosque Chileno, Instituto de Ecologia Politica and Coprique, together with the Deputies Girardi and Navarro filed legal suit called a Resource Protection to stop the project.\textsuperscript{194} On May 9, 1996 the Court accepted the petition, thereby halting the project pending a judgment, but the Resource

\begin{thebibliography}{99}

\bibitem{185} Chilean Supreme Court Rejects Controversial Trillium Logging Project CIEL Home Page, \url{http://www.econet.apc.org/ciel/trillium.html} (Mar. 21, 1997) (copy on file with The Transnational Lawyer) [hereinafter Chilean Supreme Court].

\bibitem{186} Environmentalists Achieve, supra note 132.

\bibitem{187} Id.

\bibitem{188} See generally CONAMA decision, supra note 4 (laying out the defense put forth by CONAMA and COREMA).

\bibitem{189} Id. Senator Horavth, Senator Diaz, Deputy Girardi, and Deputy Navarro. Id.

\bibitem{190} See CONAMA decision, supra note 4, Dissenting opinion's 6th and 7th points, at p. 8 of the translated version of the decision (setting forth the dissenting opinion provided by the Minister Mr. Osvaldo Faundez and the Member Lawyer Mr. Manuel Daniel). The dissent claims that "appellants, congressmen domiciled at the National Congress, Valparaiso, and other persons who give as their domicile the city of Punta Arenas ... do not demonstrate in what way they have been affected, because in reality they do it indeterminately, in the interest of the community, thus lacking active legitimization to ask for the legal protection they request." Id.

\bibitem{191} See generally Id. (discussing the Chilean Supreme Court's treatment of the arguments from the environmental groups and from CONAMA and COREMA).

\bibitem{192} Region XI Environmental Commission (COREMA).

\bibitem{193} Environmentalists Achieve, supra note 132.

\bibitem{194} Id.

\end{thebibliography}
Protection was denied.\textsuperscript{195} The denial of the Resource Protection motivated Senators Horvath and Diaz, together with Deputies Girardi and Navarro, to present yet another Resource Protection against CONAMA.\textsuperscript{196} The rejection of this second suit prompted environmental groups to appeal to the Chilean Supreme Court.\textsuperscript{197}

Later in 1996, CONAMA approved Trillium’s EIS, which prompted opponents to file suit in October 1996 arguing the approval was illegal.\textsuperscript{198} Environmental groups and pro-environment deputies requested a writ of protection\textsuperscript{199} to prevent Trillium from continuing with its Rio Condor Project in Tierra del Fuego.\textsuperscript{200} In May of 1996, the Puntas Arenas Court of Appeals temporarily halted the project after the Pro-Defense for the Environment Movement, along with several environmental groups, filed a protective action against the court.\textsuperscript{201} Subsequently, the First Branch of the Santiago Court of Appeals unanimously rejected the opposition’s appeal for an injunction reasoning that CONAMA approved the project pursuant to certain requirements utilizing various studies and plans to mitigate environmental impacts.\textsuperscript{202} Although the writ was denied, the court granted a motion for an injunction, pending the Chilean Supreme Court decision.\textsuperscript{203} Finally, in March of 1997, the Chilean Supreme Court ruled against Trillium’s first EIS.\textsuperscript{204}

Upon looking at the translated text of the case, no previous cases were mentioned. In fact, this case is the first case of its kind to reach the Chilean Supreme Court.\textsuperscript{205} Rarely in Chile have cases pertaining to the environment ever reached the Supreme Court.\textsuperscript{206}

\textbf{C. Decision}

By a 3-2 vote, the Supreme Court held the project approval by COREMA and CONAMA was illegal because, due to a lack of regulations, legislation covering

\begin{itemize}
\item \textsuperscript{195} Id.
\item \textsuperscript{196} Id. See Trillium Appeal, supra note 178.
\item \textsuperscript{197} Environmentalists Achieve, supra note 132.
\item \textsuperscript{198} See Supreme Court Sinks Trillium Project: Rules Government Must Establish EIS Regulations (Mar. 20, 1997) <http://www.gekkonet.com/CHIPtrade/news_FR71.htm> (translated news from EL MERCURIO) (copy on file with The Transnational Lawyer) [hereinafter Supreme Court Sinks] (declaring that because of Trillium’s proposed project, environmental groups have sparked opposition to development in Chile).
\item \textsuperscript{199} Id.
\item \textsuperscript{200} Id.
\item \textsuperscript{201} Otis, supra note 9.
\item \textsuperscript{202} Supreme Court Sinks, supra note 198. See Trillium Appeal, supra note 178 (outlining the procedural history of the CONAMA decision).
\item \textsuperscript{203} Supreme Court Sinks, supra note 198.
\item \textsuperscript{204} See Trillium Submits Second EIS for Condor Project (Aug. 27, 1997) <http://www.gekkonet.com/CHIPtrade/news_FR72.htm> (translated news from EL MERCURIO and EL DIARIO, Chilean newspapers) (copy on file with The Transnational Lawyer) [hereinafter Trillium Submits] (stating Trillium has submitted a second EIS to COREMA).
\item \textsuperscript{205} See Environmentalists Achieve, supra note 132.
\item \textsuperscript{206} Id.
\end{itemize}
EISs was not applicable. The Court stated the approval was arbitrary and contradicted all the technical recommendations, and furthermore, the information presented in the EIS was insufficient to make a decision on the sustainability of the project because the continued existence of the forestry resource was not affirmed.

In fact, the majority held that CONAMA and COREMA, by approving the Rio Condor Project, infringed articles 6 and 7 of the Constitution of the Republic which established that state institutions must subject their action to the Constitution and to the rules prescribed according to it. The majority rejected appellant’s argument that the Presidential Order, issued on September 30, 1993, established regulations referring to those who voluntarily submit an EIS. The court found that environmental authorities cannot dictate the viability of a project without established regulations. Despite the existence of the Framework which defines EISs, the government had not created norms for such procedures.

As a landmark decision in the environmental arena, the majority held that in actions involving environmental protection, the general appeal for protection requires the action be illegal, arbitrary, and lack reasonable grounds. The court relied upon principles found in the Constitution and in EFL in order to conclude that all persons have the collective public right to the community as a whole, thereby satisfying the standing requirement. Reasoning that the Constitution applies to “all persons,” the Court concluded that all Chilean citizens have the right to be protected and the right to appeal for such protection.

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207. Id. See CONAMA decision, supra note 4, at the 6th point of the majority opinion (holding that as previously state, Law 19,300 regarding the EISs is not in effect and, by not being so, the appealed institution could not issue the resolution contested by these means, basing itself on antecedents that, for now, are not contemplated in the law, and by doing do, it is evident that it incurred an illegal act).

208. Environmentalists Achieve, supra note 132.

209. See CONAMA decision, supra note 4, at the 6th point of the majority opinion (holding also that these institutions must act validly within their competence and in the manner prescribed by law and, any act contravening these articles is null and will impose the responsibilities and sanction which the law establishes); Constitution, supra note 87, arts. 6 and 7.

210. CONAMA and COREMA are appellants in this Supreme Court case.

211. See CONAMA decision, supra note 4, at the 7th point of the majority opinion (noting that “It is known that only through law or other legal norms, decree or regulation, can specific restrictions or condition be established for the exercise of determined rights or freedoms, but under no circumstances through a Presidential Order”).

212. See Supreme Court Sinks, supra note 198 (declaring that because of Trillium’s proposed project, environmental groups have sparked opposition to development in Chile); see also CONAMA decision, supra note 5, at 6th point of the majority (holding that “as previously state, Law 19,300 regarding the EISs is not in effect and, by not being so, the appealed institution could not issue the resolution contested by these means, basing itself on antecedents that, for now, are not contemplated in the law, and by doing do, it is evident that it incurred an illegal act”).

213. Supreme Court Sinks, supra note 198.

214. See CONAMA decision, supra note 4, at 8th point of the majority opinion (determining, according to the 9th point of the decision, that the resolution contested by these means of protection is both illegal and arbitrary).

215. See id. at 12th and 13th points of the majority opinion (providing that “the right to live in a pollution-free environment, pursuant to Art. 19, No. 8 of the Constitution, is a human right with constitutional standing, which acts with a dual nature: a public subjective right and a collective public right”).

216. Id.
creates citizen suits in cases where the protection of the environment is at issue.\textsuperscript{217} According to the opinion, appellants have the right to push for preservation of nature and the conservation of the environmental heritage, an activity no longer limited to those living close to the projects.\textsuperscript{218}

Besides the three votes in favor of striking down CONAMA’s and COREMA’s approval, two dissenting votes believed the appealed decision must be confirmed and the approval of the EIS upheld.\textsuperscript{219} The dissent agrees with CONAMA and COREMA that appellants lacked standing to sue.\textsuperscript{220} According to the dissent, in order to file an appeal for protection the appellants must be a “specific damaged individual” acting in the legitimate exercise of his right.\textsuperscript{221} Furthermore, dissenters claim that although the approval may satisfy the illegality requirement, it cannot be considered arbitrary.\textsuperscript{222} CONAMA’s and COREMA’s approval of Trillium’s EIS was not arbitrary because the public institutions made a rational, researched decision.\textsuperscript{223} According to the dissent, a erroneous decision is not synonymous with an arbitrary decision.\textsuperscript{224}

In short, the Chilean Supreme Court held the approval of Trillium’s EIS by CONAMA and COREMA was both arbitrary and illegal because these public institutions did not have any legal guidelines to follow for determining approval.\textsuperscript{225}

IV. LEGAL RAMIFICATIONS

The conflict between environmental groups and development appears to have been resolved as a result of the recent CONAMA decision.\textsuperscript{226} Environmental watchdogs were given a great deal of power with this decision and resulting legislation that codified citizen suits.\textsuperscript{227} The major implication of this case was the

\begin{itemize}
\item \textsuperscript{217} Id.
\item \textsuperscript{218} Id.
\item \textsuperscript{219} See generally CONAMA decision, supra note 4 (providing the dissenting opinion and its rationale).
\item \textsuperscript{220} Id.
\item \textsuperscript{221} Id. at 7th point of the dissenting opinion.
\item \textsuperscript{222} See generally id. at the 5th point of dissenting opinion (indicating that the aggravating act must be both illegal and arbitrary pursuant to article 20 of the Chilean Constitution). “In the opinion of the dissenting parties, there is no question of attributing arbitrariness to the objected resolution, as it has not been an act which comes from mere whim or irrationality; on the contrary, although mistaken, it has been dictated after a procedure fundamentally based on what the laws has contemplated and which must be applied in due course.” Id.; see also Constitution, supra note 87, art. 20.
\item \textsuperscript{223} See CONAMA decision, supra note 4.
\item \textsuperscript{224} Id.
\item \textsuperscript{225} See generally id. (rejecting CONAMA’s and COREMA’s approval of Trillium’s EIS).
\item \textsuperscript{226} See generally id. (holding that CONAMA and COREMA had no authority to approve of voluntary EIS).
\item As a result, the Chilean legislature amended its laws so as to provide for mandatory EISs. Id.; see also Valparaiso, supra note 136.
\item \textsuperscript{227} See CONAMA decision, supra note 4; see also Valparaíso, supra note 136.
\end{itemize}
revision of Chile's Environmental Framework Law.\textsuperscript{228} As a result of this decision, the Chilean parliament amended the existing law so as to provide for mandatory EISs.\textsuperscript{229} The law will provide strict technical criteria for determining whether major industrial projects are environmentally viable.\textsuperscript{230} However, this decision and resulting law may scare off foreign investors.\textsuperscript{231} Foreign markets increasingly demand strict, functional environmental regulations, thus unclear and unpredictable legislation may deter foreign investment.\textsuperscript{232} Requiring mandatory EISs may affect the future of foreign investment in Chile.\textsuperscript{233}

A. Implication of Environmental Groups as Watchdogs

As a result of the Supreme Court ruling, citizen suits may become a powerful tool in the political arena.\textsuperscript{234} The CONAMA case was a landmark decision on various levels.\textsuperscript{235} Prior to this decision, only those directly affected by projects were able to make an effective claim.\textsuperscript{236} Because Chilean environmental groups were successfully able to obtain an injunction against a logging project, the decision provides environmental groups with a great deal of political power.\textsuperscript{237} Relying on the reasoning of the court, the premise for citizen suits is that the environment is the heritage of all citizens.\textsuperscript{238} The Supreme Court reinforced the constitutional provision guaranteeing the citizens of Chile the right to live in a pollution free environment.\textsuperscript{239} Essentially, as a result of this decision, businesses may be more reluctant to invest in Chile knowing that environmental groups not directly impacted by the project might be able to stop the project.\textsuperscript{240} Consequently, environmentalists have already served notice that they will use this decision to challenge another U.S. project in

\textsuperscript{228} See generally Valparaiso, supra note 136 (explaining that the House of Representatives amended the laws as a result of the CONAMA decision).
\textsuperscript{229} Id. See Government reaches Agreement on EIS: System: Regulatory Bill Will be Sent to Congress by Monday (Mar. 25, 1997) <http://www.gekkonet.com/CHIPtrade/nws_EV71.htm> (copy on file with The Transnational Lawyer) [hereinafter Regulatory Bill] (reporting on the legislation mandating EISs).
\textsuperscript{230} Valparaiso, supra note 136. See Regulatory Bill, supra note 229.
\textsuperscript{231} Id.
\textsuperscript{232} Id. See generally id. (implying that mandatory EISs could serve as a deterrent to foreign investment in Chile because of the time, effort and money needed to compile such a document).
\textsuperscript{233} See Heather Walsh, Court Ruling Prompts Ecology Regulations. EARTH TIMES NEWS SERVICE. (May 11, 1997) <http://earthtimes.org/may/americaschilecourtlingmay11_97.htm> (copy on file with The Transnational Lawyer) (interpreting the decision such that outsiders, not just those party to the suit, may affect litigation).
\textsuperscript{234} See generally CONAMA decision, supra note 4.
\textsuperscript{235} Id.
\textsuperscript{236} See Walsh, supra note 234 (quoting Fernando Dougnac, an environmental lawyer who won the Trillium case, who said the ruling gives citizens the right to file an injunction against a project when the government does not fulfil its obligations to protect the environment).
\textsuperscript{237} Id.
\textsuperscript{238} Id. See Array, supra note 5.
\textsuperscript{239} See Walsh, supra note 234; see also Constitution, supra note 87, art. 19.
\textsuperscript{240} See Array, supra note 5 (reporting that the business community is up in arms about the new environmental regulations).
Santiago.\textsuperscript{241} By giving every Chilean citizen the ability to bring suit to halt projects affecting the environment, the Chilean government created a powerful watchdog to act as a check on the government and possibly as a deterrent to foreign investment.\textsuperscript{242}

\textbf{B. New Legislation Passed}

As a result of the decision, the legislature imposed environmental regulations.\textsuperscript{243} In light of the constitutional right to live in a pollution-free environment,\textsuperscript{244} the government imposed legislation making foreign investment and development much more difficult in Chile.\textsuperscript{245} Members of the House of Representatives are displeased with the effects of this decision and have created regulations so as to prevent future damage to Chile's credibility and security with its international commitments.\textsuperscript{246} Foreign investors want to invest in a nation knowing that its policies and laws are predictable.\textsuperscript{247} Resulting from the recent Supreme Court decision, Chile passed legislation mandating EISs\textsuperscript{248} for all development projects.\textsuperscript{249}

Mandatory EISs may potentially deter investors.\textsuperscript{250} The process of compiling an EIS requires a great deal of time, effort and money.\textsuperscript{251} Total investment in

\begin{footnotes}
\item[241] See id. (suggesting that environmentalists in Chile plan to use citizen suits as a mean to challenge more projects, such as a US$1 billion forestry project and power plant in Santiago).
\item[242] See generally Walsh, supra note 234 (implying that business and industry are fuming over the ruling which undermines the credibility of the government).
\item[243] Valparaiso, supra note 136.
\item[244] Constitution, supra note 87.
\item[245] See generally Array, supra note 5 (discussing Chile's new environmental legislation and its impact on the economy).
\item[246] See Valparaiso, supra note 136 (stating that "under these circumstances and as made clear in a systematic manner...by the members from the (Commission for Natural Resources, National Assets and Environment) and from the House of Representatives, it is an unavoidable duty that the (General Comptrollership of the Republic) and the CONAMA definitely resolve any difference which was produced in respect to the approval of the corresponding regulation, so as to resolve situations as the one set forth in respect to the Rio Condor project, which naturally we do not share and would not like to have repeated, due to the damage it caused to the credibility and security which, without a doubt, has damaged the government's credibility in all of its international commitments"). More so considering the great efforts carried out to ensure reasonable balance between growth, equity and sustainability. Id.
\item[247] See id. (suggesting that investment in any nation is risky, but even more so when the nation does not have a uniform legal system providing security and stability to investors).
\item[248] EFL, supra note 68, at tit. II, para. 2, art. 8, 10(a)-(r) (defining EIS).
\item[249] Id. See Paez, supra note 101, at 633 n.60 (describing the list of projects or activities subject to the Environmental Impact Assessment System as including water supply and storage systems, power lines and their substations, electric power plants capable of producing an output greater than three megawatts, nuclear reactors, land, water and air transportation terminals, development projects, mining operations, carbon fuel facilities, manufacturing facilities, agro-industry facilities, forestry development sites, hydrobiological projects, hazardous materials handling operations, sanitation projects, park/reserve projects, and operations dealing with the application of chemicals).
\item[250] See Regulatory Bill, supra note 229 (discussing the effects of a mandatory environmental assessment system).
\item[251] Id.
\end{footnotes}
compiling EISs to date exceeds US$19 billion. Therefore the requirement of an EIS increases the cost of investing in Chile. Foreign investment may decrease in Chile because of investors not wanting to commit the time and money to comply with the mandatory EIS law.

According to Article 14 of the Civil Code, Chilean law is binding on all inhabitants of the Republic including aliens. Therefore foreign corporations need not be citizens of Chile in order to be subject to Chilean law. A corporation formed abroad is recognized such that the corporation can sue and be sued in Chile. However, in order to engage in active business, the corporation must establish a branch in Chile. Therefore, by law foreign corporations developing in Chile are required to submit an EIS in compliance with Chilean legislation.

C. How Protecting the Environment Will Effect Foreign Investment

In 1996, the Chilean government took steps to provide for the preservation of the environment and natural resources of the country, against the competing interest of foreign investment. In 1994, the Central Bank of Chile, encouraged by the World Bank began to develop balance sheets, also known as "green" accounts to document the rate the country's reserves of forests, minerals and fish were being depleted and to estimate the environmental costs of such depletion. Given the primitive methods of forest management prevalent in Chile, these studies indicated that no trees suitable for logging would exist in twenty-five to thirty years. A major disincentive to the conservation of rainforests was the traditional

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252. See id. (noting that EISs are costly and these costs are incurred by the companies proposing the project).
253. Id.
254. See generally id. (implying that investors must pay for the development and must finance the environmental study and EIS).
255. Id.
256. See Albert S. Golbert and Yenny Nun, Latin American Laws and Institutions (1982) at 415; see also Regulatory Bill, supra note 229.
257. Golbert & Nun, supra note 256, at 415.
258. Id. at 433.
259. Id.
260. Id. at 415.
261. Findley, supra note 56, at 19.
262. See id. (declaring that the World Bank offered soft loans to promote environmental planning).
263. Id.
264. See id. at 17 (theorizing that Chile's method of forest management involved wholesale cutting and burning without reforestation); see also WEBSTER'S NEW COLLEGIATE DICTIONARY 990 (9th ed. 1991) (defining reforestation as the action of renewing forest cover by planting seeds or young trees).
265. See Findley, supra note 56, at 19 n.16 (claiming that in response to the studies predicting the depletion of the Chilean forests, Chile's forestry industry questioned the Central Bank's methods and figures, as well as questioned the credentials of the economist who headed the environmental accounting unit). As a result of the industry's vigorous questioning, the lead economist resigned and the Central Bank's directors vacillated their commitment to the continuation of the unit. Id.; see also Chile: Forest Fire, THE ECONOMIST, 37 (Feb 3, 1996)
system of national income and asset accounts used to compute national gross domestic product (GDP) and to measure the success of national governments and their economic policies.\(^{266}\) Therefore, developing nations such as Chile tend to be more concerned with a high GDP rather than protecting the environment.\(^{267}\)

In fact, local politicians tend to respond favorably to development interests seeking to exploit rainforests.\(^{268}\) Strong, urban Environmental Non-Governmental Organizations (ENGO) primarily have political influence with the national government. Thus, rainforest conversation remains primarily within the province of national elites rather than of local residents.\(^{269}\) Such is true with the CONAMA decision, where the environmental groups sued the Chilean Government, most specifically CONAMA, and effectuated a repeal of the approval of Trillium’s logging project.\(^{270}\) The Supreme Court ruling has thrown into question the legality of over a hundred other projects approved by CONAMA before the new regulation came into being.\(^{271}\) By striking down CONAMA’s approval of the EIS, the Chilean Supreme Court essentially undermined its own legislative authority.\(^{272}\) In 1996 alone, CONAMA approved US$3.4 billion in new projects.\(^{273}\) Under the perspective of the Supreme Court’s resolution, EISs which have been carried out or are to be carried out, would have no validity while the corresponding regulation is not enacted.\(^{274}\) This decision produced a sort of deadlock of various projects, even though developers complied with the demands established by law.\(^{275}\) By undermining its own legislative and administrative authority, this Supreme Court decision

\[^{266}\text{See Findley, supra note 56, at 21 (reporting that the model balance sheet in the United Nations System of National Accounts (SNA), which the Chilean Central Bank recently employed, recognizes biodiversity and minerals as economic assets to be included in a nation’s capital stock, however the SNA income and product accounts do not). Ironically, low-income countries which are typically most dependant on natural resources for employment, revenues, and foreign exchange earning, are instructed to use a national accounting system that ignores their principal assets. Id.}\]

\[^{267}\text{See generally id. (implying that Chile’s focus has centered on the economy rather than the environment).}\]

\[^{268}\text{Id. at 22.}\]

\[^{270}\text{See generally CONAMA decision, supra note 4.}\]

\[^{271}\text{Walsh, supra note 234. See Régulatory Bill, supra note 229 (stating that between 1990 and the end of January 1997, 171 projects in various industries have submitted to the environmental evaluation system); see also Array, supra note 5 (explaining that the decision raised questions about the legality of CONAMA’s approval procedures and opened the door for judicial reviews of scores of other projects approved by CONAMA). An examination into this issue is beyond the scope of this comment. However, it is worthwhile to mention that in light of undermining CONAMA’s authority, foreign investors may be deterred from investing in Chile because of the lack of uniformity and stability in the application of environmental laws, most specifically the environmental evaluation system. Id.}\]

\[^{272}\text{See generally Supreme Court Sinks, supra note 198 (indicating that because the Chilean Supreme Court found CONAMA and COREMA devoid of legal authority to approve, the Court undermined the power of the government that created these institutions for the purpose of environmental protection and regulation).}\]

\[^{273}\text{Id.}\]

\[^{274}\text{Valparaiso, supra note 136.}\]

\[^{275}\text{Id.}\]
may discourage foreign investment because investors want the security of knowing
the agency they are dealing with and the procedures they are following have legal
significance.  

The major interpretation of this Supreme Court ruling allows litigation not only
by those who are directly affected by projects, but also by outsiders. According
to the Chilean Constitution which guarantees a fundamental right to live in a
pollution free environment, Chilean citizens have the power to challenge projects
adversely affecting the environment under this recent Supreme Court decision. The
ramifications of such power may be that environmental concerns can potentially outweigh the nation’s desire to encourage foreign investment. Businesses in Chile are angry over this decision giving citizens the right to file an injunction against a project saying it undermines the credibility of the government and creates “an atmosphere of incredulity on the part of the private sector.”

The decision subverts the environmental policies which favor the current
government and the enormous impact it can produce in the institutional order has not been determined. The day after the decision was handed down, Trillium Corporation gave a statement that it invested in Chile for its political and economic stability and for its interest in establishing clear guidelines to protect the environment as well as an unrestricted respect for private property. Nonetheless, we find ourselves ensnared in a legal dispute . . . investors and the environment are left unprotected. The very essence of why corporations have ventured into Chile has now been destroyed with this decision and subsequent legislation. The business community is irate about the new environmental regulations and this decision may create a loss of credibility in the eyes of foreign investors. Other potential foreign investors may express Trillium’s same sentiment. Corporations may learn from this event and refrain from investing or developing in Chile.

276. See generally CONAMA decision, supra note 4 (holding that the decisions of the administrative agencies were illegal because they had no legislative authority to make such decisions).
277. Walsh, supra note 234.
279. CONAMA decision, supra note 4.
280. Walsh, supra note 234.
281. See id. (quoting Pedro Lizana, President of Sofofa, the manufacturing association); see also Array, supra note 5.
282. Valparaiso, supra note 136.
283. Walsh, supra note 234.
284. Id.
285. Id.
286. Array, supra note 5.
287. See generally Supreme Court Sinks, supra note 198 (stating that Trillium invested in Chile because of a solid economy and constitutional framework). In light of the attack on Chile’s environmental process, more people may review their investments and projects more heavily than before such discontent. Id; see also Government Worries Trillium Decision Bad For Investment (Mar. 21, 1997) <http://www.gekkonet.com/CHIPtrade/news_FR71.htm> (translated news from EL MERCURIO and LA EPOCA, Chilean newspapers) (copy on file with The Transnational Lawyer) [hereinafter Government Worries] (arguing that the Chilean Supreme Court decision siding
Chile’s insertion into international markets may be adversely affected as this decision discourages the participation of investors in important areas of production.***

Furthermore, while potential future investors may hesitate before investing in Chile, the Supreme Court decision also discourages environmentally viable projects. The decision to approve Trillium’s EIS was mistaken because the EIS was not fully researched.*** However, the proposed Rio Condor Project was not completely an anti-environment project.*** In fact, Trillium was planning to implement an innovative sustainable development plan.*** Even Chilean officials admit this decision provides disincentives to those who comply with environmental procedures.

On March 27, 1997 Vivianne Blanlot, executive director of CONAMA, has suggested to their regional counterparts, COREMA, that they suspend all decisions on pending EISs in light of the recent Supreme Court decision.*** The Supreme Court decision severely damaged CONAMA’s reputation. According to Robert Manne, President of Bayside, Trillium’s parent company, the verdict undermines the environmental evaluation system, making CONAMA and COREMA virtually non-existent.

Both Silva Vera, governor of Chile’s Region XII, and Chile’s President Eduardo Frei have given their approval for the continuation to Trillium’s Rio Condor Project.*** Trillium executives are expected to re-release their original EIS to COREMA who will have 120 days to reach a decision.*** According to Trillium executive, Robert Manne, the Rio Condor Project would employ nearly 10% of the total workforce in Tierra del Fuego and would enable Chile to be the world’s leader in environmentally conscious, forest land management.

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against forestry company Trillium could be a disincentive for companies to invest in environmentally sustainable projects).

*** Valparaiso, supra note 136.

*** See CONAMA decision, supra note 4 (regarding the restoration plan and sustainability of harvesting the lenga forest).

*** Id.

*** See Dietrich, supra note 144.

*** See Government Worries, supra note 287 (referring to Trillium’s submission of a voluntary EIS prior to the enactment of mandatory EIS).


*** See Government Worries, supra note 287 (explaining that Trillium had devoted a year to making forest management plans as though CONAMA existed, however if CONAMA had any authority its approval would not have been overturned by the Supreme Court).


*** Id.

*** Id.
V. CONCLUSION

The CONAMA decision may significantly impact the future foreign investment in Chile.\(^{298}\) Chile's dedication to the environment and preservation of natural resources may be a model for other South American countries to follow.\(^{299}\) Such strict environmental protections may discourage present foreign investors from continuing to invest and develop in Chile, thereby damaging the Chilean economy.\(^{300}\) Additionally, protective measures may deter future foreign investments because investors might not want to partake in the costly and timely EIS process.\(^{301}\)

Chile, once a developing nation hungry for foreign investment, is now, in light of the recent Supreme Court decision, on the brink of potentially discouraging foreign investors.\(^{302}\) Based upon the recent Supreme Court decision, repealing approval of a massive logging project, Chile's priorities may have shifted from encouraging foreign investment above all else towards a more sustainable model of economic development.\(^{303}\) Although Chile is a developing nation and not yet wealthy enough to put environmental concerns in the forefront of development, the trend appears to slant in such a direction.

Looking at the specifics of the logging project, it can be deduced that Chile will heavily weigh the environmental impacts against business developments in the future.\(^{304}\) To illustrate, Tierra del Fuego was a remote area with little vegetation and according to Trillium the impacts appeared to be slight.\(^{305}\) Despite the benefits to the nation, the government with pressure from environmental groups, repealed approval of the project. Not only did the Supreme Court make such a decision, but this decision was the basis for subsequent legislation making EISs mandatory.\(^{306}\)

Although in the past, EISs were submitted prior to project approval, the creation of strict regulations, coupled with the great deal of attention environmental impacts now have in Chile, may decrease desirability of Chile as an ideal destination for investment.\(^{307}\) Tougher environmental laws are generally viewed by businessmen

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\(^{298}\) See Valparaiso, \textit{supra} note 136 (declaring that the enormous impact has not been diminished and Chile's insertion into international markets may be affected because this decision discourages the participation of investors).

\(^{299}\) See generally Arturo C. Porzecanski, \textit{Is Chile Still a Model for Latin America?} \textit{LATIN AM. L. \\& BUS. RPT.} \textit{vol. 5, no. 8} (Aug. 31, 1997) (stating that before Chile can be admitted into NAFTA it must rework and strengthen its environmental regulations, but this issue is outside the scope of this comment).

\(^{300}\) Valparaiso, \textit{supra} note 136.

\(^{301}\) See generally \textit{Regulatory Bill, supra} note 229 (noting that the legislation mandating EISs may adversely affect foreign investment because it will be more costly to invest in Chile by having to prepare an EIS).

\(^{302}\) See CONAMA decision, \textit{supra} note 4.

\(^{303}\) See generally \textit{id.} (implying that environmentalists can halt proposed projects in Chile).

\(^{304}\) See \textit{id.} (striking down a multi-million dollar forestry project based upon a technicality in the EIS submitted). The CONAMA case demonstrates an environmental victory over development within Chile. \textit{Id.}

\(^{305}\) Trillium Project, \textit{supra} note 151.

\(^{306}\) See CONAMA decision, \textit{supra} note 4.

\(^{307}\) Array, \textit{supra} note 5.
as a way to stunt continued economic success.\textsuperscript{308} In fact, environmental regulations are infamously known for their ability to impede trade, decrease investment opportunities, and create large expenses for the manufacturer.\textsuperscript{309} Foreign investors may be reluctant to invest in projects that may be tied up in the courts for years over battle with environmentalists.\textsuperscript{310} The previous speedy system of approval of foreign investments may also be hindered with the submission of lengthy EISs, which take a great deal of time to research and compile. Consequently, companies like Trillium may no longer be able to afford to take a risk on projects in the nation of Chile and thus foreign investment in Chile may decrease.\textsuperscript{311}

\textsuperscript{308} See Bivona, supra note 18, at 172; see also Chile: Environmental Issues One Hurdle Slowing Chilean Entry Into NAFTA, BNA INTERNATIONAL ENVIRONMENTAL DAILY (Sept. 25, 1995) at d3 [hereinafter Environmental Issues] (describing environmental laws as a hurdle to free trade).

\textsuperscript{309} See Bivona, supra note 18, at 172; see also Christine Buff, NAFTA Meets NEPA: Trade and The Environment in the 1990s 34 NAT. RESC. J. 179, 183 (1994).

\textsuperscript{310} See Bivona, supra note 18, at 172; see also Environmental Issues, supra note 308, at d3.

\textsuperscript{311} Dietrich, supra note 144.