

**STATEMENT ON HOW
THE UNITED STATES-CHILE FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Chile Free Trade Agreement (FTA) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act ("TPA act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the FTA.

The U.S.-Chile FTA is the first U.S. free trade agreement with a South American nation. The agreement will level the competitive trade playing field for U.S. farmers, ranchers, and businesses seeking to sell their products and services to Chile. The Chilean government currently gives commercial preferences to a variety of other countries, including Canada, Mexico, and the 15 countries of the European Union, under existing free trade arrangements.

In addition to eliminating tariffs on all goods traded between the United States and Chile, the FTA will substantially reduce barriers to bilateral trade in services and investment. The agreement also contains state-of-the-art provisions in areas such as services, intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

Along with the U.S.-Singapore FTA, the U.S.-Chile FTA is an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. Several of the agreement's provisions will serve as useful precedents in negotiations currently underway to conclude a Free Trade Area of the Americas as well as a free trade agreement with Central American countries.

The U.S.-Chile FTA meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA act. Accordingly, President Bush strongly believes that the Congress should approve this FTA and enact the legislation needed to implement it.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses, (2) further strengthen international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade. The U.S.-Chile FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The FTA will significantly improve prospects for U.S. goods exports to Chile. Chile currently imposes a 6% duty on most imports from the United States. Immediately after the agreement takes effect, more than 85% of U.S. exports of industrial and consumer products to Chile will become duty-free. Chile will eliminate its tariffs on the majority of other U.S. industrial and consumer products within four years, and will phase out its tariffs on all such products within 10 years.

When the FTA takes effect Chile must also stop imposing a 50% surcharge on imports of used goods from the United States, including capital goods. In addition, the agreement requires Chile to eliminate its 75% automobile luxury tax in four years. During the four-year transition period, the price threshold for imposing the tax will increase by \$2,500 each year. In addition, the agreement calls for both countries to immediately eliminate existing tariffs on imports of textiles and apparel products that meet the agreement's "yarn-forward" rule of origin. This aspect of the agreement will create new opportunities for U.S. and Chilean fiber, yarn, fabric, and apparel manufacturing industries.

U.S. exporters of price-sensitive products such as paper products, plastics, heating and other equipment, fertilizer, wheat, corn, and soybeans should particularly benefit from elimination of Chile's tariffs. The FTA will require Chile to eliminate its tariffs on more than three-quarters of all agricultural products within four years and on all remaining agricultural products over 12 years.

U.S. services companies should gain substantially from the agreement as well. The agreement expands or locks in current U.S. access to key services markets in Chile, particularly in the financial services, telecommunications, express delivery, professional, audiovisual, tourism, environmental, and educational services sectors.

2. Stronger International Trade Disciplines

The U.S.-Chile FTA establishes binding rules-of-the-road to protect electronic trade in digital products such as software, music, images, videos, and text. The agreement draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. These rules will ensure even-handed treatment for U.S. firms that deliver digital products to Chile via the Internet. The FTA also limits customs duties on digital products imported through conventional means and prohibits tariffs outright when digital products are delivered over the Internet. The agreement's provisions on electronic commerce, together with those in the recently concluded U.S.-Singapore FTA, will serve as a model for progress in this emerging area in future bilateral, regional, and global trade agreements.

The FTA recognizes that workers and firms can fully realize the agreement's market-opening potential only if it imposes disciplines that clarify and proceed from those currently in place through other agreements. Thus, the agreement creates new rules on intellectual property

rights (IPR) that clarify and build upon those in the WTO “TRIPS” agreement to strengthen enforcement and enhance rules for protecting IPR.

The FTA also includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in place under the WTO. In addition, the agreement contains innovative procedures for settling disputes that may arise under the FTA, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan model of world production and trade to predict certain economic effects of various free trade agreements, the U.S.-Chile FTA could boost annual global welfare by \$5.0 billion when fully implemented. In absolute terms, most of this positive welfare effect will be enjoyed by the United States (\$4.4 billion, or 0.05% of GNP). Chile’s annual welfare will increase by \$550 million (0.7% of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and high product aggregation) and because they do not necessarily measure all of the agreement’s anticipated effects (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the FTA will contribute to economic growth in both countries and in global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the U.S.-Chile FTA includes meaningful commitments by each government on labor and environmental protection.

Both governments reaffirm through the agreement their respective obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The agreement also commits each government to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. Moreover, while recognizing each party’s right to establish its own labor laws, exercise its discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the agreement commits both Chile and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each government to ensure that its laws provide for high levels of environmental protection and to strive to improve those levels. As is the case for labor law enforcement, the FTA contains a binding commitment on effective environmental law enforcement, while recognizing each government’s right to establish its own environmental laws, and exercise discretion in regulatory, prosecutorial, and compliance matters. The

agreement also includes language similar to that on labor rights that requires each government to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. In addition, the FTA includes provisions that will remove barriers to bilateral trade in environmental products and services, with the potential to reduce costs for purchases of pollution abatement and other environmental equipment.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA act also establishes a variety of “principal trade negotiating objectives.” The U.S.-Chile FTA makes substantial progress toward each of the applicable principal goals set out in the act.

1. Opening Markets for U.S. Goods

Chile’s commitment under the agreement to eliminate all import duties will create new export opportunities for U.S. industrial, consumer, and agricultural products. By eliminating Chile’s import duties, the agreement will make U.S. products more competitive with goods from a variety of other countries whose products currently benefit from lower duty rates under free trade arrangements they have concluded with Chile. In addition, the agreement will require Chile to eliminate burdensome fees on U.S. exports of used goods and higher-priced automobiles, and accord duty-free treatment to environmentally-friendly recycled goods, thus improving the prospects for exports of these U.S. products to Chile.

The agreement also commits Chile for the first time to open its procurement market to U.S. firms. The FTA will provide opportunities for U.S. firms to supply goods and services to 20 Chilean national government departments and agencies, as well as regional governments, in procurements valued at \$56,000 or more for goods and services. U.S. firms will also be able to bid on contracts with 341 Chilean municipalities above specified thresholds (\$460,00 for goods and services), as well as with 11 Chilean government-related entities. U.S. companies will also be authorized to compete for construction contracts of \$6.481 million or more.

The FTA’s procurement provisions also provide comprehensive rules prohibiting Chile from discriminating in its purchasing practices against U.S. goods, services, and suppliers and requiring Chile to apply fair and transparent procurement procedures. While Chile, unlike the United States, is not a party to the WTO Agreement on Government Procurement, the government procurement rules in the FTA broadly resemble WTO procurement rules.

The agreement also commits Chile and the United States to increase cooperation in the areas of technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The U.S.-Chile FTA will reduce barriers and create new market opportunities in Chile for key U.S. services and will lock in access in sectors where Chile's services market is already open. The agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are protected under the agreement's rules unless a government has negotiated a specific exemption in that sector.

The agreement will either open or lock in substantial access to Chile's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, distribution services (wholesaling, retailing, and franchising), professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The agreement's market-opening provisions are complemented by state-of-the art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

In the financial services sector, Chile will ensure that U.S. firms may continue freely to supply banking, securities, and asset management services in Chile through their offices in that country and to provide financial advisory and information services from the United States to customers in Chile. The FTA also commits Chile not to require U.S. firms to demonstrate a benefit to the Chilean economy before they can establish special companies authorized to manage contributions under Chile's mandatory pension system. In addition, beginning March 1, 2005, U.S. mutual funds will be free to manage voluntary contributions to Chile's pension system on the same footing as Chilean-owned firms. The FTA also will ensure that when U.S. investment firms establish mutual funds in Chile they can use portfolio managers based in the United States to manage the securities included in those funds.

The FTA will also ensure that Chile continues to allow U.S. firms to provide insurance to customers in Chile through subsidiary offices located there, including life and non-life insurance, reinsurance, insurance intermediation, and insurance auxiliary services. In addition, no later than four years after the agreement takes effect, Chile will allow U.S. insurance companies to begin doing business through branches in Chile. Chile will also allow U.S. insurance companies for the first time to provide from the United States to customers in Chile marine, aviation, and transport insurance ("MAT insurance") and intermediation of reinsurance and MAT insurance. The agreement will also ensure that U.S. firms may continue to provide Chilean customers reinsurance and certain insurance auxiliary services (such as insurance consulting, actuarial, and risk assessment services) from the United States. In addition, the FTA calls on Chile to maintain or adopt policies that allow licensed U.S. insurers to provide new insurance products to their business customers in Chile without prior regulatory approval.

The FTA guarantees continued, unimpeded access to Chile's telecommunications market virtually across-the-board to U.S. telecom companies. Under the WTO, Chile has not committed to allow competition in its market for local telecommunications services. By contrast, the FTA ensures that U.S. telecom companies will be free to enter any telecom sector in Chile, whether by

acquiring or building local facilities, linking their U.S. networks with networks in Chile, or leasing lines from firms in Chile. The FTA commits Chile's telecom regulatory authorities to use open and transparent administrative procedures, ensure that U.S. firms have fair and non-discriminatory access to public telephone networks, consult with interested parties before issuing regulations, solicit public comments for proposed rules, and publish all pertinent regulations.

The agreement commits Chile to refrain from imposing restrictions on express delivery services, thus locking in Chile's open market for these services. The FTA includes an innovative, comprehensive definition of express delivery services that will ensure that Chile's commitments in this area cover the full spectrum of activities that form part of these services. The agreement also expresses Chile's intention not to use funds from its postal monopoly to give Chilean express delivery firms an unfair commercial advantage.

The FTA will broadly ensure that Chile does not discriminate against U.S. film, television, and other audiovisual firms in favor of domestic or third country producers. The agreement permits only a few, narrowly tailored exceptions to the FTA's non-discrimination rules in this sector. Thus, while the agreement provides Chile with the flexibility it needs to address its cultural promotion interests, it does so without including a broad "cultural exception" that could be used to justify discriminatory or protectionist regulations aimed at U.S. film and television producers.

The agreement requires Chile to provide largely open access to its professional services marketplace for U.S. suppliers – including for lawyers, architects, engineers, and accountants. The few entry limitations that Chile has retained under the FTA in the professional services sector – such as a citizenship requirement for admission to the Chilean bar – are not expected to be commercially significant. The FTA also includes an annex calling for the two countries to explore mutual recognition agreements for each other's professionals.

The FTA will also ensure that Chile will provide liberal access for U.S. firms to its tourism services sector, including operation of hotels, motels, and restaurants, and will provide largely unrestricted U.S. access to its market for environmental services. In addition, under the agreement, Chile will defer application of its local employment rules for new market entrants from the United States for the first 18 months after they begin operations in Chile, thus allowing U.S. firms to bring in qualified U.S. personnel to establish their Chilean enterprises on a rapid and sure footing.

3. Foreign Investment

The FTA commits Chile to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Chile. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Chile on the same basis as Chilean investors or other foreign investors – across the full spectrum of economic activity.

Under the agreement, Chile will provide U.S. investors due process rights, and recourse in the event of expropriations, that are consistent with U.S. legal principles and practice. For example, the FTA includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The text thus makes explicit that the treatment required by this obligation is grounded in, and does not extend beyond, the due process standards embraced by the United States and other major legal systems of the world.

With regard to recourse in the event of expropriations, the FTA draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The FTA clarifies, for example, that takings are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the FTA commits the United States to continue to provide Chilean investors a high level of protection and due process, the agreement gives Chilean firms no greater substantive rights than U.S. companies already enjoy in the United States.

The FTA also commits Chile not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Chile will allow U.S. investors to transfer funds related to their investments in and out of Chile.

The agreement includes investor-State arbitration procedures that will provide a fair and expeditious means of addressing disputes. The arbitration provisions incorporate procedures intended to increase public access to information regarding arbitration proceedings. The FTA requires, for example, that all documents in investor-State arbitrations, except for business confidential and other legally confidential information, be made public promptly. In addition, all hearings in arbitration proceedings are to be open to the public. The FTA also gives tribunals the authority to accept *amicus* submissions from the public and includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

4. Intellectual Property

The U.S.-Chile FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The agreement ensures that Chile will provide a high level of IPR protection similar to that provided under U.S. law. Key provisions of the agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The FTA requires Chile to extend its term of protection for copyrighted works and clarifies protection for temporary copies of works. The agreement includes state-of-the-art protection for trademarks and copyrights, as well as expanded protection for patents and undisclosed information.

Under the FTA, Chile will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two governments to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the agreement will also require Chile to protect encrypted satellite signals as well as the programming these signals carry.

The FTA commits Chile to make patent rights available, with certain exceptions, for inventions and provides for extension of the patent term if there are unreasonable delays in issuing the patent or in obtaining regulatory approval for the patented product. The FTA will also require Chile to protect against unauthorized disclosure or unfair commercial use of test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure approvals to market their products. Under the agreement, Chile will protect for five years product information generated in connection with pharmaceutical product approvals and will protect similar information for agricultural chemicals for 10 years.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products and, at least with respect to pirated goods, the equipment used to produce these products, and a requirement to provide for statutory and actual damages to remedy such practices. Chile must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products. In addition, Chile must maintain criminal penalties for circumvention of technology protection measures.

5. Transparency

The agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes key provisions that will ensure that Chile observes fundamental transparency principles. Those provisions are set out in a specific chapter of the agreement dealing with regulatory transparency as well as in provisions of the agreement addressing cross-border services, financial services, temporary entry, competition, government procurement, customs administration, investment, telecommunications, technical barriers to trade, and dispute settlement. The agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is also an effective tool in addressing corrupt practices that may affect bilateral trade. To this end, the FTA government procurement provisions include commitments to ensure integrity in government procurement. The Agreement requires Chile and

the United States to establish and maintain criminal penalties against bribery and corruption in connection with government purchases and make bribery of procurement officials a crime.

6. Regulatory Practices

The U.S.-Chile FTA recognizes that healthy, competitive domestic markets are vital for fully realizing the benefits of trade liberalization. Thus, the agreement requires each government to maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. Under the agreement, Chile commits to take appropriate enforcement action under its competition law to address anticompetitive practices affecting its markets.

The agreement also recognizes the value of transparency with respect to competition policies. Accordingly, the FTA commits the United States and Chile to further their cooperation on competition law enforcement, including notification, consultation, and exchange of information on their competition laws and policies. At the same time, Chile and the United States will maintain their autonomy and discretion in developing and enforcing competition laws and policies.

Under the agreement, if Chile gives a private or government-owned entity the sole right to provide or purchase a good or service, it must ensure that the entity acts consistently with commercial considerations, does not discriminate against U.S. goods or service suppliers, and does not engage in anticompetitive practices in markets outside the scope of its monopoly.

The FTA also addresses regulatory issues directly linked to the agreement's market-opening provisions. The FTA includes disciplines designed to prevent the possibility that firms in Chile might fraudulently seek preferential tariff treatment under the agreement for textile or apparel products or fraudulently claim that Chile is the country of origin for such products. To address this possibility, the FTA includes anti-circumvention commitments with respect to customs cooperation and enforcement. The agreement contemplates that U.S. customs officials may visit production facilities in Chile and bar imports of textile and apparel products from factories it finds to be circumventing the FTA's rules regarding trade in textile and apparel products.

7. Electronic Commerce

The FTA includes ground-breaking rules prohibiting duties on and discrimination against digitally-encoded products transmitted over the Internet, including computer programs, video, images, and sound recordings. The agreement thus creates a strong foundation for wider efforts to bar duties and unfair or discriminatory regulation of electronically-transmitted products. In addition, the FTA requires Chile to base any customs duties that it applies to digital products imported on physical media (such as DVDs or CD-ROMs) on the value of the media (*e.g.*, the disc), rather than on the value of the movie, music, or software encoded on the media.

8. Trade in Agricultural Products

The agreement will improve prospects for agricultural exports to Chile, including for beef and beef products, pork and pork products, soybeans, durum wheat, potatoes, feed grains, and processed foods. The FTA will require Chile to eliminate all barriers to U.S. corn exports and to provide immediate duty-free access to Chile's markets for U.S. soybean and soybean meal exports. The agreement will also immediately eliminate Chile's tariffs on U.S. pork and pork products, beef offal, durum wheat, barley, barley malt, sorghum, pasta, breakfast cereals, cereal preparations, and sunflower seeds. Four years after the agreement enters into force, U.S. beef will enter Chile free of tariffs or quotas. Under the FTA, Chile and the United States will gradually harmonize their wine import duties at the lowest rates in either country and then eliminate all duties on bilateral trade in wine.

The agreement will also phase out over 10 years all Chilean barriers to U.S. poultry. Beginning in the agreement's third year, Chile will establish an 8,000 metric ton "tariff-rate quota" (TRQ) for U.S. poultry imports. The amount of U.S. poultry qualifying for importation under the TRQ will grow annually and Chile will phase out tariffs that it applies to imports of poultry in excess of the TRQ amount. Under the agreement, Chile will eliminate its tariffs on many dairy products, including skim milk powder, whey, and cheeses, over four years. Chile will phase out its tariffs on other dairy products within eight years.

The agreement also requires Chile immediately to eliminate its tariffs on fresh or chilled tomatoes, onions, and garlic. Chile will eliminate its 6% tariff on U.S. frozen fried potatoes and potato chips over four years. Chile will phase out its tariffs on other fresh and processed vegetable products over a period of up to 12 years.

The agreement also addresses other barriers that have reduced market opportunities for U.S. exports of agricultural products to Chile. The agreement requires Chile to eliminate its "price-band" mechanism for U.S. farm products over a 12-year transition period. The FTA also calls for Chile to recognize the U.S. beef grading program. In addition, in early June 2003 Chile recognized that USDA's inspection system for beef, pork, and lamb is equivalent to Chile's system, thereby permitting U.S. exports of those products to Chile. In addition, Chile will rely on U.S. Food and Drug Administration certifications of U.S. dairies to satisfy Chilean milk product safety requirements, which will make FDA-approved dairies eligible to export their products to Chile.

The agreement includes a safeguard "snap-back" provision that will help U.S. farmers who produce goods most sensitive to imports adjust to competition from Chile. The safeguard is price-based, automatic, and will remain in effect throughout the 12-year transition period. Prices for imports of commodities subject to the safeguard will automatically be assessed a tariff uplift if the import value of the commodity falls below the trigger price established in the agreement.

The FTA commits Chile to work with the United States in the current round of WTO trade negotiations to eliminate agricultural export subsidies.

The agreement will also provide a bilateral forum for discussing sanitary and phytosanitary (SPS) issues that may affect bilateral trade in agricultural products. A joint SPS

committee operating under the agreement will consider SPS issues pending before international organizations and help coordinate bilateral technical cooperation programs. Any SPS dispute between the two governments will be resolved under the applicable provisions of the WTO SPS agreement using WTO dispute settlement rules.

9. Labor Rights and Environmental Protection

Under the agreement, Chile and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor rights as set forth in the Agreement. The agreement makes clear that it is inappropriate to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with the other party or investment. A key element of the agreement's labor provisions, which is enforceable through the agreement's dispute settlement procedure, is a commitment by each government regarding the effective enforcement of its domestic labor laws. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor.

The FTA includes procedural guarantees ensuring that interested persons have access to Chilean courts or tribunals to enforce its labor laws and creates a joint labor council to discuss matters that may arise regarding the chapter. The FTA also establishes a mechanism to foster cooperation on labor issues between the two governments to promote respect for the principles embodied in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of the FTA's environmental provisions is an enforceable commitment by each government regarding the effective enforcement of its environmental laws. The agreement commits Chile and the United States to ensure that their domestic environmental laws provide for high levels of environmental protection and to strive to continue to improve these laws. Through the agreement, Chile and the United States expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under these laws in order to seek investment or encourage trade with the other country.

The FTA creates a joint council to consider environmental issues arising under the agreement and calls for the two governments to promote public participation in the council's work. Under the agreement, agencies from the United States and Chile will engage in specific cooperative projects set out in an annex to the agreement. In addition, under a recently concluded bilateral agreement on environmental cooperation called for under the FTA, the United States and Chile have established a mechanism for developing a joint work plan on environmental issues.

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the two governments over the implementation of the agreement. The agreement's dispute procedures rely principally on consultations and compliance rather than on the imposition of trade sanctions or penalties. The procedures set new, higher standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two governments to release their legal briefs and other filings to the public, and for dispute panels to have authority to receive submissions from interested nongovernmental groups.

The FTA's dispute settlement rules also provide equivalent remedies to enforce panel decisions under the agreement, regardless of whether they address the agreement's commercial, labor, or environmental provisions. The FTA achieves this result through an innovative enforcement mechanism that provides for the use of monetary assessments if a government fails to comply with a panel's decision. Enforcement through the suspension of trade benefits provided under the agreement is also available for all types of disputes. But the agreement is designed to use remedies that will enhance compliance with the agreement, rather than restrict trade, which could adversely affect sectors and consumers that do not have a direct stake in the dispute.

11. Trade Remedies

The FTA provides explicitly that the agreement does not affect either government's rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Moreover, these issues are expressly excluded from the FTA's dispute settlement provisions. Thus, the agreement fully preserves U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The agreement includes a bilateral safeguard procedure, similar to those in past U.S. free trade agreements, that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the agreement. The agreement also includes a special safeguard to address the possibility that duty elimination under the agreement could result in damaging levels of textile or apparel imports.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The United States-Chile FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Chile are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts

from the two countries consulted on U.S. and Chilean labor laws and how their respective systems operate. The two governments included a bilateral labor cooperation mechanism in the FTA to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO Convention 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*. The agreement includes a framework for the cooperation mechanism and lists a range of labor activities on which the two governments will collaborate. Officials of the U.S. Department of Labor and Chile's Labor Ministry and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing both trade in goods and trade in services to ensure that the United States remain fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The agreement also avoids disturbing existing state and local governmental measures that might run afoul of the agreement's services and investment rules by including "grandfather" clauses that exempt those measures from challenge under the agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Chile. The FTA expressly recognizes the importance of multilateral environmental agreements, including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Chile to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between multilateral environmental agreements and WTO rules. In addition, the bilateral environmental cooperation mechanism negotiated in parallel with the FTA will provide further opportunities for the two governments to cooperate in promoting effective implementation of multilateral environmental agreements to which they are both parties.

4. Currency and Exchange Rate Manipulation

The FTA's investment and services rules will promote and protect freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

Significant and unanticipated currency movements can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes, or the appearance of new information on fundamental economic conditions. A determination of whether such movements reflect currency manipulation to promote a competitive advantage in

international trade must therefore take into account a broad range of issues, institutions, and market developments that will require a review mechanism with a larger scope than any specific trade agreement.

Under the 1988 Omnibus Trade and Competitiveness Act, the Secretary of the Treasury is required to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currencies and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the International Monetary Fund is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes. The Department of the Treasury reports semi-annually on its analysis.

The Treasury will ensure that significant and unanticipated currency movements are examined in its reviews of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to reflect a pattern of currency manipulation to promote a competitive advantage in international trade through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA act, the Administration has provided a report to the Congress describing Chile's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA act on (1) the Administration's environmental review of the agreement and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Chile, which will also be made available to the public. Finally, the Administration has reported, as specified in the TPA act, on U.S. efforts to establish consultative mechanisms to strengthen Chile's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.