

# **U.S.-SINGAPORE and U.S. - CHILE FREE TRADE AGREEMENTS**

Statement of  
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Committee on Finance  
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## **INTRODUCTION**

Mr. Chairman, Mr. Baucus, and Members of the Committee, thank you for the opportunity to testify today and for your continued guidance and support. Ambassador Zoellick and I greatly appreciate your leadership on trade issues, Mr. Chairman and Mr. Baucus, and we value our partnership with the Congress on these important matters.

Without the help of the Members of this Committee and excellent staff, I would not have the privilege of testifying here today on the U.S.-Singapore and U.S.-Chile Free Trade Agreements (FTAs). During the past two years, we have worked together to reenergize the U.S. trade agenda. Passage of the Trade Act of 2002 (Trade Act), including Trade Promotion Authority (TPA), was a major turning point in that effort, which will lead to economic benefits for all Americans and many others around the world.

The Administration has used TPA to launch major new trade initiatives designed to expand trade and open markets globally, regionally and bilaterally. We initiated new WTO negotiations in Doha and have since presented bold proposals in agriculture, industrial products and services. We have FTA negotiations underway with Australia, Central America (CAFTA), Morocco, and the South African Customs Union (SACU). We have announced our intent to begin negotiations on an FTA with Bahrain early next year. We have also launched the President's Enterprise for ASEAN Initiative and a Middle East trade initiative. We will not stop there.

I welcome this opportunity to review the accomplishments of the FTA and present the Administration's request for favorable consideration of legislation needed to implement the FTA later this year. Attached to my testimony are summaries of the main provisions of each agreement.

The U.S.-Singapore and U.S.-Chile FTAs reflect a bipartisan effort to conclude trade agreements with two important trading partners. Both agreements were launched under the Clinton Administration—with Singapore in November 2000 and with Chile in December 2000-- and concluded under the Bush Administration. President Bush and Singaporean Prime Minister Goh signed the U.S.-Singapore FTA on May 6, 2003, at the White House. Ambassador Zoellick and

Chilean Foreign Minister Alvear signed the U.S.- Chile FTA on June 6, 2003, at the Vizcaya Mansion in Miami.

### **U.S. - SINGAPORE FTA**

The U.S.-Singapore FTA is a solid agreement. It is the first FTA President Bush has signed with any country and our first with an Asian nation. This Agreement provides commercial and political benefits for both the United States and Singapore. Strengthening economic ties helps secure strong political interests.

The U.S.-Singapore FTA will enhance further an already strong and thriving commercial relationship. Singapore was our 12<sup>th</sup> largest trading partner last year. Annual two-way trade of goods and services between our nations exceeded \$40 billion. Expanding this trade will benefit workers, consumers, industry and farmers. Independent analyses found significant economic gains will result from the FTA for the United States and Singapore.

The FTA is comprehensive in scope and covers aspects of trade in goods, services, investment, government procurement, protection of intellectual property, competition policy and the relationship between trade and labor and environment. This FTA builds upon the basic foundation of the NAFTA and WTO agreements and improves upon them in a number of ways. The U.S.-Singapore FTA can serve as the foundation for other possible FTAs in Southeast Asia. President Bush envisaged this prospect when he announced his Enterprise for ASEAN Initiative (EAI) last year.

The Administration looks forward to working with Congress on the legislation needed to implement this FTA. We hope to be in a position to submit this legislation after further work with the Congress.

### **U.S. - CHILE FTA**

The U.S.-Chile Free Trade Agreement is a state-of-the-art agreement, setting the stage for further trade integration in the hemisphere.

It makes sound economic sense for the United States to have a free trade agreement with Chile. Although Chile was only our 36<sup>th</sup> largest trading partner in goods in 2002 (with \$2.6 billion in exports and \$3.8 billion in imports), Chile has one of the fastest growing economies in the world. Its sound economic policies are reflected in its investment grade capital market ratings, unique in South America. Over the past 15-20 years, Chile has established a vigorous democracy, a thriving and open economy built on trade, and a free market society. A U.S.-Chile FTA will help Chile continue its impressive record of growth, development and poverty alleviation. It will help spur progress in the Free Trade Area of the Americas, and will send a positive message throughout the world, particularly in the Western Hemisphere, that we will work in partnership with those who are committed to free markets.

Moreover, a U.S.-Chile FTA will help U.S. manufacturers, suppliers, farmers, workers, service providers, consumers and investors achieve a level playing field. Chile already has FTAs with Mexico, Canada, Mercosur, and -- since February -- the EU. As a result, its trade with these economies is growing while American companies are being disadvantaged. Indeed, the U.S. share of Chilean imports has dropped from 23% in 1998 to 16% in 2002. The National Association of Manufacturers estimates the lack of a U.S.-Chile FTA causes U.S. companies to lose at least \$1 billion in exports annually. The United States needs an FTA with Chile to ensure that we enjoy market access, treatment, prices and protection at least as good as our competitors. Consumers will benefit from lower prices and more choices.

As Ambassador Zoellick said, "The U.S.-Chile FTA is a partnership for growth, a partnership in creating economic opportunity for the people of both countries." Chile has opened its markets and welcomed competition. As a result, it is one of the freest economies in Latin America.

The result of Chile's openness has been the best growth record in Latin America, averaging over 6 percent per year through the 1990's. This growth enabled Chile to cut its poverty rate in half, from 45 percent in 1987 to 22 percent in 1998. The U.S.-Chile FTA will help Chile sustain this growth and will send a strong signal to the hemisphere that the United States wants to work in partnership to promote mutual economic growth.

## **FTA PROCESS**

The U.S.-Singapore and U.S.-Chile FTAs are the first agreements that will be implemented under the TPA procedures set out in the Trade Act. Even before receiving Congressional guidance under the Trade Act, the process of developing U.S. proposals and concluding the FTA was open and transparent. USTR held public briefings, consulted frequently with Congress and private sector advisors, and sought public comments on the negotiations as they proceeded. Proposed texts were made available to members of Congress and advisors in advance of their presentation to our negotiating partners. The Congress and our statutory advisors had access to the full drafts of the Singapore and Chile FTAs in December 2002. USTR also posted summaries of the FTAs on our public web site. The full texts of each agreement were posted on the USTR public website as soon as the preliminary legal review of each agreement was completed, which was March 6, 2003, for the agreement with Singapore and April 3, 2003, for the agreement with Chile.

As with other agreements, such as NAFTA and the WTO Agreements, our private sector advisors are required to submit reports to the President, the Congress, and the USTR providing their assessments of the extent to which the FTA achieves the objectives, policies and priorities set out in the Trade Act. For the Singapore and Chile FTAs, only one of the thirty-one advisory committees opposed the agreements.

## **SUPPORTING OUR EFFORTS TO EXPAND TRADE WORLDWIDE**

Last October, President Bush announced the Enterprise for ASEAN Initiative (EAI) in recognition of this important region. The EAI offers the prospect of FTAs with individual ASEAN nations, leading to a network of FTAs in the region. The U.S.-Singapore FTA can serve as the foundation for these other possible FTAs. The ASEAN includes the largest Muslim country in the world – Indonesia – as well as other countries with large Muslim populations, including Malaysia, the Philippines and Brunei.

The President is committed to making progress under the EAI as a framework for deepening our trade and investment relationship with ASEAN. The United States expects a potential FTA partner to be a member of the WTO and to have a Trade and Investment Framework Agreement (TIFA) with the United States. Since announcement of this initiative, the United States has signed TIFAs with Thailand and Brunei. The trade ministers of these countries, as well as Philippines and Indonesia, with which the United States already has TIFAs, have met regularly to address specific bilateral issues and coordinate on regional and multilateral issues.

Likewise, the conclusion and signing of the Chile FTA has provided momentum to other hemispheric and global trade liberalization efforts by breaking ground on new issues and demonstrating what a 21<sup>st</sup> century trade agreement should be. We continue to move forward with the centerpiece of our hemispheric integration strategy, the Free Trade Area of the Americas (FTAA). We maintain our strong commitment to the negotiation of a broad and robust FTAA by January of 2005.

The U.S.-Chile FTA and the Central American Free Trade Agreement (CAFTA) will serve as building blocks for the FTAA. They will give both sides greater access to each other's markets at an earlier date than is possible under the FTAA. At the same time, these bilateral FTAs strengthen ties and integration, demonstrating the additional benefits available through the FTAA.

## **CONCLUSION**

The U.S.-Singapore and U.S.-Chile FTAs are the most comprehensive and up-to-date trade agreements the United States has concluded. These FTAs command widespread support in the private sector and makes progress in achieving each of the relevant objectives, purposes, policies and priorities that the Congress identified in the Trade Act.

With continued Congressional guidance and support, this Administration is pursuing an ambitious and comprehensive trade policy. We will continue to move forward bilaterally, regionally, and globally. Together, we can show the world the power of free trade to strengthen democracy and promote prosperity.

The Administration looks forward to working with this Committee and the full Congress in

enacting the legislation necessary to implement these Agreements. Thank you, Mr. Chairman. I would be pleased to respond to questions.

## SUMMARY OF THE U.S.-SINGAPORE FTA

### Market Access for Services

Singapore is one of the world's most sophisticated services economies, and a services hub for the fast-growing Southeast Asian region. The U.S.-Singapore FTA will accord substantial market access to U.S. firms across the entire spectrum of services, subject to very few exceptions. The FTA uses a so-called "negative list" approach, in which all service sectors are liberalized unless a specific reservation is taken in the Agreement. This technique, which we successfully used in the NAFTA, provides for maximum liberalization of services markets.

Singapore will treat U.S. services suppliers as well as its own suppliers or other foreign suppliers, and U.S. services firms will enjoy fair and non-discriminatory treatment. Such non-discrimination will be achieved through strong disciplines on both cross-border supply of services (such as those delivered electronically, or through the travel of services professionals across borders) as well as the right to invest and establish a local services presence.

Importantly, services market access is supplemented in this FTA by strong and detailed disciplines on regulatory transparency. U.S. services suppliers have found that market access commitments may be less meaningful without parallel commitments by trading partners to regulatory transparency. Under the FTA, Singaporean services regulators must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

New market access commitments apply across a broad range of sectors, including, but not limited to, banking, insurance, securities and related services; computer and related services; direct selling; telecommunications services; audiovisual services; construction and engineering; tourism; advertising; express delivery; professional services (architects, engineers, accountants, etc.); distribution services, such as wholesaling, retailing and franchising; adult education and training services; environmental services; and energy services. U.S. firms also have the ability to own equity stakes in entities that may be created if Singapore chooses to privatize certain government-owned services.

Some achievements of the FTA in certain services sectors are highlighted below.

**Banking:** The financial services chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. Singapore's current ban on new licenses for full-service banks will be lifted within 18 months, and lifted within three years for "wholesale" banks that serve only large transactions. Licensed full-service banks will be able to offer all their services in Singapore at up to 30 locations in the first year that the agreement is in effect, and at an unlimited number of locations within two years. Locally incorporated subsidiaries of U.S. banks can apply for access to the local Automated Teller Machine (ATM) network within two-and-a half

years, and branches of U.S. banks get access to the ATM network in four years.

**Insurance:** Under the FTA, U.S. insurance firms will be able to establish subsidiaries, branches or joint ventures. Singapore is expanding the cross-border insurance services it allows, and U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, to provide insurance brokerage of reinsurance and MAT insurance, and to provide insurance auxiliary services. A new principle of expedited availability of insurance services in the FTA means that prior regulatory product approval will not be required for all insurance products other than life insurance, Central Provident Fund related products, and investment-linked products sold to the business community. Expedited procedures will be available in other cases when prior product approval is necessary. The FTA specifies that U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements.

**Securities and Related Financial Services:** The FTA specifies that U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms. In addition, U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. And U.S.-based firms may sell portfolio management services via a related institution in Singapore. Under the FTA, Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.

**Express Delivery Services:** The FTA contains important provisions relating to express delivery services. It provides for liberalization of express delivery services and other related services (that are part of an integrated express delivery system) that will allow a more efficient and expedited express delivery business in Singapore. Singapore also commits that it will not allow its postal service to cross-subsidize express letters in an anti-competitive manner with revenues from its monopoly services.

**Professional Services:** The FTA specifies that Singapore will ease restrictions on U.S. firms creating joint law ventures to practice in Singapore, and will recognize degrees earned from certain U.S. law schools for admission to the Singapore bar. Singapore will reduce onerous requirements on the make-up of boards of directors for architectural and engineering firms. And capital ownership requirements for land surveying services will be eliminated. In addition, the FTA liberalizes the requirements for registration and certification of patent agents. Provisions of the FTA also call for cooperation in developing standards and criteria for licensing and certification of other professional services providers.

**Telecommunications:** The FTA contains a full range of market access commitments on telecommunications services, consistent with the regulatory regimes of the U.S. and

Singapore. For example, users of the public telecommunications network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or “first right” of access to telecommunications networks. The FTA also provides U.S. phone companies with the right to interconnect with networks in Singapore in a timely fashion, on terms, conditions, and cost-oriented rates that are transparent and reasonable. And the FTA grants U.S. firms seeking to build a physical network in Singapore non-discriminatory access to buildings that contain telephone switches and submarine cable heads. U.S. firms will be able to lease lines on non-discriminatory terms and to re-sell telecom services of Singaporean suppliers to build a customer base. Importantly, the FTA includes transparency requirements for the rule-making procedures of Singapore’s telecom regulatory authority, and requires publication of inter-connections agreements and service rates. Singapore commits that when competition emerges in a telecom sector, that area will be deregulated. The agreement also specifies that companies, not governments, will make technology choices, particularly for mobile wireless services, thus allowing firms to compete on the basis of technology and innovation, not on government-mandated standards.

### **Trade in Goods and Agriculture: Tariffs Eliminated**

U.S. tariffs on 92% of Singapore’s exports of goods will be eliminated immediately upon entry into force of the Agreement, with remaining tariffs phased out over 4-10 years. Singapore guarantees zero tariffs immediately on all U.S. products.

Textiles and apparel will be duty-free immediately if they meet the Agreement’s “yarn-forward” rule of origin, which will promote new opportunities for U.S. and Singaporean fiber, yarn, fabric and apparel manufacturing industries. A limited yearly amount of textiles and apparel containing non-U.S. or non-Singaporean yarns, fibers or fabrics may also qualify for duty-free treatment.

Extensive monitoring and anti-circumvention commitments—such as reporting, licensing, and unannounced factory checks—will ensure that only Singaporean textiles and apparel receive tariff preferences under the Agreement.

### **Electronic Commerce: Free Trade in the Digital Age**

No previous U.S. free trade agreement contains such cutting-edge provisions on digital trade as the proposed FTA with Singapore. The United States and Singapore agreed to provisions on electronic commerce that reflect the issue’s importance in global trade, and the principle of avoiding barriers that impede the use of electronic commerce.

For example, the Agreement establishes explicit guarantees that the principle of non-discrimination applies to digital products delivered electronically, such as software, music, images, videos, or text. This will provide fair treatment and protection to U.S. firms that deliver such digital products via the Internet. The FTA also establishes a binding prohibition on customs duties charged on digital products delivered electronically. For digital products delivered on hard



media (such as a DVD or a CD-ROM), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc.

The FTA also affirms that any commitments made related to services also extend to the electronic delivery of such services, such as financial services delivered over the Internet. This sets a very good precedent for U.S. services liberalization efforts in the WTO and in other FTAs.

### **Investment: Important Protections for U.S. Investors**

The Agreement will improve the bilateral investment climate and provide important protections for investors, and is also consistent with the objectives regarding investor-state dispute settlement in the Trade Act. Given the large stock of U.S. investment in Singapore, the protections of the FTA are extremely important and provide assurances for the future growth of two-way investment.

The FTA will provide a secure, predictable legal framework for U.S. investors operating in Singapore. All forms of investment are protected under the Agreement. The Agreement guarantees U.S. investors treatment no less favorable than Singaporean investors or any other foreign investor, except in certain sectors that are specifically exempted. This so-called "negative list" approach is the most comprehensive way to protect the interests of U.S. investors in Singapore.

Among the rights afforded to U.S. investors under the Agreement are the right to make international transfers related to an investment, protections related to expropriation and due process that are consistent with U.S. law, and freedom from certain performance-related restrictions and requirements.

The investor protections are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to arbitral panels and arbitral hearings will be open to the public, and interested parties will have the opportunity to submit their views.

### **Intellectual Property Rights (IPR): Setting New High Standards**

The U.S.-Singapore FTA provides for a very high level of IPR protection, including state-of-the-art protections for trademarks and digital copyrights, as well as expanded protection for patents and undisclosed information. These are supported by tough penalties for piracy and counterfeiting, including procedures for seizure and destruction of counterfeit products, the equipment used to produce counterfeit products, and the establishment of statutory and actual damages for violations. Singapore will accede to international Internet treaties, extend the term of protection for copyrighted works, and maintain criminal penalties for circumvention of technology protection measures and for trade in counterfeit goods.

The rising global level of trade in counterfeit goods calls for strong provisions to combat such illegal trade. The FTA gives effect to the trademark law treaty and the joint recommendation on protection of well-known marks, ensuring that all trademarks can be registered in Singapore and

that licensees will no longer have to register their trademark licenses to assert their rights in a trademark. More specific information on the Agreement's IPR provisions is below.

**Trademarks:** The FTA ensures government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names. It applies the important principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase or geographical place-name. Furthermore, the FTA streamlines the trademark filing process by allowing applicants to use their own national patent/trademark offices for filing trademark applications.

**Copyrights:** The FTA contains provisions designed to ensure that only authors and other copyright owners have the right to make their works available online. Copyright owners maintain rights to temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet. The FTA provides that copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. And strong anti-circumvention provisions will help to limit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.

The FTA requires that governments only use legitimate computer software, thus setting a positive example for private users. Singapore agrees to prohibit the production of optical discs (CDs, DVDs or software) without a source identification code, unless the copyright holder authorizes (in writing) such production. And the agreement provides for protection for encrypted program-carrying satellite signals as well as the programming, thus preventing piracy of satellite television programming.

The FTA provides for limited liability for Internet Service Providers (ISPs), reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

**Patents & Undisclosed Information:** Under the provisions of the FTA, a patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The grounds for revoking a patent in Singapore are limited to the same grounds required to originally refuse a patent, thus protecting against arbitrary revocation. The FTA provides new protections for patents covering biotech plants and animals, and it protects against imports of pharmaceutical products without patent-holder's consent by allowing lawsuits when contracts are breached. Test data and other information submitted to a government for the purpose of product approval will be protected against disclosure or unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Finally, the FTA contains provisions designed to ensure that government marketing-

approval agencies will not grant approval to products that infringe patents.

**IPR Enforcement:** Singapore has agreed to establish criminal penalties for companies that make pirated copies from legitimate products, and the Singaporean government guarantees in the FTA that it has authority to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. Under the FTA, IPR laws will be enforced against traded goods, including trans-shipments, to deter violators from using U.S. or Singaporean ports or free-trade zones to traffic in pirated products. Enforcement officials may act on their own authority in border and criminal IPR cases without waiting for the filing of a formal complaint, thus providing more effective enforcement.

The agreement mandates both statutory and actual damages under Singaporean law for IPR violations. This serves as a deterrent against piracy, and provides that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.

### **Competition Policy: Protection Against Anticompetitive Business Conduct, Designated Monopolies and Government Enterprises**

The FTA contains provisions to protect U.S. firms against possible anti-competitive behavior. Singapore commits to enact laws proscribing anti-competitive conduct and to create a competition authority commission by January 2005.

Especially important in the case of Singapore is the commitment that Government-Linked-Corporations (GLC's) will operate on a commercial and nondiscriminatory basis. As GLC's account for a significant percentage of Singapore's economic activity, it was important for the U.S. to secure this non-discrimination commitment, and to back it up through dispute settlement provisions. Singapore also agrees to provide annual information on government enterprises with substantial revenues or assets.

### **Government Procurement: Strong Disciplines**

Both Singapore and the United States are members of the WTO Agreement on Government Procurement, but the U.S.-Singapore FTA goes beyond existing WTO obligations. For example, the FTA lowers the monetary thresholds for coverage under government procurement commitments, thereby increasing the number of contracts on which U.S. firms may bid in a manner that is covered by transparent procurement disciplines. In addition, under the FTA Singapore broadens its commitments to non-discrimination in government services procurement and reinforces its WTO commitments to strong and transparent disciplines on procurement procedures.

As in the services and investment provisions of the Agreement, the government procurement chapter uses a "negative list" approach in which U.S. firms gain nondiscriminatory access unless a sector is specifically excluded in the Agreement.

### **Customs Procedures and Rules of Origin: Ground-Breaking Provisions**

The U.S.-Singapore FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be applied. Specifically, the Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. The Agreement also seeks to facilitate the clearance of express delivery shipments through customs.

Under the FTA, both Parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments. Strong but simple rules of origin will ensure that only U.S. and Singaporean goods benefit from the Agreement.

### **Temporary Entry of Personnel**

The Agreement contains provisions for the temporary entry of business visitors, including intra-company transferees and professionals. The Administration believes that the temporary entry provisions strike a careful balance between the needs of the U.S. service industry to provide competitive services while preserving the right of Congress to legislate on immigration policy. Under these provisions, a professional visa category would be established.

### **Environmental Provisions: Cooperation to Protect the Environment**

The FTA fully meets the environmental objectives set out by Congress in TPA. Significantly, environmental obligations are part of the core text of the trade agreement. Both parties commit to ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. The agreement's text makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment. A related agreement on environmental cooperation will enhance demand for environmental goods and services.

Reflecting the bipartisan compromise struck in the Trade Act, the FTA requires that Parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

### **Labor Provisions: Promotion of Worker Rights**

Significantly, labor obligations are part of the core text of the trade agreement. Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles. The Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the Agreement requires that Parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

### **Dispute Settlement: Innovative New Tools**

All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement. The procedures for dispute panel procedures set new and higher standards of openness and transparency, reflecting the guidance from the Congress in the Trade Act. For example, the Agreement envisions that dispute settlement proceedings will be open to the public, that legal submissions by parties to a dispute will be released to the public, and that interested third parties will have the ability to submit their views to dispute settlement panels.

Dispute settlement procedures in the FTA promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The FTA dispute settlement procedures also provide for "equivalent" remedies for commercial and labor/environmental disputes. The FTA does this through an innovative new enforcement mechanism that involves the use of monetary assessments to enforce commercial, labor, and environmental obligations of the trade agreement. Suspension of preferential tariff benefits under the Agreement is also available for all disputes, but the mechanism is designed in all cases to seek remedies that will enhance compliance with the obligations of the Agreement, rather than restricting trade and harming "innocent bystanders."

## **SUMMARY OF THE U.S. - CHILE FTA**

### **Market Access for Goods**

More than 87% of U.S.-Chilean bilateral trade in consumer and industrial products would become duty-free immediately upon entry into force of the Agreement, with most remaining tariffs eliminated within four years. Key U.S. export sectors would gain immediate duty-free access to Chile, such as agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. Chile's "luxury tax" on automobiles will be phased out over 4 years. In the meantime, the number of vehicles to which this tax applies will be sharply reduced as soon as the Agreement takes effect.

Textiles and apparel will be duty-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Chilean fiber, yarn, fabric and apparel manufacturing industries. A limited yearly amount of textiles and apparel containing non-U.S. or non-Chilean yarns, fibers or fabrics may also qualify for duty-free treatment.

Our key concern was to level the playing field to ensure that U.S. access to Chile would be as good as that of the EU or Canada, both of which have FTAs with Chile. Immediately following the ratification of the EU-Chile FTA, the EU saw a 27% increase in trade with Chile. Through the US-Chile agreement we ensure that U.S. firms will not be left behind.

### **Expanded Markets for U.S. Farmers and Ranchers**

More than three-quarters of U.S. farm goods will enter Chile duty-free within 4 years, and all duties on U.S. products will be phased out over 12 years. Key U.S. farm products will benefit from improved market access, including pork and pork products, beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and processed food products such as pasta, distilled spirits, and breakfast cereals. Tariffs on U.S. and Chilean wines will first be equalized at low U.S. rates and then eliminated.

U.S. farmers will have access to Chile that is as good as or better than the European Union or Canada, both of which already have FTAs with Chile. Chilean price bands, under which import duties on the same product may vary according to price level, will be phased out. During the phase out, producers of these products will be treated as good as or better than their competitors with other countries. Elimination of price bands was not part of the EU or Canada FTAs with Chile. The Agreement eliminates the use of export subsidies on U.S.-Chilean farm trade, but preserves the right to respond if third countries use export subsidies to displace U.S. products in the Chilean market. An agricultural safeguard provision will help protect U.S. farmers and ranchers from sudden surges in imports from Chile.

Both parties to the Agreement renew their commitment to continue the work on resolving important sanitary and phytosanitary issues, such as meat and dairy inspection and meat grading, that are inhibiting access to consumers in both markets.

## Access to a Fast-Growing Chilean Services Market

The commitments of the Agreement in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local services presence.

Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

Chile will accord substantial market access across its entire services regime, subject to very few exceptions, a so-called “negative list” approach. This establishes market access commitments across a wide range of sectors of interest to the United States, including but not limited to: Computer and related services; telecommunications services; audiovisual services; construction and engineering; tourism; advertising; express delivery; professional services (architects, engineers, accountants, etc.); distribution services (wholesaling, retailing and franchising); adult education and training services; and environmental services. The express delivery commitment includes an important and expansive definition of the integrated nature of express services, and affirms existing competitive opportunities.

Some of the key services commitments are spelled out in more detail below:

**Financial Services:** This chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. U.S. insurance firms would gain full rights to establish subsidiaries or joint ventures for all insurance sectors (life, non-life, reinsurance, brokerage) with limited exceptions. Chile has committed to phase in insurance branching rights. Chile further has committed to modify its legislation to allow cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance, and has confirmed existing rights for reinsurance. A new principle of expedited availability of insurance services means that the parties recognize the importance of developing and maintaining regulatory procedures to expedite the offering of insurance services by licensed suppliers.

U.S. banks and securities firms may establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances, and U.S. financial institutions may offer financial services to citizens participating in Chile’s highly successful privatized voluntary savings plans. U.S. firms also gain some increased ability to offer such products through Chile’s mandatory social security system. Chile also will allow U.S.-based firms to offer services cross-border to Chileans in areas such as financial information and data processing, and financial advisory services with a limited exception. Chilean mutual funds may use foreign-based portfolio managers.

**Telecommunications:** Under the Agreement, users of the public telecommunications network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or “first right” of access to telecommunications networks. The FTA also provides U.S. phone companies with the right to interconnect with networks in Chile at non-discriminatory, cost-based rates. U.S. firms seeking to build a physical network in Chile are also granted non-discriminatory access to facilities, such as telephone switches and submarine cable landing stations. And U.S. firms will be able to lease lines on Chilean telecom networks on non-discriminatory terms, and to re-sell telecom services of Chilean suppliers to build a customer base.

### **Electronic Commerce: Free Trade in the Digital Age**

The Electronic Commerce text in the FTA identifies Chile as a leader in Latin America for the further development of digital trade, as both countries agreed to provisions on electronic commerce that reflect the issue's importance in global trade.

In the FTA, Chile and the United States committed to non-discriminatory treatment of digital products, agreed not to impose customs duties on such products, and affirmed that commitments made related to services also extend to the electronic delivery of such services. For digital products delivered on hard media (e.g., a DVD or CD), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc. Finally, both countries agreed to cooperate in numerous policy areas related to electronic commerce, including on the maintenance of cross-border flows of information.

### **Investment: Important Protections for U.S. Investors**

The Agreement will establish a secure, predictable legal framework for U.S. investors operating in Chile, and is consistent with the objectives regarding investor-state dispute settlement contained in the Trade Act of 2002. All forms of U.S. investment in Chile are protected under the Agreement, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors enjoy in almost all circumstances the right to establish, acquire, and operate investments in Chile on an equal footing with Chilean investors, and with investors of other countries. The Agreement prohibits and removes certain restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs.

Pursuant to U.S. Trade Promotion Authority, the Agreement draws from U.S. legal principles and practices, to provide U.S. investors a basic set of substantive protections that Chilean investors currently enjoy under the U.S. legal system. Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive a fair market value for property in the event of expropriation. These investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.



## **Intellectual Property Rights (IPR): Expanded Protections and Enforcement**

Protection of copyrights, patents, trademarks, and undisclosed trade information in the U.S.-Chile FTA is state-of-the-art, with protections that go beyond previous U.S. free-trade agreements. Enforcement of intellectual property rights is also enhanced under the Agreement. Some specific aspects of the Agreement's protections for IPR are listed below.

**Trademarks:** The Agreement contains language to ensure that there is government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names. The trademark section of the Agreement also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase, or geographical place-name.

**Copyrights:** The Agreement's copyright language will ensure that only authors and other copyright owners have the right to make their works available online. Copyright owners maintain all rights to even temporary copies of their works on computers, which is important in protecting music, videos, software, and text from widespread unauthorized sharing via the Internet. Under the Agreement, copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. Strong anti-circumvention provisions prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet. The FTA also provides that governments will only use legitimate computer software, thus setting a positive example for private users.

**Patents and Trade Information:** The Agreement provides that a patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The FTA specifies that grounds for revoking a patent are limited to the same grounds required to originally refuse a patent, which helps to protect against arbitrary revocation. And test data and other information submitted to a government for the purpose of product approval will be protected against disclosure or unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Finally, the IPR provisions ensure that government marketing-approval agencies will not grant approval to products that infringe patents.

**IPR Enforcement:** The FTA contains commitments that party governments will criminalize end-user piracy, thus providing a strong deterrence against piracy and counterfeiting. The Chilean government guarantees that it has authority to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. The Agreement specifies that IPR laws will be enforced against goods-in-transit, to deter violators from using U.S. or Chilean ports or free-trade zones to traffic in pirated products. Enforcement officials may act on their own authority in border and criminal IPR cases without waiting for the filing of a formal complaint, thus providing more

effective enforcement. Finally, the Agreement mandates both statutory and actual damages under Chilean law for IPR violations. This will serve as a deterrent against piracy, and provide that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.

### **Competition Policy: Protections Against Anticompetitive Behavior**

The U.S.-Chile FTA commits Chile to maintain competition laws that prohibit anti-competitive business conduct, and a competition agency to enforce those laws. The Chilean laws already promote economic efficiency and consumer welfare, making clear the appropriate objective of competition laws.

The Agreement also requires that Chile control state enterprises and officially designated monopolies so that such firms do not abuse their official status to harm the interests of U.S. companies or discriminate in the sale of goods or services.

### **Government Procurement: Setting a Precedent for the Hemisphere**

The FTA requires that covered Chilean ministries, as well as regional and municipal governments, not discriminate against U.S. firms, or in favor of Chilean firms, when making government purchases in excess of agreed monetary thresholds. It furthermore imposes strong and transparent disciplines on government procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures.

The FTA covers the purchases of most Chilean central government agencies, and covers 13 regional governments, 10 ports and all airports that are property of the state or dependents of the Dirección de Aeronáutica Civil, and more than 350 municipalities in Chile.

Importantly, the FTA ensures that bribery in government procurement is specified as a criminal offense under Chilean and U.S. laws. This furthers the anti-corruption goals set out by hemispheric leaders at the Summit of the Americas in Quebec City in 2001.

### **Ground-Breaking Customs Procedures**

The U.S.-Chile FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be applied. The Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments.

Strong but simple rules of origin will ensure that only U.S. and Chilean goods benefit from the Agreement. The rules are specific to individual products, but are designed to be easier to

administer than NAFTA rules of origin.

### **Temporary Entry of Personnel**

The Agreement contains provisions for the temporary entry of business visitors, including intra-company transferees and professionals. The Administration believes that the temporary entry provisions strike a careful balance between the needs of the U.S. service industry to provide competitive services while preserving the right of Congress to legislate on immigration policy. Under these provisions, a professional visa category would be established.

### **Environmental Provisions: Cooperation to Protect the Environment**

The FTA fully meets the environmental objectives set out by Congress in the Trade Act of 2002. Significantly, environmental obligations are part of the core text of the Trade Agreement. Both parties commit to ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. The Agreement's text makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the FTA requires that Parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

In addition, the Agreement contains an annex identifying a number of important cooperative projects that will promote environmental protection. Projects include:

- Building capacity for wildlife protection and resource management in Latin America through collaboration with wildlife managers, universities, and local communities.
- A project to develop and implement effective alternatives to methyl bromide, a chemical that Chile and the United States have committed to phase out under international environmental agreements.
- Development of a Pollutant Release and Transfer Register (PRTR) in Chile, similar to the successful Toxic Release Inventory in the United States. The PRTR is a publicly available database of chemicals that have been released by industrial facilities into the environment.

### **Labor Provisions: Promotion of Worker Rights**

Significantly, labor obligations are part of the core text of the Trade Agreement. Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles. The Agreement makes clear that it is inappropriate to

weaken or reduce domestic labor protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the Agreement requires that Parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

The Agreement also contains a cooperative labor mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Cooperative activities may include:

- Discussions of legislation, practice, and implementation of the core elements of the ILO Declaration on Fundamental Principles and Rights at Work.
- Improving systems for the administration and enforcement of labor laws.

### **Dispute Settlement: Innovative New Tools**

All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement. The procedures for dispute panel procedures set new and higher standards of openness and transparency, reflecting the guidance from Congress in the Trade Act. For example, the Agreement provides that dispute settlement proceedings will be open to the public, that legal submissions by parties to a dispute will be released to the public, and that interested third parties will have an opportunity to submit their views to dispute settlement panels.

Dispute settlement procedures in the FTA promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The FTA dispute settlement procedures also provide for "equivalent" remedies for commercial and labor/environmental disputes. The FTA achieves this through an innovative new enforcement mechanism that involves the use of monetary assessments to enforce commercial, labor, and environmental obligations of the Trade Agreement. Suspension of preferential tariff benefits under the Agreement is also available for all disputes, but the mechanism is designed in all cases to seek remedies that will enhance compliance with the obligations of the Agreement, rather than restricting trade and harming "innocent bystanders."