

ANNEX 3

STATEMENTS ON HOW EACH FTA THAT HAS BEEN CONCLUDED MAKES PROGRESS IN ACHIEVING THE APPLICABLE PURPOSES, POLICIES, AND OBJECTIVES OF TPA

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

A. INTRODUCTION

The United States-Australia Free Trade Agreement (FTA or Agreement) 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 United States-Australia FTA is the first bilateral free trade agreement concluded by the United States with a developed country since the U.S.-Canada FTA in 1988. Tariffs on almost all manufactured goods originating in the United States and Australia and on all U.S. agricultural exports to Australia will be eliminated as soon as the Agreement enters into force. The Agreement addresses duty treatment for imports of sensitive products into the United States through transition periods, use of tariff-rate quotas (TRQs), and continued application of current duty rates and quotas for sugar and some dairy products. Under the FTA, Australia will substantially reduce barriers to bilateral trade in services and investment. The Agreement also includes state-of-the-art provisions in such key chapters as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The United States-Australia FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic ties with a long-time strategic ally.

The United States-Australia 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 the FTA and enact the legislation needed to implement the Agreement.

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 United States-Australia FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

On the day the FTA enters into effect, tariffs will be eliminated on virtually all of the tariff lines covering U.S. manufactured goods exports to Australia. Australia's tariffs on these products now average at 4.3 percent, and tariffs on some products of export interest to U.S. firms are as high as 15 percent. Australia will also eliminate tariffs on all U.S. agricultural exports immediately upon entry into force of the Agreement. The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance and other financial services. Australia has also agreed to restrict its review of U.S. investment in Australia, thus eliminating an element of uncertainty in that market.

The U.S.-Australia FTA opens Australia's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Australia is not a signatory of the World Trade Organization (WTO) Agreement on Government Procurement, this represents a major benefit of the Agreement.

As a developed country market with familiar business norms and a common language, Australia presents fewer hurdles for U.S. small and medium sized enterprises (SME) considering entry into the global market. Australia's sophistication and stable political and legal foundations reduce the risks to SMEs. Exports from U.S. SMEs to Australia increased by nearly \$1 billion, or 65 percent between 1992 and 2001. Elimination of tariff and non-tariff measures through the FTA should increase the attractiveness of this market for SMEs.

2. Stronger International Trade Disciplines

The FTA includes innovative commitments to promote 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. The FTA prohibits tariffs when digital products are delivered over the Internet. The U.S.-Australia FTA is the first to include provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration.

The FTA recognizes that workers and firms can fully realize the agreement's market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights (IPR) that clarify and build on those in the WTO TRIPS agreement and implement the more recent World Intellectual Property Organization (WIPO) treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules for protecting IPR.

The Agreement also includes provisions on addressing anticompetitive behavior by firms, cooperation on consumer protection and recognition of judgments providing monetary restitution

to consumers, investors, or customers who have suffered economic harm as a result of being deceived, defrauded, or misled. The FTA includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. The Agreement also 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 (Michigan model) to estimate certain economic effects of various free trade agreements, the FTA will boost annual global welfare by \$23.1 billion when fully implemented. In absolute terms, a major share of this positive welfare effect will be enjoyed by the United States (\$19.4 billion, or 0.2 percent of GNP). Australia's annual welfare will increase by \$5.4 billion (1.1 percent 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 group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of 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.-Australia FTA includes meaningful commitments by each Party labor and environmental protection.

Both Parties 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 Party 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 Australia 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 Party 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 that the Parties not fail to effectively enforce domestic environmental laws, while recognizing each Party'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 Party 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. Australia has been a strong partner on environmental issues. The FTA recognizes and builds on our shared commitment to strong environmental protections.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

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

1. Opening Markets for U.S. Goods

The United States has a significant surplus in its trade in goods and services with Australia. Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for improved access to Australia’s market. For example, in addition to cutting tariffs on agricultural goods, the United States and Australia will work together on sanitary and phytosanitary (SPS) matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal or plant life or health. To that end, they have created an SPS Committee and a standing technical working group to address SPS issues. Australia and the United States will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (TBT) that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

Australia is a major consumer of U.S. services and the FTA creates new market opportunities in Australia for a range of key U.S. services and will lock in access in sectors where Australia’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 subject to the Agreement’s rules unless a Party has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Australia’s services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. For many service providers, Australia will end investment screening for new investments and permit life insurance companies to establish branches. 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.

Under the FTA, Australia will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that ensures that market access restrictions that Australia includes for its postal sector do not pertain to express delivery services. The FTA also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

The FTA commits Australia 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 Australia. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Australia on the same basis as Australian investors or other foreign investors – across the full spectrum of economic activity.

Under the Agreement, Australia 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 Agreement 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 Australian investors a high level of protection and due process, it gives Australia firms no greater substantive rights than U.S. companies already enjoy in the United States.

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

In light of the unique circumstances of the Australian legal system, the FTA does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Among other things, Australia has an open economic environment and a legal system similar to that of the United States, U.S. investors have confidence in the fairness and integrity of Australia’s legal system, and the United States has a long history of close

commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions. There are few other countries in the world that are in similar circumstances. If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving the dispute.

4. Intellectual Property

The U.S.-Australia 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 Australia 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 Australia to accede to international Internet treaties and extend its term of protection for copyrighted 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, Australia 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, images, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two Parties 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 Australia to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Australia 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 granting regulatory approval for marketing the patented product. The FTA provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. The FTA will also require Australia 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 regulatory approval for their patented products. Under the Agreement, Australia 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 the equipment used to produce these products. The FTA also commits Australia to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect

to pirated goods, the equipment used to produce them. Australia 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.

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 Australia 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, competition, government procurement, customs administration, investment, telecommunications, 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 government corruption in international trade. Under the FTA, the United States and Australia affirm their commitments to adopt, maintain, and enforce effective measures against bribery and corruption in international business transactions. The Agreement also provides for the two Parties to cooperate on these issues and to look for ways to address issues of bribery and corruption through broader international initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all chapters including those on telecommunications, cross-border trade in services, government procurement, technical barriers to trade, SPS, and customs administration. In addition, the Agreement includes commitments on transparency, right of appeal of administrative decisions, and access to information. Chapter Fourteen deals with proscribing anticompetitive practices. Under the Agreement, Americans will have better opportunities to provide their views to Australia's regulators, either directly or under the various government-to-government consultation provisions and bodies established for ongoing cooperation and further work. This is the first FTA to include provisions supporting the mutual recognition and enforcement of monetary judgments obtained by the Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Australia's Securities and Investments Commission and Competition and Consumer Commission to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

The U.S.-Australia FTA is also our first FTA to directly address issues related to regulatory control of prices for pharmaceutical products. Under the FTA, Australia and the United States affirm their commitment to several basic principles related to their shared objective of facilitating high quality health care and improvements in public health. Each

country will ensure that if its federal health care authorities do not rely on competitive market-based mechanisms, such authorities maintain more prompt and transparent procedures for listing pharmaceutical products for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under their respective federal healthcare programs. Government procurement of pharmaceutical products, which includes formulary development and management, is dealt with under Chapter Fifteen (Government Procurement) rather than under the pharmaceutical-specific provisions of the Agreement.

Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under that country's Pharmaceutical Benefits Scheme (PBS), including access to an independent review process for listing decisions. Companies will also be provided further opportunities to consult with officials during the PBS process.

7. Electronic Commerce

The FTA includes rules prohibiting duties on and discrimination against digital products, e.g., computer programs, video, images, and sound recordings. The Agreement creates a strong foundation for wider regional and multilateral efforts to bar duties and discriminatory treatment of digital products. The FTA also includes provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration.

8. Trade in Agricultural Products

The FTA includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods and safeguards for producers of import sensitive agricultural products. In addition, the United States and Australia have agreed to work together in WTO agriculture negotiations to: (1) substantially improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) develop disciplines eliminating state trading enterprises' monopoly export rights; and (4) substantially reduce trade-distorting domestic support.

Under the FTA, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third-country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

The FTA includes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. The Agreement contains three distinct safeguard mechanisms: (1) a price-based safeguard for certain horticultural goods; (2) a quantity-based safeguard for certain beef goods (available in years 9 through 18 of the Agreement); and (3) a price-based safeguard for certain beef goods (available starting in year 19 of the Agreement).

9. Labor Rights and Environmental Protection

Under the Agreement, Australia 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 principles and 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 principles and rights as an encouragement for trade or investment with the other party. 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 that it will not fail to effectively enforce domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. It also commits Australia and the United States to cooperate on labor issues and activities.

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 that it will not fail to effectively enforce domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement also commits Australia 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, Australia 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 those laws in order to seek investment or encourage trade with the other country. In addition, the United States and Australia agree to establish, pursuant to a "joint statement on environmental cooperation" negotiated in parallel with the FTA, a mechanism for collaborating on environmental issues of mutual interest.

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the two Parties over the implementation of the Agreement. The Agreement's dispute procedures rely principally on consultations and compliance rather than imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two Parties 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 enforcement mechanism that provides for the use of monetary assessments. That mechanism also allows a prevailing Party to suspend tariff benefits under the Agreement if a losing Party fails to pay such

an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. 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. This FTA is the only to provide for provisional relief in the context of a textile safeguard action.

The FTA does not affect U.S. rights to take safeguard actions under section 201, which implements the WTO Safeguards Agreement and GATT 1994. Under the FTA, the President may, but is not required to, exempt imports of goods from Australia, from a WTO Safeguard measure, if such goods are not a substantial cause of serious injury or threat thereof.

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 U.S.-Australia FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Australia 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 Australian labor laws and how their respective systems operate. The two Parties will continue to consult and work together 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*. Officials of the U.S. Department of Labor and Australia's Ministry of Work Place Relations and other appropriate agencies will participate in these consultations and future cooperation.

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 services to ensure that the United States remains 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 very important concerns for both the United States and Australia. 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 Australia 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 agreement 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

Section 2102(c)(12) of the TPA states that "In order to address and maintain United States competitiveness in the global economy, the President shall seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Investment, Cross Border Trade in Services and Financial Services chapters of the United States—Australia Free Trade Agreement promote and protect the 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.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, 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 currency 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 IMF 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 will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis 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 be manipulated in the sense of 2102(c)(12) 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 Australia'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 Australia, 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 Australia's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.

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

A. INTRODUCTION

The United States-Singapore 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 United States-Singapore FTA is the first U.S. free trade agreement with an Asian country. In addition to eliminating tariffs on all trade in goods between the United States and Singapore, the agreement will substantially reduce barriers to bilateral trade in services and investment, and includes state-of-the-art provisions addressing such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

Along with the recently signed free trade agreement with Chile, the Singapore FTA is one of the most far-reaching trade and investment agreements the United States has ever concluded. A variety of the agreement’s provisions will serve as useful benchmarks for future free trade agreements with other advanced economies in the Asia-Pacific region. The FTA forms an integral part of the Administration’s larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives.

The United States-Singapore 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 the FTA and enact the legislation needed to implement the agreement.

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.-Singapore FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

As soon as the agreement takes effect, Singapore will lock-in zero duty rates across the broad sweep of products that the United States currently exports to Singapore. In the absence of the FTA, Singapore would remain free under World Trade Organization (WTO) rules to impose substantial duties on many of these imports. 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 Singaporean fiber, yarn, fabric, and apparel manufacturing industries.

The agreement's ground-breaking provisions on customs procedures will particularly benefit small businesses. The FTA will facilitate customs processing, which will benefit the many small- and mid-sized U.S. companies that incur significant additional costs due to inefficient customs procedures. Under the agreement, Singapore will provide for administrative and judicial review of customs decisions, employ risk-management systems to facilitate the movement of low-risk goods, and release goods from customs within a period no greater than that required to ensure compliance with its customs laws. Whenever possible, Singapore will release goods within 48 hours of arrival. In addition, Singapore will seek to make all new and amended customs regulations available for public comment before they are promulgated. These commitments will facilitate bilateral trade and ensure the highest possible degree of transparency, with particular benefits for smaller U.S. exporters.

The FTA reflects a substantial advance beyond Singapore's commitments on services trade under the WTO General Agreement on Trade in Services. The agreement guarantees U.S. firms enhanced access to key services markets in Singapore, particularly in the financial services, express delivery, and professional services sectors, and locks in current open access in other key services markets such as telecommunications.

2. Stronger International Trade Disciplines

The FTA establishes innovative, 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 Singapore 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 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 proceed from those currently in place through other agreements. Thus, the agreement sets out new rules on intellectual property rights (IPR) that clarify and build on those in the WTO TRIPS agreement to strengthen enforcement and enhance rules for protecting IPR.

The agreement also establishes ground-breaking rules for addressing discriminatory and anticompetitive behavior by firms that are subject to government influence and includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. The agreement also 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.-Singapore FTA will boost annual global welfare by \$25.1 billion when fully implemented. In absolute terms, most of this positive welfare effect will be enjoyed by the United States (\$17.5 billion, or 0.19 percent of GNP). Singapore's annual welfare will increase by \$2.5 billion (3.4 percent 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 not all the expected effects of the agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the agreement 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.-Singapore 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 Singapore 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 establishes a variety of “principal trade negotiating objectives.” The U.S.-Singapore FTA makes substantial progress toward each of the applicable principal goals set out in the act.

1. Opening Markets for U.S. Goods

Although the United States and Singapore generally have a strong bilateral relationship in trade in goods, U.S. exporters will enjoy increased market opportunities and greater certainty under the FTA regarding the terms for continued access to Singapore’s vibrant market. While the great bulk of U.S. products currently enter Singapore duty-free, the agreement will immediately lock those zero duties in place. The agreement also commits Singapore to eliminate all its existing tariffs on U.S. products (including on beer and other alcohol beverages).

The agreement also calls for Singapore and the United States to increase cooperation on 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

Singapore is a major consumer of U.S. services and the FTA will reduce barriers and create new market opportunities in Singapore for a range of key U.S. services and will lock in access in sectors where Singapore’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 subject to the agreement’s rules unless a government has negotiated a specific exemption in that sector.

The agreement will either open or lock in existing significant access to Singapore’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, 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.

As a result of the agreement, Singapore will open its market to U.S. firms in a variety of key services sectors where access is currently limited. In the financial services sector, for example, Singapore has traditionally limited the number of foreign banks that can enter Singapore's domestic (as opposed to off-shore) banking sector. Eighteen months after the FTA takes effect, Singapore will lift its ban on new licenses for U.S.-owned full-service banks to operate in Singapore. Singapore will remove its ban on licenses for U.S. banks that provide only "wholesale" (*i.e.*, large-scale) operations within three years. Once the FTA takes effect, U.S. full-service banks will have authority to open 30 "customer service locations" (branch offices or ATM locations) in Singapore, double the number currently allowed. The FTA will require Singapore to entirely eliminate its cap on customer service locations for qualifying U.S. banks in two years.

In addition, locally incorporated, full service U.S. banks will have authority to negotiate access to Singapore's locally-owned ATM networks within 2-1/2 years after the agreement takes effect. All other full-service U.S. banks will have similar rights after four years. This provision of the FTA will allow qualifying U.S. banks to negotiate contracts with local ATM network owners, which could enable their banking customers to use hundreds of existing ATMs in Singapore. Currently, foreign-owned banks are precluded from participating in Singapore's locally-owned ATM networks.

The FTA will also ensure that when U.S. investment firms establish mutual funds in Singapore they can use personnel based in the United States to manage the securities included in those funds. The FTA also commits Singapore to relax its local staffing rules for U.S. asset management and insurance companies that seek to market their investment products under Singapore's mandatory national savings scheme, the Central Provident Fund.

The FTA locks in Singapore's generally open regime for insurance that U.S. firms provide to customers in Singapore through subsidiary or branch offices located there, including life and non-life insurance, reinsurance, insurance intermediation, and insurance auxiliary services. The FTA will provide significant new rights that will allow U.S. insurance companies to provide from the United States to customers in Singapore marine, aviation, and transport insurance ("MAT insurance"), intermediation of reinsurance and MAT insurance, and insurance auxiliary services. The agreement also ensures that U.S. firms will continue to be able to provide Singapore customers reinsurance services from the United States. The FTA also includes an innovative provision that will allow licensed U.S. insurers to provide new insurance products to their business customers in Singapore without prior regulatory approval.

In the professional services sector, U.S. engineering and architecture firms seeking to establish offices in Singapore will benefit from Singapore's commitment to require that only 51% the directors of these firms must be professionally accredited in Singapore. Currently, two-thirds of board members must be accredited there. The FTA will require Singapore to entirely eliminate local ownership requirements for U.S. land surveying firms by 2004. The FTA will also require Singapore to ease restrictions on U.S. law firms that seek to form joint law practices in Singapore, and to recognize degrees earned from certain U.S. law schools for admission to the Singapore bar.

The FTA guarantees continued, unimpeded access to Singapore's telecommunications market virtually across-the-board to U.S. telecom companies. Under the WTO, Singapore has committed to allow only three foreign telecom providers to participate in just a few of its telecom markets. By contrast, the FTA ensures that all U.S. telecom companies will continue to be free to enter any telecom sector in Singapore, whether by acquiring or building local facilities, linking its U.S. network with a network in Singapore, or leasing lines from firms in Singapore. The FTA commits Singapore'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.

Under the FTA, Singapore will also afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that ensures that market access restrictions that Singapore includes for its postal sector do not pertain to express delivery services. Representing a further innovation, the agreement requires Singapore to prohibit its postal authority from subsidizing its “express letter” service to give it an unfair commercial advantage in express delivery services.

3. Foreign Investment

The FTA commits Singapore 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 Singapore. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Singapore on the same basis as Singaporean investors or other foreign investors – across the full spectrum of economic activity.

Under the agreement, Singapore 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 Singapore investors a high level of protection and due

process, the agreement gives Singapore firms no greater substantive rights than U.S. companies already enjoy in the United States.

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

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.-Singapore 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 Singapore 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 Singapore to accede to international Internet treaties and extend its term of protection for copyrighted 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, Singapore 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. The FTA will also require Singapore to prohibit, in the absence of the copyright holder's written request, the production of optical discs (CDs, DVDs, and CD-ROMs) that do not contain a source identification code. To prevent piracy of satellite television broadcasts, the agreement will also require Singapore to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Singapore 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 granting regulatory approval for marketing the patented product. The agreement requires Singapore to enable patent owners to prevent unauthorized imports of their

patented pharmaceutical products if a contract is breached. The FTA will also require Singapore 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 regulatory approval for their patented products. Under the agreement, Singapore 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, the equipment used to produce these products, and a requirement to provide for statutory and actual damages to remedy such practices. The FTA also commits Singapore to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Singapore 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, Singapore 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 Singapore 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, competition, government procurement, customs administration, investment, telecommunications, 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 government corruption in international trade. Under the FTA, the United States and Singapore affirm their commitments to adopt, maintain, and enforce effective measures against bribery and corruption in international business transactions. The agreement also provides for the two governments to cooperate on these issues and to look for ways to address issues of bribery and corruption through broader international initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the agreement's market-opening provisions. The FTA includes disciplines designed to prevent the possibility that firms in Singapore might fraudulently seek preferential tariff treatment under the agreement for textile products or apparel that do not qualify for this treatment under the FTA's origin rules. To address this possibility, the FTA includes rules requiring Singapore to monitor textiles and

apparel production, and includes anti-circumvention commitments by Singapore in customs cooperation and enforcement. The FTA will require Singapore to penalize companies that engage in circumvention and report them to U.S. authorities. The agreement contemplates that U.S. customs officials may visit production facilities in Singapore and bar imports of textile and apparel goods from factories it finds to be circumventing the agreement's origin rules.

The FTA also addresses the issue of government regulation or other government actions that could provide a competitive advantage to domestic enterprises, and specifically to government-influenced enterprises. The government still plays a far-reaching role in Singapore's economy through investments in state-owned enterprises, known in Singapore as government-linked companies ("GLCs"). The FTA commits Singapore gradually to divest its interest in most GLCs, as market conditions permit. The FTA also offers protection for U.S. firms in their sales to, and purchases from, these companies. In particular, the FTA requires GLCs subject to "effective influence" by Singapore authorities to base their purchase and sales decisions on normal business considerations, to provide non-discriminatory treatment to U.S. goods and firms, and to refrain from anticompetitive practices. The FTA also requires Singapore to enact legislation by January 2005 that will proscribe anticompetitive business conduct and establish an antitrust enforcement authority. These commitments will help guard against anticompetitive business conduct, particularly by government-linked firms, that could prevent U.S. exporters, investors, and service providers from fully realizing the new economic opportunities the FTA will create.

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 agreement calls for Singapore to base any customs duties 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. That commitment will set a useful precedent for the Asia-Pacific region.

8. Trade in Agricultural Products

Singapore has traditionally been an important market for U.S. agricultural products. The FTA locks in place Singapore's zero duty rates for U.S. farm products and includes trade-enhancing provisions on customs procedures and trade facilitation that will help ensure that the strong bilateral trade relationship in agriculture products will continue to grow.

9. Labor Rights and Environmental Protection

Under the agreement, Singapore 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 or investment with the other party. 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 agreement also commits Singapore and the United States to cooperate on labor issues and activities.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of FTA's environmental provisions is an enforceable commitment by each government regarding the effective enforcement of its environmental laws. The agreement also commits Singapore 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, Singapore 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 those laws in order to seek investment or encourage trade with the other country. In addition, the United States and Singapore will establish, pursuant to a "memorandum of intent" negotiated in parallel with the FTA, a mechanism for developing a joint environmental work plan.

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 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 does not address antidumping or countervailing duty issues. 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-Singapore FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Singapore 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 Singaporean 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 Singapore's Ministry of Labor 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 services to ensure that the United States remains 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 Singapore. 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 Singapore 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 Singapore'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 Singapore, 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 Singapore's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.

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

A. INTRODUCTION

The United States-Morocco Free Trade Agreement (FTA or Agreement) 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.

Under the Agreement, customs duties on almost all non-textile industrial and consumer good exports originating in the United States and Morocco will be eliminated as soon as the Agreement enters into force. The Agreement covers all agricultural goods in both countries and, in some cases, provides new access to a market previously closed to U.S. exports. Certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). In addition, the FTA contains a provision that affords U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products any better access to its market that Morocco provides to any other of its trading partners, thereby giving U.S. exporters a new tool to compete with Europe and others in Morocco's market. Morocco also will substantially reduce barriers to bilateral trade in services and investment. The Agreement includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic and political ties with a long-time partner in North Africa.

The Agreement 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 the FTA and enact the legislation needed to implement the Agreement.

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 Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement will result in substantial market access across almost all economic sectors. For industrial (non-textile) products, tariffs will be eliminated immediately on more than 95 percent of bilateral trade between the United States and Morocco. Morocco's tariffs on these products now average 28 percent, and duties on some products of export interest to U.S. firms are as high as 50 percent. In addition, Morocco will eliminate tariffs on many U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of TRQs. Duties on all "originating" textile and apparel articles traded between the two countries will be eliminated either immediately or progressively under the Agreement, with special staging provisions for elimination of tariffs on some specific textile and apparel articles. All duties on textile and apparel articles will be eliminated after nine years.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Morocco's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Morocco is not a signatory of the World Trade Organization (WTO) Agreement on Government Procurement, Morocco's commitment to open its procurement market represents a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes cutting edge commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet.

The Agreement recognizes that workers and firms can fully realize its market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights (IPR) that clarify and build on those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and implement the more recent World Intellectual Property Organization (WIPO) treaties on protection of copyright and rights of performers and producers.

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

3. Economic Growth

In a recent report, the International Trade Commission (ITC) found that the FTA, when fully implemented, is likely to increase U.S. economic welfare by between \$111 million and \$132 million. In addition, the ITC report concluded that total U.S. exports will increase by some \$267 million, and total U.S. imports will increase by approximately \$238 million, as a result of the Agreement, with minimal effects on either employment or economic output. Furthermore, U.S. exports from Morocco are expected to rise by about \$740 million, and U.S. imports from Morocco are expected to rise by about \$199 million, under the FTA.

The ITC report, however, may significantly understate the economic benefits to be expected under the Agreement. That study does not consider either the economic benefits that will accrue to Morocco under the Agreement, or the additional benefits that will accrue to the United States as the result of further trade liberalization by Morocco, for example in its services and investment market.

According to an independent study using the Michigan model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual global welfare by \$7.5 billion when fully implemented. In absolute terms, a major share of this positive welfare effect will be enjoyed by the United States (\$6.0 billion, or 0.05 percent of GNP). Morocco's annual welfare will increase by \$0.9 billion (2.0 percent of GNP). However, the Michigan model assumes that all services barriers are removed in the United States, which is not the case. As a result, the study overestimates the welfare benefits for the United States by including the welfare benefits due to removing U.S. services barriers. On the other hand, formal models such as the Michigan model tend to underestimate the benefits of free trade agreements because their scope does not include assessment of the impact of rules changes such as improved IPR protection, because they group many industries and products into a limited number of categories for analysis, and because not all the expected effects of the Agreement are necessarily measured (*i.e.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of 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 United States-Morocco Free Trade Agreement includes meaningful commitments by each country on labor and environmental protection.

Both countries reaffirm through the Agreement their respective obligations as members of the International Labor Organization (ILO) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement commits each country 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 country. Moreover, while recognizing each country's right to establish its own labor laws; exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters; and allocate enforcement resources, the Agreement commits both Morocco 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 country to ensure that its laws provide for high levels of environmental protection and to strive to improve those laws. As is the case for labor law enforcement, the FTA contains a binding commitment that each country not fail to effectively enforce its domestic environmental laws, while recognizing each country'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 country 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. Finally, the two countries agree to cooperate on an ongoing basis regarding environment matters and to consider establishing further consultative mechanisms to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to Morocco's market. For example, in addition to eliminating tariffs on agricultural goods, the United States and Morocco affirm their existing rights and obligations under the WTO relating to sanitary and phytosanitary (SPS) matters and their desire to create a forum through the Joint Committee on such matters. In addition, Morocco will accept export certificates from the Food Safety Inspection Service of the U.S. Department of Agriculture on U.S. exports of beef, poultry, and beef and poultry products, as the means for certifying compliance with Morocco's standards on hormones, antibiotics, and other residues. The United States and Morocco will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (TBT) that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The FTA will create new market opportunities in Morocco for a range of key U.S. services suppliers and will lock in access in sectors where Morocco'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 subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Morocco's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, 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.

Under the FTA, Morocco will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes a comprehensive definition of express delivery services that confirms that market access restrictions that Morocco includes for its postal sector do not pertain to express delivery services. The FTA also addresses the issue of Morocco's postal monopoly and precludes directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

The FTA builds on our Bilateral Investment Treaty (BIT) so that both countries provide a strong and predictable legal framework for investors. Under the Agreement, Morocco will permit direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Morocco. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Morocco on the same basis as Moroccan investors or other foreign investors, across the full spectrum of economic activity.

Under the Agreement, Morocco 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 Agreement thus makes explicit that the treatment required by this obligation is grounded in 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, non-discriminatory 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 Moroccan investors a high level of protection and due process, the Agreement gives Moroccan firms substantive rights that are consistent with those U.S. companies already enjoy in the United States.

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

The FTA provides a mechanism for U.S. or Moroccan investors to pursue claims against the other country. An investor may assert that the country has breached a substantive obligation under the investment chapter or that the country has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the two countries to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

4. Intellectual Property Rights

The 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 Morocco 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 Morocco to accede to certain international Internet treaties and to extend its term of protection for copyrighted 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, Morocco 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 countries 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 Morocco to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Morocco to make patent rights available, with certain exceptions, for inventions and provides for extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement requires Morocco to enable patent owners to prevent unauthorized imports of their patented pharmaceutical products if a contract is breached. The FTA will also require Morocco 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 regulatory approval for their patented products. Under the Agreement, Morocco will protect product information generated in connection with pharmaceutical and agricultural chemical product approvals for five and 10 years, respectively.

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, as well as the equipment used to produce these products. The FTA also commits Morocco to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Morocco must also authorize its enforcement officials to act 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 such illegal products.

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 provisions that will ensure that Morocco 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, government procurement, customs administration, investment, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The FTA contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain, in matters affecting international trade or investment, prohibitions against bribery of foreign officials and establish criminal penalties that take into account the gravity of offenses. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The two countries will also work jointly to encourage and support appropriate regional and multilateral initiatives to address bribery and corruption.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. Almost all chapters, including those on telecommunications, cross-border trade in services, government procurement, TBT, SPS, and customs administration, contain disciplines on regulatory matters. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the FTA, each country must apply the principles of most-favored-nation treatment and national treatment to trade in electronically transmitted digital products, such as computer programs, video, images, and sound recordings. The FTA will prohibit duties on digital products that are transmitted electronically and will limit duties that the two countries may impose on duties on digital products that are stored on a carrier medium, such as a compact disc, by requiring the duty to be based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The FTA includes several provisions designed to open Morocco's markets for U.S. agricultural products consistent with U.S. principal trade negotiating objectives. The Agreement requires the elimination of duties on agricultural products, but provides reasonable phase-out periods, TRQs, and safeguards for producers of import-sensitive agricultural products. The FTA also contains disciplines on the implementation and administration of TRQs for agricultural goods, as well as specific provisions relating to an import licensing program for high quality beef and a wheat auctioning system that would apply if Morocco uses these measures.

Under the FTA, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. In addition, Morocco and the United States will work together in the WTO negotiations on agriculture to develop an agreement on export state trading enterprises that, for example, eliminates restrictions on the right to export.

The Agreement also includes safeguard procedures to aid U.S. industries that are facing low-priced imports of certain agricultural goods. For the United States, such as canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice.

9. Labor Rights and Environmental Protection

Under the Agreement, Morocco and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their 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 for a Party 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 or investment with the other Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each country to not fail to effectively enforce its labor laws

through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. Finally, Morocco and the United States will cooperate on labor issues. Pursuant to a side letter, which is an integral part of the Agreement, the Parties have created a Subcommittee on Labor Affairs to oversee the operation of the labor chapter.

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 country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The Agreement also commits Morocco and the United States to ensure that their domestic laws provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Morocco 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 those laws in order to seek investment or encourage trade with the other country. Finally, Morocco and the United States will cooperate on environment issues. Pursuant to a side letter, which is an integral part of the Agreement, the Parties have created a Subcommittee on Environmental Affairs to oversee the operation of the environment chapter.

10. Dispute Settlement

The FTA includes procedures for settling disputes that may arise between the Parties over the implementation of the Agreement. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two countries to release their legal briefs and other filings to the public, and for dispute settlement panels to have authority to receive submissions from interested non-governmental 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 enforcement mechanism that provides for the use of monetary assessments. That mechanism allows a prevailing country to suspend tariff benefits under the Agreement if the losing country fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Finally, dispute settlement is available under the Agreement for labor or environmental disputes relating to a country's effective enforcement of its labor or environmental laws. If a panel determines that a country has not met its enforcement obligations and the two countries cannot agree on how to resolve the dispute, or the complaining country believes that the defending country has failed to implement an agreed resolution, the complaining country may

ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending country. The panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending country fails to pay an assessment, the complaining country may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, again while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. 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, which 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. The FTA does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, as amended, which implements the WTO Safeguards Agreement and General Agreement on Tariffs and Trade (GATT) 1994.

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 Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Morocco 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 Moroccan labor laws and how their respective systems operate. The two countries will continue to consult and work together 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*. Officials of the U.S. Department of Labor and Morocco's Ministry of Employment, Social Development, and Solidarity and other appropriate agencies will participate in these consultations and future cooperation.

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 services to ensure that the United States remains 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 Morocco. The FTA expressly recognizes the importance of multilateral environmental agreements (MEAs), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Morocco to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the two countries will cooperate in promoting effective implementation of MEAs to which they are both parties.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that, in order to address and maintain United States competitiveness in the global economy, the President shall "seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The investment, cross-border trade in services, and financial services chapters of the FTA promote and protect the 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.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes, or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects 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.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (IMF), and consider whether countries manipulate the rate of exchange between their currency and the U.S. dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF 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 will ensure that currency movements described in Section 2102(c)(12) are examined in its analyses 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 be manipulated in the sense of 2102(c)(12) 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 Morocco'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 Morocco, which will 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 Morocco's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

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

A. INTRODUCTION

The United States-Bahrain Free Trade Agreement (“FTA” or “Agreement”) 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 Agreement.

Under the Agreement, 100 percent of bilateral trade in consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement. In particular, trade in textile and apparel goods will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Furthermore, Bahrain will provide immediate duty-free access to U.S. agricultural exports in 98 percent of agricultural tariff lines. Certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) in both countries, or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (“TRQs”) during a 10-year transition period by the United States. Bahrain also will substantially reduce barriers to bilateral trade in services, including financial services. The Agreement includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The FTA forms an integral part of the Administration’s larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic and political ties with a long-time partner in the Middle East, and is a further step in achieving President Bush’s goal of a broader United States-Middle East Free Trade Agreement (“MEFTA”) by 2013.

The Agreement 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 the Agreement and enact the legislation needed to implement the Agreement.

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 Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement will result in substantial market access across almost all economic sectors. For consumer and industrial goods (including textile and apparel goods), tariffs will be eliminated immediately on 100 percent of bilateral trade between the United States and Bahrain. Bahrain maintains an across-the-board tariff of approximately five percent on almost all such goods, though certain goods have tariffs as high as 20 percent. In addition, Bahrain will eliminate tariffs on virtually all U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of TRQs during a 10-year transition period by the United States.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Bahrain's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Bahrain is not a signatory to the World Trade Organization ("WTO") Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet.

The Agreement recognizes that workers and firms can fully realize its market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO TRIPS Agreement and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. In addition, the FTA contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to enforce a Party's rights where a dispute settlement panel finds that the other Party has breached its obligations.

3. Foster Economic Growth

U.S. exports to Bahrain have averaged about \$435 million per year over the last four years. While that figure is small in comparison to that of other U.S. trading partners, these exports have been concentrated in a narrow range of manufacturing categories: transportation equipment (motor vehicles and airplanes); machinery (other than electrical); computer and electronic products; fabricated metal products; food manufacturing; and chemicals. The removal of tariffs on all industrial goods will boost U.S. competitiveness in Bahrain, especially in the aforementioned product categories. Coupled with the gains expected to result from greater liberalization of trade in services, heightened protection of intellectual property rights, and increased transparency, the FTA is expected to make a positive contribution to U.S. economic welfare and the expansion of 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 Agreement includes meaningful commitments by each country on labor and environmental protection.

Both countries reaffirm through the Agreement their respective obligations as members of the International Labor Organization (“ILO”) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement commits each country 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 country. Moreover, while recognizing each Party’s right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the Agreement commits both Bahrain 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 country to ensure that its laws and policies provide for high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the FTA contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party’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 country 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. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and to consider establishing further consultative mechanisms to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of “principal trade negotiating objectives.” The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to Bahrain’s market. For example, in addition to cutting tariffs on agricultural goods, the United States and Bahrain will work together on sanitary and phytosanitary (“SPS”) matters, with a view to facilitating trade between the countries, while appropriately protecting human, animal, and plant life and health. They will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (“TBT”) that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The FTA creates new market opportunities in Bahrain for a range of key U.S. services suppliers and will lock in access in sectors where Bahrain’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 subject to the Agreement’s rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Bahrain’s services markets in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, 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.

Under the FTA, Bahrain will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation (“MFN”) treatment, and additional market access benefits to the other Party’s express delivery services. The FTA also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

A principal trade negotiating objective of the United States is to achieve, in agreements with U.S. trading partners, strong and predictable legal frameworks for U.S. investors. In 1999, the United States and Bahrain negotiated a comprehensive bilateral investment treaty (“BIT”),

the *Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment (1999)*. The BIT was based on the U.S. model for investment agreements and provides both substantially increased protections and improved transparency for U.S. investors in Bahrain. In particular, the BIT: (1) applies to all forms of U.S. investment in Bahrain; (2) requires that covered U.S. investments receive the better of national treatment or MFN treatment provided by Bahrain; (3) prohibits the imposition of performance requirements on covered U.S. investments by Bahrain; (4) allows expropriation of U.S. investments by Bahrain only in accordance with customary international law; and (5) allows U.S. investors to bring disputes with the Bahraini government to binding international arbitration, among other provisions.

Given the comprehensive nature of the BIT, and the fact that it was concluded so recently, the Agreement contains no investment chapter. However, certain provisions of Chapter Ten (Cross-Border Trade in Services) extend additional benefits to investors and investments that are covered under the BIT. Chapter Eleven (Financial Services) provides supplementary obligations regarding the treatment of financial institutions.

4. Intellectual Property Rights

The 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 Bahrain 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 Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The FTA requires Bahrain to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the FTA, Bahrain will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires Bahrain to direct its agencies 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 Bahrain to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Bahrain to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The FTA will also require Bahrain to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, Bahrain will protect information

generated in connection with pharmaceutical and agricultural chemical product approvals for five and 10 years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The FTA also commits Bahrain to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them.

5. Transparency

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes provisions that will ensure that Bahrain 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 trade in services, financial services, government procurement, customs administration, telecommunications, TBT, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The FTA contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on telecommunications, cross-border trade in services, government procurement, TBT, SPS, and customs administration. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the FTA, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The FTA includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a

strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The FTA includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. Under the Agreement, which covers all agricultural products, Bahrain will provide immediate duty-free access for U.S. exports in 98 percent of agricultural tariff lines, and will phase out its remaining tariffs within 10 years.

In addition, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

9. Labor Rights and Environmental Protection

Under the Agreement, Bahrain and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their 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 for a Party 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 in its territory by investors of the other Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each country not to fail to effectively enforce its 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 Agreement also commits Bahrain and the United States to cooperate on labor issues, in part through the Labor Cooperation Mechanism described in an annex to the labor chapter.

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 country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The Agreement also commits Bahrain and the United States to ensure that their domestic laws and policies provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Bahrain 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 those laws in order to seek investment or encourage trade with the other country. The Agreement also commits Bahrain and the United States to cooperate on environment issues, in part pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation.

10. Dispute Settlement

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

The FTA's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the other Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows the prevailing Party to suspend tariff benefits under the Agreement if the losing Party fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Finally, dispute settlement is available under the Agreement for labor or environmental disputes relating to the Parties' obligations not to fail to effectively enforce their labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, again while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. Thus, the Agreement does not affect 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 the procedures in past U.S. free trade agreements, which 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. The FTA does not affect U.S. rights to take safeguard actions under sections 201 to 201 of the Trade Act of 1974, which implement the WTO Safeguards Agreement and General Agreement on Tariffs and Trade (GATT) 1994.

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 Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Bahrain 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 Bahraini labor laws and how their respective systems operate. The two Parties will continue to consult and work together 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 Labour*. Officials of the U.S. Department of Labor and Bahrain's Ministry of Labor and Social Affairs and other appropriate agencies will participate in these consultations and future cooperation.

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 trade in both goods and services to ensure that the United States remains 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 counter to the Agreement's services 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 Bahrain. The FTA expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Bahrain to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the two countries will cooperate in promoting effective implementation of MEAs to which they are both parties.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that “[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.”

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement, along with the BIT, promote and protect the 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.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (“IMF”), and to consider whether countries manipulate the rate of exchange between their currency 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 IMF 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 will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis 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 be manipulated in the sense of 2102(c)(12) 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 Bahrain’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 Bahrain, which will 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 Bahrain's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

**STATEMENT ON HOW
THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES
FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The Dominican Republic – Central America – United States Free Trade Agreement (“Agreement”) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

The Agreement represents an historic development in our relations with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (“Central America”) and the Dominican Republic. The Agreement reflects a commitment on the part of the United States to sustained engagement in support of democracy, peaceful regional integration, and economic growth and opportunity in a region where several countries only recently transitioned from civil war to peaceful, democratic societies.

The Agreement will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Central America and the Dominican Republic. As detailed below, approximately 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement, with duties on other industrial and consumer goods eliminated over ten years. In particular, trade in nearly all textile and apparel goods meeting the Agreement’s origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment.

Furthermore, Central America and the Dominican Republic will provide immediate duty-free access to more than half of all U.S. agricultural exports to the region. Certain agricultural goods will have longer periods for duty elimination (up to 20 years), or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (“TRQs”) during the transition period. The Agreement addresses duty treatment for imports of sensitive agricultural products into the United States through transition periods (up to 20 years) and the use of TRQs.

The Central American countries and the Dominican Republic will substantially reduce barriers to trade in services, including financial services. The Agreement also includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce,

telecommunications, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement responds to Congress' direction, as expressed in the Caribbean Basin Trade Partnership Act, to conclude comprehensive, mutually advantageous trade agreements with beneficiary countries of the Caribbean Basin Initiative ("CBI") trade preference program. Since 1985, our trade relationship with Central America and the Dominican Republic has been driven by the unilateral trade preferences that the United States provides through the CBI program. This program has contributed to economic development and helped to alleviate poverty in the region. By moving from unilateral trade preferences to a reciprocal free trade agreement, we will build on the success of the CBI program by advancing economic development in the region through trade, as well as expanding U.S. access to markets in Central America and the Dominican Republic.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade initiatives. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor. The Agreement will also contribute to hemispheric integration and provide an impetus toward establishing the *Free Trade Area of the Americas*.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

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 Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

Consumer/Industrial Goods. More than 80 percent of U.S. exports of consumer and industrial goods will enter Central America and the Dominican Republic duty-free when the Agreement enters into force, with remaining tariffs phased out over ten years. Average tariffs on

these items in Central America and the Dominican Republic currently range from 4.1 percent to 7.8 percent, and tariffs on some products of export interest to U.S. firms are as high as 25 percent.

Textiles and Apparel. Nearly all trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately. Moreover, duty elimination for textile and apparel goods may, on a reciprocal basis, be made retroactive to January 1, 2004. The Agreement also allows, if certain conditions are met, for the use of Canadian and Mexican materials as inputs in the production of textile or apparel goods, thereby contributing to the development of stronger, more integrated regional industries.

Agriculture. The Central American countries and the Dominican Republic currently maintain high tariffs on U.S. agricultural goods. The simple average tariff that these countries apply to imports of agricultural products from the United States exceeds 11 percent, and, on certain import-sensitive products, can exceed 150 percent. The average bound tariffs on agricultural products for these countries under their World Trade Organization ("WTO") commitments range from 35 percent in Honduras to 60 percent in Nicaragua. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Central America and the Dominican Republic. Under the Agreement, over half of all U.S. agricultural exports to the region will be duty-free when the Agreement enters into force, including on important export interests such as prime and choice cuts of beef, soybeans, wheat, cotton, apples, peaches, pears, grapes, cherries, almonds, walnuts, pistachios, raisins, canned peaches and pears, frozen concentrated grapefruit juice, and frozen concentrated orange juice (except to the Dominican Republic). Tariffs on most other U.S. goods will be phased out within 15 years. For the most sensitive agricultural goods, tariffs will be eliminated over periods ranging from 15 to 20 years. For these goods, liberalization will be achieved through TRQs that will increase over time. Over-quota tariffs will be eliminated during the 15-20-year transition period on all such import-sensitive products with the exception of white corn (El Salvador, Guatemala, Honduras, and Nicaragua) and onions and potatoes (Costa Rica). (The United States will maintain its over-quota tariffs on sugar.)

Services/Financial Services/Telecommunications. The Agreement provides additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

Government Procurement. The Agreement opens the Central American and Dominican Republic government procurement markets to U.S. suppliers for the first time on transparent and non-discriminatory terms. As the Central American countries and the Dominican Republic are not signatories to the WTO Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, 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 (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual net global welfare by \$15.7 billion when fully implemented. In absolute terms, a positive welfare effect will be enjoyed by the United States (\$17.3 billion, or 0.17 percent of GNP) and by Central America and the Dominican Republic collectively (\$5.3 billion, or 4.4 percent 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 group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of 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 Agreement includes meaningful commitments by each country on labor and environmental protection.

Each of the Parties reaffirms through the Agreement its obligations as a member of the International Labor Organization ("ILO") and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement contains a binding commitment

that each Party not fail to effectively enforce domestic labor laws, while recognizing each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The Agreement also commits each Party 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 another Party. The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter.

Similarly, the Agreement commits each country to ensure that its laws and policies provide for and encourage high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the Agreement contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party'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 country 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 another Party. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and have entered into a related Environmental Cooperation Agreement to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Central America and the Dominican Republic. For example, in addition to cutting tariffs on agricultural goods, the United States and the other Parties will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal, and plant life and health. In addition, the Central American countries and the Dominican Republic are working toward the recognition of the U.S. meat inspection and certification systems in order to facilitate U.S. exports. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The Agreement will create new market opportunities in Central America and the Dominican Republic for a range of key U.S. services suppliers and will lock in access in sectors where their services markets are 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 subject to the Agreement’s rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to services markets in Central America and the Dominican Republic in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, 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.

Under the Agreement, the Central American countries and the Dominican Republic will improve or lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation (“MFN”) treatment, and additional market access benefits to express delivery services of the other Parties. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

Several of the Central American countries and the Dominican Republic also made commitments regarding their “dealer protection” regimes. Under existing “dealer protection” regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

3. Opening Markets for U.S. Investment

The Agreement commits the Central American countries and the Dominican Republic 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 those countries. Except for certain specified exceptions, the Agreement will give U.S. investors the opportunity to establish, acquire, and operate investments in the Central American countries and the Dominican Republic on the same basis as those countries’ own investors or other foreign investors – across the full spectrum of economic activity.

Under the Agreement, the Central American countries and the Dominican Republic 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 Agreement includes

protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The Agreement 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 Agreement draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The Agreement 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 Agreement commits the United States to continue to provide Central American and Dominican Republic investors a high level of protection and due process, it gives Central American and Dominican Republic firms no greater substantive rights than U.S. companies already enjoy in the United States.

The Agreement also commits the Central American countries and the Dominican Republic not to burden U.S. investors with protectionist “performance requirements” – such as rules requiring investors to buy local products – and ensures that the Central American countries and the Dominican Republic will allow U.S. investors to transfer funds related to their investments into and out of Central America and the Dominican Republic.

The Agreement provides a mechanism for an investor of a Party to pursue a claim against another Party. The investor may assert that the Party has breached a substantive obligation under the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the countries to make public key documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Investment Chapter.

4. Intellectual Property Rights

The Agreement 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 the Central American countries and the Dominican

Republic 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 Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement requires each Central American country and the Dominican Republic to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, these countries will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The Agreement requires each government to direct its agencies 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 the Central American countries and the Dominican Republic to protect encrypted satellite signals as well as the programming those signals carry.

The Agreement commits the Central American countries and the Dominican Republic to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement will also require these countries to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, these countries will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and ten years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The Agreement also commits each Central American country and the Dominican Republic to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Each country 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.

5. Transparency

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that

each Party 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 customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, each country will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives to combat bribery and corruption.

6. Regulatory Practices

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the Agreement, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. In addition, the United States and the other Parties have agreed to work together toward a multilateral agreement in the WTO to eliminate export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for another Party. If a third country subsidizes exports to a Party, an exporting Party may initiate consultations with the importing Party to develop measures the importing Party may

adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. If the importing Party does not agree to such measures, the exporting Party may provide an export subsidy on its exports of the good to the importing Party, but only to the extent necessary to counteract the trade-distorting effect of the subsidized imports from the third country.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

9. Labor Rights and Environmental Protection

Under the Agreement, the Central American countries, the Dominican Republic, and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their 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 for a Party 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 another Party or investment in its territory by investors of another Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedures, is a commitment by each country not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits the Agreement countries to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor chapter.

Environmental commitments are also included in the core text of the Agreement. As is the case for labor rights, a key component of the Agreement's environmental provisions is an enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. Under the Agreement, each Party also commits to ensure that its domestic laws and policies provide for and encourage high levels of environmental protection and to strive to continue to improve those laws and policies. Through the Agreement, the Parties expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. In addition, the Agreement includes a public submissions mechanism that allows members of the public to raise concerns with an independent secretariat about a Party's enforcement of its environmental laws. In appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they have identified certain priority areas of environmental cooperation.

10. Dispute Settlement

The Agreement includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The Agreement calls for dispute settlement proceedings to be open to the public, for the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The Agreement's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the complaining Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The Agreement achieves this result through an enforcement mechanism that provides for the use of monetary assessments or trade sanctions in either type of dispute.

Dispute settlement is available under the Agreement for labor or environmental disputes relating to each Party's obligation not to fail to effectively enforce its labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but

is not required to, exempt imports of goods from Agreement countries from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country retains its rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. The United States agreed to maintain an advantage currently afforded to imports from the Central American countries and the Dominican Republic as a result of their status as beneficiary countries under the Caribbean Basin Economic Recovery Act (“CBERA”). Specifically, the United States agreed to continue to treat the other Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or “cumulating”) imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

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 Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States, the Central American countries, and the Dominican Republic are members of the ILO. The United States has a longstanding cooperative relationship with each of these countries on labor issues. During the negotiations, government labor experts from the Agreement countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism 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 Labour*. The Agreement establishes a framework for the labor cooperation and capacity building mechanism and lists a range of labor activities on which the Parties will cooperate. Officials of the U.S. Department of Labor and the labor ministries of the other Parties and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The Agreement 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 Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains 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 counter to the Agreement's services 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 Agreement, the environment and sustainable development are important concerns for both the United States and the other Agreement countries. The Agreement expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The Agreement commits the Parties to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the Environmental Cooperation Agreement negotiated in parallel with the Agreement will provide further opportunities for the seven governments to cooperate in promoting effective implementation of MEAs to which they are all party.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement promote and protect the 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.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund ("IMF"), and to consider whether countries manipulate the rate of exchange between their currency 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 IMF 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 will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis 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 be manipulated in the sense of 2102(c)(12) 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 the laws of the Central American countries and the Dominican Republic 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 Agreement's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on the Central American countries and the Dominican Republic, which will 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 the Central American countries' and the Dominican Republic's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

**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 percent duty on most imports from the United States. Immediately after the agreement takes effect, more than 85 percent 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 percent surcharge on imports of used goods from the United States, including capital goods. In addition, the agreement requires Chile to eliminate its 75 percent 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 percent of GNP). Chile’s annual welfare will increase by \$550 million (0.7 percent 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.