

# United States Employment Impact Review of the U.S.-Chile Free Trade Agreement

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## EXECUTIVE SUMMARY

This employment impact review was prepared pursuant to section 2102(c)(5) of the Trade Act of 2002 which requires the President to review and report to the Congress on the impact of future trade agreements on U.S. employment, including labor markets. This review presents an overview of the employment impact review process, the background and contents of the U.S.-Chile Free Trade Agreement (FTA), and assessments of the potential economic and employment effects of the FTA. In addition, the review considers four selected issues related to the FTA that are relevant to employment and labor markets in the United States: the labor provisions of the FTA; the investment provisions in the FTA; the temporary entry provisions for business persons in the FTA; and trade adjustment assistance (TAA) and other federal programs to assist U.S. workers that may be displaced by international trade. The Trade Act of 2002 not only included the Trade Promotion Authority (TPA) but also renewed the TAA program and greatly expanded and enhanced the coverage, benefits, and services available to workers certified under the program.

The major finding of this review is, given the current volume, composition, and structure of bilateral trade between Chile and the United States, the U.S.-Chile FTA is not expected to have any significant effects on employment in the United States. The absence of any significant adverse domestic employment effects from the FTA is attributable to, among other factors, the gradual removal over a 12-year period of the remaining U.S. tariffs on imports from Chile and safeguards for increases in imports if they cause serious injury to a domestic industry.

As Chile's markets become more open to U.S. goods and services with the introduction of the U.S.-Chile FTA, and U.S. goods become more competitive in the Chilean market, it is expected that U.S. exports to Chile will increase. This especially ought to be the case for the current leading U.S. exports to Chile such as aircraft, construction and engineering equipment, motor vehicles, computers, chemical and plastic products, and telecommunications equipment. New U.S. export opportunities may also arise in the areas of agriculture, manufacturing, and services as the access of U.S. exports to the relatively small Chilean market improves. U.S. imports from Chile are also expected to increase as the result of the FTA, especially in products such as fruits, copper, fish, precious metals, and wine.

## **I. Introduction: Overview of the Employment Impact Review Process**

### **A. Scope and Outline of the Employment Review**

This employment impact review consists of three additional parts. Part II discusses the background and contents of the U.S.-Chile Free Trade Agreement (FTA), including the bilateral economic setting, current barriers to bilateral trade, and the major elements of the FTA. Part III considers the potential economic and employment effects of the FTA, with special emphasis on industrial employment and occupational labor markets in the United States. Part IV considers four special issues related to the FTA that are relevant to employment and labor markets in the United States and have been raised by the public in the context of the FTA negotiations: (1) the labor provisions of the FTA, including a labor cooperation mechanism; (2) the investment provisions in the FTA and their implications for employment in the United States; (3) the temporary entry provisions for business persons in the FTA; and (4) the availability of trade adjustment assistance and other federal programs to assist U.S. workers that may be displaced by increased imports or companies transferring their production overseas.

### **B. Legislative Mandate**

This review of the employment impact of the U.S.-Chile FTA is pursuant to section 2102(c)(5) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(5) provides that the President shall:

review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public.

The President, by Executive Order 13277 (67 Fed. Reg. 70305), assigned the responsibility for conducting reviews under section 2102(c)(5) to the United States Trade Representative (USTR), who delegated such responsibility to the Secretary of Labor with the requirement that reviews be coordinated through the Trade Policy Staff Committee (67 Fed. Reg. 71606).

The employment impact review is modeled, to the extent appropriate, after Executive Order 13141; the guidelines developed for the implementation of that order provided guidance for the development of procedures and the determination of the scope of this employment review.<sup>1</sup> Because of the short time frame between the completion of the negotiation of the U.S.-Chile FTA and the submission due date of the employment impact review, there was not sufficient time to seek public comments on a draft review. The U.S. Department of Labor and USTR welcomes comments on the organization, content, and usefulness of this review that would lead to improvements in the employment impact reviews of future trade agreements.

## C. Public Outreach and Comments

### 1. Responses to Federal Register Notice

The U.S. Department of Labor and USTR jointly issued a notice on October 21, 2002 in the *Federal Register* announcing the initiation of a review of the potential impact on U.S. employment of the proposed U.S.-Chile FTA, including the effects on domestic labor markets, and requesting written public comment on the review and the provision of information on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market effects of the FTA.<sup>2</sup>

Two submissions were received in response to the notice:

- The Rubber and Plastic Footwear Manufacturers Association (RPFMA), representing domestic manufacturers of fabric-upper, rubber-soled footwear and protective footwear, noted that the impact on employment of the FTA can only be adverse since there are not likely to be increases in U.S. footwear exports.
- The American Apparel & Footwear Association (AAFA), a national association of the apparel and footwear industries, argued the employment impacts of the FTA in the industrial sectors it represents will be negligible because Chile is a very small supplier of apparel and footwear to the U.S. market, Chile represents a small market for U.S. apparel and footwear, and given the already high level of import penetration in the U.S. market, any further growth in apparel and footwear imports is likely to come at the expense of other foreign suppliers rather than displacing U.S. production and employment.

### 2. Reports of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) and Other Advisory Committees

Section 2104(e) of the Trade Act requires that advisory committees provide the President, USTR, and Congress with reports under section 135(e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. The advisory committee reports are available on the USTR web site at: [http://www.ustr.gov/new/fta/Chile/advisor\\_reports.htm](http://www.ustr.gov/new/fta/Chile/advisor_reports.htm).

The Advisory Committee for Trade Policy and Negotiations (ACTPN) and the other 29 trade advisory committees virtually all expressed the view that the FTA is in the economic interests of the United States and stated their support for the FTA. The findings of a majority of the ACTPN found that the FTA will “substantially improve market access for American farm products, industrial and other non-agricultural goods, and services;” a labor representative on the ACTPN dissented from the positive views of other ACTPN members. The ACTPN and a number of the Industry Sector Advisory Committees (ISACs) indicated that the investment provisions of the FTA are especially

noteworthy as they significantly improve the opportunities and conditions for U.S. investments in Chile.

The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) submitted its report to the President on February 28, 2003. Contrary to 30 other advisory committees, the LAC argued that the FTA will lead to a deteriorating trade balance and lost jobs, citing their views of NAFTA and the establishment of permanent normal trade relations with China. The LAC claimed that the main focus of the FTA was on removing obstacles to increased U.S. investment in Chile at the expense of the United States, with a consequent loss of U.S. jobs. The LAC was also critical of the FTA's labor provisions that commit the Parties to enforce their own labor laws without any enforceable obligation for those laws to meet international standards as defined by the ILO. The LAC interpreted the FTA's dispute resolution procedure as providing for longer timelines and lower penalties for violations of the Labor Chapter than for other violations and that requiring financial penalties be used to improve labor standards reduced their punitive value. [These issues are discussed in section IV.A of this review.] The LAC also opined that FTA provisions on the temporary entry of professionals erode basic protections for U.S. workers in the domestic labor market, and that the FTA provisions on investment, procurement, and services would constrain the ability of the U.S. government to regulate in the public interest and provide public services. [These issues are discussed in section IV.C of this review.]

## **II. Background and Contents of the FTA**

### **A. Bilateral Economic Setting**

#### *1. Population and the Economy*

Chile's population was 15.4 million (or 5.4 percent of that of the United States) in 2001. Chile's gross domestic product (GDP) was \$63.6 billion in 2001, compared to U.S. GDP of \$10.2 trillion. Chile's economy is comparable in size to that of the State of Mississippi, which had a gross state product of \$67.3 billion in 2000. Chile's gross national income (GNI) per capita in 2001 was \$4,590, slightly below that of Venezuela (\$4,760) and approximately one-eighth of U.S. per capita GNI of \$34,280.

#### *2. Labor Force*

##### *a. U.S. Labor Force*

In 2002, the U.S. labor force totaled 145 million workers. Nearly 47 percent (67.4 million) of the civilian U.S. labor force in 2002 was female.<sup>3</sup> The service-producing industries, also known as the service sector, are the major source of employment in the United States. In 2002, service-producing industries accounted for 77 percent of total U.S. employment; within this group, services, including personal, private, business, and other services, accounted for 38 percent of total U.S. employment and wholesale and retail trade accounted for 21 percent. Other major sectors of employment include manufacturing which accounted for 13 percent of total U.S. employment, mining and construction which accounted for about 7 percent and agriculture which accounted for slightly over 2 percent.<sup>4</sup> On an occupational basis, approximately 31 percent of all the employed persons were in either managerial professions (15 percent of total employment) or professional specialty occupations (16 percent of total employment); other major occupational categories of U.S. employment were technical, sales, and administrative support occupations (29 percent of total employment) and service occupations (14 percent of total employment). On the industrial basis used for cross-country analysis,<sup>5</sup> U.S. employment in 2000 was distributed across industrial sectors as follows: 2 percent in the agricultural sector,<sup>6</sup> 22 percent in industry,<sup>7</sup> and 75 percent in the service sector.<sup>8</sup>

The annual average unemployment rate in the United States was 5.8 percent for 2002, an increase over its recent low point of 3.8 percent in April 2000.<sup>9</sup> The majority of the U.S. unemployed in 2002, as is typical, included job losers and those who had completed temporary jobs (55 percent). Reentrants to the labor force made up 28 percent of the unemployed in 2002, new entrants represented 6 percent, and job leavers accounted for 10 percent. From an industry standpoint, job losses during 2002 were in mining, construction, manufacturing, retail trade, and transportation. These losses were countered in part by an increase in jobs in the services and government industries.<sup>10</sup>

Education appears to have been a favorable influence on finding and keeping a job. Of workers 25 years or older, 10 percent of the employed had less than a secondary degree, 31 percent had finished secondary schooling, 27 percent had some tertiary schooling, and 32 percent had a college degree in 2002.<sup>11</sup> Of the unemployed in 2002, 19 percent had not completed secondary school, 35 percent had completed secondary schooling, 27 percent had attended some college (including those receiving an associate degree), and 20 percent had a college degree.<sup>12</sup>

In 2002, business sector labor productivity rose 4.8 percent, a sharp increase from the 1.1 percent annual average labor productivity growth in 2001.<sup>13</sup> Overall, labor productivity in manufacturing increased 4.5 percent on average in 2002, compared to labor productivity increases for durable goods and nondurable goods within the manufacturing sector of 5.6 percent and 2.8 percent, respectively.<sup>14</sup> Between 1990 and 2000, labor productivity increased in 111 of the 119 industries in the manufacturing sector.<sup>15</sup>

On average, U.S. workers worked 39.2 hours per week during 2002; the average full-time worker put in 42.9 hours per week. Persons working in agriculture reported more work hours per week, 41.1 hours on average (46.8 hours for full-time workers), than those in nonagricultural industries, 39.1 hours per week (42.8 hours for full-time workers).

#### b. Chile's Labor Force

At the beginning of 2003, the Chile's labor force consisted of approximately 6 million workers of whom 5.5 million were employed.<sup>16</sup> Female workers made up about 34 percent (2 million) of Chile's labor force.<sup>17</sup> The major sectors of employment in Chile in 2001 were: community, social and personal services (28 percent); wholesale and retail trade, restaurants, and hotels (19 percent); manufacturing (14 percent); and agriculture, hunting, forestry, and fishing (14 percent). The top occupational employment groups in 2001 were: production and related workers, transport equipment operators, and laborers (31 percent); clerical and related workers (14 percent); service workers (14 percent); and agriculture, animal husbandry, forestry workers, fishermen, and hunters (14 percent).<sup>18</sup> On the industrial basis used for cross-country analysis, Chile's employment in 1998 was distributed across industrial sectors as follows: 60 percent in services,<sup>19</sup> 26 percent in industry,<sup>20</sup> and 14 percent in agriculture.<sup>21</sup>

Chile continues to experience a relatively high rate of unemployment; the average annual rate of unemployment in 2002 was 8.9 percent.<sup>22</sup>

Chile experienced a moderate recession in 1999, but showed signs of recovery in 2000 with GDP growth at 5.4 percent. Even with increased unemployment resulting from the recession, average wage growth exceeded the rate of inflation as a result of higher productivity.<sup>23</sup> A study of international comparisons of labor productivity concluded that Chile's GDP (on a purchasing power parity basis) per hour worked was 41 percent of that of a U.S. worker in 1996.<sup>24</sup>

Increases in public investment in human capital have occurred in Chile since 1989. These appear to have had a positive impact on the population and have been associated with a sharp drop in poverty. Chile has one of the most educated labor forces in Latin America. The adult illiteracy rate in 2001 in Chile was 4.1 percent.<sup>25</sup>

In 2001, while 55 percent of the unemployed in Chile had completed upper secondary schooling, only 23 percent of the unemployed had completed only lower secondary, primary, or had no schooling.<sup>26</sup> In 2001, approximately 15 percent of the unemployed in Chile were workers seeking their first job. The majority of the unemployed in Chile in 2001 (34 percent) were production and related workers, transport equipment operators, and laborers. Of the unemployed in 2001, only 6 percent were professional, technical, and related workers.<sup>27</sup> The main industries with substantial levels of unemployment in 2001 were: wholesale and retail trade, restaurants, and hotels (17 percent); community, social and personal services (16 percent); construction (15 percent); and manufacturing (13 percent).<sup>28</sup>

The ILO estimates that in 2000, the non-agricultural informal sector (defined as self-employed workers—except clerks, professionals, and technicians—and family workers; domestic service workers; and workers employed in enterprises with up to five workers) made up 38 percent of Chile’s total non-agricultural employment.<sup>29</sup> Chile and Brazil were the only countries in Latin America to experience an increase in employment in the formal sector between 2001 and 2002.<sup>30</sup>

### 3. *International Trade in Goods*

#### a. Global and Bilateral Trade

U.S. trade in goods represented 18 percent of its GDP in 2001. U.S. goods trade with the world amounted to \$1.8 trillion (\$666.0 billion exports and \$1,132.6 billion imports) in 2001. Based on available statistics from the World Trade Organization (WTO), the United States was the world’s number one exporter and number one importer in 2000.<sup>31</sup>

Chile’s trade in goods represented 51 percent of its GDP in 2000. During 2001, Chile’s goods trade with the world amounted to \$34.4 billion (\$18.3 billion exports and \$16.0 billion imports). Based on available statistics from the WTO, Chile was the world’s 48<sup>th</sup> largest exporter and the world’s 43<sup>rd</sup> largest importer in 2000.<sup>32</sup>

U.S. bilateral goods trade with Chile represents a very small share of U.S. trade with the world, accounting for only 0.4 percent (\$2.8 billion) of overall U.S. exports to the world and only 0.3 percent (\$3.3 billion) of overall U.S. imports from the world in 2001. Chile ranked as the 33<sup>rd</sup> largest U.S. export market and the 39<sup>th</sup> largest source for U.S. goods imports in 2001. In contrast, the United States was Chile’s largest export partner and second largest import supplier in 2001, accounting for 19 percent of Chile’s exports and 19 percent of Chile’s imports. Between 1997 and 2001, U.S. exports to Chile have fallen by 32 percent while U.S. imports from Chile have increased by 42 percent; this decline in

U.S. exports to Chile may be due in part to Chile entering into free trade agreements with other countries.<sup>33</sup>

b. U.S. Merchandise Exports to Chile

U.S. goods exports to Chile amounted to \$2.8 billion in 2001. Slightly over half (56 percent) were accounted for by the top-10 3-digit export-based Standard Industry Classification (SIC) industries, covering a variety of manufactured products, including: construction, mining and material handling machinery and equipment; office machines; aircraft; communications equipment; motor vehicles; industrial chemicals; and plastics and resins (See Table 1).<sup>34</sup>

**Table 1: Top-10 SIC-based U.S. Exports to Chile in 2001**

U.S. Export Industry	SIC Code	Value of U.S. Exports to Chile (\$mil.)	Percent of	
			Total U.S. Industry Exports	All U.S. Exports to Chile
Construction, Mining, and Materials Handling Machinery	353	351	2.2	12.4
Office, Computing, and Accounting Machines	357	261	0.7	9.3
Aircraft and Parts	372	204	0.4	7.2
Communications Equipment and Apparatus	366	161	1.0	5.7
Motor Vehicles and Motor Vehicle Equipment	371	137	0.2	4.9
Manufactured Commodities Not Identified by Kind	3XX	126	0.6	4.4
Industrial Inorganic Chemicals	281	92	1.0	3.3
Plastics Materials and Synthetic Resins	282	90	0.6	3.2
General Industrial Machines and Equipment	356	87	0.6	3.1
Industrial Organic Chemicals	286	69	0.4	2.4

*Source:* U.S. Department of Labor tabulations of official U.S. trade statistics from the U.S. Department of Commerce, Bureau of Census.

Viewed from the vantage point of Chilean statistics, during 2000 Chile imported more than \$100 million from the United States in several 2-digit Standard International Trade Classification (SITC) product categories: Specialized Machinery (\$297 million); General Industrial Machinery (\$309 million); Office Machines (\$364 million); Telecommunications Equipment (\$330 million); and Electrical Machinery (\$209 million). For each of these categories, imports from the United States represented more than 30 percent of total Chilean imports of these items.

c. U.S. Merchandise Imports from Chile

U.S. goods imports from Chile amounted to \$3.3 billion in 2001. Slightly over three-quarters (78 percent) were accounted for by the top-10 3-digit import-based SIC industries, covering a variety of food and agricultural products such as beverages (primarily wine), fish, fruits (mainly fresh grapes), and vegetables and several manufactured products such as primary nonferrous metal (mainly copper) products, industrial chemicals, wood and wood products, and refined petroleum products (See Table 2).

**Table 2: Top-10 SIC-based U.S. Imports from Chile in 2001**

U.S. Import Industry	SIC Code	Value of U.S. Imports from Chile (\$mil.)	Percent of	
			Total U.S. Industry Imports	All U.S. Imports from Chile
Fresh Fruit	017	608	12.5	18.6
Primary Nonferrous Metals	333	559	3.6	17.0
Fish, Fresh, Chilled, or Frozen	091	459	5.7	14.0
Millwork, Veneer, Plywood, and Structural Parts	243	250	6.4	7.6
Beverages and Flavoring Extracts	208	138	1.7	4.2
Industrial Organic Chemicals	286	132	0.8	4.0
Sawmill and Planing Mill Products	242	127	1.8	3.9
Petroleum Refinery Products	291	106	0.3	3.2
U.S. Goods Returned	980	96	0.3	2.9
Prepared Fruits and Vegetables	203	91	2.5	2.8

Source: U.S. Department of Labor tabulations of official U.S. trade statistics from the U.S. Department of Commerce, Bureau of Census.

Several items, not in the top-10, imported from Chile that accounted for a substantial portion of total U.S. imports of the item in 2001 include the following SIC-based import groups: Copper Ore—SIC 102 (\$21 million; 36 percent); Iron Ore—SIC 101 (\$17 million; 6 percent); and Cash Grains and Other Crops (\$87 million; 10 percent).

Again, viewed from the vantage point of Chilean statistics, during 2000 the United States imported more than \$100 million in goods from Chile in several 2-digit SITC sectors: Fish (\$471 million); Vegetables and Fruit (\$599 million); Cork and Wood (\$245 million); and Cork and Wood Manufactures (\$146 million). For each of these categories, exports from Chile to the United States represented more than 30 percent of total Chilean exports of these items.

#### 4. *International Trade in Services*

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were \$1.3 billion out of total U.S. services exports of \$266 billion in 2001 (about 0.5 percent of total U.S. services exports), and U.S. services imports from Chile were \$840 million out of the total U.S. imports of \$192 billion (about 0.4 percent of total U.S. services imports). Chile's service exports amounted to \$3.9 billion in 2000, while its service imports amounted to \$4.5 billion.

U.S. exports of services to Chile in 2001 consisted of: \$485 million in other private services<sup>35</sup> (or about 37 percent of all U.S. services exports to Chile); \$469 million in travel (or about 36 percent); \$115 million in passenger fares (about 9 percent); \$184 million in transportation (about 14 percent); and \$59 million in royalties (about 5 percent). U.S. imports of services from Chile in 2001 consisted of: \$408 million in travel (or about 49 percent of all U.S. services imports from Chile); \$148 million in other private services (about 18 percent); \$116 million in transportation (about 14 percent); \$97 million in passenger fares (about 12 percent); and \$71 million in royalties (about 8 percent).

Sales of services in Chile by majority U.S.-owned affiliates were \$3.1 billion in 2000, while sales of services in the United States by majority Chilean-owned firms were \$202 million.

Chile's service exports amounted to \$3.9 billion in 2000, while its service imports amounted to \$4.5 billion. U.S. exports of private commercial services (i.e., excluding military and government) to Chile were \$1.3 billion out of total U.S. services exports of \$266 billion in 2001 (about 0.5 percent of total U.S. services exports), and U.S. services imports from Chile were \$840 million out of the total U.S. imports of \$192 billion (about 0.4 percent of total U.S. services imports).

## 5. *Foreign Direct Investment*

Net inflows of foreign direct investment (FDI) in 2000 accounted for 22 percent of Chile's gross capital formation and 5 percent of GDP. The stock of U.S. foreign direct investment in Chile in 2001 was \$11.7 billion, up from \$9.5 billion in 2000. U.S. FDI in Chile is concentrated largely in finance, manufacturing and banking sectors.<sup>36</sup>

Chilean investment in the United States has been rather limited. On a historical cost basis, the stock of Chilean foreign direct investment in the United States was a negative \$179 million in 2001.<sup>37</sup>

## B. **Current Barriers to Bilateral Trade**

### 1. *Trade in Goods*

In 2001, of the \$3.3 billion of U.S. imports from Chile, \$1.8 billion (56 percent) entered normal trade relations (NTR) duty free.<sup>38</sup> Of the remaining \$1.5 billion that was potentially subject to duty, \$483 million (15 percent) entered duty free under the Generalized System of Preferences (GSP) and insignificant amounts entered duty free under the Harmonized Tariff System (HTS) 9802 program or other special (Chapter 99) provisions,<sup>39</sup> and \$958 million (29 percent) was assessed duties at an average *ad valorem* rate of 2 percent. The vast majority (\$655 million or about two-thirds) of these dutiable imports were subject to an *ad valorem* duty rate of less than or equal to 1 percent. Another \$43 million was assessed duties between 1 and 2 percent, \$162 million between 2 and 5 percent, \$7 million at between 5 and 10 percent, \$74 million at between 10 and 20 percent, and only \$3 million above 20 percent. Total estimated annual tariff revenue collected by the United States on imports from Chile was \$19.3 million, which was about 0.1 percent of total U.S. tariff revenues in 2001.<sup>40</sup>

On a sectoral basis, the only appreciable amounts of imports subject to an *ad valorem* tariff of greater than 2 percent were food and agricultural products. Although U.S. imports of grapes from Chile are the largest imported agricultural item, these imports

either entered duty free or, if subject to duty, were assessed a duty of less than 1 percent. Tariff line items (8-digit HTS) in agricultural or food categories with imports greater than one million dollars and calculated duty rates of greater than 10 percent include: avocados (\$53.8 million with a duty rate of 10.4 percent); grape juice (\$6.1 million with a duty rate of 15.8 percent); concentrated or sweetened milk or cream in airtight containers (\$1.3 million with a duty rate of 47.3 percent); prepared or preserved peaches (\$1.2 million with a duty rate of 17.0 percent); and artichokes (\$1.0 million with a duty rate of 14.9 percent).

In addition to the food and agricultural items listed above, several apparel tariff line items had imports greater than one million dollars and tariff rates above 10 percent: men's wool trousers (\$3.0 million with a duty rate of 18.5 percent), men's wool blazers (\$2.9 million with a duty rate of 18.8 percent), and men's wool suits (\$1.8 million with a duty rate of 18.9 percent). Chile's share of total U.S. imports of these items is generally less than one percent.

Virtually all U.S. exports to Chile were subject to a uniform *ad valorem* tariff rate; this rate was set at 9 percent in 2000, 8 percent in 2001, 7 percent in 2002, and 6 percent in 2003. Computer products and books entered duty free. Imported used goods are subject to a 50 percent surcharge, while imports of used automobiles are prohibited. Chile also applied specific duties (based on weight or some other measure), in addition to the *ad valorem* tariff, on wheat, wheat flour, edible vegetable oils, and sugar in order to keep domestic prices of these commodities within a predetermined price band. Virtually all of Chile's tariffs are bound (i.e., not to exceed a specified rate) by international obligations at the WTO at a rate of 25 percent *ad valorem*.

U.S. exports of new automobiles were subject to a luxury tax of 85 percent on the customs, insurance, and freight (CIF) or landed value greater than \$15,835 in 2002. Chile's health and phytosanitary requirements effectively blocked U.S. exports of some agricultural products such as cherries and some citrus, and severely constrained U.S. exports of poultry and red meat.

## 2. *Trade in Services, Investment, and Temporary Entry of Business Persons Related to these Activities*

Chile has a relatively open services trade and investment regime.<sup>41</sup> There are some concerns regarding delays and lack of transparency in telecommunications regulatory decisions and restrictions on financial services and insurance. Foreign investments in Chile of over \$1 million are currently entitled to the benefits and guarantees of its Decree Law (DL) 600 program that is administered by the Foreign Investment Committee (FIC) of the Ministry of the Economy. Under this program, original capital may not be repatriated for one year and there is pro-forma screening mechanism. The FIC signs a contract with each investor that stipulates the time period within which the investment is to be implemented. Chile also maintains an Unremunerated Reserve Requirement (URR)—known as the *encaje*—to incoming portfolio and other non-foreign direct

investment (FDI) investment flows. Though currently at zero, this measure has, in the past, amounted to the effective imposition of a transaction fee equal to the interest for one year on up to 30 percent of the amount of the investment. As the costs of the fee would be amortized over the duration of the investment, this has the effect of favoring longer-term over shorter-term instruments. Chile also maintained certain performance requirements that deal with local content and trade balancing in the automotive industry.

The U.S. services and investment regimes are open.<sup>42</sup> Such restrictions as exist are fully consistent with international obligations under the WTO and bilateral and multilateral agreements. Cabotage laws reserve domestic routes to U.S. operators and government support for U.S.-flag vessels. The United States restricts foreign ownership and control of U.S. air transport carriers, and the provision of domestic air service is restricted to U.S. carriers. The United States also restricts foreign investment in telecommunications, radio broadcast, atomic energy, and energy pipelines. Insurance is subject to sub-federal regulation at the state level, which frequently limits competition from other U.S. states and foreign providers, unless they establish a commercial presence in the respective state. Professional services are similarly regulated by the states, which can complicate access for foreign investors and service providers. Finally, under the Exon-Florio Amendment to the Defense Production Act, the President has the authority to suspend or prohibit foreign mergers, acquisitions, and takeovers, where there is credible information of a threat to national security.

Temporary entry of business persons is an important counterpart to the facilitation of trade in goods and services and investment. Separate from the question of professional licenses or accreditation, the degree to which movement of these persons is restricted can affect the ability of firms and persons to carry out activities that are important to trade in goods or services or the conduct of investment.

Under current law, temporary entry into Chile is relatively swift by means of the tourist entry category, intended for short-term visitors who will not be working in the local economy and do not require a national identity card, e.g., U.S. exporters and other business visitors. U.S. citizens entering as a tourist do not require a visa; they may stay for up to 90 days, may renew their status as necessary, and may apply for short-term work authorization. The tourist category can also provide initial access to business persons who intend to stay longer than 90 days and/or to work in Chile, e.g., traders, investors, intra-company transferees and professionals. However, in order to undertake such activities in Chile, these individuals must first adjust to the status of “temporary resident.” Applications for one-year temporary residence may be submitted prior to or after arrival. Temporary residents receive a more flexible form of work authorization as well as the identity card needed to conduct financial transactions, e.g., opening a bank account, renting a home, or obtaining a cell phone. Neither the tourist nor temporary resident category is numerically capped in Chile.

Currently, the principal barriers to U.S. citizens entering Chile for purposes of employment are internal, i.e., licensure requirements and caps on the direct employment of foreign workers within any enterprise. While these are not temporary entry

constraints, they can have immediate implications for U.S. citizens migrating to Chile to fill jobs. Chile imposes licensure requirements on a much wider range of professions and technical occupations than does the United States. U.S. nationals offered employment contracts with enterprises in Chile may first need to complete course work at a state-run educational institution to obtain the requisite license. In addition, Chile's Labor Code specifies: "At least eighty-five per cent of the workers employed by a same employer shall be of Chilean nationality." Certain skilled personnel are exempt from this cap. Apart from these exceptions, however, only 15 percent of all direct hires by any enterprise in Chile may be foreign workers (including both U.S. and foreign nationals), a constraint that could become increasingly problematic as the Chilean labor force globalizes.

The United States grants temporary entry for specific types of activities, and requires applicants to be fully qualified for those activities at the time of entry. For the visa categories of traders or investors (E-1, E-2), intra-company transferees (L-1), and professionals (H-1B), work authorization is issued along with the grant of temporary entry. However, traders and investors are only admitted from countries that have entered into treaties of commerce and navigation with the United States. While the United States does not numerically limit entries of business visitors (B-1), traders or investors, or intra-company transferees, it does impose a world-wide quota on professional entries under its H-1B visa program. Chilean professionals desiring to enter the United States currently must compete with other foreign nationals for entry under this program.

### **C. Major Elements of the FTA**

The FTA consists of 24 chapters and associated annexes: Preamble Text; Initial Provisions; General Definitions; National Treatment and Market Access for Goods; Rules of Origin and Origin Procedures; Customs Administration; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; Trade Remedies; Government Procurement; Investment; Cross-Border Trade in Services; Financial Services; Telecommunications; Temporary Entry for Business Persons; Electronic Commerce; Competition Policy, Designated Monopolies, and State Enterprises; Intellectual Property Rights; Labor; Environment; Transparency; Administration of the Agreement; Dispute Settlement; Exceptions; Final Provisions; and three annexes on non-conforming measures in services and investment, and financial services. The complete text of the FTA and summary fact sheets are available on USTR's web site at <http://www.ustr.gov>.

Following is a summary of the FTA provisions that are most relevant to this employment impact review.

- *Preamble Text*

Although it does not create specific obligations, the Preamble to the FTA frames the FTA's obligations and sets out the broad aims and objectives of the Agreement. In the Preamble, the governments resolve to create new employment opportunities and improve working conditions and living standards in the two countries; build on their respective

international commitments and strengthen their cooperation on labor matters; and protect, enhance and enforce basic worker's rights.

- *National Treatment and Market Access for Goods (Chapter 3)*

The FTA market access provisions set out the schedules for the elimination of tariffs on goods originating in the two countries. Most tariffs will be eliminated immediately, with remaining tariffs phased out over 2 to 12 years. For the United States, the import sensitivity of goods is generally reflected in the tariff phase-out schedules. This chapter also includes safeguard provisions for certain agricultural products and for textiles and apparel. For agricultural products subject to a trigger price mechanism under the FTA, safeguard measures may be taken during the 12-year transition period. Emergency actions to restore the MFN rate of duty may be taken on textile and apparel products for a period of up to 3 years but cannot be taken or maintained beyond the period ending 8 years after the duty has been eliminated under the Agreement.

Duty drawback is a WTO-consistent export subsidy program administered by most countries, including the United States and Chile, under which exporters may re-claim duties paid on inputs used in the manufacture of goods that are exported. The FTA phases out duty drawback and deferral programs for exports to each other over a 3-year period after the eighth year of the Agreement. By year 12 of the Agreement, at which time all duties under the FTA will have been eliminated, the Parties will no longer provide duty drawback or deferral for exports to each other.

The United States has sought to eliminate or restrict the use of this program under free trade agreements for several reasons. Most significant from an employment perspective, the smaller FTA-partner can use duty-refund or deferral programs to attract investment for production of goods for sale in the larger FTA-partner (e.g., the United States). While Chile currently has a very small assembly sector, limited to two free zones in the north and south ends of the country, ending duty-drawback eliminates a trade diverting incentive that could have had a net negative impact on the United States.

- *Rules of Origin and Origin Procedures (Chapter 4) and Customs Administration (Chapter 5)*

The FTA provides strong but simple rules of origin to ensure that only eligible products from the FTA Parties receive preferential treatment. The FTA requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. Both Parties agree to share information to combat illegal transshipment of goods.

- *Technical Barriers to Trade (Chapter 7)*

The FTA includes an enhanced cooperation program to exchange information on subjects covered by the WTO Agreement on Technical Barriers to Trade (WTO TBT Agreement), which addresses technical regulations, standards, and conformity assessment procedures.

The FTA does not contain any additional obligations beyond those contained in the WTO TBT Agreement.

- *Trade Remedies (Chapter 8)*

The safeguards section of this chapter allows a Party to restore the MFN duty if a product is being imported in such increased quantities so as to be a substantial cause of serious injury, or threat thereof, to a domestic producer of a like or directly competitive product. A safeguard action may be taken only during the 10-year transition period and generally not be in place for longer than 3 years. The Party taking a safeguard action must provide compensation or be subject to withdrawal of substantially equivalent concessions by the other Party. The Parties' WTO rights are reserved. The Agreement also states that the Parties retain their WTO rights and obligations with regard to antidumping and countervailing duties and that nothing in the FTA including the dispute settlement chapter imposes any rights or obligations on the Parties in respect of antidumping or countervailing duties.

- *Government Procurement (Chapter 9)*

The FTA's Government Procurement Chapter builds on the existing commitments in the WTO Government Procurement Agreement (GPA), which ensures non-discrimination, transparency, predictability, and accountability in the government procurement process and provides appropriate reciprocal, competitive government procurement opportunities to U.S. suppliers in Chile's government procurement market.

- *Investment (Chapter 10)*

The FTA's Investment Chapter contains a comprehensive set of well-established standards found in investment agreements throughout the world, including provisions obligating each Party to treat investors of the other Party and their investments no less favorably than its own investors and their investments in like circumstances (national treatment) and no less favorably than the investors of other countries and their investments in like circumstances (most-favored-nation treatment). Likewise, the chapter contains disciplines on imposing listed "performance requirements" on investors of the other Party as a condition of the investment (with appropriate exceptions for non-discriminatory health, safety, and environmental requirements).

The chapter also incorporates a number of modifications to traditional investment provisions that respond to Congress' guidance on investment objectives in the Trade Act. In particular, the provisions on minimum standard of treatment of investors and expropriation, together with supplementary annexes, provide more detail and context to the Parties' understanding of these obligations to ensure that they are properly interpreted and applied. The FTA's provisions on investor-State dispute settlement procedures (a mechanism allowing an investor to pursue a claim in international arbitration against a host government for alleged breach of its investment obligations) include a significant number of innovations to improve the transparency of arbitral proceedings and to help

assure that arbitral panels properly interpret the FTA's investment provisions, while ensuring that Chilean investors receive no greater rights than U.S. investors in this country.

- *Cross-Border Trade in Services (Chapter 11)*

The FTA's core commitments regarding services are modeled on obligations and concepts in the WTO General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), and other FTAs to which the United States is a party. These include provision for national treatment and most-favored-nation treatment for services suppliers in like circumstances and obligations concerning transparency in regulatory processes. Services supplied in the exercise of governmental authority, i.e. any service that is supplied neither on a commercial basis nor in competition with one or more services suppliers, are also excluded from coverage.

The FTA disciplines will apply across a broad range of services sectors in Chile. As a result, U.S. service suppliers are afforded substantially improved market access opportunities in Chile, with very few exceptions. The FTA's disciplines apply both to cross-border supply of services (such as those delivered electronically, or through the travel of services professionals across borders) and the right to establish a local services presence in Chile.

- *Temporary Entry for Business Persons (Chapter 14)*

Mutual commitments for the temporary mobility of business visitors, traders and investors, intra-company transferees, and professionals are set forth in Chapter 14, Temporary Entry of Business Persons. These provisions do not affect policies regarding visa issuance and screening procedures related to national security. Chapter 14 promotes transparency by detailing the circumstances under which FTA temporary labor mobility will be authorized. Apart from the FTA professional category, for which U.S. legislation will be necessary, all temporary entry commitments will be implemented through existing immigration law. This agreement will form the basis for a Chilean national's access to the treaty trader and treaty investor classifications for entry into the United States.

- *Labor (Chapter 18)*

The Labor Chapter of the FTA is consistent with the guidance from the Congress in the Trade Act. The Agreement includes promotion of internationally recognized core labor standards as a chapter within the main text of the Agreement, obligates the Parties to effectively enforce their labor laws, and makes the effective enforcement of a Party's labor laws subject to the same State-to-State dispute settlement procedures that apply to the commercial chapters. It also includes procedural guarantees ensuring that interested persons have access to the relevant courts and/or tribunals necessary for the enforcement of a Party's labor laws and creates a Labor Affairs Council to discuss matters that may arise regarding the chapter.

Consistent with the guidance of the Congress on other priorities, the Agreement includes provisions for consultations to resolve issues that may arise under the chapter and establishes a Labor Cooperation Mechanism for cooperation on labor issues between the Parties 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*.

- *Environment (Chapter 19)*

The FTA's Environment Chapter incorporates Trade Act guidance through a number of core obligations concerning effective enforcement of environmental laws, providing for high levels of environmental protection, and not weakening environmental laws to encourage trade or attract investment. The FTA also includes articles on environmental cooperation, procedural guarantees (e.g., commitments by each Party to provide certain basic remedies for violations of its environmental laws, and to provide appropriate public access to environmental enforcement proceedings), and a consultative mechanism for implementing the provisions of the chapter. Consistent with Trade Act guidance, the effective enforcement provision is enforceable through the FTA's State-to-State dispute settlement provisions.

- *Transparency (Chapter 20)*

The FTA's Transparency Chapter, modeled on the NAFTA, requires both Parties to publicize their laws, regulations, procedures, and administrative rulings of general applicability respecting matters covered by the Agreement such as to enable interested persons to become acquainted with them. Also, to the extent possible, such proposed measures shall be published in advance to provide interested persons a reasonable opportunity to comment on them.

- *Dispute Settlement (Chapter 22)*

The FTA sets out detailed provisions providing for speedy and impartial resolution of government-to-government disputes over the implementation of the Agreement. Consistent with Trade Act guidance, the FTA's core obligation to effectively enforce labor laws (as well as the analogous obligation in the FTA's environmental provisions) is subject to the dispute settlement provisions. The dispute settlement procedures contain specific provisions for resolving labor disputes, which include opportunities for labor officials to consult on labor issues before they proceed to dispute settlement, and for labor experts to serve as panelists and/or advisors to panel members. An innovative enforcement mechanism includes monetary penalties as a way to enforce commercial, labor, and environmental obligations of the FTA. Special provisions give guidance on factors panels should take into account in considering the amount of monetary assessments in environmental and labor disputes, and provide for assessments to be paid into a fund to be expended for appropriate environmental and labor initiatives. If the

non-complainant fails to pay the assessment, the complaining may withdraw trade benefits to collect the assessment.

The dispute settlement provisions also set high standards for openness and transparency, including provisions for open public hearings, public release of legal submissions, and rights for interested third parties to submit views.

### **III. Potential Economic and Employment Effects of the FTA**

The focus of this review is on the potential employment and labor market impacts of the U.S.-Chile FTA in the United States. It is based on qualitative assessments of the current structure and volume of U.S. trade with Chile, including the potential effects of removing barriers to trade, as well as one publicly available independent quantitative assessment (econometric modeling effort) of the economic and employment effects of a U.S.-Chile FTA.

#### **A. Aggregate Economic Effects**

A review of the economic modeling literature revealed that only one independent academic quantitative assessment of a U.S.-Chile FTA has been conducted. The study was performed by Professors Drusilla Brown (Tufts University), Alan Deardorff and Robert Stern (both of the University of Michigan), employing the Michigan Model of World Production and Trade.<sup>43</sup> These authors have used this model to evaluate the economic effects (including sectoral employment changes) of various proposed U.S. trade agreements.

The Michigan Model is a computable general equilibrium (CGE) model of world production and trade containing 18 economic sectors in each of 20 countries or world regions. The model incorporates some aspects of increasing returns to scale, monopolistic competition, and product variety. The model assumes full employment or that total employment in each economy does not change, while employment in each economic sector is permitted to adjust to a new equilibrium after the introduction of the FTA with sectors either expanding or contracting their production in response to changes in bilateral trade flows.<sup>44</sup>

The Brown, Deardorff, and Stern (BDS) study found that the FTA would boost global welfare by \$5.0 billion, with U.S. welfare increasing by \$4.4 billion (0.05 percent of U.S. GNP), Chile's welfare increasing by \$0.6 billion (0.69 percent of Chile's GNP), and the rest of the world experiencing a negligible effect.<sup>45</sup>

The measures of welfare changes only consider how national aggregate consumption possibilities may change and do not consider how it is distributed among the population; hence, an increase in a country's welfare does not necessarily imply that all, or even a majority, of the population is better off.

#### **B. Sectoral Employment Effects**

According to the BDS study, the sectoral employment effects on the United States of the FTA would be very small (less than 0.03 percent of employment in every sector affected) with increases in employment in the manufacturing sector balancing expected job losses in agriculture and services. The analysis suggests that employment would be expected to expand in 12 sectors and contract in 6 sectors as the result of the FTA (See Table 3).

**Table 3: Sectoral Employment Effects in the United States of a U.S. Chile FTA**  
**Based on Simulations Using the Michigan Model of World Production and Trade**  
(number of workers and percent of sector employment)

<b>U.S. Sector</b>	<b>Employment Increasing</b>	<b>Employment Decreasing</b>
Agriculture	--	Agriculture (-698 workers or -0.02 percent)
Mining	Mining (1 worker or z percent)	--
Construction	Construction (125 workers or z percent)	--
Manufacturing	Chemicals (518 workers or 0.02 percent); Machinery and Equipment (518 workers or 0.02 percent); Transportation Equipment (378 workers or 0.02 percent); Textiles (173 workers or 0.01 percent); Wood and Wood Products (91 workers or z percent); Other Manufactures (91 workers or z percent); Non-metallic Mineral Products (40 workers or 0.01 percent).	Food, Beverages and Tobacco (-203 workers or -0.01 percent); Wearing Apparel (-170 workers or -0.02 percent); Metal Products (-73 workers or z percent); Leather Products and Footwear (-37 or 0.03 percent).
Services	Trade and Transport (500 workers or z percent); Government Services (90 workers or z percent); Electric, Gas and Water (78 workers or z percent).	Other Private Services (-1,422 workers or z percent)

Note: z percent = less than 0.005 percent.

Source: Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, "Multilateral, Regional, and Bilateral Trade-Policy Options for the United States and Japan," Research Seminar in International Economics Discussion Paper No. 490 (Ann Arbor, MI: The University of Michigan, School of Public Policy, December 16, 2002), Table 8.

The expected sectoral employment changes under the BDS study are either quite small or negligible (especially when compared to the employment size of the affected sector or the normal turnover—quits, separations, and new hires—in the U.S. labor market). The largest expected absolute U.S. employment gains (sectors likely to expand) are in Chemicals, Machinery and Equipment, Trade and Transport Services, and Transportation Equipment—all strong and competitive U.S. export sectors. The largest expected employment declines (sectors likely to contract) are in Other Private Services; Agriculture; Food, Beverages and Tobacco; and Wearing Apparel.

These estimated levels of job changes in Table 3 (sectoral employment adjustments to a new equilibrium following the full implementation of the FTA) are quite insignificant, particularly given that they are likely to occur over a number of years. In a typical month in 2002, 1.5 million U.S. workers were laid off or discharged while 4.2 million were hired. In addition, the estimated job losses do not necessarily imply that current workers in these industries will actually lose their jobs (although that could happen). Many of the expected employment losses may be achieved simply by not hiring new workers to replace workers voluntarily leaving their jobs.

### **C. Potential U.S. Labor Market Effects**

#### *1. Industry*

##### *a. Sector Likely to Expand as the Result of the FTA*

Current export patterns and the BDS modeling results suggest that U.S. employment in several manufacturing industries is likely to increase slightly due to the FTA. The industries likely to gain jobs include: Chemicals (SIC 28), Industrial Machinery (SIC 35), Electrical Machinery (SIC 36), Transportation Equipment (SIC 37); and Textiles (SIC

22); smaller or insignificant gains may occur in Lumber and Wood Products (SIC 24) and Non-Metallic Mineral Products such as stone, clay, and, glass products (SIC 32).

The projections of the BDS study also suggest slight employment gains in construction and several service sectors. These are industries, which for the most part produce non-tradables and support the production of tradables, have experienced employment growth since 1979.

b. Sectors Likely to Contract as the Result of the FTA

Based upon the current pattern of U.S. imports from Chile and their current duty treatment, as well as the projections of sectoral effects of the FTA as modeled by BDS, several sectors may be slightly negatively affected by the FTA. In some cases, U.S. imports of goods from Chile may increase significantly as the result of tariff reductions under the FTA in sectors that currently have few imports from Chile because of high tariffs. In addition, increased imports from Chile may substitute for imports from other countries and therefore domestic sectors may not be affected even though there are significant increases in imports from Chile. For these reasons, the current structure of imports from Chile may not be the most accurate guide to sectors likely to be negatively affected by further trade liberalization.

Both the BDS modeling results and current import patterns suggest that the major U.S. sector likely to be negatively affected by the FTA is the agricultural sector. Of the \$76.8 million in imports from Chile in 2001 that faced U.S. duties of more than 10 percent, \$52.9 million, or 69 percent, were agricultural products such as avocados and fresh asparagus. The phase out of tariffs may lead to some employment declines in the United States for those employed in the growing and harvesting of avocados and asparagus. The United States imported 63 percent of its total avocado imports (almost \$53 million) from Chile in 2001, and the duties paid on these avocado imports represented 29 percent of all duties paid on all imports from Chile in 2001. In contrast to most other agricultural products, avocados are one of the few agricultural products for which the harvest season in the two countries coincides. In general, the harvest seasons for most fresh fruits and vegetables in the two countries are non-overlapping or complementary.

Employment in several sectors of manufacturing may also be slightly negatively affected. These sectors include: Food and Kindred Products (SIC 20); Tobacco Products (SIC 21); Apparel (SIC 23); Leather Products (SIC 31); and Primary Metal Products (SIC 33).

According to the BDS study, a majority of the employment declines are likely to occur in the private service sector. These losses are likely to result not from direct import competition from Chile, but from economy-wide secondary effects (such as provision of these services to firms that may be directly affected by increased imports from Chile). The goods-producing industries likely to be negatively affected by the FTA are generally industries where employment has been contracting over the last several decades and where employment declines were occurring even during the 1990s when the overall economy experienced rather strong employment growth.

c. Rules of Origin, Phase in, and Other Safeguards in the FTA

Features have been built into the FTA to help ease the adjustment process in the United States during the transition to bilateral free trade with Chile and help assure that only imports from Chile benefit from the FTA. These include strict rules of origin, rules to protect against transshipment of goods (e.g., a third country using Chile as an export platform to the United States), the gradual phase-out of U.S. tariffs on goods originating from Chile, and mechanisms to address injurious increases in imports from Chile.

*Rules of Origin and Anti-Circumvention Provisions:* The FTA contains strict rules of origin to assure that only products grown or produced in each country are afforded the benefits under the FTA. These rules generally include requirements which specify that items must undergo substantial transformation within the United States or Chile to be eligible for benefits under the FTA—namely, a change in HTS classification (either a change to another subheading within or outside the group, a new heading, or a new chapter) and, in addition, some items must meet a specific regional content rule of 35-45 percent of the value of the item, depending on the method of valuation used.

Textile and apparel goods produced or assembled by a Party must meet a yarn forward rule (i.e., be produced from yarns or fabrics that originated in either Party) in order to be considered as originating from a Party and eligible for preferential treatment under the FTA.

Special treatment (as if an originating good) is provided through tariff preference levels (TPLs) for some cotton and man-made fiber fabric apparel goods made of non-originating fibers but assembled by a Party. For items wholly formed by a Party from non-Chilean or U.S. produced yarns, up to 1 million square meter equivalents (SME) per year will receive preferential treatment under the FTA; for items cut or knit-to-shape and sewn or assembled by a Party from fabric or yarns not produced in Chile or the United States, up to 2 million SME per year for the first 10 years of the FTA will receive preferential duty treatment (duty-free), and up to 1 million SME per year thereafter.

The FTA contains a *de minimis* provision for goods that do not meet the requirements of the Agreement to be considered as originating from one of the Parties. Generally, if the value of materials used in the production of a good does not undergo the required change in HTS classification and does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets all other applicable criteria, it qualifies as an originating good. There are, however, some exceptions to this general rule.<sup>46</sup>

The FTA contains provisions that commit each Party to enforce its own laws related to circumvention and its prevention. Circumvention means providing false declaration or information for the purpose or effect of violating or avoiding existing customs, country of origin labeling, or trade laws of the respective Parties. Examples of circumvention include illegal transshipment and false declarations concerning country of origin and product content or description.

*Gradual phase-in of the FTA:* Table 4 summarizes the phase-out schedule for U.S. import tariffs on goods originating from Chile as well as the phase-out schedule for Chile's tariffs on goods originating from the United States under the FTA. Clearly, the bulk (about 88 percent) of two-way trade will become duty-free upon the initiation of the FTA, with most of the balance becoming duty-free by the eighth year of the FTA, leaving only a small number of most-sensitive items on both sides becoming duty-free after the tenth or twelfth years of the FTA.

**Table 4: Bilateral Phase-Out of Tariffs on Goods under the U.S.-Chile FTA**

Tariff Line Item Duty-Free After	Phase out of U.S. Tariffs on Chilean Goods				Phase out of Chile's Tariffs on U.S. Goods			
	Number of Tariff Lines	Percent of Tariff Lines	1998-2000 Average Import Value (\$thous.)	Percent of Average Import Value	Number of Tariff Lines	Percent of Tariff Lines	1998-2000 Average Import Value (\$thous.)	Percent of Average Import Value
Immediate	9,564	93.7	\$2,396,616	88.1	5,329	90.3	\$3,019,669	87.2
Year 2	1	0.0	106,442	3.9	23	0.4	110,795	3.2
Year 4	198	1.9	7,655	0.3	288	4.9	193,304	5.6
Year 8	135	1.3	19,018	0.7	146	2.5	75,014	2.2
Year 10	70	0.7	382	0.0	23	0.4	43,373	1.3
Year 12	241	2.4	189,677	7.0	95	1.6	19,722	0.6
Total	10,209	100.0	2,719,734	100.0	5,904	100.0	3,461,876	100.0

Source: Office of the U.S. Trade Representative, Office of the Americas.

About 70 percent of all U.S. imports from Chile already enter the United States duty-free (four-fifths of these duty-free entries are NTR duty-free and one-fifth are GSP duty-free). The United States will eliminate immediately, upon entry into force of the FTA, its import duties on all non-agricultural Chilean-originating goods that are designated as duty-free under the U.S. Generalized System of Preferences (GSP); also, U.S. merchandise import processing fees on Chilean originating goods will be eliminated immediately under the FTA.

Under the FTA, the United States will phase out all of its import tariffs on goods originating from Chile over a period of 12 years. As Table 4 shows, the majority of U.S. imports from Chile (about 88 percent, based on a recent trade value basis, representing about 94 percent of all U.S. tariff lines) will become duty-free upon entry into force of the FTA. By the eighth year of the FTA, 93 percent on a value basis (97 percent on a tariff line basis) of U.S. imports from Chile will be duty-free under the FTA, with the balance becoming duty-free by the twelfth year of the FTA.

Upon the entry into force of the FTA, Chile will eliminate its 50 percent surcharge on originating U.S. used goods that benefit from preferential treatment under the FTA as well as begin to phase out over a 4-year period its luxury tax that applies only to imported automobiles.

Under the FTA, Chile will phase out all its import tariffs on goods originating from the United States over a period of 12 years. As Table 4 shows, most of Chile's imports from the United States (87 percent, based on a recent trade value basis, representing about 90 percent of all Chilean tariff lines) will become duty-free upon entry into force of the

FTA. By the eighth year of the FTA, about 98 percent (both on a value and tariff line basis) will be duty-free and the balance will become duty-free by the twelfth year of the FTA.

Tables 5 and 6, respectively, present a summary of the product content of each tariff phase-out category (tariff staging category) for U.S. tariffs on goods originating from Chile and Chile's tariffs on goods originating from the United States.

The United States will eliminate most of its tariffs on industrial goods and consumer products that originate from Chile upon entry into force of the FTA. This includes U.S. tariffs on imports of originating textile and apparel items (i.e., those meeting the yarn-forward rule of origin), since Chile is not considered a major or competitive supplier of these items to the U.S. market; Chile will do the same for its imports of originating U.S. textile and apparel items. As discussed above, special treatment (duty-free up to a limit specified by tariff preference levels) is provided for some cotton and MMF fabric apparel items that otherwise might not qualify as originating from a Party. Other import-sensitive items such as agricultural products, footwear, watches and clocks, leather goods, glassware, and china have longer tariff phase-out periods to allow for adjustment. The longest phase-out period (12 years) is provided for especially sensitive agricultural products with additional provisions for tariff rate quotas during the implementation period and a tariff snap-back safeguard mechanism for some of these items.

With respect to opportunities for U.S. exports to Chile, most of Chile's tariffs on U.S. industrial goods and consumer products will be phased out with the entry into force of the FTA. Again, the longest phase out period (12 years) of Chile's tariffs is reserved for especially sensitive agricultural products, with tariffs on some chemicals, motor vehicles, plastics, resins, and glassware products phased out within 8 years, and some tariffs on motor vehicle parts within 10 years.

**Table 5: U.S. Tariff Staging for Imports from Chile under the FTA**

<b>Duty Free Beginning of Year</b>	<b>Tariff Staging Category and Product Content</b>
<b>0</b> (immediate)	<b>F:</b> Items now duty-free, continue duty-free <b>A:</b> Some agricultural and the majority of industrial items currently subject to duty <b>N:</b> Items imported under bond for samples, repair, exhibit, etc.
<b>2</b>	<b>K:</b> Refined copper cathodes*
<b>4</b>	<b>B:</b> Certain brooms and wiskbrooms; watches and clocks & pts; pens and mechanical pencils; inked ribbon; knives and metal utensils; tungsten bars, rods, powder; iron or steel screws; glassware; hats and headgear; luggage; handbags; leather or artificial fur apparel; rubber gloves; petroleum oils; bonito, prepared sardines, and salmon; beef*; some agricultural products
<b>8</b>	<b>C:</b> Certain broom corn wiskbrooms; watches and clocks & pts; manganese, magnesium, titanium, and aluminum; iron or steel screws; glassware and lead crystal; luggage; leather gloves; radial tires*; some agricultural products
<b>10</b>	<b>D:</b> Certain brooms; glassware; porcelain and china tableware*; unglazed and glazed ceramic tiles; tuna and skipjack; some agricultural products <b>H:</b> Poultry* <b>L:</b> Rubber and waterproof footwear <b>M:</b> Foreign value added to item entered under HTS 9802 provisions; spare parts for vessels installed before first entry into the United States; certain protective ski-racing wearing apparel
<b>12</b>	<b>E:</b> Sugar*; peanuts; tobacco*; cotton; processed artichokes* <b>G:</b> Avocados* <b>J:</b> Liquid dairy; cheese*; milk powder*; butter*; condensed milk*; other dairy products* <b>Special:</b> Wine

Notes: \* with a tariff-rate quota (i.e., immediately duty-free up to a specified quantitative limit [quota] with staged tariffs applied to the amount in excess of the quota; quotas expire at the end of the staging period and the item is then duty-free in unlimited quantities). The staging categories are defined as follows:

**A:** Duty-free January 1 of year 1 of the FTA.

**B:** Four equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 4.

**C:** Eight equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 8.

**D:** Ten equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 10.

**E:** Twelve equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 12.

**F:** Already duty-free on January 1 of year 1, continue duty-free.

**G:** Base rate, years 1-4; annual reductions of 8.3%, years 5-8; annual reductions of 16.7%, years 9-11; duty-free January 1 of year 12.

**H:** Base rate, years 1-2; 8 equal annual reductions, years 3-9; duty-free January 1 of year 10.

**J:** Base rate, years 1-7; 5 equal annual reductions, years 8-11; duty-free January 1 of year 12.

**K:** Two equal annual reductions beginning January 1 of year 1; duty-free January 1 of year 2.

**L:** 5% annual reductions, years 1-5; 10% annual reductions, years 6-9; duty-free January 1 of year 10.

**M:** Base rate, years 1-9; duty-free January 1 of year 10.

**N:** Duty-free January 1 of year 1.

**Special (wine):** Depending on the tariff line item, one of the following staging formulas:

Base rate, years 1-8; beginning January 1 of year 9 annual reductions of 7.7%, 35.9%, 64.1%; duty-free January 1 of year 12;

Base rate, years 1-11; duty-free January 1 of year 12;

Base rate, years 1-8; beginning January 1 of year 9 annual reductions of 2.7%, 32.4%, 62.2%; duty-free January 1 of year 12;

Base rate, years 1-10; beginning January 1 of year 11 reduction of 41.7%; duty-free January 1 of year 12;

Annual reductions beginning January 1 of year 1 of 8.1%, 16.3%, 24.4%, 32.6%, 40.7%, 48.8%, 57.0%, 65.1%, 73.3%, 81.4%, 89.6%; duty-free January 1 of year 12;

Annual reductions beginning January 1 of year 1 of 6.1%, 14.2%, 22.9%, 31.0%, 39.7%, 47.3%, 55.7%, 63.8%, 72.5%, 80.6%, 89.3%; duty-free January 1 of year 12;

Base rate, years 1-10; beginning January 1 of year 11 a 33.3% reduction; duty-free January 1 of year 12.

**Table 6: Chile's Tariff Staging for Imports from the United States under the FTA**

<b>Duty Free Beginning of Year</b>	<b>Tariff Staging Category and Product Content</b>
<b>0</b> (immediate)	<b>A:</b> Some agricultural and the majority of industrial items currently subject to duty
<b>3</b>	<b>O:</b> Certain corn <b>P:</b> Gasoline; petroleum oils; liquid propane; liquid butane
<b>4</b>	<b>B:</b> Certain industrial chemicals; coloring pigments, paints, enamels, and glazes; perfumes and toilet water, eye make-up; printing ink; glues and adhesives; explosives; fungicides and herbicides; plastics and resins; tall oil; stone, ceramic, and porcelain tiles and cubes; abrasives; asphalt articles; cream separators; clothes dryers; dryers for wood, paper, or paperboard; food heating machines; glass fiber; glass, glassware and mirrors; weighing machinery; spraying appliances; filtering machinery for liquids; unupholstered wood frame seats; beef* and some other agricultural products
<b>8</b>	<b>C:</b> Cement; kaolin; feldspar; certain plastic and rubber sheets and plates; organic surface-active agents; activated carbon; decalcomanias; clothing accessories; retreaded or used tires; conveyor belts; protective footwear; safety headgear; glass and mirrors; iron or steel structures; copper wire and stranded cable; locks and other fittings for motor vehicles; clasps and buckles; electric powered hoists for lifting vehicles; overhead traveling cranes; agricultural machinery; voltage regulators; sound signaling equipment; lamps for vehicles; ignition wiring sets; motor vehicles and bodies for transporting 10 or more persons; safety seat belts for autos; gas masks; gas or smoke analysis apparatus; seats for motor vehicles; wooden bedroom furniture; some agricultural products
<b>10</b>	<b>D:</b> Certain parts and equipment for motor vehicles <b>H:</b> Chicken and turkey*
<b>12</b>	<b>E:</b> Certain grains, juices and beverages, and other agricultural products <b>G:</b> Sugar and sugar-containing products and other agricultural products <b>V:</b> Wine

Notes: \* with a tariff-rate quota (i.e., immediately duty-free up to a specified quantitative limit [quota] with staged tariffs applied to the amount in excess of the quota; quotas expire at the end of the staging period and the item is then duty-free in unlimited quantities).

The staging categories are defined as follows:

**A:** Duty-free January 1 of year 1 of the FTA.

**B:** Four equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 4.

**C:** Eight equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 8.

**D:** Ten equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 10.

**E:** Twelve equal annual reductions, beginning Jan 1 of year 1; duty-free January 1 of year 12.

**G:** Base rate, years 1-4; annual reductions of 8.3%, years 5-8; annual reductions of 16.7%, years 9-11; duty-free January 1 of year 12.

**H:** Base rate, years 1-2; 8 equal annual reductions, years 3-9; duty-free January 1 of year 10.

**O:** Base rate, years 1-2; duty-free January 1 of year 3.

**P:** Annual reductions beginning January 1 of year 1 of 80%, 90%; duty-free January 1 of year 3.

**V:** Base rate, years 1-6; beginning January 1 of year 7, annual reductions of 3.3%, 21.7%, 40.0%, 58.3%, 76.7%; duty-free January 1 of year 12.

*Safeguards:* The U.S.-Chile FTA contains three separate safeguard mechanisms—a general bilateral safeguard, an agriculture safeguard, and a Textile and Apparel Bilateral Emergency Action safeguard—that should provide additional means of helping industries adjust to increased imports resulting from the FTA:

- The Safeguards Chapter of the FTA allows a Party to restore the most-favored-nation (MFN)—now known in the United States as normal trade relations (NTR)—duty if a product is being imported in such quantities so as to be a substantial cause of serious injury or threat thereof to a domestic producer of a like or directly competitive product. A safeguard action may be taken only during the 10-year transition period and not be in place for longer than 3 years. The Party taking the action must provide compensation or be subject to withdrawal of substantially equivalent concessions by the other Party. Each Party retains its rights and obligations for global safeguard actions under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.
- Agricultural safeguard measures may also be taken during the 12-year transition period for agricultural goods subject to a tariff snap-back mechanism. Under this mechanism, if the unit import price of the good is more than 10 percent below the trigger price for that item, as specified in Annex 3.18 of the FTA, a percentage (based on the spread between the unit import price and the trigger price) of the most-favored-nation (MFN) duty rate may be assessed as an additional duty; the total duty collected cannot exceed the amount under the prevailing MFN applied rate for that item.
- Bilateral Emergency Action measures may be taken on textile and apparel goods during the 10-year transition period and may not be in place for longer than 3 years. The MFN rate of duty may be restored if imports of a textile or apparel product are being imported in such quantities as to cause serious damage, or threat thereof, to a domestic industry producing a like or directly competitive product. Compensation is required or the exporting Party may suspend substantially equivalent concessions.

## 2. *Occupation and Compensation*

As a result of the FTA, some industries in the United States are expected to experience modest employment gains while a few are expected to experience small employment losses. To see how this may affect U.S. workers in particular occupations, current employment by occupation is examined for these industries.

As noted above, the BDS study suggests that the Chemical (SIC 28), Industrial Machinery (SIC 35), Electronic Machinery (SIC 36), Transportation Equipment (SIC 37), Non-Metallic Mineral Products (SIC 32), and Textile (SIC 22) industries may be among those that experience small positive employment effects as a result of the FTA. Table 7 presents employment and average hourly wages by the leading occupations in 2001 for industries in which employment may increase as the result of the FTA.

**Table 7: Leading Occupations in Selected U.S. Manufacturing Industries In which U.S. Employment is Expected to Increase as the Result of the U.S.-Chile FTA, 2001**

<b>Industrial Sector/Occupational Group</b>	<b>Employment</b>	<b>Percent of Total</b>	<b>Average Hourly Wage</b>
<b>All Manufacturing (SIC 20 – 39)</b>	<b>17,700,000</b>	<b>100.0</b>	<b>\$14.83</b>
<b>Chemicals (SIC 28)</b>	<b>995,590</b>	<b>100.0</b>	<b>\$21.35</b>
Production occupations	377,830	38.0	\$15.91
Office and administrative support occupations	118,940	12.0	\$15.81
Life, physical and social science occupations	102,690	10.3	\$25.58
<b>Industrial Machinery (SIC 35)</b>	<b>1,884,910</b>	<b>100.0</b>	<b>\$19.51</b>
Production occupations	982,130	52.1	\$14.93
Office and administrative support occupations	195,780	10.4	\$14.56
Architecture and engineering occupations	168,370	8.9	\$27.40
<b>Electronic and Other Electrical Machinery (SIC 36)</b>	<b>1,490,880</b>	<b>100.0</b>	<b>\$19.21</b>
Production occupations	719,310	48.3	\$12.79
Architecture and engineering occupations	213,620	14.3	\$26.65
Office and administrative support occupations	151,120	10.1	\$14.88
<b>Transportation Equipment (SIC 37)</b>	<b>1,714,420</b>	<b>100.0</b>	<b>\$21.65</b>
Production occupations	848,750	49.5	\$17.44
Architecture and engineering occupations	216,580	12.6	\$30.49
Office and administrative support occupations	119,120	7.0	\$16.42
<b>Stone, Clay, Glass, and Concrete Products (SIC 32)</b>	<b>548,700</b>	<b>100.0</b>	<b>\$15.61</b>
Production occupations	215,460	39.3	\$13.55
Transportation and material moving occupations	149,190	27.2	\$13.49
Office and administrative support occupations	48,260	8.8	\$13.99
<b>Textiles (SIC 22)</b>	<b>437,330</b>	<b>100.0</b>	<b>\$12.92</b>
Production occupations	281,070	64.3	\$11.07
Transportation and material moving occupations	42,090	9.6	\$10.23
Office and administrative support occupations	37,750	8.6	\$12.81

Source: U.S. Department of Labor, Bureau of Labor Statistics.

In 2001, the manufacturing sector employed 17.7 million workers and had an average hourly wage of \$14.83.<sup>47</sup> With the exception of Textiles, the average hourly wage in the industries within manufacturing listed in Table 7 was well above the overall average for all manufacturing. Production occupations are the major occupational group for these manufacturing industries, followed by office and administrative support occupations, and architecture and engineering occupations. While the average hourly wage for production occupations is below the average for each 2-digit SIC industry group listed in Table 7, it is above the average hourly wage for all manufacturing in the Chemicals (SIC 28), Industrial Machinery (SIC 35), and Transportation Equipment (SIC 37) industry groups. A similar pattern is observed for office and administrative support occupations. In all cases, architecture and engineering occupations have average hourly wages above both the within-industry average and the overall average for manufacturing.

The FTA is also expected to result in increases in U.S. imports from Chile of Food and Kindred Products (SIC 20), Tobacco (SIC 21), Apparel (SIC 23), Leather (SIC 31), and Primary Metal Products (SIC 33) and domestic employment may be negatively affected in these industries. Table 8 presents employment and average hourly wages for the leading occupational groups in 2001 in these industries in which employment may decrease slightly as the result of the FTA.

Generally, the average hourly wage of workers in the leading occupational groups in the industries expected to experience slight FTA-related employment declines is below the average hourly wage within their respective industry and, in many cases, below the overall manufacturing average hourly wage.

Comparing employment and the average hourly wage in the industries expected to contract in employment as the result of the FTA (Table 8) with those expected to expand in employment (Table 7), one finds that employment levels and average hourly wages are lower in the industries in expected to contract in employment (Table 8) than they are in the industries expected to expand in employment (Tables 7).

It is possible that the skill set of workers in production occupations and those in office and administrative support occupations in the industries expected to experience employment declines may be similar enough to that held by their counterparts in the industries expected to experience employment increases. Therefore, an expected decline in demand for workers in the industries listed in Table 8 may be absorbed at least in part by an increase in demand for them in industries listed in Table 7.

**Table 8: Leading Occupations in Selected U.S. Manufacturing Industries  
In which U.S. Employment is Expected to Decrease as the Result of the U.S.-Chile FTA, 2001**

Industrial Sector/Occupational Group	Employment	Percent of Total	Average Hourly Wage
<b>All Manufacturing (SIC 20 – 39)</b>	<b>17,700,000</b>	<b>100.0</b>	<b>\$14.83</b>
<b>Food and Kindred Products (SIC 20)</b>	<b>1,684,440</b>	<b>100.0</b>	<b>\$14.03</b>
Production occupations	824,840	49.0	\$11.53
Transportation and material moving occupations	335,940	19.9	\$12.23
Office and administrative support occupations	133,450	7.9	\$13.56
<b>Tobacco (SIC 21)</b>	<b>33,470</b>	<b>100.0</b>	<b>\$20.00</b>
Production occupations	11,950	35.7	\$16.46
Transportation and material moving occupations	5,460	16.3	\$12.28
Office and administrative support occupations	4,180	12.5	\$15.45
<b>Apparel (SIC 23)</b>	<b>512,880</b>	<b>100.0</b>	<b>\$11.48</b>
Production occupations	351,470	68.5	\$9.36
Transportation and material moving occupations	39,600	7.7	\$9.41
Office and administrative support occupations	59,430	11.6	\$12.10
<b>Leather (SIC 31)</b>	<b>56,480</b>	<b>100.0</b>	<b>\$12.73</b>
Production occupations	37,380	66.2	\$10.30
Transportation and material moving occupations	3,990	7.1	\$10.21
Office and administrative support occupations	6,890	12.2	\$12.32
<b>Primary Metal Products (SIC 33)</b>	<b>603,400</b>	<b>100.0</b>	<b>\$17.19</b>
Production occupations	343,500	56.9	\$14.77
Transportation and material moving occupations	61,060	10.1	\$14.54
Installation, maintenance, and repair occupations	54,280	9.0	\$18.81

Source: U.S. Department of Labor, Bureau of Labor Statistics.

### 3. Gender Issues

In varying degrees, women and men participate differently in the workplace. In many cases, women do not work in the same types or places of work as men. An FTA may

change the mix of industrial production and the occupational concentration of the labor force, and conceivably it may affect female workers differently than it does men. Accordingly, a growing literature has emerged dedicated to this question. These studies draw upon gender-differentiated data to analyze women's experiences in the labor market, including gender issues faced in the workplace, home, and school, as a result of changes in international trade and investment flows.<sup>48</sup>

While the employment effects in the United States of the FTA are expected to be minimal, there is reason to expect that adjustment costs associated with the FTA are likely to be higher for female workers than for male workers in certain sectors. A substantial number of women work in the apparel and leather industries and hence may be at greater risk of losing their jobs as the result of more open trade.<sup>49</sup> However, other sectors such as metal products and food, beverages, and tobacco have higher proportions of male workers, suggesting the potential for disparate impact by gender is modest.

#### **IV. Special Issues Selected for Review**

During the course of the negotiation of the U.S.-Chile FTA, concerns were expressed by representatives from trade unions, business, and the general public about a variety of broader negotiation issues and objectives that might have possible implications for workers in the United States and for the U.S. labor market. This section addresses several of these: the inclusion of a chapter in the FTA that addresses labor issues; the treatment of foreign direct investment in the FTA; provisions in the FTA for the temporary entry of business persons and professionals; and the expanded trade adjustment assistance program provided for in the Trade Act of 2002.

##### **A. Labor Chapter, Including the Labor Cooperation Mechanism**

###### *1. Labor Chapter in the FTA*

###### *a. Overview*

The Labor Chapter of the FTA—Chapter 18—fully meets the relevant provisions of the Trade Act of 2002. The FTA includes protection for internationally recognized core labor standards as a chapter within the text, obligates each of the Parties to effectively enforce their respective labor laws, and makes the effective enforcement of a Party's labor laws subject to the same State-to-State dispute settlement procedures that apply to the other chapters.

The incorporation of a Labor Chapter within the text of the U.S.-Chile and U.S.-Singapore FTAs represents the latest step in a process in which compliance with certain labor rights has been incorporated into U.S. trade legislation. This process began in 1983 with the Caribbean Basin Initiative (CBI) and was followed shortly thereafter by the addition of labor rights provisions to the Generalized System of Preferences (GSP) when that program was renewed in 1984. The process continued with the passage of the Andean Trade Preference Act (ATPA) in 1991, and the Caribbean Basin Trade Partnership Act (CBTPA) and Africa Growth and Opportunity Act (AGOA) in 2000. All of these trade benefit programs made adherence to internationally recognized worker rights one of a number of conditions for eligibility.

The first U.S. free trade agreement that included labor rights provisions was the North American Free Trade Agreement (NAFTA). Under the NAFTA framework, labor rights and standards were addressed in a supplemental agreement, the North American Agreement on Labor Cooperation (NAALC). The U.S.-Jordan FTA, which entered into effect in 2002, was the first bilateral free trade agreement to which the United States is a Party that includes labor rights protections in the main text.

###### *b. Labor and the Trade Act*

The Trade Act sets out a number of provisions with respect to labor rights and standards that must be included in an agreement for it to be considered under the special Trade Act procedures.

As overall negotiating objectives, the United States is to:

- foster economic growth, raise living standards, and promote full employment in the United States and to enhance the global economy;
- seek the promotion of worker rights and the rights of children consistent with the ILO's core labor standards and an understanding of the relationship between trade and worker rights;
- seek provisions in trade agreements by which the Parties strive to ensure not to weaken or reduce the protections afforded in domestic labor law as an encouragement for trade;
- promote universal ratification and compliance with ILO Convention 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*.

As principal negotiating objectives with respect to labor, the United States is to:

- ensure that the parties to a trade agreement do not fail to effectively enforce their labor laws through a sustained or recurring course of action or inaction in a manner affecting trade between the parties;
- recognize that the parties to a trade agreement retain discretionary authority in the enforcement of their labor laws;
- strengthen the capacity of U.S. trading partners to promote respect for core labor standards;
- ensure that labor, health or safety practices of parties to trade agreements do not arbitrarily discriminate against U.S. exports or serve as disguised barriers to trade.

As a principal negotiating objective with respect to dispute settlement and enforcement, the United States is to seek provisions to treat principal negotiating objectives equally with respect to:

- the ability to resort to dispute settlement procedures;
- the availability of equivalent dispute settlement procedures; and
- the availability of equivalent remedies.

As a negotiating objective with respect to the worst forms of child labor, the United States is to seek commitments by parties to trade agreements to vigorously enforce their laws against the worst forms of child labor.

In the promotion of certain priorities, the United States is to:

- seek greater cooperation between the ILO and the WTO;
- seek to establish consultative mechanisms with the parties to trade agreements to strengthen their ability to promote respect for core labor standards and compliance with ILO Convention 182, and report to the Senate Finance Committee and House Ways and Means Committee on the content and operation of such mechanisms; and
- review the impact of future trade agreements on employment in the United States and report to the Senate Finance Committee and the House Ways and Means Committee.

In pursuing these objectives and priorities, the President is to:

- direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;
- submit to the Senate Finance Committee and the House Ways and Means Committee a meaningful report on labor rights in any country with which the United States plans to implement a trade agreement; and
- submit to the Congress a report describing the extent to which any country with which the United States plans to implement a trade agreement has laws governing exploitative child labor.

The Trade Act defines core labor standards as: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of any form of forced or compulsory labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

c. Summary of FTA Chapter 18: Labor

Chapter 18 of the FTA consists of eight Articles and an Annex as follows:

- In Article 18.1, the Parties reaffirm their commitments as members of the ILO and in accordance with the ILO *Declaration on Fundamental Principles and Rights at Work and Its Follow-up*.<sup>50</sup> The Parties agree that they shall strive to

ensure that such labor principles and the internationally recognized labor rights defined in Article 18.8 are recognized and protected by domestic law.

- Under Article 18.2, the Parties agree that they shall not fail to effectively enforce their labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties. The labor laws included under this provision are defined as those related to the internationally recognized labor rights listed in Article 18.8 below. This section represents the primary obligation of the Parties under the Agreement and violation of this obligation is subject to the same State-to-State dispute settlement procedures that apply to the other chapters of the FTA. The provision recognizes the Parties' authority to decide for themselves how to enforce labor laws, and to exercise discretion regarding investigatory, prosecutorial, regulatory, and compliance matters.

The Parties further recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws and agree that each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to internationally recognized labor rights, as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

- Article 18.3 provides for procedural guarantees and public awareness in which the Parties agree to ensure that interested and affected persons have access to judicial and non-judicial tribunals for the enforcement of the Parties' labor laws and may seek enforcement of their rights. The Parties further agree to ensure that proceedings are fair, equitable, and transparent and to promote public awareness of their labor laws.
- Article 18.4 establishes the institutional arrangements for the Chapter. It provides that the Parties will establish a cabinet-level Labor Affairs Council to oversee the implementation of the Chapter and review progress. Article 18.4 also provides for the designation by each Party of a point of contact within its labor ministry. The points of contact are to provide for public input and submissions on matters related to the Agreement.
- Article 18.5 establishes a labor cooperation mechanism (LCM) between the Parties 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*.
- Article 18.6 establishes a mechanism for consultations between the Parties to resolve any matter that may arise under the chapter. If a Party believes that the other Party is not in compliance with its effective enforcement obligation in

Article 18.2, the Party must seek consultations under the Labor Chapter before it may invoke the provisions of the Dispute Settlement chapter.

- Article 18.7 establishes a roster of labor experts from which panelists would be selected for any arbitral panel created to resolve a dispute arising under the Labor Chapter.
- Article 18.8 defines the terms used in the Labor Chapter of the FTA. It lists the internationally recognized worker rights to which the Parties are bound as: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition on the use of any form of forced or compulsory labor; (4) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- Annex 18.5 of the chapter establishes the framework for the LCM and lists a range of activities in which the Parties agree to cooperate in accordance with Article 18.5. (See below).

Under the dispute settlement procedures, if a dispute settlement panel finds that a Party has not conformed to its obligations to effectively enforce its labor laws, the losing Party may settle the case. If the Parties are unable to reach agreement on a settlement, the panel would establish an annual monetary assessment. The assessment would be paid into a fund for appropriate labor initiatives, including efforts to improve or enhance labor law enforcement. If the losing country fails to pay the assessment, the other country would be entitled to suspend tariff benefits under the FTA sufficient to collect the assessment.

## 2. *Labor Cooperation Mechanism*

In the FTA, the Parties recognize that cooperation provides enhanced opportunities to further advance common commitments, including 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*. To assist in further implementing these commitments, the FTA includes a Labor Cooperation Mechanism (LCM), which establishes a framework for the two labor ministries to work together to promote respect for core labor standards and compliance with ILO Convention No. 182, and to improve systems of administration and enforcement of labor laws, among other things. The contact point provided for in Article 18.4 of the Labor Chapter will also serve as a contact point for the LCM.

The Parties' labor ministries are to carry out the work of the LCM. Among the cooperative activities that they may carry out are: (1) establishing priorities for cooperation; (2) developing and periodically revising a work program of technical assistance in accord with those priorities; (3) exchanging information regarding labor policies and the observance and effective application of labor law and practice in the Parties' territories; (4) exchanging information on and encouraging best labor practices; (5) advancing understanding of, respect for, and effective implementation of the principles reflected in the ILO *Declaration on Fundamental Principles and Rights at*

*Work and Its Follow-Up*; (6) promoting the collection and publication of comparative data on labor standards, labor market indicators, and enforcement activity; (7) arranging periodic sessions to review cooperative activities and provide guidance for future activities; and (8) developing recommendations for their respective governments for their consideration.

The LCM may undertake cooperative activities on any labor issue it considers appropriate, such as on: (1) fundamental labor rights and their effective application; (2) labor relations; (3) working conditions; (4) issues related to small and medium enterprises; (5) social protections; (6) technical issues and information exchange; and (7) implications of economic integration between the Parties for advancing each Party's labor objectives.

Cooperation activities under the LCM may be carried out through any form the Parties deem appropriate, including by: (1) exchanging government delegations, professionals, and specialists, including through study visits; (2) sharing of information, standards, regulations and procedures and best practices, including through the exchange of pertinent publications and monographs; (3) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs; (4) developing collaborative projects or demonstrations; (5) undertaking joint research projects, studies and reports, including by engaging independent experts with relevant expertise; (6) drawing on the expertise of academic and other institutions in their territories in developing and implementing cooperative programs and relationships between such institutions on technical labor issues; and (7) engaging in technical exchanges and cooperation.

In identifying areas for cooperation and carrying out cooperative activities under the LCM, the Parties shall consider views of their respective worker and employer representatives, as well as other members of civil society.

### 3. *U.S.-Chile Labor Cooperation*

Chile and the United States have already begun cooperative efforts to address labor law enforcement and the capacity to promote respect for core labor standards. U.S. and Chilean labor department officials have moved forward on labor technical cooperation projects on labor justice reform and labor law compliance schemes that address particular labor law reform and compliance needs on the part of the Government of Chile.

The U.S. Department of Labor and the Government of Chile are engaged in technical cooperation on modernizing aspects of labor inspection, investigation, enforcement, and compliance practices. Particular emphasis is being placed on wage and hour issues (such as minimum wage and overtime requirements), occupational safety and health, and labor relations disputes (unfair labor practices).

Chile has instituted a modernization of its criminal justice system over the last several years aimed at replacing an inquisitorial model of written judgments with a system of

open, oral and adversarial trials. The Government of Chile seeks to undertake a similar reform of its labor justice system, with particular emphasis on improving the efficiency of court administration and developing an updated system of trial proceedings. The U.S. Department of Labor is working with other U.S. government entities (Administrative Office of the U.S. Courts, Federal Judicial Training Center) to engage in technical cooperation with the Government of Chile on civil procedures and due process issues, general court management, operational aspects of judicial procedures and the conduct of trial proceedings, judicial training, and alternative dispute resolution.

To date, the technical cooperation efforts have included a planning meeting of high-level labor officials from both countries, which took place in Santiago in July 2002, two separate technical design team visits to Chile in the Fall of 2002, and detailed study tours to the United States for Chilean officials in March 2003 (labor compliance) and April 2003 (labor justice reform), which included presentations and site visits for Chilean officials to gain a better understanding of the U.S. system so that the two countries can identify aspects appropriate for Chile and develop more directed training.

## B. Investment

International agreements on investment are designed to provide a secure legal framework for investment among the Parties and reduce protectionist barriers, taking into account governments' need to protect the public welfare and other policy objectives. Such agreements have a long history, including in 36 bilateral investment treaties (BITs), currently in effect, to which the United States is a Party, and Chapter 11 of the NAFTA. These agreements all include provisions allowing private investors of a Party to submit to arbitration a claim that another State-Party has violated one or more of the investment obligations and has thereby caused loss or damage to the investor or investment ("investor-State" mechanism). Investment agreements have brought benefits to the United States, helping to remove barriers to U.S. investment abroad and to provide U.S. investors overseas with fair and non-discriminatory treatment. However, concerns have been raised by the LAC and other interested parties that arbitral panels could potentially misinterpret the investment obligations to be inconsistent with legitimate government regulatory functions, including protecting the environment, shielding consumers from fraud, delivering public services and safeguarding public health. The LAC also asserted that the FTA focuses more on facilitating the shift of investment abroad than increasing U.S. exports.

The Trade Act provides guidance on the appropriate resolution of the regulatory issues in the form of principal negotiating objectives regarding investment. As further explained in the accompanying Conference report, the Trade Act instructs that it is a priority for negotiators to seek agreements protecting the rights of U.S. investors abroad and ensuring the existence of a neutral investor-State dispute settlement mechanism. At the same time, these protections must be balanced so that they do not come at the expense of making U.S. federal, state, and local laws and regulations more vulnerable to successful challenges by foreign investors than by similarly situated U.S. investors. As part of this balance, the substantive investment protections (e.g., expropriation, fair and equitable treatment, and full protection and security) are to be consistent with U.S. legal principles and practice and are not to provide "greater substantive rights" to foreign investors in the United States than are available to U.S. investors in the United States.

### 1. *Overview*

The FTA fully meets the Trade Act requirements as indicated in the overview of the Investment Chapter—Chapter 10—under Section II(A)(C) of this report. In addition to providing a comprehensive set of standards that will protect investors from discriminatory or arbitrary actions by the host government, the Investment Chapter also incorporates a number of provisions that respond to Congressional concerns regarding the regulatory impact of the investment provisions.

To the extent that regulatory concerns expressed by the LAC are similar to those raised by Congress and others, these issues have been analyzed in the Environmental Review.<sup>51</sup> The effect of the investment provisions would likely be the same with respect to the enforcement of U.S. labor laws.

To further ensure the ability of the U.S. government to carry out certain legitimate regulatory functions, the FTA contains an Annex of Non-Conforming Measures, in which the United States reserves the right to adopt or maintain any measure in the case of social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

## 2. *Employment Impact*

Predicting the employment impact of U.S. and Chilean investment flows that may arise out of the Investment Chapter of the FTA is problematic, and there is no generally accepted economic model for doing so. While such investment flows are likely to increase, given the additional security and predictability that an FTA provides, investment decisions depend on a host of factors, ranging from political to social to economic, many of which are exogenous to the Agreement. Short-term investment, including portfolio investment, is too volatile to predict with any degree of certainty. Foreign direct investment (FDI) is more stable and long term, but is, nevertheless, dependent on different factors. Moreover, outward flows of U.S. investment capital would need to be measured against inward flows resulting from intra-company transfers by U.S. overseas subsidiaries and operations to the host-company or investors in the United States. The same would apply to Chilean investment in the United States. This section, therefore, focuses on the current stock of U.S. investment in Chile and areas where additional U.S. FDI appears likely, given Chile's economic objectives and information from various sources, without drawing any conclusions or making any predictions regarding the impact on employment in the United States.

The total stock of U.S. direct investment in Chile at the end of 2001 was \$11.7 billion, invested primarily in manufacturing (largely food and chemicals), (\$1.9 billion), banking (\$1.0 billion) financial services (\$3.0 billion), and other industries (including mining) (\$5.1 billion). The stock of Chilean direct investment in the U.S. at the end of 2001 was insignificant at minus \$179 million.<sup>52</sup>

Increased access to the Chilean financial services and banking sectors were important sectoral objectives of U.S. negotiators.<sup>53</sup> An important achievement of U.S. negotiators was increased access for U.S. financial services to participants in Chile's privatized pension system. U.S. FDI is likely to increase in both banking and financial services, where investment is already significant. The Agreement will also provide new access to additional areas of Chile's services market, including telecommunications services, express delivery, and professional services.

U.S. investment in Chile in manufacturing may also expand as a result of the FTA. Possible areas of additional U.S. direct investment include the chemical, electronics, and consumer goods manufacturing sectors. U.S. investment in the mining sector, already significant, will probably grow in view of the superior grade of many Chilean ores and the consequent comparative advantage Chilean producers have over U.S. producers.

### C. Temporary Entry Provisions for Business Persons in the FTA

Successful implementation of the FTA will require that business persons from each country be able to travel readily between the two countries. Development and expansion of business opportunities, investment of capital, and movement of key personnel between foreign and local business sites requires that the two countries establish transparent, predictable, facilitative rules governing the temporary admission, stay, and employment of business persons. Unfortunately, this aspect of an FTA is not normally taken into account in most quantitative economic models that compute the employment effects of proposed FTAs. Such computer models typically assume that each country's labor force is fixed and fully employed, and that an FTA will result in the free flow of goods and services between countries without altering the size of the domestic labor force.

Chapter 14 of the FTA, entitled Temporary Entry of Business Persons, articulates a set of mutual commitments for the admission of business visitors, traders and investors, intra-company transferees, and professionals. These FTA categories directly parallel and are consistent with categories of temporary entry under U.S. immigration law. However, Chile will implement these temporary entry commitments through its existing visa system that does not identify visa categories in this way.

Only citizens of Chile and the United States will be eligible for these benefits that cover the right of temporary admission but do not guarantee the right of employment in the other country. Business persons applying for temporary entry under this chapter must meet the standards established for the relevant temporary entry category under domestic law.

Chilean law imposes no numerical limitations on the admission of business persons covered under this Temporary Entry Chapter. As noted previously, however, Chile does restrict each business's employment of foreign nationals to not more than 15 percent of its total workforce. While this barrier affects the employment opportunities of U.S. citizens who have entered Chile, it does so by constraining their delivery of services rather than their actual admission. Hence this issue is addressed in Chapter 11, Cross-Border Trade in Services. Professionals are the only class of business persons whose admission to the United States is numerically restricted. Because of the worldwide cap on specialty occupation (H-1B) workers, Chilean professionals currently compete with other nationalities for U.S. admission. To further facilitate their entry, the FTA provides for up to 1,400 approvals of initial applications from Chilean professionals each year, above those available through the H-1B program. This annual cap on Chilean FTA professional admissions is permanent.

#### *1. Categories of Temporary Entry Under the FTA*

##### *a. Business Visitor*

Both the United States and Chile have strong interests in the business visitor category, which grants citizens of either country temporary entry into the other country to perform

certain business-related functions that do not constitute direct employment within the host economy. These business-related functions include: meeting and consulting with business associates; conducting certain independent research and design functions; certain commercial transactions for an enterprise in the host country; undertaking marketing and sales activities; facilitating import and export of goods; fulfilling obligations taken under a contract of sale; and certain general service functions.

The United States will admit Chilean business visitors using the existing B-1 nonimmigrant (i.e., temporary) classification. The rules for this classification stipulate that the individual's principal residence and primary source of remuneration for these activities must be outside of the United States. U.S. business visitors traveling to Chile for periods of less than 90 days may enter without a visa, as tourists. For longer stays, or to obtain work authorization and the identity card essential to most financial transactions, they may apply for temporary resident status, either prior to entry or during their tourist stay in Chile. Temporary residence is granted in single year increments, but will be renewable so long as the conditions on which it is based remain in effect.

b. Traders and Investors

Both countries likewise share a strong interest in the movement of traders and investors. The FTA articulates a single overarching category for these individuals. However, the United States will implement this commitment using two existing temporary entry categories, treaty traders or treaty investors (the E-1 and E-2 nonimmigrant categories, respectively). Following U.S. general law, Chilean traders may enter the United States to carry on substantial trade in goods or services only if their company's trade is principally between the United States and Chile. Chilean investors will be admitted to establish, develop, administer or provide key technical assistance to the operation of investments to which they or their enterprise have committed (or are in the process of committing) a substantial amount of capital. Only persons in supervisory or executive roles, or those having essential skills relevant to the business of the enterprise, are eligible for these temporary entry categories. Chile will grant U.S. traders and investors temporary resident status, along with work authorization and the national identity card. Their one-year admission will be renewable indefinitely, so long as the original conditions remain in effect.

c. Intra-company Transferees

A third area of mutual interest is intra-company transferees. Inclusion of intra-company transferees in the FTA will enable multinational companies to transfer citizens of either country, employed in one of their own (or their affiliate's) business sites elsewhere into a temporary assignment within their company or affiliate in Chile or the United States. The United States will implement this commitment using the L-1 classification, which stipulates that employees transferred into the United States must be in an executive or managerial position, or must hold a job that requires specialized knowledge relevant to the company's operation. Under the FTA, a Party may also require the transferee to have completed one year of employment with the company or its foreign affiliate during the

three previous years. Like most other FTA temporary entrants, U.S. transferees to companies within Chile will require temporary resident status, work authorization and a national identity card. They will not be subject to a prior employment standard.

d. Professionals

The FTA professional category will cover the direct delivery of services by individual workers. Under this category, professionals from Chile will be admitted to the United States on a temporary basis for employment with a U.S. employer. U.S. legislation will be necessary to establish this new temporary entry category. U.S. rules for Chilean FTA professionals, which are not yet fully formulated, are likely to resemble those of the H-1B and NAFTA “TN” professional constructs. Chilean FTA professionals will be subject to a numerical limitation of 1,400 per year. This figure is sufficiently large, relative to current professional entries from Chile [330 Chilean initial H-1B petitions were approved in FY-2001] that it should accommodate considerable increased professional mobility under the agreement. As with the previous categories, Chile will implement this commitment by granting qualifying U.S. professionals temporary resident status, in single year increments.

2. *Potential U.S. Labor Market Impacts*

There is widespread consensus that the first three categories of FTA entry have neutral or net positive impacts on the U.S. labor market. By definition, business visitors are precluded from direct employment in the domestic labor market. The functions they perform within the United States are intended to facilitate trade between the two partner-countries, creating employment opportunities in both nations. The actions of traders and investors are likewise expected to stimulate the growth of businesses in the United States, thereby generating employment opportunities for U.S. workers. Non-managerial employees admitted for the purpose of applying their essential skills within the company also work in support of this generally positive mission. The temporary admission category of intra-company transferees is intended to simultaneously benefit labor markets in the United States and abroad. This category is considered indispensable for the smooth operation of multinational corporations, which often require the movement of key personnel between sites and affiliated companies in various countries. Technical personnel admitted under this category are not subject to a prevailing wage requirement, and in recent years there have been anecdotal reports of multinational companies trying to take advantage of this by bringing in low-wage contract workers as intra-company transferees. Nonetheless, on balance, intra-company transferees are still regarded as a stimulus to the domestic labor market.

Concerns about potential labor market impacts typically focus on the professional category that admits foreign workers into the domestic labor market on a temporary basis. Under terms of the FTA, U.S. employers will not be required to recruit or to consider the applications of U.S. professionals before hiring professionals from Chile. To mitigate concerns about potential labor market impacts, FTA commitments for professionals enable the United States to incorporate certain worker protections Congress established in

the H-1B specialty worker program. While the Administration and the Congress have not yet formulated the specific rules for this temporary entry category, at a minimum they will include:

- explicitly defining a “professional occupation” as one that requires a post-secondary degree (or the equivalent of such a degree) in a specialty requiring four or more years of study, and theoretical and practical application of a body of specialized knowledge;
- requiring any FTA “professional” to acquire the requisite education and skills before entering the country;
- requiring that the professional’s U.S. employer attest to some of the same terms of employment as H-1B employers, such as payment of the prevailing wage, notification of other employees regarding this hiring decision, and an attestation that this hiring action will not adversely affect similarly situated U.S. workers;
- prohibiting the employment of FTA professionals in situations that might adversely affect the settlement of labor disputes;
- inclusion of an annual numeric cap of 1,400 initial approvals for Chilean FTA professionals that will operate independently of the H-1B cap; and
- granting entry and extensions of temporary stay in one-year increments, so long as the professional can demonstrate continuing employment that satisfies the terms of this FTA.

## **D. Trade Adjustment Assistance and Other Federal Programs to Assist Displaced Workers**

While international trade has net economic benefits, it is recognized that it may also result in dislocations, particularly in specific goods-producing industries or geographical areas, and some workers may need help in finding a new job. Even though the expected displacements due to the U.S.-Chile FTA are likely to be minimal, it is a clear policy goal to provide coordinated adjustment and transition services and to make them available in a timely manner.

The U.S. Department of Labor has several programs to assist workers who lose their jobs as a result of U.S. international trade agreements to find re-employment. These include the newly reauthorized Trade Adjustment Assistance (TAA) program that was part of the Trade Act of 2002, the Workforce Investment Act (WIA), Unemployment Insurance (UI), and a compliance requirement that there be advance notification of plant closings which affect more than 50 workers.

### *1. New Enhanced Trade Adjustment Assistance Program*

The Trade Act consolidated the former TAA program and the NAFTA Transitional Adjustment Assistance (NAFTA-TAA) program, which assisted workers adversely affected by trade with Mexico or Canada, into a single enhanced TAA program and authorized it through fiscal year 2007. It expanded the eligibility of workers for TAA assistance to include workers who lose their jobs when their firms shift production either to countries that are parties to a free trade agreement with the United States or to countries that are beneficiaries under certain specified legislation. Coverage applies also to cases where there has been or is likely to be an increase in imports like or directly competitive with articles produced by the firm. In addition, certain “secondary” workers are also eligible for TAA, namely, workers in firms that produced and supplied component parts directly to a trade-impacted firm where these component parts were directly incorporated into the articles that served as the basis for the TAA certification for the primarily affected workers. TAA eligibility was also expanded to certain secondary workers who are downstream producers who performed additional, value-added production processes directly for a primary firm for articles that were the basis for the primary firm’s TAA certification. For the downstream producer to receive a certification, the primary firm’s certification must result from trade with Canada and/or Mexico. Downstream production, for example, can include final assembly or finishing of articles produced by a directly affected firm. In general, workers who are not covered by a TAA certification may be eligible for the employment-related services available under the Workforce Investment Act (WIA) and described below if they have been permanently laid off, or have received a notice of termination or layoff from employment; that is, they are dislocated workers.

Coverage was also extended to farmers who face dislocations due to increased imports. The Trade Act created a new trade adjustment assistance program for farmers that

provides compensation (limited to \$10,000 per person, per year), employment services, and training when commodity prices fall below the average for the past five years due to import surges. The program is administered by the U.S. Department of Agriculture, which is to be appropriated an amount not to exceed \$90 million for each of the fiscal years 2003 through 2007 to carry out the purposes of this program.

## 2. *Benefits and Services Provided to Dislocated Workers*

Early intervention is a key principle to return workers to jobs. In this light, the Trade Act requires rapid response services be available to workers as soon as a petition for TAA is filed. Rapid Response Services provide immediate aid to workers affected by announcements of plant closings and large layoffs. Dislocated Worker offices may send one or more representatives to the work site to coordinate the layoff before it occurs. Early interventions are also facilitated by the Worker Adjustment and Retraining Notification (WARN) Act that requires employers of 100 or more full-time workers to provide 60-days advance notice of a plant closing or major layoff (over 50 employees). Such a notice triggers a Rapid Response from state teams, and during rapid response, specialists in helping workers cope with job change will gather information on workers' needs and begin to organize the services necessary to help them get back to work.

The TAA program provides training, income support, and other reemployment and supportive services to certified workers who lost their jobs or had their work hours or salary reduced because of increased imports or shifts in production to foreign countries. Trade affected workers are "dislocated workers" under the Workforce Investment Act (WIA) that is administered by the U.S. Department of Labor. The Trade Act of 2002 strongly encourages close coordination with WIA services. Three types of services are potentially available:

- All workers have access to core services—information on and assistance with unemployment insurance (UI) benefits, electronic job search, and local area job openings—through a local One-Stop Career Center. If they have not received information on these services through their Rapid Response team, this is the first step in obtaining them;
- If more than the core services are needed, intensive services may be available such as one-on-one assistance, group career workshops, and other assistance such as skills assessment, stress management workshops, and one-on-one job counseling. TAA certified workers are entitled to financial assistance for out-of-area job search and relocation; and
- Training services, including on-the-job training (OJT), occupational skills improvement, and remedial education classes—such as English as a second language (ESL)—may be available. One-Stop Career Centers have a list of approved training programs, descriptions and costs to help guide the decision-making process. Under TAA services, training must generally be full time and the length of the training program may not exceed 104 weeks. However, if

remedial training is needed initially, a total of 130 weeks of training and income support are possible through TAA.

Not everyone who is eligible to participate in the TAA program or WIA needs training. Dislocated workers will work with staff in the One-Stop Career Center to determine the type of services needed and whether or not training is needed to find a new job. The revised TAA program spells out specific criteria for approval of training: there is no suitable employment available, training is available and appropriate (i.e., training is suitable for the worker and available at a reasonable cost, and the worker is qualified for and would benefit from the training), and there's a reasonable expectation of a job after completion. The amount of funds available annually for training under TAA is \$220 million. The total appropriation for the TAA program in FY-2003 is \$972.2 million.

The revised TAA program also includes a temporary 5-year program of alternative trade adjustment assistance for older workers. Under this program, workers in firms with a significant number of workers over the age of 50 who are without easily transferable skills may choose, in lieu of the other benefits available under the TAA program, to receive payments of 50 percent of the difference between pre-layoff wages and their reemployment wages. A worker could receive payments for up to a two-year period, but the maximum amount paid may not exceed \$10,000. In order to qualify, the worker must be at least 50 years of age, become reemployed within 26 weeks of separation, and be reemployed at annual wages of not more than \$50,000 in a full-time job that is not the job from which he/she was laid off.

There are also a number of new provisions providing health insurance assistance to certain TAA-eligible workers. The primary source of assistance is a tax credit of 65 percent of the cost of coverage of the eligible individual and qualified family members under qualified health insurance. The eligible individuals include three groups: (1) TAA participants who are receiving extended income support under the TAA program, or who would be eligible to receive such income support if they had exhausted their unemployment insurance (UI); (2) TAA participants who are participating in the alternative TAA for older workers program; and (3) individuals age 55 or older who are receiving pension benefits paid by the Pension Benefit Guaranty Corporation.

### *3. Grant Programs to the States for Provision of Health Insurance Assistance*

The Trade Act also established a number of grant programs to assist the states in the provision of health insurance assistance to these eligible groups. Two grant programs (with a total appropriation of \$100 million), which are administered by the Department of Health and Human Services, were established in order to help states establish and operate qualified high-risk pools. Two additional grant programs were added to the National Emergency Grants (NEGs), which are administered by the Department of Labor under the WIA. The first grant program awards grants to provide interim health insurance coverage and supportive services (such as transportation, child and dependent care, and income assistance) to the three groups that are eligible for the tax credit. This grant is for

assisting in the payment (65 percent) of the eligible participant's health insurance. Moreover, it was the "sense of Congress" that supportive services like childcare should be provided through other U.S. Department of Labor programs as well. The Trade Act authorizes \$50 million for FY-2002, \$100 million for FY-2003, and \$50 million for FY-2004 for this program. The second new NEG grant program provides health insurance coverage assistance to individuals included in the three eligible groups and pays the administrative costs of enrolling such individuals, including the processing of the eligibility certificates necessary for the tax credit. This grant is for state infrastructure for this part of the program. Ten million dollars for FY-2002 became available upon enactment, and \$60 million per year is authorized for each of fiscal years 2003-2007 for these grants.

The Trade Act also amended ERISA, the Public Health Service Act, and the Internal Revenue Code to allow a temporary extension of the period during which a worker who is "TAA-eligible" may elect COBRA continuation coverage under the layoff employer's health insurance plan. The extension is for a 60-day period that begins on the day the individual first meets the TAA eligibility requirements, and the election must occur within 6-months of the trade-related layoff. If a worker makes such an election, assistance in making the payments for the continuation coverage is provided through the tax credit or through the NEG grants.

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## **End Notes**

<sup>1</sup> Executive Order 13141—Environmental Review of Trade Agreements—was signed by President Clinton on November 16, 1999. The Order commits the U.S. government to a policy of careful assessment and consideration of the environmental impacts of trade agreements, including factoring environmental considerations into the development of its trade negotiating objectives. The Order directs that, in certain instances, written environmental impact reviews be made and made available to the public in final form. Also, the Order directs the Office of the U.S. Trade Representative (USTR) and the Council on Environmental Quality (CEQ) to oversee the implementation of the Order, including the development of procedures or guidelines pursuant to the Order. In December 2000, USTR and CEQ published *Guidelines for the Implementation of Executive Order 13141—Environmental Review of Trade Agreements*. The Order and Guidelines are available on the USTR web site at: <http://www.ustr.gov/environmental.shtml>. USTR and CEQ jointly oversee implementation of the Order and Guidelines, while USTR, through its Trade Policy Staff Committee (TPSC), is responsible for conducting individual reviews.

<sup>2</sup> See 67 *Fed. Reg.* 64692-64693 (October 21, 2002).

<sup>3</sup> Taken from unpublished tabulations from the Current Population Survey, Bureau of Labor Statistics, U.S. Department of Labor.

<sup>4</sup> Taken from unpublished tabulations from the Current Population Survey, Bureau of Labor Statistics, U.S. Department of Labor.

<sup>5</sup> See *World Development Indicators* (Washington: World Bank, 2003)

<sup>6</sup> Agriculture includes hunting, forestry, and fishing, corresponding to major division 1 (ISIC revision 2) or tabulation categories A and B (ISIC revision 3)

<sup>7</sup> Industry includes mining and quarrying (including oil production), manufacturing, electricity, gas and water, and construction, corresponding to major divisions 2-5 (ISIC revision 2) or tabulation categories C-F (ISIC revision 3)

<sup>8</sup> Services include wholesale and retail trade and restaurants and hotels; transport, storage, and communications; financing, insurance, real estate, and business services; and community, social, and personal services—corresponding to divisions 6-9 (ISIC revision 2) or tabulation categories G-P (ISIC revision 3).

<sup>9</sup> The reported unemployment rate is for the civilian labor force 16 years or older and is an annual average for 2002. For more information see the US Bureau of Labor Statistics web site: <http://www.bls.gov>.

<sup>10</sup> See *The Employment Situation: December 2002*, US DOL, BLS (released January 2003).

<sup>11</sup> Taken from unpublished tabulations from the Current Population Survey, Bureau of Labor Statistics, U.S. Department of Labor.

<sup>12</sup> Taken from unpublished tabulations from the Current Population Survey, Bureau of Labor Statistics, U.S. Department of Labor.

<sup>13</sup> See *Productivity and Costs, Preliminary Fourth Quarter and Annual Averages for 2002*, U.S. Department of Labor, Bureau of Labor Statistics, February 2003.

<sup>14</sup> *Productivity and Costs, Preliminary Fourth Quarter and Annual Averages for 2002*, U.S. Department of Labor, Bureau of Labor Statistics, February 2003.

<sup>15</sup> *Productivity and Costs by Industry*, U.S. Department of Labor, Bureau of Labor Statistics, April 2002.

<sup>16</sup> These estimates are calculated by the Chilean National Institute of Statistics and have a reference period November 2002 to January 2003. *Instituto Nacional de Estadísticas*, <http://www.ine.cl/03-empleo/9999.htm> and <http://www.ine.cl/03-empleo/11301.htm>.

<sup>17</sup> The reference period for this calculation was November 2002 to January 2003. From the Chilean National Institute of Statistics (*Instituto Nacional de Estadísticas*) at <http://www.ine.cl/03-empleo/9999.htm> and <http://www.ine.cl/03-empleo/11301.htm>.

<sup>18</sup> ILO, LABORSTA.

<sup>19</sup> Services include wholesale and retail trade and restaurants and hotels; transport, storage, and communications; financing, insurance, real estate, and business services; and community, social, and personal services—corresponding to divisions 6–9 (ISIC revision 2) or tabulation categories G–P (ISIC revision 3).

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- <sup>20</sup> Includes manufacturing, mining and quarrying (including oil production), manufacturing, construction, electricity, gas, and water, corresponding to divisions 2–5 (ISIC revision 2) or tabulation categories C–F (ISIC revision 3).
- <sup>21</sup> Agriculture includes hunting, forestry, and fishing, corresponding to division 1 (ISIC revision 2) or tabulation categories A and B (ISIC revision 3).
- <sup>22</sup> Based on information provided by the U.S. Embassy, Santiago.
- <sup>23</sup> *CIA World Fact Book, 2002* – online version
- <sup>24</sup> van Ark, Bart and Robert H. McGuckin, “International Comparisons of Labor Productivity and Per Capita Income, *Monthly Labor Review*, July 1999, pp. 33-41.
- <sup>25</sup> ILO, *Key Indicators of the Labor Market CD-ROM, 2001-2002*.
- <sup>26</sup> See ILO, LABORSTA. This result could reflect the recent bumping-up in educational attainment in Chile. That is, recent labor force entrants had more education but less work experience; hence, they were the first to lose their jobs in a downturn. It is also possible that these new workers could only find lower-skilled jobs. This latter possibility is supported by the concentration of unemployment in lower-skilled occupations and industries.
- <sup>27</sup> Occupations are definitions are taken from the International Standard Classification of Occupations.
- <sup>28</sup> ILO, LABORSTA, online-version
- <sup>29</sup> *2001 Labour Overview, Latin America and the Caribbean* (Lima: International Labor Office, December 2001), Table 6-A.
- <sup>30</sup> *Global Employment Trends* (Geneva: International Labor Office, 2003), p. 14.
- <sup>31</sup> Trade ranking are compiled by the World Trade Organization (WTO); see *International Trade Statistics 2001*, Table I.5 (Geneva: World Trade Organization, 2001), p. 21.
- <sup>32</sup> Trade ranking are compiled by the World Trade Organization (WTO); see *International Trade Statistics 2001*, Table I.5 (Geneva: World Trade Organization, 2001), p. 21.
- <sup>33</sup> See, for example, National Association of Manufacturers, “Absence of Chilean Trade Agreement Costing U.S. Over \$800 Million per Year,” October 2001.
- <sup>34</sup> Since U.S. employment data from the U.S. Bureau of Labor Statistics (BLS) were available only on a SIC basis, U.S. trade data in this review have been tabulated on a SIC basis for the purposes of impact analysis. BLS will begin publishing current U.S. employment data on the new North American Industry Classification System (NAICS) basis, beginning with the release of May 2003 data in June 2003.
- <sup>35</sup> Private services include non-government personal and business related services.
- <sup>36</sup> See, *2003 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: Office of the United States Trade Representative, 2003), p. 39.
- <sup>37</sup> U.S. Department of Commerce, Bureau of Economic Analysis. A negative figure is arrived at by subtracting the liabilities the U.S. entities owe their Chilean owners from the total equity value of the investment.
- <sup>38</sup> The duty-free category now known as normal trade relations (NTR) duty-free was formerly known as “most favored nations” (MFN) duty-free.
- <sup>39</sup> Chapter 98 of the Harmonized Tariff Schedules (HTS) of the United States contains provisions related to foreign processing of U.S. materials; duties are assessed only on the foreign value added and not on the U.S. content value. Chapter 99 of the HTS contains special or temporary duty exemptions.
- <sup>40</sup> Tabulated from official U.S. Department of Commerce trade statistics, using calculated duties reported.
- <sup>41</sup> This paragraph is based on information in the *2003 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: Office of the United States Trade Representative, 2003), pp. 39-45.
- <sup>42</sup> See *WTO Trade Policy Review: United States, September 2001* at [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp172\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp172_e.htm), and *Statement on Foreign Direct Investment Policy* (U.S. Department of Treasury, December 26, 1991).
- <sup>43</sup> See Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, “Multilateral, Regional, and Bilateral Trade-Policy Options for the United States and Japan,” Research Seminar in International Economics Discussion Paper No. 490 (Ann Arbor, MI: The University of Michigan, School of Public Policy, December 16, 2002). The paper is available at <http://www.spp.umich.edu/rsie/workingpapers/wp.html>.
- <sup>44</sup> For further information about the model, see <http://www.Fordschool.umich.edu/rsie/model>.
- <sup>45</sup> See Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, “Multilateral, Regional, and Bilateral Trade-Policy Options for the United States and Japan,” Research Seminar in International Economics Discussion Paper No. 490 (Ann Arbor, MI: The University of Michigan, School of Public Policy,

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December 16, 2002). In addition to evaluating the effects of a bilateral U.S.-Chile FTA, the paper considers another scenario in which Chile joins NAFTA that yields similar results for the United States but they are not reported here. The paper is available at <http://www.spp.umich.edu/rsie/workingpapers/wp.html>.

<sup>46</sup> For textile and apparel goods made of non-originating fibers or non-elastomeric yarns used in the production of a component of a good that determines the tariff classification of the good do not undergo the applicable change in tariff classification for the good, the total weight of all such fibers or yarns in that component does not exceed 7 percent of the total weight of that component. In other cases, the *de minimis* rule does not apply to: non-originating dairy products, bird eggs, natural honey, and some other edible products of animal origin used in the production of other like products or in ice cream, dried milk, animal feeds, or juice products; non-originating fresh or dried citrus fruit used in the production of juices; non-originating animal or vegetable fats and oils, prepared edible fats, or animal or vegetable waxes used in the production of lards, greases, or other oils; non-originating cane or beet sugar and chemically pure sucrose in solid form used in the production of other sugar products; non-originating sugar and confectionary products and cocoa powder used in the production of other cocoa powders; non-originating beer, wine, vermouth, and other fermented beverages; undenatured ethyl alcohol; and spirits, liqueurs, and other spiritous beverages used in the production of other spirits and beverages; and non-originating live animals, vegetables, fats and oils, and prepared food stuffs used in the production of similar goods unless the non-originating material is provided for in a different subheading of the Harmonized Tariff Schedule than the good from which origin is being determined.

<sup>47</sup> See, U.S. Bureau of Labor Statistics web site at <http://www.bls.gov/iag/iag.manufacturing.htm>.

<sup>48</sup> For example, Women's EDGE published a comprehensive methodology for conducting a gender assessment for trade and investment agreements. See *Framework for Gender Assessments of Trade and Investment Agreements*, The Coalition for Women's Economic Development and Global Equality, 2002. See also, Heather Gibb, *Gender Mainstreaming, Good Practices from the Asia Pacific Region*, Asia-Pacific Economic Cooperation (2001) at <http://www.apecsec.org.sg>; and *GenderReach*, the Office of Women in Development, the United States Agency for International Development, web site at: <http://www.genderreach.com>

<sup>49</sup> See for example Kletzer, Lori G., *Job Loss from Imports: Measuring the Costs*, The Globalization Balance Sheet Series, Institute for International Economics, September 2001.

<sup>50</sup> The Declaration, enacted by the ILO in 1998, commits all member countries to “. . . promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.”

<sup>52</sup> A negative figure is arrived at by subtracting the liabilities the U.S. entities owe their Chilean owners from the total equity value of the investment.

<sup>53</sup> A separate Financial Services Chapter applies to the provision of banking and financial services, including those that require a commercial presence. Disputes that emerge under this chapter, however, are subject to the provisions of the investor-state disputes resolution procedures of the Investment Chapter, though the scope of disputes subject to these procedures is narrower than in the case of other investments.