STATEMENT AS TO HOW THE UNITED STATES-CHILE FREE TRADE AGREEMENT SERVES THE INTERESTS OF UNITED STATES COMMERCE

INTRODUCTION

The United States-Chile Free Trade Agreement (FTA) serves the interests of United States commerce and benefits many sectors of the U.S. economy. It is a partnership for growth and a partnership for creating economic opportunities between our two countries. It will serve the interests of workers and consumers in both countries.

Chile has one of the world's fastest growing economies. Its sound economic policies are reflected in its investment grade capital market ratings, unique in South America. Chile has a thriving democracy which, together with its 15-20 years of free and open markets, has led to a prosperous economy. The U.S.-Chile FTA should help Chile continue its impressive rate of growth and development. It will help spur progress in the negotiations for the Free Trade Area of the Americas, and send a positive message throughout the Western Hemisphere and the world that the United States will work in partnership with those who are committed to open markets.

Leveling the Playing Field

The U.S.-Chile FTA will help U.S. manufacturers, service suppliers, farmers, workers, consumers, and investors achieve a level playing field. Securing an FTA with Chile will ensure that U.S. workers, businesses, and investors will receive treatment that is as good or better than Chile accords its other trade agreement partners.

Prior to the late 1990s, U.S. products were highly competitive in the Chilean market, accounting for a growing share of Chile's imports. Chile subsequently became an Associate Member in Mercosur, and has trade agreements providing preferential access for several countries, most notably with Canada, Mexico, and the 15 members of the European Union. The trade advantages accorded other countries under these agreements, together with other factors, resulted in a significant erosion in the volume of imports from the United States into Chile. The U.S. share of Chile's goods imports from the world fell from 24 percent in 1997 to under 17 percent in 2002. U.S. service providers likewise saw their share of Chile's services market drop from 35 percent in 1997 to 27 percent in 2001.

While the United States was losing market share, the major countries with which Chile maintains free trade agreements added more than 9 percentage points to their share of imports into Chile's market. These gains were sharp across the board for the Mercosur countries (Argentina, Brazil, Uruguay and Paraguay), while Canadian and Mexican share gains in Chile were more concentrated in particular sectors. Chile's global goods imports were $14.3 billion in 2002, of which $2.4 billion (16.6 percent) were imported from the United States. If the United States had maintained its 1997 import share of 24 percent, Chile's imports from the United States could have been $3.4 billion, *i.e.*, $1.1 billion more than they actual were.

Chile's most significant FTA, prior to the U.S.-Chile FTA, a free trade agreement with the 15-member European Union (EU), went into effect in February 2003. The EU has already established itself as the leading exporter to Chile. Without the U.S.-Chile FTA exporters from the EU will enjoy lower tariffs and greater market access in Chile. The National Association of Manufacturers estimates that 6,000 U.S. jobs will be lost if the EU's advantage is not quickly eliminated.

Small and Medium Sized Business

Emerging markets like Chile's provide excellent opportunities for fast growth in exports, particularly for small and medium-sized enterprises. In 1999, 79 percent of all U.S. firms that exported to Chile were small businesses. Small businesses have taken advantage of previous trade agreements designed to eliminate trade barriers. Since the North American Free Trade Agreement (NAFTA) went into effect in1994, exports to Canada and Mexico have accounted for nearly one-third of all exports by small and medium-sized businesses.

Small and medium-sized enterprises will especially benefit from the tariff elimination provisions of the U.S.-Chile FTA. In recent years, U.S. companies have faced strong competition from firms in Canada and Mexico who already enjoy the benefits of these countries' free trade agreements with Chile. A level playing field is especially important for small and medium-sized firms, which generally cannot source production in countries that already enjoy the benefits of free trade with Chile. Anticipating the small-business benefits that the FTA would provide, the U.S. Small Business Administration (SBA), the Technical Cooperation Service of Chile, and the Chilean Economic Development Agency signed a memorandum of understanding on December 5, 2002, designed to promote linkages between Chilean and U.S. small businesses.

The U.S.-Chile FTA is a comprehensive trade agreement that will address and, in most cases, significantly improve many aspects of the bilateral commercial relationship. The FTA is characterized by a series of broad principles governing trade that provide certainty and predictability, a prerequisite for the expansion of business – particularly small business.

TARIFF ELIMINATION LEVELS THE PLAYING FIELD FOR U.S. EXPORTERS

U.S. exporters to Chile currently face tariffs that other major competitors do not pay as a result of Chile's existing FTAs. The U.S.-Chile FTA addresses this significant disadvantage facing U.S. exports to Chile. More than 85 percent of bilateral trade in industrial and consumer products will become duty-free immediately upon the entry into force of the FTA. The majority of remaining industrial and consumer products will become duty-free within four years, and all tariffs on these products will be phased out within 10 years.

With respect to agriculture, tariffs on more than 75 percent of agricultural products will be eliminated within four years, and all tariffs on these products will be phased out over 12 years. An additional bonus for U.S. exporters is the phase-out of Chile's price bands on goods such as wheat, wheat flour, edible vegetable oil, and sugar.

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

Other key U.S. export sectors will benefit from the agreement as well. U.S. exporters of price sensitive products such as paper products, plastics, heating and other equipment, fertilizer, wheat, corn, and soybeans have seen big losses of market share in Chile and should particularly benefit.

Industrial Goods

The U.S.-Chile FTA is critical to U.S. competitiveness in key Chilean markets. Best prospects for exports to Chile include pollution control equipment, telecommunications, medical equipment, heavy machinery and equipment, and materials for the plastics industry (machinery and resin).

- Environmental technology products are top U.S. exports to Chile. The market for such products is expected to grow significantly in the near future as Chilean sanitary companies will have to invest $2.5 billion before the year 2010 in order to comply with the government's new, more stringent environmental regime. The Chilean Development Corporation (CORFO) has approved additional funds (estimated at $1 billion) to be used for these upgrades and three new wastewater treatment plants in the Santiago area. Under the FTA, Chile agreed to eliminate tariffs immediately on about 95 percent of U.S. exports in the environmental goods sector. Without the tariff benefits of the U.S.-Chile FTA, U.S. environmental technologies companies could be priced out of the market. Ninety-nine percent of companies in the U.S. environmental technologies industry are categorized as small businesses (that is, have fewer than 500 employees).

- Chile's telecommunication's market is the most advanced in South America. Competition in this sector is fierce, and the world-wide downturn in telecommunications investment has made price an even more critical component in sales. In 2000, the United States exported $260 million in telecom equipment to Chile, followed by successive declines to $158 million and $105 million in 2001 and 2002, respectively. In Chile, where about ninety-five percent of the market is supplied by imports, the immediate elimination of virtually all tariffs on telecommunications equipment will allow U.S. firms to regain competitiveness as Chile seeks new technologies.

- For several years, the United States has been one of Chile's most important suppliers of medical equipment. In 2002, the United States exported to Chile medical equipment valued at over $60 million, accounting for nearly 50 percent of Chile's market. The tariff eliminations in the recently-implemented EU-Chile free trade agreement, however, give European medical device producers a major price advantage over U.S. medical device exports. The Chilean government has recently approved several programs for large-scale purchases of modern equipment as part of an effort to upgrade the public and private health sectors. Under the FTA, Chile agreed to eliminate tariffs immediately on products constituting 99 percent of U.S. exports in the electronics and instrumentation sector (which includes the medical equipment sector). The elimination of Chilean tariffs on medical equipment will enable U.S. companies to compete on par with EU medical device firms and to take advantage of these new opportunities.

- The plastics industry in Chile has experienced strong sustained growth. However, as a result of price sensitivity and intense competition from countries that currently do not face a 6 percent tariff on their products, U.S. exports to Chile of plastics production machinery and resins have dropped, with the U.S. share of plastics imports falling from 29 percent in 1997 to 20 percent in 2002. Approximately 84 percent of Chile's tariffs in this sector will drop to zero immediately upon implementation of the Agreement, significantly enhancing U.S. industry's competitiveness in the Chilean plastics market.

- U.S. exports to Chile of construction equipment have dropped 33 percent from $286 million in 1997 to $193 million in 2002. During the same period, U.S. mining equipment exports declined even more significantly, dropping 84 percent from $119 million to $19 million. At the same time, Brazil and Canada, which both have duty-free access to the Chilean market through trade agreements, have significantly increased their market share. Under the FTA, Chile agreed to immediately eliminate tariffs on virtually all U.S. exports in the transportation, construction, mining, and agricultural equipment sectors. Implementation of the Agreement will help put U.S. exporters on equal footing with global competitors in the Chilean market.

- U.S. heating equipment, electrical power equipment, air conditioning and cooling equipment, and security equipment are all good prospects for exports to Chile. Virtually all of our major companies' competitors in these areas are from countries with a free trade agreement with Chile. The U.S.-Chile FTA is critically important for these industries to remain competitive in Chile as, under the FTA, Chile agreed to immediately eliminate tariffs on 98 percent of U.S. exports in the capital goods sector.

- The U.S. share of Chile's import market for paper products has seriously deteriorated since 1997, dropping from 30 percent to 9 percent in 2002. During the same period, Canada and Argentina, both free trade agreement partners of Chile, saw significant gains in market share. Implementation of the Agreement will provide a substantial and needed boost to U.S. paper products' competitiveness in the Chilean market as essentially all paper tariffs are eliminated immediately.

- U.S. paint, dye, tanning, and putty manufacturers have seen a significant loss in market share in Chile since 1997, with gains going to Mexico and, to a lesser extent, Brazil and Canada. All of these countries have free trade agreements with Chile. Approximately 62 percent of Chile's tariffs on these goods will go to zero immediately upon implementation of the Agreement and the rest will go to zero within four years, greatly improving U.S. industry's ability to compete in this sector.

Agricultural Goods

The U.S.-Chile FTA will give America's farmers and ranchers and associated businesses improved, and in many cases new, access to a market of 15 million consumers. Under this FTA, the U.S. access to Chile's market will improve for a variety of U.S. agricultural products, including durum wheat, pork, beef, feed grains, dairy, horticultural, and high-value food products. Over three-quarters of U.S. farm goods will enter Chile duty-free within four years and all tariffs on U.S. agricultural products will be phased out over 12 years. U.S. wheat, wheat flour and vegetable oils will now receive the lowest tariff rate available and will be duty-free at the conclusion of the transition period. In the past, Chile's price band system sharply constrained export opportunities for these products. Chile has committed to eliminate its price band mechanism as it relates to the United States over a 12-year transition period. Elimination of price bands was not part of the EU or Canadian FTAs with Chile.

Product specific highlights include the following:

- Chile will fully liberalize corn trade. The United States has lost significant market share, largely to Argentina, a member of Mercosur.

- U.S. soybean and soybean meal exports gain immediate duty-free access to Chile. This puts the United States on a more competitive footing with its major competitors, Brazil and Argentina, who already have duty-free market access in Chile and to whom U.S. industry has lost significant market share.

- Chile's tariffs will be eliminated immediately on the following products: pork and pork products, beef offal, durum wheat, barley, barley malt, sorghum, pasta, breakfast cereals, cereal preparations, and sunflower seeds.

- Four years after the agreement enters into force, U.S. beef will enter Chile free of tariffs or quotas. Beef products from Brazil, Uruguay, Paraguay and Argentina currently have duty-free access and currently supply almost all of Chile's beef imports.

- Pork exporters face tough competition from the EU, but will achieve parity with EU producers as a result of immediate elimination of tariffs under the U.S.-Chile FTA. U.S. pork could find niche markets in the hotel and restaurant sector for high-quality pork cuts and processed products.

- Exports of U.S. beef and pork to Chile are currently restricted due to differences in meat

inspection regulations. Consumer cuts of meat are denied access unless labeled and graded according to Chilean standards, which differ from U.S. standards. Annex 3.17 of the Agreement provides for both governments to recognize each other's beef grading systems, making it possible for USDA to certify beef products for export to Chile. Both countries have already undertaken the process of recognizing each other's meat inspection systems. Chile recognized the U.S. inspection system for beef, pork and lamb on June 3, 2003.

- Access for poultry on both sides will be completely liberalized over a 10- year period, beginning in the Agreement's third year. This will consist of an 8,000 metric ton tariff-rate quota with a 5 percent annual growth factor and a linear phase out of the out-of-quota tariff rate.

- Without duty-free access, U.S. dairy products are at a disadvantage to those from Argentina and Uruguay which benefit from lower transportation costs and existing trade agreements with Chile. Argentina and Uruguay generally supply half to two-thirds of Chile's dairy product imports, mostly nonfat dry milk, whole milk powder, cheese, and whey powder. A major worldwide supplier of cheese and whey, the U.S. share of Chile's total dairy product import market averaged just under five percent from 1999-2001. U.S. dairy products are further restricted due to differences in inspection regulations and grading standards. Under the agreement, Chile's duties on many dairy products, including skim milk powder, whey, and cheeses, will be eliminated in four years; duties on other dairy products will be eliminated in eight years. In addition, Chile will rely on U.S. Food and Drug Administration certifications of U.S. dairies to satisfy Chilean milk product safety requirements, which will make FDA-approved dairies eligible to export their products to Chile.

- U.S. fresh and processed vegetables currently face a 6 percent Chilean tariff. Chile's trade agreements with Canada, Mexico, and the EU have placed U.S. vegetables at a disadvantage in the Chilean market. The U.S. share of Chile's import market averages 14 percent. In contrast, Canada's share of the same import market is 57 percent. U.S. exporters also face high competition with the Mercosur countries, which export products such as head lettuce, onions, shallots, and sweet corn under preferential tariff rates.

- U.S. fresh and processed vegetables will gain improved access to the Chilean market as the existing tariffs are phased out. The phase-out period varies by product from immediate elimination to elimination after 12 years. For example, Chile's 6 percent tariff on U.S. frozen fried potatoes and potato chips is phased out over 4 years. Tariffs on fresh or chilled tomatoes, onions, and garlic will be phased out immediately. A U.S.-Chile FTA will make U.S. vegetables more competitive with products from Canada and other competitors.

- U.S. planting seeds gain improved access to Chile's market under a U.S.-Chile FTA. The FTA will immediately eliminate Chile's 6 percent import tariff. This will put the United States on an equal footing with the EU, the other primary supplier, which now

enjoys duty-free access under its trade agreement with Chile.

Safeguard for Import Sensitive Agricultural Products

The agreement also has a safeguard provision that will help farmers of the products most sensitive to imports adjust to competition from Chile. The safeguard is price-based, automatic, and applicable throughout the 12-year transition period. Prices for the commodities subject to safeguards will automatically be assessed the tariff uplift if the import value of the commodity falls below the trigger price established in the Agreement.

KEY PROVISIONS OF THE AGREEMENT PROVIDE NEW OPPORTUNITIES FOR DOING BUSINESS IN CHILE

The U.S.-Chile FTA has a number of key provisions which provide new opportunities for U.S. business. The agreement restricts the application of non-tariff barriers, provides broad coverage for U.S. service providers, guarantees broad access to the Chilean government procurement market, and ensures expeditious entry and exit of business persons across national borders.

Reduction and Elimination of Non-tariff barriers

- *Luxury tax*. The U.S.-Chile FTA requires Chile to eliminate its 85% luxury tax which was a significant disincentive to the export of U.S. automobiles to Chile. This "luxury tax" is only collected on imported vehicles valued at over $15,000. Given the nature of the U.S. automotive industry, the tax falls disproportionately on U.S. vehicles rather than on those from Europe or Asia. Under the terms of the FTA, the luxury tax on automobiles will be phased out over four years, eliminating a very significant barrier to U.S. vehicle exports.

- *Remanufactured Goods*. The Chile FTA is the first trade agreement to include provisions that allow some environmentally-friendly remanufactured goods to qualify for tariff elimination benefits under a free trade agreement. (Remanufacturing is a labor-intensive activity that allows the recycling of discarded or used "cores," which are normally the heaviest basic parts, such as an engine or radiator. The industry employs tens of thousands of U.S. workers.) The value added during this highly sophisticated process was not recognized under previous agreements, and it was difficult or impossible for remanufactured goods to qualify for FTA benefits. U.S. remanufacturers of many parts, such as engines, radiators, and alternators for construction equipment and transportation machinery, will be able to export their products to Chile duty-free.

- *Used goods*. Upon entry into force of this Agreement, Chile must end its 50 percent surcharge on the existing 6 percent tariff on used goods, an important benefit for capital goods exporters given that the combination of the flat rate (6%) tariff and the surcharge amounted to a 9% tariff on all used goods. Used goods will be accorded the same treatment as new goods with respect to the agreement's tariff elimination schedule.

Access for Services

The United States is the world's leading supplier and exporter of services. Defined broadly, service industries make up the bulk of the U.S. economy, accounting for over 80 percent of private sector output and private non-farm employment (107 million service jobs in 2002). Global U.S. commercial services exports of $279 billion in 2002 accounted for 29 percent of total U.S. exports and helped significantly to offset a portion of the U.S. trade deficit in goods. In 2000, sales by U.S.-owned services affiliates in foreign markets reached $393 billion. The service sector's contribution to U.S. exports, jobs, and growth provides a strong reason for the United States to continue to open services markets abroad through agreements such as the U.S.-Chile FTA.

Chile looks to the United States as a source of high-quality and cutting-edge services and technologies. U.S. services firms are particularly well-positioned to expand their already significant presence. (In 2001, U.S.-Chile services trade amounted to $ 2.2 billion, with the United States in surplus by $472 million. In the seven years prior to 2001, U.S. services trade with Chile expanded by 37 percent. In 2000, sales by U.S.-owned services affiliates in Chile reached $3.1 billion.)

The FTA will lock in and build on existing market access opportunities in Chile. U.S. service suppliers will benefit from commitments covering cross-border supply of services (such as those supplied through electronic means, or through the travel of nationals) and the right to invest and establish a local services presence. These market access rights are complemented by strong and detailed disciplines on regulatory transparency so that U.S. suppliers can take better advantage of market openings.

Market access is generally guaranteed through a "negative list," which means that only so-called "non-conforming" measures that are listed in the agreement are excluded from the commitments. Among the wide range of sectors benefitting from the agreement are such key areas as computer and related services, telecommunications services, financial services, audiovisual services, tourism, advertising, construction and engineering, express delivery, professional services (architects, engineers, accountants, legal services), distribution services (wholesaling, retailing, franchising), adult education and training services, and environmental services, with very few limitations or restrictions.

- *Financial services*. The Agreement locks in Chile's open regime for banking, securities, and asset management and provides other important rights regarding Chile's privatized pension system and cross-border supply of financial information and advisory services. Regarding insurance, the Agreement binds broad access for U.S. investors including cross-border access in important sectors such as reinsurance, transport insurance, and related brokerage. U.S. cross-border exports of banking, securities and insurance premiums reached $130 million in 2001, representing an approximately $108 million surplus in financial services with Chile.

- *Telecommunications Services*. The Telecommunications Chapter covers access to and use of the public telecommunications network for the provision of services. The Agreement also

has groundbreaking provisions with respect to flat-rate, cost-based, nondiscriminatory access for leased lines, which are critical for e-commerce service suppliers. The Chapter builds in significant flexibility to account for changes that may occur through new legislation or new regulatory decisions. The chapter will help create an environment for successful innovation and development of telecommunications networks, something that is lacking in many markets around the world.

- *Insurance*. The Agreement assures cross-border trade in certain insurance products and allows branching within four years of the Agreement's entry into force. Chile also commits to recognize the importance of developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. The Agreement contains a requirement that Chilean regulators will use the flexibility allowed under their laws to permit the supply of new financial services in Chile, provided they are already offered in the United States. These provisions will help promote the growth of U.S. firms in the market.

- *Express Delivery Services*. The express delivery sector is another key beneficiary of the FTA services chapter. Express delivery services are in demand from a wide range of companies – from high-tech to agriculture, and autos to retail services. Speed-to-market, just-in-time inventory processes, and total quality management are critical to success in today's economy. The FTA services chapter includes an expansive definition of the integrated nature of express services and affirms existing competitive opportunities.

Government Procurement

The Government Procurement chapter guarantees U.S. suppliers meaningful market access to a broad scope of Chilean government procurements. To achieve this, the chapter mandates the use of transparent procedures that ensure non-discriminatory treatment of U.S. businesses in Chile's government procurement market for all covered procurements. The obligations include requirements for publishing procurement opportunities, developing technical specifications, setting qualification procedures, and sharing contract award information while ensuring confidentiality. This means that U.S. suppliers will have access to necessary information on the procurement opportunities covered by the Agreement. The FTA also provides that procuring entities tell unsuccessful bidders the reasons why their bids were unsuccessful. Confidential commercial information contained in a supplier's bid cannot be shared with other potential suppliers. Chile is also required to maintain an impartial authority to hear U.S. supplier complaints regarding the conduct of procurements.

U.S. suppliers stand to benefit greatly from this chapter, as it covers procurement by most Chilean central government agencies, 13 regional governments, 10 ports, all airports that are property of the state, and more than 350 municipalities in Chile. In addition, the FTA is the first agreement to clarify that build-operate-transfer contracts (BOTs) are within the scope of government procurement. Given that BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities, it was important that the chapter guarantee that U.S. suppliers receive non-discriminatory and transparent treatment when competing for these contracts.

Finally, for the first time in a U.S. international procurement agreement, the chapter specifically requires that each government make solicitation of a bribe and the bribery of both domestic and foreign procurement officials a criminal offense, furthering hemispheric anti-corruption efforts. This step forward for anti-corruption efforts in a procurement agreement clearly advances one of the principal negotiating objectives of the Trade Promotion Authority Act.

Temporary Entry of Business Persons

Ensuring the cross-border mobility of business persons is critical for U.S. companies developing new markets and business opportunities abroad. The international mobility of business persons, whether as individuals or employees providing services, has become an increasingly important component of competitive markets for suppliers and consumers. U.S. companies developing new markets and business opportunities must be able to move their personnel quickly. Access to foreign markets is important not only to large firms that conduct business on a global basis, but also to small- and medium-sized enterprises, and even sole proprietorships. As trade flows increase as a result of the agreement, so does the movement of business persons between trading partners. As a result, many trade agreements provide for the temporary entry of business persons in defined categories to administer investments, meet with business associates, or provide services.

The U.S. and Chilean governments agreed to facilitate the temporary entry of business persons who conduct trade and investment in the two countries. The Agreement provides for the entry of business persons under four categories: business visitors, traders and investors, intra-company transferees, and professionals.

- *Business visitors* may engage in a broad spectrum of activities outlined in the chapter. These specified activities, based on similar provisions in the NAFTA, are designed to cover a typical business cycle, from research and development to after-sales service. Business visitors are typically short term visitors.

- *Traders* are business persons engaged in substantial trade in goods or services between the Parties. *Investors* are business persons who have committed a substantial amount of capital, and who seek entry to administer that investment.

- *Intra-company transferees* are managers, executives, or specialists who are transferred by their company from one country to another.

- *Professionals* are business persons engaged in a specialty occupation requiring a bachelor's degree (or its equivalent) or higher.

CREATING A FAVORABLE ENVIRONMENT FOR U.S. INVESTORS

Investment

The Agreement will help establish a secure, predictable legal framework for U.S. investors in Chile and serve to encourage further foreign direct investments from Chile in the United States. All forms of investments are covered by the Agreement, including direct ownership of companies, real estate, intellectual property rights, government concessions, and debt instruments. Consistent with the principles that have led the United States to conclude nearly 40 Bilateral Investment Treaties (BITs) with other countries, we achieved an investment chapter that strengthens the link between investment and trade in goods and services. This is of particular importance to service providers who, in order to execute their business model effectively, elect to establish a local presence in Chile. The Agreement assures U.S. investors opportunities to establish, acquire, and operate investments in Chile on the same basis as Chilean investors, except in limited, specific sectors. U.S. investors will not be subject to market-distorting performance requirements, such as those that require a firm to export in order to be able to conduct business. U.S. investors also will have the right to make international transfers related to their investments, and are guaranteed the right to employ top managers regardless of nationality.

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

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

The agreement includes investor-state arbitration procedures that will provide a fair and expeditious means of addressing disputes. The arbitration provisions incorporate procedures intended to increase public access to information regarding arbitration proceedings. The FTA requires, for example, that all documents and hearings in investor-state arbitration proceedings be made public promptly and gives tribunals the authority to accept *amicus* submissions from the

public. The FTA also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

Intellectual Property Protection

The U.S.-Chile FTA sets out high standards of protection and enforcement for intellectual property rights. It builds on the standards currently in force in the WTO TRIPS Agreement and in the NAFTA. It updates and clarifies those standards to take into account the experiences gained since those agreements entered into force, and the significant and rapid technological and legal developments that have occurred since that time.

This agreement will promote the growth of both the U.S. and Chilean copyright-based and high-tech industries. Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to $90 billion to the economy through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property. Piracy has caused more than $22 billion in losses annually worldwide to the copyright-based industries. USTR's National Trade Estimates Report indicates an annual loss of $2 million dollars to video piracy alone in Chile. This FTA will be instrumental in reducing these losses and in contributing to even faster global growth for all these important industry sectors.

Some of the most important provisions of the agreement relate to: registration of collective, certification, and sound marks, as well as geographical indications and scent marks. It includes domain name management requirements that assure a dispute resolution procedure to prevent trademark cyber-piracy, and protects from abuses of geographical indications by imposing first-in-time, first-in-right for trademarks.

- *Copyrights (and Related Rights).* The agreement sets parameters for the right of reproduction, which encompasses temporary copies, and provides longer terms of protection for works and phonograms (life + 70 for works measured by a person's life; 70 years for corporate works), which are consistent with U.S. standards and international trends. Anti-circumvention obligations prevent persons from tampering with technology designed to guard against copyright piracy and to manage access to music, programs, and literary works provided over the Internet. The agreement also requires that governments use only legitimate computer software, provides limited liability for Internet Service Providers, and ensures protection of encrypted program-carrying satellite signals.

- *Patents.* The agreement provides for patent term extensions to compensate for unreasonable administrative or regulatory delays (including marketing approval) that occur while granting the patent. The grounds for revoking a patent are limited to the same grounds that would have justified a refusal to grant the patent, to guard against arbitrary revocation of patents. In addition, the agreement offers protection of test data submitted for marketing approval against unfair commercial use. There is linkage

between the marketing approvals and patent protection, so that, for instance, marketing approval is not granted to a product that infringes a patent.

- *Enforcement Provisions.* The agreement provides for the award of actual damages that include compensation for any harm suffered, based on the value of the legitimate goods, as well as on the infringer's profits. The agreement allows for statutory damages, to ensure appropriate damages where there are inadequate records of actual damages. In addition, law enforcement agencies will have the authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Significantly, the agreement will ensure that law enforcement agencies have the authority to take *ex-officio* action with respect to border measures and criminal enforcement, including *ex-officio* enforcement to stop pirated or counterfeit goods in transit. Finally, end-user piracy is subject to criminal prosecution.

The Chile FTA, once fully implemented, will contain the highest level of intellectual property protection in South America and will greatly facilitate the growth of new trade in valuable digital and other intellectual property-based products, particularly in the area of electronic commerce.

LABOR AND THE ENVIRONMENT

Free trade promotes free markets, economic growth, expanded employment opportunities, and higher incomes. As countries grow wealthier, their citizens demand better working conditions and a cleaner environment. Economic growth gives governments more resources and incentives to promote and enforce strong standards in these areas. The FTA includes an environment and labor package that places obligations within the text and emphasizes the importance of cooperative action.

Under the agreement, Chile and the United States reaffirm their obligations as members of the International Labor Organization (ILO) and will strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles. The agreement makes clear that it is inappropriate to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. A key element of the agreement's labor provisions, which is enforceable through the agreement's dispute settlement procedure, is a commitment by each government regarding the effective enforcement of its domestic labor laws.

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

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

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

The FTA includes an innovative dispute settlement mechanism that allows a party to seek the imposition of a monetary assessment if another party refuses to comply with the "effective enforcement" provision. If a party fails to pay an assessment, the other party may take other appropriate steps to collect the assessment, including by withdrawing trade benefits. Each of these remedies – withdrawal of trade benefits and imposition of monetary assessments – is also available in disputes involving the FTA's "commercial" obligations. The agreement is designed in all cases to use remedies that will enhance compliance with the agreement, rather than restrict trade, which could adversely affect sectors and consumers that do not have a direct stake in the dispute.

CLEAR AND PREDICTABLE FRAMEWORK FOR BUSINESS

Without a high standard of transparency, the benefits of any free trade agreement can be lost in non-transparent and confusing regulations. Transparency provisions both in a specific chapter on the issue and throughout the agreement promote open, impartial procedures and underscore Chile's commitment to the rules-based global trading system. General provisions promote open, transparent, regulatory procedures by providing for advance notice, comment periods, and publication of all regulations whenever possible.

Groundbreaking provisions to streamline customs procedures and simplify rules of origin for most products will facilitate taking advantage of the new trade openings, and will be particularly helpful to small and medium-sized enterprises that do not have the resources to battle excessive red tape when attempting to gain access to new markets. In particular, this Agreement:

- Provides that shipments, not part of a series of shipments, valued under $2500 need not be accompanied by information that certifies origin, including a certificate of origin. The ceiling in NAFTA is just $1,000.

- Shifts much of the burden for proving the accuracy of origin certification to the importer. Under NAFTA, the exporter is asked initially if doubts about a certification arise.

- Provides that certificates of origin need not be in a prescribed format as under NAFTA, and the necessary data elements may be submitted electronically.

- Allows for certificates of origin to be valid for four years from the date on which they were signed, assuming circumstances have not changed.

- Contains rules of origin that are straightforward and simplified. Based on our experience with NAFTA, we were able to minimize the use of complicated regional content value calculations.

- Provides for improvements reducing non-tariff barriers, including technical regulations, conformity assessment procedures, and other "technical barriers to trade". The U.S.-Chile FTA enhances obligations to allow a meaningful opportunity to comment on proposals and attempts to minimize redundant requirements for conformity assurance by obligating national treatment in government programs to recognize conformity assessment bodies.

Streamlined Customs Procedures

The U.S.-Chile FTA and the U.S.-Singapore FTA will be the first FTAs anywhere in world to have specific, concrete obligations to enhance transparency and efficiency of customs procedures. All customs laws, regulations and guidelines are required to be published on the Internet. The private sector may request binding advance rulings on customs matters. Additional provisions allow rapid release of goods, including expedited treatment for express delivery shipments. Strong but simple rules of origin are specific to individual products, but are designed to be easier to administer than NAFTA rules of origin.

Transparency in the Service Sector

Opaque regulations provide significant barriers to U.S. services firms in foreign markets. A government's regulations governing financial services, telecommunications services, energy services, or professional services, for example, can severely undercut the value of market access commitments. The provisions of the U.S.-Chile FTA guarantee a high standard of transparency in administrative, licensing, and adjudicatory proceedings. For example, regulatory authorities must provide advance notice and comment periods for proposed regulations, publish final regulations, and provide summary reactions to comments received on the draft regulations whenever possible. Procedural obligations help guarantee that regulatory authorities will act in a prompt and transparent fashion in reviewing and replying to applications for licenses. All of these advancements will help U.S. service firms become more competitive in the Chilean market.

Dispute Settlement

Dispute Settlement provisions provide for open hearings, authorization for panels to receive submissions from non-governmental entities, and public release of submissions – objectives that the United States has long sought in the WTO. Similar transparency provisions apply to investor-state disputes.

AN AGREEMENT FOR THE DIGITAL AGE

Trade in goods and services is increasingly characterized by rapid technological advancements, particularly with regard to the mode of delivery. Trade agreements need to take into account future technological developments. The agreement recognizes the concept of "digital products" and provides for broad national treatment and MFN nondiscriminatory treatment for products delivered online. The text recognizes the evolution and development of digital products during the last twenty years and addresses the need for predictability in how digital products are treated by trade law. The concept is a breakthrough in the region in achieving certainty, predictability, and market access for computer programs, video images, sound recordings, and other digitally encoded products. In addition, the FTA provides for the duty-free treatment for digital products.

The Business Software Alliance estimates that by 2005, sixty-six percent of all software will be delivered on line. Recognizing that more and more products will be delivered digitally, negotiators ensured that digital products that are imported or exported through electronic means will not be subject to customs duties. For software and other digital products still being physically traded, the parties agreed to apply customs duties on the basis of the value of the carrier medium (e.g., a CD or other product).

The U.S.-Chile FTA can play an important role in building jobs in the high-tech sector and marks a milestone in the progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services, and barrier-free e-commerce among our trading partners. In this Agreement, a new baseline has been set that could lead to significant market opportunities for the U.S. information technology (IT) and software industries in the years ahead. The U.S.-Chile FTA marks the first time that a major South American country has embraced obligations equivalent to the duty reduction commitments reflected in the 1996 Information Technology Agreement (ITA).

CONCLUSION

Approving and implementing the U.S.-Chile Free Trade Agreement is in the economic interest of the United States. The FTA will anchor the United States in an important region and solidify our bilateral relationship with a South American nation whose adherence to democratic and free market principles creates a shining example for the rest of the region.

Not only will the U.S.-Chile FTA help Chile continue its impressive record of growth and development, it will also set a standard for market liberalization in the region, encouraging other