

UNITED STATES – CHILE FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States – Chile Free Trade Agreement.

Chapter One: Initial Provisions

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Chile are party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

Chapter Two: General Definitions

Chapter Two defines certain terms that recur in various chapters of the Agreement.

Chapter Three: National Treatment and Market Access for Goods

Chapter Three sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter Four) traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Three provides for the elimination of all tariffs on originating goods traded between the Parties. Most tariffs will be eliminated as soon as the Agreement enters into force. The remaining tariffs will be phased out over periods of up to 12 years. The United States has also agreed not to apply its merchandise processing fee on imports of originating goods from Chile. The chapter also provides that the two Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. Chapter Three prohibits the Parties from imposing export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the WTO General Agreement on

Tariffs and Trade 1994 (GATT). In addition, it limits all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Specific Barriers. When the Agreement enters into force, Chile must end its 50 percent surcharge on imports of used goods, including capital goods. Chapter Three phases out duty drawback and deferral programs between the Parties in years eight through 12 of the Agreement. Chile will eliminate its 85 percent automobile luxury tax in four years, and will increase the minimum threshold for imposing the tax by \$2,500 each preceding year.

Agriculture. Chapter Three also provides that the Parties will work together in WTO agriculture negotiations to eliminate export subsidies. Other provisions on agricultural trade address rules on subsidized exports between the Parties and mutual recognition of grading, quality, or marketing measures. The chapter provides that Chile will eliminate its price band mechanism for wheat, wheat flour, vegetable oils, and sugar in 12 years. For sugar, the chapter provides that each Party's access to the other's market is limited to the amount of its net trade surplus. Recognizing the special conditions agricultural products face, Chapter Three also sets out a transitional tariff "snap-back" mechanism that allows a Party to impose a temporary duty on specified agricultural products under certain conditions. Once tariffs on a product reach zero, the Parties may no longer use the snap-back for that product. The temporary duty may not exceed normal trade relations/most-favored-nation (NTR/MFN) rates.

Textiles and Apparel. Chapter Three sets out various provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and anti-circumvention provisions.

Chapter Three provides for the elimination of tariffs on all "originating" textile and apparel goods traded between the two countries once the Agreement takes effect. To deal with emergency conditions that might result for particular goods as a result of immediate duty elimination, the Agreement includes a "safeguard" provision that will permit the importing country temporarily to reimpose NTR/MFN duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to three years during the first eight years after duties on a good are eliminated under the Agreement.

Chapter Three includes special rules of origin for textile and apparel goods under the Agreement, including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to products that ordinarily would not be considered originating goods because fibers or yarns in their origin-determining components do not undergo an applicable change in tariff classification. Under the special rule, however, the Parties will consider these products to be originating goods if the fibers or yarns in question constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Chapter Three also calls for the United States and Chile to provide “tariff preference levels” (TPLs) for a limited quantity of cotton and man-made fiber fabric goods and cotton and man-made fiber apparel goods from non-Party sources. For fabric formed from non-Party yarn or fabric, TPL status will apply to 1 million square meters annually. For apparel cut and sewn from non-Party fabric or yarn, TPL status will apply to 2 million square meters per year in the first 10 years of the Agreement, and thereafter to 1 million square meters per year. TPL goods will be accorded preferential tariff treatment as if they were originating goods.

The chapter also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement’s rules governing trade in textile and apparel goods. As part of these commitments, the Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and preventing circumvention of laws affecting trade in textile and apparel goods. Each Party will also conduct site visits under specified conditions, and will provide information necessary to conduct site visits. The chapter permits a Party to respond to circumvention and certain actions that impede a Party from detecting circumvention by denying preferential tariff treatment under the Agreement to specific textile or apparel goods, or by limiting more generally imports of textile and apparel goods from particular enterprises.

Consultations. Either party may convene bilateral consultations to resolve any technical or interpretive issues that arise under the chapter’s customs cooperation article. In addition, either Party may request technical assistance from the other Party in implementing the article.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, goods must qualify as “originating goods” under the rules of origin set out in Chapter Four and a related annex. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties’ territories.

Key Concepts. Chapter Four provides three alternative sets of criteria under which a product will generally qualify as an “originating good:”

- When the good is wholly obtained or produced in the territory of one or both of the Parties (for example crops grown or minerals extracted in the United States); or
- When the good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties, the good meets any applicable “regional value content” requirement (see below), and the good satisfies all other requirements of Chapter Four; or
- When the good is produced in one or both countries entirely from “originating” materials.

Chapter Four and Annex 4.1 further clarify that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the chapter.

Regional Value Content. Some origin rules under the Agreement require that certain goods must meet a regional value content test in order to qualify as “originating,” meaning that a specified percentage of the value of the good must be attributable to originating materials. The Agreement provides two methods for calculating that percentage: the “build-down method” based on the value of non-originating materials used, and the “build-up method” based on the value of originating materials used. Under the Agreement, accessories, spare parts, and tools delivered with a good will be considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating the regional value content.

Certificates of Origin. Under the Agreement, importers who wish to claim preferential FTA tariff treatment for particular goods must make a written declaration that the good qualifies as originating and be prepared to submit, on the request of the importing Party’s customs authority, a valid certificate of origin for the goods. Certificates must be completed by the producer or exporter of the good. They will remain valid for four years and may cover either a single importation of one or more goods, or several importations of identical goods.

Post-Importation Claims. Chapter Four establishes a method for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Parties must issue any denials of preferential treatment in writing, accompanied by legal and factual findings. Chapter Four also provides that a Party will not penalize an importer where the importer promptly and voluntarily corrects a declaration. Verification of more than one false certification, however, may result in a Party denying preferential tariff treatment to identical goods of that importer until the importer proves its compliance with laws and regulations governing claims of origin.

Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering the Agreement’s market access and rules of origin chapters.

Textile and Apparel Rules of Origin. A textile or apparel product will generally qualify as an “originating good” only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties or if there is an applicable change in tariff classification as specified in Annex 4.1.

Chapter Five: Customs Administration

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures on the Internet or a comparable computer-based telecommunications network and, where possible, solicit public comments before amending its customs regulations. Each Party will also provide written advance rulings, on request, to its importers and to exporters and producers of the other Party, regarding whether a product qualifies as an "originating good" under the Agreement as well as on other customs matters. Each Party will also guarantee importers access to both administrative and judicial review of customs matters. The Parties will also release goods from customs promptly and apply expedited procedures for clearing express shipments through customs.

Cooperation. Chapter Five is also designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement, to the WTO Customs Valuation Agreement, and to import and export restrictions.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six aims to enhance the Parties' implementation of existing WTO rules on sanitary and phytosanitary (SPS) measures. It reflects the Parties' agreement that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement) is their shared objective, and that including additional SPS rights and obligations in the Agreement is not necessary.

Key Concepts. In general, an SPS measure is a law or regulation applied to protect humans, animals, or plants from certain health risks. Such risks may include plant- and animal-borne pests and diseases, as well as additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Chapter Six calls for the Parties to establish an SPS Committee, consisting of relevant trade and regulatory officials, to serve as a bilateral forum for SPS issues. The Committee will provide a forum for discussing SPS measures that may affect trade between the Parties, consulting on SPS matters that are before international organizations, and coordinating technical cooperation programs, among other activities. Neither Party may invoke the Agreement's dispute settlement procedures for any matter arising under Chapter Six. Instead, any SPS dispute between the Parties will be resolved under the applicable provisions of the WTO SPS Agreement using WTO dispute settlement rules.

Chapter Seven: Technical Barriers to Trade

Chapter Seven seeks to enhance the Parties' implementation of existing WTO rules on technical barriers to trade. It builds on WTO rules to promote transparency, accountability, and cooperation between the Parties on product regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may occur in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular product meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Chapter Seven requires the Parties to apply these principles.

Cooperation and Recognition. Chapter Seven provides multiple options for cooperation between the Parties on trade facilitation to improve market access. In addition, where a Party provides for the acceptance of foreign technical regulations as equivalent to its own, Chapter Seven requires it to provide reasons for not accepting technical regulations of the other Party as equivalent.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Where a Party recognizes conformity assessment bodies, Chapter Seven creates a right for bodies located in the territory of the other Party to qualify on a non-discriminatory basis.

Transparency. Chapter Seven contains various transparency obligations, including obligations to permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures; transmit regulatory proposals notified under the TBT Agreement directly to the other Party; describe in writing the objective of and reasons for regulatory proposals; and accept and respond in writing to comments on regulatory proposals.

Chapter Eight: Trade Remedies

Chapter Eight establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The chapter does not affect either government's rights or obligations under the WTO's global safeguard provisions or under other WTO trade remedy rules.

Key Concepts. Chapter Eight authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions

as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a “like” or “directly competitive” product.

Specifics. A safeguard measure may be applied only during the Agreement’s ten-year “transition period” (or 12 years for certain agricultural goods) for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement.

A bilateral safeguard measure may last up to three years. For measures lasting more than one year, however, the Party must scale back the measure at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on compensation, the Party entitled to compensation may unilaterally suspend “substantially equivalent” trade concessions that it has made to the other Party.

Global Safeguards. Chapter Eight maintains each country’s right to take remedial action against imports from all sources under GATT Article XIX and the WTO Agreement on Safeguards, without providing additional rights or obligations. A Party may not apply a safeguard measure under Chapter Eight to a good while the good is subject to a global safeguard the Party has imposed. Special safeguard provisions for textile and apparel and agricultural products appear in Chapter Three (National Treatment and Market Access for Goods).

Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under WTO agreements relating to the application of antidumping and countervailing duties. The Agreement does not create any rights or obligations for the Parties with respect to antidumping and countervailing duties. Those measures may not be challenged under the Agreement’s dispute settlement procedures.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive rules prohibiting each government from discriminating in its purchasing practices against products, services, and suppliers from the other country and requiring each Party to apply fair and transparent procurement procedures. While Chile is not a party to the WTO Agreement on Government Procurement, the rules of Chapter Nine broadly resemble WTO procurement rules.

General Principles. Chapter Nine establishes a basic rule of “national treatment,” meaning that each Party’s procurement rules must treat goods, services, and suppliers from the other country in a manner that is “no less favorable” than it treats their domestic counterparts. The chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or

ownership. Chapter Nine also prohibits the imposition of “offsets,” such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

Coverage and Thresholds. Chapter Nine applies to purchases above certain dollar thresholds by those government departments, agencies, and enterprises named in each Party’s schedule. The chapter applies to purchases by listed “central” (*i.e.*, Chilean national or U.S. federal) government agencies of goods and services valued at \$56,190 or more and construction services valued at \$6,481,000 or more. The equivalent thresholds for purchases for “sub-central” government entities (*i.e.*, Chilean municipalities and U.S. state government agencies) are set at \$460,000 and \$6,481,000, respectively. The chapter’s thresholds for listed government enterprises are either \$280,951 or \$518,000 for goods and services, and \$6,481,000 for construction services. All thresholds are subject to adjustment for inflation.

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The chapter lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on “tendering” (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service.

Award Rules. Chapter Nine requires that to be considered for award a tender must be made in writing and submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine is designed to ensure integrity in each Party’s procurement practices, including by requiring the Parties to maintain laws that make bribery of procurement officials a crime. It establishes procedures under which a Party may change the extent to which the chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the chapter. It also provides that Parties may adopt or maintain measures necessary to protect: public morals, order, or safety; human, animal, or plant life or health; or intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor. Finally, Chapter Nine

establishes a bilateral Committee on Procurement to address issues related to the implementation of the chapter.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovative provisions.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Chilean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections under Part A of Chapter Ten: non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; freedom from "performance requirements;" free transfer of funds related to an investment; protection from expropriation other than in conformity with customary international law; a "minimum standard of treatment" in conformity with customary international law; and the ability to hire key managerial and technical personnel without regard to nationality.

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the chapter particular sectors or measures for which it negotiated an exemption from the chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Part A of Chapter Ten or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment.

Innovative provisions afford public access to information on Chapter Ten investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter Ten requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims. A special annex addressing investor-State

procedures provides Chile limited policy flexibility with respect to certain capital flows it may consider disruptive.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the United States and Chile. Certain of its provisions also apply to measures affecting services investments. The chapter is drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- from the territory of one Party into the territory of another (*e.g.*, electronic delivery of services from the United States to Chile);
- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Chilean company provides services to U.S. visitors in Chile); and
- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Chile).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in the United States or Chile and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and most-favored-nation treatment to service suppliers of the other Party. Thus, the chapter requires each Party to treat service suppliers of the other Party no less favorably than its own suppliers. The chapter protects the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The chapter also includes a rule prohibiting the Parties from requiring firms to establish a local presence before they can supply a service. In addition, the chapter seeks to remove market access barriers by barring certain types of restrictions on the supply of services (*e.g.*, rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of

Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although Chile has undertaken a commitment relating to cross-subsidization of express delivery services.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: 1) financial institutions of the other Party, 2) investors of the other Party, and their investments, in financial institutions, and 3) cross-border trade in financial services.

Key Concepts. The chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Thus, Chapter Twelve imposes rules requiring national treatment and most-favored-nation treatment, prohibiting certain quantitative restrictions on market access, and barring restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and to services companies that are currently supplying and that seek to supply financial services from one Party's territory to the other's.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Other Provisions. Chapter Twelve includes complementary provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party – other than regulated financial institutions – that make or operate investments in the Party's territory are covered principally by Chapter Ten and certain provisions of Chapter Eleven. In particular the core obligations of the investment chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services chapter. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Telecommunications

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the United States and Chile. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party.

Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality. Chapter Thirteen improves on work undertaken in the WTO, where Chile has not committed to allow competition in its market for local telecommunications services.

Key Concepts. Under Chapter Thirteen, the term "public telecommunications network" covers the infrastructure used to provide public telecommunications services between defined endpoints. A "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (e.g., services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Chilean regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Thirteen establishes rules that

reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Chile must ensure that its public phone companies do not provide preferential access to Chilean banks or Internet service providers, to the detriment of U.S. competitors);
- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;
- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;
- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and
- impose disciplines on the behavior of "major suppliers" – *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

Regulation. The chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;
- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;
- may elect to deregulate telecommunications services when competition emerges and certain standards are met;
- will avoid imposing economic regulations on information service providers, such as Internet providers, other than to promote competition or protect consumers; and
- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fourteen: Temporary Entry for Business Persons

Chapter Fourteen calls for each government to facilitate the temporary entry into its territory of business persons of the other Party. The Agreement requires each Party to use transparent criteria and procedures in carrying out its temporary entry rules. At the same time, the rules set out in Chapter Fourteen respect each Party's need to ensure border security and protect its domestic labor force and permanent employment.

Key Concepts. Chapter Fourteen covers temporary entry only. Its provisions do not apply to measures regarding citizenship, permanent residence, or employment on a permanent basis. An annex to Chapter Fourteen groups business persons into four categories (business visitors, traders and investors, intra-company transferees, and professionals) and identifies the criteria under which the Parties must grant them temporary entry. Each business person meeting these criteria must also be qualified for entry under the Party's general requirements relating to public health and safety and national security. An annex permits the United States to limit the number of Chilean professionals entering the United States under the chapter to 1,400 per year. The Parties may require attestations for professionals similar to those required by the United States under the "H-1B" visa program.

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures relating to temporary entry expeditiously. Chapter Fourteen clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

Other Provisions. Chapter Fourteen permits recourse to dispute settlement in disputes over a Party's pattern of practice in carrying out its temporary entry commitments, but not for individual denials of entry. The chapter creates a Subcommittee on Temporary Entry to facilitate the administration of its provisions. Chapter Fourteen makes clear that it contains all of the substantive obligations the two Parties have assumed under the Agreement with respect to temporary entry. The chapter does not impose obligations or commitments with respect to subjects covered under other chapters of the Agreement.

Chapter Fifteen: Electronic Commerce

Chapter Fifteen establishes rules designed to prohibit duties on, and discriminatory regulation of, electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The chapter represents the first U.S. agreement on this subject with a country in the Western Hemisphere and a major advance over previous understandings on this subject.

Customs Duties. Chapter Fifteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. By virtue of Chapter Three (National Treatment and Market Access for Goods), each Party must assess the customs value (and any applicable tariffs) on the medium rather than the content of any digital products imported on a physical medium, such as a compact disc (*i.e.*, on the value of the disc rather than that of the information it contains).

Non-Discrimination. Chapter Fifteen requires the Parties to apply principles of non-discrimination to trade in electronically transmitted digital products so that they benefit from the same sorts of principles that govern trade in goods and services. Thus, for example, each Party must refrain from discriminating against electronically transmitted digital products on the ground that they have a nexus to the other country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country.

Cooperation. Chapter Fifteen provides for future cooperation between the United States and Chile on electronic commerce issues such as data privacy, consumer protection, and cyber-security.

Chapter Sixteen: Competition Policy, Designated Monopolies, and State Enterprises

Chapter Sixteen includes several provisions related to business conduct in recognition that healthy, competitive domestic markets are vital for fully realizing the benefits of trade liberalization. The chapter sets out basic procedural safeguards and rules ensuring against harmful conduct by state monopolies and state enterprises. Neither of these types of enterprises account for a significant portion of either Party's economy.

Antitrust Laws. Chapter Sixteen requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. Each Party will take appropriate enforcement action under its law to address anticompetitive practices. Chapter Sixteen affirms that the antitrust enforcement policy of each Party is not to discriminate on the basis of nationality.

Procedural Rights. Chapter Sixteen guarantees basic procedural rights for firms facing antitrust enforcement actions. Each Party will provide a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are subject to review by a court or independent tribunal.

Designated Monopolies. Under Chapter Sixteen, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does

not discriminate against the other Party's goods or service suppliers, and does not engage in anticompetitive practices in markets outside its monopoly mandate.

State Enterprises. Chapter Sixteen sets obligations regarding each Party's responsibilities for "state enterprises," which are companies that a Party owns or controls. Each Party must ensure that its state enterprises accord non-discriminatory treatment to the other's companies.

Cooperation. Chapter Sixteen calls for bilateral cooperation on antitrust matters and furthers transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and state enterprises. The Parties may avail themselves of consultations to discuss specific issues.

Dispute Settlement. The chapter's provisions requiring the Parties to adopt and enforce antitrust laws are not subject to the Agreement's dispute settlement procedures, nor are the provisions governing cooperation and consultations. By contrast, the chapter's rules addressing designated monopolies and state enterprises may be enforced through the Agreement's dispute settlement mechanism.

Chapter Seventeen: Intellectual Property Rights

Chapter Seventeen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights.

General Provisions. The chapter will require Chile to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The chapter also includes full national treatment commitments, with no exceptions for digital products. It also requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Seventeen includes provisions on the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. The chapter also contains provisions on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. Each Party must provide full protection for trademarks with respect to later geographical indications by providing a "first-in-time, first-in-right" rule for trademarks.

Copyrights and Related Rights. Chapter Seventeen articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the World Intellectual Property Organization Internet treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies – an important principle in the digital realm. It also calls for each Party to

provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter Seventeen requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

Recognizing the importance of satellite broadcasts, Chapter Seventeen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, rather than solely to the content contained in the signals.

Patents and Trade Secrets. Chapter Seventeen requires patent term extensions to compensate for unreasonable administrative or regulatory delays (including for marketing approval) that occur while granting the patent. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The chapter also limits the exceptions to patent protection. In addition, Chapter Seventeen offers protection against unfair commercial use of test data that a company submits in seeking marketing approval for certain regulated products. It precludes other firms from relying on the data for specific periods – five years for pharmaceuticals and ten years for agricultural chemicals.

Enforcement Provisions. Chapter Seventeen imposes obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The chapter also provides for damages fixed in advance (*i.e.*, "statutory damages"), at the option of the right holder. Such pre-established damages help to deter piracy by ensuring an appropriate remedy in cases where, for instance, information on actual damages is inadequate.

Chapter Seventeen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Seventeen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods – including those in transit – without waiting for a formal complaint. Chapter Seventeen provides that each Party must make counterfeiting and piracy subject to criminal penalties.

Transition Periods. Certain provisions of the chapter will take effect over periods of up to two to five years.

Chapter Eighteen: Labor

Chapter Eighteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. It draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter Eighteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Each Party must strive to ensure that its domestic law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the chapter. Each Party must also strive to ensure it does not derogate from or waive the protections of its domestic labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws.

Effective Enforcement. Chapter Eighteen commits each Party not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The chapter defines labor laws to include those related to: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition of forced or compulsory labor; 4) a minimum age for the employment of children and elimination of the worst forms of child labor; and 5) acceptable conditions of work with respect to wages, hours and occupational safety and health. The U.S. commitment includes federal statutes and regulations addressing these areas, but not state or local labor laws. While committing each Party to effective labor law enforcement, the chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. Chapter Eighteen provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may invoke the provisions of Chapter Twenty-Two (Dispute Settlement) after an initial 60-day consultation period by requesting a meeting of the Agreement's ministerial-level Free Trade Commission. The Parties will maintain a special roster of experts to serve on any dispute settlement panels convened to hear disputes regarding labor law enforcement.

Cooperation. A bilateral Labor Affairs Council will oversee the chapter's implementation and will provide a forum for consultations and cooperation on labor matters. Each Party will designate a contact point for communications with the other Party and the public regarding the chapter. An annex creates a mechanism for ongoing labor cooperation focusing on the improvement of labor standards, particularly those in the 1998 ILO declaration, and the elimination of the worst forms of child labor.

Chapter Nineteen: Environment

Chapter Nineteen establishes the Parties' commitments and undertakings regarding environmental protection, and includes several key provisions that parallel those in the Agreement's labor chapter. Chapter Nineteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Jordan Free Trade Agreement.

Like the labor chapter, Chapter Nineteen includes a commitment on effective law enforcement. It also includes commitments to establish high levels of environmental protection and to strive not to weaken or reduce environmental laws to encourage bilateral trade or investment. Chapter Nineteen includes commitments to enhance bilateral cooperation in environmental matters.

General Principles. The Parties must ensure that their laws provide for high levels of environmental protection and strive to improve these levels. They must also strive to ensure they do not waive or derogate from their environmental laws to encourage trade with or investment from the other Party.

Effective Enforcement. Chapter Nineteen commits each Party not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The U.S. commitment applies to federal environmental statutes and regulations. At the same time, the chapter recognizes the right of each Party to establish its own environmental laws, exercise discretion in regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Nineteen provides for cooperative consultations. If the matter concerns a Party's compliance with the chapter's environmental law enforcement provision, the complaining Party may invoke the provisions of Chapter Twenty-Two (Dispute Settlement) after an initial 60-day consultation period by requesting a meeting of the Agreement's ministerial-level Free Trade Commission. The Parties will maintain a special roster of experts to serve on any dispute settlement panels convened to hear disputes regarding environmental law enforcement.

Cooperation. Chapter Nineteen establishes an Environment Affairs Council, composed of cabinet-level environment officials, to advise on matters addressed in the chapter. Opportunities will be provided at Council meetings for the public to share concerns and ideas about the implementation of Chapter Nineteen and cooperative work between the Parties. Chapter Nineteen also includes a commitment to conduct a series of cooperative projects, including improving capacity for wildlife management, remediating hazardous waste sites in Chile, and developing a pollutant release and transfer registry in Chile. The Parties have signed a separate environmental cooperation agreement to guide future efforts. The Parties will consult on the

outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter Twenty: Transparency

Chapter Twenty sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must ensure reasonable notice of regulatory proceedings and the opportunity to present facts and arguments. Chapter Twenty also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Twenty-One: Administration of the Agreement

Chapter Twenty-One creates a Free Trade Commission to supervise implementation of the Agreement and assist in the resolution of any disputes that may arise under the Agreement. The Commission may also agree to accelerate duty phase-outs on particular products and adjust the Agreement's product-specific rules of origin. The Commission will make decisions by consensus. Each Party will designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct. The Commission will be chaired by each government's trade minister and will convene at least once a year.

Chapter Twenty-Two: Dispute Settlement

Chapter Twenty-Two sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other trade agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter.

Consultations. Either Party may request consultations on any actual or proposed measure that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within the specified period (normally 60 days), a Party may request a meeting of the Free Trade Commission. To help resolve the dispute, the Commission may employ technical advisers, good offices, conciliation, mediation, or other dispute resolution procedures.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (generally 30 days), either Party may request the establishment of an arbitral panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have 14 days to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the Parties cannot resolve the dispute after they receive the panel's final report, the Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform with the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the Parties or, failing that, will be set at 50% of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a \$15 million annual

cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute mechanisms to settle international commercial disputes between private parties in the two countries. Each country must provide for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-Three: Exceptions

Chapter Twenty-Three sets out general provisions that apply to all or large portions of the Agreement. For example, it incorporates the general exceptions set forth in Article XX of the GATT and Article XIV of the GATS for various chapters.

Essential Security. Chapter Twenty-Three allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's 1) national treatment obligation for goods, 2) national treatment and most-favored-nation obligations for services, 3) prohibitions on performance requirements, and 4) expropriation rules.

Balance of Payments. Chapter Twenty-Three establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

Disclosure of Information. The chapter also provides that a Party may withhold information from the other where such disclosure would impede domestic law enforcement or contravene laws protecting personal privacy or financial records.

Chapter Twenty-Four: Final Provisions

Chapter Twenty-Four provides that the annexes, appendices, and footnotes are part of the Agreement, that the Parties may amend the Agreement subject to applicable domestic procedures, and that the English and Spanish texts are both authentic. The chapter provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended, and it provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.