

Free Trade with Chile: Summary of the U.S.-Chile Free Trade Agreement

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Trade in Goods

All tariffs and quotas on all goods eliminated immediately or after transition periods – no exceptions.

• **New Market Access for U.S. Consumer and Industrial Products**

- More than 85% of bilateral trade in consumer and industrial products becomes duty-free immediately upon entry into force of the Agreement, with most remaining tariffs eliminated within four years.

- Key U.S. export sectors gain immediate duty-free access to Chile, such as agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products.

- Chile's "luxury tax" on automobiles will be phased out over 4 years. In the meantime, the number of vehicles to which this tax applies will be sharply reduced as soon as the Agreement takes effect.

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

"We will move toward free trade throughout the Americas by completing our FTA with Chile... [a country] which has set the standard in Latin America for progressively opening its economy and transforming its political system." -- Robert B. Zoellick, U.S. Trade Representative

• **New Opportunities for U.S. Farmers and Ranchers**

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

- U.S. farmers will have access to Chile that is as good as or better than the European Union or Canada, both of which already have FTAs with Chile.

- Chilean price bands, under which import duties on the same product may vary according to price level, will be phased out. During the phase out, producers of these products will be treated as good as or better than their competitors with other countries. Elimination of price bands was not part of the EU or Canada FTAs with Chile.

- Eliminates the use of export subsidies on U.S.-Chilean farm trade, but preserves the right to respond if third countries use export subsidies to displace U.S. products in the Chilean market.

- An agricultural safeguard provision will help protect U.S. farmers and ranchers from sudden surges in imports from Chile.

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

Trade In Services

• Services Trade: Market Access and Regulatory Fairness

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

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

• Broad Commitments to Open Services Markets

- Chile will accord substantial market access across its entire services regime, subject to very few exceptions, a so-called "negative list" approach.

- Market access commitments apply across a range of sectors, including but not limited to:

o Computer and related services

o Telecommunications services

o Audiovisual services

o Construction and Engineering

o Tourism

o Advertising

o Express Delivery

o Professional services (architects, engineers, accountants, etc.)

o Distribution services, such as wholesaling, retailing and franchising

o Adult education & training services

o Environmental services

- The express delivery commitment includes an expansive definition of the integrated nature of express services, and affirms existing competitive opportunities.

The U.S. is Chile's largest trading partner. Two-way goods and services trade totaled \$8.8 billion in 2001.

• **New Opportunities for U.S. Banks, Insurance, Securities and Related Services**

- The financial services chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations.

- U.S. insurance firms have full rights to establish subsidiaries or joint ventures for all insurance sectors (life, non-life, reinsurance, brokerage) with limited exceptions. Chile has committed to phase in insurance branching rights.

- Chile commits to modify its legislation to open cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance, and confirms existing rights for reinsurance.

- New principle of expedited availability of insurance services means that prior regulatory product approval is not required for insurance sold to the business community. Expedited procedures are available in other cases when prior product approval is necessary.

- U.S. banks and securities firms may establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances.

- U.S. financial institutions may offer financial services to citizens participating in Chile's highly successful privatized voluntary savings plans. U.S. firms also gain some increased ability to offer such products through Chile's mandatory social security system.

- Chile will allow U.S.-based firms to offer services crossborder to Chileans in areas such as financial information and data processing, and financial advisory services with a limited exception. Chilean mutual funds may use foreignbased portfolio managers.

Chile's private pension system, now nearly 20 years old, was Latin America's first. Held up as a model for other countries, it has greatly increased savings rates. Individually-owned pension accounts are worth more than \$30 billion.

• **An Open and Competitive Telecommunications Market**

- Users of the telecom network are guaranteed reasonable and non-discriminatory access to the network. This prevents local firms from having preferential or "first right" of access to telecom networks.

- U.S. phone companies obtain right to interconnect with networks in Chile at

nondiscriminatory, cost-based rates.

- U.S. firms seeking to build a physical network in Chile granted non-discriminatory access to facilities, such as telephone switches and submarine cable landing stations.
- U.S. firms will be able to lease elements of Chilean telecom networks on non-discriminatory terms and to re-sell telecom services of Chilean suppliers to build a customer base.

• **E-Commerce: Free Trade in the Digital Age**

- Chile and the U.S. agreed to provisions on e-commerce that reflect the issue's importance in global trade. Each country also recognized the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment.
- Chile and the U.S. committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.
- For digital products delivered on hard media (such as a DVD or CD), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc.
- The e-commerce text identifies Chile as a leader in Latin America for the further development of electronic commerce.

Investment

• **Important New Protections for U.S. Investors**

- The agreement will establish a secure, predictable legal framework for U.S. investors operating in Chile.
- All forms of investment are protected under the Agreement, such as enterprises, debt, concessions, contracts and intellectual property.
- U.S. investors enjoy in almost all circumstances the right to establish, acquire and operate investments in Chile on an equal footing with Chilean investors, and with investors of other countries, unless specifically stated otherwise.
- Pursuant to U.S. Trade Promotion Authority, the agreement draws from U.S. legal principles and practices to provide U.S. investors a basic set of substantive protections that Chilean investors currently enjoy under the U.S. legal system.
- Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive a fair market value for property in the event of an expropriation.

"A free-trade pact with Chile would show other countries in the hemisphere the huge benefits of putting their economic houses in order: unimpeded access to the biggest and

richest market in the world." -- Los Angeles Times, 12/6/2001

- The Agreement prohibits and removes certain restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs.
- These investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.
- Open, transparent procedures for settling investment disputes.

Intellectual Property Rights (IPR)

• High Level of IPR Protection

- Protection of copyrights, patents, trademarks and trade secrets is state-of-the-art, going farther than previous free-trade agreements. Enforcement of intellectual property rights is also enhanced under this Agreement.
- Non-discriminatory treatment for U.S. intellectual property transmitted over the Internet.

• Trademarks: State-of-the-Art Protection in the Digital Age

- Ensures government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase or geographical place-name.

• Copyrights: Protection for Copyrighted Works in A Digital Economy

- Ensures that only authors, composers and other copyright owners have the right to make their works available online. Copyright owners maintain all rights to even temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet.
- Copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends.
- Strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments only use legitimate computer software, thus setting a positive example for private users.
- Limited liability for Internet Service Providers (ISPs), reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement

of copyrights.

- **Patents & Trade Secrets: Protection Expanded**

- Patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice.
- Grounds for revoking a patent are limited to the same grounds required to originally refuse a patent, thus protecting against arbitrary revocation
- Test data and trade secrets submitted to a government for the purpose of product approval will be protected against disclosure for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Closes potential loopholes to these provisions.
- Ensures that government marketing-approval agencies will not grant approval to patent-violating products.

- **IPR Enforcement: Tough Penalties for Piracy and Counterfeiting**

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Chilean government guarantees that it has authority to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. IPR laws will be enforced against goods-in-transit, to deter violators from using U.S. or Chilean ports or free-trade zones to traffic in pirated products. Ex officio action may be taken in border and criminal IPR cases, thus providing more effective enforcement.
- Mandates both statutory and actual damages under Chilean law for IPR violations. This serves as a deterrent against piracy, and provides that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.

Competition Policy

- **U.S. Firms Protected Against Anti-Competitive and Monopolistic Behavior**

- Commits Chile to maintain a competition law that prohibits anti-competitive business conduct, and a competition agency to enforce that law.
- The Chilean law promotes economic efficiency and consumer welfare, thus making the appropriate objective of competition law clear.
- The Agreement also requires that Chile control and regulate state enterprises and officially designated monopolies. Such firms may not abuse their official status to harm the interests of U.S. companies, and must not discriminate in the sale of goods or services.

Government Procurement

- **Strong Government Procurement Disciplines Set Precedent for Hemisphere**

- Requires that covered Chilean ministries, regional and municipal governments not discriminate against U.S. firms, or in favor of Chilean firms, when making government purchases in excess of agreed monetary thresholds.
- Imposes strong and transparent disciplines on procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures.
- Covers the purchases of most Chilean central government agencies, 13 regional governments, 11 ports and airports, and more than 350 municipalities in Chile.
- Ensures that bribery in government procurement is specified as a criminal offense under Chilean and U.S. laws. This furthers the anti-corruption goals set out by hemispheric leaders at the Summit of the Americas in Quebec City in 2001.

Customs Procedures and Rules of Origin

• Ground-Breaking Customs Procedures

- U.S.-Chile FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be conducted.
- Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness.
- Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments.
- Strong but simple rules of origin will ensure that only U.S. and Chilean goods benefit from the Agreement. Rules are specific to individual products, but are designed to be easier to administer than NAFTA rules of origin.

"Chile has strong markets, and its impressive economic performance over the past 10 years has been fostered by decades of consistent trade liberalization policies, political stability, and a commitment to democratic institutions." -- The Heritage Foundation, July 2001

Temporary Entry of Personnel

• Mobility For Highly Trained Personnel

- Agreement contains provisions that provide for the entry into either party of business visitors, traders and investors, intra-company transferees, and professionals.
- In the United States, this will take the form of a special FTA professional visa, available to a limited number of individuals holding four-year degrees. The number of professional visas granted to Chilean citizens will be capped annually.
- Agreement preserves the ability of the U.S. Congress to amend immigration laws, and the

professional visa is the result of extensive consultations with Congress.

Labor and Environmental Provisions

• Ground-Breaking Cooperation to Protect the Environment

- Agreement fully meets the environmental objectives set out by Congress in TPA. Environmental obligations are part of the core text of the trade agreement.
- U.S. professionals will be able to enter Chile without a numerical limit.
- Both parties shall ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. Agreement makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment.
- Agreement requires that parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.
- Chile and the U.S. will pursue a number of cooperative projects to promote environmental protection. Projects include:
 - o Building capacity for wildlife protection and resource management in Latin America through collaboration with wildlife managers, universities, and local communities.
 - o A project to develop and implement effective alternatives to methyl bromide, a chemical that Chile and the United States have committed to phase out under international environmental agreements.
 - o Development of Pollutant Release and Transfer Register (PRTR) in Chile, similar to the successful Toxic Release Inventory in the U.S. The PRTR is a publicly available database of chemicals that have been released by industrial facilities into the environment.

Chile is a signatory of more than 20 international agreements aimed at protecting the environment and ensuring sustainable development

• Cooperative Activities to Promote Worker Rights

- Agreement fully meets the labor objectives set out by Congress in TPA. Labor obligations are part of the core text of the trade agreement.
- Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.
- Agreement requires that parties shall effectively enforce their own domestic labor laws,

and this obligation is enforceable through the Agreement's dispute settlement procedures.

- Procedural guarantees in the Agreement will ensure that workers and employers will have fair, equitable and transparent access to labor tribunals/courts.

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

- o Discussions of legislation, practice and implementation of the core elements of the ILO Declaration on Fundamental Principles and Rights at Work.

- o Improving systems for the administration and enforcement of labor laws.

Dispute Settlement

- **Innovative New Tools to Enforce a Trade Agreement**

- All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement.

- Dispute panel procedures set high standards of openness and transparency:

- o Open public hearings;

- o Public release of legal submissions by parties;

- o Special roster of labor or environmental experts for disputes in these areas;

- o Rights for interested third parties to submit views.

- Emphasis is on promoting compliance through consultation, joint action plans and trade-enhancing remedies.

- An innovative enforcement mechanism includes monetary penalties to enforce commercial, labor, and environmental obligations of the trade agreement.