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The U.S.-Chile Free Trade Agreement: Economic and Trade Policy Issues

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Summary

On June 6, 2003, the United States and Chile signed a long anticipated bilateral free trade agreement (FTA) in Miami, Florida, concluding a 14-round negotiation process that began on December 6, 2000. The House Ways and Means and Senate Finance Committees held informal markups on the draft implementing legislation on July 10, 2003. On July 15, the U.S.-Chile Free Trade Agreement Implementation Act (H.R. 2738/S. 1416) was sent to Congress. The next day, the House and Senate Judiciary Committees approved the bill by voice vote. On July 17, the House Ways and Means and Senate Finance Committees also approved it by voice vote. On July 24, the House debated and passed H.R. 2738 (270-156). The Senate is expected to debate and vote on the companion bill, S. 1416, the week of July 28.

If the FTA is implemented, Chile would join a select group of only four other countries that have an FTA with the United States (Canada, Mexico, Jordan, and Israel). Although many point to the potential for trade growth between the two countries, if passed, the significance of this FTA runs deeper: 1) it would be the first agreement with a South American country; 2) it would be an agreement with one of the most open and reformed economies in Latin America; 3) it would exemplify how trade policy issues, including those with social and economic implications, can be resolved between a small developing country and a large developed one; and, 4) it may prove to be a step toward completing the Free Trade Area of the Americas.

The FTA would allow increased market access with 85% of bilateral trade in consumer and industrial products eligible for duty-free treatment immediately, with other product tariff rates being reduced over time. Some 75% of U.S. farm exports would enter Chile duty-free within four years and all duties would be fully phased out within 12 years after implementation of the agreement. For Chile, 95% of its export products would gain duty-free status immediately and only 1.2% would fall into the longest 12-year phase-out period. Other critical issues were resolved including environment and labor provisions, more open government procurement rules, increased access for services trade, greater protection of U.S. investment and intellectual property, and creation of a new e-commerce chapter. The trade remedies chapter is limited to safeguards so there would be no anticipated change to the antidumping and countervailing duty options currently available to both countries.

The bilateral negotiation was a challenging exercise for both countries and although a broad-based agreement was struck, there are a few issues that remain somewhat unsettling for many Members of Congress, as expressed at hearings in both the House and the Senate. Overall, because there are now multiple FTAs being contemplated, there is a concern over the implications of one bilateral becoming a "template" for others that follow. In the case of the U.S.-Chile FTA, attention is focused on language governing dispute resolution treatment of labor and financial transfers, as well as the temporary entry for business persons. These and other issues are discussed in this report, which provides background and analysis on Chile's economy, trade relations, and the bilateral FTA. It will be updated periodically.

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The U.S.-Chile Free Trade Agreement: Economic and Trade Policy Issues

On June 6, 2003, the United States and Chile signed a long anticipated bilateral free trade agreement (FTA) in Miami, Florida, concluding a 14-round negotiation process that began on December 6, 2000.[1] The House Ways and Means and Senate Finance Committees held informal markups on the draft implementing legislation on July 10, 2003. On July 15, the U.S.-Chile Free Trade Agreement Implementation Act (H.R. 2738/S. 1416) was sent to Congress. The next day, the House and Senate Judiciary Committees approved the bill by voice vote. On July 17, the House Ways and Means and Senate Finance Committees also approved it by voice vote. On July 24, the House debated and passed H.R. 2738 (270-156) under the fast-track rules, which require an up or down vote without amendment, as stipulated in the Trade Promotion Authority (TPA) language in the Trade Act of 2002 (P.L. 107-210, sec. 2103).[2] The Senate is expected to debate and vote on the companion bill, S. 1416, the week of July 28 under the same fast-track procedures.

The bilateral negotiation was a challenging exercise for both countries and although a broad-based agreement was struck, there are a few issues that remain somewhat contentious for many Members of Congress, as expressed at hearings in both the House and the Senate. Overall, because there are now multiple FTAs being contemplated, there is a concern over the possibility of one bilateral FTA being considered a "template" for others that follow. A summary of the relevant issues appears in the back of this report, which provides background and analysis on Chile's economy, trade relations, and the bilateral FTA and will be updated periodically.

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[1] The two countries announced on December 11, 2002 that an agreement had been reached and President Bush formally notified the 108th Congress on January 30, 2003 of his intention to sign the agreement.

[2] Trade promotion authority, formerly known as fast-track trade negotiating authority, is an expedited process for congressional consideration of trade agreements. It provides that Congress will consider trade agreements within a mandatory deadline, under limited debate, and with no amendments as long as the President meets requirements set in the law. The fast-track language itself may be found in section 151 of the Trade Act of 1974(19 U.S.C. 2191-2194; P.L. 93-618, as amended.) See also: CRS Issue Brief IB10084, *Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress*, by Lenore Sek and CRS Report RS21004, *Fast-Track Negotiating Authority for Trade Agreements and Trade Promotion Authority: Chronology of Major Votes*, by Carolyn C. Smith.

Why a U.S.-Chile FTA?

Trade agreements evoke strong reactions from supporters and opponents alike. Nowhere is this debate more alive than in the U.S. Congress, which for eight years was at an impasse over passage of trade promotion authority (TPA) until it renewed TPA in August 2002 as part of the Trade Act of 2002 (P.L. 107-210). Without TPA, the politically charged nature of trade negotiations made passage of implementing legislation for multilateral and regional agreements more uncertain. In addition to complex multilateral trade arrangements, the United States has pursued simpler bilateral agreements that were expected to be less politically sensitive and therefore more likely to gain congressional approval, especially if TPA had not been renewed. On September 28, 2001, for example, President Bush signed into law the implementing legislation for the U.S.-Jordan FTA (P.L. 107-43). Bilateral FTAs with Singapore and Chile were pursued with the expectation of similar support.

Opposition to bilateral FTAs, however, has heated up for both economic and political reasons. Economists, even those who support free trade, point out that bilateral (and regional) agreements are poor substitutes for multilateral arrangements. Although both countries in a bilateral arrangement may see their welfare improve through trade creation, the agreement may also cause trade (and investment) diversion, which can negatively affect those both in and outside of the agreement. Although trade diversion is often difficult to assess, it is a real consideration in pursuing negotiations below the multilateral level.[3]

In addition to economists' questions over the trade effects of bilateral agreements, there is vehement opposition by various interest groups. Perhaps first among many are the import-competing industries that bear the brunt of the adjustment costs of a trade agreement. Despite the welfare gains to society as a whole (e.g. more efficient resource allocation, lower priced imports, greater selection of goods), those industries subject to increased competition face potentially serious pressure to adjust their operations to become more efficient, lower-cost producers. Competition is generally accepted as a tenet of doing business in a market economy, and on a national level, these adjustment costs may be small and lead to greater productivity. When the rules change because of trade agreements, however, affected workers and industries resist strongly and their concerns are an integral part of the trade liberalization debate.

Strong criticism of virtually all trade agreements also arises from groups arguing that any arrangement is unacceptable unless it includes strong provisions addressing the impact of the trade agreement on labor and environmental conditions. When joined with other groups protesting "globalization" in general, a formidable coalition is created. Collectively, these interest groups raise the question of whether trade agreements enhance the social welfare of participating countries. Given the intensity of debate and amount of effort and resources needed to consummate an FTA, some questioned whether the marginal gains from a U.S.-Chile bilateral agreement would

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[3] For a discussion, see: CRS Report RL31072, *Regional Trade Agreements: An Analysis of Trade-Related Impacts*, by Gary J. Wells. August 3, 2001.

be justified given that Chile is a small and distant U.S. trade partner, and already has a relatively open economy.

Advocates of the U.S.-Chile FTA responded that it offered both economic and political gains, with Chile seen as a potential strategic foothold in South America, a region historically linked closely with Europe and Asia. From an economic perspective, U.S. business interests considered Chile a prime target for expanding exports and repeatedly stressed the need to reduce the higher tariffs they faced relative to Canada and other countries that already had FTAs with Chile. Lower-cost U.S. imports from Chile also provided benefits to individual and business consumers. Further, some of Chile's exports to the United States have zero or low tariffs already, suggesting that the adjustment costs to import-competing firms could be low (see **appendix 2**). U.S. investors also saw Chile's political and economic stability as attractive for foreign investment.

From a trade strategy perspective, it was argued that a U.S.-Chile FTA would support U.S. initiatives with the Free Trade Area of the Americas (FTAA), currently under negotiation, by encouraging greater Chilean support for U.S. issues and perhaps even helping define key negotiating parameters (e.g. labor and environment provisions) that could be precedent-setting.[4] The U.S.-Chile FTA was also offered as a compelling case for passage of TPA legislation, which would serve as a signal to Latin America and the rest of the world of the U.S. commitment to pursue and complete trade agreements.

Chile also saw a logic in prioritizing an FTA with the United States because export promotion has been a building block of its growth and development strategy. Guaranteed access to the large U.S. market offers opportunities for increased and perhaps more diversified trade. Chile also envisioned increased foreign investment as an attendant benefit of the FTA, and argued that its well-established track record on economic and trade reform made it the Latin American country most ready to negotiate a bilateral FTA. In short, despite its relatively small economy, Chile presented itself as a country ready, willing, and able to negotiate a mutually beneficial FTA with the United States.

In addition to the benefits that were expected to accrue to U.S. businesses, investors, and consumers, an FTA with Chile was also seen as an opportunity for the United States to support economic and trade reform in Latin America, for which Chile had become a regional model. Trade was a big part of the economic growth and development story in Chile, and linked directly to increased productivity, higher standards of living, greater diffusion of technology, and overall modernization of the country. Therefore, the United States, it was argued, should support these gains because they are a foundation for continued economic, social, and political stability and progress in the region. Trade agreements were also presented as playing a role in development and have the added benefit of "locking in" reforms, lending a sense

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[4] The FTAA would include 34 nations of the Western Hemisphere and is scheduled for completion by January 2005. See: CRS Report RS20864, *A Free Trade Area of the Americas: Status of Negotiations and Major Policy Issues*, by J. F. Hornbeck.

of permanence to economic and political conditions that is conducive to attracting and keeping foreign trade and investment.

Clearly, there were competing viewpoints on the desirability of a U.S.-Chile FTA. A look at Chile's economic development is one way of addressing many, if not all, of the issues highlighted above precisely because Chile has been an early and aggressive reformer of economic and trade policy in Latin America. In this light, to the extent that the welfare of Chilean society has improved with economic openness, it may be one indication that freer trade can support a broad array of economic and political goals. It is with this approach in mind that this report integrates a discussion of Chile's economic growth and development with trade policy issues raised in both the United States and Chile.

Economic Reform in Chile

Chile has become one of the most open, reformed, and developed economies in Latin America, a rebuilding process initiated under the military dictatorship of Augusto Pinochet (1973-90) and accelerated under civilian government following the return of democratic rule in 1990. Chile transformed its state-dominated economy into one grounded in market-based economic principles, first by stabilizing the economy and then restructuring it (e.g., lifting price controls, deregulating labor markets, privatizing state enterprises, reducing trade and exchange rate restrictions). As part of the process, Chile weathered some devastating domestic setbacks, including the 1982 economic collapse, followed by the sudden onset of the Latin American debt crisis. Chile survived it all, however, and eventually thrived economically, although not without incurring significant social costs along the way.[5]

Economic reform has continued into the 21st century and actually coincided with a period of strong economic growth that held for most of the last decade (see **table 1**). Currently, Chile is adjusting to the slower economic growth experienced both at home and abroad over the past two years, including a prolonged recession and financial crisis in neighboring Argentina. In 2002, Chile's gross domestic product (GDP) rose by only 1.7%, which was higher than many of its neighbors. Although, this reflects a slower growth rate compared to average economic growth of over 5% in the late 1990s, Chile's economy has proven resilient in the face a global economic downturn and contagion from the Argentine financial crisis.

Chile's current macroeconomic management rests on three policy pillars: a flexible exchange rate; inflation-targeting monetary policy; and strict fiscal discipline aimed at generating a public sector surplus. On the positive side, tight fiscal control has kept Chile's public external debt position relatively low, helping restrain inflation to 2.4% in 2002 and leaving room for monetary policy to support economic growth as well as price stability. Productivity levels have been sufficient to see real wage

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[5] A detailed summary of this process with an emphasis on trade policy may be found in: CRS Report 97-56, *Chilean Trade and Economic Reform: Implications for NAFTA Accession*, by J. F. Hornbeck. October 17, 1997. pp. 1-9.

growth, as well. On the negative side, unemployment has remained around 9%, a nagging problem facing Chilean policy makers.

Trade reform began in the 1970s and helped transform the economy. By dismantling its multilevel tariff schedule and reducing nontariff barriers, Chile sought to engage foreign markets more aggressively and open itself to international competition. The uniform average nominal import tariff rate fell from 105% in 1973 to 15% in 1988, and to 11% in 1991 under civilian government. Chile then reduced the tariff rate by 1 percentage point each year until it reached 6% on January 1, 2003. Although not without adjustment costs, the competitive pressures of trade reform have clearly increased productivity and economic growth.

Table 1. Chile: Selected Economic and Financial Indicators

	1996	1997	1998	1999	2000	2001	2002
GDP Growth (%)	7.4	6.6	3.2	-1.0	4.4	2.8	1.7
Inflation - CPI Avg. (%)	7.4	6.1	5.1	3.3	3.8	3.6	2.4
Unemployment Rate (%)	6.5	6.1	6.2	9.7	9.2	9.2	8.8
Fiscal Balance (% of GDP)	2.4	1.9	-0.1	-2.2	-0.9	-0.9	____
Current Acct Bal (% of GDP)	-5.1	-4.5	-5.2	-0.1	-1.3	-1.4	-1.8
Terms of Trade (% change)	-15.5	2.6	-12.6	0.9	-0.1	-8.0	____
Foreign Exchange Res. ($bil)	15.5	17.8	16.0	14.7	14.7	14.4	15.6

Data Source: International Monetary Fund and Central Bank of Chile.

Continuing a trend since the mid-1980s, Chile has recently made a number of simplifying capital market reforms, including abandoning its exchange rate band in favor of a floating system, eliminating many controls on foreign capital, including the one-year, non-remunerated reserve requirement, and reducing and equalizing capital gains treatment of domestic and foreign investment.[6] Changes in capital controls and exchange rate management have been essential to spurring Chile's export-led growth. Privatization and deregulation have also progressed beyond financial services to include telecommunications, energy, and selected public infrastructure, with Chile also leading Latin America in the divestiture of public-owned enterprises.

Chile's record of reform, growth, and development corresponds with increased measures of income and social well being. In 2001, Chile's per capita income level was second only to Argentina's in Latin America and will likely be first once data reflect Argentina's financial crisis. In addition, Chile's human development index (HDI) for 2002 ranked second in Latin America behind Argentina and ahead of the much larger economies of Brazil and Mexico.[7] Welfare gains for the poorer

[6] *Latin American Monitor: Southern Cone*. June 2001, pp. 4-5 and Central Bank of Chile, *Press Release*, April 16, 2001.

[7] The Human Development Index (HDI) is a composite measure of average achievement (continued...)

segments of Chilean society are also being seen, with a relatively low child mortality rate and absolute measures of poverty declining over the past decade and registering lower than most other Latin American countries.[8] High unemployment and a skewed income distribution in line with the rest of the region, however, point to the need to increase the quality and quantity of workforce participation, which is related to improving education, health care, and other public policies.

Chile's Trade Policies and Relations

Over the past decade, Chile's increasingly expansive and independent trade policy portrays a strategy that is commonly referred to as "open regionalism." This approach combines unilateralism with the formation of sub-regional integration groups open to future expansion, such as the Andean Community and the Southern Common Market (Mercado Comun del Sur — Mercosur), among others, while also leaving open the possibility for bilateral and extra-regional trade agreements. As pointed out in one study, it differs from earlier, fundamentally unsuccessful, attempts at economic integration in Latin America by emphasizing trade opening rather than collective sub-regional protectionism.[9]

The "open regionalism" policy took shape in the early 1990s when Chile signed economic complementarity agreements (simplified free trade agreements) with Bolivia, Mexico, Venezuela, Colombia, and Ecuador under guidelines set out by the Latin American Integration Association (Association Latinoamericana de Integracion — ALADI). Similar arrangements followed with Peru and Argentina. Chile has signed FTAs with Canada, Mexico, and Central America. In April and October 2002 respectively, Chile completed negotiations for an FTA with the European Union and South Korea. It is currently courting other countries including Japan, New Zealand, and Singapore, and closing in on an agreement with the European Free Trade Association (EFTA), see **appendix 3**. All are considered part of a strategy to open industrial economies further to Chilean exports. Chile joined Mercosur as an associate member in 1996, limiting its commitment largely because of Mercosur's higher common external tariff. Chile is also an active participant in the World Trade Organization (WTO), seeing it as the venue to settle controversial issues less suited to regional or bilateral discussions.

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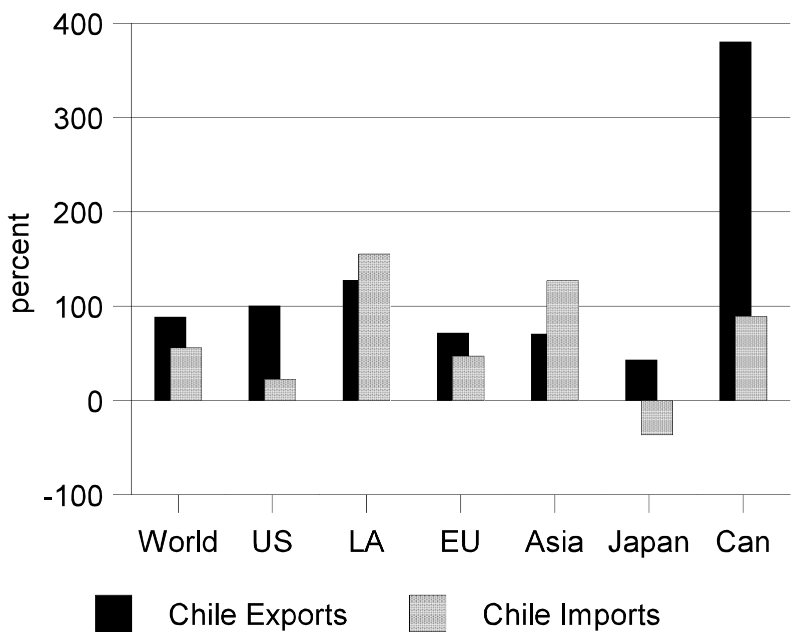
[7] (...continued)
in human development (education, income, and life expectancy). Worldwide, Chile ranked 38 compared to Argentina (34), Uruguay (40), Costa Rica (43), Mexico (54), Venezuela (69), and Brazil (73). Argentina's rank may fall precipitously once corrected for its current financial crisis. See: United Nations, *Human Development Report 2002,* p. 149.

[8] Less than 2% of Chile's population lives on less than $1.00 per day compared to 10% in Brazil, 8% in Mexico, and 15% in Venezuela. The under-5 mortality rate for Chile is 12 per 1,000 compared to Argentina (19), Brazil (36), Mexico (29), and Venezuela (22). See: The World Bank. *2003 World Development Report,* pp. 58-59 and 112-14.

[9] Weintraub, Sidney. *Development and Democracy in the Southern Cone: Imperatives for U.S. Policy in South America*. Washington, D.C. Center for Strategic and International Studies, 2000. pp. 2-3.

Trade data reflect Chile's open and independent trade policy. Its exports to the world expanded by 89% over the eight years 1993-2001 (see **figure 1**) and imports grew by 56%. Although Chile is not part of the Andean Community or a full partner of Mercosur, its fastest export growth has been intra-regional, a testament to Chile's trade strategy that combines unilateral reductions in tariff and nontariff barriers with an aggressive effort to enter into bilateral arrangements. From 1993 to 2001, Chilean exports expanded by 126% to Latin America, compared to 100% to the United States, 43% to Japan, 70% to the rest of Asia, and 71% to the European Union. Chile's trade with Canada points to another interesting trend. Although the dollar value of exports is very small, it grew by some 380%, an issue that was not lost on many U.S. business advocates of a U.S.-Chile FTA, who argued that the Chile-Canada FTA put U.S. firms at a competitive disadvantage until a similar or better agreement could be reached with the United States.

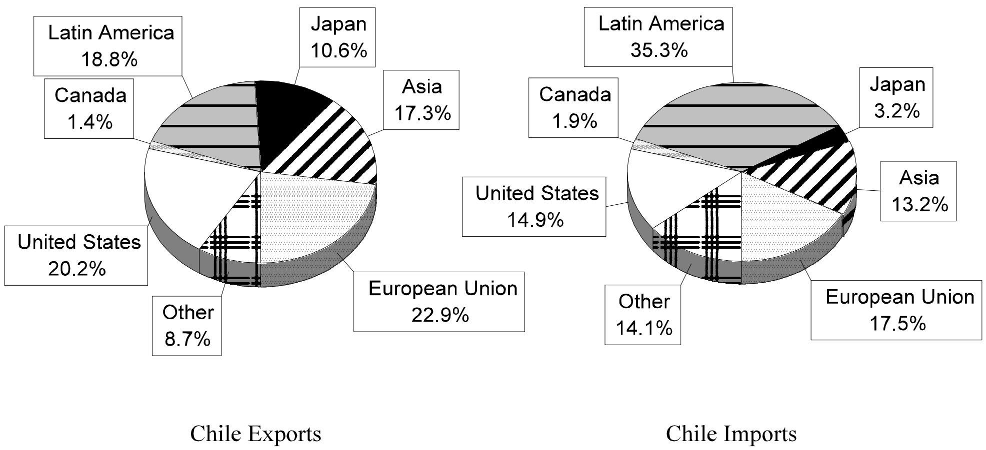
Figure 1. Growth in Chilean Trade with Major Partners, 1993-2001



Source: CRS computed from IMF, *Direction of Trade Statistics*.

As seen in **figure 2**, Chile has diversified export markets, which not only increases opportunities for trade, but also reduces dependence on a few markets and thereby softens exposure to foreign shocks (e.g. Argentina). Its largest export market is the European Union, which accounted for 23% of exports in 2002, followed by the United States with 20%, and Latin America with 19%. Japan accounted for 11% of Chilean exports and the rest of Asia 17%. These figures reflect some relative change over the past decade, as seen in the growth patterns in **Figure 1**. There was a decrease in the European Union's and Japan's share of Chilean exports, as well as to Latin America. Although Chile's exports to Latin America had been rising during the 1990s, slow regional growth at the turn of the century reduced its export market share. The export shares to Asia and the United States, two areas that have experienced relatively faster growth, have risen recently. There was also a large increase in Chilean export share to Canada, although from a very small base.

Figure 2. Chile Direction of Trade, 2002



Data Source: Central Bank of Chile. *Indicadores de Comercio Exterior*, March 2003. pp. 417 & 455.

Latin America is Chile's largest importing area, accounting for 35% of imports, followed by the EU with 18%, the United States with 15%, and Asia with 13%. Japan and Canada follow at a distance with 3% and 2%, respectively. The EU trade presence in Chile has declined over the past decade, as it did with other Latin American countries. The relative importance of the United States suggests that Chile has had a strong incentive to pursue a bilateral FTA, other than a general preference for expanding its export base.

Chile's open regionalism and export driven trade policy have been challenged, however, for not focusing enough on diversifying the country away from minimally refined agriculture and mining products (copper, fish, grapes, and wood). Manufactured products account for less than 15% of total exports,[10] suggesting two potential problems. First, relying on traditional commodities can provide strong export earnings, but earnings are unpredictable given the volatile nature of commodity prices (see Chile's swings in its terms of trade in **Table 1**).

Second, little movement toward a manufacture-based, value-added approach to export promotion can limit long-term economic growth, a point developed by an Inter-American Development Bank (IDB) study arguing that the relatively poor

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[10] Inter-American Development Bank (IDB). *Integration and Trade in the Americas: Periodic Note, December 2000*. Washington, D.C. p. 14. At the other end of the spectrum, manufactured goods account for 71% of Mexico's exports, reflecting the large amount of maquiladora trade with the United States.

income growth performance of commodity exporting countries can be traced to this lack of export diversification. Although many Latin American countries have expanded their intra-regional trade, deepening integration with developed economies seems necessary to achieve greater export diversification. The large gains in export manufactures of Mexico and the Central American countries in the 1990s, for example, were related, in some measure, to preferential trade arrangements with the United States. Other Latin American countries had much slower growth of manufactured exports.[11] Whether Chile will adopt export diversification as part of its long-term development strategy is unclear, but Chile's efforts to develop trade relationships with developed economies, including the U.S.-Chile FTA, would seem to be an important component of such a goal.

On Chile's import side, most from developed countries are capital goods, highlighting the link between an open trade policy (lower tariffs on capital goods) and development (capital goods form the investment base for other production). Importantly, there is strong competition in the Chilean capital goods market from firms around the world. Given Chile's many trade negotiations underway, there was pressure exerted by U.S. firms to expedite the Chile-FTA. A closer look at the structure of U.S.-Chile trade suggests there is potential for mutual benefit from strengthening trade ties between the two countries.

The U.S.-Chile Bilateral Trade Relationship

The United States is Chile's largest single-country trading partner, accounting for 20% of Chilean exports and 15% of imports in 2002. By contrast, Chile is the United States' 34th largest export destination and 36th largest import contributor, accounting for 0.3% of U.S. trade (2002 data). Chile's relatively small share of U.S. trade has actually slipped slightly in recent years, but its increasing openness to U.S. trade is evident in the numbers. In 2002, Chile's per capita imports from the United States were $163, higher than other major South American countries considered less liberalized in their trade policies such as Argentina ($44) and Brazil ($71).[12]

Trends in U.S.-Chile merchandise trade are shown in **figure 3** (data appear in **appendix 1**) and mirror the trend in Chile's economic growth. U.S. exports grew significantly in the first half of the last decade, rising by 77% from 1992 to 1997. After that, they fell precipitously for two years, coinciding with the precipitous fall in Chile's economic growth from 7.4% in both 1996 and 1997 to 3.4 % in 1998 and -1.1% in 1999 (see **Table 1**). As economic growth picked up again in 2000, rising to 5.4%, so too did the demand for U.S. goods, but economic and U.S. export trends faltered again in 2001 and 2002, with the United States running a merchandise trade deficit with Chile for the first time since 1988. In 2002, U.S. exports were not much above levels ten years earlier. This pattern parallels declining exports levels to Latin

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[11] Ibid., pp. 12-15.

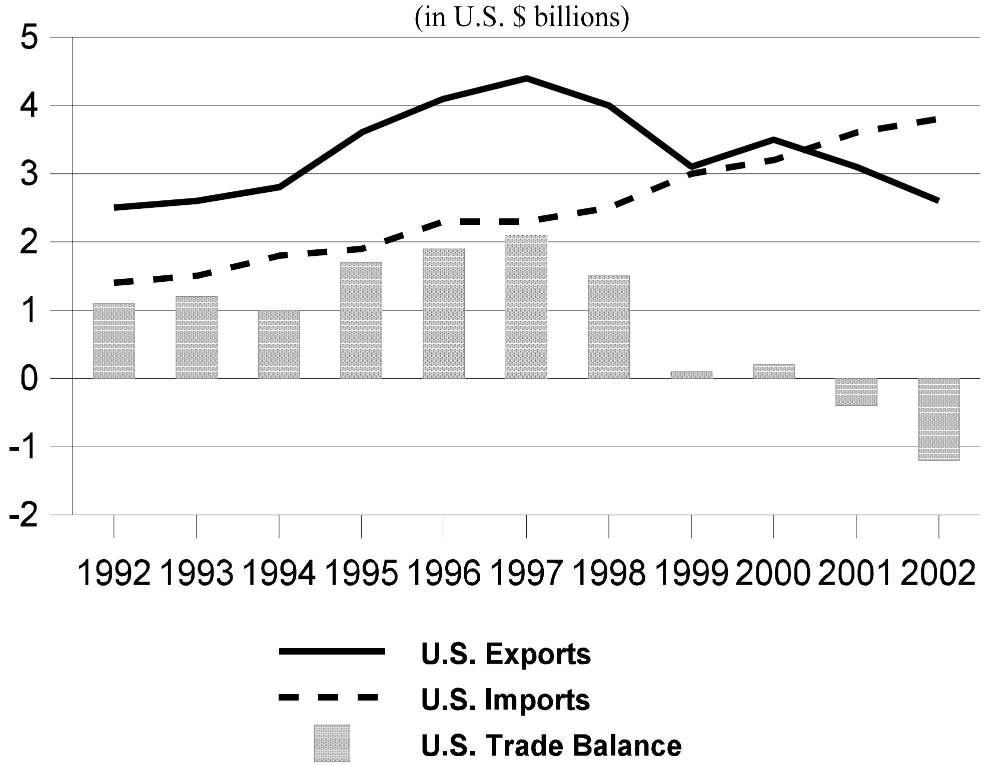
[12] See: CRS Report 98-840 E, *U.S.-Latin American Trade: Recent Trends*, by J. F. Hornbeck, p. 4.

America, as a whole, reflecting weakening economic conditions and therefore demand for imports in general.

U.S. imports from Chile have grown steadily since 1992, reflecting continuing U.S. interest in Chilean products and the extended expansion of the U.S. economy. U.S. imports grew by 172% from 1992 to 2002, a higher rate of import growth than from either Latin America, excluding Mexico (107%), or the world (118%). The United States maintained a trade surplus with Chile from 1989 until 2000; in 2001 the trade balance turned to a deficit equal to 6% of total trade between the two countries and 18% in 2002.

Figure 3. U.S.-Chile Merchandise Trade, 1992-2002

(in U.S. $ billions)



Data Source: U.S. Department of Commerce

Major U.S. products exported to Chile are mostly capital goods (see **Appendix 2**). These include: machinery (31%), particularly computers, office machinery, and industrial equipment such as gas turbines and bulldozers; electrical machinery (16%) including television and radio transmission apparatus, telephone equipment, spare parts, integrated circuits, sound recording equipment and media; vehicles (8%) mostly trucks and passenger cars; aircraft and parts (5%), and optical/medical instruments (5%). In recent years, the U.S. export trends have exhibited a slowing in transportation equipment such as airplanes and automobiles, and an increase in computer and electronic equipment relative to other goods.

The top five U.S. imports from Chile are natural resource based goods that reflect some refining of the basic resource, but little value-added manufacturing activity. They account for nearly 70% of total imports from Chile and include: copper articles (19%), mostly refined alloys; edible fruits and nuts (18%), most of which are grapes; fish (15%), mostly salmon; wood (13%), various types of lumber; and beverages (4%), virtually all wine. Recent trends have seen an increase in grape and fish imports, with a steady level or slight decline in demand for copper, wood, and wine products relative to other goods.

Review of Negotiations and Policy Issues

The U.S.-Chile FTA was completed on December 11, 2002, following two years and 14 rounds of negotiations. USTR Robert Zoellick signed the agreement for the United States on June 6, 2003 and both the Trade Subcommittee of the House Ways and Means Committee and the Senate Finance Committee held related hearings in June 2003. As part of the congressional consultation process, the United States International Trade Commission (ITC) released in June 2003 a comprehensive study assessing the likely impact of the FTA on the U.S. economy, providing both quantitative and qualitative estimates of the FTA's possible effects.

The overall estimate of the ITC study was that by 2016, when the full effect of the tariff eliminations would be felt, U.S. exports to Chile would increase in a range between 18% and 52%; U.S. imports would rise between 6% and 14%. The study notes that this would be very small relative to total U.S. trade and that the economy-wide effects on trade, production, and overall economic welfare would be small to negligible (in a range of negative 0.001% to a positive 0.003% of GDP). This is in keeping with general expectations from the outset of the negotiations that recognized the limited benefits that could be achieved by the FTA given Chile is already a relatively small open economy with a relatively small trade position with the United States. The ITC finding, however, serves as an estimate of confirmation, focusing largely on the implications of tariff reduction, which may be quantified, unlike changes in many nontariff barriers.[13]

The rest of this section briefly summarizes the major policy issues that had to be reconciled in the negotiating process and references the ITC's conclusions with respect to each major issue area, where applicable.

Tariffs and Market Access

For the United States, market access and particularly reducing tariff rates, was a central goal of the negotiations. For countries that have trade agreements with Chile, such as Canada, the uniform 6% tariff is being phased out on most goods, an advantage the United States wanted to eliminate. On the other side, the primary U.S. imports from Chile face varying levels of tariffs, although some goods enter the United States duty free under normal trade relations (see **Appendix 2** for U.S. tariff treatment of major Chilean exports). The major U.S. imports from Chile do not

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[13] United States International Trade Commission. *U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects.* USITC Publication 3605. June 2003. pp. xiii-xv. In addition to a review of the literature, the study bases its conclusions on a computable general equilibrium model (CGE) that estimates the "likely impact of a the U.S.-Chile FTA for 22 aggregated sectors." See pp. 2-3, 53-55, and Appendix C.

qualify for duty-free treatment under the Generalized System of Preferences (GSP), a preferential trade arrangement made by developed countries for developing country imports. The United States and Chile negotiated tariff reduction phase-out schedule on a product-by-product basis that differentiated treatment for sensitive products, as was done in the North American Free Trade Agreement (NAFTA).

The ITC identified the major sectors that would likely benefit the most from the FTA. The quantitative analysis estimates the likely increase in U.S. exports and imports for the year 2016, when the full effect of the tariff reductions would be felt. The estimated ranges of increase in U.S. exports for the most affected sectors are: 1) motor vehicles and transportation equipment (35%-215%); 2) textiles, apparel, and leather goods (29%-101%); and 3) coal, oil, gas, and other minerals (26%-72%). For U.S. imports, the range estimates for most affected sectors are: 1) dairy products (169%-575%); 2) textiles, apparel, and leather goods (77%-372%); and other crops (55%-114%), particularly avocados when the tariff rate quota is eliminated in 12 years. In all cases, the increases are estimated to be large on a percentage basis because of relatively high tariff or tariff equivalent barriers on these goods. Because the changes are computed from relatively small bases on a dollar value basis, however, the effects on industry production are expected to be small.[14]

Services Trade

Services are an important part of U.S. exports and are a key negotiating area in trade agreements. The United States is a leading provider of financial (insurance, banking, securities) and telecommunications services. The U.S.-Chile FTA would lower barriers and would enhance disciplines with respect to the provision of these services, but would not alter significantly U.S. imports of these services, nor would there likely be a large change in the U.S. export position. First, Chile has only a small presence in the United States with respect to these services and second, Chile is a relatively small market for U.S. services and has been relatively open for some time.[15]

Trade Remedies

In addition to tariff reductions, trade remedies presented negotiators with significant challenges. In the United States, low tariffs on most products have caused domestic industries to rely on trade remedy laws to fight import competition. Perhaps the most controversial issue was the application of U.S. antidumping statutes (investigations to determine if goods are being sold at less than fair value), which Chile expressed a desire to address in the bilateral FTA. This was not a new issue and was tackled in the Canada-Chile FTA, which provides for the "reciprocal exemption from the application of anti-dumping laws," except under "exceptional

[14] Ibid., pp. xv-xviii and 46, 51, and 57. The report has a detailed discussion of the FTA's possible effects by sector and commodity.

[15] Ibid., pp., 94-101.

circumstances."[16] The thrust of that agreement appears not to force the elimination of antidumping remedies, but to make their use a last rather than first recourse, under WTO guidelines.

Chile's sensitivity to U.S. antidumping investigations was based on their "frequent and at times unjustified use,"[17] and Chile argued that just the filing of dumping charges initiated a process with significant unrecoverable costs regardless of the investigation's outcome. In recent years, antidumping investigations were concluded on Chilean salmon, mushrooms, grapes, and raspberries. The ITC ruled that there was reasonable indication that material injury was caused to U.S. producers in the cases of salmon, mushrooms, and raspberries, but not for grapes.[18] The United States indicated that trade remedy laws would not be negotiated unless otherwise directed by Congress and the Bush Administration, and extended an offer to Chile to make the process more transparent. Chile responded with concrete proposals to make this suggestion operational.[19] The United States also had NTB concerns over Chile's price band system used to maintain domestic agricultural prices and its sanitary and phytosanitary regulations that restrict imports of U.S. agricultural and meat products.[20]

IPR and Investment

Among the other issues of special interest to the United States were intellectual property rights (IPR) and investment provisions. Chile has signed the Trade Related Intellectual Property Rights (TRIPS), but its congress has yet to pass legislation implementing the provisions. In addition Chile has also signed two World Intellectual Property Organization (WIPO) treaties, but has failed to conform fully to these obligations, as well. The U.S.-Chile FTA reaffirms obligations under TRIPS and adds another layer of important protection for U.S. industries, which if enforced would potentially increase revenues to a number of industries including: motion picture, sound recording, business software, book publishing, pharmaceuticals, and agricultural chemicals, among others.[21]

Chile is known for its transparent and high level treatment of foreign investment and has eliminated restrictions on capital inflows that existed in the 1990s (see next section). As a WTO member, it is a signatory to both the WTO Agreement on Trade Related Investment Measures (TRIMS) and the WTO General Agreement on Trade in Services (GATS), both of which affect investment rules. The U.S.-Chile FTA

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[16] *Government of Canada*, *Canada-Chile* Free Trade Agreement, February 1997. Antidumping was also addressed in the Chile-Mexico FTA.

[17] On Chile's trade agreements, see: [http://www.direcon.cl/acuerdos/index.htm]

[18] ITC antidumping rulings may be viewed at: [http://www.usitc.gov/7ops/7opsindex.htm]

[19] Conversations with office of the USTR, August 17, 2001 and Embassy of Chile, May 9, 2002.

[20] Office of the United States Trade Representative. *2002 National Trade Estimate Report on Foreign Trade Barriers*. pp. 38-39.

[21] USITC, op. cit., pp. 109 and 118.

goes beyond these rules and provides U.S. investors with strong protection. As important as these provisions are for the United States, the ITC estimates that because of Chile's historically open economy and small investment market, the FTA might foster increased U.S. investment in Chile, but it is unlikely to be significantly higher than would otherwise be the case.[22]

Labor and Environment

Labor and environment provisions have become accepted as legitimate, but difficult issues to resolve in trade agreements. At the heart of the matter is whether a difference in environmental and labor standards between developed and developing countries creates economic and social issues that should be addressed in trade agreements. This has led to a strong divergence of opinion, both among groups within the United States, and between developed and developing countries.

Advocates of including labor and environment provisions in trade agreements argue that developing countries enjoy an "unfair" competitive advantage because their lower standards translate into lower costs, which in turn are reflected in lower prices for goods that compete with those produced in developed countries.[23] Over time, this argument suggests that the difference in standards leads to investment and jobs moving abroad to take advantage of the lower production costs. On the other hand, many studies show that these costs are usually not high enough to determine business location, where productivity remains the primary factor.[24] There are also social concerns to the labor and environmental issue that relate directly to the human impact of diminished health and living conditions caused by pollution, poverty, and unsafe working conditions. Given countries' different levels of development and therefore capacities to address these issues, there is considerable disagreement over how far a trade agreement should go in engaging these domestic policy issues.

Developing countries, including Chile, have expressed two basic concerns regarding the inclusion of environmental and labor provisions in trade agreements: 1) that their sovereignty may be undermined if such agreements endorse higher standards; and 2) that such provisions may be used to justify disguised protectionism. Free trade advocates in the United States and other developed countries have expressed similar sentiments in opposition to placing environmental and labor provisions in trade agreements.

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[22] Ibid., pp. 103-108.

[23] The difference is that the social costs associated with environmental degradation, pollution, poor working conditions, and low wages are not captured in the production process. Through legal and regulatory measures, developed countries require that businesses bear many of these costs, which are then reflected in the final (relatively higher) price of the good or service in the market place.

[24] See: CRS Report 98-742, *Trade with Developing Countries: Effects on U.S. Workers*, by J. F. Hornbeck. September 2, 1998, pp 11-13. Productivity and wage levels are, however, highly correlated. See: Rodrik, Dani. Sense and Nonsense in the Globalization Debate. *Foreign Policy*. Summer 1997, Number 107. pp. 30-33.

Labor and environment provisions in trade agreements have evolved over time. NAFTA's side agreements set a precedent in both labor and environment provisions that all parties: 1) not relax standards to attract investment or reduce costs of exports; 2) strive to improve standards over time, and; 3) enforce effectively their laws and regulations. The U.S.-Jordan bilateral FTA (the implementing legislation was signed into law by President Bush on September 28, 2001 — P.L. 107-43) took labor and environmental provisions a step farther. It includes most key features of the NAFTA side agreements, but moved the provisions to the main body of the text, thereby placing these provisions under the dispute resolution process of the entire agreement. Significantly, this includes language stating that an affected party may take "any appropriate and commensurate measure," including trade sanctions if the dispute remains unresolved.[25]

Chile recognized the importance of labor and environment provisions when it included them in the 1996 FTA with Canada, but kept them equally general in NAFTA-like side agreements. The labor and environment provisions differ from the Jordan model by their placement in a side agreement and their reliance on less stringent dispute resolution options, emphasizing monetary assessments rather than trade sanctions.[26] During the negotiations, it was unclear whether the Chile-Canada, U.S.-Jordan, or some new or hybrid model would work for the U.S.-Chile FTA. U.S. negotiators looked to guidance in the TPA legislation and the core debate focused on dispute resolution and enforcement mechanisms, particularly the use of trade sanctions in cases of noncompliance. Chile was on record, however, as flatly rejecting inclusion of any language that allows for the use of trade sanctions.

Congress and the U.S.-Chile FTA

In recent years, the United States has signed bilateral FTAs with Jordan, Singapore, and Chile. All three have common elements, but each reflects country specific issues. A recurring question for the U.S. Congress with respect to the trade negotiation process has been, to what extent does one agreement become a model for another? When the U.S.-Chile FTA was signed in December 2002, United States Trade Representative Robert Zoellick announced that it could serve as a "template" for CAFTA.[27] Since then, many Members of Congress have raised concerns over this prospect and in particular, over how labor and financial transfers are handled in dispute settlement procedures, as well as language governing the temporary entry for business persons. This section provides a brief summary of the provisions in the U.S.-Chile FTA and amplifies the debate over three of the more controversial aspects of the agreement.

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[25] See: CRS Report RS20968. *Jordan-U.S. Free Trade Agreement: Labor Issues*, by Mary Jane Bolle. pp. 2-3 and CRS Report RS20999. *U.S.-Jordan Free Trade Agreement: Analysis of Environmental Provisions*, by Mary Tiemann. pp. 2-3.

[26] Government of Canada. *Canada-Chile Free Trade Agreement. Article by Article Chapter Summaries*. February 1997.

[27] Washington Trade Daily, *US, Chile Reach FTA*, December 12, 2002.

The U.S.-Chile FTA in Brief

If the U.S.-Chile agreement is implemented, Chile would join a select group of only four other countries that have an FTA with the United States (Canada, Mexico, Jordan, and Israel). Market access was a critical provision. Duty free access was negotiated for all goods traded between the two countries. Fully 87% of bilateral trade in consumer and industrial products would become duty-free immediately, with others receiving reduced tariff treatment over time. Some 75% of U.S. farm exports would enter Chile duty-free within four years and duties on all goods would be fully phased out within 12 years after implementation of the agreement. With a few exceptions, the agreement would also increase market access for a broad range of services, with new opportunities for the financial services sector.[28]

Exports subsidies on agricultural products would be eliminated, but either country would be able to respond in-kind if damaged by third party export subsidies. There is also a safeguards provision to address possible surges in agricultural imports from Chile.[29] Importantly, the chapter on trade remedies deals only with the safeguards provision, so there would be no expected change to the antidumping and countervailing duty options currently available to both countries under WTO rules.

For Chile, 95% of its export products would gain immediate duty-free status and only 1.2% would fall into the longest 12-year phase-out period. Other important market access gains would include phasing out the luxury tax on automobiles over four years, less restrictive treatment of textile and apparel products that meet rules of origin criteria, and reduction over time of Chilean price bands, a provision not included in either of the FTAs Chile negotiated with Canada and the European Union.

Other achievements of importance to the United States include consolidating and stabilizing rules governing openness of services trade, telecommunications, intellectual property rights (IPR), e-commerce trade, and investment. These areas were of much greater interest to the United States than Chile and reflect gains for highly competitive U.S. industries. There would be few exceptions to the new services rules, benefitting firms working in financial, telecommunications, computer, and professional services. Chile's approach to IPR would also be adjusted to accommodate U.S. concerns over software, music, text, and videos. A new e-commerce chapter addresses the growing trade in digital products.

The U.S.-Chile FTA still faces a few broad questions from the U.S. Congress, in addition to specific concerns that individual Members may have. Three that have received repeated attention involve the treatment of labor and financial transfers in dispute settlement, and the temporary entry for business persons.

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[28] The full text of the agreement has 24 chapters filling hundreds of pages. The entire text may be found at: [http://www.ustr.gov].

[29] CRS Agriculture Policy and Farm Bill electronic briefing book, *Agriculture in the U.S.-Chile Free Trade Agreement*, [http://www.congress.gov/brbk/html/ebagr53.html].

Labor Dispute Settlement Provisions

A key controversy surrounds the treatment of three labor provisions in the agreement, which labor advocates argue is a step backward from the provisions agreed to in the U.S.-Jordan bilateral (as well as the Generalized System of Preferences and Caribbean Basin Trade Partnership Act, which currently govern much of the U.S. trade with Latin America). Specifically, provisions: 1) requiring effective enforcement of domestic labor laws, 2) reaffirming commitments to ILO basic principles, and 3) requiring parties to strive to ensure the "non-derogation" from domestic standards (not weakening or reducing protections to encourage trade and investment) are treated differently.[30]

In the first case, failure to enforce domestic labor laws could be formally challenged in the dispute resolution process as defined in the FTA (Article 22.16(1)). In the case of the other two provisions, which are supported in principle, such recourse would not be available. The USTR points to cooperative mechanisms for improving workers' rights in the FTA,[31] but labor advocates argue that unless all three are enforceable, the FTA provides "a meaningful trade discipline where — and only where — the country's labor laws are adequate. Otherwise we would simply lock in low and unacceptable labor standards through our trade agreements."[32] Although Chile has a sound record in support of basic labor rights, such differentiated treatment has been challenged as inadequate for use in other countries, particularly those in Central America,[33] and so raises a question for some as to whether the Chile agreement does or should constitute a precedent.

In addition, in the one case where the formal dispute resolution process may be invoked, it is differentiated from disputes related to commercial issues. Ultimately, if a commercial dispute remains unsettled, the country faces the possibility of suspension of benefits under the FTA "of equivalent effect" (Article 22.15(2)), resulting in the raising of tariffs, or payment of a monetary assessment equal to 50% of what a dispute panel determines is "of equivalent effect." This article does not apply to the disputable labor provision. The difference is that the option for failing to resolve a labor dispute is a monetary assessment, which would be capped at $15 million per year, with recourse to an equivalent dollar value of suspended benefits (higher tariffs) if the monetary assessment is not paid. The monetary assessment would also be paid into a fund and expended for "appropriate labor initiatives." Labor advocates argue that by capping the assessment at $15 million and having the

[30] For more background on these issues, see: CRS Report RS21560, *Free Trade Agreements with Singapore and Chile: Labor Issues*, by Mary Jane Bolle.

[31] USTR. Response to the Labor Advisory Committee (LAC) report on the proposed FTAs with Singapore and Chile. Undated. May be found at USTR web site.

[32] Polaski,, Sandra. Carnegie Endowment for International Peace. *Testimony Before the Senate Committee on Finance on the Implementation of the U.S. Bilateral Free Trade Agreements with Singapore and Chile*. June 17, 2003. p. 2.

[33] Polaski, Sandra. Issue Brief: *Central America and the U.S. Face Challenge — and Chance for Historic Breakthrough — on Workers' Rights*. Carnegie Endowment for International Peace. February 2003. pp. 1-2.

assessment paid into a fund in the offending country render the labor provisions ineffective. The USTR argues that for a small country like Chile, such a fine would be significant relative to the dollar value of the trade benefits it would receive. [34]

From a congressional perspective, there is an additional question of whether differences in the treatment of the three labor provisions in some way fail to meet in full the principal negotiating objectives of Congress as outlined in TPA legislation. Although the three provisions are not accorded the exact same treatment in the FTA, neither are they in the TPA language. Section 2102(b)(11) of the Trade Act of 2002 (TPA) states that among the principal labor negotiation objectives is the provision "*to ensure that a party* to a trade agreement with the United States *does not fail to effectively enforce* the environmental or *labor laws*." This may be contrasted with the apparently weaker objective "*to strengthen the capacity* of United States trading partners *to promote respect for core labor standards*," and, in Sec. 2102(a)(1)(7) to "*strive to ensure* that *they do not weaken or reduce the protections afforded in* domestic environmental and *labor laws* as an encouragement for trade."

There is a final point. Although the TPA provisions seem to differ with respect to treatment of these three labor provisions, under the dispute resolution provision (sec. 2102(b)(12)(G)), a principal negotiating objective also listed is "to seek provisions that treat United States principal negotiating objectives equally" with respect to the ability to resort to dispute settlement, the availability of equivalent procedures, and the availability of equivalent remedies. Whereas the labor groups have argued that this is not the case with labor and commercial disputes, the USTR has responded that this standard has been met since both commercial and labor disputes are subject to monetary assessments and suspension of benefits. The dispute settlement procedures do operate slightly differently, however, and it may be a matter of interpretation as to whether there is a problem in their meeting congressional negotiating objectives.[35]

Investment and Capital Controls

A second controversial provision in the agreement involves the exceptions related to Chile's use of capital controls, again set out in the dispute resolution language. During the 1990s, Chile became famous for regulating capital inflows, discontinued in 2001, in an attempt to exert better monetary control in hopes of

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[34] See: USTR, op. cit., and Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). *The U.S.-Chile and U.S.-Singapore Free Trade Agreements*. February 28, 2003. pp. 5-9 and Lee, Thea M. *Testimony of the AFL-CIO Before the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Trade on the Implementation of U.S. bilateral Free Trade Agreements with Singapore and Chile*. June 10, 2003. pp. 2-3.

[35] It should also be noted that under the principal negotiating objectives with respect to labor is the provision: 1) "to recognize that parties to a trade agreement retain the right to exercise discretion" in investigating and prosecuting compliance matters; 2) that "a country is effectively enforcing its laws" if its reflects reasonable action as being taken; and 3) "no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards." Sec. 2102(b)(11)(B).

avoiding a future currency crisis. There is an ongoing debate over the efficacy of this policy, but many economists view it as having had some stabilizing effect on Chile's financial system and succeeding in ameliorating financial contagion effects from the 1990s Asian crisis.

As part of the investment chapter of the U.S.-Chile FTA, the United States negotiated to ensure the free flow of U.S. transfers between the two countries, which has been a standard concept in U.S. bilateral investment treaties.[36] This took the form of addressing remittances in two provisions related to short-term and long-term capital investment. Recognizing Chile's history with capital controls, the basic tenet of free transfers stipulated in the investment chapter would be amended in the dispute settlement process to address any future possibility that Chile might reinstate capital controls.

Specifically, the United States negotiated positions that would give U.S. investors better treatment in dispute resolution than afforded other foreign investors. The first provision (Annex 10-F of the U.S.-Chile FTA) deals with the treatment of long-term investments under Chile's Decree Law 600 (D.L. 600). This law provides an investment option in the form of a contract with the Government of Chile that stipulates certain rights of the investor, but also requires that foreign direct investment (FDI) remain in country for a minimal period of one year (three years at one point). Should a dispute arise, the provision in the U.S.-Chile FTA basically would allow the investor the option to make a claim in international arbitration as opposed to having to work through the domestic Chilean court system as set out in D.L. 600. It is the less controversial provision of the two.

The second provision (Annex 10-C of the U.S.-Chile FTA) addresses Chile's *Ley de Encaje*, which governs the treatment of short-term capital investment. Simply stated, this law, which was made nonoperational in April 2001, required that any short-term capital investment made in Chile had to be accompanied by a nonremunerated deposit to be placed in the central bank for one year.[37] If the capital remained in Chile for at least one year, the deposit was returned in full. The law also required that if there were an investor dispute these restrictions, a claim could not be made until one year after the event which set the claim in motion. The United States agreed to the one-year rule (higher than the "normal" six-month cooling off period), with two exceptions that would allow for an immediate filing of claims by U.S. investors with disputes. The exceptions would apply to: 1) transfers of earnings from FDI, and 2) payments on debt issued in a foreign market (to cover U.S. inter- and intra-firm lending between affiliated enterprises).

The U.S.-Chile FTA provisions do not eliminate Chile's right to use its capital control laws per se, including the *Ley de Encaje*, but do extend certain additional

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[36] See: U.S. Department of State. *Fact Sheet: Bilateral Investment Treaty Program*. January 22, 2001. [http://www.state.gov/e/eb/rls/fs/197pf.htm]

[37] Historically, the deposit fluctuated between 10% and 30% of the investment. According to the Embassy of Chile, the law is still in effect, but the regulations have been struck by the Central Bank of Chile, effectively making the law nonoperational. The Chilean government could reactivate these regulations.

rights to U.S. investors. This could be viewed as a compromise given the United States has agreed to recognize Chile's "one-year rule" in principal that delays the filing of a claim. Others have argued that permitting U.S. companies to use the dispute resolution process to recover losses that may have occurred from the implementation of capital controls effectively serves to restrict Chile's ability to use those controls and thereby restricts its ability to conduct its own monetary policy. Given that the Chilean government has eliminated the *Ley de Encaje* and that Chile is technically not restricted from reimposing it, it is not clear that the FTA exceptions to Chile's dispute settlement regulations under this law constitute such an invasion of domestic control. These provisions might also be evaluated in light of their effects on U.S. investment in Chile, which is a significant goal of the FTA from the Chilean perspective.

Temporary Business Personnel and Workers[38]

Key Provisions. Chapter 14 of the U.S.-Chile FTA creates separate categories of entry for citizens of each country to engage in a wide range of business and investment activities on a temporary basis, *i.e.*, nonimmigrants. The FTA addresses four specific categories of temporary nonimmigrant admissions currently governed by U.S. immigration law: business visitors; treaty traders; intracompany transfers; and professional workers. These categories parallel the visa categories commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15) of the Immigration and Nationality Act : B-2 visitors, E-1 treaty traders, L-1 intracompany transfers, and H-1B professional workers.[39] Neither Party would be allowed to require labor certification or other similar procedures as a condition of entry and would not be able to impose any numerical limits on these categories, with some exceptions noted for the professional workers (including an annual cap of 1,400).[40]

The FTA clearly states the desire to facilitate the temporary entry of persons fitting these categories, provided the person complies with applicable immigration measures for temporary entry (*e.g.*, public health and safety as well as national security). Chilean citizens who are business visitors, for example, would be able to enter the United States for business purposes on the basis of an oral declaration or letter from the employer specifying the principal place of business, detailing in the FTA an admissions policy not currently specified in statute.

Title IV of S. 1416/H.R. 2738 would amend several sections of the Immigration and Nationality Act (INA, 8 U.S.C.). Foremost, the bills would amend

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[38] This section was written by Ruth Ellen Wasem, Specialist in Social Legislation.

[39] For background, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, and CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, both by Ruth Ellen Wasem.

[40] For a discussion of the labor market requirements for employment-based visas, see: CRS Report RS21520, *Labor Certification for Permanent Immigrant Admissions*; CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*; and CRS Report RS21543, *Immigration Policy for Intracompany Transfers (L Visas): Issues and Legislation*, all by Ruth Ellen Wasem

§101(a)(15)(H) of INA to carve out a carve out a portion of the H-1B visas — to be designated the H-1B-1 visa — for professional workers entering through the FTAs. In many ways the proposed FTA professional worker visa requirements parallel the H-1B visa requirements, notably having similar educational requirements. The H-1B visa, however, specifies that the occupation require ***highly*** specialized knowledge, while the proposed FTA professional worker visa specifies that the occupation require only specialized knowledge.

The bills would also amend §212 of INA to add a labor attestation requirement for employers bringing in potential FTA professional worker nonimmigrants that is similar to the H-1B labor attestation statutory requirements. The additional attestation requirements for "H-1B dependent employers" currently specified in §212 are not included in the labor attestation requirements for employers of the proposed FTA professional worker nonimmigrants.

S. 1416/H.R. 2738 contains numerical limits of 1,400 new entries under the proposed FTA professional worker visa from Chile. The bills do not limit the number of times that an alien may renew the FTA professional worker visa on an annual basis, unlike H-1B workers who are limited to a total of 6 years. The bills would count an FTA professional worker against the H-1B cap the first year he/she enters and again after the fifth year he/she seeks renewal. Although the foreign national holding the proposed FTA professional worker visa would remain a temporary resident who would only be permitted to work for any employer who had met the labor attestation requirements, the foreign national with a FTA professional worker visa could legally remain in the United States indefinitely.

On July 10, 2003, the House Judiciary Committee held a "mock" mark-up of the USTR's draft language. Chairman Sensenbrenner took the lead in stating that "immigration policy does not belong in free trade agreements," citing Congress's plenary authority over immigration policy in Article 1, §8 of the U.S. Constitution. Members on both sides of the aisle expressed agreement with Chairman Sensenbrenner's position, with several Members going further to state that the draft language was an "insult to Congress." The House Judiciary Committee recommended including the FTA professional workers in the H-1B nonimmigrant visa and counting an FTA professional worker against the H-1B cap the first year he/she enters and again after the fifth year he/she seeks renewal. These recommendations are reflected in the legislation as introduced.

Title IV of S. 1416/H.R. 2738 would also amend the INA to include Chile citizens as E-1 treaty traders and E-2 treaty investors.

Major Points of Debate. The USTR maintains that ensuring cross-border mobility of professionals and other business persons is critical for U.S. companies in developing new markets and business opportunities abroad. The USTR further argues that the temporary business personnel provisions in the FTAs are not immigration policy because they only affect temporary entry. The USTR points out that it issued a notice of intent to negotiate provisions to facilitate the temporary entry of business persons in October 2001 and that it briefed congressional staff on the FTA provisions on numerous occasions.

Others express concern that the USTR has overreached its negotiating authority by including immigration provisions in the FTAs. Critics maintain that the USTR's assertion that temporary entry of foreign business personnel and professional workers is not immigration policy is disingenuous. More generally, some point out that these provisions would constrain current and future Congresses when they consider revising immigration law on business personnel, treaty investors and traders, intracompany transfers, and professional workers because the United States would run the risk of violating the FTA.

The specific issue of FTA professional worker is sparking the most debate. The Labor Advisory Committee, one of six private sector advisory committees for the USTR, is critical of the provisions on the temporary entry of business personnel and professional workers because it appears to enable workers from Chile who have no direct employment except a service contract to enter the United States.[41] Others have expressed concern that professional workers from Chile would be held to a less stringent standard than existing H-1B law (*specialized knowledge* versus ***highly*** *specialized knowledge*) and that the stricter attestation requirements for H-1B dependent employers would also be omitted.

The USTR argues that it is incorrect to assert that the labor attestations required under the FTA would be less rigorous than the LCA called for under current U.S. law. According to the USTR, the labor attestation required under the FTA also is to be modeled after the LCA that the Department of Labor requires under the existing H-1B visa program, and (as is the case under the H-1B program) fees may be collected along with the labor attestations.[42] The USTR states that the labor attestations, education and training fees, and numerical limits provisions have been added to the FTAs in response to congressional concerns.

Issues surrounding legal authority to enforce immigration law are also arising. Some are questioning whether §106 and §107 of the legislation would enable an international panel to overrule decisions by officials in the Department of Homeland Security or by the Attorney General to reject visa applicants from Chile and Singapore. USTR responds that the panel that would be established by the FTA would be bi-national and would only deal with cases brought by a Party to the agreement in which there is alleged to be a pattern of violations.[43]

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[41] Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC). *The U.S.-Chile and U.S.-Singapore Free Trade Agreements*. February 28, 2003. p. 9-11.

[42] Letter. U.S. Trade Representative to Mr. George Becker, Chair, Labor Advisory Committee on Trade Negotiations and Trade Policy. c. March 2003.

[43] For more analysis, see CRS Electronic Briefing Book on Trade, "Immigration Issues in the Free Trade Agreements," at [http://www.congress.gov/brbk/html/ebtra135.html].

Appendix 1. US-Chile Merchandise Trade, 1985-2002

(in US $ millions)

Year	U.S. Exports	U.S. Imports	Trade Balance	Trade Turnover	% Growth in U.S. Exports	% Growth in U.S. Imports
1985	682	745	-63	1,427	—— —	—— —
1986	823	820	3	1,643	20.7%	10.1%
1987	796	981	-185	1,777	-3.3%	19.6%
1988	1,066	1,181	-115	2,247	33.9%	20.4%
1989	1,414	1,292	122	2,706	32.6%	9.4%
1990	1,664	1,313	351	2,977	17.7%	1.6%
1991	1,839	1,302	537	3,141	10.5%	-0.8%
1992	2,466	1,388	1,078	3,854	34.1%	6.6%
1993	2,599	1,462	1,137	4,061	5.4%	5.3%
1994	2,774	1,821	953	4,595	6.7%	24.6%
1995	3,615	1,931	1,684	5,546	30.3%	6.0%
1996	4,132	2,256	1,876	6,388	14.3%	16.8%
1997	4,368	2,293	2,075	6,661	5.7%	1.6%
1998	3,979	2,453	1,526	6,432	-8.9%	7.0%
1999	3,078	2,953	125	6,031	-22.6%	20.4%
2000	3,455	3,228	227	6,683	12.2%	9.3%
2001	3,131	3,555	-424	6,686	-9.4%	10.1%
2002	2,612	3,781	-1,169	6,396	-16.6%	6.4%

Data Source: U.S. Department of Commerce.

Appendix 2. Major U.S.-Chile Product Trade and Tariff Rates, 2002/03

(% of total dollar value)

Major U.S. Exports	% of Total	Tariff Rate	Major U.S. Imports*	% of Total	NTR Tariff Rate**	Free under GSP#
Machinery: - Computers, - Office mach. - parts - gas turbines	34% (7%) (5%) (5%) (2%)	6%	Edible Fruit and Nuts: - grapes (0806) - fruit (0809)	20% (12%) (3%)	$1.13-1.80/m^3$ $.002-.005/kg	no no
Electrical machinery	14%	6%	Copper: - refined (7403) - unref. (7402)	17% (15%) (2%)	1% free	no
Vehicles (new)	8%	6%	Fish (mostly salmon): - fillet (0304) - fresh (0302) - frozen (0303)	13% (11%) (1%) (1%)	free free free	
Aircraft	2%	6%	Wood (lumber) - (4407, 4409, 4411)	15%	free	
Medical instruments	6%	6%	Beverages: - wine (2204)	4% (4%)	$.063/lit.	no
Plastic	5%	6%	Organic Chemicals: - methanol(2905)	4% (4%)	8%	no
Organic chemicals	2%	6%	Oil: - not crude(2710)	2%	$.525/bbl	no
Other	27%	6%	Other	25%		
Total	100%		Total	100%		

Data Source: U.S. Department of Commerce.
*By HTS number = Harmonized Tariff Schedule of the United States. Note, HTS numbers are not provided on U.S. exports, which are subject to Chile's 6% nominal uniform import tariff rate.
**NTR is the general or normal tariff rates (also known as most favored nation rates) applied to products not given preferential tariff treatment.
#GSP = Generalized System of Preferences or preferential tariff treatment given to select developing country imports by developed countries. Some imports receive GSP treatment only if the exporting country is considered a "least developed country." Because Chile does not qualify under this designation, most of its exports to the United States are not eligible for GSP treatment.

Appendix 3. Chile's Multilateral, Regional, and Bilateral Trade Agreements

Agreement	Date Effective	Type
WTO (GATT)	January 1995	multilateral free trade agreement (FTA)
APEC	November 1994	regional association
Mercosur	October 1, 1996 (associate member)	regional customs union
FTAA	negotiating (January 1, 2005 deadline)	regional FTA
LAIA	January 1980	regional association
• Bolvia	July 1, 1993	economic complementarity agreement#, FTA to be negotiated
• Venezuela	July 1, 1993	economic complementarity agreement
• Colombia	January 1, 1994	economic complementarity agreement
• Ecuador	January 1, 1995	economic complementarity agreement
• Peru	July 1, 1998	economic complementarity agreement
• Argentina	signed May 19, 2000	economic complementarity agreement
Canada	July 5, 1997	bilateral FTA
Mexico	1998	bilateral FTA
Central America*	signed October 18, 1999	FTA framework agreement
European Union	February 1, 2003	FTA
European Free Trade Association	under negotiation	FTA
Japan	pre-negotiation impact studies completed	bilateral FTA
Singapore	under discussion	bilateral FTA
New Zealand	under discussion	bilateral FTA
South Korea	negotiations concluded October 24, 2002.	bilateral FTA
United States	negotiations concluded December 11,2002	bilateral FTA

limited trade agreement negotiated under guidelines see forth by the Latin American Integration Association (LAIA), known in Spanish as the Asociación Latinoamericana de Integración (ALADI).
* Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica (ratified January 2002).
Data source: Organization of American States. Foreign Trade Information System. This may be found at: [http://www.sice.oas.org] and Embassy of Chile.