

Testimony of
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Senate Committee on the Judiciary
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Mr. Chairman, Ranking Member Leahy, and Members of the Committee:

I am honored to appear before you today to testify on the U.S.-Chile Free Trade Agreement (FTA), which was signed on June 6 in Miami in an historic ceremony with Ambassador Zoellick and his Chilean counterpart Soledad Alvear.

Sound Economic Sense for the United States

I welcome the opportunity to discuss the U.S.-Chile FTA and to describe the benefits it will offer American businesses and consumers. The agreement, the result of a long-term bipartisan effort and an open, transparent negotiating process, makes sound economic sense for the United States and Chile and represents a win-win, state-of-the-art trade agreement for a modern economy.

It makes sound economic sense for the United States to have a free trade agreement with Chile. Although Chile was only our 36th largest trading partner in goods in 2002 (with \$2.6 billion in exports and \$3.8 billion in imports), Chile has one of the fastest growing economies in the world. Its sound economic policies are reflected in its investment grade capital market ratings, unique in South America. Over the past 15-20 years, Chile has established a thriving democracy, a free market society and a thriving open economy built on trade. A U.S.-Chile FTA will help Chile continue its impressive record of growth and development. It will help spur progress in the Free Trade Area of the Americas, and will send a positive message throughout the world, particularly in the Western Hemisphere, that we will work in partnership with those who are committed to free markets.

Moreover, a U.S.-Chile FTA will help U.S. manufacturers, suppliers, farmers, workers, consumers and investors achieve a level playing field. Chile already has FTAs with Mexico, Canada, Mercosur, and -- since February -- the EU. As a result, its trade with these economies is growing while American companies are being disadvantaged. The National Association of Manufacturers estimates the lack of a U.S.-Chile FTA causes U.S. companies to lose at least \$1 billion in exports annually. The United States needs an FTA with Chile to ensure that we enjoy market access, treatment, prices and protection at least as good as our competitors. Consumers will benefit from lower prices and more choices.

Result of a Long-term Bipartisan Effort

The U.S.-Chile FTA is truly a bipartisan effort. Negotiations were launched under the Clinton Administration in December 2000. After fourteen rounds, negotiations were concluded under the Bush Administration in December 2002.

In fact, discussions about a bilateral free trade agreement have been going on much longer. As Ambassador Zoellick stated in his congressional notification last fall, "the origins of an agreement with Chile date back to the Administration of President George H.W. Bush, when the first discussions were held regarding a possible Chile FTA." In the mid-90's, the North American Free Trade Agreement (NAFTA) countries (the United States, Canada and Mexico) invited Chile to dock into the NAFTA. However, with the subsequent lapse of what was then known as "fast-track authority," docking didn't appear feasible. The United States and Chile instead initiated a Trade and Investment Framework Agreement (TIFA) to facilitate bilateral trade and investment liberalization and pave the way for a future FTA.

As a footnote, discussions about a U.S.-Chile bilateral trade agreement have been going on much longer than a decade. Chilean historians inform us that these discussions began in the 1800's when Chilean Ambassador Pangea was sent as a special emissary to the United States to propose a bilateral trade agreement to President Jackson. Unfortunately, President Jackson was not persuaded. Ambassador Pangea may have been a bit ahead of his time, but I think you all would agree the FTA with Chile has been in the works for a long time - and has truly enjoyed bipartisan support.

Result of an Open, Transparent Process

The process of developing U.S. proposals and concluding the U.S.-Chile FTA was open and transparent. Even before Trade Promotion Authority was granted, the Office of the U.S. Trade Representative (USTR) held public briefings and consulted frequently with Congressional staff, private sector advisors (including small business advisors, such as Industry Sector Advisory Committee 14, the small and minority business advisory committee), and civil society groups. We continued this process after the Bipartisan Trade Promotion Authority Act of 2002 was enacted last August, meeting with the Congressional Oversight Group, members and staff from interested Committees, and advisory groups, to develop positions and provide regular updates on results of negotiating rounds. We used technology to facilitate access to texts, providing draft texts to cleared advisors via a secure website in early January and, after the legal review, made the text available to the public on USTR's regular website on April 3. Open, transparent, consultative processes throughout the negotiations resulted in a greatly improved agreement.

Summary - A Win-Win Agreement

The U.S.-Chile FTA is a win-win, state-of-the-art trade agreement for a modern economy. USTR's website (www.ustr.gov) has a nine-page summary of the agreement as well as the English version of the texts. I will highlight the most salient points.

Four features distinguish the U.S.-Chile FTA from the other 150 or so FTAs that other countries and the EU have concluded:

- 1) It is comprehensive.
- 2) It promotes transparency.
- 3) It is modern.
- 4) It uses an innovative approach that supports and promotes respect for environmental protection and worker rights.

1. Comprehensive

We challenged ourselves to be as open as possible, across the board.

Goods. Chile currently has a six percent flat tariff on goods, except for products subject to its price bands (wheat, wheat flour, vegetable oil and sugar). Under the U.S.-Chile FTA, all goods will be duty-free and quota-free at the end of the transition periods (10 years maximum for industrial goods and 12 years for agricultural goods). There is generous immediate, duty-free access - more than 87 percent of bilateral trade in goods. Special phase-outs are allowed within these timeframes for goods with sensitivities.

Our key concern was to level the playing field to ensure that U.S. access to Chile would be as good as that of the EU or Canada, both of which have FTAs with Chile. Chile's commitment to eliminate its agricultural price bands, which it had retained in previous trade agreements, was an essential component of our decision to liberalize all trade.

Among the key features, access for beef in both countries will be completely liberalized over four years. U.S. beef exporters will be permitted to use U.S. grading standards when they market beef in Chile. Chile is finalizing the administrative regulations necessary to recognize the U.S. meat inspection system - to the benefit of U.S. beef and pork exporters. Tariffs on U.S. and Chilean wines will first be equalized at low U.S. rates and then eliminated. Chile also agreed to eliminate a 50 percent surcharge on used goods (important for capital goods exporters), to end duty drawback and duty deferral programs after a transition and to eliminate its 85 percent "auto luxury tax" in four years.

In addition to longer phase-out periods on sensitive products, the Trade Remedies chapter provides for temporary safeguards to be imposed when increased imports constitute a substantial cause of serious injury or threat of serious injury to a domestic industry. Special safeguards are also provided for certain textile and agricultural products.

Services. Today 80% of Americans work for service companies, and about two-thirds of our GDP is in services. As a matter of fact about one-third of all US small business exporters are in service related fields. We improved upon the approach used in the WTO and used a "negative list" approach for negotiating market access rights so that all services are included with very few exceptions. There are broad commitments on both sides.

Government Procurement. This is the first FTA to explicitly recognize that build-operate-transfer contracts are government procurement. The Government Procurement provisions cover purchases of most Chilean government infrastructure and resource projects, including ports and airports, as well as central government entities and more than 350 municipalities.

2. Promotes Transparency

Transparency provisions both in the Transparency chapter and throughout the agreement promote open, impartial procedures and underscore Chile's commitment to the rules-based global trading system. General provisions ensure open, transparent, regulatory procedures by requiring advance notice, comment periods and publication of all regulations.

Of special interest to small business are the provisions that streamline customs procedures and simplify rules of origin. These provisions will facilitate taking advantage of the new trade openings. The U.S.-Chile FTA and the U.S.-Singapore FTA will be the first FTAs anywhere in world to have specific, concrete obligations to enhance transparency and efficiency of customs procedures. All customs laws, regulations and guidelines are required to be published on the Internet. The private sector may request binding advance rulings on customs matters. Additional provisions allow rapid release of goods, including expedited treatment for express delivery shipments.

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

The Services chapter provides additional procedural requirements regarding transparency in development and application of regulations, including the requirement to establish mechanisms for responding to questions on regulatory issues. These advancements are particularly crucial for the services sector since many sectors are regulated and transparency is needed to guarantee that market access improvements can be fully exploited.

The Government Procurement chapter requires open and transparent qualification and tendering procedures, with only limited restrictions. It also requires Chile to establish an impartial authority to hear supplier complaints about the implementation of the government procurement obligations. Importantly, it specifically requires that any bribery in government procurement be considered a criminal offense in U.S. and Chilean laws, furthering hemispheric anti-corruption goals.

Dispute Settlement provisions provide for open public hearings, the opportunity for interested third parties to submit views, and public release of submissions, objectives that the United States has long sought in the WTO. Similar transparency provisions apply to investor-state disputes.

3. Modern

The agreement is modern in its approach to technology and business practices, encompassing strengthened protection for intellectual property rights and investment, and new provisions on telecommunications, electronic commerce, express delivery and temporary entry.

Intellectual Property Rights (IPR). The agreement provides state-of the art protection for digital products such as U.S. software, music, text and videos. IPR protection for patents, trademarks and trade secrets exceeds existing international standards and obligates Chile to provide

protection at a level that reflects U.S. standards. This is especially important to US small businesses. It works toward insuring that small businesses, which tend to be on the technological cutting edge, will have a satisfactory recourse if their intellectual property is pirated. Additionally, it provides US businesses with the knowledge that the Chilean government will protect their rights at the same level that the US government protects them domestically.

Investment. The agreement provides important protections for U.S. investors in Chile. The agreement ensures that U.S. investors will enjoy national treatment and MFN treatment in Chile in almost all circumstances. The investment provisions draw from U.S. legal principles and practices, including due process and transparency. All forms of investment are protected under the agreement, such as enterprises, debt, concessions, contracts and intellectual property. Expedited procedures will help deter and eliminate frivolous claims, and other provisions ensure that efficient selection of arbitrators and prompt resolution of claims. The agreement also contemplates the establishment of an appellate mechanism to review awards under the Investment Chapter, permitting the Parties to establish a bilateral appellate mechanism or to establish a future multilateral appellate mechanism. Standards are established for expropriation and compensation for expropriation, and for fair and equitable treatment. Performance requirements are prohibited, except in certain limited circumstances. Free transfer of funds is protected. Under special dispute settlement provisions, however, Chile shall not incur liability if Chilean authorities exercise, for a limited period, narrow flexibility to restrict certain capital flows that Chile considers potentially destabilizing.

Telecommunications. The telecommunications chapter improves on Chile's WTO obligations. It ensures non-discriminatory access to, and use of, Chile's public telecommunications network, coupled with sound regulatory measures to prevent abuses by the dominant incumbent service supplier. In addition, the agreement includes a commitment from Chile to allow market entry for basic telecommunications services. This market access to Chile's telecommunications sector is essential for the continued development of innovative and new service offerings.

The agreement will require a greater level of transparency in dealing with major suppliers of public telecommunication services, transparent regulatory processes, and strong regulatory enforcement powers. It also provides flexibility to account for changes that may occur through new legislation or new regulatory decisions. Foreign companies operating in the U.S. telecommunications sector enjoy a high degree of market access and transparency. With this agreement, U.S. telecommunication service suppliers will enjoy similar access, openness and transparency in Chile.

Electronic Commerce. The E-Commerce chapter is a breakthrough in achieving certainty and predictability for market access of products such as computer programs, video images, sound recordings and other digitally encoded products. The commitments provide that digital products that are imported or exported through electronic means will not be subject to customs duties. Furthermore, each side will determine customs valuation on the basis of the carrier medium, e.g., optical media or tape, rather than content. Both the United States and Chile commit to non-discriminatory treatment of digital products. Electronic commerce is an area of trade that has been, for the most part, free of many traditional trade barriers (duties, discrimination,

protectionism). The U.S.-Chile FTA binds the current level of openness for trade in this area by reaching an agreement that prevents such barriers from being imposed in the future.

Services. In addition to obtaining increased market access for U.S. banks, insurance companies, telecommunications companies, and securities firms, the FTA for the first time recognizes "express delivery" as a distinct industry. Express delivery service commitments are based on an expansive definition of the integrated nature of services. Express delivery services obtain expedited customs clearance. Special provisions will deter postal carriers from cross-subsidizing competing services.

Temporary Entry. The international mobility of businesspersons, whether as individuals or employees providing services, has become an increasingly important component of competitive markets for suppliers and consumers alike. The United States has thousands of knowledge-based companies that will be able to benefit from greater opportunities for service providers overseas. Given that services now account for 65 percent of the U.S. economy and that trade in services accounts for 28 percent of the value of U.S. exports, the ability of U.S. business persons to temporarily enter foreign markets is critical. For this reason, the agreement we negotiated with Chile provides unlimited temporary entry for U.S. business visitors, traders and investors, intra-company transferees, and professionals. The FTA also provides for up to 1,400 temporary entry visas into the U.S. for Chilean professionals. These provisions address only temporary entry and explicitly exclude citizenship, permanent residence, or employment on a permanent basis.

4. Innovative Approach to Labor and Environment

Both the U.S.-Chile and U.S.-Singapore FTAs took into account Congressional guidance and built upon the Jordan Agreement by including in the agreements mechanisms for consultation, dialogue, and public participation. These FTAs encourage high levels of environmental and labor protection, and obligate the signatories to enforce their domestic labor and environmental laws. This "effective enforcement provision" is subject to dispute settlement and backed by effective remedies, including an innovative use of monetary assessments, that are designed to encourage compliance. If a defending party fails to pay the monetary assessment, the complaining party may take other appropriate steps to collect the assessment, which may include suspending tariff benefits. The Chile FTA includes special rosters of experts for settlement of Labor, Environment, and Financial Services disputes. Our FTAs with Chile and Singapore also provide for bilateral cooperation programs to promote worker rights and environmental protection.

Promotes Growth and Poverty Reduction

As Ambassador Zoellick said, "The U.S.-Chile FTA is a partnership for growth, a partnership in creating economic opportunity for the people of both countries."

Chile has opened its markets and welcomed competition. As a result, it is one of the freest economies in Latin America.

The result of Chile's openness has been the best growth record in Latin America, averaging over 6 percent per year through the 1990's. This growth enabled Chile to cut its poverty rate in half, from 45 percent in 1987 to 22 percent in 1998. The U.S.-Chile FTA will help Chile sustain this

growth and will send a strong signal to the hemisphere that the United States wants to work in partnership to promote mutual economic growth.

Provides Momentum for Hemispheric Trade Liberalization

Conclusion of the Chile FTA has provided momentum to other hemispheric and global trade liberalization efforts by breaking ground on new issues and demonstrating what a 21st century trade agreement should be. We continue to move forward with the centerpiece of our hemispheric integration strategy, the Free Trade Area of the Americas (FTAA). We maintain our strong commitment to the negotiation of a comprehensive and robust FTAA by January of 2005. We already have followed up on our success with Chile by launching historic negotiations toward a free trade agreement (the so-called CAFTA) between the United States and the nations of the Central America economic integration system: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

The U.S.-Chile FTA and the CAFTA will serve as building blocks for the FTAA. They will give both sides greater access to others' markets at an earlier date than is possible under the FTAA. At the same time, these bilateral FTAs strengthen ties and integration, demonstrating the additional benefits available through the FTAA.

Together with other more developed countries in the hemisphere, such as Canada, Mexico, Brazil and Chile, we continue to work on the hemispheric cooperation program. The program will help all nations in the hemisphere benefit from the FTAA, by providing appropriate technical assistance and trade capacity building to FTAA nations requiring assistance.

With Congressional guidance and support, this Administration is pursuing an ambitious and comprehensive trade policy. We will continue to move forward bilaterally, regionally and globally. Together, we can show the world the power of free trade to strengthen democracy and promote prosperity.