109th Congress, 1st Session – – – – – – – – – – – – – – House Document 109–16

REQUEST FOR AN EXTENSION OF TRADE PROMOTION AUTHORITY PROCEDURES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONSISTENT WITH SECTION 2103(c)(2) OF THE TRADE ACT OF 2002, A LETTER REQUESTING CONGRESS EXTEND TRADE PROMOTION AUTHORITY PROCEDURES FOR TWO YEARS, AND A REPORT PREPARED BY THE ADMINISTRATION ON TRADE NEGOTIATIONS CONDUCTED UNDER THOSE PROCEDURES

APRIL 5, 2005.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

39–011 WASHINGTON : 2005

THE WHITE HOUSE,
Washington, March 30, 2005.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Consistent with section 2103(c)(2) of the Trade Act of 2002, I ask that the Congress extend trade promotion authority procedures for 2 years, and I enclose a report prepared by my Administration on trade negotiations conducted under those procedures.

Trade promotion authority is essential to expanding opportunities for American businesses, workers, and farmers. Working with the Congress, my Administration has completed trade agreements with 12 nations on 5 continents that will open a combined market of 124 million consumers for America's farmers, manufacturers, and service providers.

We must continue to pursue bilateral and regional agreements to open new markets, and we must complete negotiations in the World Trade Organization to reduce global barriers to trade. We will continue to enforce vigorously the trade laws so that American businesses and workers are competing on a level playing field.

Free and fair trade creates jobs, raises living standards, and lowers prices for families here at home. Trade agreements also deepen our partnerships with countries that want to trade in freedom. I look forward to the continued close cooperation with the Congress in pursuing these objectives.

Sincerely,

GEORGE W. BUSH.

Report to the Congress on the Extension of Trade Promotion Authority

Consistent With Section 2103(c)(2)
Of the
Trade Act of 2002

March 30, 2005

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I. INTRODUCTION AND REQUEST FOR EXTENSION OF TRADE PROMOTION AUTHORITY

On August 6, 2002, President Bush signed the Trade Act of 2002 (Trade Act), Title XXI of which contains the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act). The TPA Act provides, in part, for "trade authorities procedures" to apply to bills implementing certain trade agreements that the President enters into before July 1, 2005.

The Act provides for extension of trade authorities procedures to include agreements concluded before July 1, 2007, if the President so requests in a report submitted to the Congress by April 1, 2005.

For the reasons set forth in this report, the President makes the request to which Section 2103(c)(2) of the Trade Act refers. Consistent with that section, this report includes:

1) a description of all trade agreements that have been negotiated under Section 2103(b) of the Trade Act and the anticipated schedule for submitting such agreements to the Congress for approval;

2) a description of the progress that has been made in negotiations to achieve the purposes, policies, priorities, and objectives (hereinafter "negotiating objectives") of the TPA Act, and a statement that such progress justifies the continuation of negotiations; and

3) a statement of the reasons why the extension is needed to complete the negotiations.

II. OVERVIEW

a. How Trade Promotion Authority Works

Trade Promotion Authority (TPA) provides a framework for close collaboration between the Congress and the President that has been instrumental in opening markets around the world for America's workers, farmers, ranchers, and businesses and expanding choices for America's consumers and industries.

The TPA Act provides for Congress to vote without amendment and within a set period on trade-agreement-implementing legislation that the President submits. The TPA Act also calls for the President to notify, consult with, and report to the Congress on the negotiation of trade agreements that he seeks to implement through trade authorities procedures. The TPA Act also spells out detailed objectives for U.S. multilateral, regional, and bilateral trade negotiations. Broadly speaking, these negotiating objectives call for obtaining more open and reciprocal market access, reducing or eliminating trade and investment barriers, protecting intellectual property rights, strengthening the system of international trading disciplines and procedures, fostering economic growth, protecting the environment, and promoting respect for worker rights.

The detailed notice and consultation requirements set out in the TPA Act ensure that the Administration has the benefit of advice from the Congress, the private sector, and the public before and during negotiations. Specifically, the Act establishes a special Congressional Oversight Group (COG) through which Members of Congress provide timely advice to the Administration on trade negotiations and receive regular briefings from the United States Trade Representative on proposed U.S. negotiating positions. In addition, the Administration's trade negotiators brief and seek advice from Congressional committees before each negotiating round. This process ensures close coordination and a regular exchange of information between the two branches. The Administration also works closely with private-sector advisors who are appointed as part of its official trade advisory system. These advisors play an important role by providing views and recommendations to the Administration before, during, and after the negotiations and by providing advisory opinions to the Congress and to the President on agreements once they are completed.

Once the President strikes an agreement, the Congress and the President continue to work together to draft implementing legislation and a statement by the President on how the agreement will be carried out through regulation. This process includes hearings and informal mark-ups with the full participation of the relevant Congressional committees and ensures that the implementing package, like the trade agreement itself, reflects the views of both the Administration and the Congress.

i. TPA Strengthens America's Negotiating Hand

Since 1974, the executive and legislative branches have worked together, on a bipartisan basis, to level the playing field in overseas markets and to conclude and enforce trade agreements that benefit Americans. The specific negotiating objectives and special consultation and legislative procedures reflected in the TPA Act and similar previous laws have fostered and formalized this cooperation in a way that maximizes U.S. negotiating leverage while taking into account Congressional and private-sector views and priorities and ensures a balance of equities among all stakeholders.

TPA – and similar authority enjoyed by five previous presidents – has been employed successfully to open new markets around the world for American workers, innovators, farmers, ranchers, and businesses and to establish a vital legal infrastructure for enforcing the trade commitments other countries make to the United States. Over recent decades, this authority was used to conclude and implement two global trade pacts – the Tokyo Round agreements, under the auspices of the General Agreement on Tariffs and Trade, and the Uruguay Round agreements, which established the WTO and a series of market-opening bilateral and regional free trade agreements (FTAs), including the United States-Israel FTA in 1985, the United States-Canada FTA in 1988, and the North American Free Trade Agreement (NAFTA) in 1992.

In 1994, however, that authority lapsed, and America fell behind as the European Union, Mexico, and many other nations negotiated dozens of trade agreements that set new rules and opened growing markets for their exports, putting the United States at a competitive disadvantage. To restore America's leadership in negotiating agreements, the Bush

Administration worked closely with the Congress to forge a new consensus on TPA. Passage of the Trade Act of 2002 renewed trade promotion authority and established new guidelines and objectives for trade negotiations, including on labor and environmental issues.

The consultative mechanism established under TPA not only ensures that the President has the full benefit of Congressional advice, it also bolsters leverage for U.S. trade negotiators in representing America's interests in trade negotiations. Because it provides clear guidance on negotiating objectives and calls for sustained, meaningful consultations between Congress and the Administration before and during trade negotiations, TPA tells our trading partners that the United States speaks with one voice at the negotiating table.

Under TPA, foreign governments know that Congress will consider completed trade agreements quickly and conclusively. Our trading partners can thus make the decisions necessary to reach agreement with the United States without concern that the agreements they sign will be reopened later. TPA thus greatly increases U.S. bargaining power and leadership in dismantling trade barriers around the world, helping to build democracy, promoting hope and opportunity abroad, and increasing prosperity at home.

b. What Congress and the President Have Accomplished with TPA

In close consultation with Congress, the President has used TPA to initiate a new trade strategy: pursuing mutually reinforcing trade initiatives globally, regionally, and bilaterally. To date, the Administration has implemented that strategy by concluding major trade agreements that open new markets, level the playing field for American workers, farmers, ranchers, and businesses, and expand choices for American consumers and industry. Since August 2002, the Congress has, under TPA, approved groundbreaking FTAs with Chile, Singapore, Australia, and Morocco, with strong bipartisan support in both chambers. And, in close consultation with the Congress, the President has concluded two additional FTAs – one with five Central American countries and the Dominican Republic (CAFTA-DR) and another with Bahrain.

By pursuing TPA negotiating objectives through multiple trade initiatives in key markets in Asia, the Pacific, Latin America, the Middle East, and Africa, the Administration has created a "competition for liberalization." This strategy involves not only negotiating bilateral and regional FTAs, but also the launch of global trade negotiations in the WTO. This strategy has created strong incentives for trading partners to move forward, while also establishing models for state-of-the-art rules in areas such as e-commerce, intellectual property rights, labor and environmental law enforcement, and anti-corruption. Each FTA that the Administration has negotiated also includes strict enforcement mechanisms that take effect as soon as the agreement enters into force – providing vital means to ensure that other countries live up to their trade obligations.

These accomplishments to date are due in large part to a process of regular interaction and collaboration between the legislative and executive branches under TPA. Since TPA was enacted, the U.S. Trade Representative has met regularly with the COG to discuss the Administration's trade agenda and receive advice from Members of Congress regarding

negotiating objectives, strategies, and positions, as well as on compliance and enforcement of trade-agreement commitments.

At the staff level, U.S. trade negotiators have conferred with multiple Congressional committees before and after each round of FTA talks through both formal consultations and informal discussions that address inquiries of committee staff and Members. Consistent with TPA, the Administration has also briefed the committees of jurisdiction on each FTA's agricultural- and textile-related aspects and on how the FTA will relate to the fishing industry. Also in accordance with TPA, the Administration's trade negotiators submit proposed FTA text to relevant committees of jurisdiction in a timely manner before tabling them in FTA talks. The Administration has also followed TPA guidance in providing reports to the Congress on each FTA's potential effects on existing laws, including trade-remedy laws, and on employment, the environment, labor, and state and local governments.

i. Opening Markets and Leveling the Playing Field

Trade agreements concluded and implemented under the TPA Act are opening new markets for U.S. goods and services around the world and leveling the playing field for American workers, farmers, ranchers, and businesses.

For example, more than 99 percent of U.S. manufactured goods exported to Australia became duty-free immediately when the United States-Australia FTA entered into force on January 1, 2005 – the most significant immediate reduction of industrial tariffs ever achieved in a U.S. FTA. U.S. manufacturers estimate that the elimination of tariffs could result in a $2-billion-per-year increase in U.S. exports to Australia once the agreement is fully implemented. In addition, all U.S. agriculture exports to Australia – totaling nearly $500 million in 2004 – received immediate duty-free access under the United States-Australia FTA.

While only two FTAs (with Chile and Singapore) concluded under TPA have been in place for more than a year, they are already delivering results. In 2004, U.S. exports to Chile grew by nearly one billion dollars compared to 2003, an increase of nearly 34 percent. This is nearly double the rate of growth in U.S. exports to other countries in Latin America. U.S. exports to Singapore – the United States' 11th-largest export market – rose by more than 18 percent, with exports of U.S.-built information technology equipment alone growing by $1.7 billion. When implemented, the United States-Morocco FTA will remove tariffs on over 95 percent of consumer and industrial goods on day one. U.S. farmers and ranchers will also enjoy expanded access to Morocco for many of their products, including wheat, beef, poultry, corn, soybeans, and almonds.

America's free trade agreements go far beyond eliminating tariffs. They also establish fair and enforceable trade rules that dismantle unjustified regulatory barriers, eliminate practices that discriminate against U.S. firms, and provide state-of-the-art protection for films, software, technology, recordings, inventions, and other creative products, which are the cornerstone of America's innovation economy.

ii. Solving Problems and Enforcing U.S. Rights

The high-quality trade agreements concluded and implemented under the TPA Act include strong dispute-settlement procedures and establish an infrastructure for enforcing those agreements. The dispute-settlement provisions of these agreements ensure that American workers, farmers, ranchers, and businesses actually receive the benefits to which they are entitled under the agreements.

The dispute-settlement procedures of the new FTAs also set high standards for openness and transparency, such as by requiring open public hearings, public release of each government's legal submissions, and the opportunity for interested third parties to submit views. In all cases, the emphasis is on promoting compliance through consultation, joint action plans, and trade-enhancing remedies.

The vast majority of enforcement initiatives are brought to successful resolution without the need to resort to formal litigation. Indeed, many problems are resolved in the context of FTA negotiations themselves. Before U.S. trading partners can hope to begin negotiations for an upgraded trading arrangement like an FTA, they must address existing problems. Before completed trade agreements can be submitted for approval by the Congress, FTA trading partners must show continued progress.

For example, at U.S. insistence, Australia eliminated its longstanding barrier preventing imports of U.S. table grapes before formal free-trade negotiations even began. This was worth $15.4 million in 2004 to U.S. farmers who export this product to Australia. During FTA negotiations with the Dominican Republic, that country committed to providing the United States with ongoing reports of civil and criminal prosecutions it pursues against broadcast pirates.

iii. Driving Economic Growth

TPA is the linchpin for America's trade strategy that has leveraged both tough market-opening negotiations and vigilant enforcement of U.S. rights to expand opportunities for U.S. workers, farmers, ranchers, and businesses in markets around the world. Today, the United States is the world's greatest trading nation, exporting $1.15 trillion in goods and services in 2004.

As the United States breaks down trade barriers around the world, trade flows increase, as does American prosperity. In the last two decades, U.S. trade (exports plus imports of goods and services) increased significantly, growing from 18 percent of GDP in 1984 to 25 percent of GDP in 2004. At the same time, the U.S. economy grew by 86 percent and the real per-capita income of Americans rose by 50 percent. Exports help spur economic growth and create higher-paying jobs. U.S. jobs supported by goods exports are estimated to pay wages 13 percent to 18 percent above the U.S. national average, and U.S. exports of goods and services support an estimated 12 million American jobs. In the agricultural sector today, one in three acres planted in the United States produces crops for export.

Open markets also help increase productivity, raise real wages, and lower prices for the goods that American businesses and consumers purchase. Prices for consumer goods and services and

industrial inputs, driven by trade and international competition, tend to drop as trade barriers fall. These inputs in turn help make domestic producers more efficient and internationally competitive, which in turn drives export growth. Consumers find more choices at lower prices. By eliminating foreign tariffs under the FTAs that have already been completed and those currently under negotiation, the Administration and Congress can help American firms who sell products abroad save over $4 billion a year in foreign duties.

The United States will be better able to sustain the economic growth and prosperity it has enjoyed over the past two decades if the Administration can continue to open foreign markets to U.S. products and services. TPA is an essential component of this strategy. Extending TPA will give the Administration the tools it needs to complete negotiations that will help expand our Nation's prosperity.

iv. Encouraging Reform

The Administration's process of negotiating bilateral and regional free trade agreements, followed by continuous monitoring and enforcement, provides the means to trigger and then lock in broader economic reforms abroad. These FTAs require effective environmental and labor law enforcement, government transparency, and anti-corruption efforts and promote market-based reforms and the rule of law.

At its core, the transformational power of trade comes from expanding and strengthening the key constituencies for these reforms, particularly by expanding the middle class and increasing the importance of independent business relative to government.

The Chile, Singapore, Australia, Bahrain, and Morocco FTAs use innovative new mechanisms to meet the environmental and labor objectives set out by Congress in the TPA Act. All the agreements call for cooperative projects to support environmental protection while also requiring each government to effectively enforce its environmental laws – an obligation enforceable through dispute-settlement procedures. The CAFTA-DR goes further with an innovative plan for involving civil society in the implementation of the agreement's environmental obligations. Subsequent FTAs will continue to include this core idea, while each will also be tailored to the particular circumstances of each new FTA partner.

The Administration has used FTA negotiations to promote respect for internationally recognized labor rights by FTA partners. For example, labor-law reform languished in the Moroccan Parliament for 20 years before United States-Morocco FTA negotiations helped provide the momentum for Morocco to update its labor code. The Administration also worked successfully with the CAFTA-DR countries during the FTA negotiations to improve the application and enforcement of their labor laws and to provide an institutional framework for technical cooperation on labor issues in the future.

Another innovative feature of U.S. FTAs is the requirement to spend any monetary assessments levied under the agreements in response to persistent, unremedied failures to enforce domestic labor or environmental laws on programs to address the problems that gave rise to the assessments, putting the emphasis on correcting shortcomings.

FTAs that the Administration has concluded since August 2002 also typically call for U.S. trading partners to treat American companies that operate or seek to establish businesses in their territories in a fair and even-handed way. FTAs generally require, for example, that participating governments ensure that investors are accorded due process of law in court administrative proceedings, refrain from discrimination based on nationality, and allow expropriation of property only on payment of compensation. The FTAs also generally provide investors with a neutral arbitration forum to resolve disputes with host governments.

In addition, all FTAs concluded with developing countries call for participating governments to prohibit bribery of government officials generally and procurement officials specifically. FTAs with the CAFTA-DR countries, Morocco, and Bahrain also spell out the particular features that each government's laws on bribery and corruption in international trade and investment should contain, including appropriate criminal penalties. In addition, each FTA fosters the rule of law and open government by requiring administrative due process and calling for notice and comment rule-making on subjects covered by the agreement.

c. Extending TPA is Essential for America's Trade Leadership

Extending TPA until July 1, 2007, is critical to maintaining U.S. global leadership on trade, furthering the Administration's successful "competitive liberalization" strategy, and concluding negotiations already underway. Under TPA, the Administration is leading the way in ongoing global trade negotiations under the WTO that promise substantial economic gains for the United States and the world. A successful conclusion of these negotiations could mean an annual benefit of $2,500 for the average American family of four. Moreover, research by the World Bank and the Center for Global Development suggests that the removal of all measurable tariff and non-tariff barriers worldwide could lift up to 500 million people out of poverty.

In consultation with Congress, the Administration has launched and is seeking to conclude free-trade negotiations with partners in Latin America (Panama and the Andean nations of Colombia, Ecuador, and Peru, with Bolivia participating as an observer), Asia (Thailand), Africa (the five nations of the Southern African Customs Union: Botswana, Lesotho, Namibia, South Africa, and Swaziland), and the Middle East (Oman and the United Arab Emirates). In addition, the Administration is working to conclude the Free Trade Area of the Americas (FTAA), encompassing all the democracies of the Western Hemisphere. The Administration considers that the progress that has been made in each of these negotiations in achieving TPA objectives justifies continuing – and completing – the negotiations.

These negotiations promise substantial new opportunities to increase exports of U.S. goods and services, raise standards of living at home and abroad, and help strengthen democratic values and the rule of law around the world. Taken together, the countries with which the Administration has completed or is negotiating free trade agreements constitute America's third-largest export market, drawing $78 billion in U.S. exports in 2004 and comprising the world's sixth-largest economy. Continued cooperation between Congress and the President through TPA will be critical in bringing current negotiations to a successful conclusion.

III. AGREEMENTS CONCLUDED AND NEGOTIATIONS IN PROGRESS

a. Multilateral Negotiations

i. TPA Is Essential to Complete Global Trade Negotiations

In November 2001, the Administration was instrumental in launching a new round of global trade negotiations under the WTO. The new global negotiating round, referred to as the "Doha Development Agenda" (DDA), offers a real opportunity to expand economic growth and raise incomes in the United States. The negotiations can also be a powerful tool for advancing economic reform and development and reducing poverty worldwide.

In a world where 95 percent of consumers live beyond U.S. borders, achieving an ambitious outcome in the DDA is strongly in America's interest. The DDA negotiations are extraordinarily complex, involving the economic interests of 148 WTO members. In this environment, U.S. trade leadership – based on TPA – is essential for bringing negotiations to a successful conclusion.

Indeed, U.S. leadership has consistently proven crucial in advancing the negotiations. The Administration, in consultation with Congress, has already introduced close to 100 proposals aimed at significantly improving access to foreign markets for U.S. services, agricultural products, and consumer and industrial goods and at strengthening world trading rules and disciplines. The Administration also led efforts to revive negotiations after the collapse of the Cancun Ministerial in September 2003 and in securing agreement last year on a roadmap for completing the DDA.

The negotiations are now entering a critical stage. WTO members are preparing for the Sixth WTO Ministerial Meeting in December of this year in Hong Kong, China, with the aim of completing negotiations before the end of 2006. The Administration must work closely with other key trade partners from both the developed and developing world to lead the DDA to a successful conclusion. The Administration can achieve that result if the Congress and the President continue to work together under TPA, thus giving our WTO partners confidence that America can carry out the commitments it makes at the negotiating table.

ii. Completing the DDA Will Create Substantial Economic Opportunities for the United States and the World

By leading the world to complete the Uruguay Round and establish the WTO, U.S. trade policies have helped this Nation to sustain not only its own domestic economic strength, but also its leadership role within the global economy. The DDA is poised to deliver significant additional benefits for the United States and the world economy. A study by the University of Michigan estimates that a one-third cut in global barriers to goods and services in the DDA would mean $2,500 a year in increased purchasing power for the average American family of four.

In addition to promoting U.S. exports, spurring innovation and wage growth, and creating job opportunities, an ambitious conclusion to the DDA will yield additional benefits vital to U.S.

interests. Trade and the competition it stimulates promote consumer choice and help restrain inflation. Since the close of the Uruguay Round, U.S. prices on a wide range of consumer goods have fallen. Opening markets also provide a catalyst for global economic development. In 1999, for example, the Council of Economic Advisers reported that the estimated rise in annual global income due to full implementation of the Uruguay Round could be between 0.2 percent to 0.9 percent of GDP or between $40 billion to $214 billion (1992 dollars). For the United States alone, the increase was estimated to be between $27 billion to $37 billion (1992 dollars) each year, with good prospects for even further gains.

U.S. trade leadership is required if the DDA negotiations are to conclude in 2006. Drawing on the leverage that TPA provides, the Administration has effectively set the market-opening agenda and high ambition for the negotiations. Steady U.S. leadership and the extension of TPA are needed to maintain the momentum and focus of the negotiations in this crucial phase and bring the negotiations to a successful conclusion.

iii. Progress on Overall Negotiations

The DDA negotiations have achieved considerable progress notwithstanding the roadblocks that emerged at the September 2003 ministerial meeting in Cancun, Mexico. In January 2004, then-U.S. Trade Representative Zoellick sent an open letter to his WTO counterparts urging them to work with the United States to put the Doha negotiations quickly back on track. The USTR's letter was complemented by visits to key capitals and meetings with trade ministers from key developed and developing countries. These efforts generated the momentum necessary to reengage the negotiations.

After several months of intensified negotiations, on July 31, 2004, the WTO General Council, the body that governs the WTO's operations between ministerial meetings, agreed on a framework for putting the DDA negotiations back on track to achieve ambitious results. The July 31 framework, crafted with substantial U.S. leadership, represents an important step in setting the ground rules that WTO members will use to negotiate the elimination, or substantial reduction, of tariff and non-tariff barriers to trade in agricultural products and industrial goods. The framework also provides key direction for progress in opening services markets around the world. In addition, the framework launched negotiations on trade facilitation (reducing costly "red tape" at the border) and provides guidance for other aspects of the DDA negotiations. Work will intensify throughout 2005 as negotiators review outstanding proposals in these areas and seek agreement on how best to address other aspects of the negotiations. At the forthcoming ministerial meeting in Hong Kong, WTO trade ministers are set to direct trade negotiators on how to conclude the DDA.

Consistent with TPA negotiating objectives, the Administration has insisted – and will continue to insist – that the negotiations remain focused on the DDA's mandate of reducing trade barriers and providing a stable, predictable, rules-based environment for world trade.

iv. Progress in Key Areas of Negotiation

1. Agriculture

The United States is the world's largest agricultural producer and exporter and increasingly looks to foreign markets to expand sales and boost farm incomes. The prospect of agricultural reform in the DDA negotiations holds the promise of substantial new export opportunities for American farmers, ranchers, and food and beverage producers. Exports of U.S. agricultural goods generate economic benefits that ripple through the domestic economy. According to the U.S. Department of Agriculture's Economic Research Service, every dollar of agricultural exports creates another $1.54 in supporting activities to process, package, ship, and finance agricultural products. This means that agricultural exports, worth approximately $61.3 billion in 2004, generated an additional $94.4 billion in supporting economic activities.

Building on the General Council's July 31 framework, the Administration is continuing its leadership role in establishing the parameters for reform and market opening in each of the three major areas of negotiation for removing barriers to agricultural trade. The framework makes important advances in securing U.S. priority objectives, including: the elimination of export subsidies and new disciplines on export state trading enterprises, greater harmonization in allowed levels of trade-distorting domestic support, and a tariff-reduction formula that delivers deeper cuts on higher tariffs. The Administration is insisting on real progress in each of these areas. Governments are seeking to complete the ground rules for negotiations before the December 2005 Hong Kong ministerial meeting so negotiators can begin developing specific offers and requests that will lead to final agreements on individual tariff lines and programs in 2006.

2. Industrial and Consumer Goods

By reducing tariffs on industrial and consumer goods, the market-opening agreements concluded in the Uruguay Round greatly benefited American companies and workers that manufacture products for export. Total U.S. exports to the world grew 35.2 percent between 1994 and 2003, while average total U.S. exports of industrial and consumer goods that were subject to Uruguay Round tariff cuts grew more than 55 percent during the same period. Certain key sectors experienced even faster growth. U.S. exports of chemicals grew by 77 percent between 1994 and 2003, and U.S. exports of medical equipment and pharmaceuticals grew by 89 percent and 183 percent, respectively. A priority Administration negotiating objective in the DDA is to build on these results by promoting sectoral initiatives to eliminate tariffs in key sectors.

The Administration is continuing to press for an ambitious outcome in this critical area of the negotiations. The July 31 negotiating framework provides the elements necessary for such an outcome. The framework is currently being used to: develop a tariff-cutting formula that requires deeper cuts for higher tariffs; negotiate agreements on sectoral liberalization; address non-tariff barriers; and give developing countries a degree of flexibility in carrying out commitments in this area. As is the case for agriculture negotiations, WTO members are seeking to set final ground rules for negotiations on industrial and consumer goods in advance of the

Hong Kong ministerial meeting so that governments can begin to present their detailed negotiating proposals and enter the final phase of bargaining early in 2006.

3. Services

Services firms provide more jobs – and more new jobs – than all other sectors of the U.S. economy combined. A successful conclusion to the DDA will require far-reaching market-opening commitments by our trading partners in the services area. Such an outcome would offer significant benefits to U.S. services providers, who already lead the world in export sales by a large margin. In 2004, the United States exported $339 billion in services and recorded a surplus of $48 billion.

U.S. interests in these negotiations are broad – ranging from telecommunications services to financial services, express delivery services, energy-related services, distribution services, computer-related services, and audiovisual services – reflecting the fact that America is the world's leading services exporter. The Administration has pressed for an ambitious market-opening agenda for negotiations on services trade, which the General Council included in its July 31 framework. The framework calls for WTO members to intensify negotiations on services trade by presenting more – and better – market-opening offers as soon as possible.

4. WTO Rules

U.S. negotiators remain focused on ensuring that the DDA negotiations strengthen the global system of trade rules and address the underlying causes of unfair trade practices. American workers need strong and effective trade rules to combat unfair trade practices. The DDA should result in strengthened subsidies disciplines, while preserving the strength and effectiveness of antidumping and countervailing duty trade remedies.

5. Trade Facilitation

Negotiations on trade facilitation are now underway under the DDA, and initial proposals were submitted in early 2005. The negotiations will update and modernize current WTO rules on border procedures. By cutting "red tape" at the border, these negotiations hold the prospect of reducing the cost of selling into some countries by 5-15 percent.

6. Dispute Settlement

WTO trade rules are only as strong as the procedures available to enforce them. For this reason, the Administration has led efforts to strengthen the rules for resolving disputes under WTO agreements and to promote transparency in dispute-settlement proceedings. The Administration has pursued these goals as part of the WTO's review of the existing Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which sets procedures for resolving disputes. Although the DSU review is not formally a part of the DDA, changes in dispute settlement rules are expected to be approved as part of the overall package of the DDA results.

7. Environment

The Administration is seeking to promote environmental considerations in the DDA while advancing growth and trade overall. The Administration will continue to pursue a practical approach to the negotiations, identifying opportunities to promote environmental objectives, such as increased market access for environmental goods and services and new disciplines on fisheries subsidies, while working to enhance communication and cooperation between the WTO's secretariat and secretariats for multilateral environmental agreements.

b. Regional and Bilateral Agreements and Negotiations

Since August 2002, the Administration has completed six FTAs under TPA with eleven countries in close collaboration with the Congress (a twelfth during this Administration was completed in 2001 with Jordan). Additional FTAs will build on the commercial opportunities that Congress and the President have created together under TPA, including far-reaching initiatives in Asia, the Middle East, the Americas, and Africa.

All of the FTAs concluded to date have advanced the negotiating objectives that Congress identified in the TPA Act. Annex 1 to this report provides synopses of each such agreement's unique benefits and innovations together with progress achieved in conjunction with the agreement. In addition, Annex 1 describes the progress that the Administration has made in FTA negotiations currently in progress. Annex 2 includes a detailed summary of each FTA that the Administration has concluded under TPA. Annex 3 provides a description of how each such FTA has made progress in achieving TPA negotiating objectives.

While the FTAs concluded under TPA have differed from each other in important respects, they also have much in common. The key common features of the FTAs concluded since August 2002 under TPA are summarized below.

i. Key FTA Elements

- *Eliminating Duties on Goods*: Consistent with TPA negotiating objectives, each FTA provides for the phased elimination of duties on goods traded with agreement partners, with tariffs on as many products as possible eliminated on the day the agreement takes effect. Each FTA also takes into account domestic sensitivities, allowing the United States to gradually phase out tariffs on products that are especially sensitive to import competition.

- *Opening Trade in Agricultural Products*: Each FTA includes provisions, called for in the TPA Act, designed to eliminate foreign barriers to trade in U.S. agricultural products, while providing reasonable adjustment periods and safeguards for U.S. producers of import-sensitive agricultural products. Each agreement provides for the elimination of agricultural export subsidies on bilateral trade, unless the exporter believes that a third country is subsidizing its exports into that market. In such cases, special provisions apply. Each FTA includes safeguard procedures to provide relief to certain domestic agriculture producers facing increased imports or imports that fall below a price

threshold. Each FTA reaffirms each government's WTO commitments on the application of sanitary and phytosanitary (SPS) measures and strengthens cooperation on SPS matters.

- *Eliminating Barriers to Trade in Services*: As set out in the TPA Act, each FTA calls for the parties to eliminate unnecessary barriers to cross-border supply of services. Except with respect to specifically identified measures or subject areas, the FTAs prohibit discrimination on the basis of nationality and prohibit local presence requirements. These rules apply on a "negative list" basis, meaning that all services sectors and measures are covered unless the agreement specifically states otherwise. Each FTA contains separate disciplines applicable to financial services.

- *Protecting Investments*: In accordance with TPA guidance, each FTA other than the United States-Bahrain FTA includes substantive and procedural provisions on foreign investment. These provisions reflect a substantial revision of earlier U.S. investment treaties and agreements to draw more directly from U.S. legal principles and practice and enhance transparency in dispute settlement. FTA investment rules include provisions prohibiting nationality-based discrimination with respect to foreign investment, ensuring treatment in accordance with the customary international law minimum standard of treatment, prohibiting barriers to the free transfer of funds related to investments, providing protection against expropriation without compensation, barring certain "performance requirements," and limiting the imposition of nationality-based restrictions on senior managers and boards of directors. These rules apply on a "negative list" basis, meaning that all sectors and measures are covered unless the agreement specifically states otherwise.

  FTA investment rules also contain special provisions confirming that governments can pursue important regulatory objectives, such as environmental protection. In addition, the FTAs generally include arbitration procedures that enable investors to seek compensation for breaches of the FTA's investment obligations or of investment agreements with, or investment authorizations from, the host government. The FTAs also call for the participating governments to consider developing an appellate or similar mechanism for reviewing arbitration decisions.

- *Protecting Intellectual Property Rights*: Each FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights (IPR), with an emphasis on new and emerging technologies. As called for in the TPA Act, each FTA contains state-of-the art provisions for protecting intellectual property, including patents, trademarks (including geographical indications), copyrights, and data submitted to obtain government approval to market pharmaceutical and agricultural chemical products. Each FTA also contains extensive provisions for IPR enforcement, including provisions directed at the protection of intellectual property in the digital environment. Key provisions of each FTA, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

- *Increasing Regulatory Transparency*: Each FTA includes provisions that call for notice-and-comment procedures in rule-making for matters covered by the agreement as well as other measures to increase regulatory transparency – an important TPA objective. In addition, each FTA contains unique disciplines on regulatory transparency in the service sector, including specialized rules for financial services and telecommunications.

- *Combating Corruption*: Consistent with TPA objectives, each FTA contains provisions specifically addressing bribery and corruption.

- *Protecting Electronic Commerce*: Each FTA includes rules, consistent with TPA objectives, prohibiting duties on and discrimination against digital products, such as computer programs, videos, images, and sound recordings, based on where they are made or the nationality of the firms or persons making them. These provisions create a strong foundation for wider regional and multilateral efforts to bar duties and discriminatory treatment of digital products.

- *Rules of Origin and Customs Procedures*: Each FTA includes rules of origin to ensure that products only from FTA partners benefit from the special preferences that the agreement provides, as well as provisions to address circumvention of those rules. In addition, each FTA provides for customs operations to be conducted with transparency, efficiency, and predictability. These provisions reflect key priorities set out in the TPA Act.

- *Procedures for Settling Disputes*: As envisioned in the TPA Act, each FTA contains strong procedures for settling any disputes that may arise between FTA partners. The procedures set high standards of transparency by providing for hearings to be open to the public, for the governments to release briefs and other filings to the public, and for dispute-settlement panels to have authority to consider submissions from interested non-governmental groups. Each FTA's dispute-settlement rules provide equivalent procedures and remedies for enforcing panel decisions under the agreement, regardless of whether they address the agreement's commercial, labor, or environmental provisions.

- *Safeguard Measures*: Consistent with TPA objectives, each FTA includes a safeguard procedure that is available to provide temporary relief to domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of import duties under the FTA. Each FTA also includes a special safeguard to address the possibility that duty elimination under the agreement could result in damaging levels of textile or apparel imports. Consistent with the guidance provided in the TPA Act, the FTAs preserve the ability of the United States to enforce rigorously its trade laws, including the antidumping or countervailing duty laws.

- *Government Procurement*: Each FTA includes rules to ensure that FTA partners follow transparent, non-discriminatory procedures when they make government purchases specified under the agreement, opening new sales opportunities for U.S. firms. This represents a big step forward because, with the exception of Singapore, no government that has concluded an FTA with the United States since 2002 is a party to the

WTO Agreement on Government Procurement, which calls for fair and open contracting rules.

- *Protecting Workers' Rights*: Each FTA includes provisions called for under the labor objectives set out in the TPA Act. Each FTA provides for the governments to reaffirm their obligations as members of the International Labor Organization (ILO) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up*. Each FTA also includes a commitment from each government to strive to ensure that it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment. In addition, each FTA includes a commitment, subject to the agreement's dispute settlement procedures, by each government not to fail to effectively enforce its domestic labor laws on a sustained or recurring basis in a manner affecting trade. Each FTA also recognizes each country's right to establish its own labor laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The United States is alone among the world's trading nations in insisting that its FTAs include provisions such as these.

- *Protecting the Environment*: Each FTA also includes provisions called for under the environmental objectives of the TPA Act. The FTAs commit each government to ensure that its laws provide for high levels of environmental protection and to strive to improve those laws. Each Party also must to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. As is the case for labor law enforcement, each FTA contains a binding commitment that each country not fail to effectively enforce its domestic environmental laws, while recognizing each country's right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. A linked agreement to cooperate on an ongoing basis regarding environment matters and to establish formal consultative mechanisms to facilitate such cooperation is another key element of each FTA.

IV. CONCLUSION

For the better part of a century, beginning with the Reciprocal Trade Agreements Act of 1934, the legislative and executive branches have recognized that the negotiation and implementation of trade agreements requires special cooperation. Neither alone can successfully pursue a trade policy that is both internationally effective and domestically acceptable. TPA procedures reflect a special partnership between the Congress and the President essential for the achievement of U.S. trade policy objectives.

Under TPA, Congress and the Administration agree on the goals to be pursued at the negotiating table. The Administration consults with Congress at every step in the process, and Congress reviews the agreements the Administration negotiates. Through TPA procedures, the legislative and executive branches have established an essential partnership in pursuit of policies that

increase U.S. leverage and leadership in dismantling foreign barriers, enforcing commitments, and promoting a world that trades in freedom.

In close consultation with the Congress, the President has used TPA to pursue a bold strategy of global, regional, and bilateral trade negotiations that is opening new markets abroad and leveling the playing field for American workers, farmers, ranchers, and businesses. Extending TPA is essential to further this strategy, maintain U.S. leadership, and complete major ongoing negotiations globally in the WTO and bilaterally with a dozen countries in Asia, the Middle East, Latin America, and Africa.

As the world's leading trading nation, no country stands to gain more from open markets and fair and enforceable global trade rules than the United States. Exports accounted for a quarter of U.S. economic growth in the last decade. Last year alone, the United States exported more than $1.1 trillion in goods and services to more than 200 foreign markets.

As America strives to build a new century of increased prosperity through international trade partnerships, it must vigorously pursue the opportunities for economic growth and prosperity described in this report. To turn those opportunities into realities, Congress and the Administration must extend the partnership that has been so effective for the American people.

ANNEX 1

EACH FTA'S UNIQUE BENEFITS, INNOVATIONS, AND SPECIFIC NEGOTIATING OBJECTIVES

ASIA AND THE PACIFIC

Since TPA took effect in August 2002, the Administration has worked with the Congress under TPA to conclude two FTAs with partners in Asia and the Pacific region and initiated negotiations on a third agreement. The United States – Singapore Free Trade Agreement, which Congress approved in August 2003 with strong support in both chambers, was America's first FTA with an Asian nation. The agreement took effect on January 1, 2004. The FTA with Singapore reflects an important first step in the Administration's efforts to open markets in Southeast Asia as part of the President's Enterprise for ASEAN Initiative (EAI), announced in October 2002.

In May 2004, the Administration concluded an FTA with Australia. Congress voted by wide margins in July 2004 to approve the Australia FTA and it entered into force on January 1, 2005.

On February 12, 2004, President Bush notified Congress that the Administration intended to negotiate a free trade agreement with Thailand, one of Southeast Asia's most dynamic economies. The negotiations began in June 2004. An FTA with Thailand offers substantial new export opportunities for U.S. ranchers, farmers, workers, and manufacturers across a wide range of agricultural and industrial sectors.

1. Free Trade Agreement with Australia

In effect since January 1, 2005, the United States – Australia FTA represents a major step in opening markets and strengthening economies across the Asia-Pacific region. Australia, currently America's 14th largest goods export market, is a large and growing trade and investment partner as well as a close ally. In 2004, two-way annual goods trade was nearly $22 billion. Two-way services trade was $9 billion in 2003 (latest data available).

By providing increased access to Australia's market, the FTA will boost bilateral trade in both goods and services. By one estimate, the agreement will increase U.S. manufacturing exports to Australia by $2 billion a year when the FTA is fully implemented. In 2002, Australian firms in the United States employed 55,000 Americans. The FTA is expected to create even more employment opportunities, and promote U.S. efficiency and competitiveness.

Unique Benefits

- *Leveling the Playing Field:* Before the Australia FTA took effect, U.S. firms paid 10 times as much in total annual import tariffs to Australia as the United States collected on products from Australia. The FTA will eliminate this disparity.

- *Tariff Elimination:* Australia eliminated its tariffs on more than 99 percent of U.S. manufactured goods on the day the FTA took effect, reflecting the single largest immediate tariff elimination for industrial goods provided under any U.S. FTA.

- *Access for U.S. Agricultural Products:* The FTA immediately eliminated duties on all U.S. agricultural exports to Australia, which totaled nearly $500 million in 2004. It also includes tariff rate quotas and safeguards for addressing U.S. imports of sensitive agricultural products from Australia, such as beef, dairy, cotton, and peanuts, with no change in access for sugar. In addition, the FTA establishes a new forum for scientific cooperation between U.S. and Australian authorities to resolve, on the basis of science, specific bilateral animal and plant health matters.

- *Government Procurement:* Under the FTA, approximately 80 Australian central government entities, including key ministries and government enterprises, as well as all of Australia's states and territories, must follow transparent, non-discriminatory procurement rules. These commitments are particularly significant and commercially important because Australia is not a party to the WTO Agreement on Government Procurement.

- *Protection for Intellectual Property Rights:* Under the FTA, Australia addressed key U.S. IPR concerns regarding copyrights, patents, trademark protection, and enforcement. The FTA also provides for protection and enforcement of IPRs consistent with the requirements of 21st century technology.

- *Electronic Commerce:* In addition to providing for non-discriminatory treatment of electronic commerce, the FTA is the first to include provisions on authenticating electronic signatures.

- *Government Drug Listing Rules:* The Australia FTA is the first U.S. FTA to include innovative, non-market access provisions relating to public health and pharmaceuticals, including requirements for Australia's health programs to apply transparent procedures in listing new pharmaceuticals for reimbursement. Under the FTA, Australia will also establish an independent review process for listing decisions. In addition, the FTA establishes a Medicines Working Group to provide for a continued dialogue between the United States and Australia on policy issues relating to innovative health care access.

Progress in Conjunction with the Agreement

- *SPS Measures:* In anticipation of and during the FTA negotiations, the Administration worked successfully with Australia to remove unjustifiable Australian SPS barriers that impeded imports of U.S. food and agricultural products to that country. For example, in July 2002, before the FTA negotiations began, Australia agreed to begin allowing imports of U.S. table grapes. As a result, U.S. exports of table grapes reached $15.4 million in 2004. In addition, beginning in August 2004, U.S. pork producers were able to export to Australia for the first time. U.S. shipments reached nearly $3.4 million by the end of the year.

2. Free Trade Agreement with Singapore

The FTA that the Administration concluded with Singapore, in operation now for 15 months, has worked to deepen and strengthen U.S. relations with this key trading partner. Singapore, a major Southeast Asian trading hub, is currently the 11th largest U.S. export market. In 2004, two-way goods trade was nearly $35 billion. Two-way services trade was $9.2 billion in 2003 (latest data available).

The FTA has already served to increase bilateral trade in goods and services, while reinforcing U.S. economic ties with Southeast Asia and improving U.S. competitiveness in the region. During the first year the FTA was in effect, U.S. exports to Singapore grew by 18.4 percent. Three U.S. sectors experienced particularly rapid growth in exports to Singapore during the period: information technology equipment exports increased by 62 percent ($1.7 billion increase); mineral and fuel exports increased by 86 percent ($265 million increase); and furniture exports increased by 99 percent ($7.3 million increase).

Other U.S. exports that experienced significant increases during the first year of the FTA include: chemicals, such as plastics, cosmetics, and pharmaceuticals; fish; construction equipment; building products; paper and other forest products; consumer goods; travel goods; scientific equipment; infrastructure machinery; and medical equipment.

Unique Benefits

- *Leveling the Playing Field:* Singapore is a significant services export market for U.S. companies. The agreement largely opens Singapore's formerly highly restricted banking sector to U.S. firms, and provides greater access for U.S. companies to provide insurance, legal, architectural, engineering, and express delivery services in Singapore. In addition, the FTA enables U.S. firms to acquire equity stakes in a wide range of government-controlled enterprises in Singapore, such as public utilities and port management, broadcasting, and tourism firms, when they are privatized.

- *Tariff Elimination:* Most tariffs on goods traded between the United States and Singapore were eliminated on the day the agreement entered into force. The rest will be phased out over 3 to 10 years. More than 97 percent of United States – Singapore goods trade is now duty-free.

- *Preventing Transshipments and Circumvention:* The FTA includes firm commitments to combat illegal transshipments of all traded goods and to prevent circumvention of the agreement's origin rules for textiles and apparel.

Progress in Conjunction with the Agreement

- *Environmental Cooperation*: The Administration used the FTA negotiations as an opportunity to conclude a memorandum of intent with Singapore on environmental cooperation. The two governments have already initiated several bilateral environmental

initiatives, including actions aimed at advancing environmental protection in the Southeast Asia region as well as combating illegal trade in wildlife and illegal logging.

3. Free Trade Negotiations with Thailand

In October 2003, President Bush announced that the Administration would seek an FTA with Thailand, reaffirming the Administration's commitment under the EAI to strengthen trade ties with countries in the ASEAN region that are actively pursuing economic reforms.

An FTA with Thailand will deepen longstanding bilateral economic and security ties. Thailand is the 20th largest U.S. trading partner, with two-way trade of $23.9 billion in 2004. The Administration expects that an FTA will create significant new opportunities for U.S. exporters across a wide range of agricultural, manufacturing, and services sectors. Extension of TPA will be essential for securing a comprehensive, market-opening FTA with Thailand.

Country-Specific Negotiating Objectives

- *Leveling the Playing Field:* Over 70 percent of Thailand's products already enter the U.S. market duty-free under the Generalized System of Preferences (GSP) program or under U.S. Most Favored Nation (MFN) tariff rates. An FTA will make duty-free treatment reciprocal. In addition, an FTA will give U.S. exports preferred treatment similar to that which Thailand affords to goods from its ASEAN and other preferential trading partners.

- *Reducing Tariff and Non-Tariff Barriers:* The Administration is seeking to address a variety of Thai measures that limit U.S. exports to Thailand, including high tariffs on agricultural goods, restrictive licensing practices, and an unpredictable and nontransparent customs regime.

- *Opportunities for U.S. Agricultural Products:* An FTA with Thailand will be particularly beneficial for U.S. agricultural producers. The United States is already one of the largest suppliers of agricultural products to the Thai market. By eliminating Thailand's high duties and other barriers in the agricultural sector, the FTA will expand opportunities for U.S. farmers and ranchers in this major market.

- *Benefits for Industrial and Consumer Exports:* The Administration is seeking to dismantle barriers in Thailand that limit opportunities to sell key industrial goods to Thailand, while remaining sensitive to important concerns raised regarding key domestic sectors, such as automotive products.

- *Opportunities for U.S. Services Firms*: The Administration is seeking to build on rights that each country affords to investors and other services suppliers of the other country under the *United States – Thailand Treaty of Amity and Economic Relations* to address discriminatory and other barriers to trade in Thailand's services markets. The Administration is also seeking to provide increased opportunities in Thailand for U.S.

service providers in such sectors as telecommunications, financial services, and professional services.

- *Protecting Intellectual Property Rights:* A top priority for the Administration is to address deficiencies in Thailand's protection of intellectual property rights, bringing its IPR regime up to the standards set in all recent U.S. FTAs.

- *Strengthening Core Values:* The Administration is also seeking an FTA that will reinforce important values in Thailand, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor; improved respect for the rule of law; concern for environmental protection and sustainable development and compliance with domestic environmental laws; accountability of institutions of governance; transparency; and a commitment to combat corruption.

Progress in the Negotiations

Since negotiations with Thailand began in June 2004, there have been two rounds of negotiations as well as inter-sessional meetings on specific issues. A third round of negotiations is planned for early April 2005. The two sides have made progress on drafting texts and have exchanged data and information needed for both governments to begin preparing market-opening proposals.

Objectives in Conjunction with the Negotiations

- *SPS Measures*: In conjunction with the FTA negotiations, the Administration is engaging Thailand in a comprehensive discussion of its regulations governing agricultural biotechnology products and its policies regarding imports of U.S. biotech goods. In addition, the Administration is seeking to have Thailand adopt science-based health and safety standards for processed food, beef, and poultry.

- *Environmental Cooperation:* In parallel with the FTA negotiations the Administration has initiated discussions with Thailand on environmental cooperation priorities.

- *Workers' Rights:* During the negotiations, the Administration will seek to confirm that Thailand's domestic labor laws cover internationally recognized labor rights and identify areas of cooperation with regard to labor rights and practices. The Administration will also seek to ensure that Thailand makes continued progress in eliminating the worst forms of child labor.

THE MIDDLE EAST

To create hope and opportunity in a region beset by violence and conflict, President Bush announced in 2003 that the Administration would seek to establish a Middle East Free Trade Area (MEFTA) by 2013. The initiative will deepen U.S. trade relationships with the countries of the Middle East and North Africa through steps tailored to each country's level of development.

The Administration has worked hard to advance this important goal, which would link countries from the Mahgreb to the Persian Gulf that are committed to economic reform and help to reinvigorate a region with a rich history as a key trading center.

The President's vision of a Middle East and North Africa that trades in freedom has received special attention. The *9/11 Commission,* in its final report issued on July 22, 2004, unanimously recommended that the United States should promote economic policies that "encourage development, more open societies, and opportunities for people to improve the lives of their families." When the terrorism panel made this recommendation, the Administration was already aggressively building the foundation for a MEFTA. Free trade agreements with Jordan and Israel were already in place. Congress was days away from voting to approve – by a large bipartisan margin – an FTA with Morocco, and U.S. negotiators were preparing for a final round of meetings that resulted in an FTA with Bahrain.

Extension of TPA is essential so that the Administration can continue to foster market-oriented economies in the region that operate on a transparent basis and in accordance with the rule of law. An extension of TPA will also help level the playing field for U.S. goods and services exporters. For example, 46 percent of U.S. imports from Bahrain, Oman, and the United Arab Emirates (UAE) currently enter the United States duty-free. FTAs with these countries will eliminate duties on a reciprocal basis.

The Administration began FTA negotiations in March 2005 with the UAE and Oman. These initiatives build on the FTAs that the Administration had concluded with Morocco and Bahrain under TPA, as well as on FTAs completed earlier with Israel and Jordan. These negotiations will encourage other members of the Gulf Cooperation Council (GCC) to adopt standards that promote trade and investment and protect the environment and workers' rights.

The Administration's FTA initiatives in the region have focused on countries led by modernizers who are promoting openness and economic growth. By supporting these countries as they expand their trading and investment relationship with the United States, the Administration is providing a concrete and mutually beneficial avenue for enhancing opportunity and hope in this critical region. In describing policies that support economic development and reform, the *9/11 Commission* highlighted the FTAs the Administration has concluded with Bahrain and Morocco under TPA in. An extension of TPA will be essential in assisting U.S. negotiators to conclude FTAs that will spread democracy and boost U.S. exports to the region.

1. Free Trade Agreement with Morocco

Signed in June 2004, the United States – Morocco FTA was the first free trade agreement concluded under the President's MEFTA initiative as well as the first with a country in Africa. The FTA with Morocco will anchor efforts to establish a sub-regional agreement in North Africa, leading ultimately to a region-wide MEFTA. The FTA will help to strengthen an important, strategically placed, and politically moderate ally through increased economic prosperity and growth.

U.S. goods exports to Morocco in 2004 totaled $524 million, with two-way trade of $1 billion. The U.S. International Trade Commission has estimated that once the agreement is fully implemented U.S. exports to Morocco will be $740 million higher than U.S. exports would be otherwise each year.

Congress approved the Morocco FTA in August 2004 by substantial margins in both chambers, and the President signed the implementing legislation into law shortly thereafter. The Moroccan Parliament ratified the agreement in January 2005, and it is currently awaiting signature by King Mohammed VI. The agreement is expected to enter into force in 2005.

Unique Benefits

- *Leveling the Playing Field:* The FTA provides for more than 95 percent of bilateral trade in consumer and industrial goods to become duty-free on the day the agreement enters into force – representing the best FTA market access package that the Administration has achieved to date with a developing country. Currently, U.S. products entering Morocco face an average tariff of over 20 percent, while Moroccan products entering the United States are subject to an average tariff of 4 percent. Nearly 60 percent of Morocco's imports into the United States now enter duty-free.

- *Agricultural and Services Trade:* The agreement also opens Morocco's previously closed market for U.S. beef and poultry products and could lead to five-fold increases in U.S. wheat exports over recent levels. Other U.S. farm products, such as soybeans, soybean meal, cotton, dairy products, corn and other feed grains, fruits and nuts, processed foods and vegetable oils will benefit as well. By leveling the playing field, the FTA gives U.S. farmers and ranchers new tools to compete with Canada and the EU, among others, in Morocco's market. The FTA also reduces barriers in Morocco to U.S. services firms, including in financial services, audiovisual services, express delivery services, telecommunications, computer and related services, distribution, construction, and engineering.

- *Transparency and Anti-Corruption:* The FTA includes specific commitments on combating bribery in matters affecting international trade and investment, including rules spelling out particular features that anti-bribery laws should contain.

Progress in Conjunction with the Agreement

- *Labor Rights:* The prospect of an FTA with the United States helped forge a domestic consensus for labor law reform in Morocco, spurring reform efforts that had been stymied for more than 20 years. A comprehensive new labor law went into effect on June 8, 2004, just days before the FTA was signed. The law is a significant improvement over earlier measures, particularly as it strengthens rights of association and collective bargaining. In addition, the ILO provided, with funding from the U.S. Department of Labor, technical assistance to Morocco to improve the application and enforcement of its labor laws, and to address child labor issues.

- *Environmental Cooperation*: During the FTA negotiations, Morocco enacted new laws to combat air pollution and strengthen environmental regulation. In addition, in tandem with the FTA, the United States and Morocco concluded a Joint Statement on Environmental Cooperation. The Administration has already begun carrying out its commitments under the statement through environmental training and capacity building projects in Morocco.

2. Free Trade Agreement with Bahrain

On September 14, 2004, the Administration concluded an FTA with Bahrain, an important strategic partner in the Persian Gulf.

Bahrain is a regional leader in economic reform and trade liberalization, and has undertaken reform of its political system. For example, well before the FTA negotiations began, Bahrain brought its investment rules up to international standards by concluding a bilateral investment treaty with the United States. The United States – Bahrain FTA will support and accelerate these reforms, and will set the stage for improving trade relations and expanding openness with other countries in the region, thereby increasing prosperity, opportunity, and hope. The conclusion of this agreement has motivated the other members of the GCC to increase the pace of their own economic reforms, and sets a high standard for the current FTA negotiations with the UAE and Oman. The Administration expects to submit the agreement to the Congress in 2005.

Unique Benefits

- *Leveling the Playing Field*: In 2004, 31 percent of Bahrain's exports to the United States entered duty-free. The FTA will level the playing field by removing barriers to U.S. exports to Bahrain. On the day the agreement enters into force, all U.S. consumer, industrial, and agricultural exports except for alcohol and tobacco will enter Bahrain duty-free.

- *Opportunities for U.S. Services Firms:* Under the FTA, Bahrain has committed to maintain an open services market in more sectors than any U.S. FTA partner, creating a wide array of opportunities in sectors such as banking and securities, insurance, telecommunications, healthcare, distribution, energy, construction and engineering, education and training, tourism and travel, and environmental services.

- *Transparency and Anti-Corruption:* The FTA includes specific commitments on combating bribery in matters affecting international trade and investment, including rules spelling out particular features that anti-bribery laws should contain.

Progress in Conjunction with the Agreement

- *SPS Measures:* Before initiating FTA negotiations, the Administration worked with Bahrain to bring its unjustifiable shelf-life standards for processed food into compliance with international science-based standards. Within two months after FTA negotiations began, Bahrain repealed its shelf-life standards and replaced them with appropriate, science-based regulations.

- *Environmental Cooperation:* In the course of negotiating the FTA, the United States and Bahrain concluded a memorandum of understanding on environmental cooperation that the two governments will use to develop priorities for environment-related projects in Bahrain.

- *Labor Rights:* The FTA includes a labor cooperation mechanism to promote respect for the core labor principles embodied in the ILO Declaration, which are enshrined in Bahrain's labor code. In 2002, Bahrain enacted significant reforms to its labor code, which included permitting the formation of labor unions for the first time since the early 1970s. Both nationals and foreign workers are allowed to form and join trade unions under the new law.

3. Free Trade Negotiations with the United Arab Emirates

On November 15, 2004, the President notified Congress of the Administration's intent to negotiate an FTA with the UAE. The proposed FTA will build on the FTA the Administration signed with Bahrain last year and will deepen a trading relationship with one of the most dynamic and market-oriented economies in the region. Concluding an agreement with the UAE will send a strong signal in the Middle East of the value of strengthening bilateral economic relations with the United States. Together with an anticipated FTA with Oman, and building on the FTA concluded with Bahrain last year, a free trade agreement with the UAE will significantly advance the process of building a sub-regional trading zone in the Persian Gulf, complementing efforts in the Levant and North Africa and ultimately leading to a completed MEFTA.

The UAE is the third largest U.S. trading partner in the Middle East after Saudi Arabia and Israel. Two-way trade in 2004 was $5.2 billion, of which $4.1 billion was in U.S. exports.

Negotiations with the UAE began in early March 2005 following consultations between the Administration's principal trade negotiators and the Congress on negotiating positions and proposed agreement texts. An extension of TPA is essential to complete these negotiations.

Country-Specific Negotiating Objectives

The Administration is seeking an FTA with the UAE that will increase commercial opportunities for U.S. exporters and service providers, enhance protection for U.S. investors and intellectual property owners and investors, and foster environmental protection. The Administration will be specifically looking to address current UAE company and agency laws that restrict the investment opportunities for U.S. firms as well as distribution rights for U.S. firms that export to the UAE.

In 2004, 54 percent of the UAE's exports to the United States entered duty-free. The Administration will work to level the playing field by eliminating barriers to U.S. exports to the UAE.

Objectives in Conjunction with the Negotiations

- *SPS Measures:* Before the FTA negotiations began, the Administration asked the UAE to bring its SPS regulations – in particular its unjustifiable shelf-life standards for processed food and its ban on U.S. beef imports – into conformity with international science-based standards. The Administration is working to provide technical assistance to help ensure that the UAE takes timely, concrete action.

- *Labor Rights:* The Administration intends to urge the UAE to adopt and enforce labor laws that implement internationally recognized labor rights and apply those laws to its entire workforce, in particular foreign workers employed in the UAE.

- *Environmental Cooperation:* Even before FTA negotiations got underway, the Administration began discussions with the UAE on environmental cooperation priorities with the UAE, with the aim of negotiating a memorandum of understanding on environmental cooperation that will complement the eventual FTA.

4. Free Trade Negotiations with Oman

On November 15, 2004, the President notified Congress of the Administration's intention to begin FTA negotiations with Oman, a close U.S. ally in the Persian Gulf. These negotiations represent an important further stage in implementing the President's initiative to advance economic reforms and openness in the Middle East and Gulf region and in creating the MEFTA.

Oman is an appropriate candidate for an FTA with the United States, having significantly reformed its trade regime when it joined the WTO in 2000. In addition, Oman has a solid record of protecting intellectual property rights and providing access to its goods and government procurement markets.

Negotiations with Oman began in early March 2005, following consultations between the Administration's principal trade negotiators and the Congress on negotiating positions and proposed agreement texts. An extension of TPA is essential to complete these negotiations.

Country-Specific Negotiating Objectives

U.S. negotiating positions draw from prior bilateral FTAs with the region, in particular those with Bahrain and Morocco. The FTA will provide new export opportunities for U.S. services firms in sectors such as telecommunications, banking, insurance, energy, construction, engineering, legal services, accounting, tourism and travel, health care, and environmental services. An FTA will also support Oman's commitment to transparency, openness, and the rule of law, and enhance respect for intellectual property rights, labor rights, and environmental protection.

In 2004, 42 percent of Oman's exports to the United States entered duty-free. The Administration will work to level the playing field by eliminating barriers to U.S. exports to Oman.

Objectives in Conjunction with the Negotiations

- *SPS Measures:* Before the FTA got underway, the Administration requested Oman to bring its SPS regulations – in particular, its unjustifiable shelf-life standards for processed food and ban on U.S. beef imports – into conformity with international science-based standards. The Administration is working to provide technical assistance to help ensure that Oman takes timely, concrete action.

- *Labor Rights:* Oman recently enacted new labor legislation, along with implementing regulations, to better ensure freedom of association and the right to collective bargaining for all workers in Oman. The Administration intends to consult closely with Oman concerning its labor laws, and provide technical assistance as needed, consistent with TPA objectives on labor rights.

- *Environmental Cooperation:* The Administration has begun discussions with Oman on its environmental cooperation priorities and intends to negotiate a memorandum of understanding with Oman on environmental cooperation in parallel with the FTA.

AGREEMENTS AND NEGOTIATIONS IN THE AMERICAS

TPA has enabled the Administration to build on the NAFTA, which created the world's largest free trade area, by expanding America's trade partnerships in the Western Hemisphere to neighbors in Central and South America. First, TPA enabled the Administration, in close collaboration with the Congress, to conclude and implement an innovative FTA with Chile in 2003, South America's most dynamic economy and a thriving democracy. In August 2004, the Administration concluded a robust, market-opening FTA with five nations of Central America and the Dominican Republic (CAFTA-DR). The Administration expects to submit that agreement to the Congress in 2005.

Also in 2004, the Administration launched new FTA negotiations with Panama and with three Andean countries (Colombia, Ecuador, and Peru), with Bolivia participating as an observer. At the same time, the Administration is continuing to press for a market-opening Free Trade Area of the Americas (FTAA) that will include all of the Western Hemisphere democracies. Each of these efforts demonstrates an abiding U.S. commitment under TPA to promote open trade, economic progress, and democratic institutions throughout the region.

1. CAFTA-DR

On August 5, 2004, the Administration concluded the CAFTA-DR, which unites the United States through free trade with five countries of Central America (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic, countries that collectively form the second largest U.S. export market in Latin America. This historic agreement will create new economic opportunities for the United States by eliminating tariffs, opening markets, promoting transparency, and establishing state-of-the-art rules for 21st century commerce. It will also contribute to the transformation of a region that was consumed by internal strife and border disputes just a decade ago but is now a successful regional economy with flourishing democracies.

The CAFTA-DR will create a level playing field for U.S. workers, farmers, ranchers, and businesses; strengthen struggling democracies throughout the region; create a more efficient textile and apparel production zone to compete with Asia; and provide stronger protections for labor rights and the environment.

The United States is the largest trading partner of the CAFTA-DR countries, accounting for 39 percent of the region's goods imports in 2003 (latest data available). In 2004, the CAFTA-DR countries purchased $15.7 billion in U.S. goods, and total goods trade between the United States and the region was $33.4 billion.

Unique Benefits

- *Leveling the Playing Field:* The CAFTA-DR countries, like many other developing countries, enjoy broad duty-free access to the U.S. market through the GSP and Caribbean Basin Initiative (CBI) trade preference programs that Congress established to

promote economic development. In 2004, nearly 80 percent of goods exports from the CAFTA-DR countries to the United States entered duty-free under the unilateral CBI or GSP programs or under MFN tariff rates. These countries also enjoy the benefits of an open U.S. services market. CAFTA-DR levels the playing field by eliminating the tariffs that the CAFTA-DR countries' impose on U.S. goods exports.

- *Expanded Markets for U.S. Farmers and Ranchers, and Manufacturers*: Under the CAFTA-DR, more than 80 percent of U.S. consumer and industrial goods will enjoy duty-free access to Central America and the Dominican Republic immediately after the FTA enters into force, with remaining tariffs phased out over 10 years. This means that key U.S. exports, such as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment, will gain immediate duty-free access to Central America and the Dominican Republic. The CAFTA-DR changes the "one-way street" of duty-free access currently enjoyed by Central America and the Dominican Republic on most of their agricultural products into a "two-way street" that provides U.S. agricultural exporters with access to these markets and levels the playing field with other countries that already have preferential access to these markets. Nearly every major U.S. agricultural sector will benefit from expanded opportunities under this agreement, with substantial gains in such sectors as feed grains, wheat, rice, soybeans, poultry, pork, beef, dairy, fruits, vegetables, and processed products.

- *Textiles and Apparel*: Textiles and apparel that meet the FTA's regional origin rules will become duty-free as soon as the agreement takes effect, promoting new opportunities for U.S., Central American, and Dominican Republic textile and apparel manufacturers that will support U.S. exports and jobs.

- *Trade in Services*: The agreement will give U.S. services and service providers unprecedented access to CAFTA-DR markets across a wide range of sectors, including telecommunications, express delivery services, computer and related services, financial services, and insurance. The agreement also disciplines the use of "dealer protection" regimes in the CAFTA-DR countries, reducing significant barriers to distribution in the region.

- *Investment:* The FTA is the first such agreement to mandate a follow-on negotiation, to begin and conclude within a specified period, to develop an appellate body or similar mechanism to review awards rendered by investor-state arbitration tribunals. Establishing such a body or similar mechanism is a specific TPA negotiating objective.

- *Transparency and Anti-Corruption:* The FTA includes specific commitments on combating bribery in matters affecting international trade and investment, including rules spelling out particular features that anti-bribery laws should contain.

- *Public Submissions on Environmental Enforcement:* The agreement is the first FTA to include a robust public submissions process that will allow members of the public to raise

concerns that a CAFTA-DR government is not effectively enforcing its environmental laws.

- *Worker Rights:* The CAFTA-DR sets out in unprecedented detail the procedural guarantees that each government must provide to its workers to ensure they have access to fair, equitable, and transparent judicial proceedings to protect their rights under domestic labor laws.

Progress in Conjunction with the Agreement

- *SPS Measures:* The CAFTA-DR countries are working toward the recognition of U.S. meat inspection and certification systems in order to facilitate U.S. exports.

- *Improved Labor Rights:* During the course of the negotiations, the five Central American countries and the Dominican Republic made significant improvements in the application and enforcement of its labor laws. In addition, the U.S. Department of Labor has funded a multi-year program of labor cooperation, as contemplated under the agreement, to improve the capacity of each country to protect workers' rights. The State Department is also in the process of programming $20 million of Economic Support Funds for labor and environment capacity building activities related to CAFTA-DR. In addition, all six countries asked the International Labor Organization (ILO) to review the consistency of its domestic labor laws with the international labor conventions covered by the ILO Declaration. The ILO's reports provide confidence that all six countries have labor laws that give effect to the core principles in the ILO Declaration.

- *Environmental Cooperation:* As a complement to the FTA, the United States and the six other governments signed an environmental cooperation agreement that provides a comprehensive framework for long-term cooperation on environmental issues in the region.

2. Free Trade Agreement with Chile

In June 2003, the Administration concluded an FTA with Chile, a country with one of the fastest growing economies in the world. Congress approved the agreement in August 2003 under TPA procedures. The agreement has been in force since January 1, 2004. U.S. exports to Chile during the first year of the FTA increased by nearly a billion dollars, growing from $2.7 billion in 2003 to $3.6 billion in 2004, a 33.5 percent increase. Two-way trade, in 2004, was $8.4 billion, and U.S. exports now account for nearly 15 percent of Chilean imports.

Unique Benefits

- *Leveling the Playing Field:* Before the Chile FTA took effect, U.S. firms paid an across-the-board six percent tariff on goods entering Chile's market. This put U.S. firms at a disadvantage given Chile's FTAs with countries such as Canada and Mexico, and with

the EU. The FTA gave immediate duty-free access to 87 percent of U.S. exports to Chile, thus giving U.S. firms the same access as Chile's other FTA partners.

- *Tariff Elimination*: Chile has already eliminated tariffs on 90 percent of U.S. exports. More than three-quarters of U.S. farm goods by value exported to Chile will become duty-free by 2007, and many key agricultural products, such as apples, cherries, lettuce, grapes, almonds, pistachios, and oranges became duty-free as soon as the agreement entered into force. Following the removal of Chilean tariffs under the FTA, U.S. exports of certain construction machinery have grown by 415 percent; tractors by 371 percent; shelled almonds by 270 percent; and motor vehicles used to transport goods by 60 percent.

- *Automobile Tax Elimination:* Chile committed to remove its 85 percent tax on automobiles valued at more that $16,000 over a 4-year period beginning on January 1, 2004. The tax phase-out has already led to an increase in U.S. automobile exports to Chile.

- *Government Procurement*: The FTA requires Chile, for the first time, to follow open, transparent, and non-discriminatory purchasing procedures for most of its central government infrastructure and resource projects, including ports and airports, and covers most other purchases by central government entities and approximately 350 municipalities. The FTA also requires Chile to make bribery of government procurement officials a crime and spells out particular features that such a law should contain.

- *Services:* The FTA opens Chilean markets further in key sectors such as telecommunications, financial services, insurance, and express delivery services.

- *Customs:* The Chile and Singapore FTAs were the first FTAs to include specific, concrete obligations to enhance transparency and efficiency of general customs procedures. They require all customs laws and regulations to be published on the Internet, and provide for importers to request binding advance rulings on customs matters. Both agreements also provide for the rapid release of goods from customs, with expedited treatment for express delivery shipments.

- *Labor Cooperation:* The Chile FTA creates a mechanism for ongoing labor cooperation focusing on improving labor standards, particularly those set out in the ILO Declaration and the elimination of the worst forms of child labor. The United States – Chile Labor Affairs Council, created by the FTA, met in Santiago in December 2004.

- *Environmental Cooperative Projects:* The FTA commits the two governments to eight cooperative projects that address trade-related environmental issues in Chile, such as environmental law enforcement, clean-up of abandoned mines, and capacity building for farmers to encourage better handling of pesticides.

Progress in Conjunction with the Agreement

- *SPS Measures:* The Chile FTA provided a road map for subsequent FTA negotiations on SPS measures as well as for SPS discussions in the Western Hemisphere and elsewhere. In parallel with the FTA negotiations, Chile removed several unjustifiable phytosanitary barriers, opening opportunities for U.S. growers to increase their sales to Chile of fresh fruits from the West Coast, Arizona, Texas, and Florida. Chile also agreed to accept U.S. meat inspection regimes for beef and pork. The FTA also permits U.S. beef exporters to use U.S. grading standards when they market beef in Chile.

- *Labor Law Reform:* During the course of the FTA negotiations, Chile eliminated its remaining Pinochet-era labor laws.

- *Environmental Cooperation:* In conjunction with the FTA, the United States and Chile concluded an environmental cooperation agreement, which provides a framework and identifies priorities for further cooperative projects. The two governments recently agreed on an environmental work plan for 2005-06.

3. Free Trade Negotiations with Andean Countries

In October 2003, President Bush notified Congress of his intent to begin FTA negotiations with the countries of the Andean region. The Administration is currently negotiating an FTA with Colombia, Peru, and Ecuador; Bolivia is participating as an observer. TPA will be vital for completing the FTA, which will foster economic growth and higher paying jobs in the United States by reducing and eliminating barriers to trade and investment between these four Andean countries and the United States. An FTA with these Andean countries will also enhance U.S. efforts to strengthen democracy and to support fundamental values in the region, such as the rule of law and efforts to combat corruption.

These four Andean countries collectively constitute an $8.5 billion market for U.S. goods, but one characterized by substantial barriers to U.S. trade. U.S. exports constituted, in 2003 (latest data available), 25 percent of these countries' imports. Together, these countries have a gross domestic product (on a purchasing power parity basis) of $476 billion and a combined population of about 92 million. Excluding the NAFTA countries, Colombia alone is the largest purchaser of U.S. agricultural exports in the Western Hemisphere. This combination of facts points to a region that has major, unrealized potential for U.S. exporters and investors.

An FTA with the Andean countries will help promote regional economic integration, combat narcotrafficking, build democratic institutions, and promote socio-economic development while providing new export opportunities for U.S. agriculture, industry, and service providers. These economic and social benefits an FTA will bring to the region will help strengthen the commitment of these countries to free, private market systems at a time when slow growth in Latin America has brought the commitment to open markets under political pressure. The President will need the leverage and support that TPA provides to bring the Andean FTA negotiations to a successful conclusion.

Region-Specific Negotiating Objectives

- *Leveling the Playing Field:* Ninety percent of the Andeans' exports to the U.S. market enter duty-free. An FTA will make duty-free treatment reciprocal. In addition, a FTA will give U.S. exports preferential treatment relative to the Andeans' non-FTA trading partners.

- *Reducing Key Trade Barriers:* The Administration is using the negotiations to address specific barriers that limit U.S. exports to the Andean countries, including high tariffs and variable levies ("price bands") on agricultural goods, restrictive licensing practices, and an unpredictable and nontransparent customs regime.

- *Access for U.S. Agriculture:* An FTA with the Andean countries will bring significant benefits for U.S. agricultural producers. Colombia is already the largest purchaser of U.S. agricultural exports in South America.

- *Access for U.S. Manufactures:* The Administration is pressing for the immediate elimination of Andean tariffs on industrial goods of particular export interest to the United States, while remaining sensitive to important concerns raised regarding key U.S. import sectors.

- *Services Trade:* The Administration is seeking to eliminate specific restrictions that make it difficult for U.S. service providers to operate in Andean markets, and is addressing other barriers to U.S. services trade with the Andean countries. The Administration expects to achieve the greatest degree of market opening in such services sectors as telecommunications, banking, and insurance.

- *Investment:* The Administration is asking the Andean countries to adopt a robust set of investment-related disciplines, including consent to the arbitration of disputes involving investors from the other FTA countries. This is especially important given recent disputes between U.S. investors and Andean governments, which have raised concerns among U.S. businesses.

- *Intellectual Property:* The Administration is using the negotiations to address deficiencies in the Andean countries' protection of intellectual property rights. The Administration is also seeking to raise the level of protection to the standards it has set in other FTAs.

- *Strengthening Core Values:* The Administration is seeking an FTA that will reinforce important values in the Andean countries, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor; respect for the rule of law; concern for environmental protection and sustainable development and compliance with domestic environmental laws; accountability of institutions of governance; transparency; and commitments to combat corruption.

Progress in the Negotiations

Negotiations on a United States – Andean FTA began in May 2004. After eight rounds of negotiations, good progress has been made in developing texts and disciplines across the range of subject areas. Significant work remains to be done in obtaining commitments from the Andean countries with respect to opening specific markets. All parties would like to conclude negotiations this year.

Objectives in Conjunction with the Negotiations

- *SPS Measures:* In parallel with the FTA negotiations, the Administration has initiated discussions with the Andean countries to eliminate unjustified SPS barriers to exports of U.S. beef and poultry.

- *Environmental Cooperation*: The Administration has taken advantage of the FTA negotiations to begin discussing environmental cooperation priorities with the Andean countries that would build on existing U.S. efforts in the region. As with the CAFTA-DR, the Administration expects to negotiate an environmental cooperation agreement as a complement to the FTA. U.S. negotiators are working with their Andean counterparts to ensure that civil society is involved in the development of the FTA's environmental provisions and the cooperation agreement, including through public meetings in each Andean country with environmental nongovernmental organizations, industry, and indigenous groups.

- *Labor Rights*: During the negotiations, the Administration has engaged with the Andean countries concerning the need to promote respect for worker rights. The Administration intends to establish procedures for consultations and cooperative activities with the Andean countries to strengthen their capacity to promote respect for internationally recognized labor rights, including compliance with ILO Convention 182 on the worst forms of child labor.

4. Free Trade Negotiations with Panama

On November 18, 2003, the President notified Congress of his intention to begin FTA negotiations with Panama. The United States and Panama have a long history of close ties and a strong economic partnership. An FTA with Panama will be a natural extension of an already largely open trade and investment relationship, and an important link in the strategy of opening markets in the hemisphere through competitive liberalization. A United States – Panama FTA will solidify this long-standing trade partnership with cutting-edge commitments to eliminate barriers to trade in goods, services, and investment.

The United States is Panama's largest trading partner, providing 34 percent of its goods imports. Total goods trade between the United States and Panama was $2.1 billion in 2004. Panama, like many other developing countries, already enjoys broad duty-free access to the U.S. market through trade preference programs provided by Congress to promote economic development. In 2004, nearly 90 percent of Panama's goods exports entered the United States duty-free under the unilateral CBI and GSP programs, or under MFN tariff rates. An FTA with Panama will reduce

barriers to U.S. exports and stimulate important reforms of Panama's legal and business environment that are key to encouraging trade and business development.

Panama is a major transshipment point for world-wide goods trade. The United States and Panama enjoy a strong mutual commitment to cooperation in security initiatives and in monitoring traffic transiting Panama. An FTA with Panama affords the opportunity to strengthen mechanisms designed to enhance customs enforcement and trade security. An extension of TPA will be critical in concluding a robust free trade agreement with Panama.

Country-Specific Negotiating Objectives

- *Leveling the Playing Field:* The Administration is seeking through the negotiations to ensure reciprocal access for U.S. exports to Panama's goods markets.

- *Access for U.S. Agriculture:* The Administration is seeking an agreement that will open Panama's market to U.S. agricultural products. In particular, the Administration is using the negotiations to address Panama's high tariffs on agricultural goods and restrictive licensing practices.

- *Access for U.S. Manufactures:* The Administration has pressed for the immediate elimination, once the FTA takes effect, of Panama's tariffs on industrial goods of particular export interest to the United States, while remaining sensitive to important concerns raised regarding key U.S. import sectors.

- *Trade in Services:* Panama, like the United States, is predominantly a services-based economy, with services accounting for about 80 percent of economic activity. The Administration is seeking to open Panama's services market to U.S. firms, particularly for professional services, financial services, and telecommunications.

- *Canal Zone:* The Panama Canal is the focal point of Panama's economy and represents an important opportunity for mutual economic opportunities and growth. Much of Panama's economic activity is tied to the canal infrastructure and the logistics and financing of international shipping. The Administration is looking to the FTA to provide U.S. companies with enhanced access to business opportunities associated with the Canal, such as in construction, engineering, and environmental services. This is especially important because an anticipated $4-8 billion Canal expansion.

- *Strengthening Core Values:* The Administration is also seeking an FTA that will reinforce important values in Panama such as the elimination of the worst forms of child labor; respect for the rule of law; concern for environmental protection and sustainable development and compliance with domestic environmental laws; accountability of institutions of governance; transparency; and a commitment to combat corruption.

- *Labor Rights:* The FTA, like other agreements the Administration has negotiated under TPA, will include provisions that promote respect for ILO standards and require the effective enforcement of domestic labor laws.

Progress in the Negotiations

The United States and Panama have held eight rounds of negotiations since April 2004. On September 1, 2004, Martin Torrijos took office as president of Panama. President Torrijos' negotiating team has represented Panama since the fifth round of negotiations in October 2004. Significant progress has been made in the negotiation, but issues remain, particularly regarding agricultural trade and the Panama Canal Authority. The Administration is seeking to conclude the negotiations expeditiously.

Objectives in Conjunction with the Negotiations

- *Environmental Cooperation:* As a complement to the FTA, the Administration intends to establish an environmental cooperation mechanism with Panama.
- *SPS Measures:* In conjunction with the FTA negotiations, the Administration is working to eliminate Panama's requirement for facility-by-facility inspection of meat, poultry, and other food producing facilities in the United States and establish a system for Panama to rely on U.S. food inspection procedures.

5. Negotiations on the Free Trade Area of the Americas

At the first Summit of the Americas in Miami in 1994 and repeatedly since, leaders of the Western Hemisphere's 34 democracies have called for the creation of a Free Trade Area of the Americas by 2005. Formal negotiations on the text of an agreement began in 1998 and the participating countries agreed to initiate formal market access negotiations after the TPA Act was signed into law in August 2002.

Bringing the FTAA negotiations to a successful conclusion will benefit U.S. farmers, workers, businesses, and consumers, as well as strengthen the rule of law and solidify economic reform throughout the Americas. It will also increase U.S. export opportunities to a region of 800 million people with a combined annual GDP of $14 trillion. An FTAA will also facilitate regional integration and competitiveness, supporting broader U.S. foreign policy interests in promoting prosperity, democracy, and security in neighboring countries.

Region-Specific Negotiating Objectives

The Administration has taken a comprehensive approach to the FTAA negotiations. Consistent with the objectives set out in TPA, the Administration has sought an agreement that will eliminate tariff and non-tariff barriers to U.S. exports; lower barriers to U.S. trade in services; improve the climate for investment; open government procurement markets and increase transparency for U.S. suppliers of goods and services; bolster the competitive climate in countries within the region; improve the protection and enforcement of intellectual property rights; preserve the ability of the Administration to enforce its trade laws; ensure that trade and environmental policies are mutually supportive and that domestic environmental laws are effectively enforced; promote respect for worker rights consistent with ILO core labor standards; and provide a fair, transparent, timely and effective mechanism for the settlement of disputes arising under the agreement.

U.S. leadership is essential for bringing the negotiation to a successful conclusion. The extension of TPA will send a strong signal at the upcoming Summit of the Americas in November 2005 regarding the importance the Administration attaches to strengthening its relationship with the 33 other Western Hemisphere countries participating in the FTAA negotiations.

Progress in the Negotiations

In 2003, following the renewal of TPA, the negotiations made good progress after participating governments exchanged initial proposals for opening their markets and, in many cases, improved their offers. A third draft text showing areas of agreement and negotiating proposals was made public following the FTAA Trade Ministerial that took place in Miami in November 2003. To make the negotiating process more transparent, participating governments initiated new dialogues with civil society throughout the hemisphere. FTAA governments also established the Hemispheric Cooperation Program to assist participating governments in preparing to assume obligations under the FTAA, and several such governments worked effectively with the donor community led by the Inter-American Development Bank to develop national strategies for trade capacity building as part of their overall economic development plans.

In mid-2003, the member countries of the Common Market of the South (Mercosur, which consists of Argentina, Brazil, Paraguay, and Uruguay) challenged the previously-agreed consensus on the general negotiating objectives for the FTAA. Mercosur called for a wide-ranging restructuring of the negotiating agenda to reduce its scope significantly and focus on opening markets for goods and a few other goals. After vigorous debate among the 34 FTAA countries, the United States and Brazil as FTAA Co-chairs put forward a two-track approach as a way to advance the negotiations. Ultimately, all 34 countries agreed at the November 2003 Miami Ministerial meeting on this new framework for negotiations.

At the Miami meeting, ministers called for a "common and balanced set of rights and obligations applicable to all countries." This would constitute one element of the FTAA, containing core commitments by all countries in all areas previously under negotiation. Ministers also agreed that interested countries could negotiate additional benefits and obligations. This would constitute another, more ambitious element of the FTAA and could be achieved, for example, through one or more agreements open to interested countries. For the United States, this two-track framework establishes a way to make substantial progress in opening markets and reducing trade barriers across the region, while continuing to pursue more ambitious results with countries that are willing to go further.

Talks took place during 2004 on providing detailed instructions to FTAA negotiators regarding the "common set" negotiations and on the procedures that will govern the more ambitious negotiations open to interested countries. These discussions have yet to conclude. Once an agreement on these points is in place, FTAA negotiations will resume. As a result of the delays occasioned over the past two years, ministers will need to address the overall FTAA negotiation schedule when they next meet, which is expected to be later in 2005.

AFRICA

Supporting Africa's integration into the global economy is one of the key elements of the Administration's Africa trade policy. The African Growth and Opportunity Act (AGOA), enacted in 2000, expanded in 2002, and extended in 2004 through 2015, has created tangible incentives for commercial development and economic reform in sub-Saharan Africa. As a result of AGOA, more than 98 percent of U.S. imports from the 37 AGOA-eligible countries enter the United States duty-free. To build on AGOA's success, the Administration is working, in close consultation with the Congress, with the five countries of the Southern African Customs Union (SACU) – Botswana, Lesotho, Namibia, South Africa, and Swaziland – to establish a regional free trade agreement.

A United States – SACU FTA would enhance U.S. ties with the region and help to strengthen regional integration among the SACU nations. An FTA would also begin the process of transforming United States – Africa trade into a reciprocal partnership, rather than one characterized by unilateral U.S. preference programs as is currently the case. Continued availability of TPA is fundamental in achieving these goals.

1. Free Trade Negotiations with SACU

President Bush notified Congress on November 4, 2002, of his intention to begin negotiations with the SACU countries. The negotiations began in June 2003 in Pretoria, South Africa.

Together, the SACU countries comprise the largest U.S. export market in sub-Saharan Africa, accounting for $3.3 billion in U.S. exports in 2004. Total two-way United States – SACU trade was valued at $10.2 billion in 2004. SACU is the world's oldest customs union, and has laid a solid foundation for free trade by advancing regional integration efforts and instituting domestic economic reforms.

Region-Specific Negotiating Objectives

- *Leveling the Playing Field:* Some 97 percent of exports to the United States from the five SACU countries enter the United States duty-free. The FTA negotiations provide an opportunity to level the playing field in areas where U.S. exporters are disadvantaged by the EU's free trade agreement with South Africa.

- *Opening Markets:* The Administration is seeking to eliminate duties on U.S. exports to the SACU countries, giving U.S. firms considerably greater access to sub-Saharan Africa's largest market and helping to foster an expanded U.S. commercial presence in the region.

- *Encouraging Economic Growth:* The Administration is seeking to make trade a greater part of southern Africa's economic development strategy, encourage greater foreign investment in southern Africa, and promote regional economic integration and growth.

- *Creating a Model for Development:* The FTA will create an infrastructure for opportunity that builds on AGOA and establish a comprehensive framework that will serve as a model for future FTAs between the United States and Africa.

Progress in the Negotiations

To date, the Administration has held six rounds of formal negotiations with the SACU governments, in which negotiators have exchanged information on each government's respective trade policies and regimes, held detailed discussions on the full range of FTA issues, and submitted texts covering most negotiating areas. Over recent months, the Administration has been working with SACU to reaffirm a common vision of the FTA's scope and ambition. The Administration has underscored the need for a comprehensive FTA that covers all key areas, including investment, intellectual property rights, government procurement, labor, and the environment.

In December 2004, SACU ministers agreed to establish a deputy-level group that will provide political-level guidance to resolve problems and address deadlocks as the negotiations move forward. The group will also establish a timeframe for completing the negotiations and a schedule for future rounds.

A TPA extension will provide the time and negotiating leverage that the Administration needs to conclude a high quality agreement that is consistent with TPA negotiating objectives.

Objectives in Conjunction with the Negotiations

- *Technical Assistance:* The Administration is providing trade capacity building and technical assistance to SACU countries to support the FTA negotiations and facilitate future United States – SACU trade and investment relations.

- *Labor Rights*: During the negotiations, the Administration has taken steps to help SACU countries better respect the rights of workers and children. With funding provided by the U.S. Department of Labor, the ILO has begun a program to increase the capacity of SACU country labor ministries to enforce domestic labor laws. The Administration will continue to engage with the SACU governments regarding the coverage of internationally recognized labor rights in their domestic labor laws, and seek needed improvements in that coverage during the course of the negotiations.

- *Environmental Cooperation:* The Administration has hosted a roundtable for SACU environment officials to learn more about the structure of environmental laws and enforcement capabilities in the SACU countries and to discuss environmental cooperation priorities. The Administration is seeking to put in place an environmental cooperation mechanism with SACU countries as an adjunct to the FTA.

ANNEX 2

CHAPTER-BY-CHAPTER SUMMARY OF EACH FTA THAT HAS BEEN CONCLUDED UNDER TPA

UNITED STATES – AUSTRALIA FREE TRADE AGREEMENT

Summary of the Agreement

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

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Australia are party. Chapter One also includes definitions of certain terms that recur in various chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

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

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties. Duties on virtually all tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including in some cases the application of preferential tariff-rate quotas (TRQs). Annex 2-B (General Notes to the U.S. Tariff Schedule) includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Australia.

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

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In

addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Pharmaceuticals. The Parties affirm their commitment to several basic principles related to their shared objective of facilitating high quality health care and improvements in public health. These principles are: (1) the important role played by innovative pharmaceutical products in delivering high quality health care; (2) the importance of research and development in the pharmaceutical industry and of appropriate government support, including through intellectual property protection and other policies; (3) the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious, and accountable procedures, without impeding a Party's ability to apply appropriate standards of quality, safety, and efficacy; and (4) the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical. When a Party takes the latter approach, it will ensure that its respective federal health care authorities maintain prompt and transparent procedures for listing pharmaceutical products for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under its federal health care programs.

Government procurement of pharmaceuticals by each Party is covered under Chapter Fifteen (Government Procurement) rather than under the pharmaceutical-specific provisions of the Agreement. Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under its Pharmaceutical Benefits Scheme, including access to an independent review process for listing decisions. The Parties also will establish a Medicines Working Group, consisting of officials from their federal health agencies, to promote discussion and understanding of pharmaceutical issues. Finally, each Party confirms that it will allow pharmaceutical manufacturers to publish certain information regarding their products on the Internet.

Chapter Three: Agriculture

Chapter Three sets out various provisions governing trade in agricultural goods between the Parties.

Cooperation. Chapter Three provides that the Parties will work together in WTO agriculture negotiations to: (1) improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) develop disciplines eliminating state trading enterprises' monopoly export rights; and (4) substantially reduce trade-distorting domestic support. In addition, the Parties will establish a Committee on Agriculture that will meet at least once each year to promote trade, address barriers to bilateral trade in agricultural goods, and oversee implementation of this Chapter.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 3.3, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third

country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three establishes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. The United States will apply safeguard measures (in the form of additional duties) according to Annex 3-A. Annex 3-A contains three distinct safeguard mechanisms: (1) a price-based safeguard for certain horticultural goods; (2) a quantity-based safeguard for certain beef goods (available in years 9 through 18 of the Agreement); and (3) a price-based safeguard for certain beef goods (available starting in year 19 of the Agreement). The United States has the discretion to forego imposing the beef safeguard measures.

The price-based horticultural safeguard consists of a schedule of eligible horticultural goods and their respective "trigger" prices, as well as a methodology for determining the amount of an additional safeguard duty. The U.S. horticulture schedule includes goods such as dried onion and garlic, canned fruit, processed tomato products, and various juices. In years 9 through 18 of the Agreement, the United States will impose a quantity-based safeguard measure on certain beef imports when such imports exceed an established volume "trigger". The safeguard measure will remain in force until the end of the calendar year in which the measure applies. Starting in year 19 of the Agreement, the U.S. will impose a price-based safeguard on certain beef imports when the U.S. monthly average index price for beef falls below a trigger price that is calculated at 6.5 percent less than the average of the previous 24 monthly average index prices.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard under either Chapter Nine (Safeguards) of this Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

Additional Provisions. Chapter Three contains certain additional provisions designed to facilitate trade in agricultural goods. One such provision concerns the administration of TRQs. If an importing Party believes that an exporting Party has increased its imports of an agricultural good from a third country, thereby increasing its exports of a good subject to a TRQ administered by the importing Party, the exporting Party must immediately consult upon request to remedy the situation. A second provision relates to market access for dairy goods, establishing that, following year 20 of the Agreement, either Party may request consultations with the other Party to consider modifying market access commitments for dairy goods set out in Annex 2-B. The market access commitments on dairy can only be modified if both Parties agree to do so.

Chapter Four: Textiles and Apparel

Chapter Four sets out provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Safeguard Actions. Under Chapter Two (National Treatment and Market Access for Goods), duties on all "originating" textile and apparel goods traded between the two countries will be eliminated either immediately or progressively, once the Agreement takes effect. To deal with emergency conditions resulting from such duty elimination or reduction, the Agreement includes a "safeguard" provision that permits the importing country temporarily to re-impose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to two years (with the possibility of a two-year extension) for a period of ten years after duties on a good are eliminated under the Agreement.

While a Party may normally impose a safeguard action only after its authorities have determined that there is serious damage (or a threat of serious damage), in circumstances where delay would cause damage to a domestic industry that would be difficult to repair, a Party temporarily may impose a safeguard action, based on a preliminary determination that there is clear evidence that imports from the exporting Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports are causing serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good. Temporary relief may remain in effect for a maximum of 200 days. The duration of temporary relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter. A Party imposing a safeguard action must provide the other Party with mutually agreed compensation in the form of trade concessions that have substantially equivalent value to the increased duties caused by the action. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from the action.

Rules of Origin and Related Matters. Chapter Four includes special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

The annex to Chapter Four includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 4-A.

Customs Cooperation. Chapter Four also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. A Party may respond to circumvention and actions that impede a Party from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods, or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the article.

Chapter Five: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Four (Textiles and Apparel) and Five and Annexes 4-A and 5-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the two Parties' territories.

Key Concepts. Chapter Five provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both of the Parties; (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapters Four and Five, including their annexes; or

- When the good is produced in one or both countries entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods

specified in Annex 5-A, however, must be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. Chapter Five also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Consultations. Chapter Five calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Parties must meet within six months of the Agreement's entry into force to discuss the Chapter's implementation and application. They also must consult regularly to discuss possible amendments to the Chapter and Annex 5-A.

Chapter Six: Customs Administration

Chapter Six establishes rules designed to encourage transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Australia will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet or in print form and, where possible, solicit public comments before amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party, regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Six also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Seven: Sanitary and Phytosanitary Measures

Chapter Seven defines the Parties' obligations to one another regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Seven, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The Committee's mandate includes: (1) enhancing each Party's implementation of the SPS Agreement; (2) consulting on SPS matters that may affect trade between the Parties; and (3) consulting on issues, agendas and positions for meetings of certain international organizations. The Parties also will establish a standing working group on animal and plant health measures to facilitate trade by resolving specific SPS issues. Upon the request of a Party, the working group will develop "work plans" for technical and scientific matters relating to animal and plant health and the Parties' trade and regulatory objectives.

Dispute Settlement. Neither Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Seven. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

Chapter Eight: Technical Barriers to Trade

Under Chapter Eight, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

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

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Eight, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Eight sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Eight provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Eight further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Eight contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; (4) accept and respond in writing to comments on regulatory proposals; and (5) provide information to regional (*i.e.*, state governments) to encourage their adherence to the Chapter, as appropriate.

Chapter Nine: Safeguards

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

Chapter Nine authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a safeguard measure may be applied only during the Agreement's "transition period" (or as provided in Annex 2-B) for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. For customs duties that are applied to a good on a seasonal basis, the increase in the duty may not exceed the lesser of: (1) the level of the MFN/NTR duty rate in effect on the day immediately before the Agreement enters into effect; or (2) the MFN/NTR duty in effect for the immediately preceding season. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The duration of provisional relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter Nine incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Nine requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter Nine maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from the other Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not impose a safeguard measure under Chapter Nine more than once on any good. Special safeguard provisions for certain agricultural goods are set out in Chapter Three (Agriculture) and for textile and apparel goods in Chapter Four (Textiles and Apparel).

Chapter Ten: Cross-Border Trade in Services

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

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

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

Chapter Ten should be read together with Chapter Eleven (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border.

General Principles. Among Chapter Ten's core obligations are requirements to provide national treatment and most-favored-nation (MFN) treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from

requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Ten applies across virtually all services sectors. The Chapter excludes financial services, except that certain provisions of Chapter Ten apply to investments in unregulated financial services that are covered by Chapter Eleven (Investment). In addition, Chapter Ten does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

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

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

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

Chapter Eleven: Investment

Chapter Eleven establishes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contains several innovations that were incorporated in the free trade agreements (FTAs) with Chile and Singapore.

Key Concepts. Under Chapter Eleven, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both

U.S. and Australian nationals as well as firms (including branches) established in one of the Parties.

General Principles. Chapter Eleven provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) a "minimum standard of treatment" in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from "performance requirements"; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Thirteen), Chapter Eleven generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, MFN status, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make measures more restrictive.

Investor-State Disputes. In light of the unique circumstances of the Australian legal system, Chapter Eleven does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Among other things, Australia has an open economic environment and a legal system similar to that of the United States, U.S. investors have confidence in the fairness and integrity of Australia's legal system, and the United States has a long history of close commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions. There are few other countries in the world that are in similar circumstances.

If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving the dispute. In addition, nothing precludes an aggrieved Party from using the dispute settlement procedures provided under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). Finally, an investor or an investment of a Party may submit to arbitration a claim against the other Party, to the extent allowed by the other Party's law.

Chapter Twelve: Telecommunications

Chapter Twelve includes disciplines beyond those imposed under Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Australia. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public

telecommunications networks in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Twelve also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Twelve, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of what are commonly known as "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Australian regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Twelve establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Australia must ensure that its public phone companies do not provide preferential access to Australian banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers," *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

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

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Consultative Mechanisms. The Parties will establish a consultative process for discussing telecommunications and information technology issues.

Chapter Thirteen: Financial Services

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

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

General Principles. Chapter Thirteen's core obligations parallel those in Chapters Ten (Cross-Border Trade in Services) and Eleven (Investment). Specifically, Chapter Thirteen imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis.

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

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

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

Chapter Fourteen: Competition-Related Matters

Recognizing that anticompetitive business conduct has the potential to restrict bilateral trade and investment, Chapter Fourteen calls for each government to proscribe such conduct. The Chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering state enterprises. Chapter Fourteen also contains provisions facilitating cooperation on cross-border consumer protection and the recognition and enforcement of certain monetary judgments obtained by each Party's relevant enforcement agencies.

Competition Laws. Chapter Fourteen requires each Party to adopt or maintain measures prohibiting anticompetitive business conduct and to take appropriate action with respect to such conduct. It also requires each Party to maintain authorities responsible for enforcing their national competition laws. Chapter Fourteen affirms that the enforcement policy of each Party's national competition authority does not discriminate on the basis of nationality. It also obligates the Parties to provide certain procedural protections for persons facing enforcement actions. Each Party will ensure that persons subject to sanctions or remedies for competition law violations will be provided a right to be heard and to present evidence, and to seek review by a court or independent tribunal.

Designated Monopolies. There are specific rules governing instances in which a Party gives a private or national government-owned entity the monopoly right to provide or purchase a good or service. In particular, the Party must ensure that the entity: (1) abides by the Party's obligations under the Agreement wherever it exercises authority delegated to it by the government in connection with the monopoly good or service; (2) purchases or sells the monopoly product in a manner consistent with commercial considerations; (3) does not discriminate against the other Party's investments, goods or service suppliers in the purchase or sale of the monopoly product; and (4) does not engage in anticompetitive practices in markets outside its monopoly mandate that harm the other Party's investments.

State Enterprises. Chapter Fourteen sets forth obligations regarding the Parties' responsibilities for "state enterprises," *i.e.*, enterprises owned or controlled by any level of government of a Party. Each Party must ensure that its state enterprises accord non-discriminatory treatment in

the sale of their products to the other Party's companies. In addition, the United States will ensure that sub-federal state enterprises are not exempt from U.S. antitrust laws solely by virtue of their status as sub-federal enterprises, unless protected by the State Action Doctrine. For its part, Australia will take reasonable measures to ensure that its sub-federal governments do not provide a competitive advantage to government businesses simply because they are government-owned.

Cooperation and Consultations. Chapter Fourteen provides for bilateral cooperation in relation to the enforcement of competition laws and policy. In addition, the Parties will strengthen their cooperation and coordination among their respective consumer protection agencies.

Recognition of Monetary Judgments. Chapter Fourteen contains provisions supporting the mutual recognition and enforcement of monetary judgments obtained by the Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Australia's Securities and Investments Commission and Competition and Consumer Commission to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

Dispute Settlement. Many of the Chapter's provisions are not subject to the Agreement's dispute settlement procedures, including the provisions requiring a Party to adopt and enforce measures prohibiting anticompetitive business conduct and the provisions governing cooperation and consultations. The Chapter's rules addressing designated monopolies and state enterprises, however, may be enforced through the Agreement's State-to-State dispute settlement mechanism.

Chapter Fifteen: Government Procurement

Chapter Fifteen provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. While Australia is not a party to the WTO Agreement on Government Procurement, the rules of Chapter Fifteen are broadly based on WTO procurement rules.

General Principles. Chapter Fifteen establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other country in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Fifteen also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Fifteen applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. The Chapter applies to procurements by listed "central" (*i.e.*, Australian Commonwealth or U.S. Federal) government agencies of goods and services valued at US$58,550 or more and construction services valued at

US$6,725,000 or more. The equivalent thresholds for purchases by "sub-central" government entities (*i.e.*, Australian state and territory government agencies and U.S. state government agencies) are US$477,000 and US$6,725,000, for goods and services and construction services, respectively. The Chapter's thresholds for listed "government enterprises" are either US$292,751 or US$538,000 for goods and services, and US$6,725,000 for construction services. All thresholds are subject to adjustment for inflation.

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

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

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

Additional Provisions. Chapter Fifteen is designed to provide integrity in each Party's procurement practices, including by requiring the Parties to maintain laws that make bribery of procurement officials a criminal or administrative offense. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor. Finally, the Parties agree to jointly promote liberalization of government procurement markets in the context of the WTO and Asia Pacific Economic Cooperation (APEC) forum.

Chapter Sixteen: Electronic Commerce

Chapter Sixteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Sixteen provides that a Party may not impose customs duties on digital products of the other Party regardless of whether they are fixed on a carrier medium or transmitted electronically.

Non-Discrimination. Chapter Sixteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. Thus, a Party may not discriminate against electronically transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten and Eleven or to the extent they are inconsistent with Chapter Seventeen.

Additional Provisions. Chapter Sixteen contains additional provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration. This Chapter is the first to contain these new initiatives related to electronic commerce.

Chapter Seventeen: Intellectual Property

Chapter Seventeen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. The Parties affirm that they have ratified or acceded to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. Australia will also ratify or accede to the WIPO Internet treaties (consisting of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty). The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Seventeen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against

infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Seventeen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Seventeen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Seventeen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Seventeen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Seventeen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Seventeen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining

damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

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

Transition Periods. All obligations in the Chapter take effect upon the Agreement's entry into force, with the exception of copyright anti-circumvention provisions that are subject to a two-year transition.

Chapter Eighteen: Labor

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

General Principles. Under Chapter Eighteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the Chapter. Each Party also must strive to ensure it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective labor law enforcement, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Eighteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health.

The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws. Since Australia's states and territories share responsibility with the Commonwealth government with respect to the rights and principles set out in the Chapter, Australia's commitment covers laws enacted by the Commonwealth and the states and territories.

Dispute Settlement. Chapter Eighteen provides for consultations if a Party believes that the other Party is not complying with the commitments in this Chapter. If the matter concerns a Party's compliance with the Chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Eighteen on the same matter cease. In addition, after 60 days of consultations under Chapter Eighteen, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement Chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the Chapter's operation. Each Party will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. Additionally, the Parties agree to cooperate on labor matters of mutual interest and explore ways to further advance labor standards on a bilateral, regional, and multilateral basis.

Chapter Nineteen: Environment

Chapter Nineteen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Nineteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

General Principles. In Chapter Nineteen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. Chapter Nineteen further includes commitments to enhance bilateral cooperation in environmental matters and to provide certain procedural and public awareness guarantees and encourages the Parties to develop voluntary, market-based mechanisms for sustaining high levels of environmental protection.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government. The Australian commitment applies to Commonwealth, state and territory environmental statutes and regulations. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Nineteen provides for consultations to resolve disputes. If the matter concerns a Party's compliance with the Chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under this Chapter or Chapter Twenty-One (Institutional Arrangements and Dispute Settlement). If a Party chooses to request consultations under Article 21.5, consultations under Chapter Nineteen on the same matter cease. In addition, after 60 days of consultations under Chapter Nineteen, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement Chapter.

Cooperation. Chapter Nineteen includes a commitment by the Parties to cooperate on environmental issues through a joint statement on environmental cooperation. The Joint Committee also may establish a subcommittee to oversee the Chapter's operation. In addition, the Parties will consult on negotiations in the WTO regarding multilateral environmental agreements.

Chapter Twenty: Transparency

Chapter Twenty sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Twenty also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Twenty-One: Institutional Arrangements and Dispute Settlement

Chapter Twenty-One creates a Joint Committee to supervise implementation and the overall operation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

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

complaining government may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which shall attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

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

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

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of

the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

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

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Chapter Twenty-Two: General Provisions and Exceptions

Chapter Twenty-Two sets out general provisions that apply to the entire Agreement with the following exception. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis,* and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Ten (Cross Border Trade in Services), Twelve (Telecommunications), and Sixteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

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

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's

rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises. In cases where a Party provides written information, pursuant to a request or requirement of the Agreement, that the Party believes it could have withheld from disclosure, use of that information is limited.

Corrupt Practices. Under Chapter Twenty-Two, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

Chapter Twenty-Three: Final Provisions

Chapter Twenty-Three provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Three establishes that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. Finally, the Chapter provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.

UNITED STATES – SINGAPORE FREE TRADE AGREEMENT

Summary of the Agreement

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

Chapter 1: Establishment of the Free Trade Area and Definitions

Chapter 1 sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Singapore are party. Chapter 1 also defines certain terms that recur in various chapters of the Agreement.

Chapter 2: National Treatment and Market Access for Goods

Chapter 2 sets out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from the other Party in a non-discriminatory manner, provides for the phase-out of tariffs on "originating goods" (as defined in Chapter 3) traded between the two Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter 2 provides for the elimination of all tariffs on originating goods traded between the Parties. Most tariffs will be eliminated as soon as the Agreement enters into force. The remaining tariffs will be phased out over periods of up to 10 years. The United States has also agreed not to apply its merchandise processing fee on imports of originating goods from Singapore. The chapter also provides that the two Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Temporary Admission. Chapter 2 requires the Parties to provide duty-free temporary admission for certain products without the usual bonding requirement that applies to imports. Such items include professional equipment, goods for display or demonstration, and commercial samples.

Import/Export Restrictions, Fees, and Formalities. Chapter 2 also prohibits the Parties from imposing export and import price requirements, import licensing conditioned on performance requirements, and voluntary export restraints inconsistent with the WTO General Agreement on Tariffs and Trade 1994 (GATT). In addition, it limits all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered.

Specific Barriers. Singapore will: 1) harmonize its excise taxes on imports of distilled spirits by 2005; 2) allow imports of chewing gum with therapeutic value; and 3) eliminate its ban on imports of satellite dishes.

Apparel. Chapter 2 calls for the United States to provide tariff preferences during the first nine years that the Agreement is in force for specific amounts of certain non-originating apparel from Singapore. These "tariff preference levels" (TPLs) will apply to a limited quantity of cotton and man-made fiber goods cut and sewn in Singapore using fabric or yarn imported from third countries. In the first year after the TPL provisions take effect, TPL status will apply to 25 million square meters of apparel. This quantity will be reduced each year thereafter. The TPL program will terminate nine years after it first takes effect. The United States will phase out duties on TPL imports in five equal annual increments once the TPL program takes effect, with the U.S. duty rate reduced to zero beginning on the first day of the fifth year.

Chapter 3: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, goods must qualify as "originating goods" under the rules of origin set out in Chapter 3 and three related annexes. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter 3 provides four alternative sets of criteria under which a product will generally qualify as an "originating good:"

- when the good is wholly obtained or produced in the territory of one or both of the Parties (for example, crops grown or minerals extracted in the United States);

- when the good is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or both Parties, the good meets any applicable "regional value content" requirement (see below), and the good satisfies all other requirements of Chapter 3;

- when the good is produced in one or both countries entirely from "originating" materials; or

- for certain medical equipment and information technology products listed in Annex 3B (all of which currently enjoy duty-free access to the U.S. market), when the good is shipped from one Party to the other, regardless of where the good was produced.

Chapter 3 and Annex 3A further clarify that simple combining or packaging operations, or mere dilution with water or another substance that does not change the characteristics of the good, will not confer origin.

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

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

Denial and Correction of Claims. A Party must issue any denials of preferential treatment in writing accompanied by legal and factual findings. Chapter 3 also provides that a Party will not penalize an importer where the importer promptly and voluntarily corrects a claim and pays any duties owed within one year of submission of the claim.

Textile and Apparel Rules of Origin. A textile or apparel product will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties or if there is an applicable change in tariff classification as specified in Annex 3A.

A special de minimis rule applies to certain textile and apparel products. Such products would not ordinarily be considered originating goods because fibers or yarns in their origin-determining components do not undergo an applicable change in tariff classification. Under the special rule, however, the Parties will consider these products to be originating goods if the fibers or yarns in question constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Consultations. Chapter 3 calls for the Parties to work together to ensure the effective and uniform application of the chapter and the two governments may consider modifying Annexes 3A, 3B, and 3C. Either Party may request consultations in which the Parties will consider whether to modify the chapter's textile and apparel rules of origin.

Chapter 4: Customs Administration

Chapter 4 establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter 4 commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures on the Internet or in print form and, where possible, will solicit public comments before amending its customs regulations. Each Party will also provide written advance rulings, on request, to its importers and to exporters of the other Party, regarding whether a product qualifies as an "originating good" under the Agreement as well as on other customs matters. Each Party will also guarantee importers access to both administrative and judicial review of customs decisions. The Parties will also release

goods from customs promptly and apply expedited procedures for clearing express shipments through customs.

Cooperation. Chapter 4 is also designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions calling for the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter 5: Textiles and Apparel

Chapter 5 sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing trade in textile and apparel goods. Chapter 5 seeks to ensure that customs officials will have ample authority to detect, deter, and penalize fraudulent claims for preferential tariff treatment in this sector.

Anti-circumvention. The chapter commits each Party to take necessary and appropriate measures to aggressively enforce its laws related to circumvention of textile and apparel import rules, cooperate in the enforcement of the other Party's laws related to circumvention, and prevent circumvention.

Monitoring. Singapore will establish and maintain monitoring programs designed to enhance the enforcement of its laws relating to trade in textile and apparel goods. In particular, Singapore will:

- monitor imports, exports, and production of textile and apparel goods in its "free trade zones" (special areas designated for favorable treatment under Singapore law);
- institute a comprehensive system of registration, inspection, recordkeeping, and reporting covering all enterprises that produce textile or apparel goods claimed to be "originating goods" under the Agreement or marked as "products of Singapore," and all enterprises that export such goods to the United States; and
- establish and maintain a program to ensure that goods en route to the United States bear accurate country of origin marking and that the documents accompanying the goods accurately describe the goods.

Cooperation. The Parties will share documents and information relevant to circumvention of their rules governing textile and apparel imports. Each Party will also facilitate efforts by the other Party's law enforcement authorities to gather relevant information, including through site visits under specified conditions.

Enforcement. Chapter 5 commits each Party to investigate vigorously claims of circumvention and, where appropriate, take enforcement action. The chapter commits Singapore to take effective action against enterprises in Singapore that engage in intentional circumvention, including by denying particular exporters or producers permission to ship textile and apparel goods to the United States. If the United States discovers that an enterprise in Singapore is engaged in intentional circumvention, it may temporarily bar imports from the enterprise.

Consultations. Either Party may convene bilateral consultations on circumvention issues. If the United States gives Singapore clear evidence of circumvention and consultations do not yield a mutually satisfactory outcome, the United States may reduce imports from Singapore by up to three times the quantity of the goods involved in the circumvention. The United States may also revoke any preferential treatment afforded the goods involved in the circumvention and temporarily deny entry to goods from the enterprise in question.

Textile Safeguard Actions. Chapter 5 includes a "safeguard" provision to deal with emergency conditions that might result from eliminating tariffs on bilateral trade in textile and apparel goods under the Agreement. The chapter permits the importing country temporarily to suspend duty reductions or to reimpose normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be imposed for up to four years during the first ten years that the Agreement's textile and apparel provisions are in effect.

Effective Date. Chapter 5 provides that the Agreement's textile and apparel provisions, *i.e.*, Chapter 5 and pertinent provisions of other chapters, including Chapters Two (National Treatment and Market Access for Goods) and Three (Rules of Origin), will take effect after the Parties consult and exchange written notices that legislation needed to implement the chapter is in place.

Chapter 6: Technical Barriers to Trade

Chapter 6 seeks to enhance the Parties' implementation of existing WTO rules on technical barriers to trade. It builds on WTO rules to promote bilateral cooperation in the area of technical regulations, standards, and conformity assessment procedures, with a view towards deepening the understanding of each Party's systems.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may occur in the context of development, adoption, and application of voluntary product standards, mandatory product standards, and procedures used to determine whether a particular product meets such standards. The chapter also addresses "conformity assessment," namely the process for determining whether products fulfill the relevant requirements in a Party's technical regulations or standards.

Cooperation and Recognition. Chapter 6 encourages the Parties to exchange information on TBT issues, hold consultations to resolve issues, and use international standards as a basis for technical regulations, standards, and conformity assessment procedures. It also encourages the

Parties to enhance their cooperation in the context of other agreements, including by implementing with respect to each other the first two phases of the Asia Pacific Economic Cooperation (APEC) mutual recognition arrangement for conformity assessment of telecommunications equipment. Each Party will designate a TBT coordinator to work with domestic firms and groups and the other Party's coordinator on enhancing bilateral cooperation.

Working Group on Medical Products. Annex 6A establishes a bilateral medical products working group that will be jointly chaired by the U.S. Food and Drug Administration and Singapore's Health Sciences Authority. The group will provide a forum for cooperation on medical product regulation issues.

Chapter 7: Safeguards

Chapter 7 establishes a bilateral safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The chapter does not affect either government's rights or obligations under the WTO's global safeguard provisions or under other WTO trade remedy rules.

Key Concepts. Chapter 7 authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" product.

Specifics. A safeguard measure may be applied only during the Agreement's ten-year "transition period" for phasing out duties on bilateral trade. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days while its investigation of the matter is underway.

A bilateral safeguard measure may last for an initial period of two years. A Party may extend it for two more years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Chapter 7 incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter 7 requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on compensation, the Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the other Party.

Global Safeguards. Chapter 7 maintains each country's right to take remedial action against imports from all sources under GATT Article XIX and the WTO Agreement on Safeguards,

without providing additional rights or obligations. A Party may not impose a safeguard measure under Chapter 7 more than once on any product, nor may a Party apply Chapter 7 measure to a product that the Party has made subject to a safeguard measure under another provision of the Agreement or under a separate agreement. Special safeguard provisions for textile and apparel products appear in Chapter 5 (Textiles and Apparel).

Chapter 8: Cross-Border Trade in Services

Chapter 8 governs measures affecting cross-border trade in services between the United States and Singapore. Certain of its provisions also apply to measures affecting services investments. The chapter is drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

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

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

Chapter 8 should be read together with Chapter 15 (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter 8 applies where, for example, a service supplier is temporarily present in the United States or Singapore and does not operate through a local investment.

Core Principles. Among the core obligations in Chapter 8 are requirements to provide national treatment and most-favored-nation treatment to service suppliers of the other Party. Thus, the chapter requires each Party to treat service suppliers of the other Party no less favorably than its own suppliers. The chapter protects the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The chapter also includes a rule prohibiting the Parties from requiring firms to establish a local presence before they can supply a service. In addition, the chapter seeks to remove market access barriers by barring certain types of restrictions on the supply of services (*e.g.*, rules limiting the number of firms that may offer a particular service or restricting or requiring specific types of legal structures or joint ventures with local companies in order to supply a service). The chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter 8 applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of

Chapter 8 apply to investments in unregulated financial services that are covered by Chapter 15 (Investment). In addition, Chapter 8 does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

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

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter 8. The transparency rules apply to the development and application of regulations governing services. The chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment.

Exclusions. Chapter 8 excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter 8 also does not generally apply to government subsidies, although Singapore has undertaken a commitment relating to cross-subsidization of certain express delivery services.

Chapter 9: Telecommunications

Chapter 9 creates disciplines beyond those imposed under Chapters 8 (Cross-Border Trade in Services) and 15 (Investment) on regulatory measures affecting telecommunications trade and investment between the United States and Singapore. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party.

Chapter 9 also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality. Finally, the Chapter 9 improves on work undertaken in the WTO on trade in telecommunications services, where Singapore has committed only to allow only three foreign suppliers to participate in a limited set of its telecommunications markets.

Key Concepts. Under Chapter 9, the term "public telecommunications network" covers the infrastructure used to provide public telecommunications services between defined endpoints. A "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Both the U.S. and Singapore regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter 9 establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Singapore must ensure that its public phone companies do not provide preferential access to Singapore banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers" – *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

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

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Privatization. In a letter from Singapore's trade minister signed along with the Agreement, Singapore has committed to establish a plan to divest its majority interest in Singapore's two leading telecommunications firms.

Chapter 10: Financial Services

Chapter 10 provides rules governing each Party's treatment of: 1) financial institutions of the other Party, 2) investors of the other Party, and their investments, in financial institutions, and 3) cross-border trade in financial services.

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

General Principles. Chapter 10's core obligations parallel those in Chapter 8 (Cross-Border Trade in Services) and 15 (Investment). Thus, Chapter 10 imposes rules requiring national treatment and most-favored-nation treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and to services companies that are currently supplying and that seek to supply financial services from one Party's territory to the other's.

Non-Conforming Measures. Similar to Chapters 8 and 15, each Party has listed in an annex to Chapter 10 particular financial services measures for which it negotiated exemptions from the chapter's core obligations. All existing U.S. state and local laws and regulations are exempted from these obligations. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Other Provisions. Chapter 10 also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to other Chapters. Measures that a Party applies to financial services suppliers of the other Party – other than regulated financial institutions – that make or operate investments in the Party's territory are covered principally by Chapter 8 and certain provisions of Chapter 15. In particular, the core obligations of the investment chapter apply to such measures, as do the market access, transparency, and domestic regulation provisions of the services chapter. Chapter 10 incorporates by reference certain provisions of Chapter 15, such as those relating to transfers and expropriation.

Chapter 11: Temporary Entry of Business Persons

Chapter 11 calls for each government to facilitate the temporary entry into its territory of business persons of the other Party. The Agreement requires each Party to use transparent criteria and procedures in carrying out its temporary entry rules. At the same time, the rules set out in Chapter 11 respect each Party's need to ensure border security and protect its domestic labor force and permanent employment.

Key Concepts. Chapter 11 covers temporary entry only. Its provisions do not apply to measures regarding citizenship, permanent residence, or employment on a permanent basis. An annex to Chapter 11 groups business persons into four categories (business visitors, traders and investors, intra-company transferees, and professionals) and identifies the criteria under which the Parties must grant them temporary entry. Each business person meeting these criteria must also be qualified for entry under the Party's general requirements relating to public health and safety and national security. An annex permits the United States to limit the number of Singaporean professionals entering the United States under the chapter to 5,400 per year. The Parties may require attestations for professionals similar to those required by the United States under the "H-1B" visa program.

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures relating to temporary entry expeditiously. Chapter 11 clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

Other Provisions. Chapter 11 permits recourse to dispute settlement in disputes over a Party's pattern of practice in carrying out its temporary entry commitments, but not for individual denials of entry. Each Party will establish a group of immigration and other pertinent officials, called a "temporary entry coordinator." The two coordinators will exchange information and work together on temporary entry issues of mutual interest. Chapter 11 makes clear that it contains all of the substantive obligations the two Parties have assumed under the Agreement with respect to temporary entry. The chapter does not impose obligations or commitments with respect to subjects covered under other chapters of the Agreement.

Chapter 12: Anticompetitive Business Conduct, Designated Monopolies, and Government Enterprises

Recognizing that anticompetitive practices can restrict bilateral trade and investment, Chapter 12 calls for each government to enact and enforce competition laws and to cooperate on antitrust matters. The chapter also sets out basic procedural safeguards and rules ensuring against harmful conduct by government-designated monopolies as well as special rules covering "government enterprises."

Antitrust Laws. Chapter 12 requires each Party to adopt or maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. In particular, Singapore has committed to enact general antitrust legislation by January 2005. Each Party will take appropriate enforcement action to address anticompetitive business conduct. Chapter 12 also affirms that each Party's antitrust enforcement policy is not to discriminate on the basis of nationality.

Procedural Rights. Chapter 12 guarantees basic procedural rights for firms facing antitrust enforcement actions. Each Party will provide such firms a right to be heard and to present evidence before imposing a sanction or remedy, and will ensure that any sanctions or remedies are subject to review by a court or independent tribunal.

Designated Monopolies. Under Chapter 12, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does not discriminate against the other Party's goods or service suppliers, and does not use its monopoly position to engage in anticompetitive practices in markets outside its monopoly mandate.

Government Enterprises. Chapter 12 sets out obligations regarding each Party's responsibilities for "government enterprises." For the United States, this term means companies that the government owns or controls. For Singapore, the term encompasses firms in which the government of Singapore has "effective influence."

Singapore will ensure that its government enterprises act in accordance with commercial considerations, provide non-discriminatory treatment to U.S. goods and services suppliers, and refrain from entering into anticompetitive agreements among competitors or engaging in exclusionary practices that reduce competition to the detriment of consumers.
Singapore will publish an annual report detailing its ownership and control of larger government enterprises, and will provide the same information for enterprises of any size upon U.S. request. Singapore will not exercise influence over its government enterprises except in a manner consistent with the Agreement, and will continue to reduce its aggregate ownership and other interests in these enterprises.

For its part, the United States will ensure that its government enterprises accord non-discriminatory treatment in their sales of goods and services to Singaporean companies.

Cooperation and Consultations. Chapter 12 provides for cooperation between the Parties on competition law and policy developments and furthers transparency by providing for the exchange of publicly available information on antitrust enforcement and on designated monopolies and government enterprises. Each Party may also request consultations to discuss specific issues. Where pertinent in such consultations, Singapore will provide information regarding the steps it plans to take or has taken to address anticompetitive conduct by a government enterprise.

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

Chapter 13: Government Procurement

Chapter 13 establishes obligations with respect to government purchases that extend beyond those the Parties have undertaken under the WTO Agreement on Government Procurement (GPA), in such areas as thresholds, scope and coverage, and procedures for withdrawing entities from coverage under the chapter when a government's control or influence over them has been eliminated. The chapter also includes many of the fundamental disciplines of the GPA, such as comprehensive rules prohibiting each government from discriminating in its purchasing practices against products, services, and suppliers from the other country and requiring each Party to apply fair and transparent procurement procedures.

General Principles. The chapter incorporates by reference major portions of the GPA, including its basic rules on non-discrimination and procedural fairness and transparency. The chapter also commits the Parties to cooperate in the ongoing review of the GPA, on procurement matters in APEC, and in WTO negotiations of an agreement on transparency in government procurement.

Coverage and Thresholds. Chapter 13 covers purchases above certain dollar thresholds by government departments and entities that each Party has listed in its relevant GPA schedules. The chapter applies to central (federal) government procurements of goods and services valued at $56,190 or more and construction services valued at $6,481,000 or more. The chapter also applies to certain purchases by 37 state governments listed in the U.S. GPA schedule, namely, procurements of goods and services valued at $460,000 or more and construction services of $6,481,000 or more. For government enterprises subject to the Parties' commitments under the GPA, the chapter's thresholds are set at either $250,000 or $518,000 for goods and services, and $6,481,000 for construction services.

Nondiscrimination. Chapter 13 incorporates the GPA's basic rule of "national treatment," meaning that each Party's procurement rules must treat goods, services, and suppliers from the other country in a manner that is "no less favorable" than it treats their domestic counterparts. Chapter 13 also applies GPA rules that bar discrimination against locally established suppliers on the basis of foreign affiliation or ownership. The chapter also incorporates the GPA bar against "offsets," such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

Transparency. Chapter 13 also brings in GPA rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance.

Tendering Rules. Chapter 13 incorporates GPA rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. GPA rules incorporated into Chapter 13 also provide that procuring entities may not write technical specifications to favor a particular supplier, good, or service.

Award Rules. The GPA provisions made part of Chapter 13 require that to be considered for award a tender must be made in writing and submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract.

Digital Products. In addition to products that each Party has committed to make subject to the GPA, Chapter 13 covers each government's purchases of electronically transmitted "digital products" of the other Party.

Changes in Coverage. The Chapter 13 includes streamlined procedures under which either Party may remove from the chapter's disciplines government entities that a Party has privatized.

Chapter 14: Electronic Commerce

Chapter 14 establishes rules designed to prohibit duties on, and discriminatory regulation of, electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The chapter represents the first U.S. agreement on this subject with a country in the Asia-Pacific region and a major advance over previous understandings on this subject.

Customs Duties. Chapter 14 provides that a Party may not impose customs duties on digital products that are transmitted electronically. Each Party must assess the customs value (and any applicable tariffs) on the medium rather than the content of any digital products imported on a physical medium, such as a compact disc (*i.e.*, on the value of the disc rather than that of the information it contains)

Non-Discrimination. Chapter 14 requires the Parties to apply principles of non-discrimination to trade in electronically transmitted digital products so that they benefit from the same sorts of principles that govern trade in goods and services. Thus, for example, each Party must refrain from discriminating against electronically transmitted digital products on the ground that they have a nexus to the other country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to the other Party than it gives to like digital products that have a nexus to a third country.

Chapter 15: Investment

Chapter 15 establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment treaties) and in customary international law, and contain several innovative provisions.

Key Concepts. Under Chapter 15, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, concessions, and contracts. It includes both existing and future investments. The term "investor of a Party" encompasses both U.S. and Singaporean nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections under Part B of Chapter 15: non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; freedom from "performance requirements;" free transfer of funds related to an investment; protection from expropriation other than in conformity with customary international law; a "minimum standard of treatment" in conformity with customary international law; and the ability to hire key managerial and technical personnel without regard to nationality.

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter 10), Chapter 15 generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the chapter particular sectors or measures for which it negotiated an exemption from the chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. Once a Party liberalizes a measure that it has exempted, however, it must thereafter maintain the measure at least at that level of openness.

Investor-State Disputes. Chapter 15 provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Part B of Chapter 15 or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment.

Innovative provisions afford public access to information on Chapter 15 investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter 15 requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims. A special annex addressing investor-State procedures provides Singapore limited policy flexibility with respect to certain capital flows it may consider disruptive.

Chapter 16: Intellectual Property Rights

Chapter 16 complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights.

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

Trademarks and Geographical Indications. Chapter 16 imposes rules with respect to the registration of collective, certification, and sound marks, as well as geographical indications and scent marks. The chapter also imposes rules for domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy. Each Party must provide full protection for trademarks with respect to later geographical indications by providing a "first-in-time, first-in-right" rule for trademarks.

Copyrights and Related Rights. Chapter 16 articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the WIPO Internet Treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies — an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter 16 requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter 16 sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

Recognizing the importance of satellite broadcasts, Chapter 16 ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, rather than solely to the content contained in the signals.

Patents and Trade Secrets. Chapter 16 requires patent term extensions to compensate for unreasonable administrative or regulatory delays (including for marketing approval) that occur while granting the patent. The chapter also protects against imports of pharmaceutical products without the patent-holder's consent by allowing lawsuits when contracts are breached. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to

the grounds that would have justified a refusal to grant the patent. The chapter also limits the exceptions to patent protection. In addition, Chapter 16 offers protection against unfair commercial use of test data that a company submits in seeking marketing approval for certain regulated products. It precludes other firms from relying on the data for specific periods – five years for pharmaceuticals and ten years for agricultural chemicals.

Enforcement Provisions. Chapter 16 imposes obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The chapter also provides for damages fixed in advance (i.e., "statutory damages"), at the option of the right holder. Such pre-established damages help to deter piracy by ensuring an appropriate remedy in cases where, for instance, information on actual damages is inadequate.

Chapter 16 provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter 16 also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods – including those in transit – without waiting for a formal complaint. Chapter 16 provides that each Party must make counterfeiting and piracy subject to criminal penalties. In addition, the chapter specifically requires Singapore to implement rules that will prohibit the production of optical discs (*e.g.*, CDs, DVDs, or software) without source identification codes, unless the copyright holder authorizes the production.

Transition Periods. The chapter takes effect six months after the Agreement enters into force, with short additional transition periods for certain provisions.

Chapter 17: Labor

Chapter 17 sets out the Parties' commitments and undertakings regarding trade-related labor rights. It draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Jordan Free Trade Agreement.

General Principles. Under Chapter 17, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its domestic law recognizes and protects the fundamental labor principles spelled out in the ILO declaration and listed in the chapter. Each Party must also strive to ensure it does not derogate from or waive the protections of its domestic labor laws to encourage trade with or investment from the other Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws.

Effective Enforcement. Chapter 17 commits each Party not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting bilateral trade. The chapter defines

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

Dispute Settlement. Chapter 17 provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may choose to pursue consultations under the labor chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the labor chapter, the Parties may agree to refer the matter directly to the Agreement's ministerial-level Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Each Party will designate a contact point for communications with the other Party and the public regarding the chapter. An annex creates a mechanism for ongoing labor cooperation focusing on the improvement of labor standards, particularly those in the 1998 ILO declaration, and the elimination of the worst forms of child labor.

Chapter 18: Environment

Chapter 18 establishes the Parties' commitments and undertakings regarding environmental protection, and includes several key provisions that parallel those in the Agreement's labor chapter. Chapter 18 draws on, but does not replicate, the North American Agreement on Environmental Cooperation and the environmental provisions United States-Jordan Free Trade Agreement.

Like the labor chapter, Chapter 18 includes a commitment on effective law enforcement. It also includes commitments to establish high levels of environmental protection and to strive not to weaken or reduce environmental laws to encourage bilateral trade or investment. It also includes commitments to enhance bilateral cooperation in environmental matters.

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

Effective Enforcement. Chapter 18 commits each Party not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The U.S. commitments apply to federal environmental statutes and regulations enforceable in the first

instance by the federal government. At the same time, the chapter recognizes the right of each Party to establish its own environmental laws, exercise discretion in regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter 18 provides for cooperative consultations. If the matter concerns a Party's compliance with the chapter's environmental law enforcement provision, the complaining Party may choose to pursue consultations under the environment chapter or Chapter 20 (Administration and Dispute Settlement). After 60 days of consultations under the environment chapter, the Parties may agree to refer the matter directly to the Joint Committee for resolution under the dispute settlement chapter.

Cooperation. The Joint Committee may establish a subcommittee to oversee the chapter's implementation. Chapter 18 also includes a commitment to pursue cooperative environmental activities under a bilateral memorandum of intent and includes a recognition of the importance of ongoing environmental cooperation outside the Agreement. The Parties will consult on the outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter 19: Transparency

Chapter 19 sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that to the extent possible each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must ensure reasonable notice of regulatory proceedings and the opportunity to present facts and arguments. Chapter 19 also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter 20: Administration and Dispute Settlement

Chapter 20 creates a Joint Committee to supervise implementation of the Agreement, assist in the resolution of any disputes that may arise under the Agreement, and consider and adopt amendments to the Agreement. The Committee will be chaired by each government's trade minister and will convene at least once a year.

Chapter 20 also sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other trade agreements (*e.g.*, the WTO agreements), the complaining government may choose the forum for resolving the matter.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. If the Parties cannot resolve the matter through consultations within 60 days, a Party may request a meeting of the Joint Committee.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations.

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

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

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

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

Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for labor and environmental initiatives. If the defending Party fails to pay an assessment or to establish an escrow for paying such an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

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

Chapter 21: General and Final Provisions

Chapter 21 sets out general provisions that apply to all or large portions of the Agreement. For example, it incorporates the general exceptions set forth in Article XX of the GATT and Article XIV of the GATS for various chapters. It also sets the terms for the Agreement's entry into force and termination.

Essential Security. Chapter 21 allows each Party to take actions it considers necessary to protect its essential security interests.

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

Disclosure of Information. The chapter also provides that a Party may withhold information from the other where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Corrupt Practices. Under Chapter 21, the Parties pledge to continue to combat bribery and corruption in international business transactions, to work together on anti-corruption issues, and to support relevant initiatives in international fora.

General Provisions. Chapter 21 provides that the annexes are part of the Agreement and that the Parties may amend the Agreement subject to applicable domestic procedures. The chapter also provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.

UNITED STATES – MOROCCO FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Morocco Free Trade Agreement.

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which both the United States and Morocco are party. They also provide that, with certain exceptions, the dispute settlement provisions of the *Treaty Between the United States of America and the Kingdom of Morocco Concerning the Encouragement and Reciprocal Protection of Investments*, signed by the Parties in 1985, will be suspended on the date of entry into force of the Agreement. Chapter One also includes definitions of certain terms that recur in various Chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

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

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties. The Agreement is comprehensive, containing U.S. and Moroccan commitments on all tariffs. Duties on 95 percent of bilateral trade in industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other such goods will be phased out over periods of up to 10 years. Some sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). Annex IV of the Agreement includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods.

Annex IV also contains a provision that ensures that U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products will enjoy a degree of access to Morocco's market that is at least as favorable as that Morocco affords other of its trading partners. This provision will ensure that U.S. exporters of agricultural products will be able to compete with European and other countries in Morocco's market. Chapter Two also provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

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

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade (GATT) 1994 and specifies that these include: (1) export and import price requirements (except under antidumping and countervailing duty orders); (2) import licensing conditioned on the fulfillment of a performance requirement; and (3) voluntary export restraints inconsistent with Article VI of GATT 1994. In addition, a Party must limit fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered, in accordance with Article VIII of GATT 1994.

Chapter Three: Agriculture and Sanitary and Phytosanitary Measures

Chapter Three sets out various provisions governing trade in agricultural goods and the Parties' observance of WTO rules on sanitary and phytosanitary (SPS) measures.

Tariff-Rate Quotas. Chapter Three contains disciplines regarding the administration and implementation of TRQs for agricultural goods. Those disciplines require the Parties to implement and administer the TRQs in accordance with Article XIII of GATT 1994 and the WTO Agreement on Import Licensing Procedures. They must also ensure that: (1) administration procedures are transparent, publicly available, timely, non-discriminatory, responsive to market conditions, and minimally burdensome to trade; (2) anyone who fulfills a Party's requirements is eligible to apply and be considered for an allocation under that Party's TRQs; (3) no portion of an in-quota quantity is allocated to producer groups or other non-governmental organizations (NGOs) (with certain exceptions for Morocco's wheat TRQ); (4) only government entities administer each Party's TRQs and the Parties do not delegate TRQ administration to producer groups or other NGOs; and (5) in-quota quantities are allocated in commercially viable shipping quantities. Furthermore, a Party must make every effort to administer its TRQs in a manner that allows importers to fully utilize them; may not condition application for, or use of, an import license or allocation under a TRQ on the re-exportation of an agricultural good; and may not count food aid or other non-commercial shipments in determining whether a TRQ in-quota quantity has been filled. Finally, the Agreement provides for consultation, on request of either Party, on administration of TRQs.

Export Subsidies. Chapter Three provides for the Parties to work together toward an agreement in the WTO to eliminate agricultural export subsidies and prevent their reintroduction in any form. The Chapter further provides that neither Party may introduce or maintain export subsidies on agricultural goods destined for the other country, except as provided for in Article 3.3. Under Article 3.3., if the exporting Party believes that a third country is subsidizing its exports to the other Party, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the

importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Export State Trading Enterprises. The Chapter also contains an article regarding export state trading enterprises. The article commits the Parties to work together in WTO negotiations to secure an agreement on export state trading enterprises that: (1) eliminates restrictions on the right to export; (2) eliminates special financing granted directly or indirectly to state trading enterprises that export for sale a significant share of that country's exports of an agricultural good; and (3) ensures greater transparency in the operation and maintenance of export state trading enterprises.

Agricultural Safeguards. Chapter Three establishes safeguard procedures to aid U.S. industries that are facing low-priced imports of certain horticulture products. The United States will apply safeguard measures (in the form of additional duties) according to Annex 3-A. Annex 3-A sets out a schedule (the "U.S. Agricultural Safeguard List") of eligible horticulture products and their respective "trigger" prices, as well as a methodology for determining the amount of the additional safeguard duty. The U.S. Agricultural Safeguard List includes goods such as canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice. Morocco has recourse to other agricultural safeguard mechanisms as set forth in Annex 3-A ("Schedule of Morocco").

Neither government may apply an agriculture safeguard measure to a good that is already the subject of a safeguard under either Chapter Eight (Safeguards) of this Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. Neither Party may subject imports of originating goods from the other Party to any duties applied pursuant to Article 5 of the WTO Agreement on Agriculture.

All safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must notify the Party whose good is subject to the measure and, upon request, consult with the other Party concerning the application of the measure.

Additional Provisions. Chapter Three contains certain additional provisions designed to facilitate trade in agricultural goods. One such provision concerns the Parties' desire to establish an Agricultural Trade Forum through the Joint Committee for addressing agricultural trade matters arising under the agriculture section of Chapter Three.

Other provisions in Chapter Three concern SPS measures. In this regard, the Parties: (1) affirm their existing rights and obligations under the WTO SPS Agreement; (2) forego recourse to the Agreement's dispute settlement procedures for any SPS issues arising under the SPS Section of Chapter Three; and (3) affirm their desire to create a forum through the Joint Committee on SPS matters.

Two annexes to Chapter Three contain provisions relating to trade in specific agricultural products. Annex 3-B permits Morocco to establish an import licensing program for high-quality beef from the United States, and establishes disciplines to govern such a program. Annex 3-C

permits Morocco to implement and administer a wheat auction system for in-quota quantities of the TRQs on U.S. wheat, subject to certain disciplines.

Annex 1 to Morocco's General Notes to its tariff schedule provides that in year four of the implementation period, the United States and Morocco will decide whether the in-quota quantities in Morocco's wheat TRQs will be administered after year 5 through an auction or first-come, first served system.

Finally, pursuant to side letters that are part of the Agreement, Morocco: (1) will eliminate its variable tariff system on oilseeds by the date of entry into force of the Agreement; and, (2) with respect to U.S. exports of beef, poultry, and beef and poultry products, will accept FSIS export certificates as the means for certifying compliance with standards on hormones, antibiotics, and other residues.

Chapter Four: Textiles and Apparel

Chapter Four sets out provisions addressing trade in textile and apparel goods, including a "safeguard" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Tariff Elimination. Under Chapter Four, duties on all "originating" textile and apparel goods traded between the two countries will be eliminated after nine years. Tariffs will be eliminated immediately on some goods and, except for certain specific textile and apparel articles, tariffs on the remainder of textile and apparel goods will be phased out progressively. As in Chapter Two (National Treatment and Market Access for Goods), Chapter Four provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

Safeguard Actions. To deal with emergency conditions resulting from such duty elimination or reduction, the Agreement includes a "safeguard" provision that permits the importing country temporarily to re-impose normal trade relations (most-favored-nation) (NTR (MFN)) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Safeguard measures may be applied for up to three years (with the possibility of a two-year extension). A Party may not apply a safeguard measure on a good beyond ten years after the Party must eliminate duties on that good under the Agreement.

A Party applying a safeguard action must provide the other Party with mutually agreed compensation in the form of trade concessions that are substantially equivalent to the increased duties. If the Parties cannot agree on compensation, the exporting Party may raise duties up to NTR (MFN) levels on any goods from the importing Party to achieve trade effects substantially equivalent to the safeguard action.

Rules of Origin and Related Matters. Chapter Four includes special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a rule for treatment of sets, and consultation provisions. The *de*

minimis rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute seven percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Chapter Four also calls for the United States and Morocco to provide "tariff preference levels" (TPLs) for a limited quantity of specific fabric and apparel goods and certain cotton goods from non-Party sources. TPL goods will be accorded preferential tariff treatment as if they were originating goods. For certain fabric and apparel goods, TPL status will apply to 30 million square meters for the first four years of the Agreement, falling to just over four million square meters in the tenth year of the Agreement, after which time TPL status for these goods will not be available. For certain cotton goods, TPL status will apply to slightly more than one million kilograms annually.

The annex to Chapter Four includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 4-A.

Customs Cooperation. Chapter Four also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. An importing Party may respond to circumvention and actions that impede it from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods, or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the chapter's customs cooperation article.

Chapter Five: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Four (Textiles and Apparel) and Five and Annexes 4-A and 5-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms that produce or manufacture goods in the two Parties' territories. They are similar in approach to those included in the U.S.-Israel and U.S.-Jordan free trade agreements.

Key Concepts. Chapter Five provides general criteria under which a good that has been imported directly from the territory of one Party into the territory of the other Party may qualify as an "originating good:"

- When the good is wholly grown, produced, or manufactured in the territory of one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States);

- When the good: (1) is not covered by the rules in Annex 4-A or Annex 5-A; (2) is a "new or different article of commerce" that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of the value of materials produced in the territory of one or both of the Parties and the "direct costs of processing operations" performed in the territory of one or both of the Parties is at least 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

- When the good is covered by the rules in Annex 4-A or Annex 5-A and meets the requirements of the applicable Annex. (Annex 4-A contains specific rules of origin for textile and apparel goods. Annex 5-A contains specific rules of origin on goods such as citrus juices, processed fruits and vegetables including canned olives, dairy products, plastics, ignition wiring sets, and motor vehicle parts.)

The Chapter defines "new or different article of commerce" as "a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed." It defines "direct costs of processing operations" as "those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good." Such costs typically include labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others. They typically do not include profit and general business expenses, such as salaries, insurance, and advertising.

Chapter Five clarifies that a good will not be considered a "new or different article of commerce" merely by virtue of simple combining or packaging operations or mere dilution with water or another substance that does not change the characteristics of the good.

Declarations of Origin. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must submit, on the request of the importing Party's customs authority, a "declaration" providing all pertinent information concerning the growth, production, or manufacture of the good. The Agreement provides that a Party should request a declaration only when it has reason to question whether a claim that particular goods meet the Agreement's origin rules or the Party is conducting a random verification. A Party may only deny preferential treatment in writing, and must provide legal and factual findings.

Consultations. Chapter Five calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Chapter permits the creation of *ad hoc* working groups or subcommittees of the Joint Committee to discuss necessary amendments or revisions. In addition, Article 5.13 provides that, at an appropriate time, "the United States and Morocco will enter into discussions with a view to deciding the extent to which materials that are products of countries in the Middle East or North Africa may be counted for purposes of satisfying the Agreement's origin requirement."

Finally, in a separate agreement set out in a side letter regarding Chapter Five of the FTA, the two governments provide that, for purposes of determining whether a good is a "new or different article of commerce that has been grown, produced, or manufactured" for purposes of Chapter Five, each country is to be guided by the specific rules of tariff classification set forth in section 102.20 of the United States Customs Regulations (19 CFR 102.20).

Chapter Six: Customs Administration

Chapter Six establishes rules designed to facilitate trade through increased transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Morocco will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet and, where possible, solicit public comments before introducing or amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party, regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. Certain provisions relating to customs administration become effective with respect to Morocco no later than two years after the Agreement's entry into force. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties also must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Six also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on standards issues.

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

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

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and specifies that the Office of the U.S. Trade Representative and Morocco's Ministry of Industry will serve as Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment (*i.e.*, testing to determine whether a product or service meets applicable standards) results. Chapter Seven further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Seven contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; and (4) accept and respond in writing to comments on regulatory proposals. These provisions become effective no later than five years after the Agreement's entry into force.

Chapter Eight: Safeguards

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

Chapter Eight authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good until the date that is five years after that Party must eliminate customs duties on that good under Annex IV. A safeguard measure may take one of two forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. For customs duties that are applied to a good on a seasonal basis, the increase in the duty may not exceed the lesser of: (1) the level of the NTR (MFN) duty rate in effect on the day immediately before the Agreement enters into effect; or (2) the NTR (MFN) duty in effect for the immediately preceding season. In "critical circumstances," the importing Party may impose provisional relief for up to 200 days, based on a preliminary determination, while its investigation of the matter is underway. The duration of provisional relief is counted as part of the duration of any safeguard resulting from an investigation under this Chapter.

A bilateral safeguard measure may last for an initial period of three years. A Party may extend it for two additional years if the Party determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

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

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions for certain agricultural goods are set out in Chapter Three (Agriculture and Sanitary and Phytosanitary Measures) and for textile and apparel goods in Chapter Four (Textiles and Apparel).

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. The rules of Chapter Nine are broadly based on WTO procurement rules. (Morocco is not a party to the WTO Agreement on Government Procurement.)

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than their domestic counterparts. The Chapter similarly bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain monetary thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, Moroccan or U.S. federal) government agencies of goods and services valued at US$175,000 or more and construction services valued at US$6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Moroccan prefectural and provincial government agencies and U.S. state government agencies) are US$477,000 and US$6,725,000, for goods and services and construction services, respectively. The Chapter's thresholds for listed "other covered entities" are either US$250,000 or US$538,000 for goods and services, depending on the entity, and US$6,725,000 for construction services. All thresholds are subject to adjustment for inflation.

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

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

Award Rules. Chapter Nine requires that to be considered for award a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers. (Morocco is required to implement one government procurement rule relating to domestic review of supplier challenges no later than one year after the Agreement enters into force.)

Additional Provisions. Chapter Nine is designed to provide integrity in each Party's procurement practices, including by requiring the Parties to adopt and maintain procedures that disqualify suppliers that a Party has determined to have engaged in fraudulent or illegal action in relation to procurement. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against discriminatory and certain other restrictive government actions when they make or attempt to make investments in the other Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement (NAFTA) and U.S. bilateral investment treaties) and in customary international law. It also contains several innovations that were incorporated in the free trade agreements the United States has

negotiated with Australia, the countries of the Central American Free Trade Agreement (CAFTA), Chile, and Singapore.

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

General Principles. Chapter Ten provides six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties (including where a Party takes measures to deal with armed conflict or civil strife in its territory); (2) the "minimum standard of treatment of aliens" in conformity with customary international law; (3) protection from expropriation other than in conformity with customary international law; (4) free transfer of funds related to an investment; (5) freedom from "performance requirements"; and (6) the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority or less of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, MFN treatment, performance requirements, or senior management and boards of directors. All current U.S. state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to pursue a claim against the other Party. The investor may assert that the Party has breached a substantive obligation under Section A of Chapter Ten or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on Chapter Ten investor-State proceedings and ensure proper application of dispute settlement rules. For example, Chapter Ten requires the Parties to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept amicus submissions from the public. The Chapter also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

As noted in connection with summary of Chapter One, with certain exceptions, the dispute settlement provisions of the 1985 bilateral investment treaty between the United States and Morocco will be suspended when the free trade agreement enters into force.

Chapter Eleven: Cross-Border Trade in Services

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

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

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

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, rules that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through local investments.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The Chapter excludes most financial services and air transportation, although it does apply to specialty air services and aircraft repair and maintenance. Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these core obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

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

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority," that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although Morocco has undertaken a commitment relating to cross-subsidization of express delivery services. The Parties have also negotiated an annex regarding the regulation of professional services. Under the annex, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection.

Chapter Twelve: Financial Services

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

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

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of the other Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S.

state and local laws and regulations are exempted from these obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Other Provisions. Chapter Twelve includes provisions on transparency, some of which become effective with respect to Morocco no later than two years after the Agreement's entry into force. It also includes "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

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

Chapter Thirteen: Telecommunications

Chapter Thirteen includes disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the United States and Morocco. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

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

Competition. Chapter Thirteen establishes rules that reflect the common elements of the Parties' laws promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Morocco must ensure that its public phone companies do not provide preferential access to Moroccan banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers," *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

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

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fourteen: Electronic Commerce

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The Chapter contains provisions on electronic commerce similar to those in recent U.S. free trade agreements with Chile, Singapore, and Australia and represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of MFN treatment and national treatment to trade in electronically transmitted digital products. In particular, a Party may not treat digital products less favorably because such digital products: (1) have undergone certain specific activities (*e.g.*, creation, production, first sale) in the territory of the other Party; or (2) are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party treat digital products that have such a nexus to the other Party less favorably than it treats like digital products with such a nexus to a non-Party. The non-discrimination rules do not apply to actions taken in accordance with the non-conforming measures adopted under Chapter Ten (Investment), Eleven (Cross-Border Trade in Services, or Twelve (Financial Services).

Chapter Fifteen: Intellectual Property Rights

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Fifteen provides for both governments to ratify or accede to certain agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants (UPOV Convention), the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms, the Patent Cooperation Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States is already a party to these agreements.

Chapter Fifteen also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions also clarify the coverage of existing subject matter and requirements for publication of all laws, regulations and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Fifteen establishes rules concerning the protection of trademarks and geographical indications. For example, it provides that the owner of a registered trademark shall have the exclusive right to prevent its use in the course of trade for related goods and services by any party not having its consent. It also sets out rules with respect to the registration of trademarks. Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for

works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Fifteen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also confirm the availability of patents for new uses or methods of using a known product. The Chapter requires protection for the right of importation. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires patent term adjustments to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data regarding safety and efficacy that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. It also requires measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and

documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. All obligations in the Chapter take effect upon the Agreement's entry into force, with the exception of the domain name cyber-piracy provisions, which are subject to a one-year transition period, and the provisions limiting the liability of internet service providers, which become effective on January 1, 2006. Morocco will also have until January 1, 2006 to ratify or accede to: (1) the UPOV Convention; (2) the Trademark Law Treaty; and (3) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms.

Chapter Sixteen: Labor

Chapter Sixteen sets out the Parties' commitments regarding trade-related labor rights. As with other recent free trade agreements, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

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

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

The U.S. commitment includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws. Morocco's commitment includes *dahirs*, acts of the Moroccan Parliament, decrees, and administrative regulations.

Cooperation. Each Party may convene a national labor advisory committee, made up of members of its public, including representatives of labor and business organizations, to advise it on the implementation of the Chapter. In addition, each Party will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. As provided for in a side letter, a Subcommittee on Labor Affairs may be established to discuss the operation of Chapter Sixteen and will include the relevant officials from each Party's labor ministries. Meetings of the Subcommittee will normally include a public session.

Finally, the Parties will establish a Labor Cooperation Mechanism to address labor matters of common interest, such as: (1) promoting fundamental rights and their effective application; (2) eliminating the worst forms of child labor; (3) enhancing labor-management relations; (4) improving working conditions; (5) developing unemployment assistance programs and other social safety net programs; (6) encouraging human-resource development and life-long learning; and (7) utilizing labor statistics. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of a Party's labor laws.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Sixteen provides for consultations regarding any matter arising under the Chapter, including the opportunity to refer a matter to the Subcommittee on Labor Affairs.

If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Sixteen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Sixteen on the same matter cease. In addition, after 60 days of consultations under Chapter Sixteen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

Chapter Seventeen: Environment

Chapter Seventeen sets out the Parties' commitments regarding environmental protection. Chapter Seventeen draws on, but does not replicate, the North American Agreement on Environmental Cooperation (the supplemental NAFTA environmental agreement) and the environmental provisions of the United States-Chile Free Trade Agreement, the United States-Singapore Free Trade Agreement, and the United States-Jordan Free Trade Agreement.

General Principles. Each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the Chapter calls on the Parties to encourage the development of voluntary

measures and market-based mechanisms for achieving and maintaining high levels of environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

Cooperation. Chapter Seventeen includes commitments to enhance bilateral cooperation in environmental matters. In particular, the Parties will undertake activities pursuant to a United States-Morocco Joint Statement on Environmental Cooperation and to coordinate and review such activities in a Working Group on Environmental Cooperation. The Parties also commit to continue to seek means to enhance the mutual benefits of multilateral environmental agreements (MEAs) and trade agreements to which they are both party, and to consult regularly with respect to the WTO negotiations regarding MEAs.

As set out in a side letter to the Agreement, a Subcommittee on Environmental Affairs will also be established to discuss the operation of Chapter Seventeen and will include the relevant officials from each Party's trade and environmental agencies. Meetings of the Subcommittee will normally include a public session, and any decisions or reports of the Subcommittee concerning implementation of Chapter Seventeen will normally be made public.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government. Morocco's commitment applies to *dahirs*, acts of the Moroccan Parliament, decrees, and administrative regulations. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations under the Chapter, it may convene bilateral consultations and next may refer the matter to the Subcommittee on Environmental Affairs. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Seventeen or Chapter Twenty (Dispute Settlement). If a Party chooses to request consultations under Chapter Twenty, consultations under Chapter Seventeen on the same matter cease. In addition, after 60 days of consultations under Chapter Seventeen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Twenty.

Chapter Eighteen: Transparency

General Provisions. Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all measures concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. (The publication requirement applies to Morocco beginning one year after the Agreement enters into force.) Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected

by an administrative proceeding applying measures to particular person, goods, or services of the other Party. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit. Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In addition, Chapter Eighteen contains innovative provisions on combating bribery and corruption. Each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties that take into account the gravity of the offense. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery and will work jointly to encourage and support appropriate regional and multilateral initiatives.

Chapter Nineteen: Administration of the Agreement

Chapter Nineteen requires that each Party designate a contact point to facilitate communication between the Parties on any matter relating to the Agreement. The Chapter also creates a Joint Committee to supervise the implementation and operation of the Agreement and to review the trade relationship between the Parties. Its tasks will be to: (1) facilitate the avoidance and settlement of disputes arising under the Agreement; (2) consider and adopt any amendment or other modification to the Agreement; and (3) issue interpretations of the Agreement. The Joint Committee will convene at least once a year.

Chapter Twenty: Dispute Settlement

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

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. A side letter to Chapter Twenty provides that, in disputes related to a Party's enforcement of its labor or environmental laws, panelists other than those chosen by lot from a standing roster that the two governments will appoint, must have expertise or experience relevant to the subject matter that is under dispute. The Parties will set

rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

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

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

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

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the

assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

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

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Chapter Twenty-One: Exceptions

Chapter Twenty-One sets out exceptions that apply to the entire Agreement. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement.

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

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

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement or otherwise be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Balance of Payments Measures. Finally, if a Party decides to impose measures for balance of payments purposes on trade in goods, it must do so in conformity with GATT 1994, and must immediately consult with the other Party regarding such measures and not impair the relative advantages accorded to the goods of the other Party under the Agreement.

Chapter Twenty-Two: Final Provisions

Chapter Twenty-Two provides that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two establishes that any other country or group of countries may accede to the Agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. It also provides for the entry into force of the Agreement and for its termination 180 days after a Party provides written notice that it intends to withdraw.

UNITED STATES – BAHRAIN FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the United States-Bahrain Free Trade Agreement ("FTA" or "Agreement").

Preamble and Chapter One: Establishment of a Free Trade Area and Definitions

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context to the provisions that follow. Chapter One sets out provisions establishing a free trade area. The Parties affirm their existing rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") and other agreements to which both the United States and Bahrain are party. Chapter One also includes definitions of certain terms that recur in various Chapters of the Agreement.

Chapter Two: National Treatment and Market Access for Goods

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

Tariff Elimination. Chapter Two provides rules for the elimination of customs duties on originating goods traded between the Parties no later than 10 years after the Agreement enters into force. The Agreement is comprehensive, containing U.S. and Bahraini elimination commitments on all tariffs. For example, 100 percent of bilateral trade in consumer and industrial goods (including textile and apparel goods) will become duty-free immediately upon the Agreement's entry into force. In addition, Bahrain will provide immediate duty-free access for U.S. agricultural exports in 98 percent of agricultural tariff lines. Certain sensitive agricultural goods in Bahrain and the United States will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of transitional preferential tariff-rate quotas ("TRQs") by the United States. Annex 2-B of the Agreement includes detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. Chapter Two also provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect.

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

Import/Export Restrictions, Fees, and Formalities. The Agreement incorporates the prohibition on import and export restrictions set out in Article XI of the General Agreement on Tariffs and Trade ("GATT") 1994 and specifies that these include: (1) export and import price requirements

(except under antidumping and countervailing duty orders); (2) import licensing conditioned on the fulfillment of a performance requirement; and (3) voluntary export restraints inconsistent with Article VI of GATT 1994. In addition, a Party must limit fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered, in accordance with Article VIII of GATT 1994. Finally, the United States also has agreed not to apply its merchandise processing fee on imports of originating goods from Bahrain.

Agricultural Export Subsidies. Chapter Two provides that the Parties will work together in WTO agriculture negotiations to eliminate all forms of agricultural export subsidies. The Chapter further provides that each Party will eliminate export subsidies on agricultural goods destined for the other country. According to Article 2.11, neither Party may introduce or maintain a subsidy on agricultural goods destined for the other Party unless the exporting Party believes that a third country is subsidizing its exports to the other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Chapter Three: Textiles and Apparel

Chapter Three sets out provisions addressing trade in textile and apparel goods, including an "emergency action" provision, special rules of origin, and customs cooperation provisions aimed at preventing circumvention.

Emergency Actions. To deal with emergency conditions resulting from the elimination or reduction of customs duties, the Agreement includes an "emergency action" provision that permits the importing country temporarily to re-impose normal trade relations (most-favored-nation) ("NTR" ("MFN")) duty rates on imports of textile or apparel goods that cause or threaten serious damage to a domestic industry. Emergency measures may be applied for a maximum aggregate period of three years, and a Party may not apply an emergency measure on a good beyond 10 years after the Party must eliminate duties on that good under the Agreement.

A Party applying an emergency action must provide the other Party with mutually agreed compensation in the form of trade concessions that are substantially equivalent to the increased duties. If the Parties cannot agree on compensation, the exporting Party may raise duties up to NTR (MFN) levels on any goods from the importing Party to achieve trade effects substantially equivalent to the emergency action.

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

Chapter Three also calls for the United States and Bahrain to provide tariff preference levels ("TPLs") for a limited quantity of specific fabric and apparel goods from non-Party sources. TPL goods will be accorded preferential tariff treatment as if they were originating goods. For the specified fabric, apparel, and made-up goods, TPL status will apply to a maximum of 65 million square meter equivalents for each of the first 10 years after the Agreement's entry into force. After 10 years, TPL status will not be available for such goods.

The Annex to Chapter Three includes specific rules of origin for textile and apparel goods. A textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*i.e.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of one or both of the Parties, or if there is an applicable change in tariff classification under Annex 3-A.

Customs Cooperation. Chapter Three also includes a customs cooperation article that sets out detailed commitments designed to prevent circumvention of the Agreement's rules governing textiles and apparel. The Parties will cooperate in enforcing relevant laws, in ensuring the accuracy of claims of origin, and in preventing circumvention of relevant international agreements. A Party may conduct site visits under certain conditions to verify that circumvention is not occurring, and the other Party must provide information necessary for the visits. An importing Party may respond to circumvention and actions that impede it from detecting circumvention, including by denying preferential tariff treatment under the Agreement to imports of specific textile or apparel goods or to all imports of textile or apparel goods from particular enterprises. Either Party may convene bilateral consultations to resolve technical or interpretive issues that arise under the Chapter's customs cooperation article.

Chapter Four: Rules of Origin

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapters Three (Textiles and Apparel) and Four and Annexes 3-A and 4-A. These rules ensure that the tariff and other benefits of the Agreement accrue primarily to firms that produce or manufacture goods in the two Parties' territories. They are similar in approach to those included in the United States-Morocco, United States-Jordan, and United States-Israel free trade agreements.

Key Concepts. Chapter Four provides general criteria under which a good that has been imported directly from one Party into the other Party may qualify as an "originating good:"

- When the good is wholly grown, produced, or manufactured in one or both of the Parties (*e.g.*, crops grown or minerals extracted in the United States);

- When the good: (1) is not covered by the rules in Annex 3-A or Annex 4-A; (2) is a "new or different article of commerce" that has been grown, produced, or manufactured in the territory of one or both of the Parties; and (3) the sum of (a) the value of materials produced in the territory of one or both of the Parties and (b) the "direct costs of processing operations" performed in the territory of one or both of the Parties is at least

35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or

- When the good is covered by the rules in Annex 3-A or Annex 4-A and meets the requirements of the applicable Annex. (Annex 3-A contains specific rules of origin for textile and apparel goods. Annex 4-A contains specific rules of origin on goods such as citrus juices; dairy products; sugar; sweetened cocoa powder; plastics; ignition wiring sets; and motor vehicle parts.)

Chapter Four defines "new or different article of commerce" as "a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one or both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed." It defines "direct costs of processing operations" as "those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good." Such costs typically include labor costs, depreciation on machinery or equipment, research and development, inspection costs, and packaging costs, among others. They typically do not include profit and general business expenses, such as salaries, insurance, and advertising.

Chapter Four clarifies that a good will not be considered a "new or different article of commerce" merely by virtue of simple combining or packaging operations or mere dilution with water or another substance that does not change the characteristics of the good.

Declarations of Origin. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must submit, on the request of the importing Party's customs authorities, a "declaration" providing all pertinent information concerning the production of the good. The Agreement provides that a Party should request a declaration only when it has reason to question the accuracy of a claim of origin or when the Party is conducting a random verification. A Party may only deny preferential treatment in writing and must provide legal and factual findings.

Consultations. Chapter Four calls for the Parties to work together to ensure the effective and uniform application of the Chapter. The Chapter permits the creation of *ad hoc* working groups or a subcommittee of the Joint Committee to discuss necessary amendments or revisions. In addition, Article 4.13 provides that, at an appropriate time, the United States and Bahrain "shall enter into discussions with a view to deciding the extent to which materials that are products of countries in the Middle East or North Africa region may be counted for purposes of satisfying the origin requirement under this Agreement as a step toward achieving regional integration."

Finally, in a separate agreement set out in a side letter regarding Chapter Four, the Parties provide that, for purposes of determining whether a good is a "new or different article of commerce that has been grown, produced, or manufactured" for purposes of Chapter Four, each country is to be guided by the rules of origin set forth in section 102.20 of the United States Customs Regulations (19 CFR 102.20).

Chapter Five: Customs Administration

Chapter Five establishes rules designed to facilitate trade through increased transparency, predictability, and efficiency in each Party's customs procedures. It also provides for cooperation between the Parties on customs matters.

General Principles. The United States and Bahrain will observe certain transparency requirements. The Parties must promptly publish their customs measures on the Internet and, where possible, solicit public comments before introducing or amending their customs regulations. Each Party also must provide written advance rulings, upon request, to its importers and to exporters of the other Party regarding whether a good qualifies as an "originating good" under the Agreement, as well as on other customs matters. The Agreement allows Bahrain up to two years to comply with the provisions relating to advance rulings. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties also must release goods from customs promptly and expeditiously clear express shipments.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the Agreement and to import and export restrictions. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity in connection with goods traded between the two countries.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to one another regarding sanitary and phytosanitary ("SPS") measures. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Under Chapter Six, the Parties affirm their rights and obligations with respect to each other under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. They also affirm their desire to create a forum through the Joint Committee on SPS matters. However, neither Party may invoke the FTA's dispute settlement procedures for a matter arising under the Chapter. Instead, any SPS dispute between the Parties must be resolved under the applicable WTO agreement(s) and rules.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules to promote transparency, accountability, and cooperation between the Parties on standards issues.

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

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

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access. The Chapter specifies that the Office of the United States Trade Representative and Bahrain's Ministry of Commerce will serve as TBT Chapter Coordinators responsible for facilitating this cooperation.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment (*i.e.*, testing to determine whether a product or service meets applicable standards) results. Chapter Seven further provides that, where a Party recognizes conformity assessment bodies in its own territory, it should recognize bodies in the territory of the other Party on the same terms.

Transparency. Chapter Seven contains various transparency obligations, including obligations to: (1) permit persons of the other Party to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (2) transmit regulatory proposals notified under the TBT Agreement directly to the other Party; (3) describe in writing the objectives of and reasons for regulatory proposals; and (4) accept and respond in writing to comments on regulatory proposals. These provisions become effective no later than five years after the Agreement enters into force.

Chapter Eight: Safeguards

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

Chapter Eight authorizes each Party to impose temporary duties on a good imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good.

Absent agreement by the other Party, a Party may only apply a safeguard measure to a good during the first 10 years that the FTA is in force. A safeguard measure may take one of two

forms – a temporary increase in duties to NTR (MFN) levels or a temporary suspension of duty reductions called for under the Agreement. A safeguard measure may last for a maximum aggregate period of three years. If a measure lasts more than one year, the Party must liberalize it at regular intervals. Chapter Eight incorporates by reference certain procedural and substantive investigation requirements of the WTO Agreement on Safeguards.

If a Party imposes a bilateral safeguard measure, Chapter Eight requires it to provide the other Party offsetting trade compensation. If the Parties cannot agree on the amount or nature of the compensation, the Party entitled to compensation may suspend "substantially equivalent" trade concessions that it has made to the other Party. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. Special safeguard provisions are set out for textile and apparel goods in Chapter Three (Textiles and Apparel).

Global Safeguards. Chapter Eight maintains each Party's right to take action under Article XIX of GATT 1994 and the WTO Agreement on Safeguards against imports from all sources.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other country. The rules of Chapter Nine are broadly based on WTO procurement rules. (Bahrain is not a party to the WTO Agreement on Government Procurement.)

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Party in a manner that is "no less favorable" than the treatment their domestic counterparts receive. The Chapter similarly bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain monetary thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, Bahraini or U.S. federal) government agencies of goods and services valued at $175,000 or more and construction services valued at $7,611,532 or more.[1] The equivalent thresholds for purchases by "other entities" are $250,000 for goods and services and $9,368,478 for construction services. All thresholds, except the $250,000 threshold, are subject to adjustment for inflation.

[1] These thresholds are subject to adjustment every two years according to a "Threshold Adjustment Formula" set out in the Annex to Chapter Nine. In addition, as stated in that Annex, there are specific required threshold amounts during the first two years of the Agreement's effectiveness.

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

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

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

Additional Provisions. Chapter Nine is designed to promote integrity in each Party's procurement practices, including by requiring the Parties to adopt and maintain procedures that disqualify suppliers that a Party has determined to have engaged in fraudulent or illegal action in relation to procurement. It establishes procedures under which a Party may change the extent to which the Chapter applies to its government entities, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to procurement of goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Cross-Border Trade in Services

Chapter Ten governs measures affecting cross-border trade in services between the United States and Bahrain. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services ("GATS"), as well as priorities that have emerged since those agreements.

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

- from the territory of one Party into the territory of the other (*e.g.*, electronic delivery of services from the United States to Bahrain);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Bahraini company provides services to U.S. visitors in Bahrain); and

- by a national of a Party in the territory of the other Party (*e.g.*, a U.S. lawyer provides legal services in Bahrain).

General Principles. Among Chapter Ten's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Party. Thus, each Party must treat service suppliers of the other Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. The Chapter's provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by either Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, rules that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through local investments pursuant to the Parties' bilateral investment treaty, discussed below.

Sectoral Coverage and Non-Conforming Measures. Chapter Ten applies across virtually all services sectors. The Chapter excludes most financial services and air transportation, although it does apply to specialty air services and aircraft repair and maintenance. Each Party has listed in Annexes those measures in particular sectors for which it negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these core obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

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

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

Parties have also negotiated an Annex regarding the regulation of professional services. Under Annex 10-B, the Parties will endeavor to develop mutually acceptable standards and criteria for licensing and certification of professional service suppliers. Such standards and criteria may be developed with regard, among other things, to: (1) accreditation of schools or academic programs; (2) qualifying examinations for licensing; (3) standards of professional conduct and the nature of disciplinary action for non-conformity with those standards; (4) requirements for knowledge of such matters as local laws, regulations, language, geography, or climate; and (5) consumer protection.

Investment. In 1999, the United States and Bahrain negotiated a comprehensive bilateral investment treaty ("BIT"), the *Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment (1999)*. The BIT was based on the standard U.S. prototype for investment agreements. The BIT: (1) applies to all forms of U.S. investment in Bahrain; (2) requires that covered U.S. investments receive the better of national treatment or MFN treatment provided by Bahrain; (3) prohibits the imposition of performance requirements on covered U.S. investments by Bahrain; (4) allows expropriation of U.S. investments by Bahrain only in accordance with customary international law; and (5) allows U.S. investors to bring disputes with the Bahraini government to binding international arbitration, among other provisions. Because the BIT provides a full range of investment disciplines, the United States and Bahrain did not include an investment chapter in the FTA. However, as noted above, the market access, domestic regulation, and transparency provisions of Chapter Ten govern the treatment of investors and investments in services sectors pursuant to the BIT.

Side Letters. Finally, in side letters to Chapter Ten that are part of the Agreement, the Parties clarify that: (1) Bahrain may prohibit gambling (and the provision of gambling services) and treat it as a criminal offense, consistent with WTO rules; and (2) no provision of the Agreement imposes obligations on the Parties with respect to immigration or – consistent with Chapter Fifteen – the right to secure employment in the territory of a Party.

Chapter Eleven: Financial Services

Chapter Eleven provides rules governing each Party's treatment of financial institutions of the other Party and cross-border trade in financial services.

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

General Principles. Chapter Eleven's core obligations parallel those in Chapter Ten (Cross-Border Trade in Services). Specifically, Chapter Eleven imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access, and bars restrictions on the nationality of senior management. These rules apply to measures

affecting financial institutions, including pre-establishment, and to financial service suppliers that are currently supplying or seek to supply on a cross-border basis.

Non-Conforming Measures. Similar to Chapter Ten, each Party has listed in an Annex to Chapter Eleven particular financial services measures for which it has negotiated exemptions from the Chapter's core obligations. Any non-conforming aspects of all current U.S. state and local laws and regulations are exempted from these obligations. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive (though certain market access commitments are exempted from this obligation).

Other Provisions. Chapter Eleven includes provisions on transparency, as well as rules regarding "new" financial services, self-regulatory organizations (the Agreement allows Bahrain up to two years to comply with certain such provisions), and the expedited availability of insurance products.

Relationship to Other Chapters/Agreements. The existing BIT provides U.S. investors in financial institutions in Bahrain with certain benefits not included in the FTA, such as compensation against expropriation, the right to free transfers, and a process for investor-state dispute settlement. Chapter Eleven also incorporates by reference certain provisions of Chapter Ten, such as those relating to denial of benefits and transfers and payments as they relate to cross-border trade.

Side Letters. Finally, side letters to Chapter Eleven that are part of the Agreement contain additional obligations with respect to financial services. In particular, the Parties provide that: (1) in reviewing the regulation of its insurance sector, Bahrain will not fail to permit U.S. insurance suppliers to sell their products through independent agents; (2) a Party may impose registration and other administrative requirements on insurance companies of the other Party, to the extent such requirements are consistent with the Agreement; and (3) the Parties may agree to extend Bahrain's six-month exemption from the obligations of Chapter Eleven (*i.e.*, its non-conforming measure) regarding the market for non-life insurance financial services.

Chapter Twelve: Telecommunications

Chapter Twelve includes disciplines beyond those imposed under Chapter Ten (Cross-Border Trade in Services) and under the BIT on regulatory measures affecting telecommunications trade and investment. Chapter Twelve is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications services in the other country. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants from the other Party. Chapter Twelve also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Twelve, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term

includes voice and data transmission services. It does not include the offering of "value-added services" (*e.g.*, services that enable users to create, store, or process information over a network).

Competition. Chapter Twelve establishes rules that reflect the common elements of the Parties' laws promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications service in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Bahrain must ensure that its public phone companies do not provide preferential access to Bahraini banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in its territory at reasonable rates;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities of dominant carriers, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from dominant domestic suppliers and resell them in order to build a customer base; and

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

- ensure that they will maintain open and transparent telecommunications regulatory regimes, including requirements to publish licensing requirements and criteria and other government measures relating to public telecommunications services;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition exists and certain standards are met; and

- may not prevent telecommunications service suppliers from choosing the technologies they consider appropriate for supplying their services, subject to legitimate public policy requirements.

Side Letters. Finally, side letters to Chapter Twelve that are part of the Agreement provide that: (1) the manner through which the Parties expect Bahrain will ensure cost-oriented interconnection levels for international services; and (2) Bahrain's commitment to issue any additional commercial mobile services licenses in a technologically neutral manner.

Chapter Thirteen: Electronic Commerce

Chapter Thirteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products, such as computer programs, video, images, and sound recordings. The Chapter contains state-of-the-art provisions on electronic commerce, similar to those in recent U.S. free trade agreements with Chile, Singapore, Australia, and Morocco.

Customs Duties. Chapter Thirteen provides that a Party may not impose customs duties on digital products of the other Party that are transmitted electronically. The Chapter does not preclude a Party from imposing duties on digital products of the other Party that are fixed on a carrier medium, provided that the duty is based on the cost or value of that medium alone, rather than the cost or value of the digital content stored on that medium.

Non-Discrimination. Chapter Thirteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products. In particular, a Party may not treat digital products less favorably because such digital products: (1) have undergone certain specific activities (*e.g.*, creation, production, first sale) in the territory of the other Party; or (2) are associated with certain categories of persons of the other Party (*e.g.*, authors, performers, producers). Nor may a Party treat digital products that have such a nexus to the other Party less favorably than it treats like digital products with such a nexus to a non-Party. These non-discrimination rules do not apply to actions taken in accordance with the non-conforming measures specifically exempted from the rules set out in Chapter Ten (Cross-Border Trade in Services) or Chapter Eleven (Financial Services).

Chapter Fourteen: Intellectual Property Rights

Chapter Fourteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Chapter Fourteen calls for the Parties to ratify or accede to certain agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals (the "Brussels Convention"), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms (the "Budapest Treaty"), the Patent Cooperation Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States is already a party to these agreements.

Chapter Fourteen also requires broad application of the principle of national treatment, with only limited exceptions. The general provisions further clarify the coverage of existing subject matter and requirements for publication of all laws, regulations, and procedures relating to the protection and enforcement of intellectual property rights.

Trademarks and Geographical Indications. Chapter Fourteen establishes rules concerning the protection of trademarks and geographical indications. For example, Parties must provide the owner of a registered trademark the exclusive right to prevent its use in the course of trade for related goods and services by any party not having the owner's consent. The Chapter also sets out rules with respect to the registration of trademarks. Each Party must provide protection for trademarks, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Chapter requires that the Parties provide efficient and transparent procedures governing the application for protection of trademarks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fourteen provides for broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically requires protection for the rights of performers and producers of phonograms.

To curb copyright piracy, Chapter Fourteen requires the governments to use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fourteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fourteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fourteen also includes a variety of provisions for the protection of patents. The Parties may only exclude inventions from patentability to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the environment. The Parties also may exclude from patentability animals and diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals. The Parties also confirm the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. The Chapter requires the Parties to provide for patent term adjustments to compensate for unreasonable delays that occur

while granting the patent, as well as for unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fourteen includes specific measures relating to certain regulated products, specifically pharmaceuticals and agricultural chemicals. Among other things, the Parties must protect test information regarding safety and efficacy submitted in seeking marketing approval for such products by precluding other firms from relying on the information. It provides specific periods for such protection – for example, five years for new pharmaceuticals and 10 years for new agricultural chemicals. It also requires the Parties to adopt measures to prevent the marketing of a pharmaceutical product during the term of a patent covering that product.

Enforcement Provisions. Chapter Fourteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, it requires the Parties, in determining damages, to take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for award of damages based on a fixed range (*i.e.*, "statutory damages"), on the election of the right holder in cases involving infringement of copyright and related rights and trademark counterfeiting.

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

Transition Periods. All provisions of the Chapter take effect when the Agreement enters into force. However, Bahrain may take up to one year after the Agreement enters into force effect to ratify or accede to: (1) the Brussels Convention; and (2) the Budapest Treaty.

Side Letters. Finally, two side letters to Chapter Fourteen that are part of the Agreement contain additional obligations on the part of Bahrain with respect to intellectual property rights. In particular, Bahrain will adopt further measures: (1) requiring effective written notice to Internet service providers with respect to materials that are claimed to be infringing a copyright; and (2) regarding the manufacture of optical discs, including provisions concerning licensure, registration, record keeping, and inspections, among others.

Chapter Fifteen: Labor

Chapter Fifteen sets out the Parties' commitments regarding trade-related labor rights. As with other recent free trade agreements, this Chapter draws on, but does not replicate, the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of the U.S. free trade agreements with Chile, Singapore, and Jordan.

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

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

Cooperation. Each Party may convene a national labor advisory committee, made up of members of its public, including representatives of labor and business organizations, to advise it on the implementation of the Chapter. Each Party also will designate a contact point for communications with the other Party and the public regarding operation of the Chapter. In addition, the Joint Committee (see Article 18.2) may establish a Subcommittee on Labor Affairs comprising the relevant officials from each Party's labor ministry and other appropriate agencies to discuss the operation of Chapter Fifteen. Meetings of the Subcommittee will normally include a public session.

Finally, the Parties will establish a Labor Cooperation Mechanism to address labor matters of common interest, such as: (1) promoting fundamental rights and their effective application; (2) developing unemployment assistance programs and other social safety net programs; (3) improving working conditions; (4) developing processes for regulating foreign workers; (5) creating alternative forms of labor-management collaboration; (6) eliminating gender discrimination in the employment arena; and (7) utilizing labor statistics.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations, Chapter Fifteen provides for consultations regarding any matter arising under the Chapter, including the opportunity to refer a matter to the Subcommittee on Labor Affairs, if established. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Fifteen or Chapter Nineteen (Dispute Settlement). If a Party chooses to request consultations under Chapter Nineteen, consultations under Chapter Fifteen on the same matter cease. In addition, after 60 days of consultations under Chapter Fifteen, the Parties may agree to

refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Nineteen.

Chapter Sixteen: Environment

Chapter Sixteen sets out the Parties' commitments regarding environmental protection. Chapter Sixteen draws on, but does not replicate, the North American Agreement on Environmental Cooperation (the supplemental NAFTA environmental agreement) and the environmental provisions included in U.S. free trade agreements with Chile, Singapore, and Jordan.

General Principles. Each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting bilateral trade. The Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage bilateral trade or investment. The Chapter also includes commitments to provide certain procedural guarantees that ensure fair, equitable, and transparent proceedings for the administration and enforcement of environmental laws. In addition, the Chapter calls on the Parties to encourage the development of voluntary measures and market-based mechanisms for achieving and maintaining high levels of environmental protection. The Parties also must ensure that opportunities exist for the public to provide input concerning the implementation of the Chapter.

Cooperation. Chapter Sixteen includes commitments to enhance bilateral cooperation in environmental matters. In particular, the Parties agree to undertake activities pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation. The Parties also commit to continue to seek means to enhance the mutual benefits of multilateral environmental agreements ("MEAs") and trade agreements to which they are both party, and to consult regularly with respect to the WTO negotiations regarding MEAs.

In addition, at the request of either Party, a Subcommittee on Environmental Affairs will be established to discuss the operation of Chapter Sixteen. The subcommittee will include the relevant officials from each Party's trade and environmental agencies. Meetings of the subcommittee will normally include an open session, and any decisions or reports of the subcommittee concerning implementation of Chapter Sixteen will normally be made public.

Effective Enforcement. The U.S. commitment on enforcement of environmental laws applies to federal environmental statutes and regulations enforceable by the federal government, but it does not cover state or local environmental laws. The Chapter also recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources.

Consultations and Dispute Settlement. If a Party believes that the other Party is not complying with its obligations under the Chapter, it may convene bilateral consultations and then may refer the matter to the Subcommittee on Environmental Affairs, if it has been established. If the matter concerns a Party's compliance with the Chapter's effective enforcement obligation, the complaining Party may choose to pursue consultations under Chapter Sixteen or Chapter

Nineteen (Dispute Settlement). If a Party chooses to request consultations under Chapter Nineteen, consultations under Chapter Sixteen on the same matter cease. In addition, after 60 days of consultations under Chapter Sixteen, the Parties may agree to refer the matter concerning compliance with the effective enforcement obligation directly to the Joint Committee for resolution under Chapter Nineteen.

Chapter Seventeen: Transparency

Chapter Seventeen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all measures concerning subjects covered by the Agreement and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Party's nationals and enterprises that are directly affected by an administrative proceeding applying measures to particular persons, goods, or services of the other Party. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action when time, the nature of the process, and the public interest permit. Chapter Seventeen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

In addition, Chapter Seventeen contains innovative provisions on combating bribery and corruption. Each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both countries will adopt or maintain appropriate measures to protect those who, in good faith, report acts of bribery and will work jointly to encourage and support appropriate regional and multilateral initiatives.

Chapter Eighteen: Administration of the Agreement

Chapter Eighteen requires that each Party designate a contact point to facilitate communication between the Parties on any matter relating to the Agreement. The Chapter also creates a Joint Committee to supervise the implementation and operation of the Agreement and to review the trade relationship between the Parties. Among others, its tasks will be to: (1) facilitate the avoidance and settlement of disputes arising under the Agreement; (2) consider and adopt any amendment or other modification to the Agreement; and (3) consider ways to further enhance trade relations between the Parties. The Joint Committee will convene at least once a year.

Chapter Nineteen: Dispute Settlement

Chapter Nineteen sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO Agreement), the

complaining Party may choose the forum for resolving the matter. The selected forum is the exclusive venue for resolving that dispute.

Consultations. Either Party may request consultations on any matter that it believes might affect the operation of the Agreement. After requesting or receiving a request for consultations, each Party must solicit the views of the public on the matter. If the Parties cannot resolve the matter through consultations within 60 days, a Party may refer the matter to the Joint Committee, which will attempt to resolve the dispute.

Panel Procedures. If the Joint Committee cannot resolve the dispute within 60 days after delivery of the request, the complaining Party may refer the matter to a panel comprising independent experts that the Parties select. In disputes related to a Party's enforcement of its labor or environmental laws, panelists must have expertise or experience relevant to the subject matter that is under dispute. The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the Parties agree otherwise, a panel is to present its initial report within 180 days after the chair is selected. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 45 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

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

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

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of

the assessment will be established by agreement of the Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or if the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

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

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, whichever occurs first.

Chapter Twenty: Exceptions

Chapter Twenty sets out exceptions that apply to the entire Agreement. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Ten (Cross Border Trade in Services), Twelve (Telecommunications), and Thirteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

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

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect either Party's rights or obligations under any tax convention. The exception sets out certain circumstances

under which tax measures are subject to the Agreement's national treatment obligation for goods and national treatment and MFN obligations for services.

Disclosure of Information. The Chapter also provides that a Party may withhold information from the other Party where such disclosure would impede domestic law enforcement or otherwise be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

Chapter Twenty-One: Final Provisions

Chapter Twenty-One provides that the Parties may amend the Agreement subject to applicable domestic procedures. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-One establishes that any other country or group of countries may become a party to the Agreement on terms and conditions that are agreed upon between the country or countries and the Parties and that are approved according to each country's domestic procedures. The Chapter also permits non-application of the agreement between a Party and a newly acceding country or group of countries. It also provides for the entry into force of the Agreement and for its termination 180 days after a Party provides written notice that it intends to withdraw.

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the Dominican Republic – Central America – United States Free Trade Agreement ("Agreement" or "CAFTA-DR") that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America) and the Dominican Republic.

Preamble

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow.

Chapter One: Initial Provisions

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

Chapter Two: General Definitions

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

Chapter Three: National Treatment and Market Access for Goods

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

Tariff Elimination. Chapter Three provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. Schedule to Annex 3.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff phase-outs on a product-by-product basis after the Agreement takes effect. Annex 3.3.6 of the

Agreement establishes additional tariff commitments that apply between the Central American Parties and the Dominican Republic. These commitments largely reflect tariff commitments these Parties have under an earlier free trade agreement between them.

Waiver of Customs Duties. Chapter Three provides that Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. However, Costa Rica, the Dominican Republic, El Salvador, and Guatemala are permitted to maintain such measures through 2009, provided they do so in accordance with the WTO Subsidies and Countervailing Measures (SCM) Agreement. Honduras and Nicaragua are permitted to maintain such measures indefinitely, provided they do so in accordance with the SCM Agreement. Chapter Three defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Parties.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. The Central American Parties and the Dominican Republic agreed not to require a person of another Party to have or maintain a relationship with a "dealer" as a condition for allowing the importation of a good. These Parties also agreed not to prohibit or restrict the importation of any good of another Party as a remedy for a violation or alleged violation of any law, regulation, or other measure relating to the relationship between a "dealer" in its territory and a person of another Party.

Distinctive Products. The Central American Parties and the Dominican Republic agreed to recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning these Parties will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. Chapter Three also establishes a Committee on the Trade in Goods to consider matters arising under Chapters Three, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters covered by Chapters Three, Four, and Five.

Agriculture

TRQs. Chapter Three requires that TRQs be administered in a manner that is transparent, non-discriminatory, responsive to market conditions and minimally burdensome on trade and allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for another CAFTA-DR country. Under Article 3.14, no Party may introduce or maintain a subsidy on agricultural goods destined for another Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume "trigger". The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 3.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

No Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs created in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) the exporting Party's trade surplus in specific sugar goods. (A Party's "trade surplus" is the amount by which its exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that a Party's exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established in the TRQs are modest – 107,000 metric tons in the first year. The maximum quantities increase to approximately 151,000 metric tons in year 15 of the Agreement. The United States will also establish a quota for specialty sugar goods of Costa Rica in the amount of 2,000 metric tons annually. Second, unlike other commodities, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement

includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to CAFTA-DR country exporters in place of imports of sugar.

Ethanol. In the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement, the United States agreed to continue to treat the Central American countries and the Dominican Republic as beneficiary countries under the Caribbean Basin Initiative (CBI) preference program with respect to ethanol imports. Accordingly, the Central American countries and the Dominican Republic will continue to share in the duty-free quota that the United States makes available to CBI beneficiary countries. The United States also agreed to establish country-specific allocations for Costa Rica and El Salvador, but did not increase the total quantity allowed under the CBI quota.

Additional Provisions. Chapter Three provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 90 days of entry into force of the Agreement and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. The Chapter also provides for the establishment of an Agriculture Review Commission. The Commission will be established 14 years after entry into force of the Agreement and will review the implementation and operation of the Agreement as it relates to trade in agricultural goods, including whether to extend the agricultural safeguard mechanism. Further, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after entry into force of the Agreement.

Textiles and Apparel

Chapter Three also sets out various provisions specifically addressing trade in textile and apparel goods.

Tariff Elimination. Duties on nearly all originating textile or apparel goods will be eliminated when the Agreement enters into force. Moreover, the preferential duty treatment under the Agreement may, on a reciprocal basis, be made retroactive to January 1, 2004.

Safeguards. The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than three years. The ability to impose textile safeguards lapses five years after the entry into force of the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure must provide the exporting Party with mutually agreed-upon compensation in the form of trade concessions for textile or apparel goods that have

substantially equivalent value to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. Under the Agreement, a textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of the United States or another CAFTA-DR Party, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4.1 of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Annex 3.25 of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or the other CAFTA-DR countries. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is originating for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States or the other CAFTA-DR countries. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Appendix 4.1-B of the Agreement provides that for purposes of determining whether woven apparel (of chapter 62 of the HTS) is originating, materials used in the production of the article that are produced in Canada or Mexico will be treated as if the materials were produced in a CAFTA-DR country, provided that Canada and Mexico, respectively: (i) provide reciprocal treatment for U.S.-produced inputs under their free trade agreements with the other CAFTA-DR countries; and (ii) agree with the United States to textile verification procedures that are substantially similar to the procedures under the CAFTA-DR.

This treatment of woven apparel made with Canadian or Mexican materials is subject to an overall quantitative limit, which is set initially at 100 million square meter equivalents, and to sub-limits for trousers and skirts, jeans, and tailored wool apparel. The overall limit may increase to a maximum of 200 square meter equivalents, with corresponding increases in the sub-

limits, based on the percentage increase in U.S. imports of originating woven apparel from the other

CAFTA-DR countries. The overall limit may also increase as a result of negotiations between the Parties following entry into force of the Agreement.

Customs Cooperation. Chapter Three commits each Party to cooperate to enforce or assist in enforcing laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of laws of the Parties or agreements affecting trade in textile and apparel goods. The Parties also agreed that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. Such a verification may include site visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, any Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from another Party in implementing the customs cooperation provisions.

Additional Provisions. Chapter Three provides for duty-free treatment for goods that an importing Party and exporting Party agree qualify as handmade, hand-loomed, or traditional folklore goods. Separately, the Chapter establishes that, for the first two years of the Agreement, the United States will charge duties that are half the NTR/MFN rate for a limited quantity of tailored wool apparel goods assembled in Costa Rica regardless of the origin of the fabric used to make the goods. Moreover, for the first ten years of the Agreement, the United States shall provide preferential tariff treatment to cotton and man-made fiber apparel goods assembled in Nicaragua that do not qualify as "originating" goods. The United States also agreed that goods assembled in CAFTA-DR countries from U.S. components with U.S. thread that do not qualify as "originating" goods will be subject to NTR/MFN duties on only the value of the assembled good minus the value of U.S. components used in the good.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or more of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or more of the Parties; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or

- When the good is produced in one or more Parties entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Verification. For purposes of determining whether a good is an originating good, each Party must ensure that its customs authority may conduct verifications. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the Chapter.

Additional Rules. Chapter Four further delineates specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of goods. The Chapter provides that Parties may not treat a good as originating if the good undergoes production outside the territories of the Parties or does not remain under the control of customs authorities in the territory of a non-Party. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Three.

Chapter Five: Customs Administration and Trade Facilitation

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

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of another Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. The Chapter provides a transition period of between one and three years to comply with several of these obligations in the case of the Central American Parties and the Dominican Republic.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing the importation of goods.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations.

Dispute Settlement. Neither Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

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

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for a Committee on Technical Barriers to Trade to oversee implementation of the Chapter and facilitate cooperation. The Committee's specific functions include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Seven further provides that Parties shall recognize conformity assessment bodies in the territories of the other Parties on no less favorable terms than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, including obligations on each Party to: (i) allow persons of the other Parties to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the TBT Agreement directly to the other Parties; (iii) describe in writing the objectives of and reasons for regulatory proposals; and (iv) consider comments on regulatory proposals and respond in writing to significant comments it receives.

Chapter Eight: Trade Remedies

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

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good. Unlike agricultural and textile or apparel safeguard measures, which will apply bilaterally, safeguard measures under Chapter Eight will apply with respect to all imports of an originating good, other than imports from a Party whose import market share is de minimis (*i.e.*, a market share of less than three percent of total imports of the originating good, unless the import market share of all such Parties exceeds nine percent).

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for a total of four years, including any extensions of the measure. A Party may extend a measure if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Annex 8.3 sets out the procedural and substantive investigation requirements that Parties must follow in conducting safeguard investigations.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Parties whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A

Party may exclude imports of an originating good from another Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.
Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures. The Chapter provides that the United States will continue to treat the other CAFTA-DR countries as CBI beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBI beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other Parties. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Parties in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, national or U.S. Federal) government agencies of goods and services valued at $58,550 or more and construction services valued at $6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Central American and Dominican Republic municipalities and U.S. state government agencies) are $477,000 and $6,725,000, for goods and services and construction services, respectively. For the three-year period following entry into force of the Agreement, the Chapter applies, in the case of the Central American Parties and the Dominican Republic, to purchases of goods and services by central government agencies valued at $117,100 or more and by sub-central government agencies valued at $650,000 or more and purchases of construction services by either central or sub-central government agencies valued at $8,000,000 or more. The Chapter's thresholds for listed "government enterprises" are either $250,000 or $538,000 for goods and services, and

$6,725,000 for construction services, except that for the three-year period following entry into force of the Agreement, the threshold for construction services in the Central American Parties and the Dominican Republic is $8,000,000. All thresholds are subject to adjustment every two years for inflation. (Separate annexes to Chapter Nine establish special coverage rules with respect to procurement between (i) the Central American Parties, and (ii) each Central American Party and the Dominican Republic.)

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

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

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

Additional Provisions. Chapter Nine builds on the anti-corruption provisions of Chapter Eighteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal procurement actions ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

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

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

General Principles. Investors enjoy six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; (2) limits on "performance requirements"; (3) free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a "minimum standard of treatment" in conformity with customary international law; (6) and the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor. "Investment agreements" and "investment authorizations" are particular types of arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter 10.

Chapter Ten affords public access to information on the Chapter's investor-State proceedings. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept amicus submissions from the public. In addition, the

Chapter includes provisions similar to those used in U.S. courts to dispose quickly of frivolous claims. Finally, an annex to Chapter Ten calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten also provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health and the environment, are not expropriatory.

Chapter Eleven: Cross-Border Trade in Services

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

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

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

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

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Parties.
Thus, each Party must treat service suppliers of another Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by a Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's

market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

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

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, MFN treatment, and additional benefits to express delivery services of the other Parties. The Chapter provides that the Central American Parties and the Dominican Republic may not adopt or maintain any restriction on express delivery services that was not in place on the date the Agreement was signed. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

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

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

Chapter Twelve: Financial Services

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

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

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. As between the Central American Parties and the Dominican Republic, obligations pertaining to banking services, or as between Guatemala and the Dominican Republic, financial services generally, do not apply until two years after entry into force of the Agreement.
Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

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

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

Chapter Thirteen: Telecommunications

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications

trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territories of the other Parties. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Thirteen establishes rules promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of another Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, El Salvador must ensure that its public phone companies do not provide preferential access to Salvadoran banks or Internet service providers, to the detriment of U.S. competitors);

- give another Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of another Party that seek to build physical networks in the Party's territory have access to key physical facilities where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of another Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers."

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

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Costa Rica. Costa Rica's obligations with respect to telecommunications are contained in a separate annex to Chapter 13. The annex recognizes the unique nature of Costa Rica's social policy on telecommunications and commits Costa Rica to undertake certain obligations as of January 1, 2006. These obligations include ensuring that enterprises have access to, and use of, public telecommunications services, and that suppliers of public communications services are provided interconnection with major suppliers.

Chapter Fourteen: Electronic Commerce

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of another Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to another Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Cooperation. Chapter Fourteen provides for future cooperation between the Parties, including exchanging information in areas such as data privacy and cyber-security.

Chapter Fifteen: Intellectual Property Rights

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Under Chapter Fifteen the Parties are obligated to ratify or accede to several agreements on intellectual property rights, including, by the date of entry into force of the Agreement, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and, within specified time frames, the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Fifteen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Parties must provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and

confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Fifteen, Parties must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product could not be used without that company's consent in granting approval to market a combination product. The Chapter also requires Parties to implement measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, the Parties, in determining damages, must take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

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

Transition Periods. Most obligations in the Chapter take effect upon the Agreement's entry into force. However, the Central American Parties and the Dominican Republic may delay giving effect to certain specified obligations for periods ranging from six months to four years from the date of entry into force of the Agreement.

Chapter Sixteen: Labor

Chapter Sixteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. Chapter Sixteen draws on the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes

further than these prior FTAs, however, in that it contains the most comprehensive set of commitments and undertakings regarding trade-related labor rights. As described below, the Chapter (i) includes detailed provisions to ensure that labor law enforcement is fair, equitable, and transparent; (ii) requires Parties to provide for public input on labor matters; and (iii) establishes a detailed framework that will assist Parties to develop the institutional capacity to fulfill the goals of the Chapter.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and protects the fundamental labor principles spelled out in the ILO Declaration as listed in the Chapter. Each Party also must strive to ensure that it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from another Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective enforcement of its labor laws, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Sixteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade between the Parties. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. In Chapter Sixteen, the Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Chapter Sixteen also commits each Party to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Sixteen provides for cooperative consultations if a Party believes that another Party is not complying with the obligations in this Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its labor law, the complaining Party may, after an initial 60-day consultation period under Chapter Sixteen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the

Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its labor laws.

Cooperation and Capacity Building. Chapter Sixteen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Parties and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of any communications from the public relating to the provisions of the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, bilateral and regional cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

Chapter Seventeen: Environment

Chapter Seventeen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Seventeen draws on the North American Agreement on Environmental Cooperation and the environmental provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however. In particular, the CAFTA-DR is the first U.S. FTA that includes a process for public submissions on environmental enforcement matters in the body of the FTA.

General Principles. Under Chapter Seventeen, the Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage trade with or investment from another Party. Chapter Seventeen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Effective Enforcement. In Chapter Seventeen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting trade between the Parties. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources in a bona fide manner. For the United States, "environmental laws" includes federal environmental statutes and regulations enforceable by the federal government.

Procedural Matters. Chapter Seventeen commits each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Chapter Seventeen also commits each Party to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for damage to the environment.

Public Submissions. Chapter Seventeen commits each Party to provide for the receipt and consideration of public submissions on matters related to the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if one member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. Pursuant to a separate understanding between the Parties, a new environmental unit within the Secretariat for Central American Economic Integration (SIECA) will serve as the secretariat for the receipt of public submissions.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations if a Party believes that another Party is not complying with its obligations under the Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its environmental law, the complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its environmental laws.

Institutional arrangements and cooperation. Chapter Seventeen establishes a cabinet-level Environment Affairs Council to oversee the implementation and operation of the Chapter. Opportunities will be provided at Council meetings for the public to express views on the implementation of Chapter Seventeen and cooperative work between the Parties. The Parties also agree under Chapter Seventeen to continue to seek ways to enhance the mutual supportiveness of multilateral agreements and trade agreements to which they are all party, and

to consult as appropriate on negotiations in the WTO regarding multilateral environmental agreements. In addition, to facilitate cooperation efforts, the Parties will enter into a separate environmental cooperation agreement.

Chapter Eighteen: Transparency

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment. Wherever possible, each Party must provide reasonable notice to the other Parties' nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Eighteen also affirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, Parties are obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

Chapter Nineteen: Administration of the Agreement and Trade Capacity Building

Chapter Nineteen creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission will be comprised of the Parties' trade ministers. It will meet annually and make decisions by consensus. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.
Chapter Nineteen requires each Party to designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

Chapter Nineteen also establishes a Committee on Trade Capacity Building, comprised of representatives of each Party. The overall objective of the Committee is to assist the Central American Parties and the Dominican Republic to implement the Agreement and adjust to liberalized trade. Particular functions of the Committee include: seeking the prioritization of trade capacity building projects at the national and regional level within Central America and the Dominican Republic; inviting international donor institutions, private sector entities, and non-

governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with each country's national trade capacity building strategy; and monitoring and assessing progress in implementing trade capacity building projects.

Chapter Twenty: Dispute Settlement

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

Consultations. A Party may request consultations with another Party on any actual or proposed measure that it believes might affect the operation of the Agreement. Any other Party having a substantial trade interest in the matter may participate in the consultations. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. Any party that participated in the consultations may participate in the panel proceedings as a complaining Party. Any other Party may participate in the panel proceedings as a third party.

The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the disputing Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. This period can be extended to 180 days in certain circumstances. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the disputing Parties cannot resolve the dispute after they receive the panel's final report, the disputing Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the

complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

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

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

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for appropriate labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

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

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

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

Chapter Twenty-One: Exceptions

Chapter Twenty-One sets out general provisions that apply to the entire Agreement with the following exception. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis*, and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

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

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

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

Disclosure of Information. The Chapter also provides that a Party may withhold information from another Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Chapter Twenty-Two: Final Provisions

Chapter Twenty-Two provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to applicable domestic procedures, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two provides for the entry into force of the Agreement, and establishes procedures under which a Party may withdraw from the Agreement. The Chapter provides that

any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. Finally, the Chapter provides that the original texts of the Agreement shall be deposited with the Organization of American States.

UNITED STATES – CHILE FREE TRADE AGREEMENT

Summary of the Agreement

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

Chapter One: Initial Provisions

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

Chapter Two: General Definitions

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

Chapter Three: National Treatment and Market Access for Goods

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

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

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

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

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

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

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

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

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

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

Chapter Three also calls for the United States and Chile to provide "tariff preference levels" (TPLs) for a limited quantity of cotton and man-made fiber fabric goods and cotton and man-

made fiber apparel goods from non-Party sources. For fabric formed from non-Party yarn or fabric, TPL status will apply to 1 million square meters annually. For apparel cut and sewn from non-Party fabric or yarn, TPL status will apply to 2 million square meters per year in the first 10 years of the Agreement, and thereafter to 1 million square meters per year. TPL goods will be accorded preferential tariff treatment as if they were originating goods.

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

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

Chapter Four: Rules of Origin and Origin Procedures

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

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

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

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

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

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

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

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

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

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

Chapter Five: Customs Administration

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

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

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

Chapter Six: Sanitary and Phytosanitary Measures

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

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

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

Chapter Seven: Technical Barriers to Trade

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

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

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

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

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

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

Chapter Eight: Trade Remedies

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

Key Concepts. Chapter Eight authorizes each Party to impose temporary duties on a product imported from the other Party if, as a result of the reduction or elimination of a duty under the Agreement, the product is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" product.

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

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

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

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

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

Chapter Nine: Government Procurement

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

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules must treat goods, services, and suppliers from the other country in a manner that is "no less favorable" than it treats their domestic counterparts. The chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also prohibits the imposition of "offsets," such as local content, licensing, investment, or similar requirements, designed to favor domestic production.

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

enterprises are either $280,951 or $518,000 for goods and services, and $6,481,000 for construction services. All thresholds are subject to adjustment for inflation.

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

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

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

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

Chapter Ten: Investment

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

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

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

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

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

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

Chapter Eleven: Cross-Border Trade in Services

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

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

- from the territory of one Party into the territory of another (*e.g.*, electronic delivery of services from the United States to Chile);

- in the territory of a Party by a person of that Party to a person of the other Party (*e.g.*, a Chilean company provides services to U.S. visitors in Chile); and

- by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in Chile).

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

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

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services except that certain provisions of Chapter Eleven apply to investments in unregulated financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

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

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

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

Chapter Twelve: Financial Services

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

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

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

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

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

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

Chapter Thirteen: Telecommunications

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

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

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

Competition. Both the U.S. and Chilean regulatory systems provide for open, competitive domestic and cross-border telecommunications markets. Chapter Thirteen establishes rules that reflect the common elements of these systems. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The chapter includes commitments by each Party to:

- ensure that all service suppliers of the other Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, Chile must ensure that its public phone companies do not provide preferential access to Chilean banks or Internet service providers, to the detriment of U.S. competitors);

- give the other Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of the other Party that seek to build physical networks in the Party's territory have access to key physical facilities, such as buildings, where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of the other Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers" – *i.e.*, companies that, by virtue of their market position or control over certain facilities, can materially affect the terms of participation in the market.

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

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met;

- will avoid imposing economic regulations on information service providers, such as Internet providers, other than to promote competition or protect consumers; and

- will endeavor to avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Chapter Fourteen: Temporary Entry for Business Persons

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

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

General Provisions. To avoid unduly impairing or delaying trade in goods or services or investment activities under the Agreement, the chapter calls on each Party to apply its measures

relating to temporary entry expeditiously. Chapter Fourteen clarifies that merely requiring a visa for admission does not violate this rule. Further, a Party may refuse admission if the temporary entry of the business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such a dispute. In such cases, the Party must provide a written statement of the reasons for the refusal and prompt notification to the other Party.

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

Chapter Fifteen: Electronic Commerce

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

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

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

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

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

Chapter Sixteen includes several provisions related to business conduct in recognition that healthy, competitive domestic markets are vital for fully realizing the benefits of trade

liberalization. The chapter sets out basic procedural safeguards and rules ensuring against harmful conduct by state monopolies and state enterprises. Neither of these types of enterprises account for a significant portion of either Party's economy.

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

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

Designated Monopolies. Under Chapter Sixteen, whenever a Party gives a private or government-owned entity the sole right to provide or purchase a good or service, the Party must ensure that the entity conducts itself in a manner consistent with commercial considerations, does not discriminate against the other Party's goods or service suppliers, and does not engage in anticompetitive practices in markets outside its monopoly mandate.

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

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

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

Chapter Seventeen: Intellectual Property Rights

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

General Provisions. The chapter will require Chile to ratify or accede to several agreements on intellectual property rights, including the International Convention for the Protection of New Varieties of Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The chapter also includes full national treatment commitments, with no exceptions for digital

products. It also requires each Party to publish its laws, regulations, procedures, and decisions concerning the protection or enforcement of intellectual property rights.

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

Copyrights and Related Rights. Chapter Seventeen articulates rights that are unique to the digital age, affirming and building on rights set out in several international agreements, including the World Intellectual Property Organization Internet treaties. For instance, the chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies – an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will ensure that authors have the exclusive right to make their works available online. To curb copyright piracy, Chapter Seventeen requires the two governments to use only legitimate computer software, setting an example for the private sector. The chapter also includes provisions on anti-circumvention under which the Parties commit to prohibit tampering with technology used by authors to protect copyrighted works. In addition, Chapter Seventeen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Each Party must also provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works).

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

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

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

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

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

Chapter Eighteen: Labor

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

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

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

Dispute Settlement. Chapter Eighteen provides for cooperative consultations if a Party believes that the other Party has violated its labor commitments. If the matter concerns a Party's compliance with the chapter's labor law enforcement provision, the complaining Party may invoke the provisions of Chapter Twenty-Two (Dispute Settlement) after an initial 60-day consultation period by requesting a meeting of the Agreement's ministerial-level Free Trade

Commission. The Parties will maintain a special roster of experts to serve on any dispute settlement panels convened to hear disputes regarding labor law enforcement.

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

Chapter Nineteen: Environment

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

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

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

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

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

Cooperation. Chapter Nineteen establishes an Environment Affairs Council, composed of cabinet-level environment officials, to advise on matters addressed in the chapter. Opportunities will be provided at Council meetings for the public to share concerns and ideas about the

implementation of Chapter Nineteen and cooperative work between the Parties. Chapter Nineteen also includes a commitment to conduct a series of cooperative projects, including improving capacity for wildlife management, remediating hazardous waste sites in Chile, and developing a pollutant release and transfer registry in Chile. The Parties have signed a separate environmental cooperation agreement to guide future efforts. The Parties will consult on the outcome of the current WTO negotiations regarding the relationship between the WTO and multilateral environmental agreements.

Chapter Twenty: Transparency

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

Chapter Twenty-One: Administration of the Agreement

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

Chapter Twenty-Two: Dispute Settlement

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

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

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

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

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

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

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

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for labor and environmental initiatives. If the

defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits.

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

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

Chapter Twenty-Three: Exceptions

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

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

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

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

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

Chapter Twenty-Four: Final Provisions

Chapter Twenty-Four provides that the annexes, appendices, and footnotes are part of the Agreement, that the Parties may amend the Agreement subject to applicable domestic procedures, and that the English and Spanish texts are both authentic. The chapter provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the

Agreement is amended, and it provides for the entry into force of the Agreement and for its termination six months after a Party provides written notice that it intends to withdraw.

ANNEX 3

STATEMENTS ON HOW EACH FTA THAT HAS BEEN CONCLUDED MAKES PROGRESS IN ACHIEVING THE APPLICABLE PURPOSES, POLICIES AND OBJECTIVES OF TPA

**STATEMENT ON HOW
THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Australia Free Trade Agreement (FTA or Agreement) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act (TPA Act). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the FTA.

The United States-Australia FTA is the first bilateral free trade agreement concluded by the United States with a developed country since the U.S.-Canada FTA in 1988. Tariffs on almost all manufactured goods originating in the United States and Australia and on all U.S. agricultural exports to Australia will be eliminated as soon as the Agreement enters into force. The Agreement addresses duty treatment for imports of sensitive products into the United States through transition periods, use of tariff-rate quotas (TRQs), and continued application of current duty rates and quotas for sugar and some dairy products. Under the FTA, Australia will substantially reduce barriers to bilateral trade in services and investment. The Agreement also includes state-of-the-art provisions in such key chapters as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The United States-Australia FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic ties with a long-time strategic ally.

The United States-Australia FTA meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, President Bush strongly believes that the Congress should approve the FTA and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of

trade. The United States-Australia FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

On the day the FTA enters into effect, tariffs will be eliminated on virtually all of the tariff lines covering U.S. manufactured goods exports to Australia. Australia's tariffs on these products now average at 4.3 percent, and tariffs on some products of export interest to U.S. firms are as high as 15 percent. Australia will also eliminate tariffs on all U.S. agricultural exports immediately upon entry into force of the Agreement. The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance and other financial services. Australia has also agreed to restrict its review of U.S. investment in Australia, thus eliminating an element of uncertainty in that market.

The U.S.-Australia FTA opens Australia's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Australia is not a signatory of the World Trade Organization (WTO) Agreement on Government Procurement, this represents a major benefit of the Agreement.

As a developed country market with familiar business norms and a common language, Australia presents fewer hurdles for U.S. small and medium sized enterprises (SME) considering entry into the global market. Australia's sophistication and stable political and legal foundations reduce the risks to SMEs. Exports from U.S. SMEs to Australia increased by nearly $1 billion, or 65 percent between 1992 and 2001. Elimination of tariff and non-tariff measures through the FTA should increase the attractiveness of this market for SMEs.

2. Stronger International Trade Disciplines

The FTA includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. The Agreement draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet. The U.S.-Australia FTA is the first to include provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration.

The FTA recognizes that workers and firms can fully realize the agreement's market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights (IPR) that clarify and build on those in the WTO TRIPS agreement and implement the more recent World Intellectual Property Organization (WIPO) treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules for protecting IPR.

The Agreement also includes provisions on addressing anticompetitive behavior by firms, cooperation on consumer protection and recognition of judgments providing monetary restitution

to consumers, investors, or customers who have suffered economic harm as a result of being deceived, defrauded, or misled. The FTA includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. The Agreement also contains innovative procedures for settling disputes that may arise under the FTA, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan Model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the FTA will boost annual global welfare by $23.1 billion when fully implemented. In absolute terms, a major share of this positive welfare effect will be enjoyed by the United States ($19.4 billion, or 0.2 percent of GNP). Australia's annual welfare will increase by $5.4 billion (1.1 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the U.S.-Australia FTA includes meaningful commitments by each Party labor and environmental protection.

Both Parties reaffirm through the Agreement their respective obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* The Agreement also commits each Party to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. Moreover, while recognizing each Party's right to establish its own labor laws, exercise its discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the Agreement commits both Australia and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each Party to ensure that its laws provide for high levels of environmental protection and to strive to improve those levels. As is the case for labor law enforcement, the FTA contains a binding commitment that the Parties not fail to effectively enforce domestic environmental laws, while recognizing each Party's right to establish its own environmental laws, and exercise discretion in regulatory, prosecutorial, and compliance matters.

The Agreement also includes language similar to that on labor rights that requires each Party to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. Australia has been a strong partner on environmental issues. The FTA recognizes and builds on our shared commitment to strong environmental protections.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The U.S.-Australia FTA makes substantial progress toward each of the applicable principal goals set out in the act.

1. Opening Markets for U.S. Goods

The United States has a significant surplus in its trade in goods and services with Australia. Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for improved access to Australia's market. For example, in addition to cutting tariffs on agricultural goods, the United States and Australia will work together on sanitary and phytosanitary (SPS) matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal or plant life or health. To that end, they have created an SPS Committee and a standing technical working group to address SPS issues. Australia and the United States will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (TBT) that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

Australia is a major consumer of U.S. services and the FTA creates new market opportunities in Australia for a range of key U.S. services and will lock in access in sectors where Australia's services market is already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a Party has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Australia's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. For many service providers, Australia will end investment screening for new investments and permit life insurance companies to establish branches. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the FTA, Australia will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that ensures that market access restrictions that Australia includes for its postal sector do not pertain to express delivery services. The FTA also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

The FTA commits Australia to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Australia. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Australia on the same basis as Australian investors or other foreign investors – across the full spectrum of economic activity.

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

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

The FTA also commits Australia not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Australia will allow U.S. investors to transfer funds related to their investments in and out of Australia.

In light of the unique circumstances of the Australian legal system, the FTA does not provide a separate dispute settlement mechanism for an investor of a Party to pursue a claim against the other Party. Among other things, Australia has an open economic environment and a legal system similar to that of the United States, U.S. investors have confidence in the fairness

and integrity of Australia's legal system, and the United States has a long history of close commercial relations with Australia that has flourished largely without disputes of the type addressed by international investment provisions. There are few other countries in the world that are in similar circumstances. If a Party believes, however, that there has been a change in circumstances such that one of its investors should be allowed to bring a claim against the other Party, the Party may request consultations with the other Party with a view towards establishing arbitral or other means of resolving the dispute.

4. Intellectual Property

The U.S.-Australia FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Australia will provide a high level of IPR protection similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The FTA requires Australia to accede to international Internet treaties and extend its term of protection for copyrighted works. The Agreement includes state-of-the-art protection for trademarks and copyrights, as well as expanded protection for patents and undisclosed information.

Under the FTA, Australia will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, images, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two Parties to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Australia to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Australia to make patent rights available, with certain exceptions, for inventions and provides for extension of the patent term if there are unreasonable delays in issuing the patent or granting regulatory approval for marketing the patented product. The FTA provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. The FTA will also require Australia to protect against unauthorized disclosure or unfair commercial use of test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, Australia will protect for five years product information generated in connection with pharmaceutical product approvals and will protect similar information for agricultural chemicals for 10 years.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The FTA

also commits Australia to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Australia must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

5. Transparency

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes key provisions that will ensure that Australia observes fundamental transparency principles. Those provisions are set out in a specific chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing cross-border services, competition, government procurement, customs administration, investment, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is also an effective tool in addressing government corruption in international trade. Under the FTA, the United States and Australia affirm their commitments to adopt, maintain, and enforce effective measures against bribery and corruption in international business transactions. The Agreement also provides for the two Parties to cooperate on these issues and to look for ways to address issues of bribery and corruption through broader international initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all chapters including those on telecommunications, cross-border trade in services, government procurement, technical barriers to trade, SPS, and customs administration. In addition, the Agreement includes commitments on transparency, right of appeal of administrative decisions, and access to information. Chapter Fourteen deals with proscribing anticompetitive practices. Under the Agreement, Americans will have better opportunities to provide their views to Australia's regulators, either directly or under the various government-to-government consultation provisions and bodies established for ongoing cooperation and further work. This is the first FTA to include provisions supporting the mutual recognition and enforcement of monetary judgments obtained by the Federal Trade Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Australia's Securities and Investments Commission and Competition and Consumer Commission to provide restitution to consumers, investors or customers who suffered economic harm as a result of being deceived, defrauded or misled.

The U.S.-Australia FTA is also our first FTA to directly address issues related to regulatory control of prices for pharmaceutical products. Under the FTA, Australia and the

United States affirm their commitment to several basic principles related to their shared objective of facilitating high quality health care and improvements in public health. Each country will ensure that if its federal health care authorities do not rely on competitive market-based mechanisms, such authorities maintain more prompt and transparent procedures for listing pharmaceutical products for reimbursement purposes, or for setting the amount of reimbursement for pharmaceuticals, under their respective federal healthcare programs. Government procurement of pharmaceutical products, which includes formulary development and management, is dealt with under Chapter Fifteen (Government Procurement) rather than under the pharmaceutical-specific provisions of the Agreement.

Australia will establish and maintain procedures enhancing transparency and accountability in the listing and pricing of pharmaceuticals under that country's Pharmaceutical Benefits Scheme (PBS), including access to an independent review process for listing decisions. Companies will also be provided further opportunities to consult with officials during the PBS process.

7. Electronic Commerce

The FTA includes rules prohibiting duties on and discrimination against digital products, e.g., computer programs, video, images, and sound recordings. The Agreement creates a strong foundation for wider regional and multilateral efforts to bar duties and discriminatory treatment of digital products. The FTA also includes provisions relating to authentication and digital certificates, online consumer protection, and paperless trade administration.

8. Trade in Agricultural Products

The FTA includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods and safeguards for producers of import sensitive agricultural products. In addition, the United States and Australia have agreed to work together in WTO agriculture negotiations to: (1) substantially improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) develop disciplines eliminating state trading enterprises' monopoly export rights; and (4) substantially reduce trade-distorting domestic support.

Under the FTA, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third-country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

The FTA includes safeguard procedures to aid domestic industries that are facing increased imports or imports below a price threshold of certain agricultural goods. The Agreement contains three distinct safeguard mechanisms: (1) a price-based safeguard for certain horticultural goods; (2) a quantity-based safeguard for certain beef goods (available in years 9

through 18 of the Agreement); and (3) a price-based safeguard for certain beef goods (available starting in year 19 of the Agreement).

9. Labor Rights and Environmental Protection

Under the Agreement, Australia and the United States reaffirm their obligations as members of the ILO and will to strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles and rights as set forth in the Agreement. The Agreement makes clear that it is inappropriate to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor principles and rights as an encouragement for trade or investment with the other party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each government that it will not fail to effectively enforce domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. It also commits Australia and the United States to cooperate on labor issues and activities.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of the FTA's environmental provisions is an enforceable commitment by each government that it will not fail to effectively enforce domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement also commits Australia and the United States to ensure that their domestic environmental laws provide for high levels of environmental protection and to strive to continue to improve these laws. Through the Agreement, Australia and the United States expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. In addition, the United States and Australia agree to establish, pursuant to a "joint statement on environmental cooperation" negotiated in parallel with the FTA, a mechanism for collaborating on environmental issues of mutual interest.

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the two Parties over the implementation of the Agreement. The Agreement's dispute procedures rely principally on consultations and compliance rather than imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two Parties to release their legal briefs and other filings to the public, and for dispute panels to have authority to receive submissions from interested nongovernmental groups.

The FTA's dispute settlement rules also provide equivalent remedies to enforce panel decisions under the Agreement, regardless of whether they address the Agreement's commercial,

labor, or environmental provisions. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism also allows a prevailing Party to suspend tariff benefits under the Agreement if a losing Party fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. Thus, the Agreement fully preserves U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The Agreement includes a bilateral safeguard procedure, similar to those in past U.S. free trade agreements that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty elimination under the Agreement could result in damaging levels of textile or apparel imports. This FTA is the only to provide for provisional relief in the context of a textile safeguard action.

The FTA does not affect U.S. rights to take safeguard actions under section 201, which implements the WTO Safeguards Agreement and GATT 1994. Under the FTA, the President may, but is not required to, exempt imports of goods from Australia, from a WTO Safeguard measure, if such goods are not a substantial cause of serious injury or threat thereof.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The U.S.-Australia FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Australia are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Australian labor laws and how their respective systems operate. The two Parties will continue to consult and work together to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO Convention 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*. Officials of the U.S. Department of Labor and Australia's Ministry of Work Place Relations and other appropriate agencies will participate in these consultations and future cooperation.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing both trade in goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run afoul of the Agreement's services and investment rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are very important concerns for both the United States and Australia. The FTA expressly recognizes the importance of multilateral environmental agreements, including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Australia to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between multilateral environmental agreements and WTO rules. In addition, the bilateral environmental cooperation agreement negotiated in parallel with the FTA will provide further opportunities for the two governments to cooperate in promoting effective implementation of multilateral environmental agreements to which they are both parties.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA states that "In order to address and maintain United States competitiveness in the global economy, the President shall seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Investment, Cross Border Trade in Services and Financial Services chapters of the United States–Australia Free Trade Agreement promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and

market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing Australia's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on (1) the Administration's environmental review of the Agreement and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Australia, which will also be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Australia's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.

STATEMENT ON HOW THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT MAKES PROGRESS IN ACHIEVING U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES

A. INTRODUCTION

The United States-Singapore Free Trade Agreement (FTA) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act ("TPA act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the FTA.

The United States-Singapore FTA is the first U.S. free trade agreement with an Asian country. In addition to eliminating tariffs on all trade in goods between the United States and Singapore, the agreement will substantially reduce barriers to bilateral trade in services and investment, and includes state-of-the-art provisions addressing such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

Along with the recently signed free trade agreement with Chile, the Singapore FTA is one of the most far-reaching trade and investment agreements the United States has ever concluded. A variety of the agreement's provisions will serve as useful benchmarks for future free trade agreements with other advanced economies in the Asia-Pacific region. The FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives.

The United States-Singapore FTA meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA act. Accordingly, President Bush strongly believes that the Congress should approve the FTA and enact the legislation needed to implement the agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses, (2) further strengthen international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade. The U.S.-Singapore FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

As soon as the agreement takes effect, Singapore will lock-in zero duty rates across the broad sweep of products that the United States currently exports to Singapore. In the absence of the FTA, Singapore would remain free under World Trade Organization (WTO) rules to impose substantial duties on many of these imports. In addition, the agreement calls for both countries to immediately eliminate existing tariffs on imports of textiles and apparel products that meet the agreement's "yarn-forward" rule of origin. This aspect of the agreement will create new opportunities for U.S. and Singaporean fiber, yarn, fabric, and apparel manufacturing industries.

The agreement's ground-breaking provisions on customs procedures will particularly benefit small businesses. The FTA will facilitate customs processing, which will benefit the many small- and mid-sized U.S. companies that incur significant additional costs due to inefficient customs procedures. Under the agreement, Singapore will provide for administrative and judicial review of customs decisions, employ risk-management systems to facilitate the movement of low-risk goods, and release goods from customs within a period no greater than that required to ensure compliance with its customs laws. Whenever possible, Singapore will release goods within 48 hours of arrival. In addition, Singapore will seek to make all new and amended customs regulations available for public comment before they are promulgated. These commitments will facilitate bilateral trade and ensure the highest possible degree of transparency, with particular benefits for smaller U.S. exporters.

The FTA reflects a substantial advance beyond Singapore's commitments on services trade under the WTO General Agreement on Trade in Services. The agreement guarantees U.S. firms enhanced access to key services markets in Singapore, particularly in the financial services, express delivery, and professional services sectors, and locks in current open access in other key services markets such as telecommunications.

2. Stronger International Trade Disciplines

The FTA establishes innovative, binding rules-of-the-road to protect electronic trade in digital products such as software, music, images, videos, and text. The agreement draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. These rules will ensure even-handed treatment for U.S. firms that deliver digital products to Singapore via the Internet. The FTA also limits customs duties on digital products imported through conventional means and prohibits tariffs outright when digital products are delivered over the Internet. The agreement's provisions on electronic commerce will serve as a model for progress in this emerging area in future bilateral, regional, and global trade agreements.

The FTA recognizes that workers and firms can fully realize the agreement's market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the agreement sets out new rules on intellectual property rights (IPR)

that clarify and build on those in the WTO TRIPS agreement to strengthen enforcement and enhance rules for protecting IPR.

The agreement also establishes ground-breaking rules for addressing discriminatory and anticompetitive behavior by firms that are subject to government influence and includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. The agreement also contains innovative procedures for settling disputes that may arise under the FTA, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan model of world production and trade to predict certain economic effects of various free trade agreements, the U.S.-Singapore FTA will boost annual global welfare by $25.1 billion when fully implemented. In absolute terms, most of this positive welfare effect will be enjoyed by the United States ($17.5 billion, or 0.19 percent of GNP). Singapore's annual welfare will increase by $2.5 billion (3.4 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and high product aggregation) and because not all the expected effects of the agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the agreement will contribute to economic growth in both countries and in global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the U.S.-Singapore FTA includes meaningful commitments by each government on labor and environmental protection.

Both governments reaffirm through the agreement their respective obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* The agreement also commits each government to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. Moreover, while recognizing each party's right to establish its own labor laws, exercise its discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the agreement commits both Singapore and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each government to ensure that its laws provide for high levels of environmental protection and to strive to improve those levels. As is the case for labor law enforcement, the FTA contains a binding commitment on effective environmental law

enforcement, while recognizing each government's right to establish its own environmental laws, and exercise discretion in regulatory, prosecutorial, and compliance matters. The agreement also includes language similar to that on labor rights that requires each government to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. In addition, the FTA includes provisions that will remove barriers to bilateral trade in environmental products and services, with the potential to reduce costs for purchases of pollution abatement and other environmental equipment.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA act establishes a variety of "principal trade negotiating objectives." The U.S.-Singapore FTA makes substantial progress toward each of the applicable principal goals set out in the act.

1. Opening Markets for U.S. Goods

Although the United States and Singapore generally have a strong bilateral relationship in trade in goods, U.S. exporters will enjoy increased market opportunities and greater certainty under the FTA regarding the terms for continued access to Singapore's vibrant market. While the great bulk of U.S. products currently enter Singapore duty-free, the agreement will immediately lock those zero duties in place. The agreement also commits Singapore to eliminate all its existing tariffs on U.S. products (including on beer and other alcohol beverages).

The agreement also calls for Singapore and the United States to increase cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

Singapore is a major consumer of U.S. services and the FTA will reduce barriers and create new market opportunities in Singapore for a range of key U.S. services and will lock in access in sectors where Singapore's services market is already open. The agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the agreement's rules unless a government has negotiated a specific exemption in that sector.

The agreement will either open or lock in existing significant access to Singapore's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, distribution services (wholesaling, retailing, franchising), professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The agreement's market-opening provisions are complemented by state-

of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

As a result of the agreement, Singapore will open its market to U.S. firms in a variety of key services sectors where access is currently limited. In the financial services sector, for example, Singapore has traditionally limited the number of foreign banks that can enter Singapore's domestic (as opposed to off-shore) banking sector. Eighteen months after the FTA takes effect, Singapore will lift its ban on new licenses for U.S.-owned full-service banks to operate in Singapore. Singapore will remove its ban on licenses for U.S. banks that provide only "wholesale" (*i.e.*, large-scale) operations within three years. Once the FTA takes effect, U.S. full-service banks will have authority to open 30 "customer service locations" (branch offices or ATM locations) in Singapore, double the number currently allowed. The FTA will require Singapore to entirely eliminate its cap on customer service locations for qualifying U.S. banks in two years.

In addition, locally incorporated, full service U.S. banks will have authority to negotiate access to Singapore's locally-owned ATM networks within 2-1/2 years after the agreement takes effect. All other full-service U.S. banks will have similar rights after four years. This provision of the FTA will allow qualifying U.S. banks to negotiate contracts with local ATM network owners, which could enable their banking customers to use hundreds of existing ATMs in Singapore. Currently, foreign-owned banks are precluded from participating in Singapore's locally-owned ATM networks.

The FTA will also ensure that when U.S. investment firms establish mutual funds in Singapore they can use personnel based in the United States to manage the securities included in those funds. The FTA also commits Singapore to relax its local staffing rules for U.S. asset management and insurance companies that seek to market their investment products under Singapore's mandatory national savings scheme, the Central Provident Fund.

The FTA locks in Singapore's generally open regime for insurance that U.S. firms provide to customers in Singapore through subsidiary or branch offices located there, including life and non-life insurance, reinsurance, insurance intermediation, and insurance auxiliary services. The FTA will provide significant new rights that will allow U.S. insurance companies to provide from the United States to customers in Singapore marine, aviation, and transport insurance ("MAT insurance"), intermediation of reinsurance and MAT insurance, and insurance auxiliary services. The agreement also ensures that U.S. firms will continue to be able to provide Singapore customers reinsurance services from the United States. The FTA also includes an innovative provision that will allow licensed U.S. insurers to provide new insurance products to their business customers in Singapore without prior regulatory approval.

In the professional services sector, U.S. engineering and architecture firms seeking to establish offices in Singapore will benefit from Singapore's commitment to require that only 51% the directors of these firms must be professionally accredited in Singapore. Currently, two-thirds of board members must be accredited there. The FTA will require Singapore to entirely

eliminate local ownership requirements for U.S. land surveying firms by 2004. The FTA will also require Singapore to ease restrictions on U.S. law firms that seek to form joint law practices Singapore, and to recognize degrees earned from certain U.S. law schools for admission to the Singapore bar.

The FTA guarantees continued, unimpeded access to Singapore's telecommunications market virtually across-the-board to U.S. telecom companies. Under the WTO, Singapore has committed to allow only three foreign telecom providers to participate in just a few of its telecom markets. By contrast, the FTA ensures that all U.S. telecom companies will continue to be free to enter any telecom sector in Singapore, whether by acquiring or building local facilities, linking its U.S. network with a network in Singapore, or leasing lines from firms in Singapore. The FTA commits Singapore's telecom regulatory authorities to use open and transparent administrative procedures, ensure that U.S. firms have fair and non-discriminatory access to public telephone networks, consult with interested parties before issuing regulations, solicit public comments for proposed rules, and publish all pertinent regulations.

Under the FTA, Singapore will also afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that ensures that market access restrictions that Singapore includes for its postal sector do not pertain to express delivery services. Representing a further innovation, the agreement requires Singapore to prohibit its postal authority from subsidizing its "express letter" service to give it an unfair commercial advantage in express delivery services.

3. Foreign Investment

The FTA commits Singapore to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Singapore. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Singapore on the same basis as Singaporean investors or other foreign investors – across the full spectrum of economic activity.

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

With regard to recourse in the event of expropriations, the FTA draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The FTA clarifies, for example, that takings are limited to property rights and property interests, not

other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the FTA commits the United States to continue to provide Singapore investors a high level of protection and due process, the agreement gives Singapore firms no greater substantive rights than U.S. companies already enjoy in the United States.

The FTA also commits Singapore not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Singapore will allow U.S. investors to transfer funds related to their investments in and out of Singapore.

The agreement includes investor-State arbitration procedures that will provide a fair and expeditious means of addressing disputes. The arbitration provisions incorporate procedures intended to increase public access to information regarding arbitration proceedings. The FTA requires, for example, that all documents in investor-State arbitrations, except for business confidential and other legally confidential information, be made public promptly. In addition, all hearings in arbitration proceedings are to be open to the public. The FTA also gives tribunals the authority to accept *amicus* submissions from the public and includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

4. Intellectual Property

The U.S.-Singapore FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The agreement ensures that Singapore will provide a high level of IPR protection similar to that provided under U.S. law. Key provisions of the agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The FTA requires Singapore to accede to international Internet treaties and extend its term of protection for copyrighted works. The agreement includes state-of-the-art protection for trademarks and copyrights, as well as expanded protection for patents and undisclosed information.

Under the FTA, Singapore will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two governments to use only legitimate computer software, thus setting a positive example for private users. The FTA will also require Singapore to prohibit, in the absence of the copyright holder's written request, the production of optical discs (CDs, DVDs, and CD-ROMs) that do not contain a source identification code. To prevent piracy of

satellite television broadcasts, the agreement will also require Singapore to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Singapore to make patent rights available, with certain exceptions, for inventions and provides for extension of the patent term if there are unreasonable delays in issuing the patent or granting regulatory approval for marketing the patented product. The agreement requires Singapore to enable patent owners to prevent unauthorized imports of their patented pharmaceutical products if a contract is breached. The FTA will also require Singapore to protect against unauthorized disclosure or unfair commercial use of test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the agreement, Singapore will protect for five years product information generated in connection with pharmaceutical product approvals and will protect similar information for agricultural chemicals for 10 years.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products, the equipment used to produce these products, and a requirement to provide for statutory and actual damages to remedy such practices. The FTA also commits Singapore to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Singapore must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products. In addition, Singapore must maintain criminal penalties for circumvention of technology protection measures.

5. Transparency

The agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes key provisions that will ensure that Singapore observes fundamental transparency principles. Those provisions are set out in a specific chapter of the agreement dealing with regulatory transparency as well as in provisions of the agreement addressing cross-border services, competition, government procurement, customs administration, investment, telecommunications, and dispute settlement. The agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is also an effective tool in addressing government corruption in international trade. Under the FTA, the United States and Singapore affirm their commitments to adopt, maintain, and enforce effective measures against bribery and corruption in international business transactions. The agreement also provides for the two governments to cooperate on these issues and to look for ways to address issues of bribery and corruption through broader international initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the agreement's market-opening provisions. The FTA includes disciplines designed to prevent the possibility that firms in Singapore might fraudulently seek preferential tariff treatment under the agreement for textile products or apparel that do not qualify for this treatment under the FTA's origin rules. To address this possibility, the FTA includes rules requiring Singapore to monitor textiles and apparel production, and includes anti-circumvention commitments by Singapore in customs cooperation and enforcement. The FTA will require Singapore to penalize companies that engage in circumvention and report them to U.S. authorities. The agreement contemplates that U.S. customs officials may visit production facilities in Singapore and bar imports of textile and apparel goods from factories it finds to be circumventing the agreement's origin rules.

The FTA also addresses the issue of government regulation or other government actions that could provide a competitive advantage to domestic enterprises, and specifically to government-influenced enterprises. The government still plays a far-reaching role in Singapore's economy through investments in state-owned enterprises, known in Singapore as government-linked companies ("GLCs"). The FTA commits Singapore gradually to divest its interest in most GLCs, as market conditions permit. The FTA also offers protection for U.S. firms in their sales to, and purchases from, these companies. In particular, the FTA requires GLCs subject to "effective influence" by Singapore authorities to base their purchase and sales decisions on normal business considerations, to provide non-discriminatory treatment to U.S. goods and firms, and to refrain from anticompetitive practices. The FTA also requires Singapore to enact legislation by January 2005 that will proscribe anticompetitive business conduct and establish an antitrust enforcement authority. These commitments will help guard against anticompetitive business conduct, particularly by government-linked firms, that could prevent U.S. exporters, investors, and service providers from fully realizing the new economic opportunities the FTA will create.

7. Electronic Commerce

The FTA includes ground-breaking rules prohibiting duties on and discrimination against digitally-encoded products transmitted over the Internet, including computer programs, video, images, and sound recordings. The agreement thus creates a strong foundation for wider efforts to bar duties and unfair or discriminatory regulation of electronically-transmitted products. In addition, the agreement calls for Singapore to base any customs duties it applies to digital products imported on physical media (such as DVDs or CD-ROMs) on the value of the media (*e.g.*, the disc) rather than on the value of the movie, music, or software encoded on the media. That commitment will set a useful precedent for the Asia-Pacific region.

8. Trade in Agricultural Products

Singapore has traditionally been an important market for U.S. agricultural products. The FTA locks in place Singapore's zero duty rates for U.S. farm products and includes trade-enhancing provisions on customs procedures and trade facilitation that will help ensure that the strong bilateral trade relationship in agriculture products will continue to grow.

9. Labor Rights and Environmental Protection

Under the agreement, Singapore and the United States reaffirm their obligations as members of the ILO and will to strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor rights as set forth in the agreement. The agreement makes clear that it is inappropriate to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. A key element of the agreement's labor provisions, which is enforceable through the agreement's dispute settlement procedure, is a commitment by each government regarding the effective enforcement of its domestic labor laws. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The agreement also commits Singapore and the United States to cooperate on labor issues and activities.

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

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the two governments over the implementation of the agreement. The agreement's dispute procedures rely principally on consultations and compliance rather than imposition of trade sanctions or penalties. The procedures set new, higher standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two governments to release their legal briefs and other filings to the public, and for dispute panels to have authority to receive submissions from interested nongovernmental groups.

The FTA's dispute settlement rules also provide equivalent remedies to enforce panel decisions under the agreement, regardless of whether they address the agreement's commercial, labor, or environmental provisions. The FTA achieves this result through an innovative enforcement mechanism that provides for the use of monetary assessments if a government fails to comply with a panel's decision. Enforcement through the suspension of trade benefits provided under the agreement is also available for all types of disputes. But the agreement is designed to use remedies that will enhance compliance with the agreement, rather than restrict trade, which could adversely affect sectors and consumers that do not have a direct stake in the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. Thus, the agreement fully preserves U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The agreement includes a bilateral safeguard procedure, similar to those in past U.S. free trade agreements, that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the agreement. The agreement also includes a special safeguard to address the possibility that duty elimination under the agreement could result in damaging levels of textile or apparel imports.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The United States-Singapore FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Singapore are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Singaporean labor laws and how their respective systems operate. The two governments included a bilateral labor cooperation mechanism in the FTA to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO Convention 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*. The agreement includes a framework for the cooperation mechanism and lists a range of labor activities on which the two governments will collaborate. Officials of the U.S. Department of Labor and Singapore's Ministry of Labor and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing both trade in goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The agreement also avoids disturbing existing state and local governmental measures that might run afoul of the agreement's services and investment rules by including "grandfather" clauses that exempt those measures from challenge under the agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Singapore. The FTA expressly recognizes the importance of multilateral environmental agreements, including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Singapore to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between multilateral environmental agreements and WTO rules. In addition, the bilateral environmental cooperation mechanism negotiated in parallel with the FTA will provide further opportunities for the two governments to cooperate in promoting effective implementation of multilateral environmental agreements to which they are both parties.

4. Currency and Exchange Rate Manipulation

The FTA's investment and services rules will promote and protect freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

Significant and unanticipated currency movements can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes, or the appearance of new information on fundamental economic conditions. A determination of whether such movements reflect currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions, and market developments that will require a review mechanism with a larger scope than any specific trade agreement.

Under the 1988 Omnibus Trade and Competitiveness Act, the Secretary of the Treasury is required to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currencies and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage

in international trade. Each member of the International Monetary Fund is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes. The Department of the Treasury reports semi-annually on its analysis.

The Treasury will ensure that significant and unanticipated currency movements are examined in its reviews of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to reflect a pattern of currency manipulation to promote a competitive advantage in international trade through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA act, the Administration has provided a report to the Congress describing Singapore's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA act on (1) the Administration's environmental review of the agreement and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Singapore, which will also be made available to the public. Finally, the Administration has reported, as specified in the TPA act, on U.S. efforts to establish consultative mechanisms to strengthen Singapore's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.

**STATEMENT ON HOW
THE UNITED STATES–MOROCCO FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Morocco Free Trade Agreement (FTA or Agreement) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act (TPA Act). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the FTA.

Under the Agreement, customs duties on almost all non-textile industrial and consumer good exports originating in the United States and Morocco will be eliminated as soon as the Agreement enters into force. The Agreement covers all agricultural goods in both countries and, in some cases, provides new access to a market previously closed to U.S. exports. Certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). In addition, the FTA contains a provision that affords U.S. exporters of products such as wheat, beef, poultry, corn, soybeans, and corn and soybean products any better access to its market that Morocco provides to any other of its trading partners, thereby giving U.S. exporters a new tool to compete with Europe and others in Morocco's market. Morocco also will substantially reduce barriers to bilateral trade in services and investment. The Agreement includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic and political ties with a long-time partner in North Africa.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, President Bush strongly believes that the Congress should approve the FTA and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United

States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement will result in substantial market access across almost all economic sectors. For industrial (non-textile) products, tariffs will be eliminated immediately on more than 95 percent of bilateral trade between the United States and Morocco. Morocco's tariffs on these products now average 28 percent, and duties on some products of export interest to U.S. firms are as high as 50 percent. In addition, Morocco will eliminate tariffs on many U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural products will have longer periods for duty elimination or will be subject to other provisions, including, in some cases, the application of TRQs. Duties on all "originating" textile and apparel articles traded between the two countries will be eliminated either immediately or progressively under the Agreement, with special staging provisions for elimination of tariffs on some specific textile and apparel articles. All duties on textile and apparel articles will be eliminated after nine years.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Morocco's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Morocco is not a signatory of the World Trade Organization (WTO) Agreement on Government Procurement, Morocco's commitment to open its procurement market represents a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes cutting edge commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet.

The Agreement recognizes that workers and firms can fully realize its market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights (IPR) that clarify and build on those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and implement the more recent World Intellectual Property Organization (WIPO) treaties on protection of copyright and rights of performers and producers.

The Agreement also includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. In addition, the FTA contains innovative procedures for settling disputes

that may arise under the Agreement, including provisions for monetary assessments to enforce dispute panel decisions.

3. Economic Growth

In a recent report, the International Trade Commission (ITC) found that the FTA, when fully implemented, is likely to increase U.S. economic welfare by between $111 million and $132 million. In addition, the ITC report concluded that total U.S. exports will increase by some $267 million, and total U.S. imports will increase by approximately $238 million, as a result of the Agreement, with minimal effects on either employment or economic output. Furthermore, U.S. exports from Morocco are expected to rise by about $740 million, and U.S. imports from Morocco are expected to rise by about $199 million, under the FTA.

The ITC report, however, may significantly understate the economic benefits to be expected under the Agreement. That study does not consider either the economic benefits that will accrue to Morocco under the Agreement, or the additional benefits that will accrue to the United States as the result of further trade liberalization by Morocco, for example in its services and investment market.

According to an independent study using the Michigan model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual global welfare by $7.5 billion when fully implemented. In absolute terms, a major share of this positive welfare effect will be enjoyed by the United States ($6.0 billion, or 0.05 percent of GNP). Morocco's annual welfare will increase by $0.9 billion (2.0 percent of GNP). However, the Michigan model assumes that all services barriers are removed in the United States, which is not the case. As a result, the study overestimates the welfare benefits for the United States by including the welfare benefits due to removing U.S. services barriers. On the other hand, formal models such as the Michigan model tend to underestimate the benefits of free trade agreements because their scope does not include assessment of the impact of rules changes such as improved IPR protection, because they group many industries and products into a limited number of categories for analysis, and because not all the expected effects of the Agreement are necessarily measured (*i.e.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the United States-Morocco Free Trade Agreement includes meaningful commitments by each country on labor and environmental protection.

Both countries reaffirm through the Agreement their respective obligations as members of the International Labor Organization (ILO) and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* The Agreement commits each country to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other country. Moreover, while recognizing each country's right to establish its own labor laws; exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters; and allocate enforcement resources, the Agreement commits both Morocco and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each country to ensure that its laws provide for high levels of environmental protection and to strive to improve those laws. As is the case for labor law enforcement, the FTA contains a binding commitment that each country not fail to effectively enforce its domestic environmental laws, while recognizing each country's right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. Finally, the two countries agree to cooperate on an ongoing basis regarding environment matters and to consider establishing further consultative mechanisms to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to Morocco's market. For example, in addition to eliminating tariffs on agricultural goods, the United States and Morocco affirm their existing rights and obligations under the WTO relating to sanitary and phytosanitary (SPS) matters and their desire to create a forum through the Joint Committee on such matters. In addition, Morocco will accept export certificates from the Food Safety Inspection Service of the U.S. Department of Agriculture on U.S. exports of beef, poultry, and beef and poultry products, as the means for certifying compliance with Morocco's standards on hormones, antibiotics, and other residues. The United States and Morocco will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade (TBT) that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The FTA will create new market opportunities in Morocco for a range of key U.S. services suppliers and will lock in access in sectors where Morocco's services market is already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Morocco's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the FTA, Morocco will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes a comprehensive definition of express delivery services that confirms that market access restrictions that Morocco includes for its postal sector do not pertain to express delivery services. The FTA also addresses the issue of Morocco's postal monopoly and precludes directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

The FTA builds on our Bilateral Investment Treaty (BIT) so that both countries provide a strong and predictable legal framework for investors. Under the Agreement, Morocco will permit direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Morocco. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Morocco on the same basis as Moroccan investors or other foreign investors, across the full spectrum of economic activity.

Under the Agreement, Morocco will provide U.S. investors due process rights, and recourse in the event of expropriations, that are consistent with U.S. legal principles and practice. For example, the FTA includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The Agreement thus makes explicit that the treatment required by this obligation is grounded in the due process standards embraced by the United States and other major legal systems of the world.

With regard to recourse in the event of expropriations, the FTA draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The FTA clarifies, for example, that takings are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine

whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, non-discriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the FTA commits the United States to continue to provide Moroccan investors a high level of protection and due process, the Agreement gives Moroccan firms substantive rights that are consistent with those U.S. companies already enjoy in the United States.

The FTA also commits Morocco not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Morocco will allow U.S. investors to transfer funds related to their investments into and out of Morocco.

The FTA provides a mechanism for U.S. or Moroccan investors to pursue claims against the other country. An investor may assert that the country has breached a substantive obligation under the investment chapter or that the country has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the two countries to make public all documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

4. Intellectual Property Rights

The FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Morocco will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The FTA requires Morocco to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. The Agreement includes state-of-the-art protection for trademarks and copyrights, as well as expanded protection for patents and undisclosed information.

Under the FTA, Morocco will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two countries to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Morocco to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Morocco to make patent rights available, with certain exceptions, for inventions and provides for extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement requires Morocco to enable patent owners to prevent unauthorized imports of their patented pharmaceutical products if a contract is breached. The FTA will also require Morocco to protect against unauthorized disclosure or unfair commercial use of test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, Morocco will protect product information generated in connection with pharmaceutical and agricultural chemical product approvals for five and 10 years, respectively.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products, as well as the equipment used to produce these products. The FTA also commits Morocco to ensure that its enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Morocco must also authorize its enforcement officials to act against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against such illegal products.

5. Transparency

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes provisions that will ensure that Morocco observes fundamental transparency principles. Those provisions are set out in a specific chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing cross-border services, government procurement, customs administration, investment, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The FTA contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain, in matters affecting international trade or investment, prohibitions against bribery of foreign officials and establish criminal penalties that take into account the gravity of offenses. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The two countries will also work jointly to encourage and support appropriate regional and multilateral initiatives to address bribery and corruption.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. Almost all chapters, including those on telecommunications, cross-border trade in services, government procurement, TBT, SPS, and customs administration, contain disciplines on regulatory matters. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the FTA, each country must apply the principles of most-favored-nation treatment and national treatment to trade in electronically transmitted digital products, such as computer programs, video, images, and sound recordings. The FTA will prohibit duties on digital products that are transmitted electronically and will limit duties that the two countries may impose on duties on digital products that are stored on a carrier medium, such as a compact disc, by requiring the duty to be based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The FTA includes several provisions designed to open Morocco's markets for U.S. agricultural products consistent with U.S. principal trade negotiating objectives. The Agreement requires the elimination of duties on agricultural products, but provides reasonable phase-out periods, TRQs, and safeguards for producers of import-sensitive agricultural products. The FTA also contains disciplines on the implementation and administration of TRQs for agricultural goods, as well as specific provisions relating to an import licensing program for high quality beef and a wheat auctioning system that would apply if Morocco uses these measures.

Under the FTA, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. In addition, Morocco and the United States will work together in the WTO negotiations on agriculture to develop an agreement on export state trading enterprises that, for example, eliminates restrictions on the right to export.

The Agreement also includes safeguard procedures to aid U.S. industries that are facing low-priced imports of certain agricultural goods. For the United States, such as canned olives, dried onion and garlic, canned fruit, processed tomato products, and orange juice.

9. Labor Rights and Environmental Protection

Under the Agreement, Morocco and the United States reaffirm their obligations as members of the ILO and will to strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade or investment with the other Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each country to not fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. Finally, Morocco and the United States will cooperate on labor issues. Pursuant to a side letter, which is an integral part of the Agreement, the Parties have created a Subcommittee on Labor Affairs to oversee the operation of the labor chapter.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of the FTA's environmental provisions is an enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The Agreement also commits Morocco and the United States to ensure that their domestic laws provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Morocco and the United States expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. Finally, Morocco and the United States will cooperate on environment issues. Pursuant to a side letter, which is an integral part of the Agreement, the Parties have created a Subcommittee on Environmental Affairs to oversee the operation of the environment chapter.

10. Dispute Settlement

The FTA includes procedures for settling disputes that may arise between the Parties over the implementation of the Agreement. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two countries to release their legal briefs and other filings to the public, and for dispute settlement panels to have authority to receive submissions from interested non-governmental groups.

The FTA's dispute settlement rules also provide equivalent remedies to enforce panel decisions under the Agreement, regardless of whether they address the Agreement's commercial, labor, or environmental provisions. The FTA achieves this result through an enforcement

mechanism that provides for the use of monetary assessments. That mechanism allows a prevailing country to suspend tariff benefits under the Agreement if the losing country fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Finally, dispute settlement is available under the Agreement for labor or environmental disputes relating to a country's effective enforcement of its labor or environmental laws. If a panel determines that a country has not met its enforcement obligations and the two countries cannot agree on how to resolve the dispute, or the complaining country believes that the defending country has failed to implement an agreed resolution, the complaining country may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending country. The panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Joint Committee for appropriate labor or environmental initiatives. If the defending country fails to pay an assessment, the complaining country may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, again while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. Thus, the Agreement fully preserves U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The Agreement includes a bilateral safeguard procedure, similar to those in past U.S. free trade agreements, which will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty elimination under the Agreement could result in damaging levels of textile or apparel imports. The FTA does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, as amended, which implements the WTO Safeguards Agreement and General Agreement on Tariffs and Trade (GATT) 1994.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Morocco are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Moroccan labor laws and how their respective systems operate. The two countries will continue to consult and work together to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*. Officials of the U.S. Department of Labor and Morocco's Ministry of Employment, Social Development, and Solidarity and other appropriate agencies will participate in these consultations and future cooperation.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing both trade in goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run afoul of the Agreement's services and investment rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Morocco. The FTA expressly recognizes the importance of multilateral environmental agreements (MEAs), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Morocco to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the two countries will cooperate in promoting effective implementation of MEAs to which they are both parties.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that, in order to address and maintain United States competitiveness in the global economy, the President shall "seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged

in a pattern of manipulating its currency to promote a competitive advantage in international

trade."

The investment, cross-border trade in services, and financial services chapters of the FTA promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes, or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions, and market developments that will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund (IMF), and consider whether countries manipulate the rate of exchange between their currency and the U.S. dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements described in Section 2102(c)(12) are examined in its analyses of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing Morocco's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Morocco, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Morocco's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

**STATEMENT ON HOW
THE UNITED STATES–BAHRAIN FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Bahrain Free Trade Agreement ("FTA" or "Agreement") makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act ("TPA Act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

Under the Agreement, 100 percent of bilateral trade in consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement. In particular, trade in textile and apparel goods will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Furthermore, Bahrain will provide immediate duty-free access to U.S. agricultural exports in 98 percent of agricultural tariff lines. Certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) in both countries, or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas ("TRQs") during a 10-year transition period by the United States. Bahrain also will substantially reduce barriers to bilateral trade in services, including financial services. The Agreement includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The FTA forms an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. The Agreement also provides the opportunity to strengthen our economic and political ties with a long-time partner in the Middle East, and is a further step in achieving President Bush's goal of a broader United States-Middle East Free Trade Agreement ("MEFTA") by 2013.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, President Bush strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of

trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement will result in substantial market access across almost all economic sectors. For consumer and industrial goods (including textile and apparel goods), tariffs will be eliminated immediately on 100 percent of bilateral trade between the United States and Bahrain. Bahrain maintains an across-the-board tariff of approximately five percent on almost all such goods, though certain goods have tariffs as high as 20 percent. In addition, Bahrain will eliminate tariffs on virtually all U.S. agricultural exports immediately upon entry into force of the Agreement. For both countries, certain sensitive agricultural goods will have longer periods for duty elimination (up to 10 years) or will be subject to other provisions, including, in some cases, the application of TRQs during a 10-year transition period by the United States.

The FTA provides additional market opening in a broad range of service sectors, including express mail delivery, insurance, and financial services. It also opens Bahrain's government procurement market to U.S. suppliers for the first time on transparent and non-discriminatory terms. As Bahrain is not a signatory to the World Trade Organization ("WTO") Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The FTA prohibits tariffs when digital products are delivered over the Internet.

The Agreement recognizes that workers and firms can fully realize its market-opening potential only if it imposes disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO TRIPS Agreement and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, imposing market-opening disciplines that extend beyond those in effect under the WTO. In addition, the FTA contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to enforce a Party's rights where a dispute settlement panel finds that the other Party has breached its obligations.

3. Foster Economic Growth

U.S. exports to Bahrain have averaged about $435 million per year over the last four years. While that figure is small in comparison to that of other U.S. trading partners, these exports have been concentrated in a narrow range of manufacturing categories: transportation equipment (motor vehicles and airplanes); machinery (other than electrical); computer and electronic products; fabricated metal products; food manufacturing; and chemicals. The removal of tariffs on all industrial goods will boost U.S. competitiveness in Bahrain, especially in the aforementioned product categories. Coupled with the gains expected to result from greater liberalization of trade in services, heightened protection of intellectual property rights, and increased transparency, the FTA is expected to make a positive contribution to U.S. economic welfare and the expansion of global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

Both countries reaffirm through the Agreement their respective obligations as members of the International Labor Organization ("ILO") and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* The Agreement commits each country to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other country. Moreover, while recognizing each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the Agreement commits both Bahrain and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each country to ensure that its laws and policies provide for high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the FTA contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party's right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and to consider establishing further consultative mechanisms to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the FTA, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to Bahrain's market. For example, in addition to cutting tariffs on agricultural goods, the United States and Bahrain will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating trade between the countries, while appropriately protecting human, animal, and plant life and health. They will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The FTA creates new market opportunities in Bahrain for a range of key U.S. services suppliers and will lock in access in sectors where Bahrain's services market is already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to Bahrain's services markets in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the FTA, Bahrain will afford U.S. services suppliers unimpeded access to another of its key services markets – express delivery. The FTA includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation ("MFN") treatment, and additional market access benefits to the other Party's express delivery services. The FTA also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

3. Foreign Investment

A principal trade negotiating objective of the United States is to achieve, in agreements with U.S. trading partners, strong and predictable legal frameworks for U.S. investors. In 1999,

the United States and Bahrain negotiated a comprehensive bilateral investment treaty ("BIT"), the *Treaty Between the Government of the United States of America and the Government of the State of Bahrain Concerning the Encouragement and Reciprocal Protection of Investment (1999)*. The BIT was based on the U.S. model for investment agreements and provides both substantially increased protections and improved transparency for U.S. investors in Bahrain. In particular, the BIT: (1) applies to all forms of U.S. investment in Bahrain; (2) requires that covered U.S. investments receive the better of national treatment or MFN treatment provided by Bahrain; (3) prohibits the imposition of performance requirements on covered U.S. investments by Bahrain; (4) allows expropriation of U.S. investments by Bahrain only in accordance with customary international law; and (5) allows U.S. investors to bring disputes with the Bahraini government to binding international arbitration, among other provisions.

Given the comprehensive nature of the BIT, and the fact that it was concluded so recently, the Agreement contains no investment chapter. However, certain provisions of Chapter Ten (Cross-Border Trade in Services) extend additional benefits to investors and investments that are covered under the BIT. Chapter Eleven (Financial Services) provides supplementary obligations regarding the treatment of financial institutions.

4. Intellectual Property Rights

The FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that Bahrain will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The FTA requires Bahrain to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the FTA, Bahrain will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires Bahrain to direct its agencies to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require Bahrain to protect encrypted satellite signals as well as the programming those signals carry.

The FTA commits Bahrain to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The FTA will also require Bahrain to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory

approval for their patented products. Under the Agreement, Bahrain will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and 10 years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The FTA also commits Bahrain to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them.

5. Transparency

The Agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes provisions that will ensure that Bahrain observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing cross-border trade in services, financial services, government procurement, customs administration, telecommunications, TBT, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The FTA contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, both countries will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives.

6. Regulatory Practices

The FTA addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on telecommunications, cross-border trade in services, government procurement, TBT, SPS, and customs administration. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the FTA, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The FTA includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to

a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The FTA includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. Under the Agreement, which covers all agricultural products, Bahrain will provide immediate duty-free access for U.S. exports in 98 percent of agricultural tariff lines, and will phase out its remaining tariffs within 10 years.

In addition, each Party will eliminate export subsidies on agricultural goods destined for the other country. If a third country subsidizes exports to a Party, the other Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

9. Labor Rights and Environmental Protection

Under the Agreement, Bahrain and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with the other Party or investment in its territory by investors of the other Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedure, is a commitment by each country not to fail to effectively enforce its labor laws. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits Bahrain and the United States to cooperate on labor issues, in part through the Labor Cooperation Mechanism described in an annex to the labor chapter.

Environmental commitments are also included in the core text of the FTA. As is the case for labor rights, a key component of the FTA's environmental provisions is an enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting bilateral trade. The Agreement also commits Bahrain and the United States to ensure that their domestic laws and policies provide for high levels of environmental protection and to strive to continue to improve these laws and policies. Through the Agreement, Bahrain and the United States expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. The Agreement also commits Bahrain and the United States to cooperate on environment issues, in part pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation.

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two countries to release their legal briefs and other filings to the public, and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The FTA's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the other Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows the prevailing Party to suspend tariff benefits under the Agreement if the losing Party fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Finally, dispute settlement is available under the Agreement for labor or environmental disputes relating to the Parties' obligations not to fai[1] to effective enforce their labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, again while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The FTA does not address antidumping or countervailing duty issues. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The Agreement includes a bilateral safeguard procedure, similar to the procedures in past U.S. free trade agreements, which will be available to aid domestic industries that sustain or are

threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty elimination under the Agreement could result in damaging levels of textile or apparel imports. The FTA does not affect U.S. rights to take safeguard actions under sections 201 to 201 of the Trade Act of 1974, which implement the WTO Safeguards Agreement and General Agreement on Tariffs and Trade (GATT) 1994.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Bahrain are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Bahraini labor laws and how their respective systems operate. The two Parties will continue to consult and work together to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.* Officials of the U.S. Department of Labor and Bahrain's Ministry of Labor and Social Affairs and other appropriate agencies will participate in these consultations and future cooperation.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run counter to the Agreement's services rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Bahrain. The FTA expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Bahrain to consult regularly with respect to the

ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the two countries will cooperate in promoting effective implementation of MEAs to which they are both parties.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement, along with the BIT, promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund ("IMF"), and to consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing Bahrain's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Bahrain, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen Bahrain's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

**STATEMENT ON HOW
THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES
FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The Dominican Republic – Central America – United States Free Trade Agreement ("Agreement") makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

The Agreement represents an historic development in our relations with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua ("Central America") and the Dominican Republic. The Agreement reflects a commitment on the part of the United States to sustained engagement in support of democracy, peaceful regional integration, and economic growth and opportunity in a region where several countries only recently transitioned from civil war to peaceful, democratic societies.

The Agreement will create significant new opportunities for American workers, farmers, businesses, and consumers by eliminating barriers to trade with Central America and the Dominican Republic. As detailed below, approximately 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement, with duties on other industrial and consumer goods eliminated over ten years. In particular, trade in nearly all textile and apparel goods meeting the Agreement's origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment.

Furthermore, Central America and the Dominican Republic will provide immediate duty-free access to more than half of all U.S. agricultural exports to the region. Certain agricultural goods will have longer periods for duty elimination (up to 20 years), or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas ("TRQs") during the transition period. The Agreement addresses duty treatment for imports of sensitive agricultural products into the United States through transition periods (up to 20 years) and the use of TRQs.

The Central American countries and the Dominican Republic will substantially reduce barriers to trade in services, including financial services. The Agreement also includes state-of-the-art provisions in such key areas as intellectual property rights, electronic commerce,

telecommunications, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement responds to Congress' direction, as expressed in the Caribbean Basin Trade Partnership Act, to conclude comprehensive, mutually advantageous trade agreements with beneficiary countries of the Caribbean Basin Initiative ("CBI") trade preference program. Since 1985, our trade relationship with Central America and the Dominican Republic has been driven by the unilateral trade preferences that the United States provides through the CBI program. This program has contributed to economic development and helped to alleviate poverty in the region. By moving from unilateral trade preferences to a reciprocal free trade agreement, we will build on the success of the CBI program by advancing economic development in the region through trade, as well as expanding U.S. access to markets in Central America and the Dominican Republic.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade initiatives. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor. The Agreement will also contribute to hemispheric integration and provide an impetus toward establishing the *Free Trade Area of the Americas*.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

Consumer/Industrial Goods. More than 80 percent of U.S. exports of consumer and industrial goods will enter Central America and the Dominican Republic duty-free when the

Agreement enters into force, with remaining tariffs phased out over ten years. Average tariffs on these items in Central America and the Dominican Republic currently range from 4.1 percent to 7.8 percent, and tariffs on some products of export interest to U.S. firms are as high as 25 percent.

Textiles and Apparel. Nearly all trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately. Moreover, duty elimination for textile and apparel goods may, on a reciprocal basis, be made retroactive to January 1, 2004. The Agreement also allows, if certain conditions are met, for the use of Canadian and Mexican materials as inputs in the production of textile or apparel goods, thereby contributing to the development of stronger, more integrated regional industries.

Agriculture. The Central American countries and the Dominican Republic currently maintain high tariffs on U.S. agricultural goods. The simple average tariff that these countries apply to imports of agricultural products from the United States exceeds 11 percent, and, on certain import-sensitive products, can exceed 150 percent. The average bound tariffs on agricultural products for these countries under their World Trade Organization ("WTO") commitments range from 35 percent in Honduras to 60 percent in Nicaragua. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Central America and the Dominican Republic. Under the Agreement, over half of all U.S. agricultural exports to the region will be duty-free when the Agreement enters into force, including on important export interests such as prime and choice cuts of beef, soybeans, wheat, cotton, apples, peaches, pears, grapes, cherries, almonds, walnuts, pistachios, raisins, canned peaches and pears, frozen concentrated grapefruit juice, and frozen concentrated orange juice (except to the Dominican Republic). Tariffs on most other U.S. goods will be phased out within 15 years. For the most sensitive agricultural goods, tariffs will be eliminated over periods ranging from 15 to 20 years. For these goods, liberalization will be achieved through TRQs that will increase over time. Over-quota tariffs will be eliminated during the 15-20-year transition period on all such import-sensitive products with the exception of white corn (El Salvador, Guatemala, Honduras, and Nicaragua) and onions and potatoes (Costa Rica). (The United States will maintain its over-quota tariffs on sugar.)

Services/Financial Services/Telecommunications. The Agreement provides additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

Government Procurement. The Agreement opens the Central American and Dominican Republic government procurement markets to U.S. suppliers for the first time on transparent and non-discriminatory terms. As the Central American countries and the Dominican Republic are not signatories to the WTO Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan Model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual net global welfare by $15.7 billion when fully implemented. In absolute terms, a positive welfare effect will be enjoyed by the United States ($17.3 billion, or 0.17 percent of GNP) and by Central America and the Dominican Republic collectively ($5.3 billion, or 4.4 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

Each of the Parties reaffirms through the Agreement its obligations as a member of the International Labor Organization ("ILO") and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Agreement contains a binding commitment that each Party not fail to effectively enforce domestic labor laws, while recognizing each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The Agreement also commits each Party to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with another Party. The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter.

Similarly, the Agreement commits each country to ensure that its laws and policies provide for and encourage high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the Agreement contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party's right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and have entered into a related Environmental Cooperation Agreement to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Central America and the Dominican Republic. For example, in addition to cutting tariffs on agricultural goods, the United States and the other Parties will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal, and plant life and health. In addition, the Central American countries and the Dominican Republic are working toward the recognition of the U.S. meat inspection and certification systems in order to facilitate U.S. exports. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The Agreement will create new market opportunities in Central America and the Dominican Republic for a range of key U.S. services suppliers and will lock in access in sectors where their services markets are already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to services markets in Central America and the Dominican Republic in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the Agreement, the Central American countries and the Dominican Republic will improve or lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation ("MFN") treatment, and additional market access benefits to express delivery services of the other Parties. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

Several of the Central American countries and the Dominican Republic also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

3. Opening Markets for U.S. Investment

The Agreement commits the Central American countries and the Dominican Republic to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in those countries. Except for certain specified exceptions, the Agreement will give U.S. investors the opportunity to establish, acquire, and operate investments in the Central American countries and the Dominican Republic on the same basis as those countries' own investors or other foreign investors – across the full spectrum of economic activity.

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

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

The Agreement also commits the Central American countries and the Dominican Republic not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that the Central American countries and the Dominican Republic will allow U.S. investors to transfer funds related to their investments into and out of Central America and the Dominican Republic.

The Agreement provides a mechanism for an investor of a Party to pursue a claim against another Party. The investor may assert that the Party has breached a substantive obligation under the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the countries to make public key documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Investment Chapter.

4. Intellectual Property Rights

The Agreement clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that the Central American countries and the Dominican Republic will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement requires each Central American country and the Dominican Republic to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, these countries will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The Agreement requires each government to direct its agencies to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require the Central American countries and the Dominican Republic to protect encrypted satellite signals as well as the programming those signals carry.

The Agreement commits the Central American countries and the Dominican Republic to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement will also require these countries to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, these countries will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for five and ten years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The Agreement also commits each Central American country and the Dominican Republic to ensure that its criminal law enforcement authorities are empowered to seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Each country must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

5. Transparency

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that each Party observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, each country will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives to combat bribery and corruption.

6. Regulatory Practices

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the Agreement, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other

mechanisms for producers of import-sensitive agricultural goods. In addition, the United States and the other Parties have agreed to work together toward a multilateral agreement in the WTO to eliminate export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for another Party. If a third country subsidizes exports to a Party, an exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. If the importing Party does not agree to such measures, the exporting Party may provide an export subsidy on its exports of the good to the importing Party, but only to the extent necessary to counteract the trade-distorting effect of the subsidized imports from the third country.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

9. Labor Rights and Environmental Protection

Under the Agreement, the Central American countries, the Dominican Republic, and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with another Party or investment in its territory by investors of another Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedures, is a commitment by each country not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits the Agreement countries to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor chapter.

Environmental commitments are also included in the core text of the Agreement. As is the case for labor rights, a key component of the Agreement's environmental provisions is an enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. Under the Agreement, each Party also commits to ensure that its domestic laws and policies provide for and encourage high levels of environmental protection and to strive to continue to improve those laws and policies. Through the Agreement, the Parties expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. In addition, the Agreement includes a public submissions

mechanism that allows members of the public to raise concerns with an independent secretariat about a Party's enforcement of its environmental laws. In appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they have identified certain priority areas of environmental cooperation.

10. Dispute Settlement

The Agreement includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The Agreement calls for dispute settlement proceedings to be open to the public, for the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The Agreement's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the complaining Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The Agreement achieves this result through an enforcement mechanism that provides for the use of monetary assessments or trade sanctions in either type of dispute.

Dispute settlement is available under the Agreement for labor or environmental disputes relating to each Party's obligation not to fail to effectively enforce its labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event

that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but is not required to, exempt imports of goods from Agreement countries from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country retains its rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. The United States agreed to maintain an advantage currently afforded to imports from the Central American countries and the Dominican Republic as a result of their status as beneficiary countries under the Caribbean Basin Economic Recovery Act ("CBERA"). Specifically, the United States agreed to continue to treat the other Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States, the Central American countries, and the Dominican Republic are members of the ILO. The United States has a longstanding cooperative relationship with each of these countries on labor issues. During the negotiations, government labor experts from the Agreement countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.* The Agreement establishes a framework for the labor cooperation and capacity building mechanism and lists a range of labor activities on which the Parties will cooperate. Officials of the U.S.

Department of Labor and the labor ministries of the other Parties and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run counter to the Agreement's services rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the Agreement, the environment and sustainable development are important concerns for both the United States and the other Agreement countries. The Agreement expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The Agreement commits the Parties to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the Environmental Cooperation Agreement negotiated in parallel with the Agreement will provide further opportunities for the seven governments to cooperate in promoting effective implementation of MEAs to which they are all party.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or

the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund ("IMF"), and to consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing the laws of the Central American countries and the Dominican Republic governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the Agreement's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on the Central American countries and the Dominican Republic, which will be made available to the public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen the Central American countries' and the Dominican Republic's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

**STATEMENT ON HOW
THE UNITED STATES-CHILE FREE TRADE AGREEMENT
MAKES PROGRESS IN ACHIEVING
U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES**

A. INTRODUCTION

The United States-Chile Free Trade Agreement (FTA) makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act ("TPA act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the FTA.

The U.S.-Chile FTA is the first U.S. free trade agreement with a South American nation. The agreement will level the competitive trade playing field for U.S. farmers, ranchers, and businesses seeking to sell their products and services to Chile. The Chilean government currently gives commercial preferences to a variety of other countries, including Canada, Mexico, and the 15 countries of the European Union, under existing free trade arrangements.

In addition to eliminating tariffs on all goods traded between the United States and Chile, the FTA will substantially reduce barriers to bilateral trade in services and investment. The agreement also contains state-of-the-art provisions in areas such as services, intellectual property rights, electronic commerce, customs and trade facilitation, dispute settlement, and labor and environmental protection.

Along with the U.S.-Singapore FTA, the U.S.-Chile FTA is an integral part of the Administration's larger strategy of opening markets around the world through global, regional, and bilateral trade and investment initiatives. Several of the agreement's provisions will serve as useful precedents in negotiations currently underway to conclude a Free Trade Area of the Americas as well as a free trade agreement with Central American countries.

The U.S.-Chile FTA meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA act. Accordingly, President Bush strongly believes that the Congress should approve this FTA and enact the legislation needed to implement it.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses, (2) further strengthen international trading disciplines, (3) foster economic growth in the United States and globally, and (4) promote environmental and worker rights policies in the context of trade. The

U.S.-Chile FTA builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The FTA will significantly improve prospects for U.S. goods exports to Chile. Chile currently imposes a 6 percent duty on most imports from the United States. Immediately after the agreement takes effect, more than 85 percent of U.S. exports of industrial and consumer products to Chile will become duty-free. Chile will eliminate its tariffs on the majority of other U.S. industrial and consumer products within four years, and will phase out its tariffs on all such products within 10 years.

When the FTA takes effect Chile must also stop imposing a 50 percent surcharge on imports of used goods from the United States, including capital goods. In addition, the agreement requires Chile to eliminate its 75 percent automobile luxury tax in four years. During the four-year transition period, the price threshold for imposing the tax will increase by $2,500 each year. In addition, the agreement calls for both countries to immediately eliminate existing tariffs on imports of textiles and apparel products that meet the agreement's "yarn-forward" rule of origin. This aspect of the agreement will create new opportunities for U.S. and Chilean fiber, yarn, fabric, and apparel manufacturing industries.

U.S. exporters of price-sensitive products such as paper products, plastics, heating and other equipment, fertilizer, wheat, corn, and soybeans should particularly benefit from elimination of Chile's tariffs. The FTA will require Chile to eliminate its tariffs on more than three-quarters of all agricultural products within four years and on all remaining agricultural products over 12 years.

U.S. services companies should gain substantially from the agreement as well. The agreement expands or locks in current U.S. access to key services markets in Chile, particularly in the financial services, telecommunications, express delivery, professional, audiovisual, tourism, environmental, and educational services sectors.

2. Stronger International Trade Disciplines

The U.S.-Chile FTA establishes binding rules-of-the-road to protect electronic trade in digital products such as software, music, images, videos, and text. The agreement draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. These rules will ensure even-handed treatment for U.S. firms that deliver digital products to Chile via the Internet. The FTA also limits customs duties on digital products imported through conventional means and prohibits tariffs outright when digital products are delivered over the Internet. The agreement's provisions on electronic commerce, together with those in the recently concluded U.S.-Singapore FTA, will serve as a model for progress in this emerging area in future bilateral, regional, and global trade agreements.

The FTA recognizes that workers and firms can fully realize the agreement's market-opening potential only if it imposes disciplines that clarify and proceed from those currently in place through other agreements. Thus, the agreement creates new rules on intellectual property rights (IPR) that clarify and build upon those in the WTO "TRIPS" agreement to strengthen enforcement and enhance rules for protecting IPR.

The FTA also includes detailed rules governing trade and investment in telecommunications services, imposing market-opening disciplines that extend beyond those in place under the WTO. In addition, the agreement contains innovative procedures for settling disputes that may arise under the FTA, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan model of world production and trade to predict certain economic effects of various free trade agreements, the U.S.-Chile FTA could boost annual global welfare by $5.0 billion when fully implemented. In absolute terms, most of this positive welfare effect will be enjoyed by the United States ($4.4 billion, or 0.05 percent of GNP). Chile's annual welfare will increase by $550 million (0.7 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and high product aggregation) and because they do not necessarily measure all of the agreement's anticipated effects (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the FTA will contribute to economic growth in both countries and in global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the U.S.-Chile FTA includes meaningful commitments by each government on labor and environmental protection.

Both governments reaffirm through the agreement their respective obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The agreement also commits each government to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with the other party. Moreover, while recognizing each party's right to establish its own labor laws, exercise its discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources, the agreement commits both Chile and the United States not to fail to effectively enforce domestic labor laws on a sustained or recurring basis in a manner affecting bilateral trade.

Similarly, the FTA commits each government to ensure that its laws provide for high levels of environmental protection and to strive to improve those levels. As is the case for labor law enforcement, the FTA contains a binding commitment on effective environmental law enforcement, while recognizing each government's right to establish its own environmental laws, and exercise discretion in regulatory, prosecutorial, and compliance matters. The agreement also includes language similar to that on labor rights that requires each government to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with the other country. In addition, the FTA includes provisions that will remove barriers to bilateral trade in environmental products and services, with the potential to reduce costs for purchases of pollution abatement and other environmental equipment.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA act also establishes a variety of "principal trade negotiating objectives." The U.S.-Chile FTA makes substantial progress toward each of the applicable principal goals set out in the act.

1. Opening Markets for U.S. Goods

Chile's commitment under the agreement to eliminate all import duties will create new export opportunities for U.S. industrial, consumer, and agricultural products. By eliminating Chile's import duties, the agreement will make U.S. products more competitive with goods from a variety of other countries whose products currently benefit from lower duty rates under free trade arrangements they have concluded with Chile. In addition, the agreement will require Chile to eliminate burdensome fees on U.S. exports of used goods and higher-priced automobiles, and accord duty-free treatment to environmentally-friendly recycled goods, thus improving the prospects for exports of these U.S. products to Chile.

The agreement also commits Chile for the first time to open its procurement market to U.S. firms. The FTA will provide opportunities for U.S. firms to supply goods and services to 20 Chilean national government departments and agencies, as well as regional governments, in procurements valued at $56,000 or more for goods and services. U.S. firms will also be able to bid on contracts with 341 Chilean municipalities above specified thresholds ($460,00 for goods and services), as well as with 11 Chilean government-related entities. U.S. companies will also be authorized to compete for construction contracts of $6.481 million or more.

The FTA's procurement provisions also provide comprehensive rules prohibiting Chile from discriminating in its purchasing practices against U.S. goods, services, and suppliers and requiring Chile to apply fair and transparent procurement procedures. While Chile, unlike the United States, is not a party to the WTO Agreement on Government Procurement, the government procurement rules in the FTA broadly resemble WTO procurement rules.

The agreement also commits Chile and the United States to increase cooperation in the areas of technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The U.S.-Chile FTA will reduce barriers and create new market opportunities in Chile for key U.S. services and will lock in access in sectors where Chile's services market is already open. The agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are protected under the agreement's rules unless a government has negotiated a specific exemption in that sector.

The agreement will either open or lock in substantial access to Chile's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery, computer and related services, distribution services (wholesaling, retailing, and franchising), professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The agreement's market-opening provisions are complemented by state-of-the art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

In the financial services sector, Chile will ensure that U.S. firms may continue freely to supply banking, securities, and asset management services in Chile through their offices in that country and to provide financial advisory and information services from the United States to customers in Chile. The FTA also commits Chile not to require U.S. firms to demonstrate a benefit to the Chilean economy before they can establish special companies authorized to manage contributions under Chile's mandatory pension system. In addition, beginning March 1, 2005, U.S. mutual funds will be free to manage voluntary contributions to Chile's pension system on the same footing as Chilean-owned firms. The FTA also will ensure that when U.S. investment firms establish mutual funds in Chile they can use portfolio managers based in the United States to manage the securities included in those funds.

The FTA will also ensure that Chile continues to allow U.S. firms to provide insurance to customers in Chile through subsidiary offices located there, including life and non-life insurance, reinsurance, insurance intermediation, and insurance auxiliary services. In addition, no later than four years after the agreement takes effect, Chile will allow U.S. insurance companies to begin doing business through branches in Chile. Chile will also allow U.S. insurance companies for the first time to provide from the United States to customers in Chile marine, aviation, and transport insurance ("MAT insurance") and intermediation of reinsurance and MAT insurance. The agreement will also ensure that U.S. firms may continue to provide Chilean customers reinsurance and certain insurance auxiliary services (such as insurance consulting, actuarial, and risk assessment services) from the United States. In addition, the FTA calls on Chile to maintain

or adopt policies that allow licensed U.S. insurers to provide new insurance products to their business customers in Chile without prior regulatory approval.

The FTA guarantees continued, unimpeded access to Chile's telecommunications market virtually across-the-board to U.S. telecom companies. Under the WTO, Chile has not committed to allow competition in its market for local telecommunications services. By contrast, the FTA ensures that U.S. telecom companies will be free to enter any telecom sector in Chile, whether by acquiring or building local facilities, linking their U.S. networks with networks in Chile, or leasing lines from firms in Chile. The FTA commits Chile's telecom regulatory authorities to use open and transparent administrative procedures, ensure that U.S. firms have fair and non-discriminatory access to public telephone networks, consult with interested parties before issuing regulations, solicit public comments for proposed rules, and publish all pertinent regulations.

The agreement commits Chile to refrain from imposing restrictions on express delivery services, thus locking in Chile's open market for these services. The FTA includes an innovative, comprehensive definition of express delivery services that will ensure that Chile's commitments in this area cover the full spectrum of activities that form part of these services. The agreement also expresses Chile's intention not to use funds from its postal monopoly to give Chilean express delivery firms an unfair commercial advantage.

The FTA will broadly ensure that Chile does not discriminate against U.S. film, television, and other audiovisual firms in favor of domestic or third country producers. The agreement permits only a few, narrowly tailored exceptions to the FTA's non-discrimination rules in this sector. Thus, while the agreement provides Chile with the flexibility it needs to address its cultural promotion interests, it does so without including a broad "cultural exception" that could be used to justify discriminatory or protectionist regulations aimed at U.S. film and television producers.

The agreement requires Chile to provide largely open access to its professional services marketplace for U.S. suppliers – including for lawyers, architects, engineers, and accountants. The few entry limitations that Chile has retained under the FTA in the professional services sector – such as a citizenship requirement for admission to the Chilean bar – are not expected to be commercially significant. The FTA also includes an annex calling for the two countries to explore mutual recognition agreements for each other's professionals.

The FTA will also ensure that Chile will provide liberal access for U.S. firms to its tourism services sector, including operation of hotels, motels, and restaurants, and will provide largely unrestricted U.S. access to its market for environmental services. In addition, under the agreement, Chile will defer application of its local employment rules for new market entrants from the United States for the first 18 months after they begin operations in Chile, thus allowing U.S. firms to bring in qualified U.S. personnel to establish their Chilean enterprises on a rapid and sure footing.

3. Foreign Investment

The FTA commits Chile to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in Chile. Except for certain specified exceptions, the FTA will give U.S. investors the opportunity to establish, acquire, and operate investments in Chile on the same basis as Chilean investors or other foreign investors – across the full spectrum of economic activity.

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

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

The FTA also commits Chile not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that Chile will allow U.S. investors to transfer funds related to their investments in and out of Chile.

The agreement includes investor-State arbitration procedures that will provide a fair and expeditious means of addressing disputes. The arbitration provisions incorporate procedures intended to increase public access to information regarding arbitration proceedings. The FTA requires, for example, that all documents in investor-State arbitrations, except for business confidential and other legally confidential information, be made public promptly. In addition, all hearings in arbitration proceedings are to be open to the public. The FTA also gives tribunals the authority to accept *amicus* submissions from the public and includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

4. Intellectual Property

The U.S.-Chile FTA clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The agreement ensures that Chile will provide a high level of IPR protection similar to that provided under U.S. law. Key provisions of the agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The FTA requires Chile to extend its term of protection for copyrighted works and clarifies protection for temporary copies of works. The agreement includes state-of-the-art protection for trademarks and copyrights, as well as expanded protection for patents and undisclosed information.

Under the FTA, Chile will ensure that copyright owners maintain rights to temporary copies of their works that others have on their computers, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The FTA requires the two governments to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the agreement will also require Chile to protect encrypted satellite signals as well as the programming these signals carry.

The FTA commits Chile to make patent rights available, with certain exceptions, for inventions and provides for extension of the patent term if there are unreasonable delays in issuing the patent or in obtaining regulatory approval for the patented product. The FTA will also require Chile to protect against unauthorized disclosure or unfair commercial use of test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure approvals to market their products. Under the agreement, Chile will protect for five years product information generated in connection with pharmaceutical product approvals and will protect similar information for agricultural chemicals for 10 years.

These standards are made more meaningful through requirements for tough penalties to combat piracy and counterfeiting, including, in civil cases, procedures for seizure and destruction of pirated and counterfeit products and, at least with respect to pirated goods, the equipment used to produce these products, and a requirement to provide for statutory and actual damages to remedy such practices. Chile must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products. In addition, Chile must maintain criminal penalties for circumvention of technology protection measures.

5. Transparency

The agreement recognizes that without a high standard of regulatory transparency, the benefits of market-opening trade and investment commitments can be lost through arbitrary or unfair government regulations. Accordingly, the FTA includes key provisions that will ensure that Chile observes fundamental transparency principles. Those provisions are set out in a specific chapter of the agreement dealing with regulatory transparency as well as in provisions of the agreement addressing cross-border services, financial services, temporary entry, competition, government procurement, customs administration, investment, telecommunications, technical barriers to trade, and dispute settlement. The agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is also an effective tool in addressing corrupt practices that may affect bilateral trade. To this end, the FTA government procurement provisions include commitments to ensure integrity in government procurement. The Agreement requires Chile and the United States to establish and maintain criminal penalties against bribery and corruption in connection with government purchases and make bribery of procurement officials a crime.

6. Regulatory Practices

The U.S.-Chile FTA recognizes that healthy, competitive domestic markets are vital for fully realizing the benefits of trade liberalization. Thus, the agreement requires each government to maintain laws prohibiting anticompetitive business conduct and an agency to enforce them. Under the agreement, Chile commits to take appropriate enforcement action under its competition law to address anticompetitive practices affecting its markets.

The agreement also recognizes the value of transparency with respect to competition policies. Accordingly, the FTA commits the United States and Chile to further their cooperation on competition law enforcement, including notification, consultation, and exchange of information on their competition laws and policies. At the same time, Chile and the United States will maintain their autonomy and discretion in developing and enforcing competition laws and policies.

Under the agreement, if Chile gives a private or government-owned entity the sole right to provide or purchase a good or service, it must ensure that the entity acts consistently with commercial considerations, does not discriminate against U.S. goods or service suppliers, and does not engage in anticompetitive practices in markets outside the scope of its monopoly.

The FTA also addresses regulatory issues directly linked to the agreement's market-opening provisions. The FTA includes disciplines designed to prevent the possibility that firms in Chile might fraudulently seek preferential tariff treatment under the agreement for textile or apparel products or fraudulently claim that Chile is the country of origin for such products. To address this possibility, the FTA includes anti-circumvention commitments with respect to customs cooperation and enforcement. The agreement contemplates that U.S. customs officials

may visit production facilities in Chile and bar imports of textile and apparel products from factories it finds to be circumventing the FTA's rules regarding trade in textile and apparel products.

7. Electronic Commerce

The FTA includes ground-breaking rules prohibiting duties on and discrimination against digitally-encoded products transmitted over the Internet, including computer programs, video, images, and sound recordings. The agreement thus creates a strong foundation for wider efforts to bar duties and unfair or discriminatory regulation of electronically-transmitted products. In addition, the FTA requires Chile to base any customs duties that it applies to digital products imported on physical media (such as DVDs or CD-ROMs) on the value of the media (*e.g.*, the disc), rather than on the value of the movie, music, or software encoded on the media.

8. Trade in Agricultural Products

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

The agreement will also phase out over 10 years all Chilean barriers to U.S. poultry. Beginning in the agreement's third year, Chile will establish an 8,000 metric ton "tariff-rate quota" (TRQ) for U.S. poultry imports. The amount of U.S. poultry qualifying for importation under the TRQ will grow annually and Chile will phase out tariffs that it applies to imports of poultry in excess of the TRQ amount. Under the agreement, Chile will eliminate its tariffs on many dairy products, including skim milk powder, whey, and cheeses, over four years. Chile will phase out its tariffs on other dairy products within eight years.

The agreement also requires Chile immediately to eliminate its tariffs on fresh or chilled tomatoes, onions, and garlic. Chile will eliminate its 6% tariff on U.S. frozen fried potatoes and potato chips over four years. Chile will phase out its tariffs on other fresh and processed vegetable products over a period of up to 12 years.

The agreement also addresses other barriers that have reduced market opportunities for U.S. exports of agricultural products to Chile. The agreement requires Chile to eliminate its "price-band" mechanism for U.S. farm products over a 12-year transition period. The FTA also calls for Chile to recognize the U.S. beef grading program. In addition, in early June 2003 Chile

recognized that USDA's inspection system for beef, pork, and lamb is equivalent to Chile's system, thereby permitting U.S. exports of those products to Chile. In addition, Chile will rely on U.S. Food and Drug Administration certifications of U.S. dairies to satisfy Chilean milk product safety requirements, which will make FDA-approved dairies eligible to export their products to Chile.

The agreement includes a safeguard "snap-back" provision that will help U.S. farmers who produce goods most sensitive to imports adjust to competition from Chile. The safeguard is price-based, automatic, and will remain in effect throughout the 12-year transition period. Prices for imports of commodities subject to the safeguard will automatically be assessed a tariff uplift if the import value of the commodity falls below the trigger price established in the agreement.

The FTA commits Chile to work with the United States in the current round of WTO trade negotiations to eliminate agricultural export subsidies.

The agreement will also provide a bilateral forum for discussing sanitary and phytosanitary (SPS) issues that may affect bilateral trade in agricultural products. A joint SPS committee operating under the agreement will consider SPS issues pending before international organizations and help coordinate bilateral technical cooperation programs. Any SPS dispute between the two governments will be resolved under the applicable provisions of the WTO SPS agreement using WTO dispute settlement rules.

9. Labor Rights and Environmental Protection

Under the agreement, Chile and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor rights as set forth in the Agreement. The agreement makes clear that it is inappropriate to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with the other party or investment. A key element of the agreement's labor provisions, which is enforceable through the agreement's dispute settlement procedure, is a commitment by each government regarding the effective enforcement of its domestic labor laws. The FTA defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor.

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

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

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

10. Dispute Settlement

The FTA includes innovative procedures for settling disputes that may arise between the two governments over the implementation of the agreement. The agreement's dispute procedures rely principally on consultations and compliance rather than on the imposition of trade sanctions or penalties. The procedures set new, higher standards of openness and transparency. The FTA calls for dispute settlement proceedings to be open to the public, for the two governments to release their legal briefs and other filings to the public, and for dispute panels to have authority to receive submissions from interested nongovernmental groups.

The FTA's dispute settlement rules also provide equivalent remedies to enforce panel decisions under the agreement, regardless of whether they address the agreement's commercial, labor, or environmental provisions. The FTA achieves this result through an innovative enforcement mechanism that provides for the use of monetary assessments if a government fails to comply with a panel's decision. Enforcement through the suspension of trade benefits provided under the agreement is also available for all types of disputes. But the agreement is designed to use remedies that will enhance compliance with the agreement, rather than restrict trade, which could adversely affect sectors and consumers that do not have a direct stake in the dispute.

11. Trade Remedies

The FTA provides explicitly that the agreement does not affect either government's rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Moreover, these issues are expressly excluded from the FTA's dispute settlement provisions.

Thus, the agreement fully preserves U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO.

The agreement includes a bilateral safeguard procedure, similar to those in past U.S. free trade agreements, that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from the phase-out of U.S. import duties under the agreement. The agreement also includes a special safeguard to address the possibility that duty elimination under the agreement could result in damaging levels of textile or apparel imports.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The United States-Chile FTA makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States and Chile are both members of the ILO and have a longstanding cooperative relationship on labor issues. During the negotiations, government labor experts from the two countries consulted on U.S. and Chilean labor laws and how their respective systems operate. The two governments included a bilateral labor cooperation mechanism in the FTA to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO Convention 182 *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*. The agreement includes a framework for the cooperation mechanism and lists a range of labor activities on which the two governments will collaborate. Officials of the U.S. Department of Labor and Chile's Labor Ministry and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The FTA fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The FTA includes a broad set of general policy exceptions for measures governing both trade in goods and trade in services to ensure that the United States remain fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The agreement also avoids disturbing existing state and local governmental measures that might run afoul of the agreement's services and investment rules by including "grandfather" clauses that exempt those measures from challenge under the agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the FTA, the environment and sustainable development are important concerns for both the United States and Chile. The FTA expressly recognizes the importance of multilateral environmental agreements, including appropriate use of trade measures in such agreements to achieve specific environmental goals. The FTA commits the United States and Chile to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between multilateral environmental agreements and WTO rules. In addition, the bilateral environmental cooperation mechanism negotiated in parallel with the FTA will provide further opportunities for the two governments to cooperate in promoting effective implementation of multilateral environmental agreements to which they are both parties.

4. Currency and Exchange Rate Manipulation

The FTA's investment and services rules will promote and protect freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

Significant and unanticipated currency movements can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes, or the appearance of new information on fundamental economic conditions. A determination of whether such movements reflect currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions, and market developments that will require a review mechanism with a larger scope than any specific trade agreement.

Under the 1988 Omnibus Trade and Competitiveness Act, the Secretary of the Treasury is required to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund, and consider whether countries manipulate the rate of exchange between their currencies and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the International Monetary Fund is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes. The Department of the Treasury reports semi-annually on its analysis.

The Treasury will ensure that significant and unanticipated currency movements are examined in its reviews of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to reflect a pattern of currency manipulation to promote a competitive advantage in international trade through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA act, the Administration has provided a report to the Congress describing Chile's laws governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA act on (1) the Administration's environmental review of the agreement and (2) its review of the FTA's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on Chile, which will also be made available to the public. Finally, the Administration has reported, as specified in the TPA act, on U.S. efforts to establish consultative mechanisms to strengthen Chile's capacity to promote respect for core labor standards and develop and implement standards for the protection of human health based on sound science.

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