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Folder Title:

Senate Finance Committee Fast Track [3]

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Divider Title: _____

NAFTA Side Agreement Accomplishments

Issue

The Labor and Environmental Side Agreements have been effective in meeting their goals. The side agreements represent a balanced approach to promoting greater international progress and cooperation on labor and environment issues.

Points to Make

- The Labor and Environment side agreements of the NAFTA are the most significant international effort to date to address these important issues as part of the trade agenda.
- They are tailored to the unique circumstances presented by three large, contiguous trading partners, two of which are high-income and one a mid-income country.
- The agreements strike a useful balance between increased cooperation, and the long term benefits that such cooperation brings, and an emphasis on labor and environmental law enforcement.
- The cooperative element of the agreements are essential to ensure increased capacity among the parties to effectively enforce their laws.

Labor Side Agreement:

- The Labor agreement - the North American Agreement on Labor Cooperation (NAALC)
 - cooperative efforts are focused on industrial relations, worker rights, gender issues, occupational safety and health and child labor.
 - Expansive seminars, workshops, public fora discussions, etc. are underway in these areas to educate officials about the best/latest developments in these areas.
- While the benefits from cooperation won't be apparent immediately, there are a number of concrete advances occurring. These demonstrate both the importance of these issues to the governments and positive influence of the NAFTA side agreement. For example, since 1994:
 - Mexico reports its enforcement budget in the Labor Secretariat is up 250 percent in real terms;
 - Mexico has issued new occupational safety and health regulations covering new categories of workers; and
 - Mexican workplace illnesses and injuries are reported to be down 30 percent.

NAFTA Environmental Agreements:

- NAFTA, along with its associated environmental agreements, has fostered among the three governments a level of cooperation without precedent. This has improved our ability to address shared environmental problems.
- The BECC and NADBank are helping communities in the U.S.-Mexico border area design and fund badly needed infrastructure projects. To date, the BECC has certified 16 projects, with a combined estimated cost of nearly \$230 million.
- The CEC has begun work on an extensive list of projects, including:
 - regional action plans for the reduction and elimination of dangerous chemicals such as DDT and chlordane;
 - cooperative activities to improve enforcement efforts; and
 - the identification and protection of vital habitats for migratory birds.
- These activities have been complemented by the ongoing efforts of the Mexican government to improve its enforcement of environmental laws.
 - Mexico has continued to increase the number/quality of its enforcement actions. Mexico reports a 72 percent reduction in serious violations in the maquiladora industry 1993-96, and a 43 percent increase in the number of maquiladora facilities in complete compliance.
- Even though many of our environmental concerns -- especially those in the border region -- were decades in the making, and we cannot realistically expect to resolve them overnight, NAFTA's environmental institutions are already established and producing results.

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The NAFTA Side Agreements' Enforcement Provisions

Issue

Critics charge the NAFTA side agreements do not contain effective enforcement provisions, particularly when compared to the NAFTA itself (i.e., Chapter 20, etc.)

Points to Make

- The NAFTA labor and environmental enforcement provisions are designed to effectively address the unique obligations in these substantive areas undertaken by the parties.
- We do not accept the premise that they are ineffective, and, in fact, believe that they have encouraged the parties to effectively enforce their environmental and labor laws.
- The procedures are purposely designed to resolve disputes and, therefore, contain a number of steps to encourage this. As a last resort the provisions provide for punitive measures.
- The coverage and procedures outlined in each agreement differ in many specifics; this reflects to the different requirements of each subject area, as well as the different legal and regulatory systems each country has in place.

The Labor Dispute Settlement Process

- The NAALC submission process invites petitions to the parties through its National Administrative Office (NAO) requesting that an alleged violation of the agreement be investigated.
- Eight submissions have been received under this trilateral agreement to date, with seven related to Mexico (one relevant to the U.S.). All but one of them have been on industrial relations (i.e., the right to associate), with the most recent submission focused on pregnancy-based gender discrimination in Mexico.
- Under the U.S. process, which initially considers submissions made regarding enforcement issues in Canada or Mexico, a rigorous fact finding investigation is begun which can include a public report and hearings. If the allegations are found to have merit, and if other efforts fail to resolve the matter, Ministerial consultations can be held.
- The NAALC also contains provisions which provide for the creation of an Evaluation Committee of Experts (ECE) and subsequently the imposition of monetary penalties and the withdrawal of tariff benefits (or in Canada's case an enforcement action in the courts) if a party fails to adopt and implement an ECE recommended action plan.
- These provisions can be brought to bear in cases involving the enforcement of

occupational safety and health rules, child labor rules and rules regarding the implementation of minimum wage laws.

- No petition has yet been submitted regarding these issues under the public submission procedures set up under the agreement, but it is important to note that the provisions can be utilized.
- The NAALC has been criticized for not providing penalties for industrial relations matters. This ignores the ability of the Agreement to lead to real advances through other means, and we believe that our experience to date can already point to several important successes:
 - For example, in one instance a union in Mexico previously denied registration was granted registration.
 - In two other instances secret balloting was granted at companies in Mexico where union votes had previously been monitored.
- This is not to say that the NAALC has, or can, resolve all the concerns that may exist in regards labor matters with respect to Mexico. In the real world, no agreement could. At the same time, it is an agreement that has demonstrated its ability to bring about change, and it will continue to have a positive impact.

The Environment Dispute Settlement and Public Submission Process

- Under Article 14 of the Environmental Side Agreement, the CEC Secretariat may consider a submission from any non-governmental organization (including businesses) or person asserting that a Party is failing to effectively enforce its environmental law.
- If the Secretariat determines that a submission meets certain basic criteria, it must decide whether the petition merits requesting a response from the concerned Party, in accordance with Article 14(2).
- After considering any response provided by that Party, the Secretariat may recommend to the Council that a factual record be developed, in accordance with Article 15. The Council may then instruct the Secretariat to prepare a factual record on the submission.
- The Article 14 process for citizen submissions on enforcement matters is working as intended. To date, the CEC Secretariat has received eleven submissions -- three concerning the United States, two concerning Mexico, and six concerning Canada.
- Two of these submissions have resulted in an investigation on the adequacy of environmental reviews of a cruise ship pier in Cozumel, Mexico, and a report on water use in the Fort Huachuca, Arizona area. Five submissions are still being reviewed.

Question:

The NAFTA side agreements provide for fines or trade sanctions when a country does not enforcement its own labor or environmental laws. The provisions are weak, however, and give Canada a veto power over their imposition.

Answer:

- Any approach that seeks to measure the success of an approach by its ability to threaten or impose sanctions misses the point entirely.
- Implementation and enforcement of high labor and environmental standards will not be truly successful until other countries recognize such standards are in their own interest.
- Sanctions can play a constructive role in this process, but are certainly not the keystone for promoting better practices in these areas.
- To encourage improved enforcement, each agreement provides a means by which there can be an independent evaluation and report on the effectiveness of enforcement of laws: an **independent secretariat** (in the case of the environmental agreement) and **Evaluation Committees of Experts** (in the labor agreements).
- The agreements also provide for **dispute settlement** in the event of a persistent pattern of failure to effectively enforce laws. Where consultations fail to resolve such disputes, a neutral panel of independent experts would be established by 2/3 vote of the parties.
- Ultimately, if a panel found that there was such a persistent pattern, and if a party failed to remedy the matter, then there could be fines or trade sanctions. Canada has agreed, in lieu of trade sanctions, to make assessments and other panel-ordered remedies enforceable against Canada in Canadian courts.
- It is not accurate to say that the 2/3 vote requirements reflect a weakness in the agreement, for three reasons:
 - in the case of the labor agreement, first, a case is begun through a submission to one of the National Section. That National Section alone can choose to begin an investigation, without the need to seek approval from any other country. This includes the ability to hold public hearings, and to otherwise bring the spotlight to bear on an issue.
 - As we have seen in the case of a recent U.S. submission, the process has produced solutions even at this early stage.
 - second, the criticisms assume that the process is an adversarial one. That was not our intent, and in fact, has not been our experience.

- Again, in the case of the labor Side agreement, all decisions have been made by consensus. Evaluative committees of experts and ministerial consultations have been held in 3 cases to date by the agreement of all the parties involved.
- We see no reason why this cooperative approach would break down.
- Finally, the 2/3 requirement reflects an appropriate balance: requiring unanimous consent would allow the party subject to the submission to block its advance, while requiring approval from only a single party could result in frivolous cases being brought against a party.

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Divider Title: _____

NAFTA Side Agreements' Applicability to Future FTAs

Issue

Some are interested in the intentions of the Administration as to whether the NAFTA side agreements, or something very similar, are applicable to future FTA partners, including Chile.

Points to Make

- The Administration's view in general is we believe it appropriate to evaluate each situation as it develops and on the basis of the specific situation make a decision on an appropriate course of action.
- Generally, however, we believe the NAFTA side agreements have advanced the labor and environmental agenda in North America.
- On the other hand, failing to support a fast track authority that provides room for such agreements essentially cedes the international trade arena to our trading partners on this issue, and it is fair to say that virtually none of them will pursue this agenda.

Chile and Labor

(If raised only)

- It is important to bear in mind that there are important differences with respect to the situation with Chile and Mexico. Notwithstanding this, the NAFTA side agreement formula, in general, may be an appropriate approach with Chile.
- As to the differences, the most important is that Chile is not an immediate neighbor and it has in recent years since the return to democracy already improved its labor law and stepped up the enforcement of the law significantly.
- Furthermore, Chile is prepared to conclude an agreement with us modeled on the NAALC, and in fact has done so already with Canada already in parallel to a free trade agreement.
- We will want to consult with the Congress before making any final decisions on how we should best proceed with Chile in regards labor.

Chile and Environment

(If raised only)

- As in the case of labor, it is important to bear in mind that there are important differences with respect to the situations in Chile and Mexico.
- The most obvious difference is that the United States and Chile are not faced with the

significant environmental challenges existing in the U.S.-Mexico border region.

- Nevertheless, Chile is increasingly focused on the need to protect its environment and achieve sustainable development.
- The Frei Administration passed a Basic Framework Law on the Environment in 1994, which provides for central policy planning by the National Environment Commission. This legislation forms a comprehensive basis for the enforcement of Chile's environmental laws.
 - For example, it includes requirements for environmental impact assessments to which all industrial and mining projects (both public and private) are subject.
- While we will want to consult with the Congress before making any final decisions on how we should proceed with Chile on environmental issues, Chile has already indicated its willingness to take on the obligations of the Environmental Side Agreement. We believe that a free trade agreement will reinforce Chile's commitment to improved environmental protection.

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Divider Title: _____

Question:

NAFTA Transition Adjustment Assistance (TAA): This program proves the NAFTA has caused at least 100,000 jobs have been lost due to the NAFTA. How do you respond?

Answer:

- As explained in the President's Study, NAFTA-TAA is not a valid measure of the job displacement impact of the NAFTA. NAFTA TAA certification does not require that a worker has lost his or her job, either due to the NAFTA or for that matter even due to imports from Mexico or Canada or a shift in production to Mexico or Canada.
 - In fact, the Department of Labor indicates that most of those certified under NAFTA TAA are either not laid off, or may remain certified even though they are recalled back to work.
- This, along with strong U.S. job growth may explain to a significant degree why only a small portion of those certified under the NAFTA TAA (12,193 of the 99,497) have actually applied for benefits.

Possible Follow-up Question:

Why has there been an increase in NAFTA TAA cases over the past three years?

Answer:

- One possible reason is that the staff from the state governments that administer the NAFTA TAA and affiliated worker groups (unions) are becoming more familiar with rules and guidelines which govern the program and efforts have been made to ensure as many people as possible are aware of the program.
- Furthermore, the number of petitions, certifications and workers applying for benefits in FY 1997 are consistent with previous program estimates of States' activity levels. The number of workers certified for NAFTA TAA benefits increased from 11,000 in FY 94, to 31,000 in FY 95 to 46,000 in FY 96.

Possible Follow-up Question:

Although the program shows that almost 100,000 people have been certified over the last three years, less than 10,000 workers have received services. Is that correct?

Answer:

- Actually, 65-70 percent of workers certified as eligible for NAFTA-TAA benefits are also certified eligible for the regular Trade Adjustment Assistance (TAA) program. A

significant number of these workers elect to receive services under the regular TAA program, because with TAA a worker may receive a waiver from the training requirements and still receive income support benefits.

- That is not the case in NAFTA-TAA. In addition, many NAFTA TAA eligible workers are also dual enrolled for assistance under the JTPA Title III program. The number of "dual enrolled" participants increased from 1,550 in FY 1995, to 2,480 in FY 1996.

Likely Source of Question:

Drafted: Bshpiece

Reviewed: Jhuenemann 8/22

Administration View on Adjustment Assistance

Question

What is the Administration's view on adjustment assistance and whether current programs are adequate?

Answer

- We are fully committed to assisting workers in transition and ensuring they have the tools to remain viable in today's economy.
- We are interested in any proposals that the Congress may suggest and are willing to work with you on this issue.

Background (not for public disclosure)

An interagency group is looking at a menu of options in this area, and is costing them out for budget purposes. No decisions have been made on what the Administration may support in this area. At the same time, NAFTA/TAA needs reauthorization for by October 98 so a potential legislative vehicle exists for any future improvements we may seek in adjustment programs. The Administration has been working closely in recent weeks with the Hispanic Caucus as well on how to improve the NAFTA TAA and the NADBank Community Adjustment Investment Program (CAIP).

Drafted: USTR/Huenemann

Cleared: NEC/Brainard (substance) 9/16

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NAFTA and Bilateral Trade Deficits

Issue

Critics argue that NAFTA is a failure because the trade balance with Mexico went from a surplus of \$1.7 billion in 1993 to a deficit of \$17.5 billion in 1996. The trade deficit with Canada also increased from \$10.7 billion in 1993 to \$21.7 billion in 1996.

Points to Make

- The shift in bilateral trade balances was not caused by the NAFTA.
 - For Mexico, the cause was the contraction in Mexican demand (caused by the 1994 financial crisis and ensuing recession) combined with the strong growth of the U.S. economy.
 - For Canada, the strength of the U.S. economy, combined with weaker growth in Canada, explains the increase in deficit.
- When looked at closely, it is inconceivable that the NAFTA caused the shift in the trade balance.
 - Mexico reduced its tariffs much more than U.S. (Mexico - 7 percentage points, from 10 to 2.9 percent; U.S. - 1.5 percentage points, from 2.07 to 0.65). The small drop in U.S. tariffs cannot be the cause in the growth in imports.
 - The NAFTA had no effect on tariff rates between U.S. and Canada because of the CFTA tariff cuts are already nearly implemented - average U.S. tariff rate of less than 1 percent (full implementation 1/1/98).
- Actually, the NAFTA helped limit the deficit.
 - DRI/McGraw Hill showed that in 1996 exports to Mexico were \$12 billion higher than they would have been without NAFTA while imports from Mexico only increased by \$5 billion due to NAFTA. According to these figures, our trade deficit with Mexico is \$7 billion lower than it would have been without NAFTA.
- It is also important to note that the deficit appears to be on a trend toward decline. Mexico's trade surplus has declined almost every month in 1997 and on a year to date basis is below 1996 levels. Also, U.S. export growth to Mexico is out pacing U.S. import growth from Mexico in 1997.
- The same is true of Canada. Through June our deficit with Canada is 19.3 percent lower than the same period last year.

Background

Trade agreements, such as NAFTA, are a marginal factor with respect to trade balances. Trade balances (as measured by the current account) are largely a macroeconomic phenomenon (full elimination depends on bringing domestic saving and investment back into alignment preferably by raising savings than lowering investment). The U.S. global trade deficit is a problem and should be resolved through efforts to raise the national saving rate, which can be accomplished through balancing the federal budget among other actions. Although trade policy has a relatively modest impact on the aggregate trade imbalance, efforts to remove trade barriers brings positive benefits for the U.S. economy and U.S. workers.

Question:

The US trade deficits with Canada and Mexico have increased significantly since the implementation of NAFTA. Hasn't NAFTA caused these "deep and probably chronic" trade deficits with our neighbors?

Answer:

- No. The President's Study indicates that the shift in the U.S.-Mexico trade balance from a small surplus in 1994 to a deficit in 1995 was driven by factors unrelated to the provisions of the NAFTA.
- The low tariffs on goods entering from Mexico, and the even smaller U.S. tariff reductions could not have conceivably been a major cause of the deficit with Mexico. Rather, the strong U.S. economy, the steep decline in the relative value of the peso and the contraction in Mexican demand were the cause.
- A DRI/McGraw Hill study showed that our trade deficit with Mexico is \$7 billion lower than it would have been without NAFTA. The President's Study generally confirmed that the NAFTA has worked to raise exports to Mexico more than imports from Mexico.
- Further, Mexico's trade surplus has declined each month in 1997 and U.S. export growth to Mexico is out pacing U.S. import growth from Mexico in 1997.
- With respect to Canada, since the average U.S. tariff on Canadian imports is less than 1 percent, the increase in the deficit is best explained by the strength of the U.S. economy combined with weaker growth in Canada.
- Also thru June of this year, the deficit with Canada has been improving and is 19.3 percent lower than the same period in 1996.

Likely Source of Question:

Drafted: Bshpiece

Reviewed: Jhuenemann 8/22

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Divider Title: _____

Question:

The NAFTA was supposed to increase the competitiveness of U.S. exports in Mexico. What evidence do we have this has been the case?

Answer:

- The U.S. share of Mexico's import market has substantially increased from already high levels. This is a solid indicator of NAFTA's effects, since it controls for factors affecting foreign suppliers similarly, such as Mexico's recession.
- Since NAFTA's implementation, U.S. suppliers share of Mexico's import market grew from 69.3% to 75.5%, reflecting a 10 percentage point average tariff advantage over foreign suppliers. (Mexico's share of American imports has risen from 6.8% to 9.3%).
 - Since NAFTA was signed, Mexico lowered its tariffs U.S. imports on average by 7.1 percentage points (from 10% to 2.9%), more than 5 times more than the 1.4 percentage point reduction by the United States (from 2.07% to 0.65%).
- Sector by sector, American suppliers have gained share since NAFTA was signed.

Textiles and Apparel:

- Share up 17.2 percentage points to 86.4%; Mexico cut tariffs by 10.7 percentage points under NAFTA.

Transportation Equipment:

- Share up 19.2 percentage points to 83.1%; Mexico cut tariffs 10.2 percentage points.

Electronic Goods and Appliances:

- Share up 5.7 percentage points to 74.3%; Mexico cut tariffs by 9.0 percentage points.
- The U.S. share of the import market in Mexico is expanding at more than double the rate of the Mexican share of U.S. imports.

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Divider Title: _____

Why is Chile our Next FTA Candidate

Question

Why is Chile our next FTA candidate? There are other democratic countries that have larger economies that are stable in Latin America.

Answer

- Two Presidents (Bush and Clinton) have committed to a free trade agreement (FTA) with Chile. Given this, concluding an FTA with Chile is viewed as the litmus test of the U.S. commitment to Latin America.
- Chile is the recognized leader of economic reform in Latin America and its most successful economy over the last decade and the most prepared of any country in the region for an FTA with the U.S.
- By concluding a free trade agreement with Chile the U.S. will be supporting market based economic reform in Latin America and will be taking its first concrete step in building the Free Trade Area of the Americas (FTAA) in a manner that advances U.S. interests.
- Chile's economic achievements are impressive by any comparison:
 - an economic growth rate that has averaged over 6 percent for 12 years;
 - growth, combined with increased social spending since the return to democracy, that has lifted over 1.3 million above the official poverty line in the last 5 years out of a total population of nearly 14 million (i.e., an equivalent ratio applied in the U.S. would mean 20 million being lifted above the poverty line);
 - the highest domestic savings and investment rate of any country in Latin America;
 - a consistent monetary policy run by an independent Central Bank and single digit inflation that continues to trend downward;
 - a pension system that serves as a model for many countries around the world and which contributes significantly to Chile's high savings rate;
 - an open and competitive economy and the leader of privatization reform in Latin America; and
 - a market opening trade policy that has negotiated 6 FTAs since 1992 and is active in APEC, the FTAA, and the WTO.
- Chile is indicative of the potential of our trade ties with Latin America - its economy of

nearly 14 million people and GDP of just over \$70 billion absorbed U.S. exports in 1996 in excess of what we exported to Russia, India or Indonesia.

Question

General Pinochet is still the army commander in Chile. Why are we interested in an FTA with a country that has a former dictator in a high level position in its government? Furthermore, some of Pinochet's anti-democratic provisions of governance still exist, such as the 8 appointed Senators which on occasion block certain proposed reforms supported by the Frei government.

Answer

- General Pinochet is an operative in the military which is now under civilian rule. We have no reason to believe that Chile's democratic institutions are in question.
- It is a tribute to the success of Chile's dignified return to democracy that the military structure in Chile is functioning under civilian democratic rule.
- As to the elements of the governing structure in Chile that continue to reflect certain remnants of the previous military period, the democratically elected Aylwin and Frei administrations have systematically proposed reforms that have progressively scaled back their scope and influence.
- This effort continues in the few areas where this continues to be an issue of concern in Chile, including with respect to the role of appointed Senators whose terms expire in 1998.

The Efficacy of Chile's Government and Judicial System re Enforcement

Question

What gives you the confidence that the Chilean governmental and judicial system can be relied upon to effectively enforce a trade agreement, or a NAFTA like labor or environmental cooperation agreement that utilizes fines as a last resort (not trade sanctions)?

Answer

- First I should say that we have made no decision as to our specific objectives on this front with Chile.
- Chile, as your question implies, has indicated its willingness to conclude a NAFTA-like labor and environmental cooperation agreement with us, and has actually concluded such an agreement with Canada that utilizes only monetary fines to enforce elements of the agreement.
- In evaluating this issue, our initial look at Chile results in a positive first impression. Chile apparently has a well deserved reputation for respect for the rule of law and the application of due process.
- Furthermore, on a scale of 1 to 10 (with 10 the best), Transparency International rated Chile in 1995 at 7.94 in the area of government. The U.S. was rated 7.79 and Canada was rated 8.87.
 - [Only if appropriate, Mexico was rated 3.18 in contrast.]
- This clearly implies that in general Chile's government is transparent in its functioning.
- Chile, based on an initial analysis by our Embassy in Santiago, has a proven history of successful reliance and respect for fines in the enforcement of domestic labor law.
- Chile is also modernizing its dispute resolution procedures as characterized by ongoing judicial reforms and the development of commercial arbitration procedures (with the active involvement of the AMCHAM).

Drafted: USTR/Huenemann with input from U.S. Embassy, DOL and DOS. 9/15

Question

Is the Administration willing to reopen the negotiations with Mexico and Canada to try to incorporate provisions that would provide for the imposition of monetary fines and trade sanctions to enforce the right to organize under the NAFTA labor accord?

Answer

- Although we recognize that some believe that the NAFTA labor agreement is not effective in its enforcement of the right to organize - a core labor standard - we do not accept that view.
- The current labor agreement granted does not provide for monetary fines or trade sanctions in regards the right to organize, bargain collectively or strike, but it does provide a venue for rigorous investigation, public hearings and a public record, and Ministerial consultations that can result in actions plans to address concerns.
- In fact, 7 of the 8 submissions (6 focused on Mexican practices and 1 on U.S. practices) that have been received under the NAFTA labor agreement have concerned the right to organize.
- On the other hand, no submissions alleging a failure to enforce laws with respect to child labor, technical minimum wage implementation or occupational safety and health have been filed. These are areas in which monetary fines and trade sanctions exist as possibilities.
- Rather than attempt to reopen negotiations for this purpose, we believe it more effective to focus on making the current system work as effectively as possible.
- Furthermore, we have no doubt that attempting to reopen the negotiations for this purpose would be strongly resisted by both Canada and Mexico. It should also be recognized that there is no domestic consensus in the U.S. on this approach.

Drafted: USTR/Huenemann

Cleared: DOL/Samet/Perez-Lopez 9/15

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Divider Title: _____

AGRICULTURAL TRADE COMPETITION IN CHILE

Issue

The recently concluded Canada-Chile Free Trade Agreement (FTA) and MERCOSUR-Chile association agreement are expected to impact U.S. agricultural exports, particularly in grains and meats.

Points to Make

- The elimination of an 11 percent Chilean tariff, resulting from the Canada-Chile Free Trade Agreement and MERCOSUR - Chile agreement, will put U.S. agricultural exports to Chile at a competitive disadvantage vis-à-vis their Canadian and MERCOSUR counterparts.
- For example, Canada negotiated preferential access for its wheat, barley, beef and pork exports to Chile.

Background

As part of the Canada-Chile FTA, Canada negotiated seasonal duty free access with Chile for durum wheat (April 15 - November 15) with a five year phase out. Immediate duty free access was also secured for Canada's barley exports, and certain grass seeds. Chile also established a tariff-rate quota for Canadian cut beef exports of 4,000 tons, increasing to 10,000 tons and for pork of 3,000 tons, increasing to 4,000 tons.

Total U.S. agricultural exports to Chile in 1996 were \$131 million, down from \$164 million in 1995. Also in 1996, U.S. exports of dry lentils (\$757,000), frozen potatoes (\$168,000), pork (\$141,000) and beef (\$34,000) to Chile were minimal. In 1995, the latest year for which data is available, Canada exported approximately \$50 million in agricultural goods to Chile. These exports consisted primarily of wheat and barley, as well as some exports of dry lentils and frozen french fries.

Similarly, the MERCOSUR - Chile agreement is structured similarly to the Canada - Chile agreement with respect to the tariff phase out in Chile. In both agreements, wheat, for example is subject to an extremely long phase. In both agreements, Chile is eliminating its tariffs, but retaining its price band system. In both cases, Chilean grain producers, particularly wheat producers, expressed opposition in the Chilean legislature. The result was increased spending on infrastructure in Chile among a number of policy changes.

Drafted: AErickson

Reviewed: JHuenemann 8/28

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Chile: Bilateral FTA versus NAFTA Accession

Question

What is the Administration's position on accession versus a bilateral?

Answer

- Our most important objective at this time is obtaining fast track authority. Without fast track authority, Chile will not conclude an agreement with the U.S., and we believe no other country will either.
- We are committed to concluding a comprehensive trade agreement with Chile that opens up commerce, generates a higher standard of living in both countries, benefits our workers and promotes sustainable development.
- We believe the NAFTA is a good agreement. At the same time, the government of Chile has indicated it is flexible as to the exact form of the agreement we hope to conclude.
- We both are committed to an agreement that will advance our interests in building the FTAA.
- We intend to work closely with the Congress when we have to make a decision on the exact form of the agreement we intend to pursue.

Question

Did not the President commit in Miami 1994 following the Summit of the Americas to NAFTA accession with Canada and Mexico?

Answer

- We are cognizant of the President's 1994 commitment to proceed towards NAFTA accession. We actually officially started the negotiations towards this end in 1995 and held four full negotiating sessions.
- We have not made a decision to preclude negotiating Chile's accession to the NAFTA. As we have made clear, we believe the NAFTA is a good agreement.
- At the same time, a lot has changed since the 1994 commitment. Chile has negotiated FTAs with MERCOSUR, Canada, and is in the process of pursuing an FTA with the EU, is expanding upon its FTA with Mexico and is negotiating an FTA with Panama.
- The FTAA process has moved significantly forward in its preparatory effort, and both Chile and the U.S. are deeply committed to that multilateral process and its success. Both of us have strategic interests in the hemisphere.
- We will work closely with the Congress if fast track legislation is passed to determine the precise form of the agreement we will seek once we resume negotiations with Chile.

Question

What are the benefits of a bilateral FTA, from a trade policy and negotiating perspective, over NAFTA accession with Chile?

Answer

- From a negotiating perspective, both Chile and the U.S. would have an additional degree of freedom to shape a new agreement given that Canada and Mexico would not be at the negotiating table.
- At the same time, the NAFTA is a good agreement and many of its provisions form a solid basis from which to conclude any future agreements.

Question

Is there not a serious downside to starting a series of bilateral FTAs given that it could result in a patchwork of confusing rules of origin for traders shipping in this hemisphere?

Answer

- We recognize that it would not be in our interests to create a series of confusing and different rules of origin throughout the hemisphere that serve as impediments to trade.
- However, it is important to bear in mind that there are already many FTAs in this hemisphere with their own special rules of origin. Clearly, if we are to build an FTAA we will have to agree on a common set of rules.
- In the agreement we aim to conclude with Chile we will work closely with the Congress and our advisors to ensure the rules are in the interests of the U.S.

Question

Why does Chile want to negotiate an FTA with the U.S. when it has been so successful economically already and has just completed agreements with MERCOSUR, is starting with the EU, etc.?

Answer

- Chile wants assured access to the large U.S. market. Chile wants the prestige of having an FTA with the U.S. Chile wants to further strengthen its market oriented trade policies with a state of the art agreement with the U.S., and Chile wants to advance towards the FTAA.

Chilean Concessions for an FTA/NAFTA Accession

Question

Is Chile refusing to address certain U.S. concerns at this time in an effort to store up “leverage” vis-a-vis the U.S. ?

Answer

- It is not possible to answer that question definitively. It would not surprise us if this were occurring to some degree.
- One area where this has been alleged is in the area of sanitary and phytosanitary measures given that Chile has not resolved a number of our concerns, including on poultry and certain fruit. We will continue to insist that these matters be resolved on the basis of science.

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Divider Title: _____

The Chile - Canada Free Trade Agreement

Issue

The Chile-Canada Free Trade Agreement provides Canada important competitive advantages in the Chilean market.

Points to Make

- Chile and Canada concluded the negotiations in late 1996 and the agreement was enacted in 1997. The agreement is modeled on major elements of the NAFTA, including its supplement agreements on labor and the environment.
- As a result of the agreement, Canadian exporters to Chile face much lower tariffs on most products than their U.S. competitors. There are already indications that the FTA is making a competitive difference, as it contributed to Northern Telecom (a Canadian company) winning a \$200 million bid over U.S. competitors among other indications.
- Canadian investors and traders now enjoy more guarantees than their U.S. counterparts against discrimination vis-a-vis Chilean firms and against expropriation. For example, Canadian investors also now have recourse to investor-state dispute settlement procedures.
- Canada has also secured through this agreement guarantees which we do not enjoy of continued access to most service sectors in Chile.

Background

On December 11, 1994, the heads of government of the United States, Canada, Mexico and Chile announced their intention to pursue Chile's accession to the NAFTA. On December 29, 1995, Canada and Chile committed to negotiate an interim free trade agreement as a bridge to Chile's accession to the NAFTA. The two sides announced that they had reached a free trade agreement in November 1996. It was implemented in 1997.

The agreement's key features include:

- Immediate duty free access for most industrial goods, which account for 80 percent of Canadian exports to Chile, and the elimination of Chile's 11 per cent import duty on almost all remaining industrial and resource-based goods over five years;
- Better access for a range of agricultural goods, including durum wheat, barley, lentils, seed potatoes, pork, canola products and beef;
- Significant new protection for Canadian investments in Chile, including an agreement to

automatically grant Canadian investor the benefits of any further liberalization that may occur in the future (but it does not eliminate the major elements of Chile's capital controls which are inconsistent with the NAFTA investment provisions);

- Significant new guarantees for Canadian exporters of services; and
- Side agreements on environment and labor.

Drafted: B Harman

Cleared: J Huenemann 8/29

The Chile - Canada Free Trade Agreement

Question:

Why did Chile and Canada cut a free trade deal?

Answer:

In December 1994 the leaders of the three NAFTA countries and Chile's President announced their intention to pursue Chile's accession to the NAFTA. A year later, when it appeared that Chile's NAFTA accession was stalled when the Congress did not grant the Administration fast track authority, Canada and Chile committed to negotiate an interim free trade agreement as both a bridge to Chile's accession to the NAFTA and a strong market opening agreement in its own right. The two sides announced that they had reached a free trade agreement in November 1996 and the agreement was implemented in 1997.

Possible Follow-Up Question:

Were Chile and Canada seeking to put pressure on the United States to proceed with Chilean accession to NAFTA?

Answer:

I cannot speak for the Chilean or Canadian Governments, but I assume that they were both motivated to seek the benefits of free trade without waiting any longer. For instance, Canada is already enjoying:

- Immediate duty free access for most industrial goods, which account for 80 percent of Canadian exports to Chile, and the elimination of Chile's 11 percent import duty on almost all remaining industrial and resource-based goods over five years;
- Better access for a range of agricultural goods, including durum wheat, barley, lentils, seed potatoes, pork, canola products and beef;
- Significant new protection for Canadian investments in Chile, including an agreement to automatically grant Canadian investor the benefits of any further liberalization that may occur in the future; and
- Significant new guarantees for Canadian exporters of services.

Chile-Canada FTA

Question

Is the FTA modeled on the NAFTA?

Answer

- Yes, but it is not a mirror reflection of the NAFTA in all respects.
- Although the provisions included are modeled on the NAFTA in many respects, the agreement does not include substantive provisions on, for example:
 - IPR, financial services, standards, SPS and procurement.
- At the same time, it includes significantly different provisions than the NAFTA in certain areas, including an agreement to phase out the application of anti-dumping laws over a 6 year period.
- The agreement does include labor and environmental cooperation accords as parallel agreements as is the case with the NAFTA. These agreements are almost identical to the NAFTA.
- In the labor and environmental accords, Chile and Canada agreed to enforcement provisions that are modeled on the agreement Canada reached in the NAFTA.

Question

Is the Chile-Canada agreement structured as an interim accord to full NAFTA accession?

Answer

- As a general matter, it was presented by the Canadians as an interim accord to NAFTA accession.
- However, the Canadians and Chileans built safeguards into the system in case NAFTA accession does not come into fruition. For example, they both agreed to resume negotiations on financial services should NAFTA accession negotiations not resume.
- Furthermore, the agreement is structured so that should the U.S. and Chile negotiate a bilateral accord, we understand Chile would be obligated in certain areas to Canada to provide it the same benefits should the U.S. strike a stronger agreement.

Question

Does the agreement that Canada and Chile reached in regards the phase-out of anti-dumping measures over six years serve as a precedent for the FTAA, or in the negotiations the U.S. may have with Chile?

Answer

- Canada has for many years promoted the notion of eliminating anti-dumping (AD) measures in the context of FTAs. Chile agreed with Canada in this context.
- However, what Canada and Chile agreed to in this context is not viewed as a precedent the U.S. is predisposed to follow either in the FTAA or in a bilateral agreement with Chile.
- We do not see a domestic consensus in the U.S. in favor of this approach to AD provisions in FTAs now or in the immediate future.

Question

We understand the Canada - Chile labor and environmental agreements are stronger than the NAFTA accords. Is this true?

Answer

- No. The accords are almost identical to the NAFTA accords, but Chile followed the Canadian lead in the NAFTA in regards the enforcement provisions of the accords.
- Specifically, the accords do not provide for trade sanctions (i.e., withdrawal of tariff preferences) whereas the NAFTA accords with Mexico do provide avenues for both the imposition of monetary fines and trade sanctions should the monetary fines not be paid.
- In addition, the fines are capped at \$10 million whereas the NAFTA accord fines are capped at \$20 million and contain an indexing clause.
- In addition, neither the labor or environmental accords between Canada and Mexico set up an independent Secretariat as did the NAFTA accords.
- Under the environmental accord with Canada, Chile did phase in the coverage of certain environmental legislation and regulations that could become the subject of the dispute settlement provisions (i.e., within six months of the agreement entering into force for some and for others January 1, 1999)..

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Divider Title: _____

The Chilean Role in the FTAA

Issue

Chile to date has not had an assertive voice in the FTAA process. However, given its new trade relationship with MERCOSUR and Canada, it is and can be influential regarding the direction in which the FTAA goes.

Points to Make

- o Chile's role as a successful and open economy in Latin America with a strong outward policy emphasis on opening foreign markets makes it a good example to other Latin American countries.
- o Chile's success in negotiating trade agreements with other Latin American countries has given it a more significant voice in the FTAA process.
- o An agreement with Chile will be strategically important as it would be viewed in some respects as a precedent for the FTAA.
- o With an agreement with United States, Chile would be more likely to add its voice to ensure that the FTAA ultimately reflects U.S.-inspired rules.

Background

Although Chile has not been a leader in the FTAA process, it is an influential player because of its perceived ties to the U.S., Canada, and to MERCOSUR and its overall economic success. Chile chairs the Working Group on Services and has generally done a good job.

On Services, the Chilean delegation has generally spoken in support of U.S. positions in the group, although Chile has not been extremely vocal or provided position papers to advance discussions. N.B., Chile and Canada excluded financial services from their bilateral trade agreement.

On Smaller Economies, Chile has consistently supported the US position. It is itself by some measures a smaller economy and can make a compelling argument for opening economies to competition.

On Competition Policy, Chile always has been present and fairly active. Chile itself has gone through a phase of deregulation and increased attention to and enforcement of competition law. They are pretty able players.

Drafted: B Harman

Cleared: J. Huenemann 9/3

The Chilean Role in the FTAA

Question:

Is Chile playing a constructive role in the FTAA negotiations?

Answer:

Chile has been an active and constructive participant in the FTAA process to date. It even chairs the Working Group on Services, and has done a good job. Chilean positions in the exercise to date have very frequently coincided with U.S. ones.

Possible Follow-Up Question:

But now that Chile has agreed to some provisions in their FTA with Canada (e.g., non-application of antidumping laws) which we might find objectionable, won't they work at cross-purposes from us in the FTAA negotiations?

Answer:

We certainly have no guarantee that Chilean positions will mirror ours in the FTAA. But neither are we in the least bound in an FTA with Chile to mirror what they have agreed with Canada or others. In fact, if we reach an agreement with Chile, it would be much more likely to add its voice to ensure that the FTAA ultimately reflects U.S.-inspired rules.

Likely Source of Question:

Those interests on the Hill and in the private sector who feel most strongly about keeping our trade laws intact.

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Divider Title: _____

Chilean Distilled Spirits Tax Discrimination

Question:

Chile maintains a discriminatory tax regime with respect to imported spirits. Are you pressing them on this issue?

Answer:

We have made our concerns very clear to the Chilean Government with respect to both its current discriminatory tax regime for distilled spirits and its proposed new regime. The latter would perpetuate the discrimination in a slightly more subtle but still transparent way.

Possible Follow-Up Question:

Why hasn't the U.S. Government challenged the practice in the WTO or joined the EU's dispute settlement case?

Answer:

The United States has asserted interested party status in the EU's WTO dispute with Chile on this matter and we are positioned to join the dispute. In fact, EU and U.S. interests are very similar in this case.

Question:

How will you handle wine tariff negotiations with Chile? Do you plan to exempt U.S. tariffs on wine from elimination?

Answer:

Our general approach to market access negotiations is to pursue the comprehensive elimination of all market access barriers, including tariffs, in foreign markets. We have discussed this issue with wine industry representatives and will continue to do so. We will work hard to find a satisfactory solution to the concerns of the U.S. wine industry.

Drafted: J Huenemann 8/29

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Divider Title: _____

Question

People said that Mexico was a model of economic reform under Salinas, and look what happened in late 1994 and 1995. Why should we believe that Chile will be different?

Answer

- The economic fundamentals in Chile are strong and have been strong for many years.
- Chile's high savings rate, investment rate, stable monetary policy and independent Central Bank, its open and competitive economy and its strong policymaking institutions all mitigate against an economic breakdown.
- In other words, the conditions that preceded the Mexican currency collapse in late 1994 do not exist in Chile today.
- Furthermore, its strong commitment to democracy and to continued efforts at reform designed to strengthen its democratic institutions even further also mitigate against a serious breakdown in its economy of the kind Mexico suffered in late 1994 and in 1995.
- Ofcourse, no one country can insulate itself from exchange rate difficulties for all time, or from an occasional recession, but Chile's record over the last decade does not lead us to believe that Chile is in serious danger of either in the near future.

Question

Is it possible that Chile will go through a massive devaluation like Mexico did after the NAFTA was enacted?

Answer

- We have no reason to believe at this time that Chile will suffer a massive devaluation given its strong economic fundamentals. The economic conditions in Chile do not lend themselves to that happening.

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Divider Title: _____

Chilean Environmental Laws and Enforcement:

Q: Chile's environmental laws and regulations are not as well developed as Mexico's, and its economy is heavily dependent on natural resource extraction. Won't increased trade exacerbate its environmental problems?

A: Chile is increasingly focused on the need to protect its environment and achieve sustainable development. The Frei Administration passed a Basic Framework Law on the Environment in 1994, which provides for central policy planning by the National Environment Commission. This legislation is forming a comprehensive basis for governmental enforcement of Chile's environmental laws and policies, including requirements for environmental impact assessments to which all industrial and mining projects (both public and private) are subject. Chile is also taking important steps to address Santiago's air pollution problems through a variety of regulatory and enforcement actions. We believe that a free trade agreement with Chile will reinforce these trends.

Chile and the Environmental Side Agreement:

Q: What has Chile committed to do vis a vis the NAFTA Environmental Side Agreement? What is in the Chile-Canada Side Agreement?

A: Chile has already said it is willing to join the NAFTA Environmental Side Agreement. In its bilateral agreement with Canada, Chile has essentially committed to abide by all of the obligations in the NAFTA Environmental Side Agreement, including the obligation to maintain high levels of environmental protection and to strive to continue to improve its environmental laws and regulations.

Q: Will the Administration commit to improve the side agreements for Chile?

A: The Administration is committed to ensuring that a free trade agreement with Chile is consistent with U.S. environmental objectives. Likewise, Chile is committed to improving its environment. As part of the process of negotiating with Chile, the Administration will engage in full consultations with the Congress and the public on environmental issues related to those negotiations. Once we have identified those issues, we will determine the appropriate methods for addressing them.

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Divider Title: _____

The Chile - EU Trade Agenda

Issue

The EU and Chile are proceeding on a path toward a free trade agreement.

Points to Make

- The U.S. is not opposed to Chile reaching a free trade agreement with a third party such as the EU provided that it strictly conforms to WTO requirements.
- It is understandable that Chile would want to deepen its trade relationship with the EU, which is after all its single largest trading partner when taken as a whole.
- That being said, U.S. exporters and investors should be concerned that they not be left behind in their dealings with Chile. The EU uses these agreements and the dialogues leading to them as a vehicle to promote European approaches to issues, European product standards, etc.
- If the EU achieves free trade in goods and services with Chile and we do not, we would be left at a severe competitive disadvantage in the Chilean market. This is particularly true because European industry often competes head-to-head with ours in similar product areas.

Background

In January 1995, EU foreign ministers approved a Commission mandate for the negotiation of a "Framework Agreement on Trade and Economic Cooperation" with Chile. The EU-Chile Framework Agreement did not commit the parties to free trade by a specific date. It did, however, prepare the ground for future trade liberalization by: (a) setting up a specific trade subcommittee which would identify sensitive and priority products and present annual recommendations for trade liberalization; and by (B) introducing cooperation in, inter alia, standards, customs and intellectual property issues. The negotiating mandate also foresees annual consultations aimed at the opening up of public procurement.

In April 1997 Chilean President Frei returned from a trip to Europe with a political understanding with his European counterparts that they will support conclusion of an FTA negotiation by as early as 1999.

Drafted: B Harman

Cleared: J Huenemann 8/29

The Chile - EU Trade Agenda

Question:

How serious is the prospect that Chile will negotiate an FTA with the EU?

Answer:

In 1995, when the EU originally agreed to pursue an FTA with Chile, the EU-Chile Framework Agreement did not commit the parties to free trade by a specific date. It did prepare the ground for future trade liberalization by: (a) setting up a specific trade subcommittee which would identify sensitive and priority products and present annual recommendations for trade liberalization; and by (B) introducing cooperation in, inter alia, standards, customs and intellectual property issues. The negotiating mandate also foresees annual consultations aimed at the opening up of public procurement.

However, in April 1997 Chilean President Frei returned from a trip to Europe with a political understanding with his European counterparts that they will support conclusion of an FTA negotiation by as early as 1999.

Possible Follow-Up Question:

Should we be concerned if the EU does conclude an FTA with Chile?

Answer:

- The U.S. is not opposed to Chile reaching a free trade agreement with a third party such as the EU provided that it strictly conforms to WTO requirements.
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Divider Title: _____

Question

I understand Chile's IPR regime has a number of faults that need to be addressed.

Answer

- Yes, we do have some concerns with Chile's regime. For example:
 - Chile's patent regime has some inadequacies, including a lack of "pipeline" protection for pharmaceuticals;
 - Chile's regime does not protect encrypted satellite signals or integrated circuits; and
 - the recording industry has in the past identified weaknesses in Chile's copyright regime.
- We will have to again closely examine Chile's IPR regime in light of its TRIPs obligations if we are to resume negotiations. We will also look forward to input from the private sector in helping us determine our specific objectives in this area.

Question

I understand Chile has capital controls that limit short term capital flows in and out of Chile. How would you address these controls in negotiating an agreement with Chile?

Answer

- Chile does have certain restrictions on investment into Chile. These include the so-called “encaje” - a reserve requirement on foreign borrowings, credit lines, deposits and stock purchases. In short, all foreign borrowings (except credits that are provided directly to Chilean exporters by foreign importers) are subject to a reserve requirement of 30 percent.
- The reserve requirement can be satisfied by depositing the required balance in the Central Bank without interest or by entering into a special repurchase agreement with the Central Bank that effectively imposes the cost equivalent to the interest forgone.
- Chile also requires a one year waiting period for the repatriation of foreign investment.
- As a general matter, the U.S. does not support such restrictions on investment. The NAFTA investment provisions and our BITs preclude these kinds of measures.
- Canada negotiated an exception for Chile in its agreement that allowed the Chilean measures to remain largely intact within certain limits.
- We will look closely at this issue in the context of any resumption of negotiations with Chile.

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Divider Title: _____

Question

I understand Chile's investment controls helped it weather the so-called tequila effect from Mexico's peso crisis whereby a number of countries in Latin America faced extreme pressures on their currencies?

Answer

- Chile's strong economic fundamentals (i.e. high savings rates, high growth and low inflation, etc.) play the primary role in Chile's economic stability and currency strength.
- I am not in a position to comment on the role Chile's capital controls may have played in the so-called tequila effect crisis.

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Divider Title: _____

CHILE'S LABOR LAWS

Issue

Chile's labor laws are a subject of interest to some in Congress. The Frei Administration has indicated it is willing to conclude a labor side agreement modeled on the NAFTA labor agreement that commits the signatories to implement their own labor laws.

Talking Points

- Chilean labor has benefitted from Chile's economic success. Even the poorest are benefitting due to both the strong growth that has averaged over 6 percent for a decade and from the increased funding for social programs since the return to democracy.
 - The net result is that Chile has seen over 1.3 people million lifted above the official poverty line in the last five years out of a population of 14 million. An equivalent ratio applied to the U.S. in regards those being lifted above the poverty line would mean over 20 million people.
- Chile's per-capita GDP is now over \$5,000.
- Chile's labor laws generally reflect internationally recognized labor standards. There is an active labor union movement in Chile.
- The right to organize in labor unions and to strike are guaranteed by law for all workers, with the exception of the military and the police. Roughly 13 percent of the labor force is organized - a similar proportion to that of the United States.
- The Chilean constitution prohibits forced or compulsory labor and children under 15 may not work, with some limited exceptions and subject to parental (guardian) permission.
- The work week may not exceed 48 hours with provisions for overtime pay: overtime may not exceed two hours per day (the maximum work day is 10 hours).
- The labor code also establishes occupational safety and health and insurance for accidents at work or sickness associated with employment.
- The Labor Code applies equally in all parts of the country including free trade zones.
- The Frei Administration has submitted proposals for labor law reform to the Chilean legislature. One important proposal would extend the rights for industry-wide bargaining. The Frei Administration is urging the Congress to pass the reforms.

Background

Labor Code amendments in 1991 addressed a number of the restrictions imposed during the Pinochet regime, e.g., by allowing for the formation of nationwide union centrals. The major problem currently is a limitation on formal collective bargaining rights. Only company specific unions now have legal access to "regulated" collective bargaining procedures; inter-sectoral unions and unions formed by

temporary workers (principally those in agriculture and construction) must receive permission from the employer in order to engage in formal bargaining procedures; few employers give such permission. Most workers continue to negotiate individual contracts. The draft legislation now before the legislature would extend the right of collective bargaining to all legally constituted unions.

There are no outstanding cases regarding Chile in the ILO Committee on Freedom of Association (which reviews all countries, whether or not they have ratified Convention 87). There is one outstanding case in the ILO Committee of Experts (which reviews ratified conventions) regarding non-discrimination (Convention 111). The monthly minimum wage is roughly \$155 and is adjusted annually by law.

Drafted: DOL/B White/D Parker

Cleared: J Huenemann 8/28

Cleared: J Perez Lopez/DOL 8/27

Chile's Labor Conditions

Question

Given that the NAFTA labor accord was designed with Mexico in mind, does it make sense to negotiate a similar agreement with Chile?

Answer

- We will have to examine that issue closely.
- Chile has repeatedly indicated its willingness to conclude an agreement like the NAFTA labor accord.
- Chile's labor regime is strong in many respects and generally meets international standards. At the same time, Chile has undertaken significant unilateral efforts to upgrade the enforcement of its labor laws since the return to democracy in 1989.
- An agreement to strengthen cooperation with Chile along with obligations to ensure its labor law is effectively enforced is potentially a valuable step forward in the U.S. international effort to encourage the adoption and enforcement of core labor standards and in our efforts to build the FTAA.
- Of course we will consult with the Congress on our specific objectives in this area should the negotiations with Chile get back underway.

Question

Will the Administration pursue an agreement that is stronger than the NAFTA labor accord with Chile?

Answer

- I would not want to publicly indicate with any specificity our objectives in this area before we restart negotiations with Chile and before we consult with Congress.
- Chile has indicated that it is not prepared to consider the utilization of trade sanctions to enforce a labor cooperation accord, but it has adopted provisions with Canada that allow for the imposition of monetary fines enforced through its domestic courts system.
- I will say that any agreement the U.S. negotiates should have appropriate enforcement provisions.

CHILE'S LABOR LAW ENFORCEMENT

Issue

Although Chilean labor law is generally consistent with international standards, Chile's enforcement record may be the subject of some concern given the Pinochet effort to dismantle the enforcement regime.

Points to Make

- The democratically elected Governments of Chile since the Pinochet years have been aware of the efforts of the previous military Government to gut the labor law enforcement regime.
- Like most developing countries, and most developed countries, Chile has limited resources with which to enforce its labor code.
- However, both the democratic Governments have increased funding for the Ministry of Labor.
- Specifically, the Frei Government is seeking to improve enforcement of the labor code and has increased the Ministry of Labor budget for labor inspections.
- To our knowledge, Chile's laws providing for freedom of association and collective bargaining are fully enforced.

Background

We have limited information about how effectively Chile enforces its labor code. There have been complaints by union officials about court delays and about an insufficiency of resources (similar complaints could be made about the United States). The Human Rights Report for 1996 does not comment one way or the other on enforcement of the labor code.

Drafted: DOL\BWhite

Cleared: J Huenemann 8/28

Cleared: J Perez Lopez 8/27

DRAFT DRAFT DRAFT

Question:

Will the Administration encourage Chile to enact the pending labor legislation submitted by the Frei Government that would expand the collective bargaining rights to more workers?

Answer:

- The Frei Administration submitted the legislation and is working to gain its passage.
- As a general matter, this Administration supports the enactment of legislation around the world that is consistent with internationally recognized worker rights.
- As you know, the Administration has actively and effectively pursued in both the ILO and WTO the protection of core labor standards, and we will continue to do so.

Follow up Question:

Will you inform the Frei Government that passage of the pending legislation is important to the U.S. trade agreement agenda with Chile?

Answer:

- As indicated previously, the Frei Administration is working to gain its passage. Furthermore, the Frei Administration knows, as do Governments all across the world, that this Administration supports the protection of core labor standards and the effective protection of workers consistent with international norms (i.e, the ILO).

Question

What is Chile doing to enforce its labor law?

Answer

- The democratically elected Governments of Chile since the Pinochet years have been aware of the efforts of the previous military Government to gut the labor law enforcement regime.
- Like most developing countries, and many developed countries, Chile has limited resources with which to enforce its labor code.
- However, both the democratic Governments have increased funding for the Ministry of Labor.
- Specifically, the Frei Government is seeking to improve enforcement of the labor code and has increased the Ministry of Labor budget for labor inspections.
- To our knowledge, Chile's laws providing for freedom of association and collective bargaining are fully enforced.

Question

You say that Chile's labor law generally meets international standards. My understanding is that many workers do not have access to collective bargaining procedures. Please explain this apparent inconsistency.

Answer

- Consistent with ILO principles, all workers in Chile, with the exception of the military and the police, have the right to form unions and to strike.
- It is true that not all unions have guaranteed access to formal collective bargaining procedures.
- This deficiency will be corrected in labor reform legislation which the Frei government is urging the Congress to enact.

Question:

Will the Administration pursue a labor cooperation agreement with Chile in parallel to a free trade agreement, or will you pursue the inclusion of core labor standards in the trade agreement with Chile?

Answer:

- We intend to enhance our labor cooperation efforts with Chile consistent with the President's view that promoting the protection of core labor standards is in our global interests and is consistent with U.S. core values.
- The NAFTA labor cooperation agreement we have with Mexico and Canada is an effective accord, and provides a basis upon which to potentially fashion an accord with Chile.
- Chile has already indicated its willingness to conclude a labor accord modeled on the NAFTA labor agreement, as they have done with Canada.

Follow up Question:

Would the Administration be content with Chile's willingness to agree to a Canada style labor agreement that forsakes, in the context of the dispute settlement mechanism, trade sanctions but does include a provision for fines imposed through domestic courts?

Answer:

- The Canadian model was satisfactory for us and Canada in the NAFTA negotiations. As to how we will procede with Chile, [I would prefer to avoid being precise at this time given that we have not engaged the Chileans on this topic since late in 1995].

Drafted: J Huenemann 8/22

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75

Divider Title: _____

The Chile - MERCOSUR Free Trade Agreement

Issue

Chile's associate membership in MERCOSUR deepens regional integration but does so on a preferential basis which puts our suppliers at a competitive disadvantage in those markets.

Points to Make

- Chile's associate membership in MERCOSUR is a logical step in the respective agendas of both Chile and MERCOSUR as the southern cone of South America integrates. The opening of economies in South America is a necessary part of the process of building the Free Trade Area of the Americas (FTAA).
- It remains to be seen the degree to which further integration will occur as Chile and MERCOSUR continue to discuss the potential for further progress.
- That being said, the reduction and elimination of duties between Chile and MERCOSUR inevitably provides their suppliers a cost advantage over ours in these markets.

Background

MERCOSUR is a partially implemented customs union (i.e., it is a partially implemented common external tariff among the four countries). On October 1, 1996, Chile entered into an "associate membership" with MERCOSUR, but did not adopt its common external tariff or formally commit to common external trade policies with MERCOSUR. However, the process of economic integration in the South America southern cone is continuing and Chile and MERCOSUR are attempting to negotiate market access for the services sector to expand upon the current accord.

The accord is an agreement requiring the elimination of virtually all tariffs within 10 years, and up to 18 years for the most sensitive items (i.e., 18 years for Chile's tariff on wheat and wheat flour). Used goods are exempt from tariff elimination. According to the GOC, the average MERCOSUR tariff that Chilean goods faces dropped from 8.2 percent to 3.2 percent the day the agreement was implemented, while Chile's average tariff on MERCOSUR goods dropped from 11 to 5.7 percent. Chile's "price band" regime for certain agricultural goods is not addressed, nor does the agreement require Chile to eliminate its capital controls (i.e., one year limit on taking capital out of Chile once invested, and the 30 percent deposit requirement - the "encaje" - in the Central Bank for incoming investment). The agreement used the WTO as guidance on other disciplines. Commitments are made to expand market access in services (but no specifics on sectors yet), a dispute settlement mechanism is framed, commitments on infrastructure and investment are incorporated, double taxation treaties are encouraged and scientific cooperation is undertaken.

We view the accord as an improved version of the traditional Latin American Integration Association (ALADI in Spanish) agreement, but it pales in comparison to the NAFTA. Our public position has been that we will look to ensure the agreement meets WTO requirements.

We have not expressed concern over the "expansion of MERCOSUR's reach" (while making clear that Chile did not join the MERCOSUR customs union, but negotiated an FTA), but have acknowledged that the region is not waiting for the U.S. Therefore, we should move forward with negotiating a free trade agreement with Chile -- which the Chile-MERCOSUR agreement does not significantly complicate -- and the FTAA.

Drafted: B Harman

Cleared: J Huenemann 8/29

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Drafted: B Harman

Cleared: J Huenemann 8/29

The Chile - MERCOSUR Free Trade Agreement

Question:

Are we concerned about Chile's negotiating an associate membership in MERCOSUR? Does this reflect a reorientation in their trade policy?

Answer:

- Chile's associate membership in MERCOSUR is a logical step in the respective agendas of both Chile and MERCOSUR as the southern cone of South America integrates. The opening of economies in South America is a necessary part of the process of building the Free Trade Area of the Americas (FTAA).
- That being said, the reduction and elimination of duties between Chile and MERCOSUR inevitably provides their suppliers a cost advantage over ours in these markets.
- We also risk being left behind in the development of rules and disciplines in the region which may or may not reflect our interests.

Possible Follow-Up Question:

Would Chile's associate membership in MERCOSUR create a conflict with Chile negotiating a free trade agreement with the United States?

Answer:

The Chile-MERCOSUR agreement does not significantly complicate a U.S.-Chile free trade negotiation. For instance, Chile did not adopt MERCOSUR's common external tariff nor formally commit to common external trade policies with MERCOSUR.

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76

Divider Title: _____

Question:

Several U.S. agricultural exports are denied entry into Chile for sanitary and phytosanitary reasons. What is USTR doing to resolve these issues?

Answer:

- Chile recently granted export approval for California lemons, table grapes, kiwis, oranges and grapefruit.
- However, sanitary and phytosanitary barriers remain for U.S. apple, pear, poultry, wheat, and Florida and Texas citrus exports.
- We raised these issues bilaterally with Chilean officials at the highest levels and will continue to work very closely with them to secure market access for these commodities.
- We have also raised our concerns in the WTO SPS Committee.

Likely Follow up Question:

Is it your view that Chile is refusing to address some of our SPS concerns because it is seeking to “save leverage” for an eventual negotiation over a free trade arrangement?

Answer:

- We strongly believe that SPS decision should be based on science, and not in an effort to retain negotiating leverage.
- Regardless of what may be driving Chile’s resistance with respect to addressing our concerns in certain products, we will continue to press to resolve these issues.

Drafted: Aerickson

Reviewed: Jhuenemann 8/22

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77

Divider Title: _____

Question

How long will it take to conclude an FTA with Chile? I gather it should be a quick negotiation.

Answer

- We are not prepared to say how long it will take to conclude an agreement with Chile.
- Because we had previously started the negotiations with Chile in 1995 and a lot of preparation went into that initial effort, that may lessen to some degree the time it would take to conclude an agreement.
- However, concluding an agreement is largely a function of to what degree and how quickly the negotiating partners are willing to make the decisions necessary in a negotiating to conclude an agreement. This negotiation should be expected to have its difficult decisions just like other negotiations.

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78

Divider Title: _____

Trade Agreement with Chile: The Value for the U.S.

Issue

It is in the interest of the United States to negotiate a comprehensive free trade agreement with Chile.

Points to Make

- Fulfilling our longstanding commitment to Chile (since 1990) is our first step in building the Free Trade Area of the Americas (FTAA) by the year 2005, a high priority of the President because of its value in expanding trade in the Americas and high paying jobs in the U.S.
- While Chile's market is one of the most open in Latin America, Chilean tariffs are a uniform 11 percent, while the U.S. tariff on imports from Chile are between 1 and 3 percent. Also, Chile's protection of intellectual property rights, its sanitary and phytosanitary regime, and other elements of its trade regime are not as open as ours.
- We should eliminate this inequity in our respective regimes and lock open this dynamic market to U.S. goods and services and ensure Chile trades by the same rules.
- We risk losing the dynamic Chilean market to our competitors if we do not act - a market to which we exported more in 1996 than we exported to Russia, India or Indonesia.
 - For example, a Canadian telecommunications firm (Northern Telecom) was successful in winning a nearly \$200 million contract over U.S. firms in part due to the fact that Chilean tariffs on goods coming in from Canada will be eliminated as a result of the FTA Canada and Chile negotiated.
- Chile has already negotiated a free trade agreement with numerous countries and is seeking to negotiate with additional countries where competitors of U.S. firms reside. For example:
 - Chile already has free trade agreements with MERCOSUR, Mexico, Venezuela, Colombia, Canada among others and has agreed to negotiate a free trade agreement with the EU. Chile is aggressively cultivating closer trade and investment ties with China, Japan, Korea and others in Asia.
- Concluding an agreement with Chile is also strategically important to our trade, economic and foreign policy interests in Latin America - our fastest growing export market and the second fastest growing region in the world.
 - Chile is viewed by Latin America (and others) as a litmus test for our resolve to

Eddleman, Linda .

From: Leavy, David C.
Sent: Tuesday, September 16, 1997 9:41 AM
To: Kyle, Robert D.
Cc: @PRESS - Public Affairs; @INTECON - Economic Affairs
Subject: RE: URGENT REQUEST FOR GUIDANCE [UNCLASSIFIED]

Bob: I would make a few points:

1). The Administration went the extra mile to consult with Democrats on the Hill and we believe we have a bill that reflects the proper balance to address workers (including child labor standards) and environmental protection while expanding exports and creating high-paying jobs.

2). The bill also reflects the President's ongoing commitment to Democratic values: 1). to break down unfair foreign trade barriers and create good American jobs; 2) to promote and advance worker rights and 3) to promote responsible environmental protections. Throughout this process, our goal has been to ensure the President has the capacity to pursue all three objectives.

- Trade Agreements: This bill permits labor/environment provisions "directly related to trade" to be brought back to Congress.
- Side Agreements: The President has extensive executive authority to reach labor/environment agreements with countries. These agreements do not require congressional approval
- Other Agreements: The Clinton Administration has done more than any other to press countries to improve labor and environmental protection--and will continue to do so, whether through the ILO, the WTO, the UN or international financial institutions.

-----Original Message-----

From: Kyle, Robert D.
Sent: Tuesday, September 16, 1997 9:21 AM
To: Leavy, David C.
Subject: FW: URGENT REQUEST FOR GUIDANCE [UNCLASSIFIED]

David - could you do an answer for this? Bob

-----Original Message-----

From: Crowley, Philip J.
Sent: Tuesday, September 16, 1997 9:11 AM
To: @EUROPE - European Affairs; @BOSNIA - Bosnian Affairs; @ASIA - Asian Affairs; @RUSSIA - Russia/Ukraine; @OSTP - Office Science Tech; @INTECON - Economic Affairs; @CUBA - Cuban Affairs; @INTERAM - Inter-American; @DEMOCRACY - Dem/Human Affairs; @NESASIA - NE/South Asia; @DEFENSE - Defense Policy
Cc: @PRESS - Public Affairs
Subject: URGENT REQUEST FOR GUIDANCE [UNCLASSIFIED]

This should cover the front for today. Appreciate updates NLT 10 am:

DEFENSE: Update from Oslo.

NESA: Albright says "worse than I thought." What next?

INTECON: What will POTUS tell Congressional opponents on Fast Track?

OSTP: Update Mir. Problems never seem to end. Dust off Cassini guidance. See USA Today dueling editorials
RUSSIA/OSTP: What about Russian Space Agency director and transfers to Iran? Should that affect space cooperation?

ASIA: What about Ziyang letter? Comment?

EUROPE: Updates on talks? What about explosion? Dust off Pacific Salmon guidance? What's next?

CUBA: Comment on Van der veer case?

INTERAM: List major findings of ONDCP/State reports released today.

DEMOCRACY: Dust off Wolf-Specter guidance. See Rosenfeld column

BOSNIA: Update as required.