

The U.S.-Chile Free Trade Agreement (FTA)

**Report of the
Industry Sector Advisory Committee on Services
for Trade Policy Matters (ISAC 13)**

February 28, 2003

February 28, 2003

Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13)

Advisory Committee Report to the President, the Congress and the United States Trade Representative on the U.S.-Chile Free Trade Agreement (FTA).

I. Purpose of the Committee Report

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002. The report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) hereby submits the following report.

II. Executive Summary of Committee Report

It should be noted that ISAC members were challenged by the lack of available final text during the 30-day period they had to conduct their analysis and write this report. Notification of Congress prior to the completion and availability of the final legal text should be avoided in future agreements. The opinions stated below are therefore subject to review of the final texts of the agreement and its annexes.

As stated in Section IV of this report, ISAC 13's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy, new employment, and, by extension, benefiting the economies of its trading partners. Overall, the Committee believes that the U.S.-Chile FTA meets the Committee's objective of achieving new and expanded trading opportunities for specific service sectors, including: audiovisual; banking, securities and asset management; distribution; e-commerce; education; energy; express delivery; healthcare; insurance; professional (e.g., accounting, legal, consulting, architectural and engineering services); telecommunications and information technology; transportation; and travel and tourism.

The ISAC strongly supports the negative list approach taken to services negotiations in the Agreement.

The Agreement contains several cross-cutting elements worth noting: provisions on investment, transparency, and temporary entry.

An important element of the Agreement is its Chapter on Investment. Foreign direct investment is particularly important for trade in services because many services can only be “traded” by establishing a commercial presence (investing) in a foreign market. The chapter provides rights to invest and procedures for the resolution of disputes. It importantly contains a commitment to unrestricted transfers of capital. However it also provides restrictions on the Agreement’s dispute resolution process in the event either Party imposes capital transfer restrictions. While industry generally opposes strongly restrictions on the free transfer of capital, we believe the formulation contained in the Investment Chapter is acceptable.

Another important element of the Agreement is its provisions for transparency in domestic regulatory processes including licensing decisions. Taken together these provisions are an outstanding achievement which will resonate in other bilateral agreements and in the multilateral GATS negotiations in the WTO.

The Agreement also contains provisions for the temporary movement of people. Like investment, movement of persons is one of the most important means by which services are traded (for example, U.S. consultants who must travel in order to provide services to foreign clients).

The Agreement also provides new market opportunities for some of the United States’ most competitive industries. Section V of this Report contains the ISAC’s report on a number of sectors. Committee members agree that the Agreement is a positive step in liberalizing services trade between the United States and Chile and note some concerns, particularly in the areas of education, energy, engineering, and express delivery.

Finally, ISAC 13 strongly recommends that USTR’s submission of this agreement to the Congress be accompanied by a complete and authoritative explanatory description of the rights secured under the Agreement, and that Congress echo that documentation in implementing legislation. Such a description is essential to a full understanding of these rights, given the “negative list” structure of the legal text. An important example of these inherent rights is the protection of all previously acquired market access or investment rights by U.S. companies currently operating in Chile’s markets. Unless Chile took a specific reservation against a particular investment, it is understood that all such acquired rights are fully protected under the Agreement.

III. Brief Description of the Mandate of the ISAC 13

ISAC 13 performs such functions and duties and prepares reports, as required by Section

135 of the Trade Act of 1974, as amended, with respect to the services sector. To fulfill its mandate the ISAC meets at least monthly to review negotiations with U.S. trade officials and to advise as required by law.

ISAC 13 advises the Secretary of Commerce and the U.S. Trade Representative (USTR) concerning the trade matters referred to in Sections 101, 102, and 124 of the Trade Act of 1974, as amended; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the development, implementation, and administration of the services trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order 12188, and the priorities for actions there under.

In particular, ISAC 13 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the USTR regarding trade barriers and implementation of trade agreements negotiated under Sections 101 or 102 of the Trade Act of 1974, as amended, and Sections 1102 and 1103 of the 1988 Trade Act, which affect the services sector, and performs such other advisory functions relevant to U.S. trade policy as may be requested by the Secretary and the USTR or their designees.

IV. Negotiating Objectives and Priorities of the ISAC 13

ISAC 13's overall goal is to liberalize trade in the wide range of services provided by U.S. businesses, thereby promoting the expansion and health of the U.S. economy and, by extension, the economies of its trading partners. Services industries provide about 80% of U.S. jobs and GDP, and account for much of the growth in the U.S. economy.

ISAC 13's objective for this and other trade agreements is to achieve substantial additional market access for U.S. service industries. This means commitments to greater access to foreign markets for U.S. cross border trade, to investment abroad, and to the temporary movement of Americans who provide skilled services.

ISAC 13 also sees an opportunity to advance U.S. policy objectives to liberalize foreign markets by focusing U.S. agencies' and private entities' efforts to provide technical assistance and trade-related capacity-building abroad, especially in developing countries and transitional economies. ISAC 13 believes that intensive technical assistance is imperative in many parts of the world if mutual trade liberalization goals are to be attained.

Finally, ISAC 13 appreciates the decision of the U.S. Government to pursue a *negative list* (or "top-down") approach and hopes this template is used when negotiating future bilateral and regional trade agreements.

V. Advisory Committee Opinion on Agreement

Overall, the Committee believes that the U.S.-Chile FTA meets the Committee's objective of achieving new and expanded commitments for specific service sectors.

ISAC 13 strongly recommends that USTR's submission of this agreement to the Congress be accompanied by a complete, authoritative explanatory description of the rights secured under the Agreement, and that Congress echo that documentation in implementing legislation. Such a description is essential to a full understanding of these rights, given the "negative list" structure of the legal text, an approach recommended by industry. Under this structure, various rights are inherent, though not self-evident. Thus, in order for there to be a full understanding by the general public, as well as for commercial interests to realize the full benefits of the rights provided by the Agreement, a definitive explanation of the rights and obligations secured by the Agreement is essential.

Advisory opinions on cross-cutting issues follow:

Investment

The Agreement will establish a secure, predictable legal framework for U.S. investors in Chile and serve to encourage further direct foreign investments from that country in the United States. All forms of investments are covered by the Agreement, including direct ownership of companies, real estate, intellectual property rights, concessions, permits and debt instruments.

Consistently with the nearly 40 Bilateral Investment Treaties (BITs) the United States has concluded with other countries, the investment chapter recognizes the close link between investment and trade. This is of particular importance to service providers, whose services often require a local presence. The Agreement assures U.S. investors opportunities to establish, acquire and operate investments in Chile in all but some sectors that each party may reserve in whole or part to its own nationals. Such investors are to be accorded equal treatment with local investors and may not be subjected to special or discriminatory requirements for the use of local inputs or export obligations or to extend licenses to local companies. Rights to manage and direct such investments with personnel other than from the host country are also provided.

The Agreement includes: a right to full, fair and prompt compensation for any expropriation of an investment, and a fully transparent, binding procedure for the resolution of disputes between foreign investors and the host government through international arbitration. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Movement of Personnel

The proposed temporary entry provision of the U.S.-Chile Free Trade Agreement provides for the temporary entry of businesspersons in four categories – business visitors, traders and investors, intra-company transferees and professionals. The United States will implement the FTA provisions relating to business visitors, traders and investors, and intra-company transferees using existing U.S. laws and regulations. Chile has agreed to

implement all four categories under its existing regime, although we are informed Chile expressed a strong interest in professionals, particularly engineers. Citizens of FTA partner countries are entitled to certain benefits such as *temporary residency*.

On balance, the Agreement is generally favorable; it achieves most, but not all, of the objectives sought by ISAC 13.

On December 7, 2001, ISAC 13 proposed to the United States Trade Representative the inclusion of a *special visa* to facilitate personnel mobility as one of the negotiating objectives of this Agreement. The *special visa* would have permitted multiple entries of the holders of the visa for a period as long as three years. ISAC 13 acknowledged that this special temporary entry visa would require a change in U.S. immigration law but believe then, as it does now, that it is desirable to do so to further facilitate the temporary movement of professionals and other essential company personnel between the United States and Chile. We are disappointed this proposed negotiating objective was not totally achieved.

U.S. service providers face complex, cumbersome and time-consuming requirements to obtain work permits and visas for their workers on short-term secondments and/or transfers to company facilities, projects or assignments in other countries. Similar barriers face foreign workers seeking entry to the United States. In some cases it can take months to obtain the necessary authorizations, thus seriously hampering the ability to perform the necessary work in a timely fashion. The Agreement acknowledges a mutual recognition of this problem; its temporary entry provisions of this Agreement should help relieve this trade barrier to some extent.

In the case of business visitors, for example, the Agreement binds access to the most common short-term business activities and prohibits prior approval procedures, petitions, labor certification tests or numerical limitations. For intra-company transferees, neither the U.S. nor Chile is subject to employment tests, labor certification, or numerical limits.

Professionals are to be granted temporary entry for limited and temporary periods. In the case of the United States one year is contemplated. The special visa for professionals will be based solely on proof of nationality, purpose of the entry and evidence of professional credentials. The visa would be multiple entry and renewable. The United States would be required to amend the Immigration Act to authorize this visa. It adopted by both parties, this visa would facilitate greatly the entry of professionals of each country in the other.

The Agreement establishes an annual limit on the number of visas of professionals from Chile to 1,400 persons. This is substantially larger than the 250 H-1B visas issued to Chileans in FY 2001 and should meet the needs of each party in the foreseeable future.

Based on the foregoing and our understanding of the other related labor mobility aspects, ISAC 13 members believe the temporary entry provisions satisfy many, but not all, of their objectives for the Agreement.

Transparency

The provisions of the Agreement providing for transparency taken together guarantee a high standard of transparency in administrative, licensing, and adjudicatory proceedings. In sum they are an outstanding achievement and model for other agreements. They are consistent with current US law and practice.

Transparency in regulatory processes is absolutely essential for services industries, because they generally are the most highly regulated. A government's regulations governing financial services, energy services, professional services, for example, can vitiate or nullify trade agreements that would otherwise purport to provide full market access and national treatment.

The Agreement's transparency provisions are laid out in four parts of the Agreement: The initial chapter on transparency applies to all trade under the Agreement. In the services chapter are additional provisions applying toll cross border services trade. The financial services chapter contains further provisions, as does the investment chapter.

The overarching provisions in the introductory chapter on transparency require the essentials: the designation of a contact point for inquiries, the requirement for prompt publication; the requirement that "to the extent possible" measures that each Party proposes to adopt are published in advance, and that persons of both Parties have a reasonable opportunity to comment. It should be noted that the proviso "to the extent possible" is consistent with US law. Further the chapter provides that parties at interest to proceeding receive reasonable notice of such proceedings, and that they are allowed to present their case prior to final administrative actions. Each Party must establish independent tribunals or procedures for prompt review of administrative actions, and has the right to a decision based on evidence.

The provisions in the cross border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to reach agreements mutually recognizing their qualifications and standards for professional practice.

The transparency provisions set out in the financial services chapter are consistent with the other transparency provisions in the Agreement but are tailored to the needs of this sector.

Advisory opinions on specific service sectors follow.

Accounting Services

Chile guarantees liberal access for accounting services under the FTA. Chile does maintain one small restriction relating to external auditors of financial institutions which are subject to a registration requirement but this is not commercially significant. In addition, the services chapter contains an Annex on Professional Services which would

enable the discussion of mutual recognition if the two sides deemed it appropriate and useful.

Advertising

The Agreement should advance the interests of U.S. firms supplying advertising services. Chile guarantees liberal access under the Agreement. In addition, chapters such as e-commerce will further complement such access.

Architecture

The chapter on the general provision of professional services is standard GATS language on the development of professional standards, temporary licensing, and review. There is nothing objectionable and the Agreement provides for equity and reciprocity within this sectoral area.

Asset Management Services

The FTA achieves the asset management industry's market access goals in many important respects. Because Chile made no commitments in asset management in the 1997 GATS Financial Services Agreement, the FTA provides legal certainty for U.S. firms that Chile will afford them national treatment, non-discrimination, and the right of establishment in asset management. In addition, the agreement includes several specific commitments sought by the industry to widen market access. These commitments include: (1) national treatment and most favored nation (MFN) with respect to the voluntary portion of Chile's national pension system by March 1, 2005 and access to the mandatory portion of the pension system without arbitrary differences in the treatment of U.S. and domestic providers; and (2) the cross-border provision of portfolio management services by asset management firms to mutual funds. This commitment, which is an important precedent for other trade negotiations, addresses a significant issue for U.S. firms establishing affiliates in Chile – it permits them to use the services of a firm (including an affiliate) outside Chile in managing Chilean mutual funds, thereby allowing the U.S. firm to achieve economies of scale and use its global expertise in serving Chilean clients. The financial services transparency commitments in the agreement also will benefit the asset management industry.

Two industry priorities were not completely addressed in the FTA. It is important to the industry that Chile allow repatriation of proceeds of portfolio investments in Chile. The provisions on capital controls, while not ideal, are a first step in addressing this contentious issue. Also, we would have preferred if the FTA included Chile's commitment to eliminate quantitative limits on pension fund investment outside of Chile, which undermine the prudent man concept. As a whole, however, the FTA contains significant benefits for the U.S. asset management industry.

Audiovisual Services

The FTA ensures that all U.S. audiovisual services will enjoy national treatment and MFN status, with reservations. While Chile did take several reservations with respect to this sector, the reservations are narrow, specific, and unlikely to disrupt existing commercial trade in audiovisual services. For example, Chile limits foreign ownership

of media, but the U.S. has similar reservations. Chile preserves the right to impose a quota on local content carried on broadcast TV, however, market forces have historically resulted in higher levels of local content than would be required by the quota, so the impact of imposing such a quota would be negligible. Moreover, the Chile FTA avoids the “cultural exceptions” approach that has flawed several prior trade agreements, while demonstrating that a trade agreement has sufficient flexibility to take into account countries’ cultural promotion interests.

Education Services

Education services welcomes the overall agreement with Chile but recognizes its shortcomings in providing true liberalization in this sector.

Education services include higher education, testing services, training and adult education. Of these, higher education services, and specifically the provision of degree courses delivered across borders and the mobility of academic staff are of interest in the Chile FTA.

One of the largest markets for U.S. education services is South America. However, in this FTA, Chile has reserved the education sector and has restricted even temporary personnel mobility (of professors) through a pre-approval process. Thus liberalization is a goal yet to be achieved.

Education is one of the United States’ most competitive export “industries”, and obtaining access abroad should in general receive more concentrated attention in future bilateral and regional agreements.

Electronic Commerce

The U.S.-Chile FTA contains a groundbreaking electronic commerce chapter which introduces the concept of "digital products" in trade agreements. The chapter prevents the application of customs duties on electronically delivered digital products, assures the non-discriminatory treatment of digital products, addresses the valuation of physically delivered digital products in the market access chapter of the agreement, and provides commitments to cooperate on electronic commerce policy. The parties agreed not to impose customs duties on digital products.

The e-commerce chapter introduces the concept of "digital products", which reflects digital product development in the last two decades and the need for predictability in how digital products are treated in trade agreements. The definition in the Chile Agreement is slightly different than in the Singapore Agreement due to distinctions in the parties' domestic law. ISAC 13 regards these differences in definitions as nuances that are not commercially problematic and therefore acceptable.

The Chile Agreement provides a broad national treatment and MFN non-discriminatory provision. However, it allows one-year for Chile to identify nonconforming measures and make amendments. We understand this caveat was necessary to secure the obligation with Chile and is limited in scope to only those measures that were in place in Chile

when the agreement was concluded. Importantly, the Chile provision does not allow for the imposition of new non-conforming measures during this one-year time frame.

With respect to the physical delivery of digital products, Chile agreed to apply customs duties on the basis of the value of the carrier medium. Presently many countries apply customs duties on content-based products using a wide variety of different standards, many of which are subjectively based on projected revenues from the sale of content-based products. U.S. industry has urged the USG to advance bilaterally, regionally and multilaterally a standard for customs valuation based on the value of the physical carrier medium for content-based products and therefore applauds the inclusion of this provision in the Agreement. We note that Chile has placed this provision in the market access chapter, which should have no impact on its binding nature.

The parties also agreed to cooperate in numerous policy areas related to e-commerce. In the Chile Agreement, these policy areas include small and medium-sized enterprises, consumer confidence, cyber security, electronic signatures, IPR, electronic government. Chile agreed to maintain cross-border flows of information. Chile also recognized preference for self-regulation in terms of codes of conduct, and model contracts. Chile also agreed to work cooperatively in international forums with the United States on e-commerce issues.

Chile Services Market Access Reservations Related to E-commerce

In the Chile Agreement, a negative list approach was used in negotiating the services chapter. Thus each party identified the exceptions to its services commitments. In the final text of the agreement, Chile dropped its original reservation on new services not identified in the U.N. Combined Product Classification which would have allowed Chile to adopt or maintain any measure with regard to such new services, including internet-based services. Chile also dropped its reservation to adopt or maintain any measure with regard to services provided by electronic means. ISAC 13 sees the elimination of these exceptions as a positive outcome.

Energy Services

We believe that the proposed FTA will facilitate the provision of energy services between the United States and Chile. In particular, the provisions related to regulatory transparency and most of those related to investment will allow U.S. energy services firms to work under the predictable and consistent rules they need to make the kinds of short, medium and long term commitments often required. Liberalization in procedures related to moving expert, professional and managerial personnel will also smooth the way toward more energy services opportunities. Overall, we believe that the Agreement improves the conditions under which most energy services will operate and provides for equity and reciprocity.

We do wish to express concern, however, about a National Treatment reservation which enables Chile to subject exploration, exploitation and processing of liquid or gas hydrocarbons found in its ocean waters to administrative concessions or special operations contracts that the President of Chile may apply through Executive Order. It is

our understanding that U.S. negotiators conceded to this reservation in part because of Chile's claim that it has no offshore hydrocarbon resources. Yet Chile may in fact have offshore resources since its claim cannot be verified without active offshore exploration, and exploration has not taken place. As a matter of record, it was believed that the North Sea had no commercial oil or gas resources either until a U.S. company made the first significant find there. The waters off Chile may offer similar potential, with resulting opportunities for U.S. energy services companies.

At a minimum, we believe that this reservation and USTR's concession to it should not serve as a precedent for other FTAs that the United States may enter into, or for the GATS.

Engineering Services

Overall, we believe that the Agreement improves the conditions under which most engineering services will operate and provides for the level playing field on which clients can openly select design professional support on the basis of technical qualifications and best value.

We do wish to express concern, however, about one inclusion, one National Treatment reservation and one item that got away.

- In the Services write up there is an Annex on Temporary Licensing of Professional Engineers. This is followed directly by language on civil engineering which states that the provisions of the Annex apply to civil engineers and to any other engineering specialties designated by Chile. This means that only U.S. engineers licensed specifically as civil engineers are covered by the section on temporary licensing unless Chile specifically names other types of engineers. First, this is too narrow (e.g. structural engineers are critical to design work in seismically active Chile). Second, there is confusion if a U.S. jurisdiction issues only professional engineer (PE) licenses (i.e. without specificity as to discipline). Does that allow the PE (undesigned) the right to gain temporary licensure in Chile, or is s/he barred because there is no Chilean designation for engineers, only civil engineers?
- The FTA also contains a National Treatment reservation pertinent to Cross Border Trade. A U.S. company must be registered in Chile to provide design services. This reservation requires that in any Chilean company no fewer than 85 percent of its employees must be of Chilean nationality. This places an onerous burden on a U.S. firm wishing to participate on a design project in Chile as part of, for example, a design-build team. The primary technical reason the U.S. firm would be seriously considered as a team member is the expertise it could bring from outside Chile; however this project enhancing advantage would be diluted from the financial perspective as it offset each of these experts with six local hires.

- There are many projects in Chile which are still funded by the International Finance Institutions (IFIs) and on which U.S. design firms regularly seek to compete. The Government Procurement section of the FTA states that internationally funded purchases which are governed by rules inconsistent with those in the FTA are excluded from coverage. However, a great deal of the IFI procurements conform to these rules or allow governments to apply their own procurement standards if they comply with, meet or exceed those of the IFI. Since few IFIs have stricter rules than those proposed in this FTA, we think there needed to be some specific reference to the applicability of the rules, or some specified subset thereof, to international procurements.

We hope that these aspects can be dealt with during a future Chile round. We would also hope they might be noted for other FTAs which are still in process of negotiation and find their way into the boilerplate with which new negotiations begin.

Express Delivery Services

The express delivery industry believes the FTA includes important provisions for the sector, including an appropriate definition of express delivery services (EDS). This agreement and the Singapore FTA are the first trade agreements to contain such a definition, an important milestone.

The Agreement also contains important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. However, it falls short in addressing another key element for our industry - cross subsidization of express delivery services operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure advantages in competitive express delivery operations. The FTA cross-subsidization statement is unilateral, applying only to Chile. Although the negotiators were able to secure a commitment from Chile, it will be difficult to attain such unilateral commitments in future multilateral negotiations. In addition, it only states that Chile has "no intention" of using "revenues" from postal services to benefit express delivery. Therefore, we are concerned that the intention expressed does not fully cover the scope of cross subsidization that could occur. Notwithstanding this shortcoming, the U.S. express delivery industry believes the text of the Agreement provides very substantial advantages.

Financial Services (other than insurance and asset management)

Based on an examination of the documents available to cleared advisors on the secure USTR website as of February 19, 2003, Chile's commitments in the financial services sector (other than insurance and asset management) contained the proposed free trade agreement with Chile (together with the listed reservations and limitations) range from acceptable to excellent from the point of view of US industry. In particular, the provisions relating to regulatory transparency in the financial services are a tremendous achievement by US negotiators and should serve as a starting point for all future financial services negotiations. While industry generally does not approve of restrictions on the free transfer of capital, we believe the formulation on transfers contained in the Chapter on Investment (an unrestricted commitment on free transfers together with some

moderate limitations on the use of the agreement's dispute resolution process in the event restrictions are imposed) represents an acceptable compromise and recognition of Chile's position. We regret that Chile has, in its reservations, imposed the requirement that many financial services be conducted through separately incorporated special purpose corporations and hope that this limitation on the ability to choose the most efficient form of doing business will be addressed by Chile in the not too distant future. Finally, we note that Chile, like many countries (including the United States in some instances) requires that certain financial services be conducted by Chilean nationals or those having residence status.

Healthcare Services

The Agreement on the whole has the potential to advance the goals of creating a more open, equitable trading environment in the health services area. This agreement certainly lays the foundation for an improved trading environment.

Of particular note, sections on E-Commerce can help to advance applications of distance learning in health care, development of continuing medical education programming, Internet medical training programs, and telemedicine and second opinions. The inclusion of language to encourage relevant bodies to establish mutually recognized standards and criteria for licensing and certification holds promise. Development of a temporary licensing standard can aid in the development of visiting physician programs, joint research and training programs, extension of tele-medicine programs, and the like. However, similar language has been incorporated in previously negotiated FTAs, but yet follow-up efforts to develop common standards and criteria for temporary licensing have not been meaningfully pursued. It is hoped that the Joint Commission will focus attention to this issue. A temporary licensing standard would promote healthcare training and education contracts, visiting physician exchanges, and the dispensing of specialized patient care.

Lastly, sections on temporary entry also are encouraging, however a future goal may be to establish treatment for visiting physicians that is similar to the innovative language included for the temporary licensing of lawyers.

Two reservations listed in the annex section for services may be applied broadly and thus create a barrier for remote health care services and health care training and education services.

In a reservation by Chile concerning the one-way broadcasting of digital telecommunication services, which primarily relates to direct satellite transmission to the home, an all-inclusive clause includes "supplementary telecommunications". In this reservation, Chile reserves the right to adopt or maintain any measure related to cross-border trade in one-way satellite broadcasting. If interpreted broadly, this reservation can apply to the growing field of distance continuing medical education, in which medical seminars are broadcast via satellite to remote international locations for a fee.

The second reservation pertains to cross border educational services. Chile reserves the

right to adopt or maintain any measure relating to a listing of educational services, including professional, technical and university-based education programs. While it is implied that this reservation applies to formal educational programs, broadly interpreted it can apply restrictions to advanced training programs for clinicians, specific technical training programs for the use of medical devices, and the like.

Insurance

In general, the operating environment for U.S. insurers in Chile has been a favorable one for some time. Certain important additional rights were sought and achieved in this negotiation, including cross border sales of marine, aviation and transport products (MAT), freedom of reinsurance, certain auxiliary services, and intermediation for MAT and reinsurance. Additionally, important regulatory procedural transparency commitments were secured for financial services generally. Industry sought to structure these insurance commitments for market access and investment protection in this (and other) negotiations based on a framework referred to as the Model Insurance Schedule.

The essential elements of the Model Schedule are reflected in Chile's insurance commitments, including the right to full ownership, national treatment and Most Favored Nation (MFN) treatment. In addition, Chile will permit conduct of insurance operations on a branch basis in four years. It should be noted that the industry would have preferred a shorter period for branching rights. It expects that that the conditions set forth in the Agreement for operation under branching will not be used by Chile to effectively deny this new right. Additionally, while Chile's commitment to make best efforts to maintain the current practice of allowing the introduction of new financial services on an expedited basis is a positive development, failure to bind this existing practice is a shortcoming of the Agreement.

Legal Services

This Agreement has not significantly addressed the interests of U.S. firms wishing to establish offices in Chile. However, significant strides were made with respect to the "temporary entry" of professionals, including lawyers.

With respect to the establishment of law firms in Chile (Mode 3), the principal drawback is the extremely narrow "scope of practice" provided in Section B of the Annex on Professional Services. It limits "foreign legal consultants" (FLCs) to practice and advice on the law "of any country of which that national is authorized to practice." This could be interpreted to mean that a lawyer admitted in New York may only practice the law of New York. More likely, Chile will interpret it to mean the law of any U.S. state. However, the preferred formulation for scope of practice is that the FLC should be permitted to practice any law that he is permitted to practice in his jurisdiction of admission with the limited exceptions of certain aspects of host country law (such as appearance in court or the drafting of instruments to be locally recorded in the local language).

To the extent that either country imposes limitations with regard to the form of association between foreign and local lawyers or the mutual recognition of educational

requirements, the Agreement contemplates immediate consultations between "the appropriate professional bodies" in each country, with a view to making a report within one year to the Joint Commission. That body will then consider them at its meeting on the first anniversary date of the effective date of the FTA. This one-year timetable may be ambitious for both sides, but provides a forum for useful bilateral consultations that should permit FLCs from the United States to operate in Chile and vice versa and to discuss promptly adjustments to the applicable rules as needed.

As indicated, the largest strides were made with respect to "temporary services." This is the issue of the greatest interest to the largest number of U.S. lawyers. The Chile FTA has attempted to liberalize significantly the basis upon which professionals will be able to enter the territory of the other signatory to provide professional services. Only declarations of nationality, purpose of visit and professional credentials will be required in order to obtain special visas that allow "temporary" access. No duration of "temporary" is included, but it appears to mean without the intention of permanent presence. The signatories have recognized that the United States needs to amend its Immigration and Nationality Law to accommodate the limited number of "professionals" that may enter under this provision. At the moment, the number is capped at 1,400 per year, which exceeds by a factor of at least 3 the number of Chilean professional that actually have been entering this country in the recent past. It is a number that U.S. lawyers could accept for movements of personnel in either direction. Nevertheless, a question may be raised whether such ceilings are desirable. The FTA eliminates "economic needs" tests for establishments under Mode 3. They should similarly be eliminated for Mode 4 access. It seems highly unlikely that the ceilings will be exceeded but as a principle their existence in this agreement may be an unfortunate precedent.

Telecommunications

The telecommunications chapter covers access to and use of the public telecommunications network for the provision of services. It covers all providers of public telecommunications service providers, with a focus on the major supplier of those services. Thus, it combines elements of NAFTA chapter 13, the GATS Telecommunications Annex, and the WTO Reference Paper to form a comprehensive access to and use of provision. The elements of the telecommunications chapter are consistent with each market's regulatory construct. The chapter built in significant flexibility to account for changes that may occur through new legislation or new regulatory decisions. These disciplines are the hallmark for successful innovation and development of the telecommunications network; something that is lacking in many markets around the world.

Also of note, Chile does not have a commitment in the WTO on local basic telecommunication services. Therefore, commitments it made to the pro-competitive reference paper would not likely apply to the local services. Thus, the chapter in this agreement is essential to locking in pro-competitive regulatory disciplines on the major supplier. In addition, we secured a commitment under this agreement to allow access to the market for local basic services. This is WTO plus.

Travel and Tourism Services

Upon review of the proposed Free Trade Agreement between Chile and the United States, we believe that on balance it will facilitate the provision of travel and tourism services between the two countries. The Agreement appears to provide for guaranteeing liberal access within the travel and tourism sector. However, it must be noted that these conclusions are made having only a few days to review the reservations Chile has taken, and with limited access to USTR negotiators who were on travel during that time.

VI. Membership of ISAC 13

A membership roster for the Industry Sector Advisory Committee on Services for Trade Policy Matters (ISAC 13) is attached.

**Industry Sector Advisory Committee
For
Trade Policy Matters
Services (ISAC 13)
Member Roster**

Chairman

Mr. Robert Vastine
President
U.S. Coalition of Service Industries

Vice-Chairman

Ms. Elizabeth Benson
President
Energy Associates

Mr. Thomas Allegretti
President
American Waterways Operators

Ms. Emily Altman
Executive Director
Morgan Stanley

Fredric S Berger, P.E.
Senior Vice President
The Louis Berger Group, Inc.

Mr. Stuart Brahs
Vice President, Federal Government Affairs
Principal Financial Group

Ms. S. Lauren Choi
Trade Policy Manager
Business Software Alliance

Mr. Gordon Cloney
Chairman
Institute for International Insurance Development

Mr. Ken Crerar
President
The Council of Insurance Agents and Brokers

Ms. Ellen Delage
Director, International Relations
The American Institute of Architects

Mr. Donald Deline
Director, Government Affairs
Halliburton Company

Peter Ehrenhaft, Esq.
Attorney, Miller & Chevalier, Chartered
Representing the American Bar Association

Dr. Richard Feigel
Vice President Engineering
The Hartford Steam Boiler Inspection and Insurance Company

Ms. Orit Frenkel
Senior Manager for International Trade and Investment
General Electric Company

Mr. John Gay
Vice President, Government Affairs
American Hotel and Lodging Association

Ms. Selina Jackson
Public Affairs Manager for International Trade
United Parcel Service

Mr. Leonard Karp
Executive Vice President and Chief Operating Officer
Philadelphia International Medicine

Ms. Laura Lane
Vice President, International Public Policy
AOL Time Warner, Inc.

Dr. Marjorie Lenn
Executive Director
Center for Quality Assurance in International Education

Donald Morgan, Esq.
Cleary, Gottlieb, Steen and Hamilton

Mr. Kevin Mulvey
Director, International Government Affairs
American International Group, Inc.

Mr. Richard O'Brien
Executive Vice President
And Director of Government Relations
American Association of Advertising Agencies

Mary Podesta, Esq.
Senior Counsel
Investment Company Institute

Ms. Bonnie Richardson
Vice President, Trade and Federal Affairs
Motion Picture Association of America, Inc.

Mr. Steven Stewart
Director, Public Affairs, Market Access and Trade
IBM Governmental Programs
IBM Corporation

Jay Tannon, Esq.
Chairman, International Trade Practice Group
Frost Brown Todd LLC

Mr. Carlos Villarreal
Executive Vice President for Operations
Wilbur Smith Associates

Mr. Allen Weltmann
Director, Government Affairs
PricewaterhouseCoopers L.L.P.

Michael Werner, Esq.
Client Services Manager
Weston Solutions, Inc.

Mr. Rhett Workman
Director, International Programs
Air Transport Association of America