

Summary of U.S.-Chile FTA Environment Chapter

General Chile FTA background

The draft Environment Chapter of the Chile FTA contains several core provisions: (1) a commitment to maintain high levels of environmental protection and to strive to improve those levels; (2) an obligation not to fail to effectively enforce environmental laws; and (3) a commitment not to waive or otherwise derogate from environmental laws in order to attract trade or investment. The Chapter also includes an article on procedural guarantees (*e.g.*, commitments by each Party to provide certain basic remedies for violations of its environmental laws, and appropriate public access to environmental enforcement proceedings). Additional provisions address institutional arrangements, environmental cooperation, and opportunities for public participation. There is also an article on the relationship of the FTA to multilateral environmental agreements (acknowledging the negotiations now taking place in the WTO, and providing for consultations on the applicability of any outcome of those negotiations to the FTA), as well as a hortatory provision encouraging promotion of corporate stewardship.

Of these provisions, only the effective enforcement obligation is enforceable through the FTA's dispute settlement mechanism. However, the Parties may raise issues regarding any provision of the Environment Chapter to the political level by requesting a meeting of the Environment Affairs Council, which, for the United States, will be chaired by the State Department's Under Secretary for Global Affairs.

The Environment Affairs Council in the Chile FTA will meet annually to discuss the implementation of the Chapter. The Council is required to seek public input in designing agendas for its meetings, and to hold public sessions at each meeting. The Council must also seek opportunities for public input or advice regarding cooperative projects that the Parties may undertake.

The Chile Environment Chapter includes an Annex on Environmental Cooperation that outlines elements of a future Environmental Cooperation Agreement that will provide a framework and identify priorities for further cooperative activities. The State Department has led the Cooperation Agreement negotiations, which are expected to be completed shortly. The Chapter also recognizes the importance of cooperation undertaken outside the Agreement.

Specific Articles

Objectives

The Environment Chapter aims to improve the mutually supportive relationship between the Parties=trade liberalization and environmental protection policies while cooperating to promote sustainable development. It also seeks to strengthen the trade-expanding effects of the Chile FTA.

Article 1

This Article, while recognizing that the Parties can set their own levels of environmental protection and adopt or modify their environmental laws accordingly, requires the Parties to guarantee high levels of environmental protection and to strive to improve their environmental laws.

Article 2

This Article deals with the enforcement of environmental laws. It obligates the Parties to ensure that they will not fail to effectively enforce their environmental laws by either commission or omission in ways that affect trade between them. It explicitly states that a Party shall be considered to be in compliance with this provision if any particular failure to enforce the law is based upon a reasonable exercise of enforcement discretion or bona fide decision regarding the allocation of enforcement resources. A Party's failure to observe this obligation may be subject to dispute resolution.

The Parties also agree in this Article that they will strive to not waive or derogate from their environmental laws, nor offer to do so, in ways that weaken environmental protections in order to encourage trade or investment.

Finally, this Article clarifies that nothing in the Environment Chapter empowers one Party to enforce environmental laws in the other's territory.

Article 3

This Article deals with the establishment of an Environment Affairs Council. In it, the Parties agree to create a ministerial-level Council that will meet at least annually to discuss the

implementation of the Environment Chapter. The Article then lays out a number of ways that the Council is expected to promote public participation and dialogue regarding the Council's work. These include commitments to: a) receive, share, consider, and respond to public comments on the Environment Chapter; b) make good-faith efforts to consult with interested members of the public on implementation of the Environment Chapter; c) look for ways to include the public in the bilateral environmental cooperation process; and d) seek advice on the implementation of the Chapter from new or existing national advisory bodies.

This Article also establishes that decisions of the Council must be agreed to by both Parties and will be made public, unless the Council decides otherwise.

Article 4

This Article deals with environmental cooperation. In it, the Parties recognize the importance of building environmental protection capacity and agree to start negotiating an Environmental Cooperation Agreement for further bilateral cooperation. They also note the ongoing importance of bilateral environmental cooperation activities that are conducted outside of the Agreement. The Parties agree to consider public comment on the cooperation undertaken under this Chapter. They also commit to discussing, to the extent they see fit, their experiences in conducting assessments of the environmental impacts of trade agreements and policies.

Article 5

This Article deals with environmental consultations, and allows a Party to request consultations with the other Party at any time regarding any matter relevant to the Environment Chapter. If, after making every attempt to settle the matter at hand, the Parties remain unable to resolve the matter, either Party may request in writing to the other Party that the Environmental Affairs Council be convened. If the matter involves the obligation from Article 2 on not failing to effectively enforce a Party's environmental laws, and if 60 days have elapsed since the complaining Party first requested consultations to resolve the matter, then the complaining Party may resort to the Chile FTA's dispute settlement proceedings. This Article leaves open the option of resolving the matter under another agreement if both Parties agree that would be more appropriate.

Article 6

This Article on the establishment of an environment roster replaces Article 8 of the Dispute Settlement Chapter for resolution of disputes regarding the failure to effectively enforce a Party's environmental laws (Article 2). It obligates the Parties to select by mutual agreement individuals

with relevant experience and not affiliated with either Party's government to form a roster from which, if the Parties so agree, Dispute Settlement panelists can be drawn to resolve cases regarding failure to effectively enforce a Party's environmental laws.

Article 7

This Article concerns procedural matters. Under it, the Parties agree to ensure that their procedures for the enforcement of environmental laws and regulations are fair, open, and equitable, and that violations are subject to effective remedies or sanctions. Each Party commits to ensure appropriate public access to judicial and administrative procedures for the enforcement of its environmental laws. Such access may include the right to: a) request investigation of alleged violations of the law; b) request government action to enforce its environmental law; c) sue another person under that Party's jurisdiction for environmental damages; and d) seek injunctions to prevent personal harm or loss from someone acting contrary to that Party's environmental laws.

Article 8

This Article on the relationship to environmental agreements acknowledges the importance of multilateral environmental agreements, recognizes the negotiations underway within the World Trade Organization under Paragraph 31 (i) of the Doha Declaration, and provides for consultations between the Parties on the applicability of any outcome of those negotiations to the Chile FTA.

Article 9

This Article recognizes the benefits of international trade and investment and notes the role corporations can play in achieving sustainable development. The Article encourages Parties to promote corporate stewardship.

Article 10

This Article defines the term "environmental law" for the purposes of the Environment Chapter.

Annex

The Annex on Environmental Cooperation provides guidance on various cooperative mechanisms, including specific projects and the negotiations of a separate bilateral cooperation agreement.