

MEMO# 15453

December 16, 2002

US REACHES AGREEMENT WITH CHILE ON FREE TRADE AGREEMENT

[15453] December 16, 2002 TO: INTERNATIONAL COMMITTEE No. 87-02 RE: US REACHES AGREEMENT WITH CHILE ON FREE TRADE AGREEMENT Last week, US trade negotiators announced the completion of a free trade agreement (FTA) with Chile. The final text of the FTA will be submitted to Congress in mid-January for approval under the 90-day consultation period required by the Trade Promotion Authority Act. A brief summary of the agreement as it relates to asset management is provided below. As requested by the Institute,¹ Chile for the first time has made market access commitments in asset management.² Chile will permit US firms to establish wholly-owned affiliates in Chile to provide asset management services. Moreover, Chile has made a binding commitment to permit US firms to provide portfolio management services to Chilean mutual funds from outside the country. This provision will allow a US firm that establishes an affiliate in Chile to enter Chile's mutual fund market to use the services of affiliates (or others) outside Chile in providing portfolio management to Chilean mutual funds. In order to manage Chilean mutual funds from outside of Chile, Chilean mutual funds must retain ultimate responsibility for supervision of the asset managers. With respect to the management of pension assets, Chile has committed to permitting US asset management companies to participate in Chile's voluntary savings program under the social security system beginning March 1, 2005. US firms will receive national treatment and most-favored nation status in managing Chile's voluntary savings program. Under the FTA, Chile also has agreed to allow US firms to establish affiliates to provide services to Chile's social security system and to benefit from domestic Chilean law that prohibits arbitrary discrimination against foreign firms. In addition to the market access commitments, Chile has agreed to disciplines on regulatory transparency. Chilean regulatory authorities will use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide 1 See Memorandum to International Committee No. 5-01 (Jan. 29, 2001) (attaching Institute's letter to the Office of the United States Trade Representative outlining industry priorities for a US-Chile FTA). 2 In the 1997 World Trade Organization Financial Services Agreement, Chile expressly made no market access commitments for asset management although the Chilean government generally has permitted US firms to manage mutual funds and pension assets. 2 advance notice and comment periods for proposed rules, and publish all regulations. The notice and comment commitments will become effective two years after the FTA enters into force. Finally, the US negotiators made substantial progress with respect to the issue of capital restrictions. We understand that the issue of capital restrictions was contentious and was one of the last issues to be resolved under the agreement. As urged by the Institute,³ the US Treasury made this issue a significant priority, and the agreement that was reached improves the transfer rights for US firms. The FTA assumes there would be free flow of capital between the US and Chile. In the event

Chile ever decides to impose capital controls, the FTA includes clear provisions for dispute settlement under which US firms may seek redress from the Chilean government subject to certain conditions such as waiting periods and limitations on the types of damages. Jennifer S. Choi Associate Counsel 3 See Memorandum to International Committee No. 7-02 (Jan. 10, 2002) (attaching Institute's comment letter to US Treasury regarding Chile's capital repatriation restrictions).

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