COMMENT LETTER

January 29, 2001

Comment Letter on U.S.-Chile Free Trade Agreement, January 2001

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Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
Room 122
600 17th Street, NW
Washington, DC 20508

Dear Ms. Blue:

I am writing on behalf of the Investment Company Institute [1] in response to USTR's request for public comment regarding the US negotiations with the Republic of Chile to conclude a free trade agreement (FTA). To assist USTR in formulating negotiating objectives for a US-Chile FTA, this letter provides information about market access and other issues in Chile for US asset management firms.

Participation by US Firms in Chile's Asset Management Industry

The US asset management industry is pleased that the United States has begun to negotiate a FTA with Chile. As you know, in the 1997 WTO 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. We hope that these bilateral negotiations will produce meaningful binding commitments for the asset management sector and encourage progress in the multi-lateral negotiations, such as the Free Trade Agreement of the Americas and the services negotiations in the World Trade Organization.

We briefly describe below the specific market access barriers in Chile, including regulatory impediments to effective market access, and the commitments that we hope Chile will make in the asset management sector.

1. Market Access

As noted above, Chile has made no commitments in the asset management sector. This lack of binding commitments in the context of a trade agreement creates legal uncertainty for US firms doing business in Chile because the Chilean government may diminish market access levels in the future. We hope that Chile will commit to allowing foreign firms to establish wholly owned affiliates in Chile to provide asset management services both to mutual funds and pension clients. In addition, Chile should make a binding commitment to permit foreign firms to provide asset management services on a cross-border basis. We understand that Chile, as a practical matter, does permit asset management companies to register on a non-resident basis to manage assets.

Institute members also would like to ensure that Chile provides national treatment to foreign firms in managing assets. Our members are interested in competing with local firms on a level playing field.

2. Regulatory Impediments

Institute members seeking to do business abroad are willing to submit to local jurisdiction and regulation. Countries, however, should not impose requirements that do not have an investor protection purpose and operate effectively to keep foreign firms out of the market. We believe that, for US firms to have meaningful and effective market access to Chile, Chile must eliminate certain regulatory impediments at the same time it makes market access commitments to allow foreign firms to provide services on a commercial presence and cross border basis.

Specifically, Chilean law restricts the amount of foreign investment that the country’s pension funds—Administradoras de Fondos de Pensiones (AFPs)—are permitted to make. Although the Chilean government has raised the limit over the years, Chile’s investment regulations continue to impose a cap on foreign investment. Laws that prohibit or restrict mutual or pension funds from making foreign investments are not necessary for the protection of investors and prevent US firms from investing for clients in markets in which they may have expertise. We hope that Chile will permit managers of pension fund assets, subject to fiduciary standards based on prudence and diversification, to invest pension assets in a wide range of investments to maximize returns to pension participants.

Portfolio Investment by US Mutual Funds in Chile

There are three ways in which a foreign investor can invest in Chile, and each method requires the prior approval of the Central Bank of Chile or the Foreign Investment Committee. Each method involves various restrictions, including repatriation restrictions and a requirement to appoint a local administrator for the investor. These restrictions are cumbersome and expensive. We hope that Chile will ease the burden on foreign institutional investors by streamlining the process for making portfolio investments in Chile.

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We would be happy to discuss these comments with you and to provide any additional information or analysis that you might find helpful.

Sincerely,

Jennifer S. Choi
Assistant Counsel

cc:Ann Main, USTR

Daniel R. Lucich, Treasury
Whit Warthin, Treasury
Mary Beasley, Treasury

ENDNOTE

1 The Investment Company Institute is the national association of the US investment company industry. Its membership includes 8,433 open-end investment companies ("mutual funds"), 491 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets in excess of $6.7 trillion, accounting for approximately 95% of total industry assets, and over 83.5 million individual shareholders.
