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Joint Declaration on the Proposed U.S.-Chile Free Trade Agreement

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The Chilean Alliance for Just and Responsible Trade (ACJR) and the Alliance for Responsible Trade (ART) declare our great disappointment with the results of the negotiations for a Free Trade Agreement (FTA) between our two nations. While we do not oppose economic integration as such, we insist that it serve to promote equitable and sustainable development for all of the countries involved. We are very concerned that this bilateral accord, instead of serving that goal, simply replicates many of the terms of the failed North American Free Trade Agreement (NAFTA) and the Chile-Canada Free Trade Agreement and will likely prove disastrous for social, gender and economic equity, jobs and wages, and the environments in our two countries.

Applying equal – or reciprocal -- treatment to countries that are so profoundly different will lead to pressure to lower wages and working conditions, which especially hurts women. In Chile's case, rather than providing greater market access and creating opportunities to diversify exports, this will simply reinforce a pattern of exports concentrated in raw materials and natural resources, with little value added. This strategy, which has been implemented for more than two decades, has resulted in transnational companies having enormous influence in strategic sectors of the country and in the reduction of the state's ability to set and implement public policies.

This accord been presented as a trade agreement, related to trade in goods. However, it also provides guarantees for the free circulation and protection of U.S. capital and investments. This agreement transcends purely economic goals, also serving political interests. It therefore sets a precedent for future negotiations with other countries in Latin America and the Caribbean and contributes to greater dominance of the U.S.-based transnational companies. We are especially concerned about the following issues:

Investment: While mechanisms must be created to regulate foreign investment, particularly U.S. investment, the U.S.-Chile accord includes virtually the same “investor-state” mechanism as NAFTA. This mechanism allows foreign investors to demand compensation for public-interest laws that jeopardize their potential profits. Some 27 such suits have been brought under NAFTA, many of which were challenges to local health and environmental laws. While the U.S.-Chile agreement does make some improvements in transparency in these cases, the fundamental problems with the mechanism have not been resolved. Despite instructions to U.S. negotiators by Congress, the language in the U.S.-Chile agreement continues to give foreign investors greater rights than local investors, including the right to bypass local judicial systems to demand compensation under conditions that would never be allowed for domestic investors.

Capital Controls: Chile's “encaje”, under which foreign investors deposited a portion of their investments in the Central Bank, was a key factor in protecting the Chilean economy from the

fallout of the 1995 “peso” crisis in Mexico. Nevertheless, at the insistence of the Bush Administration, this mechanism has been eliminated. The new bilateral agreement would prevent the Chilean government from implementing such controls except once an emergency has already begun. Even under those limited circumstances, foreign investors would have the right to sue for compensation a year after the measure’s implementation, adding additional pressure on policymakers to delay any controls on capital flight until it is much too late.

Services: Health, education, and telecommunications services would be open to foreign investment under conditions of national treatment, i.e., that foreign investors would be treated at least as well as local investors, whether government or private. Given that many transnational firms enjoy much greater access to resources than Chilean firms, this equal treatment for unequal partners will likely result in the concentration of resources in the most profitable sectors and undermine affordable access for consumers. The agreement also allows U.S. financial firms to invest in and manage privatized Chilean pensions. Given the recent downturn in the U.S. stock market and the consequent impacts on private pensions in the United States, this does not bode well for Chileans.

Intellectual Property: The FTA is clearly intended to advance the new issues in the WTO, for example, new commitments on intellectual-property rights. Chile is currently adjusting its national legislation on intellectual property to comply with commitments made in the WTO, i.e., the Trade-Related Intellectual Property Rights (TRIPS). However, once the legislative processes on these bills have concluded, Chile will actually be left with a level of protection of intellectual-property rights higher than that prescribed in TRIPS. Chile would apply a “TRIPS Plus” regime, under which patents would be extended beyond the minimum 20 years agreed to in that accord.

These and other provisions in the US-Chile FTA would undermine the agreements and commitments made in the “Doha Declaration” on public health and intellectual-property rights, under which WTO members agreed that patent protections should not prevent member countries from taking measures to protect public health. That declaration reaffirmed countries’ rights to produce generic version of essential medicines in cases of national public-health emergencies. The new Chilean laws would restrict the granting of compulsory licenses beyond what is provided for in TRIPS and would limit the exceptions that facilitate the rapid introduction of generic medicines. In addition, the U.S.-Chile agreement grants pharmaceutical companies new rights, requiring governments to wait five years before allowing generic producers access to their test data, which could lead to unnecessary and potential devastating delays in the production of affordable medicine. Intellectual property is also defined as a form of investment under this agreement, making disputes on that issue subject to the investor-state mechanism described above.

So far, no studies have been carried out on the possible impacts of such demands on public health. It is worth noting that, in cases like Chile, the World Health Organization recommends caution in the approval of legislation that is stricter than the provisions in TRIPS so as to ensure that such measures favor, rather than undermine, public health, which has already deteriorated as a result of the continued privatization and commodification of this sector.

Government Procurement: The U.S.-Chile agreement would prohibit local or national governments from considering “non-commercial” criteria in granting procurement contracts.

This means that they would be prohibited from giving preferences to achieve social or development goals, such as giving preference to firms with environmentally-friendly practices, or even from insisting that contractors pay employees a living wage.

Labor and Environment: In spite of the fact that labor issues are mentioned in the text of the agreement, the supposed benefits are relatively small, since the Chilean and U.S. governments are only obliged to uphold their own respective laws on labor and environment, with no commitment to protecting internationally recognized labor rights or to ensuring that the terms of the trade agreement do not contradict commitments made under international environmental agreements.

Gender: The text of the U.S.-Chile FTA fails to include gender issues among its priorities. These would include measures to ensure improvements in living standards for women, equality of social and economic opportunities for women and men in both countries, as well as the need to establish regulations on gender and the fulfillment of international commitments, particularly the U.N. Convention to Eliminate All Forms of Discrimination Against Women, and the Beijing Action Plan. This is particularly important since the costs of trade liberalization and the application and deepening of WTO rules have created serious problems of inequality in women's productive and reproductive employment, as well as the lack of access to basic services for women and men, with particular repercussions on poor women in both countries. The FTA does not present a framework for environmental, social or gender sustainability.

Public Participation: In the Action Plan from the Quebec Summit of the Americas, the U.S. and Chilean governments, along with other countries in the hemisphere, committed to increasing the transparency of and public participation of trade negotiations. This agreement failed to achieve even the limited standards for transparency set by the FTAA negotiations. While two drafts of the FTAA have been published so far, the U.S. and Chilean governments refused to publish any drafts of this accord. Moreover, no binding mechanisms were set up to incorporate input from civil-society. While an English version of the agreement was published a week ago -- some four months after the negotiations concluded -- there is still no version available in Spanish.

Any agreement for just and sustainable development must provide for active participation by affected sectors of the population in the negotiation, implementation and evaluation of the resulting accord. Citizens in every country must have the right to participate in decisions that affect their lives, something that was denied in the negotiations of this agreement for deregulated trade and investment, which will likely produce the same negative impacts experienced by other countries in the Americas implementing this strategy.

Presidents Bush and Lagos should not sign this agreement until there is evidence that the perspectives of the Chilean and U.S. people have been incorporated into the final accord.