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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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February 16, 2012

Ambassador Ron Kirk
United States Trade Representative
600 17th St. NW
Washington, DC 20508

Dear Ambassador Kirk,

I strongly support enforcement of our international trade agreements, especially when violations result in significant economic harm to U.S. innovators, job creators, farmers and service providers. That is precisely what is happening in Chile, where the Government of Chile has yet to implement key provisions of the U.S.-Chile Free Trade Agreement (Chile FTA), including Chile's commitment to establish and implement a system of patent linkage. In fact, the draft legislation Chile has proposed to meet its commitments falls far short of its obligations under our free trade agreement. The Chilean Government's failure to implement the terms of the Chile FTA has significantly harmed U.S. innovators.

Despite this clear violation of the Chile FTA, and the economic harm caused to U.S. innovators, your office has yet to initiate any formal dispute settlement action under our trade agreement. At the same time, your office has spent the past three years pursuing a bilateral labor dispute with the Government of Guatemala, including taking action to resolve the issue through the formal dispute settlement process established under the U.S.-Dominican Republic-Central America-United States Free Trade Agreement.

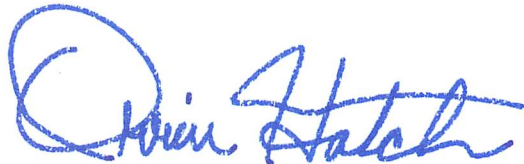
These contrasting approaches raise serious questions as to how USTR prioritizes its limited trade enforcement resources. The enforcement of Guatemala's internal labor laws may be an important issue, but its impact on U.S. exports and innovators is marginal at best. In contrast, flagrant violations of U.S. intellectual property rights (IPR) impose clear and direct economic harm upon U.S. innovators, workers and job-creators. According to a widely-cited study by NDP Consulting, from 2000 to 2007, U.S. intellectual property-intensive industries accounted for approximately 60 percent of total U.S. exports, accounted for five of the six tradable industries that reported trade surpluses, and employed more than 30 percent of American workers in all 27 tradable industries. Chile's failure to live up to the terms of our agreement, in an area where the United States has a clear comparative advantage, continues to cause significant harm to U.S. innovators, content creators and workers.

While I appreciate the efforts of USTR staff to amicably negotiate a settlement of this matter, I remain concerned that, absent the threat of formal dispute settlement and potential sanctions, the Chilean government may lack the will and ability to adequately address the outstanding issues relating to intellectual property rights. Although, as noted in the most recent Special 301 Report, the Chilean government has made some progress towards meeting their IPR-related commitments under the Chile FTA, Chile nonetheless remains on the Priority Watch List. Chile's continued failure to protect regulatory test data, protect against the circumvention of technological protection measures, establish an effective notice and takedown protocol, and other IPR-related issues of similar importance, is more than just a minor trade irritant – it is a direct assault on the comparative advantage of the United States.

Chile's failure to uphold its commitments under the Chile FTA, and your failure to hold them to account, will not go unnoticed by our trading partners. Allowing Chile's abrogation of the Chile FTA IPR provisions to continue for years sends a strong signal to our present and future free trade agreement partners that your administration will not hold them accountable for violations of their IPR commitments.

In my role as Ranking Member of the Senate Committee on Finance, I have an obligation to ensure that our scarce trade enforcement resources are being effectively utilized. To that end, I respectfully request that, in the face of Chile's continued failure to abide by the clear terms of the Chile FTA, you begin steps towards initiating bilateral dispute settlement proceedings. I also request that you provide me with a clear accounting of the criteria your office uses in determining whether to initiate consultations and formal dispute settlement proceedings under the terms of our trade agreements, including an analysis of how that criteria is being applied in the cases of Guatemala and Chile.

Sincerely,

A handwritten signature in blue ink, appearing to read "Orrin Hatch", with a large, stylized initial "O".

Orrin G. Hatch
Ranking Member