

DEPARTMENT OF LABOR**Office of the Secretary****Bureau of International Labor Affairs; Notice of Renaming the National Administrative Office as the Office of Trade Agreement Implementation; Designation of That Office as the Contact Point for Labor Provisions of Free Trade Agreements; and Request for Comments on Procedural Guidelines**

December 17, 2004.

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of renaming; designation of contact point; and request for comments on procedural guidelines.

SUMMARY: The Secretary of Labor announces that the National Administrative Office (NAO) of the Bureau of International Labor Affairs (ILAB) is renamed as the Office of Trade Agreement Implementation (Office) and will serve as the Contact Point for purposes of administering the labor chapters of the U.S.-Chile and U.S.-Singapore Free Trade Agreements, as well as labor provisions of other free trade agreements to which the United States may become a party to the extent authorized in such agreements, implementing legislation, or accompanying statements of administrative action, and the establishment of procedural guidelines pertaining to the public submission process. The Office will maintain the designation of the NAO and continue its function to administer Departmental responsibilities under the North American Agreement on Labor Cooperation. The address for this office is: Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5205, Washington, DC 20210. The telephone numbers are (office) 202-693-4900 and (facsimile) 202-693-4910.

Written comments and suggestions on the procedural guidelines are requested.

DATES: *Effective Date:* The renaming and designation of the functions of the Office are effective on December 17, 2004.

Comment Date: Written comments and suggestions on the procedural guidelines should be submitted by February 22, 2005.

ADDRESSES: Please send comments to USNAO@dol.gov or to the Director of the Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room

S-5205, Washington, DC 20210. Telephone: (202) 693-4900, facsimile (202) 693-4910. Comments provided in electronic format are preferred.

FOR FURTHER INFORMATION CONTACT: Director, Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5205, Washington, DC 20210. Telephone: (202) 693-4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S.-Chile Free Trade Agreement was signed by the United States of America and the Republic of Chile on June 6, 2003. The Governments of the countries exchanged notes providing for the entry into force of the Agreement on January 1, 2004. *See* Public Law 108-77, 117 Stat. 909 (Sept. 3, 2003), the U.S.-Chile Free Trade Agreement Implementation Act. The U.S.-Singapore Free Trade Agreement was signed by the United States of America and the Republic of Singapore on May 6, 2003. The Governments of the countries exchanged notes providing for the entry into force of the Agreement on January 1, 2004. *See* Public Law 108-78, 117 Stat. 948 (Sept. 3, 2003), the U.S.-Singapore Free Trade Agreement Implementation Act. The North American Agreement on Labor Cooperation (NAALC) was signed by the United States, Mexico, and Canada in September 1993 and became effective January 1, 1994. *See* Public Law 103-182, 107 Stat. 2057 (Dec. 8, 1993), the North American Free Trade Agreement Implementation Act.

Article 15 of the NAALC requires each Party to establish a National Administrative Office. The U.S. NAO was established by the Secretary of Labor on January 1, 1994. *See* 58 FR 69410 (Dec. 30, 1993) and 59 FR 16660 (Apr. 7, 1994). Article 16 of the NAALC provides that the NAO shall serve as a point of contact with governmental agencies of that Party, NAOs of the other Parties, and the Secretariat of the Commission for Labor Cooperation. Additionally, the NAO is to provide for the submission and receipt of public communications on labor law matters arising in the territory of another Party.

Article 18.4.3 of the U.S.-Chile FTA and Article 17.4.2 of the U.S.-Singapore FTA require each Party to designate an office within its labor ministry to serve as a contact point with the other Party, and with the public, for the purpose of implementing the labor chapters. Each contact point is to provide for the submission, receipt, and consideration of public communications on matters related to the chapters.

Paragraph 2 of Annex 18.5 of the U.S.-Chile FTA and paragraph 2(a) of Annex 17A of the U.S.-Singapore FTA also provide for the establishment of labor ministry contact points to support the work of a Labor Cooperation Mechanism established under each labor chapter. In addition, Article 18.4.6 of the U.S.-Chile FTA and Article 17.4.3 of the U.S.-Singapore FTA provide that each Party may convene an advisory committee to provide views or advice on the implementation of the labor chapters.

The attached notice provides for the renaming of the NAO as the Office of Trade Agreement Implementation and that it shall serve as the Contact Point for the labor provisions of the U.S.-Chile and U.S.-Singapore FTAs. It also provides that the Office shall serve as a contact point for matters under labor chapters of other FTAs to which the United States may become a party to the extent authorized in such agreements, implementing legislation, or accompanying statements of administrative action. The Office will have the responsibility for administering U.S. responsibilities under the labor chapters and the NAALC, including serving as a contact point between the labor ministries of the Parties, serving as a contact point with the public on the labor chapters and the NAALC, providing for the submission, receipt, consideration, and review of public communications on matters related to the labor chapters and the NAALC, providing support to any advisory committees that may be convened or consulted pursuant to the labor chapters or the NAALC, and coordinating work under the mechanisms for labor cooperation established under the labor chapters and the cooperative activities program of the NAALC.

The attached notice provides for an open and transparent process regarding compliance by Chile and Singapore with the obligations of the labor chapter of each FTA, as appropriate, by other parties to labor chapters of other FTAs to which the United States may become a party, and by Mexico and Canada with the obligations of the NAALC. It provides for receipt and review of public submissions on matters related to a labor chapter or the NAALC. Within 60 days of receipt of a submission, the Office will initiate a review of the matter or advise the submitting party and the public that a review is not appropriate. At the conclusion of each review, the Office will publish a public report. The Office will periodically publish a list of public submissions. The Office also may undertake a review on

its own initiative on relevant labor matters.

The Notice of Renaming the National Administrative Office as the Office of Trade Agreement Implementation and Designation of that Office as the Contact Point for Labor Provisions of Free Trade Agreements set forth below replaces the Revised Notice of Establishment published on April 7, 1994 (59 FR 16660).

Signed at Washington, DC on December 17, 2004.

Elaine L. Chao,
Secretary of Labor.

Notice of Renaming of the National Administrative Office as the Office of Trade Agreement Implementation and Designation of That Office as the Contact Point for Labor Provisions of Free Trade Agreements

Section A. Renaming and Designation

1. The National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor established January 1, 1994, 59 FR 16660 (Apr. 7, 1994), is renamed as the Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor.

2. The Office of Trade Agreement Implementation is designated as the Contact Point as required by Article 18.4.3 and Annex 18.5 of the U.S.-Chile FTA and Article 17.4.2 and Annex 17A of the U.S.-Singapore FTA.

3. The Office of Trade Agreement Implementation is designated as a contact point for labor chapters of other FTAs to which the United States may become a party to the extent authorized in such agreements, implementing legislation, or accompanying statements of administrative action.

4. The Office of Trade Agreement Implementation retains the functions of, and designation as, the National Administrative Office to administer Departmental responsibilities under the North American Agreement on Labor Cooperation. The Director of the Office of Trade Agreement Implementation retains the functions of, and designation as, the Secretary of the National Administrative Office under Article 15 of the North American Agreement on Labor Cooperation.

Section B. Definitions

As used herein:

“FTA” means the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, or other free trade agreement to which the United States may become a party;

“another Party” or “other Party” means a country other than the United

States that is a Party to an FTA or the NAALC;

“Commission for Labor Cooperation” means the Commission for Labor Cooperation established pursuant to Article 8 of the NAALC;

“Cooperative Activities Program” means the program of cooperative activities undertaken by the Parties to the NAALC;

“Labor Affairs Council” means the Labor Affairs Council established pursuant to Article 18.4.1 of the U.S.-Chile Free Trade Agreement or pursuant to another FTA;

“labor chapter” means Chapter Eighteen of the U.S.-Chile FTA, Chapter 17 of the U.S.-Singapore FTA, or a labor chapter of another FTA;

“Labor Cooperation Mechanism” means the mechanism established pursuant to Article 18.5 of the U.S.-Chile FTA or Article 17.5 of the U.S.-Singapore FTA, or a similar mechanism established pursuant to another FTA;

“labor organization” includes any organization of any kind, including such local, national, and international organizations or federations, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

“NAALC” means the North American Agreement on Labor Cooperation;

“non-governmental organization” means any scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

“Office” means Office of Trade Agreement Implementation;

“Party” means a Party to an FTA or the NAALC;

“person” includes one or more individuals, non-governmental organizations, labor organizations, partnerships, associations, corporations, or legal representatives; and

“Subcommittee” means a Subcommittee on Labor Affairs that may be established by the Joint Committee pursuant to Article 17.4.1 of the U.S.-Singapore FTA or pursuant to another FTA.

Section C. Functions of the Office of Trade Agreement Implementation

1. The Office shall encourage input and receive communications from the public on any matter related to a labor chapter of an FTA, including its Labor Cooperation Mechanism, and the NAALC, including its Cooperative Activities Program. The Office shall consider the views expressed by the

public, consult, as appropriate, with U.S. and foreign government and non-government representatives, and provide appropriate and prompt responses.

2. The Office shall provide assistance to the Secretary of Labor on all matters concerning a labor chapter of an FTA, including the development and implementation of a Labor Cooperation Mechanism, and the NAALC, including the development and implementation of a Cooperative Activities Program.

3. The Office shall serve as a point of contact with agencies of the United States Government, a contact point of another Party, the public, governmental working or expert groups, business representatives, labor organizations, and non-governmental organizations concerning matters under a labor chapter or the NAALC.

4. The Office shall promptly provide publicly available information pursuant to Article 14 of the NAALC as requested by the Secretariat of the Commission for Labor Cooperation, the National Administrative Office of another Party, or an Evaluation Committee of Experts.

5. The Office shall receive, determine whether to accept for review, and review submissions on another Party's commitments and obligations arising under a labor chapter or the NAALC, as set out in Sections F, G, and H.

6. The Office may, at the direction of the Director, initiate a review of any matter arising under a labor chapter or the NAALC.

7. The Office may request, undertake, and participate in consultations with another Party pursuant to Article 18.6 of the U.S.-Chile FTA, Article 17.6 of the U.S.-Singapore FTA, Parts Four and Five of the NAALC, or pursuant to another FTA, regarding any matter arising under a labor chapter or the NAALC, and shall respond to requests for such consultations made by another Party.

8. The Office shall assist a Labor Affairs Council or Subcommittee or the Commission for Labor Cooperation on any relevant matter.

9. The Office shall, as appropriate, establish working or expert groups; consult with and seek advice of non-governmental organizations or persons; prepare and publish reports as set out in Section J and on matters related to the implementation of a labor chapter pursuant to Article 18.4.4 of the U.S.-Chile FTA or Article 17.4.5 of the U.S.-Singapore FTA, or pursuant to another FTA; collect and maintain information on labor law matters involving another Party; and compile materials concerning labor law legislation of another Party.

10. The Office shall consider the views of any advisory committee established or consulted to provide advice in administering a labor chapter or the NAALC.

11. The Office shall consult with the United States Trade Representative, the Department of State, and other appropriate entities of the U.S. Government in carrying out its responsibilities under the labor chapters and the NAALC.

Section D. Cooperation

1. The Office shall conduct at all times its activities in accordance with the principles of cooperation and respect embodied in the FTAs and the NAALC. In its dealings with a contact point of another Party and all persons, the Office shall endeavor to the maximum extent possible to resolve matters through consultation and cooperation.

2. The Office shall consult with the contact point of another Party during the submission and review process set out in Sections F, G and H in order to obtain information and resolve issues that may arise.

3. The Office, on behalf of the Department of Labor and with other appropriate agencies, shall develop and implement cooperative activities under a Labor Cooperation Mechanism of an FTA and the Cooperative Activities Program of the NAALC. The Office may carry out such cooperative activities through any means the Parties deem appropriate, including exchange of government delegations, professionals, and specialists; sharing of information, standards, regulations and procedures, and best practices; organization of conferences, seminars, workshops, meetings, training sessions, and outreach and education programs; development of collaborative projects or demonstrations; joint research projects, studies, and reports; and technical exchanges and cooperation.

4. The Office shall receive and consider views on cooperative activities from worker and employer representatives and from other members of civil society.

Section E. Information

1. The Office shall maintain public files where submissions, transcripts of hearings, **Federal Register** notices, reports, advisory committee information, and other public information shall be available for inspection during normal business hours, subject to the terms and conditions of the Freedom of Information Act, 5 U.S.C. 552.

2. Information submitted by a person or another Party to the Office in confidence shall be treated as exempt from public inspection if the information meets the requirements of 5 U.S.C. 552(b) or as otherwise permitted by law. Each person or Party requesting such treatment shall clearly mark "submitted in confidence" on each page or portion of a page so submitted and furnish an explanation as to the need for exemption from public inspection. If the material is not accepted in confidence it will be returned promptly to the submitter with an explanation for the action taken.

3. The Office shall be sensitive to the needs of an individual's confidentiality and shall make every effort to protect such individual's interests.

Section F. Submissions

1. Any person may file a submission with the Office regarding another Party's commitments or obligations arising under a labor chapter or Part Two of the NAALC. Filing may be by electronic transmission, hand delivery, mail delivery, or facsimile transmission. A hard copy submission must be accompanied by an electronic version in a current Word or Word Perfect format, including attachments unless it is not practicable.

2. The submission shall identify clearly the person filing the submission and shall be signed and dated. It shall state with specificity the matters that the submitter requests the Office to consider and include supporting information available to the submitter, including, wherever possible, copies of laws or regulations which are the subject of the submission. As relevant, the submission shall address and explain to the fullest extent possible whether:

(a) the matters referenced in the submission demonstrate action inconsistent with another Party's commitments or obligations under a labor chapter or the NAALC, noting the particular commitment or obligation;

(b) there has been harm to the submitter or other persons, and, if so, to what extent;

(c) the matters referenced in the submission demonstrate a sustained or recurring course of action or inaction of non-enforcement of labor law by the other Party;

(d) the matters referenced in the submission affect trade between the parties;

(e) the course of action or inaction reflects something other than a reasonable exercise of discretion or a bona fide decision regarding the allocation of resources;

(f) relief has been sought under the domestic laws of the other Party, and, if so, the status of any legal proceedings; and

(g) the matters referenced in the submission are pending before an international body.

Section G. Acceptance of Submissions

1. Within 60 days after the filing of a submission, the Office shall determine whether to accept the submission for review. The Office may communicate with the submitter during this period regarding any matter relating to the determination.

2. In determining whether to accept a submission for review, the Office shall consider whether:

(a) the submission raises issues relevant to any matter arising under a labor chapter or the NAALC;

(b) a review would further the objectives of a labor chapter or the NAALC;

(c) the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;

(d) the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations under a labor chapter or the NAALC;

(e) the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and

(f) the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

3. If the Office accepts a submission for review, it shall promptly provide written notice to the submitter, the relevant Party, and other appropriate persons, and promptly publish in the **Federal Register** notice of the determination, a statement specifying why review is warranted, and the terms of the review.

4. If the Office declines to accept a submission for review, it shall promptly provide written notice to the submitter stating the reasons for the determination.

Section H. Reviews and Public Reports

1. Following a determination by the Office to accept a submission for review, the Office shall conduct such further examination of the submission as may

be appropriate to assist it to better understand and publicly report on the issues raised. The Office shall keep the submitter apprised of the status of a review.

2. Except for information exempt from public inspection pursuant to Section E, information relevant to a review shall be placed in a public file.

3. The Office shall provide a process for the public to submit information relevant to the review, including holding a public hearing as appropriate.

4. Notice of any such hearing under paragraph 3 shall be published in the Federal Register 30 days in advance. The notice shall contain such information as the Office deems relevant, including information pertaining to requests to present oral testimony and written briefs.

5. Any hearing shall be open to the public. All proceedings shall be conducted in English, with simultaneous interpretation provided as the Office deems necessary.

6. Any hearing shall be conducted by an official of the Office or another Departmental official, assisted by staff and legal counsel, as appropriate. The public file shall be made part of the hearing record at the commencement of the hearing.

7. Within 120 days of the acceptance of a submission for review, unless

circumstances as determined by the Office require an extension of time of up to 60 additional days, the Office shall issue a public report.

8. The report shall include a summary of the proceedings and any findings and recommendations.

Section I. Recommendations to the Secretary of Labor

1. The Office may at any time make a recommendation to the Secretary of Labor as to whether the United States should request consultations with another Party pursuant to Article 18.6.1 of the U.S.-Chile FTA or Article 17.6.1 of the U.S.-Singapore FTA, or pursuant to another FTA, or consultations with another Party at the ministerial level pursuant to Article 22 of the NAALC. As relevant and appropriate, the Office shall include any such recommendation in the report prepared in response to a submission.

2. If, following such consultations, the Office determines that the matter has not been resolved satisfactorily, it shall make a recommendation to the Secretary of Labor concerning the convening of a Labor Affairs Council or Subcommittee pursuant to an FTA, or the establishment of an Evaluation Committee of Experts pursuant to Article 23 of the NAALC, as relevant.

3. If the mechanisms referred to in paragraph 2 are invoked and the Office determines that the matter subsequently remains unresolved, and the matter concerns whether a Party is conforming with an obligation under a labor chapter, such as Article 18.2.1.a of the U.S.-Chile FTA or Article 17.2.1.a of the U.S.-Singapore FTA, or Part Two of the NAALC, that is subject to the dispute settlement provisions of an FTA or the NAALC, the Office shall make a recommendation to the Secretary of Labor concerning pursuit of dispute resolution under such provisions.

Section J. Periodic and Special Reports

1. The Office shall publish periodically a list of submissions presented to it, including a summary of the disposition of such submissions.

2. The Office shall obtain and publish periodically information on public communications considered by the other Parties.

3. The Office may undertake reviews and publish special reports on any topics under its purview on its own initiative or upon request from the Secretary of Labor.

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