

**IMPLEMENTATION OF U.S. BILATERAL FREE TRADE  
AGREEMENTS WITH CHILE AND SINGAPORE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON TRADE  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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JUNE 10, 2003  
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**Serial No. 108-24**

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**IMPLEMENTATION OF U.S. BILATERAL FREE  
TRADE AGREEMENTS WITH CHILE AND  
SINGAPORE**

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**TUESDAY, JUNE 10, 2003**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON TRADE,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 1:00 p.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE  
June 3, 2003  
No. TR-3

CONTACT: (202) 225-6649

### **Crane Announces Hearing on Implementation of U.S. Bilateral Free Trade Agreements with Chile and Singapore**

Congressman Philip M. Crane (R-IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on implementation of the United States bilateral free trade agreements (FTAs) with Chile and Singapore. **The hearing will take place on Tuesday, June 10, 2003, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 1:00 p.m.**

Oral testimony at this hearing will be from both invited and public witnesses. Invited witnesses will include Ambassador Peter Allgeier, Deputy United States Trade Representative. Also, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

The Chile and Singapore FTAs will be the first trade agreements considered by the Congress under the fast track procedures outlined in Trade Promotion Authority (TPA). TPA was approved by the 107th Congress and signed into law in August 2002 (P.L. 107-210).

The United States and Singapore began FTA negotiations in December 2000, and the talks were officially concluded in January 2003. On January 30, 2003, President Bush notified Congress of his intent to enter into the Singapore FTA. The text of the Singapore FTA was released to the public on March 7, 2003. Under TPA procedures, President Bush was able to sign the FTA 90 calendar days after his notification, or at any time after May 1, 2003. The FTA was signed on May 6 at the White House by President Bush and Singaporean Prime Minister Goh Chok Tong.

The concept of an FTA with Chile has been proposed for many years. In December 1994, the three leaders of the United States, Canada and Mexico announced their intention to negotiate Chile's accession to the North American Free Trade Agreement (NAFTA), and those talks formally began in June 1995. However, fast track authority had lapsed and the talks stalled. Since that time, both Mexico and Canada have concluded bilateral FTAs with Chile, and U.S. exporters have been losing business in Chile to competitors from both countries. On December 11, 2002, the Administration announced that an FTA had been reached in principle with Chile, and on January 30, 2003, President Bush notified Congress of his intent to enter into the Chile FTA. The text of the Chile FTA was released to the public on April 3, 2003. United States Trade Representative Robert Zoellick and Chilean Foreign Minister Soledad Alvear are scheduled to sign the FTA on June 6 in Miami, Florida.

In announcing the hearing, Chairman Crane stated, "Since the landmark passage of Trade Promotion Authority last year, U.S. trade negotiators have concluded bilateral free trade agreements with Chile and Singapore. These agreements show how, after a lapse of 8 years, TPA has enabled the United States to finally pursue new trade opportunities for U.S. businesses, farmers, and workers. The Chile and Singa-

pore free trade agreements are both comprehensive, state-of-the-art agreements, and I look forward to Congressional approval as quickly as possible.”

**FOCUS OF THE HEARING:**

The hearing will focus on Congressional consideration of the Chile and Singapore FTAs and the benefits that both agreements will bring to American businesses, farmers, workers, and to the U.S. economy.

**DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:**

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bill Covey at (202) 225-1721 no later than the close of business on Wednesday, June 4, 2003. The telephone request should be followed by a formal written request faxed to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515, at (202) 225-2610. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee on Trade staff at (202) 225-6649.

**In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard.** Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE-MINUTE RULE WILL BE STRICTLY ENFORCED. The full written statement of each witness will be included in the printed record, in accordance with House Rules.**

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Committee are required to submit 200 copies, along with an *IBM compatible 3.5-inch diskette in WordPerfect or MS Word format*, of their prepared statement for review by Members prior to the hearing. **Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than close of business on Friday, June 6, 2003, in an open and searchable package.** The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings. **Failure to do so may result in the witness being denied the opportunity to testify in person.**

**WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, by the close of business on Tuesday, June 24, 2003. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Trade in room 1104 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

**FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, in WordPerfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

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Chairman CRANE. Will everyone please take their seats. Welcome to this hearing of the Subcommittee on Trade of the Committee on Ways and Means, to focus on the recently completed Chile and Singapore Free Trade Agreements (FTAs) and the benefits that both agreements will bring to American businesses, farmers, workers, and to the U.S. economy.

The Chile and Singapore FTAs are the first trade agreements to be considered by the Congress under the procedures in the landmark Trade Promotion Authority (TPA) (Trade Act of 2002, P.L. 107-210) legislation passed last year. The conclusion of these two agreements represents a watershed in U.S. trade policy. They are the biggest U.S. free trade deals since the North American Free Trade Agreement (NAFTA) was signed over 10 years ago. Both agreements promote U.S. economic interests and substantially achieve the negotiating objectives set out in TPA. These state-of-the-art, comprehensive agreements establish high standards in market access for goods, services, e-commerce, intellectual property rights investment, and competition. On market access, all tariffs and quotas on all goods will be eliminated, no exceptions.

Singapore's origins are based on trade. In 1819, Sir Stamford Raffles recognized Singapore's prime location as a trans-shipment port, and he established it as a trading station for the British East India Company. Singapore has since become one of the world's most prosperous countries with strong international trading links and one of the world's busiest ports.

Since Singapore already has 99 percent free trade and goods, U.S. negotiators focused on removing Singaporean restrictions on a wide range of services. Singapore agreed to a negative list approach, meaning all sectors are subject to liberalization unless a party excludes them. This negative list approach is a good precedent to set, and I hope we can continue to make that approach part of all of our trade agreements.

Chile also has a market-oriented economy based upon open trade. The country is a model of how open trade and/or sound eco-



conomic policies can lead a country toward development and democracy. Under the Chilean agreement, 85 percent of bilateral trade and consumer and industrial products become duty-free immediately upon entry into force, with most remaining tariffs eliminated within 4 years.

The investment sections in both agreements provide strong protections for U.S. investors, while also making improvements to the NAFTA chapter 11 model called for in TPA by providing more transparency, public input in the dispute, and mechanisms to improve the investor state process by eliminating frivolous claims.

On intellectual property rights and enforcement, Singapore and Chile both agreed to many provisions that go beyond the disciplines in the World Trade Organization (WTO) agreement on Trade-Related aspects of Intellectual Property rights (TRIPS), particularly on high-tech digital issues. The agreements set a high standard of protection for trademarks, copyrights, patents, and trade secrets, and established a tough enforcement regime for piracy and counterfeiting. Unfortunately, I still have concerns with Singapore related to chewing gum with direct impact on a well-known Chicago-based company. I had hoped that this issue would be resolved by now, and I strongly encourage Singapore to comply with the spirit of the FTA text by allowing therapeutic chewing gum to be sold in Singapore without a prescription.

Other than that issue, I strongly support both FTAs, and I look forward to their House passage before the August recess. I believe these trade agreements mark win-win deals for the United States and two important allies, and I expect they will both be approved by the Congress with strong bipartisan support. Now I yield to our distinguished Ranking Member on the Subcommittee, Mr. Levin.

[The opening statement of Chairman Crane follows:]

**Opening Statement of the Honorable Philip M. Crane, Chairman, and a Representative in Congress from the State of Illinois**

Welcome to this hearing of the Ways and Means Trade Subcommittee to focus on the recently completed Chile and Singapore free trade agreements, and the benefits that both agreements will bring to American businesses, farmers, workers, and to the U.S. economy. The Chile and Singapore FTAs are the first trade agreements to be considered by the Congress under the procedures in the landmark Trade Promotion Authority legislation passed last year.

The conclusion of these two agreements represents a watershed in U.S. trade policy. They are the biggest U.S. free trade deals since the North American Free Trade Agreement was signed over 10 years ago. Both agreements promote U.S. economic interests and substantially achieve the negotiating objectives set out in TPA. These state-of-the-art, comprehensive agreements establish high standards in market access for goods, services, e-commerce, intellectual property rights, investment, and competition. On market access, all tariffs and quotas on all goods will be eliminated—no exceptions.

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Mr. LEVIN. Thank you, Mr. Chairman. I am glad we are here today to examine the Chile and Singapore FTAs. These will be the first FTAs, as we know, brought back under the fast track legislation passed last year. Also, the Administration has talked about and has begun using these agreements as a template, a model, for other negotiations. So, I think these two are deserving of very close and careful attention.

It is important, as we begin, to note significant positive provisions in both agreements. Both agreements include strong and comprehensive commitments by Chile and Singapore to open their goods, agriculture, and services markets to U.S. producers. Both agreements include commitments that will increase regulatory transparency and add to the benefit of U.S. investors, intellectual property holders, businesses, and consumers.

While some of the provisions in the Chile and Singapore FTAs can serve as templates for other agreements, a number of provisions clearly cannot. In some instances this is because the provision, while workable in the Chile or Singapore context, is not appropriate for FTAs with other countries where very different circumstances prevail. In other cases it is because the policy being pursued by the Administration is just plain wrong. In fact, one of the biggest threats to smooth passage of the Chile and Singapore FTAs is the concern that the Administration is beginning to use some of their provisions as models for other FTAs, for example, the U.S.-Central America Free Trade Agreement (CAFTA), where the conditions make it inappropriate to do so.

I will mention a number of the issues of concern briefly. First, the Singapore FTA includes the so-called Integrated Sourcing Initiative (ISI). If the Administration's and the Singapore government's stated purpose of the ISI was to help Indonesia—a policy, I think, that has merit—then we should find a more targeted way of doing so. Although the Administration likes to talk about this special rule of origin as if it applies only to two Indonesian islands, in fact any country in the world can take advantage of it.

Also, to date the Administration has never publicly discussed one of the two features of the ISI that raises the most concerns: The fact that ISI components from any country may be treated as Singapore content for purposes of helping other goods benefit from the FTA. I think we need a better understanding of the ISI, and the Administration should give assurances that the ISI list will not be expanded without congressional approval—and how such a system would work.

Clearly enough questions have been raised about the wisdom of the ISI, that this should be rejected as a precedent for other FTAs. The H-1B-type provisions in the Chile and Singapore agreements also have raised concern. The basic problem, as I see it, is that the Administration has created a program that allows an immigrant to stay in this country permanently under the guise of a temporary visa program. I have supported and do support immigration, and have supported increases to the H-1B cap in the past. However, before we start creating hybrids of the temporary H-1B program and the existing permanent employment-based visa programs, we should understand why we are pursuing this policy, how these provisions will work when fully enacted into U.S. law, how they will impact U.S. immigration patterns, and how they would impact U.S. workers.

The labor and environmental provisions in the Chile and Singapore FTAs are of significant concern. There are separate dispute settlement rules to place arbitrary caps on the enforceability of these provisions. I believe this is a mistaken approach—this dual dispute settlement approach—the difficulties of which would only be magnified if used as a precedent for future FTAs involving very different circumstances.

This is doubly true of any attempt to use in future FTAs the “enforce your own law” standard used in Chile and Singapore. The context in Chile and Singapore today is important, as it was in the case of Jordan. The laws of Chile and Singapore today essentially reflect core internationally recognized labor rights. How they are applied does vary in the two countries, reflecting the different general characteristics of Chile and Singapore. At the same time, there is little practical concern that these countries would backtrack.

These situations, in any event, are very different from many other FTA negotiating partners, including most Central American countries and many others that would be a part of a Free Trade Area of the Americas (FTAA). Use of the “enforce your own law” standard is invalid as a precedent, indeed as a contradiction to the purpose of promoting enforceable core labor standards when a country’s laws clearly do not reflect international standards, and when there is a history not only of nonenforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively.

I recently went to Central America to experience the situation there firsthand. The Administration’s tabling in the CAFTA negotiations of the “enforce your own law” standard is counterproductive in those countries. It would reward countries with the worst standards and will miss an opportunity to allow workers to participate actively in their workplace in these countries which historically—these efforts, these opportunities for workers, which his-

torically in every Nation, including our own, has been necessary for the development of a broad middle class.

There are several other issues that have been raised, and about which we need a response from the Office of the U.S. Trade Representative as well, and I will name just a few of them: Whether the intellectual property provisions lacking in the current state of U.S. law—making it much more difficult for Congress to change those rules in the future—are appropriate; whether the U.S. Trade Representative adequately ensured that foreign investors will not have greater rights than provided under U.S. law; whether the U.S. Trade Representative and the U.S. Department of the Treasury’s efforts to eliminate a country’s flexibility to impose, on an emergency basis, temporary capital controls—which was modified after criticism from a number of economists and several of us in the Congress—is sound policy and should be pursued in future FTAs; whether more can be done by Singapore to stop the transshipment of illegally harvested timber.

So, I hope the testimony today will discuss the significant benefits of Chile and Singapore FTAs as well as respond to these important issues and questions.

Finally, we need to consider whether and how outstanding questions can be addressed through the implementation language. I worked actively with many others on the legislation implementing the Uruguay Round agreements. The congressional efforts and input into that legislation were important for its ultimate passage. They were achieved by use of the long-standing precedent of a mock markup, the legislation to be considered under fast track rules before it is introduced. I hope that this approach will be used for the Singapore and Chile FTAs. I look forward to discussions regarding this aspect as this Subcommittee and the full Committee move forward on the Singapore and Chile FTAs. Thank you, Mr. Chairman.

[The opening statement of Mr. Levin follows:]

**Opening Statement of the Honorable Sander M. Levin, a Representative in Congress from the State of Michigan**

Thank you, Mr. Chairman. I am glad that we are here today to examine the Chile and Singapore Free Trade Agreements. These will be the first FTAs brought back under the fast track legislation passed last year. Also, the Administration has talked about and has begun using these agreements as a template for other negotiations. So I think they are deserving of very close and careful attention.

It is important to note significant positive provisions in both agreements. Both agreements include strong and comprehensive commitments by Chile and Singapore to open their goods, agricultural, and services markets to U.S. producers. Both agreements include commitments that will increase regulatory transparency and act to the benefit of U.S. investors, intellectual property holders, businesses, and consumers.

While some of the provisions in the Chile and Singapore FTAs could serve as templates for other agreements, a number of provisions clearly cannot be. In some instances, this is because the provision, while workable in the Chile and Singapore contexts, is not appropriate for FTAs with other countries, where very different circumstances prevail. In other cases, it is because the policy being pursued by the Administration is just plain wrong.

In fact, one of the biggest threats to smooth passage of the Chile and Singapore FTAs is a concern that the Administration is beginning to use some of their provisions as models for other FTAs, for example the CAFTA, where the conditions make it inappropriate to do so.

I will mention a number of the issues of concern briefly. The Singapore FTA includes the so-called Integrated Sourcing Initiative (ISI). If the Administration and

the Government of Singapore's stated purpose of the ISI was to help Indonesia—a policy I think that has merit—then we should find a more targeted way of doing so. Although the Administration likes to talk about this special rule of origin as if it applies only to two Indonesian islands, in fact any country in the world can take advantage of it.

Also, to date, the Administration has never publicly discussed one of the two features of the ISI that raises the most concerns—the fact that ISI components from any country may be treated as Singapore-content for purposes of helping other goods benefit from the FTA. I think we need a better understanding of the ISI. And the Administration should give assurances that the ISI list will not be expanded without congressional approval, and how that would work. Clearly, enough questions have been raised about the wisdom of the ISI that it should be rejected as a precedent for other FTAs.

The H-1B-type provisions in Chile and Singapore also have raised concerns. The basic problem, as I see it, is that the Administration has created a program that allows an immigrant to stay in this country *permanently* under the guise of a temporary visa program. I support immigration, and have supported increases to the H1-B cap in the past. However, before we start creating hybrids of the temporary H1-B program and the existing permanent employment-based visa programs, we should understand why we are pursuing this policy, how these provisions will work when fully enacted into U.S. law, how they will impact U.S. immigration patterns, and how they will impact U.S. workers.

The labor and environmental provisions in the Chile and Singapore FTAs are of significant concern. There are separate dispute settlement rules that place arbitrary caps on the enforceability of these provisions. I believe this is a mistaken approach, the difficulties of which would only be magnified if used as a precedent for future FTAs involving very different circumstances.

That is doubly true of any attempt to use in such future FTAs the “enforce your own law” standard used in Chile and Singapore. The context in Chile and Singapore here is important, as it was in the case of Jordan. The laws of Chile and Singapore essentially reflect core internationally recognized labor rights. How they are applied does vary in the two countries, reflecting the different general characteristics of the two nations. At the same time, there is little practical concern that these countries will back track.

These situations in any event are very different from many other FTA negotiating partners, including certainly most Central American countries and many others that would be a part of an FTAA. Use of the “enforce your own law” standard is invalid as a precedent—indeed is a contradiction to the purpose of promoting enforceable core labor standards—when a country's laws clearly do not reflect international standards and when there is a history, not only of non-enforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively.

I recently went to Central America to experience the situation there first hand. The Administration's tabling in the CAFTA negotiations of the “enforce your own law” standard is counterproductive in those countries. It would reward countries with the worst standards and will miss an opportunity to allow workers to participate actively in their workplace in these countries, which historically in every nation, including our own, has been necessary for the development of a broad middle class.

There are several other issues that have been raised and about which we need a response from USTR, as well.

1. Whether the intellectual property provisions—locking in the current state of U.S. law, making it much more difficult for Congress to change those rules in the future—are appropriate;
2. Whether the USTR adequately ensured that foreign investors will not have greater rights than provided under U.S. law;
3. Whether USTR's and Treasury's effort to eliminate a country's flexibility to impose on an emergency basis temporary capital controls, which was modified after criticism from a number of economists and several of us in the Congress, is sound policy and should be pursued in future FTAs;
4. Whether more can be done by Singapore to stop the trans-shipment of illegally harvested timber.

So, I hope the testimony today will discuss the significant benefits of the Chile and Singapore FTAs as well as respond to the important issues and questions that have been raised.

We need to consider whether and how outstanding questions can be addressed through the implementing legislation. I worked actively with many others on the legislation implementing the Uruguay Round Agreements. The congressional efforts

and input into that legislation were important for its ultimate passage. They were achieved by use of the longstanding precedent of a mock markup of legislation to be considered under fast track rules before it is introduced. I hope that this approach will be used for the Singapore and Chile FTAs and look forward to discussions regarding this aspect, as this Subcommittee and the full Committee move forward on the Singapore and Chile FTAs.

Chairman CRANE. Gentlemen, watch the little light in front of you. When you see it turn, try and wrap up your remarks if you can. With that, let me introduce our first witness, the Honorable Earl Blumenauer from Oregon. Thank you, Mr. Levin.

**STATEMENT OF THE HONORABLE EARL BLUMENAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. BLUMENAUER. Thank you, Mr. Chairman, Ranking Member Levin. We appreciate your continued leadership and insight in these important issues of our trade agreements. I think the FTA with Chile is an opportunity to illustrate the benefits of free trade, to take it out of the textbooks and put it into practice, while at the same time reinforcing and rewarding the behaviors and practices which are important to the U.S. objectives—particularly in the Western Hemisphere. Latin America, literally in our back yard, has been an area of major U.S. concern since the promulgation of the Monroe Doctrine almost 200 years ago. A Chilean agreement would send a positive message that the United States places a high regard on efforts to improve institutional frameworks that support democracy, environmental protection, improved labor standards, and market reform. Chile is making progress on all of those areas, and the agreement, in fact, encourages them to do more.

In Chile, however, we are losing market share because they have entered into FTAs with other countries, including both of our North American partners, Canada and Mexico. The experience I have seen in my own State illustrates the problem. Since Canada has a special relationship, and the United States doesn't, a State like mine that is involved with forest products, lumber, and paper products is at a disadvantage. A 6-percent Chilean tariff makes a difference in the Northwest, where I am from.

Likewise, in my community we have high-value manufactured goods such as those produced by Boeing and Freightliner, which use American unionized employees, and high-skill and high-paying jobs. Freightliner, which manufactures trucks in my district, has for years been trying to enter the Chilean market with their Argosy trucks. They have not been able to compete with trucks from the European Union that do not face the same tariff problems. They have had to transfer Oregon jobs to Mexico, which does have an FTA, to be able to enter the market. This FTA will help eliminate that problem.

Already most of the agricultural products imported from Chile are not subject to major barriers. Since we are on a different growing cycle than Chile, located in the Southern Hemisphere, their agricultural products do not necessarily compete directly with ours. In fact, we can provide more choices for our consumers at lowest costs.

Technology remains a mainstay in the Pacific West. In my State it is the leading industry. Much of it destined for export. The agreement with Chile represents an opportunity to improve markets at a time of great economic stress in that industry.

These are textbook examples of comparative advantage if we remove the barriers that currently restrict our goods. Products in our community are going to be more competitive. The alternative has been, and will continue to be, to lose the market to other countries in Latin America, Canada, or the European Union.

Mr. Chairman, one thing that I do want to put on the table, though, is that there are going to be winners and losers. Given the dramatic difference in size, we are not going to be dramatically impacted, but at a time of economic upheaval, there will be dislocations, and we need to be sensitive to it. I hope in the course of your deliberations we can continue to be sensitive to the concerns of our constituents—that we deal with issues like trade adjustment assistance and make sure that it is real. During the recent discussions that we had about TPA, there were major concerns that we all heard from our constituents to make sure that trade agreements don't undercut labor and environmental regulations in a race to the bottom. In a continent beset by environmental problems, Chile has been a leader in the environmental arena. In fact, it has in its constitution a goal of a pollution-free environment constitutionally enshrined.

In the area of labor standards, Chile has also been a pace-setter in Latin America. It has ratified all eight of the International Labor Organization (ILO) conventions. Mr. Chairman, I am hopeful that we can also appreciate, in terms of dislocation, that the United States needs to use this as a mirror to look up to us. We are concerned—and you have been a champion, both you and Mr. Levin—in terms of being able to use the power of trade to be transformational. We continue to have our own barriers in areas like textiles and agriculture that restrict access to our markets—which, ironically, if we were able to relax, would have twice the benefit to these developing countries as all the aid that is provided. Of course, we are not alone in this regard. We are certainly joined by Japan and the European Union. I am hopeful that this discussion, this debate, the work of this Subcommittee, can help us look again at what we need to do in order to be consistent and thoughtful in our approach.

Mr. Chairman, in a sea of Latin American instability, a Chilean agreement is an important step forward, and signals how we can keep our commitments and trade agreements while protecting core American values. I appreciate your leadership and your action.

[The prepared statement of Mr. Blumenauer follows:]

**Statement of the Honorable Earl Blumenauer, a Representative in  
Congress from the State of Oregon**

The free trade agreement (FTA) with Chile is an opportunity to illustrate the benefits of free trade—take it out of the textbooks and put it into practice—while at the same time, rewarding and reinforcing behaviors and practices which are important to United States objectives, particularly in the Western Hemisphere. Latin America, literally in our backyard, has been an area of major U.S. concern since the promulgation of the Monroe Doctrine, almost 200 years ago. A Chilean agreement would send a positive message that the U.S. places a high regard on efforts to improve institutional frameworks that support democracy, environmental protection,

improved labor standards, and market reform. Chile is making progress in all of these areas. In a sea of Latin American instability, a Chilean agreement is an important step forward and signals how we can keep our commitment in trade agreements while protecting core American values.

In a country like Chile, we are losing market share because they have entered into FTAs with other countries, including both of our North American partners, Canada and Mexico. The experience of Oregon illustrates the problem. Since Canada now has a special relationship and the U.S. doesn't, a State like mine is at a disadvantage with lumber products. The 6 percent Chilean tariff on U.S. paper products makes a difference to the Pacific Northwest.

We also have many high-value manufactured goods, such as those produced by Boeing and Freightliner, which use American unionized employees—high-skill and high-paying jobs. Freightliner, which manufactures trucks in my district, has been trying to enter the Chilean market for years with their Argosy trucks. They have not been able to compete with EU trucks that do not face the same tariffs as U.S. products. Freightliner had to transfer Oregon jobs to Mexico, which does have a trade agreement with Chile, so they could compete in the Chilean market. A U.S.-Chile free trade agreement would give Freightliner the direct ability to compete in the Chilean marketplace without sacrificing U.S. jobs.

Already, most of the agricultural products imported from Chile are not subject to major tariff barriers. We have an opportunity, going the other way, to be able to open new markets for the Pacific Northwest, as well as other regions. Because America is on a different growing cycle than Chile, located in the Southern Hemisphere, their agricultural products do not necessarily compete directly with our own. In fact, we can provide more choices to our consumers at lower costs.

Technology remains a mainstay of West Coast economies. In Oregon, the leading industry is high-tech, much of it destined for export. The agreement with Chile represents an opportunity to improve markets at a time of great economic stress.

These are textbook examples of comparative advantage if we remove the barriers that currently restrict our goods. Products in our community are going to be more competitive under a free trade agreement. The alternative has been and will be to lose the market to other countries in Latin America, Canada, or Europe.

An important part of this equation is how we encourage innovation, stability, and environmental protection in a continent where it appears that such attributes are in short supply. It is no secret that economies all over Latin America are suffering. There is political instability and there are serious environmental problems that threaten vast ecosystems. One of the major concerns of our constituents is to assure our trade agreements don't undercut labor and environmental regulations in a "race to the bottom." On a continent beset by environmental problems Chile has been a leader in trying to proactively address these challenges. Indeed, the goal of a pollution free environment is written into the constitution.

In the area of labor standards, Chile is also a pace-setter. Chile has ratified all eight of the International Labor Organization conventions, while the U.S. has ratified only two. For us to reward the progress in these two key areas with the first free trade agreement south of Mexico is an important signal.

Another important area of consideration with the future of trade relationships is protectionism on the part of the world's richest countries. We, along with the European Union and Japan, have been highly protective of our own domestic agricultural markets by heavily subsidizing our products and establishing trade barriers. The irony is that rich countries giving access to their markets in the areas of agriculture and textiles would provide twice the economic benefit to these developing countries than what we give them in direct aid.

There may be some modest disruption to our producers with the free trade agreement, but there are remedies to these occasions. Again, using my State as an example, raspberry producers were injured when frozen raspberries from Chile entered the U.S. at below-market prices. There was a finding in the last Congress that they had been involved in dumping frozen raspberries into the U.S. market to the detriment of our domestic growers. We were able to work with the U.S. International Trade Commission to prevent frozen raspberries from being sold at less than fair value. There are protections in the system that work to prevent illegal practices, while we reap the benefits of open and fair trade.

There will also be modest disruptions simply because Chile will have a comparative advantage in the production of certain goods. However, in a depressed economy even small losses are significant. It is important, therefore, for us to be serious about Trade Adjustment Assistance, to make sure that we do provide the necessary benefits to affected workers and we continue to modify the program to improve its effectiveness for those who are harmed by the opening of trade. We also cannot turn our back on middle- and lower-income working families that will be most at risk.



We can help them by making sure our economic policies—whether it's spending money on further tax cuts or funding education and healthcare programs—deal with the needs of these families first rather than those who are the most well off in society.

I am convinced this agreement helps pull together what we are trying to accomplish within our own markets as well as encouraging other countries to respond in a positive fashion. As I look at its impacts on my region, I am confident that it holds benefits for Oregon and the country as a whole, and sends the signals we want to be sending to the rest of the world.

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Chairman CRANE. Thank you. The time of the gentleman has expired. Our next witness, the Honorable Pete Sessions from Texas.

**STATEMENT OF THE HONORABLE PETE SESSIONS, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. SESSIONS. Thank you, Mr. Chairman and Ranking Member Levin, and also the Members of the Subcommittee on Trade who are present today. Mr. Chairman, I would like to thank this Committee for the opportunity to come and provide testimony concerning the Singapore FTA. I would also like to ask unanimous consent that my full statement be included in the record.

Chairman CRANE. Without objection, so ordered.

Mr. SESSIONS. Thank you, Mr. Chairman. I would also like to note, Mr. Chairman, that today we have in the crowd, joining us today, Franklin Lavin, who is the Ambassador of the United States to the Republic of Singapore. Mr. Lavin is here in Washington to be a part of not only this hearing, but also to aid in the passage of this important FTA.

As you know, Mr. Chairman, the President signed this agreement with Singapore. The United States and Singapore are two nations that share a mutual respect for the rule of law and wish to establish a procedure that creates an open, fair, transparent, and responsive process for the trade between our great nations. This is a comprehensive, forward-looking agreement with a large, modern, and significant trading partner and ally.

The United States already exports a large amount of electronics, high-tech manufacturing products, industrial machinery, and equipment to Singapore. American companies also export a great deal of services to Singapore, including financial services, computer telecommunications, professional, and express delivery services, all of which are extremely important to this country and to Singapore.

Singapore has also been an active partner in prosecuting the war on terror by cracking down on terrorist activities and money-laundering in their country, and their own domestic financial institutions. Singapore is also a strong ally of the United States, with our two countries participating in joint military training exercises and sharing Singaporean military bases since 1992.

This agreement gives increased market access to a number of American industries, and establishes an orderly process for ensuring regulatory transparency and investor protections for American companies and individuals doing business in Singapore.

The agreement also updates Singapore's intellectual property law. As Thomas Lipscomb noted in today's Wall Street Journal op/

ed page, and I quote, “entertainment content is now America’s largest export, and information is the basis of more than half of our gross domestic product.” This agreement also updates Singapore’s copyright and patent law to ensure that the creators of new intellectual property reap the rewards of their innovation. It updates that country’s trademark regime to reflect new market realities, and this is all enforced by a robust enforcement regime designed to criminalize the willful infringement of copyrights, and impose tough punishments on intellectual property pirates.

The agreement accomplishes the laudable goals of providing regulatory transparency in Singapore and increasing market access to this country for American products, while providing first-class environmental and labor protections. I would like to congratulate not only the U.S. Department of State, but also the U.S. Trade Representative on their successful completion of negotiations with their Singaporean colleagues, and for their hard work in producing such a comprehensive and forward-looking agreement.

Last, I appreciate being given the opportunity to have my views heard before this Committee, and urge all my colleagues on both sides to not only focus upon this agreement as an important agreement, but also one that might be used on a continuing basis as a way for us to judge FTAs. I thank the Chairman for allowing me to be here, and I will be available for questions.

[The prepared statement of Mr. Sessions follows:]

**Statement of the Honorable Pete Sessions, a Representative in Congress  
from the State of Texas**

Thank you, Mr. Chairman, for this opportunity to provide my comments on the U.S.-Singapore Free Trade Agreement (USSFTA), which is being considered today by the Committee on Ways and Means. I appreciate being invited here to testify before the Committee on the important issue of expanding free trade, and to voice my support for the USSFTA, for the proposed U.S.-Chile agreement, and for free trade generally.

I am enthusiastic about the USSFTA, and I believe that there is a good reason that President George W. Bush and Prime Minister Goh Chok Tong signed this agreement on May 6, 2003. The USSFTA establishes standards for United States-Singapore trade that provide legal protections that are the same or are similar to existing U.S. law, and which reflect the respect for the rule of law that our two countries hold in common. The USSFTA sets a great precedent for enacting future free trade agreements with countries and regions that share our values and wish to engage in lawful and robust commerce with America through an open, fair, responsive and transparent process.

The USSFTA is a broad, comprehensive and substantive agreement between the United States and its largest trading partner in Southeast Asia. In fact, as America’s 11th largest trading partner in 2001, American bilateral trade with Singapore amounted to over \$32 billion—with Singapore serving as a large export market for American electronics, high-tech manufacturing, industrial machinery and equipment manufacturers. Singapore also serves as a large market for many of America’s service industries, including financial, computer, telecommunications, professional and express delivery services, all of which are extremely important to our economy.

Another important component of our bilateral trade with Singapore that should not be overlooked is our mutual trade in agricultural products, which represents a net trade surplus for the United States. In 2002, American farmers exported around \$259 million worth of food products to Singapore—including fruits, nuts, vegetables and poultry meat. By removing and binding all of its tariffs—including its agricultural tariffs—at zero, Singapore will open its markets to American agricultural products and create new opportunities for American farmers to sell their produce to a nation whose small size (255 square miles) prevents it from being able to grow for itself the amount of food its citizens consume.

In addition to being an economically significant and modern trading partner with similar values, Singapore is also an excellent candidate to end the 8-year Trade Pro-

motion Authority (TPA) lapse because of Singapore's close relationship with the United States and its eager participation in the War on Terror. In September 2001, Singapore demonstrated its resolve to combat terrorism by establishing an Inter-Agency Task Force on Anti-Terrorism to review and to improve its existing anti-terror laws. It has also aggressively targeted the terrorism-related activities of clandestine groups within its borders and increased vigilance of money-laundering in its domestic financial institutions.

Singapore and the United States also enjoy close military ties, including ongoing participation in joint training exercises between the respective Armed Forces of both countries. Singapore has allowed U.S. military aircraft and naval vessels to use its military facilities since 1992, served as an active Member of the Coalition of the Willing in Operation Iraqi Freedom, and allowed U.S. military ships and aircraft to call at Singapore and to use its military bases and air space. Singapore also offered to provide the successful Coalition in Iraq with a medical team from the Singapore Armed Forces for deployment in Iraq or Kuwait if their expertise and service became necessary. The USSFTA is simply another way for America to demonstrate its interest in building even closer ties with a nation that has long been a solid friend and an ally.

Of course, in addition to increasing strategic relations with a long-time ally, the economic merits of the U.S.-Singapore Free Trade Agreement stand firmly on their own. The agreement will give American firms increased market access across the entire Singaporean services sector, ensuring that American firms are treated as fairly and equitably as domestic firms. To ensure a level playing field for American companies, the agreement establishes strong and detailed disciplines on regulatory transparency through open and transparent administrative procedures designed to recognize interested parties' concerns before regulations are issued. American investors will also receive rights under this agreement, including due process protections and the right to receive a fair market value for any expropriated property. An impartial and transparent public dispute settlement panel will then enforce these protections on behalf of American investors.

The agreement offers substantial benefits for American financial institutions by removing the license quota on the number of U.S. banks with Qualifying Full Bank (QFB) privileges, with Wholesale Bank (WB) privileges, and by removing the limit on the number of branches that an American bank may operate. It will also permit the cross-border supply of trade in reinsurance by brokerage, in corporate finance advisory services to corporations and investors, and allow for the expedited availability of insurance services. These new and expanded powers will help American financial institutions and financial services providers to compete on a level playing field for Singaporean deposits and investments while strengthening the level of engagement between the U.S. and Singapore in the financial services arena.

The USSFTA is also a modern, forward-looking agreement that updates Singapore's intellectual property law and brings it in line with American standards. It updates Singapore's copyright and patent law to prevent circumvention and to ensure that the creators of new technologies and inventions reap the rewards of their innovation. It updates the country's trademark regime to reflect the new market realities of branding and product identity-building, while enhancing protection for well-known trademarks. All of these enhanced protections will be complimented by a robust enforcement regime that criminalizes the willful infringement of copyrights and imposes tough punishments on piracy.

This agreement accomplishes the laudable goals of providing regulatory transparency in Singapore and increasing market access to this country for American companies while providing first-class environmental and labor protections. I would like to congratulate the United States Trade Representative on the successful completion of negotiations with their Singaporean colleagues and for their hard work in producing such a comprehensive and forward-looking agreement. I appreciate being given the opportunity to have my views heard before this Committee today, and I urge all of my colleagues on both sides of the aisle to support this important agreement. Thank you, Mr. Chairman, for your time and for the leadership on trade that you have demonstrated by holding this important hearing.

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Chairman CRANE. Thank you very much, Mr. Sessions. We also want to pay tribute to Frank Lavin for his participation, our Ambassador to Singapore. With that, I—

Mr. LEVIN. Mr. Chairman, I think, also, the Ambassador from Singapore to the U.S., Ambassador Chan, is here.

Chairman CRANE. Oh, very good. Very good. With that, now, I would like to ask our next witness to testify, the Honorable Judy Biggert from my home State of Illinois, and a neighbor. Judy.

**STATEMENT OF THE HONORABLE JUDY BIGGERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. BIGGERT. Thank you very much, Chairman Crane and Ranking Member Levin, Members of the Committee. Thank you for allowing me and my colleagues to testify today in favor of these two outstanding trade agreements. While I strongly support both the Singapore and Chile agreements, I would like to specifically address my comments today to the particular merits of the agreement with Chile. Perhaps most importantly, I would like to comment on some of the disinformation and myths that have been circulating about this agreement.

First of all, I would like to congratulate President Bush, Ambassadors Zoellick and Allgeier, and all the hard-working members of our negotiating teams at the Office of the U.S. Trade Representative and the U.S. Department of Agriculture, and other agencies. What they have written, along with their Chilean counterparts, is a comprehensive, well-balanced, state-of-the-art agreement that will benefit both nations.

Second, I would like to point out that this is not a partisan agreement. My friend and colleague Mr. Blumenauer is one of many Members from the other side of the aisle who are strong proponents of this agreement. I am happy to point out that former Presidents Bill Clinton and George Bush both shared our current President's vision of an FTA of the Americas with Chile as an early partner.

Third, this is a good agreement that covers a particularly wide range of products and services. Not only does it address the liberalization of merchandise trade, it also includes groundbreaking areas such as e-commerce, express delivery services, strong copyright and trademark protections, and an across-the-board liberalization of trade and services. In short, there is something for everyone to like in this agreement.

That is the good news. The bad news is that not all of the Members have yet focused their attention on this agreement, and so there remain some troublesome myths and bits of misinformation out there that we are working to dispel. For instance, some Members who are unfamiliar with Chile and its labor laws question whether the labor provisions in the agreement are strong enough. The fact that Chile has rewritten and strengthened its labor laws, reaffirmed its obligations as a member of the ILO, and committed in this agreement to a key binding obligation not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction. Labor protections within Chile and within this agreement are strong and sound.

Since it is an FTA, other Members instinctively question whether it preserves environmental protections. This FTA includes provisions requiring parties to establish high levels of environmental protection and not to weaken or reduce environmental laws to attract trade or investment. It provides for dispute settlement, and for environmental cooperation between the parties.

Last, some Members have said that Chile doesn't deserve this agreement. They say if Chile really wanted free trade with the United States, she should have cast her votes with us back when the United Nations Security Council took up the U.S.-sponsored resolutions regarding Iraq. Those who would make this argument are missing the point. It is not a question of whether Chile deserves this agreement. The point is that the United States deserves this agreement.

The FTAs are not gifts that we dispense to favored allies in exchange for their vote in international bodies. The FTAs are mutually beneficial arrangements that serve the national economic interests of both parties, Chile and the United States. Without free trade with Chile, U.S. producers and service providers will continue to lose business to our foreign competitors. Chile already has in place FTAs with Mexico, Canada, Mercosur, and the European Union. That means that while our exporters are paying tariffs on all products, firms exporting from those countries that have FTAs with Chile enjoy free trading partnership treatment.

The damage to our trading position has been obvious. Between 1997 and 2002, when exporters from those countries enjoyed preferential access to the Chilean market, U.S. exports to Chile dropped 41 percent from \$4.3 billion to \$2.6 billion. According to the U.S. Chamber of Commerce, companies ranging from Coca Cola to Xerox, McDonald's to Owens Corning, and 3M to Sara Lee, have lost hundreds of millions of dollars to firms based in countries that have FTAs with Chile. There is no doubt in my mind that with an FTA in place, we will reverse this trend and begin to regain our former share of Chile's market. I certainly plan to vote for this agreement and work to encourage my colleagues to support it with their votes. Thank you very much.

[The prepared statement of Ms. Biggert follows:]

**Statement of the Honorable Judy Biggert, a Representative in Congress  
from the State of Illinois**

Chairman Crane, Ranking Member Levin, Members of the Committee, thank you for allowing me and my colleagues to testify today in favor of these two outstanding trade agreements. While I strongly support both the Singapore and Chile agreements, I would like specifically to address my comments today to the particular merits of the agreement with Chile. Perhaps more importantly, I would like to comment on some of the disinformation and myths that have been circulating about this agreement.

First, I want to congratulate President Bush, Ambassadors Zoellick and Allgeier, and all of the hard-working members of our negotiating teams at USTR, USDA, and other agencies for their achievements. I know how many days, nights, weekends, hours and miles they had to spend away from their families, and I want them to know how much we appreciate their extraordinary efforts. What they have written, along with their Chilean counterparts, is a comprehensive, well balanced, state-of-the-art agreement that will benefit both nations.

Second, I want to point out that this is not a partisan agreement. As evidenced by the presence here of my friend and colleague from across the aisle, Earl Blumenauer, there are many Members of both parties who are strong proponents of this agreement. And I am happy to point out that former Presidents Bill Clinton and George Bush both shared our current President's vision of a free trade agreement of the Americas, with Chile as an early partner.

Third, this is a good agreement that covers a particularly wide range of products and services. Not only does it address the liberalization of merchandise trade, it also includes ground-breaking areas such as e-commerce, express delivery services, strong copyright and trademark protections, and an across-the-board liberalization of trade in services.

In short, there is something for everyone to like in this agreement.

That's the good news. The bad news is that not all Members have yet focused their attention on this agreement, and so there remain some troublesome myths and bits of misinformation out there that we are working to dispel.

For instance, some Members who are unfamiliar with Chile and its labor laws question whether the labor provisions in the agreement are strong enough. The facts are that Chile has recently rewritten most of its Pinochet-era labor laws, reaffirmed its obligations as a member of the International Labor Organization (ILO), and committed in this agreement to a key, binding obligation not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction. Labor protections within Chile and within this agreement are strong and sound.

And because it is a free trade agreement, other Members instinctively question whether it preserves environmental protections. But this free trade agreement includes provisions requiring parties to establish high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade or investment. It provides for dispute settlement and for environmental cooperation between the parties.

And last, some Members have said that Chile doesn't *deserve* this agreement. They say that if Chile really wanted free trade with the United States, she would have cast her votes with us back when the United Nations Security Council took up the U.S.-sponsored resolutions regarding Iraq.

But those who would make this argument are missing the point. It is not a question of whether Chile *deserves* this agreement. The point is that the *United States* deserves this agreement.

Free trade agreements are not "gifts" that we dispense to favored allies in exchange for their votes in international bodies. Free trade agreements are mutually beneficial arrangements that serve the national economic interests of both parties—Chile and the United States.

Without free trade with Chile, United States producers and service providers will continue to lose business to our foreign competitors. And once we lose business to competitors, those competitors become stronger in other markets.

Chile already has in place free trade agreements with Mexico, Canada, Mercosur, and the European Union. That means that while our exporters are paying tariffs on all products, firms exporting from those countries that have FTAs with Chile enjoy free-trading partner treatment.

The damage to our trading position has been obvious. Between 1987 and 1997, U.S. exports to Chile soared from \$770 million to over \$4.3 billion dollars, increasing at an average annual rate of 19 percent.

In contrast, between 1997 and 2002, when exporters from those countries enjoyed preferential access to the Chilean market, U.S. exports to Chile contracted 41 percent to \$2.6 billion dollars. According to the U.S. Chamber of Commerce, companies ranging from Coca Cola to Xerox, McDonald's to Owens Corning and 3M to Sara Lee have lost hundreds of millions of dollars to firms based in countries that have free trade agreements with Chile.

And since the entry into force of Chile's FTA with the European Union just 4 months ago, U.S. companies have been losing contracts, business, and opportunities to even tougher competitors in Chile.

There is no doubt in my mind that with a Chile Free Trade Agreement in place, we will reverse this trend and begin to regain our former share of Chile's market. I plan to vote for the agreement and to work to encourage my colleagues to support it with their votes.

Thank you.

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Chairman CRANE. Thank you very much. Now, I will yield to anyone on our side who may have a question or a comment. Anyone with questions on our side? Mr. Levin, on your side?

Mr. LEVIN. I guess not. Thank you very much for your testimony, helping to kick this off. We will have ample time to discuss and further probe your comments. Thank you.

Chairman CRANE. Thank you all. Appreciate that. With that, we will call our next witness, the Honorable Peter Allgeier, Deputy U.S. Trade Representative. You may proceed when ready, Mr. Allgeier.

**STATEMENT OF THE HONORABLE PETER F. ALLGEIER, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE**

Mr. ALLGEIER. Thank you very much, Mr. Chairman. First of all, Mr. Chairman and Mr. Levin, Members of the Subcommittee—

Chairman CRANE. Do you have your microphone turned on?

Mr. ALLGEIER. The light is on.

Chairman CRANE. Can somebody—

Mr. ALLGEIER. Does that work?

Chairman CRANE. Yes.

Mr. ALLGEIER. Okay. Just need it closer. Chairman Crane, Mr. Levin, Members of the Subcommittee, thank you very much for the opportunity to testify today and for your continued guidance and support as we seek to open additional markets for U.S. manufacturers, service providers, farmers, ranchers, and workers. We appreciate your leadership, Mr. Chairman, and greatly value the close cooperation that we have experienced on trade issues with the Congress.

I would also like to thank the previous panel, Representatives Blumenauer, Biggert, and Sessions, for their support of these two agreements. I have a longer statement that I would ask become part of the record.

Chairman CRANE. Without objection, so ordered.

Mr. ALLGEIER. Thank you. During the past 2 years, we have worked together to reenergize the U.S. trade agenda. Passage of the bipartisan Trade Act of 2002, with its TPA, of course, was a major turning point in this effort. This will lead to economic benefits for all Americans, and many others around the world.

I welcome this opportunity to review the accomplishments of the first agreements that will be submitted under TPA, the FTAs with Chile and Singapore, and to present the Administration's requests for favorable consideration of legislation needed to implement these FTAs.

These two agreements reflect that bipartisan effort to conclude trade agreements with two important trading partners. Both agreements were launched under the Clinton Administration, and concluded under the Bush Administration. President Bush and Prime Minister Goh signed the U.S.-Singapore FTA on May 6. Ambassador Zoellick and Minister Alvear signed the Singapore one last Friday.

These two agreements share two distinctions. First, they are the first FTAs concluded by the Administration of President Bush, and they are the first agreements concluded by the United States in Asia and in the Southern Hemisphere. Both provide commercial and political benefits for the United States and our new FTA partners.

I would like to highlight two key messages that flow from these agreements. The first is that the Chile and Singapore agreements set examples for comprehensive state-of-the-art FTAs; examples in the sense that they are responsive to the technological advances that we have seen in our economy over the last decade, responsive in the sense that they position us for greater competitiveness in a

world of global sourcing, in a world in which knowledge is the key factor of production.

The second key message is that these agreements are attentive to the full range of U.S. interests: agriculture, industry, services, consumers, small business people, labor, environment, and those who are concerned with due process and good governance.

The U.S.-Singapore FTA will enhance, further, an already strong and thriving commercial relationship with Singapore. It is comprehensive in scope, covers aspects of trade in goods, services investment, government procurement, protection of intellectual property, competition policy, and the relationship between trade, labor, and the environment. This builds upon the basic foundation of NAFTA and the WTO, but it moves beyond them and improves them in a number of ways. It can serve as a foundation for other possible free trade areas in Southeast Asia, as envisaged in President Bush's Enterprise for the Association of Southeast Asian Nations (ASEAN) Initiative.

The Chilean agreement is equally comprehensive and state-of-the-art. As the previous speakers mentioned, it will level the playing field where U.S. providers of goods and services have been at a competitive disadvantage because of the FTAs that Chile already has with a number of trading partners, including the European Union. The National Association of Manufacturers estimates that the lack of a U.S.-Chile FTA causes U.S. companies to lose at least a billion dollars annually in exports to that country. With the FTA we can ensure that we enjoy market access, treatment, and prices and protection at least as good as our competitors.

I would like to say a word about the FTA process. These are the first agreements to be implemented under the TPA procedures set out in the bipartisan Trade Act of 2002. The U.S. Trade Representative has worked—the Administration has worked to ensure that the process of developing U.S. proposals and concluding the FTA has been open and transparent. We have held public briefings. We have consulted at least 240 times with Members of Congress and staff. We have held more than 100 meetings with our public sector advisors, of which there are more than 700. We have sought public comments in the negotiations as they have proceeded. Proposed texts were made available to Members of Congress, staff, and our public sector advisors prior to giving them to our negotiating partners. In December 2002, we made available to Congress and our statutory advisors the draft text. At that time we also put up summaries on our public website. Then, when we finished the legal scrub, of course, we provided the full text of the agreement to the public, posting those on our public website as well.

Both the Singapore and Chile agreements will act as catalysts for our efforts to expand trade in Asia and in the Southern Hemisphere. As I said, they are examples. We will not necessarily use each and every article as a photocopy that will be simply put before a country and have it insert its own name. We have to take into account the different circumstances in other negotiations, but they do set an example of the kind of level of ambition and comprehensiveness and thorough treatment that we would envision in future FTAs.



We look forward to working with the Congress not only in the implementation of these agreements, but also as we move forward with the other negotiations on our agenda—and indeed as we move forward to implement those agreements. Mr. Chairman, thank you very much for allowing me this opportunity to testify. I look forward to responding to the comments and questions of you and the other Members. Thank you.

[The prepared statement of Mr. Allgeier follows:]

**Statement of the Honorable Peter F. Allgeier, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative**

**INTRODUCTION**

Mr. Chairman, Mr. Levin, and Members of the Subcommittee, thank you for the opportunity to testify today and for your continued guidance and support. We appreciate your leadership, Mr. Chairman, and greatly value the close cooperation we have experienced on trade issues with the Congress.

Without the help of the Members of this Subcommittee and excellent staff, I would not have the privilege of testifying here today on the U.S.-Singapore and U.S.-Chile Free Trade Agreements (FTAs). During the past 2 years, we have worked together to reenergize the U.S. trade agenda. Passage of the Trade Act of 2002 (Trade Act), including Trade Promotion Authority (TPA), was a major turning point in that effort, which will lead to economic benefits for all Americans and many others around the world.

The Administration has used TPA to launch major new trade initiatives designed to expand trade and open markets globally, regionally and bilaterally. We initiated new WTO negotiations in Doha and have since presented bold proposals in agriculture, industrial products and services. We have FTA negotiations underway with Australia, Central America (CAFTA), Morocco, and the South African Customs Union (SACU). We have announced our intent to begin negotiations on an FTA with Bahrain early next year. We have also launched the President's Enterprise for ASEAN Initiative and a Middle East trade initiative. We will not stop there.

I welcome this opportunity to review the accomplishments of the FTA and present the Administration's request for favorable consideration of legislation needed to implement the FTA later this year. Attached to my testimony are summaries of the main provisions of each agreement.

The U.S.-Singapore and U.S.-Chile FTAs reflect a bipartisan effort to conclude trade agreements with two important trading partners. Both agreements were launched under the Clinton Administration—with Singapore in November 2000 and with Chile in December 2000—and concluded under the Bush Administration. President Bush and Singaporean Prime Minister Goh signed the U.S.-Singapore FTA on May 6, 2003, at the White House. Ambassador Zoellick and Chilean Foreign Minister Alvear signed the U.S.-Chile FTA on June 6, 2003, at the Vizcaya Mansion in Miami.

**U.S.-SINGAPORE FTA**

The U.S.-Singapore FTA is a solid agreement. It is the first FTA President Bush has signed with any country and our first with an Asian nation. This agreement provides commercial and political benefits for both the United States and Singapore. Strengthening economic ties helps secure strong political interests.

The U.S.-Singapore FTA will enhance further an already strong and thriving commercial relationship. Singapore was our 12th largest trading partner last year. Annual two-way trade of goods and services between our nations exceeded \$40 billion. Expanding this trade will benefit workers, consumers, industry and farmers. Independent analyses found significant economic gains will result from the FTA for the United States and Singapore.

The FTA is comprehensive in scope and covers aspects of trade in goods, services, investment, government procurement, protection of intellectual property, competition policy and the relationship between trade and labor and environment. This FTA builds upon the basic foundation of the NAFTA and WTO agreements and improves upon them in a number of ways.

The U.S.-Singapore FTA can serve as the foundation for other possible FTAs in Southeast Asia. President Bush envisaged this prospect when he announced his Enterprise for ASEAN Initiative (EAI) last year.

The Administration looks forward to working with Congress on the legislation needed to implement this FTA. We hope to be in a position to submit this legislation after further work with the Congress.

### **U.S.-CHILE FTA**

The U.S.-Chile Free Trade Agreement is a state-of-the-art agreement, setting the stage for further trade integration in the hemisphere.

It makes sound economic sense for the United States to have a free trade agreement with Chile. Although Chile was only our 36th largest trading partner in goods in 2002 (with \$2.6 billion in exports and \$3.8 billion in imports), Chile has one of the fastest growing economies in the world. Its sound economic policies are reflected in its investment grade capital market ratings, unique in South America. Over the past 15–20 years, Chile has established a vigorous democracy, a thriving and open economy built on trade, and a free market society. A U.S.-Chile FTA will help Chile continue its impressive record of growth, development and poverty alleviation. It will help spur progress in the Free Trade Area of the Americas, and will send a positive message throughout the world, particularly in the Western Hemisphere, that we will work in partnership with those who are committed to free markets.

Moreover, a U.S.-Chile FTA will help U.S. manufacturers, suppliers, farmers, workers, service providers, consumers and investors achieve a level playing field. Chile already has FTAs with Mexico, Canada, Mercosur, and—since February—the EU. As a result, its trade with these economies is growing while American companies are being disadvantaged. Indeed, the U.S. share of Chilean imports has dropped from 23% in 1998 to 16% in 2002. The National Association of Manufacturers estimates the lack of a U.S.-Chile FTA causes U.S. companies to lose at least \$1 billion in exports annually. The United States needs an FTA with Chile to ensure that we enjoy market access, treatment, prices and protection at least as good as our competitors. Consumers will benefit from lower prices and more choices.

As Ambassador Zoellick said, “The U.S.-Chile FTA is a partnership for growth, a partnership in creating economic opportunity for the people of both countries.” Chile has opened its markets and welcomed competition. As a result, it is one of the freest economies in Latin America.

The result of Chile’s openness has been the best growth record in Latin America, averaging over 6 percent per year through the nineties. This growth enabled Chile to cut its poverty rate in half, from 45 percent in 1987 to 22 percent in 1998. The U.S.-Chile FTA will help Chile sustain this growth and will send a strong signal to the hemisphere that the United States wants to work in partnership to promote mutual economic growth.

### **FTA PROCESS**

The U.S.-Singapore and U.S.-Chile FTAs are the first agreements that will be implemented under the TPA procedures set out in the Trade Act. Even before receiving Congressional guidance under the Trade Act, the process of developing U.S. proposals and concluding the FTA was open and transparent. USTR held public briefings, consulted frequently with Congress and private sector advisors, and sought public comments on the negotiations as they proceeded. Proposed texts were made available to Members of Congress and advisors in advance of their presentation to our negotiating partners. The Congress and our statutory advisors had access to the full drafts of the Singapore and Chile FTAs in December 2002. USTR also posted summaries of the FTAs on our public web site. The full texts of each agreement were posted on the USTR public website as soon as the preliminary legal review of each agreement was completed, which was March 6, 2003, for the agreement with Singapore and April 3, 2003, for the agreement with Chile.

As with other agreements, such as NAFTA and the WTO Agreements, our private sector advisors are required to submit reports to the President, the Congress, and the USTR providing their assessments of the extent to which the FTA achieves the objectives, policies and priorities set out in the Trade Act. For the Singapore and Chile FTAs, only one of the thirty-one advisory committees opposed the agreements.

### **SUPPORTING OUR EFFORTS TO EXPAND TRADE WORLDWIDE**

Last October, President Bush announced the Enterprise for ASEAN Initiative (EAI) in recognition of this important region. The EAI offers the prospect of FTAs with individual ASEAN nations, leading to a network of FTAs in the region. The U.S.-Singapore FTA can serve as the foundation for these other possible FTAs. The ASEAN includes the largest Muslim country in the world—Indonesia—as well as other countries with large Muslim populations, including Malaysia, the Philippines and Brunei.

The President is committed to making progress under the EAI as a framework for deepening our trade and investment relationship with ASEAN. The United States expects a potential FTA partner to be a member of the WTO and to have a Trade and Investment Framework Agreement (TIFA) with the United States. Since announcement of this initiative, the United States has signed TIFAs with Thailand and Brunei. The trade ministers of these countries, as well as Philippines and Indonesia, with which the United States already has TIFAs, have met regularly to address specific bilateral issues and coordinate on regional and multilateral issues.

Likewise, the conclusion and signing of the Chile FTA has provided momentum to other hemispheric and global trade liberalization efforts by breaking ground on new issues and demonstrating what a 21st century trade agreement should be. We continue to move forward with the centerpiece of our hemispheric integration strategy, the Free Trade Area of the Americas (FTAA). We maintain our strong commitment to the negotiation of a broad and robust FTAA by January of 2005.

The U.S.-Chile FTA and the Central American Free Trade Agreement (CAFTA) will serve as building blocks for the FTAA. They will give both sides greater access to each other's markets at an earlier date than is possible under the FTAA. At the same time, these bilateral FTAs strengthen ties and integration, demonstrating the additional benefits available through the FTAA.

### **CONCLUSION**

The U.S.-Singapore and U.S.-Chile FTAs are the most comprehensive and up-to-date trade agreements the United States has concluded. These FTAs command widespread support in the private sector and makes progress in achieving each of the relevant objectives, purposes, policies and priorities that the Congress identified in the Trade Act.

With continued Congressional guidance and support, this Administration is pursuing an ambitious and comprehensive trade policy. We will continue to move forward bilaterally, regionally, and globally. Together, we can show the world the power of free trade to strengthen democracy and promote prosperity.

The Administration looks forward to working with this Subcommittee and the full Congress in enacting the legislation necessary to implement these Agreements. Thank you, Mr. Chairman. I would be pleased to respond to questions.

### **SUMMARY OF THE U.S.-SINGAPORE FTA**

#### **Market Access for Services**

Singapore is one of the world's most sophisticated services economies, and a services hub for the fast-growing Southeast Asian region. The U.S.-Singapore FTA will accord substantial market access to U.S. firms across the entire spectrum of services, subject to very few exceptions. The FTA uses a so-called "negative list" approach, in which all service sectors are liberalized unless a specific reservation is taken in the Agreement. This technique, which we successfully used in the NAFTA, provides for maximum liberalization of services markets.

Singapore will treat U.S. services suppliers as well as its own suppliers or other foreign suppliers, and U.S. services firms will enjoy fair and nondiscriminatory treatment. Such nondiscrimination will be achieved through strong disciplines on both cross-border supply of services (such as those delivered electronically, or through the travel of services professionals across borders) as well as the right to invest and establish a local services presence.

Importantly, services market access is supplemented in this FTA by strong and detailed disciplines on regulatory transparency. U.S. services suppliers have found that market access commitments may be less meaningful without parallel commitments by trading partners to regulatory transparency. Under the FTA, Singaporean services regulators must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

New market access commitments apply across a broad range of sectors, including, but not limited to, banking, insurance, securities and related services; computer and related services; direct selling; telecommunications services; audiovisual services; construction and engineering; tourism; advertising; express delivery; professional services (architects, engineers, accountants, etc.); distribution services, such as wholesaling, retailing and franchising; adult education and training services; environmental services; and energy services. U.S. firms also have the ability to own equity stakes in entities that may be created if Singapore chooses to privatize certain government-owned services.

Some achievements of the FTA in certain services sectors are highlighted below.

**Banking:** The financial services chapter includes core obligations of non-discrimination, most-favored nation treatment, and additional market access obligations. Singapore's current ban on new licenses for full-service banks will be lifted within 18 months, and lifted within three years for "wholesale" banks that serve only large transactions. Licensed full-service banks will be able to offer all their services in Singapore at up to 30 locations in the first year that the agreement is in effect, and at an unlimited number of locations within two years. Locally incorporated subsidiaries of U.S. banks can apply for access to the local Automated Teller Machine (ATM) network within two-and-a-half years, and branches of U.S. banks get access to the ATM network in 4 years.

**Insurance:** Under the FTA, U.S. insurance firms will be able to establish subsidiaries, branches or joint ventures. Singapore is expanding the cross-border insurance services it allows, and U.S. firms will be able to sell marine, aviation and transport (MAT) insurance, reinsurance, to provide insurance brokerage of reinsurance and MAT insurance, and to provide insurance auxiliary services. A new principle of expedited availability of insurance services in the FTA means that prior regulatory product approval will not be required for all insurance products other than life insurance, Central Provident Fund related products, and investment-linked products sold to the business community. Expedited procedures will be available in other cases when prior product approval is necessary. The FTA specifies that U.S. financial institutions may offer financial services to citizens participating in Singapore's privatized social security system under more liberal requirements.

**Securities and Related Financial Services:** The FTA specifies that U.S. firms may provide asset/portfolio management and securities services in Singapore through the establishment of a local office, or by acquisition of local firms. In addition, U.S. firms may supply pension services under Singapore's privatized social security system, with liberalized requirements regarding the number of portfolio managers that must be located in Singapore. And U.S.-based firms may sell portfolio management services via a related institution in Singapore. Under the FTA, Singapore will treat U.S. firms the same as local firms for the cross-border supply of financial information, advisory and data processing services.

**Express Delivery Services:** The FTA contains important provisions relating to express delivery services. It provides for liberalization of express delivery services and other related services (that are part of an integrated express delivery system) that will allow a more efficient and expedited express delivery business in Singapore. Singapore also commits that it will not allow its postal service to cross-subsidize express letters in an anti-competitive manner with revenues from its monopoly services.

**Professional Services:** The FTA specifies that Singapore will ease restrictions on U.S. firms creating joint law ventures to practice in Singapore, and will recognize degrees earned from certain U.S. law schools for admission to the Singapore bar. Singapore will reduce onerous requirements on the make-up of boards of directors for architectural and engineering firms. And capital ownership requirements for land surveying services will be eliminated. In addition, the FTA liberalizes the requirements for registration and certification of patent agents. Provisions of the FTA also call for cooperation in developing standards and criteria for licensing and certification of other professional services providers.

**Telecommunications:** The FTA contains a full range of market access commitments on telecommunications services, consistent with the regulatory regimes of the U.S. and Singapore. For example, users of the public telecommunications network are guaranteed reasonable and nondiscriminatory access to the network. This prevents local firms from having preferential or "first right" of access to telecommunications networks. The FTA also provides U.S. phone companies with the right to interconnect with networks in Singapore in a timely fashion, on terms, conditions, and cost-oriented rates that are transparent and reasonable. And the FTA grants U.S. firms seeking to build a physical network in Singapore nondiscriminatory access to buildings that contain telephone switches and submarine cable heads. U.S. firms will be able to lease lines on nondiscriminatory terms and to re-sell telecom services of Singaporean suppliers to build a customer base. Importantly, the FTA includes transparency requirements for the rulemaking procedures of Singapore's telecom regulatory authority, and requires publication of inter-connections agreements and service rates. Singapore commits that when competition emerges in a telecom sector, that area will be deregulated. The agreement also specifies that companies, not governments, will make technology choices, particularly for mobile wireless services, thus allowing firms to compete on the basis of technology and innovation, not on government-mandated standards.

### **Trade in Goods and Agriculture: Tariffs Eliminated**

U.S. tariffs on 92% of Singapore's exports of goods will be eliminated immediately upon entry into force of the Agreement, with remaining tariffs phased out over 4–10 years. Singapore guarantees zero tariffs immediately on all U.S. products.

Textiles and apparel will be duty-free immediately if they meet the Agreement's "yarn-forward" rule of origin, which will promote new opportunities for U.S. and Singaporean fiber, yarn, fabric and apparel manufacturing industries. A limited yearly amount of textiles and apparel containing non-U.S. or non-Singaporean yarns, fibers or fabrics may also qualify for duty-free treatment.

Extensive monitoring and anti-circumvention commitments—such as reporting, licensing, and unannounced factory checks—will ensure that only Singaporean textiles and apparel receive tariff preferences under the Agreement.

### **Electronic Commerce: Free Trade in the Digital Age**

No previous U.S. free trade agreement contains such cutting-edge provisions on digital trade as the proposed FTA with Singapore. The United States and Singapore agreed to provisions on electronic commerce that reflect the issue's importance in global trade, and the principle of avoiding barriers that impede the use of electronic commerce.

For example, the Agreement establishes explicit guarantees that the principle of nondiscrimination applies to digital products delivered electronically, such as software, music, images, videos, or text. This will provide fair treatment and protection to U.S. firms that deliver such digital products via the Internet. The FTA also establishes a binding prohibition on customs duties charged on digital products delivered electronically. For digital products delivered on hard media (such as a DVD or a CD-ROM), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc.

The FTA also affirms that any commitments made related to services also extend to the electronic delivery of such services, such as financial services delivered over the Internet. This sets a very good precedent for U.S. services liberalization efforts in the WTO and in other FTAs.

### **Investment: Important Protections for U.S. Investors**

The Agreement will improve the bilateral investment climate and provide important protections for investors, and is also consistent with the objectives regarding investor-state dispute settlement in the Trade Act. Given the large stock of U.S. investment in Singapore, the protections of the FTA are extremely important and provide assurances for the future growth of two-way investment. The FTA will provide a secure, predictable legal framework for U.S. investors operating in Singapore. All forms of investment are protected under the Agreement. The Agreement guarantees U.S. investors treatment no less favorable than Singaporean investors or any other foreign investor, except in certain sectors that are specifically exempted. This so-called "negative list" approach is the most comprehensive way to protect the interests of U.S. investors in Singapore. Among the rights afforded to U.S. investors under the Agreement are the right to make international transfers related to an investment, protections related to expropriation and due process that are consistent with U.S. law, and freedom from certain performance-related restrictions and requirements. The investor protections are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to arbitral panels and arbitral hearings will be open to the public, and interested parties will have the opportunity to submit their views.

### **Intellectual Property Rights (IPR): Setting New High Standards**

The U.S.-Singapore FTA provides for a very high level of IPR protection, including state-of-the-art protections for trademarks and digital copyrights, as well as expanded protection for patents and undisclosed information. These are supported by tough penalties for piracy and counterfeiting, including procedures for seizure and destruction of counterfeit products, the equipment used to produce counterfeit products, and the establishment of statutory and actual damages for violations. Singapore will accede to international Internet treaties, extend the term of protection for copyrighted works, and maintain criminal penalties for circumvention of technology protection measures and for trade in counterfeit goods.

The rising global level of trade in counterfeit goods calls for strong provisions to combat such illegal trade. The FTA gives effect to the trademark law treaty and the joint recommendation on protection of well-known marks, ensuring that all trademarks can be registered in Singapore and that licensees will no longer have to reg-

ister their trademark licenses to assert their rights in a trademark. More specific information on the Agreement's IPR provisions is below.

**Trademarks:** The FTA ensures government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names. It applies the important principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase or geographical place-name. Furthermore, the FTA streamlines the trademark filing process by allowing applicants to use their own national patent/trademark offices for filing trademark applications.

**Copyrights:** The FTA contains provisions designed to ensure that only authors and other copyright owners have the right to make their works available online. Copyright owners maintain rights to temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread unauthorized sharing via the Internet. The FTA provides that copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. And strong anti-circumvention provisions will help to limit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.

The FTA requires that governments only use legitimate computer software, thus setting a positive example for private users. Singapore agrees to prohibit the production of optical discs (CDs, DVDs or software) without a source identification code, unless the copyright holder authorizes (in writing) such production. And the agreement provides for protection for encrypted program-carrying satellite signals as well as the programming, thus preventing piracy of satellite television programming. The FTA provides for limited liability for Internet Service Providers (ISPs), reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

**Patents and Undisclosed Information:** Under the provisions of the FTA, a patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The grounds for revoking a patent in Singapore are limited to the same grounds required to originally refuse a patent, thus protecting against arbitrary revocation. The FTA provides new protections for patents covering biotech plants and animals, and it protects against imports of pharmaceutical products without patent-holder's consent by allowing lawsuits when contracts are breached. Test data and other information submitted to a government for the purpose of product approval will be protected against disclosure or unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Finally, the FTA contains provisions designed to ensure that government marketing-approval agencies will not grant approval to products that infringe patents.

**IPR Enforcement:** Singapore has agreed to establish criminal penalties for companies that make pirated copies from legitimate products, and the Singaporean government guarantees in the FTA that it has authority to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. Under the FTA, IPR laws will be enforced against traded goods, including transshipments, to deter violators from using U.S. or Singaporean ports or free-trade zones to traffic in pirated products. Enforcement officials may act on their own authority in border and criminal IPR cases without waiting for the filing of a formal complaint, thus providing more effective enforcement.

The agreement mandates both statutory and actual damages under Singaporean law for IPR violations. This serves as a deterrent against piracy, and provides that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.

#### **Competition Policy: Protection Against Anticompetitive Business Conduct, Designated Monopolies and Government Enterprises**

The FTA contains provisions to protect U.S. firms against possible anti-competitive behavior. Singapore commits to enact laws proscribing anti-competitive conduct and to create a competition authority commission by January 2005.

Especially important in the case of Singapore is the commitment that Government-Linked-Corporations (GLC's) will operate on a commercial and nondiscriminatory basis. As GLC's account for a significant percentage of Singapore's economic activity, it was important for the U.S. to secure this nondiscrimination commitment, and to back it up through dispute settlement provisions. Singapore also agrees to

provide annual information on government enterprises with substantial revenues or assets.

#### **Government Procurement: Strong Disciplines**

Both Singapore and the United States are members of the WTO Agreement on Government Procurement, but the U.S.-Singapore FTA goes beyond existing WTO obligations. For example, the FTA lowers the monetary thresholds for coverage under government procurement commitments, thereby increasing the number of contracts on which U.S. firms may bid in a manner that is covered by transparent procurement disciplines. In addition, under the FTA Singapore broadens its commitments to nondiscrimination in government services procurement and reinforces its WTO commitments to strong and transparent disciplines on procurement procedures.

As in the services and investment provisions of the Agreement, the government procurement chapter uses a "negative list" approach in which U.S. firms gain non-discriminatory access unless a sector is specifically excluded in the Agreement.

#### **Customs Procedures and Rules of Origin: Ground-Breaking Provisions**

The U.S.-Singapore FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be applied. Specifically, the Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. The Agreement also seeks to facilitate the clearance of express delivery shipments through customs.

Under the FTA, both parties agree to share information to combat illegal transshipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments. Strong but simple rules of origin will ensure that only U.S. and Singaporean goods benefit from the Agreement.

#### **Temporary Entry of Personnel**

The Agreement contains provisions for the temporary entry of business visitors, including intra-company transferees and professionals. The Administration believes that the temporary entry provisions strike a careful balance between the needs of the U.S. service industry to provide competitive services while preserving the right of Congress to legislate on immigration policy. Under these provisions, a professional visa category would be established.

#### **Environmental Provisions: Cooperation to Protect the Environment**

The FTA fully meets the environmental objectives set out by Congress in TPA. Significantly, environmental obligations are part of the core text of the trade agreement. Both parties commit to ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. The Agreement's text makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment. A related agreement on environmental cooperation will enhance demand for environmental goods and services.

Reflecting the bipartisan compromise struck in the Trade Act, the FTA requires that parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

#### **Labor Provisions: Promotion of Worker Rights**

Significantly, labor obligations are part of the core text of the trade agreement. Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles. The Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the Agreement requires that parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

#### **Dispute Settlement: Innovative New Tools**

All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement. The proce-

dures for dispute panel procedures set new and higher standards of openness and transparency, reflecting the guidance from the Congress in the Trade Act. For example, the Agreement envisions that dispute settlement proceedings will be open to the public, that legal submissions by parties to a dispute will be released to the public, and that interested third parties will have the ability to submit their views to dispute settlement panels.

Dispute settlement procedures in the FTA promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The FTA dispute settlement procedures also provide for “equivalent” remedies for commercial and labor/environmental disputes. The FTA does this through an innovative new enforcement mechanism that involves the use of monetary assessments to enforce commercial, labor, and environmental obligations of the trade agreement. Suspension of preferential tariff benefits under the Agreement is also available for all disputes, but the mechanism is designed in all cases to seek remedies that will enhance compliance with the obligations of the Agreement, rather than restricting trade and harming “innocent bystanders.”

#### **SUMMARY OF THE U.S.-CHILE FTA**

##### **Market Access for Goods**

More than 87% of U.S.-Chilean bilateral trade in consumer and industrial products would become duty-free immediately upon entry into force of the Agreement, with most remaining tariffs eliminated within 4 years. Key U.S. export sectors would gain immediate duty-free access to Chile, such as agricultural and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. Chile’s “luxury tax” on automobiles will be phased out over 4 years. In the meantime, the number of vehicles to which this tax applies will be sharply reduced as soon as the Agreement takes effect.

Textiles and apparel will be duty-free immediately if they meet the Agreement’s rule of origin, promoting new opportunities for U.S. and Chilean fiber, yarn, fabric and apparel manufacturing industries. A limited yearly amount of textiles and apparel containing non-U.S. or non-Chilean yarns, fibers or fabrics may also qualify for duty-free treatment.

Our key concern was to level the playing field to ensure that U.S. access to Chile would be as good as that of the EU or Canada, both of which have FTAs with Chile. Immediately following the ratification of the EU-Chile FTA, the EU saw a 27% increase in trade with Chile. Through the U.S.-Chile agreement we ensure that U.S. firms will not be left behind.

##### **Expanded Markets for U.S. Farmers and Ranchers**

More than three-quarters of U.S. farm goods will enter Chile duty-free within 4 years, and all duties on U.S. products will be phased out over 12 years. Key U.S. farm products will benefit from improved market access, including pork and pork products, beef and beef products, soybeans and soybean meal, durum wheat, feed grains, potatoes, and processed food products such as pasta, distilled spirits, and breakfast cereals. Tariffs on U.S. and Chilean wines will first be equalized at low U.S. rates and then eliminated.

U.S. farmers will have access to Chile that is as good as or better than the European Union or Canada, both of which already have FTAs with Chile. Chilean price bands, under which import duties on the same product may vary according to price level, will be phased out. During the phase out, producers of these products will be treated as good as or better than their competitors with other countries. Elimination of price bands was not part of the EU or Canada FTAs with Chile. The Agreement eliminates the use of export subsidies on U.S.-Chilean farm trade, but preserves the right to respond if third countries use export subsidies to displace U.S. products in the Chilean market. An agricultural safeguard provision will help protect U.S. farmers and ranchers from sudden surges in imports from Chile.

Both parties to the Agreement renew their commitment to continue the work on resolving important sanitary and phytosanitary issues, such as meat and dairy inspection and meat grading, that are inhibiting access to consumers in both markets.

##### **Access to a Fast-Growing Chilean Services Market**

The commitments of the Agreement in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to invest and establish a local services presence.

Traditional market access to services is supplemented by strong and detailed disciplines on regulatory transparency. Regulatory authorities must use open and



transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

Chile will accord substantial market access across its entire services regime, subject to very few exceptions, a so-called “negative list” approach. This establishes market access commitments across a wide range of sectors of interest to the United States, including but not limited to: Computer and related services; telecommunications services; audiovisual services; construction and engineering; tourism; advertising; express delivery; professional services (architects, engineers, accountants, etc.); distribution services (wholesaling, retailing and franchising); adult education and training services; and environmental services. The express delivery commitment includes an important and expansive definition of the integrated nature of express services, and affirms existing competitive opportunities.

Some of the key services commitments are spelled out in more detail below:

**Financial Services:** This chapter includes core obligations of nondiscrimination, most-favored nation treatment, and additional market access obligations. U.S. insurance firms would gain full rights to establish subsidiaries or joint ventures for all insurance sectors (life, nonlife, reinsurance, brokerage) with limited exceptions. Chile has committed to phase in insurance branching rights. Chile further has committed to modify its legislation to allow cross-border supply of key insurance sectors such as marine, aviation and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance, and has confirmed existing rights for reinsurance. A new principle of expedited availability of insurance services means that the parties recognize the importance of developing and maintaining regulatory procedures to expedite the offering of insurance services by licensed suppliers.

U.S. banks and securities firms may establish branches and subsidiaries and may invest in local firms without restriction, except in very limited circumstances, and U.S. financial institutions may offer financial services to citizens participating in Chile’s highly successful privatized voluntary savings plans. U.S. firms also gain some increased ability to offer such products through Chile’s mandatory social security system. Chile also will allow U.S.-based firms to offer services cross-border to Chileans in areas such as financial information and data processing, and financial advisory services with a limited exception. Chilean mutual funds may use foreign-based portfolio managers.

**Telecommunications:** Under the Agreement, users of the public telecommunications network are guaranteed reasonable and nondiscriminatory access to the network. This prevents local firms from having preferential or “first right” of access to telecommunications networks. The FTA also provides U.S. phone companies with the right to interconnect with networks in Chile at nondiscriminatory, cost-based rates. U.S. firms seeking to build a physical network in Chile are also granted nondiscriminatory access to facilities, such as telephone switches and submarine cable landing stations. And U.S. firms will be able to lease lines on Chilean telecom networks on nondiscriminatory terms, and to re-sell telecom services of Chilean suppliers to build a customer base.

#### **Electronic Commerce: Free Trade in the Digital Age**

The Electronic Commerce text in the FTA identifies Chile as a leader in Latin America for the further development of digital trade, as both countries agreed to provisions on electronic commerce that reflect the issue’s importance in global trade. In the FTA, Chile and the United States committed to nondiscriminatory treatment of digital products, agreed not to impose customs duties on such products, and affirmed that commitments made related to services also extend to the electronic delivery of such services. For digital products delivered on hard media (e.g., a DVD or CD), customs duties will be based on the value of the media (e.g., the disc), not on the value of the movie, music or software contained on the disc. Finally, both countries agreed to cooperate in numerous policy areas related to electronic commerce, including on the maintenance of cross-border flows of information.

#### **Investment: Important Protections for U.S. Investors**

The Agreement will establish a secure, predictable legal framework for U.S. investors operating in Chile, and is consistent with the objectives regarding investor-state dispute settlement contained in the Trade Act of 2002. All forms of U.S. investment in Chile are protected under the Agreement, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors enjoy in almost all circumstances the right to establish, acquire, and operate investments in Chile on an equal footing with Chilean investors, and with investors of other countries. The

Agreement prohibits and removes certain restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs.

Pursuant to U.S. Trade Promotion Authority, the Agreement draws from U.S. legal principles and practices, to provide U.S. investors a basic set of substantive protections that Chilean investors currently enjoy under the U.S. legal system. Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive a fair market value for property in the event of expropriation. These investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

#### **Intellectual Property Rights (IPR): Expanded Protections and Enforcement**

Protection of copyrights, patents, trademarks, and undisclosed trade information in the U.S.-Chile FTA is state-of-the-art, with protections that go beyond previous U.S. free-trade agreements. Enforcement of intellectual property rights is also enhanced under the Agreement. Some specific aspects of the Agreement's protections for IPR are listed below.

**Trademarks:** The Agreement contains language to ensure that there is government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent "cyber-squatting" of trademarked domain names. The trademark section of the Agreement also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products. This means that the first to file for a trademark is granted the first right to use that name, phrase, or geographical place-name.

**Copyrights:** The Agreement's copyright language will ensure that only authors and other copyright owners have the right to make their works available online. Copyright owners maintain all rights to even temporary copies of their works on computers, which is important in protecting music, videos, software, and text from widespread unauthorized sharing via the Internet. Under the Agreement, copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. Strong anti-circumvention provisions prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet. The FTA also provides that governments will only use legitimate computer software, thus setting a positive example for private users.

**Patents and Trade Information:** The Agreement provides that a patent term can be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The FTA specifies that grounds for revoking a patent are limited to the same grounds required to originally refuse a patent, which helps to protect against arbitrary revocation. And test data and other information submitted to a government for the purpose of product approval will be protected against disclosure or unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Finally, the IPR provisions ensure that government marketing-approval agencies will not grant approval to products that infringe patents.

**IPR Enforcement:** The FTA contains commitments that party governments will criminalize end user piracy, thus providing a strong deterrence against piracy and counterfeiting. The Chilean government guarantees that it has authority to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. The Agreement specifies that IPR laws will be enforced against goods-in-transit, to deter violators from using U.S. or Chilean ports or free-trade zones to traffic in pirated products. Enforcement officials may act on their own authority in border and criminal IPR cases without waiting for the filing of a formal complaint, thus providing more effective enforcement. Finally, the Agreement mandates both statutory and actual damages under Chilean law for IPR violations. This will serve as a deterrent against piracy, and provide that monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined.

#### **Competition Policy: Protections Against Monopolistic Behavior**

The U.S.-Chile FTA commits Chile to maintain competition laws that prohibit anti-competitive business conduct, and a competition agency to enforce those laws. The Chilean laws already promote economic efficiency and consumer welfare, making clear the appropriate objective of competition laws.

The Agreement also requires that Chile control state enterprises and officially designated monopolies so that such firms do not abuse their official status to harm the interests of U.S. companies or discriminate in the sale of goods or services.

#### **Government Procurement: Setting a Precedent for the Hemisphere**

The FTA requires that covered Chilean ministries, as well as regional and municipal governments, not discriminate against U.S. firms, or in favor of Chilean firms, when making government purchases in excess of agreed monetary thresholds. It furthermore imposes strong and transparent disciplines on government procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures.

The FTA covers the purchases of most Chilean central government agencies, and covers 13 regional governments, 10 ports and all airports that are property of the state or dependents of the Dirección de Aeronáutica Civil, and more than 350 municipalities in Chile.

Importantly, the FTA ensures that bribery in government procurement is specified as a criminal offense under Chilean and U.S. laws. This furthers the anti-corruption goals set out by hemispheric leaders at the Summit of the Americas in Quebec City in 2001.

#### **Ground-Breaking Customs Procedures**

The U.S.-Chile FTA is one of the first U.S. trade agreements with specific, concrete obligations on how customs procedures are to be applied. The Agreement requires transparency and efficiency in customs administration, with commitments on publishing laws and regulations on the Internet, and ensuring procedural certainty and fairness. Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains specific language designed to facilitate the clearance through customs of express delivery shipments.

Strong but simple rules of origin will ensure that only U.S. and Chilean goods benefit from the Agreement. The rules are specific to individual products, but are designed to be easier to administer than NAFTA rules of origin.

#### **Temporary Entry of Personnel**

The Agreement contains provisions for the temporary entry of business visitors, including intra-company transferees and professionals. The Administration believes that the temporary entry provisions strike a careful balance between the needs of the U.S. service industry to provide competitive services while preserving the right of Congress to legislate on immigration policy. Under these provisions, a professional visa category would be established.

#### **Environmental Provisions: Cooperation to Protect the Environment**

The FTA fully meets the environmental objectives set out by Congress in the Trade Act of 2002. Significantly, environmental obligations are part of the core text of the Trade Agreement. Both parties commit to ensure that their domestic environmental laws provide for high levels of environmental protection and shall strive to continue to improve such laws. The Agreement's text makes clear that it is inappropriate to weaken or reduce domestic environmental protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the FTA requires that parties shall effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

In addition, the Agreement contains an annex identifying a number of important cooperative projects that will promote environmental protection. Projects include:

- Building capacity for wildlife protection and resource management in Latin America through collaboration with wildlife managers, universities, and local communities.
- A project to develop and implement effective alternatives to methyl bromide, a chemical that Chile and the United States have committed to phase out under international environmental agreements.
- Development of a Pollutant Release and Transfer Register (PRTR) in Chile, similar to the successful Toxic Release Inventory in the United States. The PRTR is a publicly available database of chemicals that have been released by industrial facilities into the environment.

**Labor Provisions: Promotion of Worker Rights**

Significantly, labor obligations are part of the core text of the Trade Agreement. Both parties reaffirm their obligations as members of the International Labor Organization (ILO), and shall strive to ensure that their domestic laws provide for labor standards that are consistent with internationally recognized labor principles. The Agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.

Reflecting the bipartisan compromise struck in the Trade Act, the Agreement requires that Parties shall effectively enforce their own domestic labor laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

The Agreement also contains a cooperative labor mechanism to promote respect for the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Cooperative activities may include:

- Discussions of legislation, practice, and implementation of the core elements of the ILO Declaration on Fundamental Principles and Rights at Work.
- Improving systems for the administration and enforcement of labor laws.

**Dispute Settlement: Innovative New Tools**

All core obligations of the Agreement, including labor and environmental provisions, are subject to the dispute settlement provisions of the Agreement. The procedures for dispute panel procedures set new and higher standards of openness and transparency, reflecting the guidance from Congress in the Trade Act. For example, the Agreement provides that dispute settlement proceedings will be open to the public, that legal submissions by parties to a dispute will be released to the public, and that interested third parties will have an opportunity to submit their views to dispute settlement panels.

Dispute settlement procedures in the FTA promote compliance through consultation and trade-enhancing remedies, rather than relying solely on trade sanctions. The FTA dispute settlement procedures also provide for "equivalent" remedies for commercial and labor/environmental disputes. The FTA achieves this through an innovative new enforcement mechanism that involves the use of monetary assessments to enforce commercial, labor, and environmental obligations of the Trade Agreement. Suspension of preferential tariff benefits under the Agreement is also available for all disputes, but the mechanism is designed in all cases to seek remedies that will enhance compliance with the obligations of the Agreement, rather than restricting trade and harming "innocent bystanders."

Chairman CRANE. No, thank you. We appreciate you being here, Mr. Allgeier. I have heard many complaints from businesses that they have been placed at an unfair disadvantage vis-à-vis their foreign competitors located in countries with which Chile already has FTAs. Will this agreement immediately put our exporters on a level playing field with their international competitors?

Mr. ALLGEIER. Yes, sir, it will. First of all, all the agriculture will immediately be on a par or better—our access, that is, in agriculture will be on par or better with foreign competitors. On the industrial side, all those areas in which an industry or a sector has identified itself as being at a disadvantage will be in the immediate basket as well. Similarly for services. All of those new obligations will come into force upon entry of the agreement.

Chairman CRANE. I am still hearing that Singapore's implementation of its commitment on chewing gum has not yet been resolved. Is the U.S. Trade Representative continuing to support Wrigley in its effort to conclude with Singapore an acceptable means of implementation that will allow some chewing gum to be sold in Singapore without a prescription?

Mr. ALLGEIER. Yes, Mr. Chairman. We are continuing to work with Wrigley and with the Singaporean authorities to provide the

maximum possible flexibility for Wrigley and other gum manufacturers to sell their product in Singapore. In that regard, I think you are aware that Minister Yeo of Singapore actually met with people from Wrigley when he was here for the signing ceremony, and I think that is a positive sign from Singapore that they are prepared to work with us on this issue as well.

Chairman CRANE. Very good. Thank you so much. Mr. Levin.

Mr. LEVIN. Welcome. You have laid out some of the clear advantages and advances in the agreements, and I think it is clear there are some. Let me, therefore, focus on some of the issues.

I want to talk about ISI, but let me first discuss briefly, leaving time for ISI, the core labor standards and environmental issues. Let's say that the Chilean government saw a change in its majority. This is theoretical. There was a return to power of those who had written the labor laws some decades ago, and as a result there was a change so that there were clear restrictions on the ability of employees to organize and bargain collectively in violation of ILO core labor standards. What would be the remedy that could be pursued by the United States if there were that change of circumstances?

Mr. ALLGEIER. Well, if—

Mr. LEVIN. They were enforcing those laws as were written. Under this agreement, what would be our available remedy?

Mr. ALLGEIER. Okay. We would certainly look at the totality of the labor provisions, which means that countries are not to derogate from their labor laws or waive them in order to gain trade or investment advantage. As you said, they are to enforce their laws, and the implication of your question is they change their laws and then they enforce lax laws.

Mr. LEVIN. Let's say they do that. What is the available remedy under this agreement?

Mr. ALLGEIER. Under this agreement I think that we would certainly look to argue that there had been—that they had not lived up to the spirit of the agreement in the sense that they are to strive for high levels of labor protection.

Mr. LEVIN. What would be our remedy?

Mr. ALLGEIER. We would go through the dispute settlement mechanism.

Mr. LEVIN. What is subject to the dispute—the strive to achieve core labor standards isn't subject to the dispute settlement system, right?

Mr. ALLGEIER. Okay. Right.

Mr. LEVIN. So, what would be—if they were enforcing their own laws, and they were, in our judgment, in clear violation of core ILO labor standards, the five standards, what would be the available remedy?

Mr. ALLGEIER. I think that one would look at what the expectations are at the time one signs an agreement. We have, in respect to any part of a trade agreement, that when one looks at implementing the laws of Chile, one is looking at it from the perspective of the laws that are in effect now. Now—

Mr. LEVIN. I want to ask you about ISI. The answer is that the way the agreement is written, this strive to implement core labor standards is not subject to the dispute settlement system, right?

Mr. ALLGEIER. That is correct.

Mr. LEVIN. Therefore, if they were enforcing their own laws, though they—and the nonderogation provision is not subject to the dispute settlement system either, right?

Mr. ALLGEIER. That is correct.

Mr. LEVIN. All right. So, therefore, if they revert, we have no utilization available under the dispute settlement system.

Mr. ALLGEIER. Well, in all trade agreements there is this notion of what are reasonable expectations.

Mr. LEVIN. I know, but—

Mr. ALLGEIER. So, that—

Mr. LEVIN. It is what is written into the agreement. So, the answer is that there isn't an available remedy. I think you should say that, and I don't think—I am not saying it is likely that Chile would revert. I would hope not. Clearly, it shows that to utilize that model, that standard, that example, as you say, for countries that do not have the core labor standards in their agreement, in their laws, and don't practice them, it is a very unfortunate and, I think, illogical and contradictory utilization. That is what has been positioned in the CAFTA negotiation.

So, I want to ask you about ISI. Right now, machine tool components are subject to—machine tools have a local content provision. There is a lot of worry about the ISI provision. It is available for any country. So, let's say that Singapore, in order to put together their machine tools, bring in components from, say, Japan or China. Right now the way the agreement is written, those components could count as Singapore value-added or Singapore content in terms of meeting the local content requirement, right?

Mr. ALLGEIER. If we are talking about ISI, there is a specific list of information technology (IT) products.

Mr. LEVIN. Machine tools are listed under 8466. Machine tools are included. So, I am asking you, let's say the components come from China or Japan, and the imports—those exports have been increasing components of machine tools. Singapore could count those components essentially as Singapore content to meet the—I think it is the 35 percent content requirements, right?

Mr. ALLGEIER. Not if they are coming from Japan or some country other than those processing zones in Indonesia that are part of the ISI.

Mr. LEVIN. Ambassador, I think that is not correct. The red light is on. I don't think that is correct, and what I would like you to do—and I am not suggesting that this is a flaw that necessarily militates one way or another in terms of final judgment, but it surely sets a dangerous precedent. Also, it is of concern, and we need a straight answer from you because it is possible in the implementation legislation to take care of this problem. I think I asked you this point blank. If a component for a machine tool under 8466 comes into Singapore incorporated, does that count as Singapore content in order for them to ship under the reduced tariffs to the United States? I want a straight yes or no.

Mr. ALLGEIER. I will get you the correct answer to that, the accurate answer to that.

Mr. LEVIN. Thank you.

[The information follows:]

February 9, 2004

The Honorable Sander M. Levin  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Levin,

No. The ISI provides that a product listed in Annex 3B of the Singapore FTA, already MFN duty-free, is an 'originating good' for purposes of FTA tariff preference, but only if that product itself is shipped from one FTA party to the other. Thus, if such a product is shipped to Singapore from a non-FTA party (e.g., Japan or China) and used in Singapore as an input for a downstream product, that ISI good could not count as FTA-originating toward a required regional value content criterion that may be applicable to a final product assembled in Singapore.

The only way that an ISI product could possibly be treated as an originating input for purposes of a regional value content applicable to a downstream product would be if the ISI product from a non-FTA party were first shipped to the United States, then held without undergoing any processing that would affect its treatment under Chapter 3 of the FTA, then shipped to Singapore, and then manufactured in Singapore into a non-ISI good without undergoing any intermediate production steps that would affect treatment of the product under Chapter 3. It is difficult to conceive that this type of transaction would be economically rational for any of the products on the ISI list or any of the products to which a regional value content requirement may be applicable.

Sincerely,

Peter F. Allgeier

Chairman CRANE. The time of the gentleman has expired. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. Ambassador Allgeier, I, first of all, want to thank you for everything that your office has done to cooperate with us, and specifically with my office, on some of our concerns with these two agreements. I would like to focus, for the most part of my questioning, on the Singapore agreement.

As you know, I represent a manufacturing district. Among the sectors that have been particularly hard hit in my district are the domestic tool and die industry. I wonder, have you analyzed the potential impact of this agreement on the tool and die industry? I wonder specifically, would you anticipate that there would be a significant increase in competition to small U.S. manufacturers resulting from the Singapore FTA?

Mr. ALLGEIER. We would not expect a significant negative impact. However, I want to assure you that we would work—we will continue to work closely with that industry. We know that they have some concerns about possible trans-shipment, and we certainly do not want other countries beyond Singapore to benefit from this agreement.

Mr. ENGLISH. In other words, you would characterize the domestic producers in Singapore of these sorts of products as not particularly export-oriented. So, the principal challenge would be with trans-shipment?

Mr. ALLGEIER. Our principal concern would be with trans-shipment, and that is something that we would—we have highlighted in terms of the customs cooperation with Singapore, and particularly the emphasis on detecting and protecting against trans-shipment from others who are not part of this agreement.

Mr. ENGLISH. Could you please describe the provisions in the FTA which protect U.S. manufacturers, for example, from products from China entering the United States at tariff rates set forth in the Singapore FTA?

Mr. ALLGEIER. Well, the basic protection against that is the rule of origin, that there does have to be a transformation within Singapore itself. It cannot simply serve as a conduit for products from other areas. Frankly, given the region in which Singapore is located and the very competitive industry, not just in tool and die and others like that, but across the board, we have paid particular attention to this question of protecting against or avoiding transshipment both in things like tool and die, but also in areas such as textiles and intellectual property areas.

Mr. ENGLISH. Also, could you please indicate if you think a greater level of protection against transshipped products will exist if an FTA with Singapore is approved as opposed to the current relationship and why?

Mr. ALLGEIER. I think that it will improve, primarily because of this enhanced customs cooperation that will be part of this agreement. Also, frankly, the discussions that we had in the course of negotiations I think has heightened all of our attentiveness to this, and particularly the authorities in Singapore. They know that they can't afford to have this agreement turn out to be a conduit for goods from other countries, and they are very conscientious about avoiding that.

Mr. ENGLISH. Moving beyond the trans-shipment point, what manufacturing sectors could anticipate competition from Singapore specifically as a result of this FTA?

Mr. ALLGEIER. Well, to be perfectly honest, our duties at this point are so low that this agreement does not enormously enhance Singapore's access to our market in industrial products.

Mr. ENGLISH. Well, I think that is very useful. Could you apply the same analysis to Chile? Do you anticipate that there are going to be sectors of our manufacturing economy that are going to face increased competition as a result of a Chilean FTA?

Mr. ALLGEIER. I think in the case of Chile it is even less a threat, because Chile, unlike Singapore, is a beneficiary of the generalized system of preferences, and so, for a large array of products, they already get them duty free under that program.

Mr. ENGLISH. Thank you, Ambassador, and thank you, Mr. Chairman, for giving me an opportunity to pose these questions.

Chairman CRANE. Mr. Neal. Is Mr. Neal here?

Mr. LEVIN. No. He will be back.

Chairman CRANE. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman, and, Mr. Ambassador, I want to thank you again for appearing before our Subcommittee. I want to commend the U.S. Trade Representative for the outstanding job he has done in negotiating both the Singapore and Chile FTAs. These agreements will bring down barriers to trade and encourage job creation and economic growth both at home and abroad.

I am especially pleased that the Chile agreement is sensitive to the very real concerns of many of our California agricultural producers, particularly those in the horticultural sector. I hope that



these strong agreements will serve as a model for future trade agreements. Speaking of future trade agreements, Congress has consistently stressed the need for provisions in our trade agreements that provide for the protection and enforcement of American intellectual property rights that are up to date with the latest technological developments.

The Singapore and Chile FTAs achieve this result. However, we have recently seen reports that Brazil is advocating weaker intellectual property rights standards or even none at all with respect to the provisions on intellectual property protection and enforcement as part of the FTAA. It would be very troubling if the Administration accepted such an outcome. I would appreciate your views on this important issue, including whether you might consider such an outcome.

Mr. ALLGEIER. As I said in my presentation, one of the things that we are most proud of about these agreements is that they reflect the real-world situation, and particularly with respect to two things; one, the advancement of technology in our own economy, and the degree to which we are dependent on that, and second, the related one, which is that knowledge is an important factor of production and competitiveness. So, a prime objective of ours is to ensure that Americans exercise those skills and those attributes for their economic welfare. That specifically means very strong protection for intellectual property—very up to date for intellectual property. Wherever we are negotiating bilaterally, regionally or globally, high standards of protection for intellectual property is our primary objective, and we continue to seek that in all our negotiations, including the FTAA.

Mr. HERGER. I thank you very much, Mr. Ambassador. Again, thank you for appearing before us.

Mr. ALLGEIER. Thank you.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Ambassador, I would like to begin by commending you and your colleagues at the Office of the U.S. Trade Representative for the successful negotiations on these important trade agreements with Chile and Singapore. Now that these FTAs are near completion, I would like to hear your thoughts on other potential negotiating partners.

As you may know—and as the U.S. Trade Representative knows—I have long advocated negotiating trade agreements with Taiwan and Colombia, because I believe they would strengthen diplomatic ties and key U.S. interests, as well as provide economic benefits to all three countries. So, now that the Chile and Singapore agreements are nearing completion, let me ask you this: How do you decide where to look next? That is my first question. How do you decide where to look next? Do you see Taiwan and Colombia as negotiating partners of the future?

Mr. ALLGEIER. Okay. Thank you. First of all, of course we do—we don't have an empty dance card with respect to negotiations at the moment just because we have completed Chile and Singapore. We are in the midst of negotiations with the five Central American countries, with Morocco, with Australia, and with the five Members of the South African Customs Union. So, on the so-called bilateral and subregional side, that is our next set of negotiations.

There are a number of countries and economies that have approached us about free trade negotiations, including the two examples that you gave. What we are doing is we are working with those countries that are interested in free trade to promote free trade wherever possible, even short of doing a free trade negotiation at this point. For example, within the WTO, both Taiwan and Colombia are Members of the WTO. We work with them there. We also use bilateral mechanisms such as we have with Colombia or other Andean countries to point them in the direction of the kinds of policies that would be compatible with an FTA with the United States if we get to that point.

In terms of criteria that we use, it is a variety of criteria. We look, certainly, at commercial benefit, and the commercial benefit can be either immediate in dollars-and-cents sort of balance sheet terms, or it can be a benefit in terms of setting a good example in a region or in a particular area that others can emulate. Obviously, we look at the commitment of the other potential partner not just by what they say they are interested in, but their behavior within the WTO or in regional negotiations such as the FTAA, to see if they really are advocating more open trade policies in those forums. We look, obviously, at how it may benefit the reform efforts in those countries, whether those reforms are reformed in privatization of state enterprise, or in social reforms, having to do with protection of environment or labor or transparency in government procurement. Countries that are making reforms, and in which international obligations would help to make those reforms irreversible, also are good candidates. So, it is a variety of criteria.

Mr. RAMSTAD. So, based on your description of the criteria for negotiating partners, is it fair to conclude that either or both Taiwan and Colombia are prospective negotiating partners?

Mr. ALLGEIER. Well, I don't want to speculate on the situation of specific countries here today because that will just generate headlines that there is another country on the list. Let me just say that we are working constructively with all countries that indicate that they want to move to freer trade with the United States. The two examples that you gave are two that we are working with in the WTO and elsewhere.

Mr. RAMSTAD. So, they meet your criteria.

Mr. ALLGEIER. Well, there have been no decisions made on either those countries or any other countries beyond the ones I mentioned.

Mr. RAMSTAD. You just explained your criteria, and then you said and these two countries—I can't remember your exact words, but I think it is a fair restatement to say that these two countries meet those criteria that you outlined.

Mr. ALLGEIER. Well, the criteria are looked at, frankly, by an interagency group, not just by the U.S. Trade Representative. So, I am not in a position today to speak on behalf of the interagency group that there has been a decision that these two countries or any other two have met the criteria at this point.

Mr. RAMSTAD. Well, far be it for me to pin you down, but I just appreciate your explanation. I think it is an important subject matter, and I hope, Mr. Ambassador—and my time has just expired—but I hope that both Taiwan and Colombia are prospective negoti-

ating partners as well as many other countries. Thank you very much for your good work.

Mr. ALLGEIER. We would be very happy to sit with you and to talk in more detail about our relations with these two trading partners and how they stack up in terms of criteria.

Mr. RAMSTAD. I know my colleague on the other side of the aisle here, Mr. Jefferson who was here just briefly—he is a cosponsor of H. Con. Res. 98 expressing the sense of Congress that the United States should launch negotiations on an FTA with Taiwan—I know he would like to be in that meeting as well. We look forward to it. Thank you very much.

Mr. ALLGEIER. Sure.

Chairman CRANE. Thank you. Mr. Tanner.

Mr. TANNER. Mr. Becerra was here first, Mr. Chairman.

Chairman CRANE. Well, I have got you in order of your appearance.

Mr. TANNER. I pass.

Chairman CRANE. Yes. All right. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman, and thank you, Mr. Tanner. Ambassador, good to see you again. Thank you for being with us. Always appreciate your testimony. A couple of questions. I know that there are a lot of accolades that are being expressed with regard to some of the provisions that were reached in the two accords with Chile and Singapore. My understanding is that there has been some concern expressed that the accord with Chile differs with—compared to that one with Singapore—when it comes to the issue of intellectual property, in some degrees. I was wondering if you could tell me why there is a difference in the treatment between the two agreements with regards to intellectual property.

Mr. ALLGEIER. I don't think that there is any fundamental difference in terms of the level of protection or the comprehensiveness of protection. In the intellectual property chapter, as in all the chapters, the situations of individual countries are different, and so for example, certain aspects of the issue need to be emphasized in one agreement rather than another.

For example, in Chile, one of the concerns—the concern with patent treatment is greater than the concern with patent treatment in Singapore. So, therefore, there needed to be more detail in things like patent treatment and enforcement in the Chile agreement than in Singapore. What we did strive to do in these cases is to have the same very high level of intellectual property protection and comprehensiveness.

Mr. BECERRA. Now I understand that the transitional period for implementation under the Chile accord is longer than it is under the Singapore accord. Is that because of what you have just indicated, the circumstances differ by country?

Mr. ALLGEIER. You are just talking specifically with respect to intellectual property?

Mr. BECERRA. Intellectual property, correct.

Mr. ALLGEIER. Yes. You see that also in the other parts of the agreement, in the merchandise trade part.

Mr. BECERRA. So, if you had to venture an estimation here, which accord do you think we would follow in future trade negotiations with other countries when it comes to intellectual property,

the provisions that we found in the Chile accord or the provisions we found in the Singapore accord?

Mr. ALLGEIER. Well, that would depend on the situation of the country that we were negotiating with. For example, if we were negotiating with a country that had a very weak protection or enforcement and copyright, we would emphasize that, but the aim is to get the protection up to the level for everybody.

Mr. BECERRA. So, we have to take the circumstances as they come to us for each country.

Mr. ALLGEIER. Exactly.

Mr. BECERRA. Now you mentioned a little earlier when you were reading your written statement that you thought that the Chile and Singapore agreement set examples for the future course of our trade accords with other countries. With regard to the issues of labor and environment, and specifically here with labor, the agreements with Chile and Singapore speak only to the effective enforcement of domestic laws—existing domestic laws.

Now, if that is to be used as a template into the future, then it doesn't help us take into account the circumstances of the particular country or countries we may be negotiating with. So, the question I would pose to you is Chile and Singapore—we understand both have much better laws in place and much better enforcement of those laws than do other countries. I think every country in Central America would agree with us right now that their enforcement and their existing laws that they have in place do not match what Chile and Singapore have. So, when you say you want to take the Chile and Singapore agreements as models, does that mean we take them as rigid models, or do we have to bend them toward the circumstances of the particular countries we are negotiating with as you did with regard to intellectual properties for Chile and Singapore?

Mr. ALLGEIER. No. I think throughout these agreements, whether it is in access for merchandise, services, intellectual property, or labor and the environment, these agreements are models in the, shall I say, the macro sense; that they set a level of ambition, they set an approach, a direction—

Mr. BECERRA. Would this approach be sufficient for the Central America negotiations?

Mr. ALLGEIER. Well, specifically labor and environment. Let me address that. So, by that I mean these would be examples in the following sense. There are three elements, broad elements, in our approach to labor and environment here. One is, of course, the elements of the—whatever obligations we have in the trade agreement. The other is through the dialog that we have with countries during the negotiations.

Mr. BECERRA. Ambassador, let me stop you on that one point. With regard to the provisions in the agreement, are either the provisions in the Singapore or Chile agreements with regard to labor sufficient for your negotiations with Central America, when you speak directly about a provision dealing with enforcement of existing domestic laws?

Mr. ALLGEIER. Well, that will be part of our ongoing dialog with them, and it depends in part on what changes in their laws they make during the negotiating process.

Mr. BECERRA. Does the U.S. Trade Representative or does the Administration currently believe that the existing laws and enforcement by Central American countries is sufficient to allow them to have similar language to what we have in Chile and Singapore on labor?

Mr. ALLGEIER. We are not finished with our dialog with them, so I can't draw a conclusion until we see what they are prepared to do. If I just mention the last element is the cooperation to increase the institutional capability of these countries to carry out laws and to enforce the labor standards that are in the agreement. So, we do look to the specific circumstances within the broad context of the kinds of agreements that we have negotiated with Chile and Singapore.

Mr. BECERRA. Ambassador, thank you. Mr. Chairman, my time has expired. I thank the Ambassador for being here, and I hope you will consider what we are saying with regard to our concerns about using the agreements as templates, when, in fact, we do have to look at the particular circumstances of the countries; and with regard to labor, since it is treated in a subordinate fashion to other areas of interest, intellectual property and others, that we take a very close look at how we will make sure that we don't subordinate the interests of our working men and women in this country with regard to these trade agreements.

Chairman CRANE. Ms. Dunn.

Mr. ALLGEIER. We are very happy to work with you further as we get a refined appreciation of what the situation is and can be in these countries.

Mr. BECERRA. Thank you, Ambassador. Thank you, Mr. Chairman.

Ms. DUNN. Thank you, Mr. Chairman. Welcome, Ambassador. The Chile and Singapore FTAs include a yarn forward rule of origin for apparel trade, which requires that the yarn and the fabric that are used to make clothing must originate in the FTA zone. I have heard views expressed by U.S. apparel manufacturers and by retailers and also by importers that this rule of origin is too restrictive to generate new trade and may even act to discourage apparel sourcing from these two countries. What is the Administration's position with respect to the yarn forward rule of origin for textile and apparels? Do you believe there is a better way to deal with this issue that provides greater flexibility to our manufacturers and our retailers?

Mr. ALLGEIER. Our position is that we are trying to strike an appropriate balance among the different interests, meaning, obviously, our domestic industry, our retailers, our consumers, and also the interests of the trading partner. We think that the proper balance is the combination of the yarn forward rule of origin, with some provision for tariff preference levels which allow these countries to use fabric from outside either the United States or their countries. That is the best way to get the balance that this—trade practices and licensing also helps the flexibility that the retailers are seeking.

Ms. DUNN. You will pursue this combination.

Mr. ALLGEIER. This is the approach that we have taken in NAFTA, which, of course, has been very successful in this regard,

and the approach that we take in the Chile and Singapore agreements. I would expect we would take some similar approach with respect to Central America.

Ms. DUNN. Great. Thank you. I am also concerned about the enforcement of the intellectual property rights in these agreements. In the most recent special 2003 report, the U.S. Trade Representative listed Chile on the watch list. In fact, the U.S. Trade Representative reported that Chile's laws are not yet fully TRIPS consistent. The U.S. Trade Representative also expressed concerns with Chile's large backlog of pending patent applications.

I have heard from people I represent regarding the lack of enforcement of intellectual property rights in Chile. For example, delays in consideration of intellectual property cases dealing with counterfeiting in the Chilean judicial system have resulted in legal expenses for the legitimate owners, while those who have actually violated intellectual property laws have not been penalized. I understand that in this agreement there are strong intellectual property rights provisions including enforcement—in fact, in both agreements. At the same time, if countries fail to comply or enforce TRIPS, it will be very, very tough for them to also comply or enforce the provisions in these FTAs.

I would like to know what will happen if countries that enter into FTAs with the United States fail to meet their intellectual property rights obligations. Is there anything in the FTAs that will require our trading partners to make changes in their laws and their regulations to ensure compliance and enforcement? What is the U.S. Trade Representative doing to help developing countries improve their intellectual property rights standards?

Mr. ALLGEIER. Okay. First of all, the problems that you cited with respect to Chile and vis-à-vis the TRIPS—and particularly in the patent area and the backlog of patent applications—is a serious problem that we have highlighted, and it needs to be fixed as part of their implementation of the FTAA. If a country does not abide by the obligations, the intellectual property obligations, in an FTA, we have recourse to dispute settlement under that agreement. If it is also a violation, a noncompliance with their WTO obligations, we have recourse to dispute settlement.

In the case of Chile, our judgment is at the point that they are taking this seriously enough that we do not favor taking a dispute settlement case under the WTO. If we do not see prompt compliance with the WTO and full compliance with the FTA, we would then make a decision about dispute settlement in one of those two fora.

With respect to developing countries generally, this is an area in which capacity building and institutional strengthening is very important. Having a well-functioning patent office and copyright system are base obligations, and really essential to attract investment—therefore, we include this as part of our work with these countries.

Ms. DUNN. Thank you, Ambassador. I do have constituents touched by this unfortunate situation, costing them many hundreds and thousands of—sometimes millions of dollars, and so, we will be watching with great interest. Thank you. Thank you, Mr. Chairman.

Chairman CRANE. Thank you. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman. I wanted to follow up on what Ms. Dunn was talking about with regard to the yarn forward rule of origin for the textile and apparel industry. I have filed a bill along with Chairman Crane and Congressman Rangel which would apply provisions to Haiti with regard to the country of origin. Specifically, it would provide that these yarns would not only be eligible coming from the United States, but coming from other countries for which we have FTAs, basically. There is a percentage cap which is very low on their production.

I doubt that you have had an opportunity to review that bill, but, if you would, I would very much appreciate your comments with regard to it. We have got very desperate situations down in Haiti. We are every day finding more and more people trying to escape the life of poverty and come to the United States illegally, and many of them are being returned, and it is a very sad situation. It is one that I think we can go a long way toward helping if we can help create jobs in Haiti. I think the poverty level down there is 80 percent. The unemployment rate is 70 percent, and it is a very desperate situation. Hundreds of thousands of kids living on the streets, the HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome) problem is just horrible, and there just seems to be no hope for these people unless they can escape that island. If you would care to comment, I would welcome your comments.

Mr. ALLGEIER. First of all, we are very aware of the situation in Haiti, and through the work in the FTAA. With respect to the specific legislative proposal that you referred to, I would have to get back to you with a response to that, and I will be happy to do that.

[The information follows:]

*January 30, 2004*

The Honorable E. Clay Shaw, Jr.  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Shaw,

Thank you, Mr. Shaw, for your question and for your interest in the economic and political development of Haiti. As you know, Haiti is an original beneficiary of the U.S. unilateral trade preference program, the Caribbean Basin Initiative (CBI). Under CBI, U.S. imports from Haiti have grown to approximately \$255 million, mainly in apparel. CBI has clearly made a positive contribution to supporting an important economic sector in Haiti. Further, the economies of Haiti and the Dominican Republic are linked, in particular through apparel factories close to the border. We are currently working to bring the Dominican Republic into the recently concluded Central American Free Trade Agreement (CAFTA). Economic growth in the Dominican Republic should have a positive effect on Haiti. We will be working with the Congress to ensure that the integration of the Dominican Republic into the CAFTA takes into account Haiti's current situation.

While the Administration has not yet established a position on the bill you've introduced, which is intended to augment the benefits Haiti currently receives under CBI, we understand Haitian business leaders believe it could spur investment in the apparel sector and create new jobs in the apparel sector in Haiti. You have also made the case that such new benefits could serve as a strong motivator for improved political and economic governance by the Government of Haiti in response to the bill's conditionality in those areas. These are important institutional goals that the

Administration shares with you. USTR is always eager to work with Congress to develop strategies to help this troubled country.

Sincerely,

Peter F. Allgeier

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Mr. SHAW. I appreciate that. One other thing, Mr. Ambassador, that I would like to call to your attention, that I know that you are somewhat familiar with it, is to extend to you my strong recommendation for the Administration to openly support the selection of Miami, Florida, as a permanent home of the FTAA Secretariat. Miami is a center of trade throughout the Americas, and I believe placing the Secretariat on our shores is tremendously important in promoting free trade throughout the Americas.

Also, as anyone knows who has traveled to Miami/Dade County in the last 15 or 20 years, it is a bilingual city. It is one in which we have got great transportation in and out by air, and I think it is also one that I think our foreign visitors would be very comfortable spending time in with the permanent home of the Secretariat situated there. If we continue to go ahead with more than one city vying for that position, I think that would certainly make us less competitive in the market of having the Secretariat permanent home on our shores.

Mr. ALLGEIER. Thank you, Mr. Shaw. Certainly we want to be fair to all cities in the United States. I will simply say that we greatly appreciate the fact that Miami volunteered to serve as the first phase of the administrative Secretariat of the FTAA when we were getting those negotiations started. We are looking forward to a very successful ministerial in November in Miami, and I know that Ambassador Zoellick felt that the signing of the Chile agreement last week in Miami was a very successful event as well. So, we are very appreciative of the hospitality and the effectiveness of the Miami community.

Mr. SHAW. In closing, the Congress, the U.S. House of Representatives, did pass a resolution in the last Congress calling on the Secretary to support Miami's application for the Secretariat. Thank you.

Chairman CRANE. Thank you. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman. First, Mr. Ambassador, on a related topic, I want to thank you for the Office of the U.S. Trade Representative's efforts and persistence in resolving the issue at the Mexican border involving dried beans. As you well know, the holdup of those dried beans is costing farm families tens of millions of dollars, and I want to thank you for your efforts there.

I have some questions regarding the automobile industry. Obviously, as you know, that is a major sector in our economy, representing about 10 percent of U.S. exports—and that is whether we are talking about U.S.-Chile or U.S.-Singapore FTAs, or the many others that are active in discussion. I appreciate your dedication in keeping that industry really at the forefront of some of the topics; but I had a couple of questions.



Does the U.S.-Chile FTAA provide the U.S. automotive industry with a commercially beneficial automotive rule of origin? It is often overlooked due to the industry's complexities and the capital-intensive nature of it, but it is one of the most important elements of any U.S. FTA. I think it is an effective automotive-specific rule of origin. Could you respond, please, sir?

Mr. ALLGEIER. I must say, I am not an expert in each of the rules of origin in the Chile agreement. What I would prefer to do, with your permission, is to get you a detailed answer to that in writing and spell that out that way, if that is okay with you.

[The information follows:]

*January 30, 2004*

The Honorable Dave Camp  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Camp,

With respect to automotive products, we achieved the balance necessary whereby the FTA rule of origin ensures that benefits accrue to the Parties to the agreement while at the same time ensuring that the rule of origin is also trade facilitative.

In general terms, automotive products are subject to a product-specific rule of origin that presents two Regional Value Content (RVC) percentage criteria alternatives, combined with an applicable requisite change-in-tariff classification met through processing or assembling of parts into a final product. Under the agreement, either RVC criterion may be established to show applicability of FTA preferential treatment.

- The first alternative is requirement of 30 percent RVC in what is referred to as the "build-up" formula. The "build-up" formula is a calculation that involves the amount of originating material inputs used on the overall production of the good.
- The second alternative is a 50 percent RVC in what is referred to as the "build-down" formula. This "build-down" formula is a calculation that involves the amount of *non-originating* material inputs used in the overall production of a good.

The availability of alternative formulas to establish application of the tariff preferences, as well as the simplified nature of the formulas and other elements of the Agreement's origin regime, will result in the rule of origin being commercially beneficial for U.S. exporters.

Sincerely,

Peter F. Allgeier

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Mr. CAMP. It is also my understanding that Chile maintains an 85-percent tax on imported motor vehicles. That act is a de facto tariff on U.S.-built motor vehicles. Were you successful in negotiations to eliminate this barrier to free automotive trade with Chile?

Mr. ALLGEIER. My recollection is there is a phaseout of that which works two ways. There is a reduction in the excise tax, and then there is also an increase in the threshold at which that auto tax kicks in so that we are phasing that out, but I will give you the exact details of that phaseout.

Mr. CAMP. I apologize for coming in a little bit late, but I wonder if you could tell me a little bit about the provisions for the protection and enforcement of American intellectual property rights in the agreement, if they are really similar to the kinds of things that

we have seen, particularly in the Trade Act of 2002. Can you discuss that a little bit?

Mr. ALLGEIER. Yes. I think that, actually, the protection of intellectual property rights in both agreements is something that we are especially proud of because we have worked very closely with the whole range of intellectual property rights interests. For example, in the copyright area, the software industry, the entertainment industry—and particularly to deal with those issues that have arisen because of the Internet, and how to provide protection to copyright holders, for example, so that their works are not pirated and then disseminated through the Internet without their permission. So, we have looked very closely at legislation in the United States, the Digital Millennium Copyright Act of 1998 (DMCA) (P.L. 105–304), at the Internet conventions in the World Intellectual Property Organization (WIPO), and we have incorporated all of those in our agreements with Chile and with Singapore.

Mr. CAMP. Thank you very much. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman, for allowing me to participate in this Subcommittee, though I am not on the Subcommittee itself. Mr. Ambassador, I want to begin with—you used the terminology “FTA.” I prefer what the Secretary of Commerce has often called a “fair trade agreement,” and that is the reason why we have a lot of the provisions within the agreement, within the TPA that we passed. I caution you, as you go through these agreements—particularly one that was recently published about Vietnam dealing with certain products—that we actually confirm that they are able to produce the number of products that we are given a quota for, particularly in the area of textiles. Since, if they cannot produce, oftentimes it opens the gate for trans-shipments, and we don’t need a trans-shipment problem.

The rules of origin are very helpful. They were part of the TPA that was negotiated with those of us who represent textile territories or textile States. We appreciate that, and we very much want you to continue to work in that direction. It is the only way we can come back with some fairness to the trade provisions.

My question to you is in the area of currency. In the TPA, we had provisions that required the discussion up front as we began our trade agreement negotiations about the possibility of devaluations of currency, or changes in values of currency that can often have a negative impact on our product. In your trade agreement, do you have any documentation of the discussion of currency values with these potential trade partners within these agreements?

Mr. ALLGEIER. We certainly do not discuss with our trading partners specific values for their currency. First of all, the whole question of exchange rates is one that is the responsibility of the Department of Treasury. What we do in these trade agreements, however, is to try to provide the maximum amount of openness for investors and also the maximum amount of openness in financial services and transparency in the regulation of financial services. We feel that this is the contribution that the trade negotiations can make to an international identifiable system which is not subject to manipulation by countries to gain unfair advantage.

Mr. COLLINS. We are very much aware that the negotiations of the currency issues is that of the Department of Treasury, but the TPA called for just a discussion and documentation of that discussion in opening negotiations to make both parties aware that any potential change in currency can have a negative effect on the other trading partner. That was all that we were concerned about, and we would like to have seen some type of documentation in that regard when Ambassador Zoellick was here the other day, maybe a month or so ago.

I brought this issue up to him at that point and requested that you all not be timid in talking about currency values, not that we are going to try to set any currency values, but—no one is going to set our currency value but us, but it is important as a trading partner with another nation that we feel we understand up front that this is something that could be a problem, not an aftereffect after a lot of it happens and we have been hurt by the lack of that type of documentation or that type of discussion.

Mr. ALLGEIER. I understand that there is a reporting requirement on this and that the Department of Treasury is actually in the process of writing that so that we will be able to provide that information to you.

Mr. COLLINS. You aren't aware of any discussion from the U.S. Trade Representative's office about this up front? It should be a documentation of your comments and your discussions, too.

Mr. ALLGEIER. This will be an interagency submission. It is to be authored by the Department of Treasury, but we will certainly review it, and we will review the TPA language on this to be sure we are exercising appropriate responsibility and conscientiousness about that particular provision.

Mr. COLLINS. Well, it is important to those of us who have a vote when it comes to the approval of agreements in negotiations as to how you are following the TPA—the provisions that we worked very hard to make sure we end the Trade Act of 2002 itself.

Mr. ALLGEIER. We want to be scrupulous in our implementation of the TPA. We are very aware of the effort that Congress put into passing that, and we are very grateful for it. We are working with you to use it responsibly.

Chairman CRANE. Thank you. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Mr. Ambassador, many of us hope that Chile and Singapore, in their agreements, would improve upon the minimum standards for labor and environmental provisions. However, these new agreements merely require that each country enforce its own existing standards. If this becomes the model for all agreements, it could have severe impacts for workers' rights, particularly in the upcoming CAFTA agreement.

Consider that the ILO has cited Costa Rica and Honduras for their failure to protect against anti-union bias. The U.S. Department of State has criticized El Salvador, Guatemala, and Nicaragua for the same problem. The ILO has even expressed a concern that Guatemalan workers participating in a lawful strike may be subject to criminal penalties. Do you think that the CAFTA agreement should merely require that these countries, quote, "enforce their existing law"?

Mr. ALLGEIER. We certainly are aware of the importance of this issue in the Central American countries and, frankly, the different circumstances that exist in those countries and among those countries compared to, for example, Chile and Singapore. I would say also that we have made very clear to their negotiators and their leaders that this will be something that will be looked at very closely by the Congress. So, part of our negotiation is not simply negotiating the obligations, for example, that we have in Singapore and Chile, but having a very detailed and concrete dialog with these countries about the kinds of changes that they would need to make in their labor laws, either in association with this agreement or prior to it; and we have seen some effort in that regard recently on the part of El Salvador in increasing its budget for enforcement, and also some labor form proposals put forward by Guatemala. I am not saying that either of those is sufficient in those cases, but it is part of the ongoing process of negotiation. We need to get those labor standards and the enforcements of labor rights up to a certain level before we would find acceptable a commitment to enforce those laws.

Mr. NEAL. Accepting that, as you have stated, that in some instances labor standards and environmental standards are not sufficient, what would you propose doing to ensure they become sufficient?

Mr. ALLGEIER. We would do two things: one, continue to have the kinds of discussions we are having with these countries to move them in a direction so that they put forward changes in their law or they make the institutional changes they need to strengthen the enforcement; and related to that is the second element, the trade capacity building.

In the case of Central America, as the different negotiating groups are working on the trade agreement, we have a separate working group that is identifying where there needs to be strengthening of their capabilities, including institutional strengthening to carry out the kinds of agreements that we anticipate; and we are working very closely with the U.S. Agency for International Development in that. The U.S. Department of Labor is very involved with respect to the labor issues, and our other environmental related agencies such as the Environmental Protection Agency, the U.S. Department of the Interior, and the Department of State, are involved in the environmental side of capacity building. So, the negotiations really only come to a conclusion once we are satisfied that the standards—whether it is in intellectual property or in labor or in customs procedures—are up to the level that we are satisfied with and then that the country makes the kind of commitment to implement that.

Mr. NEAL. Thank you. Acknowledging that, while the question was precise, the next question is going to be very precise. “Enthusiasm” for enforcement, as you know, is a very imprecise term; so we rely heavily upon people like you to ensure that enthusiasm becomes more precise.

Mr. ALLGEIER. Effectiveness of enforcement. That is the standard that we will be looking at to see whether countries are carrying out their obligations.

Mr. NEAL. The second precise question, Mr. Ambassador—recently, The Economist magazine editorialized against your quest for complete capital account liberalization, stating that, quote, “bitter experience suggests that such demands are a mistake,” end of quote. Further, an International Monetary Fund (IMF) official wrote in the wake of the 1997 Asian financial crisis that, quote, “absolute unfettered global capital mobility is not necessarily the best long-term outcome.” I understand that this became a Department of Treasury priority in the Chile agreement even though no business I have heard from has complained about Chile’s controls. Can you answer whether complete elimination of capital controls has been tabled in the CAFTA approach, and does the IMF support your approach?

Mr. ALLGEIER. Our approach is—this comes up in the context of the investment chapter of these agreements. We think it is extremely important to foster investment—that investors be confident that they are going to be able to transfer their proceeds and other assets back and forth without impediment.

In the case of Chile and in Singapore, they had some concerns about so-called hot money and whether there could be instances they didn’t anticipate. There could be instances in which they would need some period of time to have some degree of control over so-called hot money. So, what was agreed upon was a procedure which enables them a temporary period without fundamentally impeding transfer rights of investors, and we feel that the kind of balance we struck in those agreements is a reasonable one. It is not an ideological one, but it also puts great emphasis on what all our investors say, which is, they want the right to transfer. I would expect that we would use roughly that model in other instances, but, as in the other areas, we have to look precisely at the circumstances.

Mr. NEAL. That was fairly precise. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

Chairman CRANE. Now we have a wrap-up question from Mr. Levin.

Mr. LEVIN. On the capital control, I just hope that, as we look at other agreements, we will look at the experience with Chile and Singapore. Mr. Neal, we had to pressure the U.S. Trade Representative to back off of what was a rigid ideological position; and you backed off. It is an example that I hope will be looked at. Let me just say, Mr. Chairman, this discussion we have had today about core labor standards and how it applies to environmental standards and other circumstances and application to CAFTA—I hope we can negotiate a CAFTA agreement.

Ambassador, you are not making the decisions. You are part of the decisionmaking process. To say that you are going to, in the discussions with Central American countries, make sure they take actions so that you are satisfied they are up to standards—no one believes that by the time you can negotiate a CAFTA agreement there would be a history of their containing in their laws the core labor standards, and their enforcing them. That is not realistic unless you are going to take 5 or 10 years to negotiate a CAFTA.

By the way, with other issues, whether it is subsidies or intellectual property, you don’t simply say you are satisfied that at the

point of negotiation they are up to standards. You have an enforcement procedure to make sure they are carried out. The tabling of enforcing your own laws in CAFTA is totally contradictory to the circumstances that differ from Chile and Singapore, and we are going to continue to pressure you to live up to your words that you look at circumstances, since you did not do that when you tabled a proposal for CAFTA.

This is not just a matter, in quotes, of “worker rights.” It is a matter of these countries—that workers be able to partake, to participate and move up the ladder like they have in every other country where a middle class evolved. I think if we will take some leadership, the United States, Central American countries will respond.

I want to just say a word again about the ISI and your response, because I think we need clarification so this does not get kicked around and is either underestimated or overstated. I referred to 8466, which is part of the regulations on local content that relates to machine tool parts. This is the question that needs to be answered—I want it to be very clear.

In meeting the local content requirement, can shipments from other countries—it could be Japan, China, et cetera—that make these parts be counted as Singapore content? I know that it is a big, complicated question, because of tariff shift rules and whether one or another would make it easier for them to take components from other places that are not covered by an FTA and have them count as part of Singapore local content, but you need to answer this.

By the way, part of the rules regarding local content also relate to auto parts. So, your answer to machine tools, 8466, will apply to other products, other parts that are covered by local content. Your response that it only applied to two Indonesian territories, that is not, I think, if I might say so respectfully, correct. I think it has been acknowledged that the provision in the ISI is open-ended, and so you need to help yourself and all of us understand the meaning of ISI.

I think it is very clear we should not do this. It is not a precedent. It is not an example for other FTAs. It is also important to understand what its possible implications are for our judgment of Singapore—that agreement. Otherwise, you are likely to have opposition that isn’t based on the reality, if you don’t point out the reality. Don’t be afraid to point them out.

Mr. ALLGEIER. The general approach on the rules of origin, of course, is to define those products specifically so that you don’t have abuse of content from other countries counting as part of the product from the free-trading partner.

However, on the two specific issues, the one that you raised about machine tools and the one that Congressman Camp raised about auto parts, I will get you a very specific and concrete response, and also relate that back to the ISI so that we do avoid the kind of concerns that you expressed where people misunderstand one way or another what is involved here.

Mr. LEVIN. We have been trying to secure this from you for a long time, so give it to us straight and soon.

Mr. ALLGEIER. Will do.

Chairman CRANE. Thank you. Thank you, Mr. Allgeier. We appreciate your testimony, and we look forward to working with you as we complete our agreements with Singapore and Chile. With that, we will bring our next panel before the Committee. Our next panel includes Leon Trammell, Founder and Chief Executive Officer of Tramco, Inc., Wichita, Kansas, on behalf of the U.S. Chamber of Commerce; Jeff Jacobs, President of Global Business Development, Qualcomm, San Diego, California; Keith Gottfried, Senior Vice President of Law and Corporate Affairs and General Counsel, Borland Software, Palo Alto, California; and Robert Haines, Manager of International Relations, ExxonMobil Corporation, and Co-Chairman of U.S.-Singapore FTA Business Coalition.

If you gentlemen will please take your seats, we will begin your testimony in the order in which I introduced you. Keep your eye on the little light in front of you. Don't cross the intersection when the red light is on. We will start. Folks, can we have order in the Committee room, and those of you who are here, please take seats. We will commence then with our first witness, Leon Trammell.

**STATEMENT OF E. LEON TRAMMELL, CHIEF EXECUTIVE OFFICER, TRAMCO, INC., WICHITA, KANSAS, AND CHAIRMAN, BOARD OF DIRECTORS' INTERNATIONAL POLICY COMMITTEE, U.S. CHAMBER OF COMMERCE**

Mr. TRAMMELL. Mr. Chairman, thank you for inviting me to appear before this panel today. I am Leon Trammell, Chief Executive Officer of Tramco, Incorporated, in Wichita, Kansas; and I am also a member of the Board of Directors of the U.S. Chamber of Commerce as well as acting Chairman of the Board's International Policy Committee. It is on the U.S. Chamber of Commerce's behalf that I am testifying today.

I am pleased to testify in support of the recent signing of the U.S. trade agreement with Chile and Singapore. The U.S. Chamber of Commerce represents nearly 3 million companies of every size, sector, and region. The U.S. Chamber of Commerce has aggressively represented companies like mine for nearly a century.

Tramco manufactures and sells environmentally friendly conveyors primarily for the cereal food grain processors. Our annual sales are roughly \$20 million. Today's exports make up 60 percent of our total sales. All is manufactured in Wichita, Kansas, and shipped by truck and rail to a port to be loaded or shipped, to be transported to the ports of destination.

Tramco has exported to 45 countries around the world, including Chile and Singapore. In Chile, we are active in the copper mining industry, which is state owned, and about 10 percent of our annual sales are in Chile. In Singapore, Tramco is active in the oil seed industry, companies that extract oil from the palm and other oil seeds for cooking purposes. The Singapore market accounts for only 2 or 3 percent of our annual export sales.

The Chile and Singapore FTAs will do much for companies like mine to slash barriers to our exports. They will also improve protection for U.S. investments in these two countries, and they will strengthen our position and make us more competitive in the global economy.

It is the last point that deserves special mention. Most of the 45 countries I sell to are already committed to some business-friendly practices. Otherwise, I would not have sold my products there. The main point of a trade agreement is to make even better whatever situations might exist today. This includes lower tariffs, fewer trade restrictions, stronger protection of property rights, expanding trade of services and electronic commerce, and a greater flexibility of movement of professional personnel.

The Chile and Singapore agreement includes a number of provisions that will benefit companies like mine. These benefits are summarized in my written statement. By implementing these agreements, Congress will send an important message that goes far beyond Chile and Singapore. It will say to the world that we are back in business and committed to reach fair trade agreements that benefit U.S. workers and businesses.

I started my company in 1967 with next to nothing. Today, I have over 120 employees that hold their jobs to our ability to access markets here and abroad. It has been pointed out that 96 percent of the world's customers live outside our borders. Conditions in many countries make it harder for companies like mine to sell to those consumers and therefore meet our payroll.

The Chile and Singapore agreements are important steps in our continuing journey toward increased trade jobs and prosperity, and these serve as an important example for other countries and regions with which we share these goals. They will also enable our trade negotiators to hang tough with other countries as we push them to open up their markets.

Perhaps my great, great grandparents as they traveled the Trail of Tears would not agree with my position today. They probably thought we made a mistake in letting Columbus land and should have stopped further intruders. I admit some days, when things are really, really bad, living in a teepee along some gentle-flowing streams seems very inviting. However, we know being an isolationist does not work. Remember the iron and bamboo curtains?

Give the U.S. manufacturer a level playing field with zero tariffs, and we can compete. We must be a fair free trader. I urge the Congress to approve legislation to implement these agreements as soon as possible.

[The prepared statement of Mr. Trammell follows:]

**Statement of E. Leon Trammell, Chief Executive Officer, Tramco, Inc., Wichita, Kansas, and Chairman, Board of Directors' International Policy Committee, U.S. Chamber of Commerce**

Mr. Chairman, thank you for inviting me to appear before this panel today. I am Leon Trammell, Chief Executive Officer of Tramco, Inc. in Wichita, Kansas. I am also a member of the Board of Directors of the United States Chamber of Commerce, as well as acting Chairman of the Board's International Policy Committee.

In addition to Tramco, I am pleased to testify on the recently signed U.S. free trade agreements with Chile and Singapore on behalf of the U.S. Chamber of Commerce, which is the largest business federation in the world. Representing nearly three million companies of every size, sector, and region, the Chamber has supported the business community in the United States for nearly a century.

Tramco manufactures and sells high-production conveyer product lines. Our annual sales are roughly \$20 million. In fact, exports make up about 60% of our sales. Tramco exports to 45 countries around the world, including Chile and Singapore. In Chile, we are active in the copper mining industry, and about 10% of our annual



sales are in Chile. In Singapore, Tramco is active in the oilseed industry. The Singaporean market accounts for between 2–3% of our annual sales.

I personally support these two landmark agreements, and the U.S. Chamber of Commerce offers a strong endorsement as well. These accords will slash trade barriers for U.S. exports, enhance protections for U.S. investment in these two countries, and enhance the competitiveness of American companies in the global economy.

### **The Bracing Tonic of TPA**

America's international trade in goods and services accounts for nearly a quarter of our country's GDP. As such, it is difficult to exaggerate the importance of the victory obtained last summer when the Congress renewed Presidential Trade Promotion Authority (TPA). When President George W. Bush signed the Trade Act of 2002 into law on August 6, it was a watershed for international commerce. As we predicted, this action by the Congress has helped reinvigorate the international trade agenda and has given a much-needed shot in the arm to American businesses, workers, and consumers struggling in a worldwide economic slowdown.

When TPA lapsed in 1994, the U.S. was compelled to sit on the sidelines while other countries negotiated numerous preferential trade agreements that put American companies at a competitive disadvantage. Last year, during our aggressive advocacy campaign for approval of TPA, I believe many Members of Congress grew tired of hearing that the U.S. is party to just three of the roughly 150 free trade agreements in force today.

The passage of TPA allowed the United States finally to complete negotiations for bilateral free trade agreements with Chile and Singapore, in December and January, respectively. These are the first significant free trade agreements negotiated by the United States since the NAFTA.

They are excellent agreements. Giving the lie to foreign critics of alleged U.S. protectionism, no products were excluded from the market access commitments included in the two agreements.

These agreements raise the bar for rules and disciplines covering a host of economic sectors from services and government procurement to e-commerce and intellectual property. They also raise the bar for future trade agreements, including the Free Trade Area of the Americas (FTAA) and discussions for trade liberalization in the context of the Asia-Pacific Economic Cooperation (APEC) forum.

### **Maintaining Competitiveness**

The two agreements have much in common, but each has its particular advantages. One factor adding urgency to our request for quick Congressional action on the agreement with Chile is the heightened competition U.S. companies face in the Chilean marketplace. In this sense, Chile is an example of how the world refuses to stand still—and how American business will lose its competitiveness without an ambitious program of trade expansion.

Let me illustrate. Many of you know that Chile's free trade agreement with the European Union came into force on February 1. On that day, tariffs on nearly 92% of Chilean imports from the EU were eliminated. Consequently, it is not surprising to note that Chilean imports from the EU expanded by 30% in the year ending in February 2003, whereas Chilean imports from the United States grew by less than 6%. Chilean imports from Germany grew by 47% and those from France grew by 41% in the same period.

The reason is simple: While U.S. exporters wait for a free trade agreement, our exports to Chile continue to face tariffs that begin at 6% and, for some products, range much higher. The upshot is that European companies are seeing their sales in Chile rise five times as quickly as those of U.S. firms.

In a similar fashion, the free trade agreement with Singapore will further anchor U.S. competitiveness in the Asia-Pacific region, where Singapore is already actively engaged in negotiating trade agreements. Singapore has implemented free trade agreements with Australia, Japan, New Zealand, and the European Free Trade Area and is negotiating with Canada, Chile, and Mexico. It is also a participant in the framework agreement between ASEAN and China aimed at reducing tariffs and non-tariff trade barriers.

The comprehensive nature of the free trade agreement with Singapore is a testament that Singapore shares many of our country's views on global trade liberalization. As such, the agreement will contribute to our global and regional trade liberalization objectives and will serve as a barometer for other countries in Asia that are interested in completing a free trade agreement with the United States.

### Gauging the Benefits

How might these two agreements benefit the United States? There is a strong economic argument to be made for free trade agreements. As U.S. Trade Representative Robert Zoellick has pointed out, the combined effects of the North American Free Trade Agreement (NAFTA) and the Uruguay Round trade agreement that created the World Trade Organization (WTO) have increased U.S. national income by \$40 billion to \$60 billion a year. Thanks to the lower prices that these agreements have generated for such imported items as clothing, the average American family of four has gained between \$1,000 to \$1,300 from these two pacts—an impressive tax cut, indeed.

From a business perspective, the following are a few examples of specific market-opening measures in the two free trade agreements, provided here to give some insight on how U.S. companies stand to benefit:

**Tariff Elimination.** In the case of Singapore, the free trade agreement will immediately eliminate all Singaporean customs duties on all U.S. products upon entry-into-force, unequivocally meeting one of the principal negotiating objectives set forth in the Trade Act of 2002. The agreement will also remove a number of significant non-tariff barriers, such as Singapore's excise taxes on imported automotive vehicles. The agreement with Chile will eliminate tariffs on more than 90% of all U.S. goods immediately, with the remainder to be phased out in a fairly rapid fashion. Today, most U.S. exports to Chile face a tariff of 6%, which can constitute a significant barrier indeed, but tariffs are substantially higher on some sectors. For instance, Chile continues to impose a luxury tax of 85% on vehicles imported from the United States valued at more than \$15,000—a significant barrier to U.S. exports that the free trade agreement will eliminate.

**Services.** Services accounts for over 80% of GDP and employment in the United States. The services chapters of both agreements provide enhanced market access for U.S. firms across different service sectors using a “negative list” approach (full market access for all service providers except those in sectors specifically named). U.S. service suppliers will also be assured fair and nondiscriminatory treatment in both countries. Banks, insurers, and express delivery providers are among the sectors that will benefit from new opportunities in both markets if the two agreements are approved and implemented.

**Electronic Commerce.** The landmark E-Commerce chapters of the U.S.-Chile and U.S.-Singapore agreements will help ensure the free flow of electronic commerce, champion the applicability of WTO rules to electronic commerce, and promote the development of trade in goods and services by electronic means. Provisions in this chapter guarantee nondiscrimination against products delivered electronically and preclude customs duties from being applied on digital products delivered electronically (video and software downloads). For hard media products (DVD and CD), custom duties will be based on the value of the carrier medium (e.g., the disc) rather than on the projected revenues from the sale of content-based products.

**Intellectual Property Rights.** The agreements with Chile and Singapore provide important new protections for copyrights, patents, trademarks and trade secrets, going well beyond protections offered in earlier free trade agreements. Once again, the two agreements serve as a useful benchmark for future agreements with other countries. Both agreements have important new enforcement provisions. In the case of Chile, the agreement criminalizes end-user piracy and provides strong deterrence against piracy and counterfeiting. The agreement also mandates both statutory and actual damages under Chilean law for violations of established norms for the protection of intellectual property.

**Movement of Personnel.** Under the two agreements, U.S. professionals will be granted special temporary entry visas into Singapore and Chile for a period of 90 days. The special visa would be based on proof of nationality, purpose of the entry and evidence of professional credentials. The visas would provide for multiple entries and would be renewable. The Chamber welcomes this provision in the free trade agreements, as it will make it easier for U.S. companies to deploy personnel for short assignments or transfers to company facilities in Chile and Singapore.

**Provisions on Labor and the Environment.** The longstanding policy of the U.S. Chamber is that trade agreements should not hold out trade sanctions as a remedy in response to labor and environmental disputes. Our interpretation of the enforcement mechanism of the labor and environmental provisions of the Chile and Singapore free trade agreements is that monetary compensation is the remedy of first choice and that trade sanctions would be employed only as a last resort.

### **What the Chamber is Doing**

The U.S. Chamber is helping to lead the charge in the effort to win approval of these two agreements. In concert with our partners in the U.S.-Chile and U.S.-Singapore Free Trade Coalitions, the Chamber has met face-to-face with over 120 Members of Congress since January to make the case for approval of the two agreements. We have also met with Members of Congress in their districts throughout the country as part of our ongoing "TradeRoots" program to educate businesspeople and workers about the benefits of open trade. We have found extremely broad support for the agreements both in the Congress and in the business community.

As part of this "TradeRoots" effort, the Chamber has published two "Faces of Trade" books to highlight small businesses in the United States that are already benefiting from trade with Chile and Singapore—and that stand to benefit even more from *free* trade with these two markets. I invite you to review these success stories and see the face of American trade today. It isn't just about multinationals, which can usually find a way to access foreign markets, even where tariffs are high. It's about hundreds of thousands of small companies that are accessing international markets—and that are meeting their payroll, generating jobs, and growing the American economy.

We've generated a wealth of information about the potential benefits of these agreements and our efforts to make them a reality. In the interest of brevity, I would simply urge you to contact the Chamber if you need more information. A good place to start is our website: [www.uschamber.com](http://www.uschamber.com).

### **Conclusion**

Trade expansion is an essential ingredient in any recipe for economic success in the 21st century. If U.S. companies, workers, and consumers are to thrive amidst rising competition, new trade agreements such as these two will be critical. In the end, U.S. business is quite capable of competing and winning against anyone in the world when markets are open and the playing field is level. All we are asking for is the chance to get in the game.

Mr. Chairman, we appreciate your leadership in reviving the U.S. international trade agenda, and we ask you to move expeditiously to bring these agreements to a vote in the Congress.

Thank you.

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Chairman CRANE. Thank you, Mr. Trammell. Our next witness is Jeff Jacobs.

### **STATEMENT OF JEFF JACOBS, PRESIDENT, GLOBAL DEVELOPMENT, QUALCOMM, INCORPORATED, SAN DIEGO, CALIFORNIA**

Mr. JACOBS. Thank you, Mr. Chairman. I am Jeff Jacobs, President of Global Business Development at Qualcomm, Incorporated. I am responsible for developing Qualcomm's global business strategies and directing its international activities. I am honored to testify today about the importance of implementing the bilateral FTAs with Singapore and with Chile.

My comments will focus on the benefits of these precedent-setting agreements and on the implications for future trade negotiations. I would first like to provide a brief introduction of Qualcomm's international trade interests.

Headquartered in San Diego, California, Qualcomm is a leader in developing innovative communications technologies. With more than 5,800 employees at offices in 21 countries, Qualcomm offers a range of technology products, wireless voice, and data communications.

Qualcomm is best known as the pioneer of Code Division Multiple Access (CDMA), wireless communications technology, which is the leading standard in the United States and the fastest-growing

wireless technology globally. Nearly 155 million people in 52 countries use CDMA, which enables high-quality, high-speed voice, and data services.

Qualcomm supplies the majority of the CDMA chipsets that are integrated into CDMA mobile phones and devices around the world. With more than 2,600 U.S. patents on our core CDMA intellectual property, Qualcomm also licenses CDMA to handset and equipment manufacturers around the world.

Based on this brief overview of our global business, it is no wonder that Qualcomm and the U.S. tech sector strongly support the U.S.-Singapore and U.S.-Chile FTAs.

Last year, Qualcomm worked hard to generate Congressional support for enactment of TPA; and we thank this Committee for its leadership on this critical issue. Accordingly, we support the Singapore and Chile FTAs and look forward to the introduction of legislation so that we can examine it and intensify discussion with Members.

Open markets and strong trade rules are critical to Qualcomm. More than half of our revenues are generated outside of North America. Singapore and Chile's implementation of the bilateral FTAs with the United States will help level the playing field and put the U.S. high-tech sector on equal footing with domestic and third country competitors. For example, Singapore and Chile already have trade agreements with other governments such as Canada, Japan, and the European Union, which give companies from these countries preferential access and competitive advantages over U.S. firms.

Qualcomm also supports these FTAs because of its state-of-the-art commitment, which established some of the most advanced trade rules yet to be achieved in any international trade agreement. My written statement elaborates on some of the most important provisions for the high-tech sector, which includes market access for technology products, electronic commerce, investment, and intellectual property rights. In the area of trade and services, both agreements use the comprehensive "negative list" approach, which means that all those service sectors are open to American companies unless specifically reserved.

On telecommunications services, both agreements enhance transparency and pro-competitive regulation. Both also include non-binding provisions calling on governments to ensure that telecom operators have the flexibility to use the technology of their choice. The last issue of "technology neutrality," or "operator choice of technology," is very important to Qualcomm. We commend the Administration for introducing this critical concept into international trade negotiations, and believe that the Singapore and Chile FTAs are a constructive start.

However, language that is non binding does not help U.S. technology exporters when confronted with foreign regulations of services that restrict market access for technology. Since the Singapore and Chile FTAs were negotiated, we understand that the Administration is pursuing binding rules on this concept in the WTO, the FTAA, and the FTA negotiations with Australia, Morocco, and Central America. We strongly support this and are committed to work-

ing with the Administration and Congress to obtain positive results.

Our goal is simple. United States technologies should receive the same treatment in foreign markets that foreign technology providers enjoy in the United States. For this reason, we want technology neutrality to become a standard U.S. negotiating objective.

There are also strategic reasons to support these precedent-setting FTAs. They can serve as a basis for other agreements and provide critical momentum to other trade negotiations. United States engagement in international trade negotiations also reinforces American leadership in the global arena and counterbalances the commercial agendas of other governments. Simultaneous trade negotiations with multiple countries also enhance the chances of obtaining strong results. Should negotiations with one trade partner or group stagnate, then the United States can reprioritize its effort in a different negotiation.

For example, we understand that the United States, in its FTA negotiations with Central America, has encountered some strong opposition to the inclusion of any commitments on telecom services. Given the importance of this sector, it seems unlikely that an agreement that did not include telecom services would receive necessary support within the Congress and business community. This is an example of how the United States can leverage simultaneous negotiations to obtain good results.

For these reasons, Qualcomm believes that both the U.S.-Singapore and the U.S.-Chile FTAs provide significant benefits to U.S. high-tech products and services suppliers. We support the implementation of these ground-breaking agreements. Qualcomm looks forward to working with the Congress to ensure a broad bipartisan consensus in support of these and future trade agreements. Thank you very much.

[The prepared statement of Mr. Jacobs follows:]

**Statement of Jeff Jacobs, President, Global Development, QUALCOMM, Incorporated, San Diego, California**

I am honored to have the opportunity to testify today about the importance of implementing the recently signed bilateral free trade agreements (FTAs) with Singapore and with Chile.

My comments will focus on the benefits of these precedent-setting agreements for QUALCOMM and other American high-tech companies, and on the implications for future trade negotiations. Before addressing these matters, I would first like to provide a brief introduction of QUALCOMM and our international trade interests.

**Introduction to QUALCOMM**

Headquartered in San Diego, California, QUALCOMM is a leader in developing innovative communications technologies. With more than 5,800 employees at offices in 21 countries, QUALCOMM offers a range of technology products, which enable: wireless voice and data communications; e-mail, wireless Internet and related applications; "GPS" satellite position location; and transportation communications and vehicle tracking. We have also developed a digital cinema technology that allows studios to do away with celluloid film and minimize piracy by distributing first-run films in an encrypted, digital format.

QUALCOMM is best known as the pioneer of Code Division Multiple Access (CDMA) wireless communications technology. CDMA is the leading standard in the United States and the fastest growing wireless technology globally, with some 155 million people using CDMA in 52 countries on six continents. CDMA enables high-quality, high-speed, spectrally efficient voice and data services over the same device. Our CDMA2000 technology is the first so-called "3G" or third-generation standard to be made commercially available to wireless services providers and consumers.

QUALCOMM supplies the majority of the CDMA chipsets that are integrated into CDMA mobile phones and devices around the world. With more than 2,600 U.S. patents on our core CDMA intellectual property, QUALCOMM also licenses CDMA to more than 120 U.S. and foreign handset and equipment manufacturers around the world. QUALCOMM also makes strategic investments in key countries to help develop new markets and drive demand for CDMA and other technologies.

### **Why High-Tech Supports These Free Trade Agreements**

Based on this brief overview of our global business, it is no wonder that QUALCOMM strongly supports free trade, and the results of the U.S.-Singapore and U.S.-Chile free trade negotiations. Open markets and strong trade rules are critical to QUALCOMM. More than half of QUALCOMM's revenues are generated outside of North America, with most of our growth resulting from demand in Latin America, East Asia (especially China, Japan and Korea) and India. These trends are not unique to QUALCOMM; the American high-tech sector collectively is the largest source of U.S. merchandise exports, as well as the largest cumulative source of U.S. direct investment overseas.

During 2001–2002, QUALCOMM worked hard to generate Congressional support for enactment of Trade Promotion Authority (TPA) legislation, and we thank this Committee for its leadership on this critical issue. As an exporter and employer, we educated Members on the benefits of free trade and the need to remove foreign barriers to our products and services. Accordingly, we support the Singapore and Chile FTAs, and look forward to the introduction of implementing legislation so that we can examine it and give our unqualified support. Legislative approval and implementation of the Singapore and Chile FTAs are important to QUALCOMM and other high-tech companies for several reasons, some of which are commercial and some are strategic in nature.

### **Commercial Significance**

It has been noted that both Singapore and Chile are already relatively small and open markets, and that the respective FTAs will do little to spur new export or investment opportunities for U.S. businesses. Last year, Singapore was the United States' eleventh largest export market and Chile ranked thirty-fourth. While I cannot speak to other sectors, high-tech companies believe that both markets are commercially significant, notwithstanding their relatively small populations. In the case of Chile, for example, the United States enjoyed a \$716 million trade surplus in technology exports last year. This statistic will probably grow as Chile progressively eliminates duties on most high-tech goods. Faced with a highly competitive global technology market and turbulent domestic economic trends in the United States, increasingly more American technology companies are forced to look overseas for new opportunities.

### **Level Playing Field**

The Singapore and Chile FTAs are also important because they will help to level the currently unfair playing field and let U.S. companies compete with domestic and third-country competitors in these countries. For example, Singapore and Chile already have trade agreements with other governments, such as Canada, Japan and the European Union (EU), which give companies from these countries preferential access and competitive advantages over U.S. firms. Singapore and Chile's implementation of the bilateral FTAs with the United States will help put the U.S. high-tech sector on an equal footing to compete fairly in those markets.

### **State-of-the-Art Trade Agreements**

QUALCOMM and the high-tech community also support these FTAs because of the substantive rules embodied in the agreements, which are considered the most modern, state-of-the-art trade accords in existence. Many provisions in these FTAs are superior to the norms created by the NAFTA and WTO, and establish some of the most advanced commitments yet to be achieved in any international trade initiative. Some of the most important provisions for the high-tech sector include the following:

- **Market Access for Goods:** By virtue of its WTO commitments, Singapore has already eliminated duties on high-tech products. In contrast, in implementing the FTA, Chile will eliminate the existing 6 percent duty on most high-tech products within 4 years of the agreement's entry into force;
- **Electronic Commerce:** Both agreements establish new rules on "digital products" transmitted electronically, and ensure duty-free treatment for such exports;

- **Investment:** Both agreements grant U.S. citizens and companies broad rights to invest and own property, and provides for recourse and remedies in the event of disputes;
- **Intellectual Property Rights:** Both agreements build upon existing disciplines—namely, the WTO, NAFTA and WIPO treaties—to establish new, innovative rules on IPR protection and enforcement;
- **Services (generally):** Both agreements utilize the comprehensive “negative list” approach to establish commitments, which means that all services sectors are covered and open to American companies unless specifically reserved; and
- **Telecommunication Services:** Both agreements enhance transparency, non-discrimination, and pro-competitive regulation of communications services. Both also include nonbinding provisions calling on governments to ensure that telecom operators (notably in the mobile sector) have the flexibility to use the technology of their choosing to provide services.

This last issue of “technology neutrality” or “operator choice of technology” is key and warrants elaboration. This concept is well established in the U.S. telecommunications policy and regulatory vocabulary, and is evident in the practices and decisions of the Federal Communications Commission (FCC) and other agencies in the United States. We commend the Administration for introducing this critical concept into international trade negotiations.

We believe that the relevant provisions of the Singapore Agreement (Article 9.13) and Chile Agreement (Article 13.14) are a constructive starting point. However, language that is nonbinding or is subject to broad interpretation by foreign governments does not help U.S. technology exporters, like QUALCOMM, when confronted with foreign regulations of services that restrict market access for technology products.

We understand that the Administration has subsequently tabled binding language on this issue in the WTO, FTAA and in FTA negotiations with Australia, Morocco, and Central America. We appreciate this cooperation, and are committed to working with the Administration and Congress to obtain positive results in these negotiations.

Our goal is simple: U.S. technologies should receive the same treatment in foreign markets that foreign technology providers enjoy in the United States. For this reason, we want the establishment of binding commitments that ensure that service providers can choose technologies without governmental interference to become a standard U.S. negotiating objective—whether for bilateral and regional FTAs, hemispheric or multilateral negotiations, or WTO accessions.

#### **Strategic Implications**

Yet another reason to support these agreements is that they provide critical momentum to other trade negotiations, principally the WTO and FTAA. The precedent-setting provisions of the Singapore and Chile FTAs can serve as a basis for subsequent negotiations. U.S. engagement in international trade negotiations also reinforces American leadership in the global arena. Active American participation in trade initiatives helps to counterbalance other governments whose agendas and advocacy may not be consistent with U.S. commercial interests.

Sustaining simultaneous trade negotiations in multiple fora also enhances the chances of obtaining maximum market-opening and high quality trade disciplines. Should negotiations under one forum or with one trading partner stagnate, then the United States can re-prioritize its efforts in a different negotiation that may be more promising. For example, we understand that the United States has encountered strong opposition to the inclusion of any commitments on telecommunications services in the proposed U.S.-Central America FTA. Given the importance of this sector, it seems unlikely that an agreement that did not include telecom services would garner necessary support within the Congress and U.S. business community. This is an excellent example of how the United States can leverage simultaneous, parallel negotiations with key trading partners to obtain necessary liberalization.

#### **CONCLUSION**

For these reasons, QUALCOMM believes that both the U.S.-Singapore and U.S.-Chile FTAs provide significant benefits to U.S. high-tech products and services suppliers. We support the adoption and implementation of these ground-breaking agreements. We also look forward to working with the Congress to ensure a broad, bipartisan consensus in support of these and future trade agreements.

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Chairman CRANE. Thank you, Mr. Jacobs. Mr. Gottfried.

**STATEMENT OF KEITH GOTTFRIED, SENIOR VICE PRESIDENT  
AND GENERAL COUNSEL, BORLAND SOFTWARE CORPORA-  
TION, SCOTTS VALLEY, CALIFORNIA, ON BEHALF OF THE  
BUSINESS SOFTWARE ALLIANCE**

Mr. GOTTFRIED. Mr. Chairman, Mr. Levin, and Members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Keith Gottfried, Senior Vice President/General Counsel of Borland Software Corporation. We are a publicly held software company located in Scotts Valley, California. I am pleased to testify today on behalf of Borland and the Business Software Alliance (BSA), an association of leading developers of commercial software, hardware, and e-commerce technologies. I appreciate the opportunity to testify today on the significance of the Singapore and Chile FTAs.

The IT industry is one of the leading contributors for the U.S. balance of trade. In 2002, we generated a trade surplus of \$24 billion. We are a leading engine of global economic growth, and in 2002, we contributed to the global economy in the amount of a trillion dollars. In the United States alone, the IT industry has contributed \$400 billion to the U.S. economy, generating 2.6 million jobs and \$342 billion in tax revenues. We are extremely proud of that record.

Exports account for over 50 percent of revenues for most of the leading commercial software makers in the United States, including my own company, Borland. If we are to continue these positive contributions, FTAs must establish open trading environments that promote strong intellectual property protection, growth of IT services and barrier-free e-commerce. They also must recognize the emergence of new technologies such as digitally developed and distributed products.

There is also another reason to support free trade. Over the past 2 years we have witnessed how a lack of opportunity and hope can cause desperate people to do awful and evil things such as waging a war against freedom, democracy, and the inherent goodness of mankind. We strongly believe that barrier-free trade, or free trade, can be an engine that takes people away from the despair of poverty and toward peace and prosperity; and we believe that trade, particularly as it affects our sector, can be a catalyst for that.

Mr. Chairman, I am pleased to express the unequivocal support of Borland and the members of the BSA for the Singapore and Chile FTAs. We urge every Member of this Subcommittee and Congress to vote in favor of these Agreements.

The BSA is also a member of the High Tech Trade Coalition, which also actively supports both FTAs. These agreements significantly advance the establishment of strong intellectual property protection and trade liberalization in Singapore and Chile. We commend the Administration, the U.S. Trade Representative, and Congress for these achievements. Without the leadership provided by the Administration and Congress' thoughtful guidance, these achievements would not have been possible. Mr. Chairman, I would like to highlight for you some of the key provisions in the agreements and submit my written statement for the record.

Chairman CRANE. Without objection, so ordered.



Mr. GOTTFRIED. For the software industry, strong intellectual property protection is key in the fight against piracy. Piracy cost the industry \$13 billion in lost revenues last year. That translates into hundreds of millions of dollars in lost taxes to the Federal Government, and State and local governments—if not billions. Indeed, high rates of software piracy are often the biggest trade barrier we face in many markets. In 2002, the piracy rate in Singapore was 48 percent, and 51 percent in Chile, costing the industry \$32 million in Singapore, and \$45 million in Chile.

To promote strong intellectual property protection in a digital world, the U.S. negotiating objective is clear: Our trading partners must establish a high level of intellectual property protection that complies with the WTO's TRIPS agreement and the WIPO copyright treaty. The Singapore and Chile agreements meet this test. We get the combined effect of the standards in TRIPS and the WIPO copyright treaty which is an important result. In addition, both agreements require strong civil and criminal enforcement regimes which are critical elements in our fight against piracy.

Let me take a moment to discuss a few key elements of provisions of trade in IT services, another negotiating objective for the United States. During the past decade, a vast array of new IT services has proliferated, including data storage and management, web hosting, and software implementation services. Technology users are increasingly purchasing IT solutions as a combination of goods and services. As a result, obtaining full liberalization in the area of IT services is more important than ever.

Both Singapore and Chile agreements provide full-market access and national treatment on IT services. Both agreements adopt a comprehensive approach without exception for technology. This will provide evolving IT services full-market access today and into the future. We strongly commend this approach and result. Over 500 million people are using the Internet worldwide. The promotion of barrier-free, cross-border e-commerce is therefore critical to the IT industry.

By 2005, two-thirds of all software is expected to be distributed online. This will provide U.S. software companies with enhanced access to markets around the world. The e-commerce chapters of both FTAs recognize, for the first time, the concept of digital products. Specifically, physical copies of software and electronically delivered software are both entitled to exactly the same benefits under these trade laws. This safeguard ensures that software delivered online will not face new barriers and will have the same ease of access as traditional box software.

With the successful conclusion of these FTAs, we believe precedents have been set for continued progress within the FTAA and the WTO Doha round of negotiations. Indeed, we are confident that these agreements set new standards that help the United States achieve its objectives.

In conclusion, the U.S. FTAs with Singapore and Chile mark real milestones in progress. New baselines have been set which should open markets for the U.S. technology industry in the years to come. Borland and the members of the BSA commend the achievements made in both agreements, and we strongly support their passage in Congress.

[The prepared statement of Mr. Gottfried follows:]

**Statement of Keith Gottfried, Senior Vice President and General Counsel, Borland Software Corporation, Scotts Valley, California, on behalf of the Business Software Alliance**

Mr. Chairman, Mr. Levin and the Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Keith Gottfried, Senior Vice President and General Counsel of the Borland Software Corporation. I am pleased to testify today on behalf of Borland and the Business Software Alliance ("BSA"),<sup>1</sup> an association of leading developers of software, hardware and e-commerce technologies worldwide.

Let me begin by thanking the Members of this Subcommittee for holding this important hearing about the significance of fully implementing the Singapore and Chile Free Trade Agreements (FTA). Borland and BSA as well as each of its member companies commend you for recognizing the importance of promoting free trade among our trading partners.

As one of the leading contributors to the U.S. balance of trade, U.S. information technology (IT) and software makers have contributed a trade surplus of \$24.3 billion in 2002. As a leading engine of global economic growth, the industry contributed a trillion dollars to the global economy in 2002. In the U.S. alone, the IT industry contributed \$400 billion to the U.S. economy, creating 2.6 million jobs and generating \$342 billion in tax revenues in 2002.

Exports account for over 50 percent of revenues for most of the leading commercial software makers in the U.S., including Borland and the majority of BSA members. If we are to continue the positive contributions of this industry to the U.S. economy, it is critical that free trade agreements (FTAs) establish the highest standards of intellectual property protection. It is also critical that FTAs provide an open trading environment that promotes barrier free e-commerce and growth of the information technology services sector.

As the landscape of trade policy continues to evolve, a relatively new issue has emerged on the international scene that could have an impact on American software exports. A number of countries, especially in Europe, are imposing levies (or surcharges) on hardware and software products, which by some industry estimates could cost up to one billion dollars per year, hurting both exports and the profitability of the American technology industry. This issue should also be part of our Nation's trade agenda.

Mr. Chairman, I am pleased to express the unequivocal support of Borland and BSA and its member companies for the Singapore and Chile Free Trade Agreements.

BSA is also a member of the High Tech Trade Coalition, which also strongly support the adoption and implementation of the FTAs. The U.S. High-Tech Trade Coalition is a group of leading high-tech trade associations representing America's technology companies. The high-tech sector is the largest merchandise exporter in the United States and is the U.S. industry with the most cumulative investments abroad.<sup>2</sup>

The Singapore and Chile FTAs significantly advance the establishment of strong intellectual property protection and barrier free e-commerce in Singapore and Chile, and we commend the Administration and Congress for these achievements. Without the leadership provided by Ambassador Zoellick and his team and Congress's thoughtful guidance, these achievements would not have been possible.

The importance of the Congressional approval of the Trade Promotion Authority (TPA) to the American high tech industry cannot be underestimated. The TPA legis-

<sup>1</sup>The Business Software Alliance ([www.bsa.org](http://www.bsa.org)) is the foremost organization dedicated to promoting a safe and legal digital world. The BSA is the voice of the world's software and Internet industry before governments and with consumers in the international marketplace. Its members represent the fastest growing industry in the world. BSA educates computer users on software copyrights and cyber security; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cisco Systems, CNC Software/Mastercam, Entrust, HP, IBM, Intel, Intuit, Internet Security Systems, Macromedia, Microsoft, Network Associates, Novell, PeopleSoft, SeeBeyond Technology, Sybase, and Symantec.

<sup>2</sup>High Tech Trade Coalition Include: AeA-Association For Competitive Technology; Business Software Alliance; Computer & Communications Industry Association—Computer Systems Policy Project; Computing Technology Industry Association—Electronic Industries Alliance; Information Technology Association Of America—Information Technology Industry Council; National Electrical Manufacturers Association—Semiconductor Industry Association; Semiconductor Equipment & Materials International—Software & Information Industry Association; Telecommunications Industry Association.

lation set the standard of strong IP protection and trade liberalization among our trading partners in all trade contexts including FTAs and the World Trade Organization (WTO).

With the successful conclusion of these FTAs, and continued progress within the WTO Doha Round of negotiations, including important talks on e-commerce and trade in services, we feel confident that the U.S. will achieve its objectives in promoting barrier free e-commerce and trade liberalization among our trading partners.

#### Intellectual Property (IP) Provisions in Singapore and Chile FTA:

For the software industry, strong intellectual property protection is essential in fostering continued innovation and investment as copyright infringements and software piracy cost the industry \$13 billion in lost revenues in 2002. In Singapore and Chile, the IT industry has contributed significantly to their economic growth—\$1.2 billion in Singapore and \$340 million in Chile in 2002. However, both countries continue to have high piracy rates—48% in Singapore and 51 percent in Chile, costing the industry \$31.9 million in Singapore and \$44.9 million in Chile in lost revenues in 2002.

To promote strong IP protection in a digital world, it is essential that our trading partners establish the level of copyright protection that complies with WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT). It is also essential that our trading partners fully comply with and enforce these obligations.

The mutual obligations under the U.S.-Singapore FTA mark some of the highest standards of intellectual property rights protection and enforcement yet achieved in a bilateral or multilateral agreement. The U.S.-Chile FTA also makes significant progress in achieving improved intellectual property protection and enforcement.

Both agreements recognize the importance of strong intellectual property rights protections in a digital trade environment by building on the obligations in the TRIPS Agreement, and ensuring that works made available in digital form receive commensurate protection by incorporating the obligations set out in the WIPO Copyright Treaty.

Some of the highlights in both agreements include:

The clear application of the reproduction right of a copyright owner to permanent as well as temporary copies, including temporary storage in electronic form. This treatment is critical in a networked world where copyrighted materials can be fully exploited without a user ever making a permanent copy. The Chile and the Singapore Agreements contain slightly different obligations. While the Singapore Agreement establishes the much better unqualified protection for temporary copies, the Chile Agreement contains certain limitations. In the future, the United States should in all cases follow the Singapore model.

- Provisions to promote strong intellectual property rights protection and foster electronic commerce by maintaining the balance reflected in the U.S. Digital Millennium Copyright Act. Copyright law is clarified to permit the exploitation of works and effective enforcement of rights in the online environment, while remedies against Internet service providers are limited for infringements they do not control, initiate or direct.
- Requirements to establish prohibitions against the circumvention of effective technological protection measures employed by copyright owners to protect their works against unauthorized access or use, coupled with the ability to fashion appropriate limitations on such prohibitions, again consistent with those set out in the Digital Millennium Copyright Act.
- Recognition that robust substantive standards for the protection of intellectual property, to be meaningful, must be coupled with obligations providing for the effective enforcement of rights, in both civil and criminal contexts. In this regard, key provisions of the agreements provide for the establishment of statutory damages at levels appropriate to deter further infringement, civil ex-parte measures to preserve evidence of infringement, strong criminal penalties against the most pervasive form of software piracy—corporate and enterprise end user piracy; and strong border measures to combat cross-border trade in infringing goods.
- Obligating governments to lead by example by using only legitimate and licensed software.

#### Trade in Information Technology (IT) Services

During the past decade, a vast array of new e-commerce and information technology services have been developed including data storage and management, web hosting, and software implementation services. Given the increasing trend for tech-

nology users to purchase information technology solutions as a combination of goods and services, full liberalization in this area is more important than ever.

It is critical that our trading partners provide full market access and national treatment in information technology services including those that are delivered electronically. It is also important that no barriers are created for the new and evolving information technology services.

In both the Singapore and Chile agreements, parties agreed to provide full market access and national treatment on services. Both agreements adopted a negative list approach, which means that new services will be covered under the agreement unless specific reservations were made in the agreement.

We commend this approach and the achievement in both agreements where liberalization of information technology services was achieved without any commercially significant reservations, leading to the promotion of barrier free trade in services with our trading partners.

#### E-Commerce in Singapore and Chile FTA

With over 500 million people using the Internet worldwide, the promotion of barrier free cross border e-commerce is critical in encouraging continued e-commerce growth and development. In fact, the trade treatment of software delivered electronically is one of the most important issues facing the software industry and it is essential that software delivered electronically receive the same treatment under the trade laws as software traded on a physical medium. The e-commerce provisions in the Singapore and Chile FTAs should be the model for what the United States pursues in all future trade agreements.

We are quickly moving to a world where online distribution is the predominant way software is acquired and used. According to our CEOs, by 2005, 66 percent of all software is expected to be distributed online. This will have enormous efficiencies as the newest, most up-to-date software is delivered across borders at a lower cost and more quickly than when delivered in a physical form, to the benefit of both customers and software developers.

The E-commerce chapters in both the Singapore and Chile FTAs recognize, for the first time, the concept of "digital products" in terms of trade. The chapters also establish requirements that further promote barrier free e-commerce, essential in promoting growth and development of the IT industry.

In both agreements, the trading partners agreed not to impose customs duties on digital products. This provision is consistent with the WTO Moratorium on Customs Duties on Electronic Transmissions. The inclusion of this provision is critical in further promoting the growth of cross border e-commerce.

Both agreements also introduce the concept of "digital products" as the means to ensure broad national treatment and MFN nondiscriminatory treatment for products acquired online. This is critical as it recognizes, for the first time, the evolution and development of digital products during the last twenty years and addresses the need for predictability in how digital products are treated by trade law.

With respect to the physical delivery of digital products, in both agreements, the parties agreed to apply customs duties on the basis of the value of the carrier medium. This provision is essential as valuation on content results in highly subjective assessments of projected revenues.

The parties also agreed to cooperate in numerous policy areas related to e-commerce, further advancing the work on e-commerce with our trading partners.

#### **Information Technology: Tariff Measures**

The Uruguay Round agreements on tariff reduction, and the subsequent Information Technology Agreement within the WTO, have made significant contributions by addressing the issue of barriers to trade created by high tariffs. Tariffs on information technology products are still very high in many countries, creating a substantial impediment to trade.

In order to foster a barrier free trade environment, it is critical that our trading partners sign and implement the Information Technology Agreement (ITA) or its equivalent. It is essential that our trading partners eliminate or phase out existing tariffs applied to information technology products since tariff acts as a counterproductive burden that raises the cost of the very technology needed to be competitive in the digital economy.

In both FTAs, Singapore and Chile have agreed to liberalize tariff barriers. Singapore is already a signatory to ITA. Chile, who is not a signatory to the ITA, has agreed to eliminate tariffs on high-technology products within the next 4 years. The tariff reduction measure in the Chile agreement also sets an important precedent for the Free Trade Area of the Americas (FTAA), significantly increasing the high

tech industry's ability to export its products to Brazil, one of the largest markets for technology products in Latin America.

In conclusion, the U.S. free trade agreements with Singapore and Chile sets new benchmarks in progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services and barrier free e-commerce as well as tariff elimination among our trading partners. In these agreements, new baseline have been set that should lead to significant market opportunities for the U.S. IT and software industries in the years ahead. We commend the achievements made in both agreements and we strongly support their passage in Congress. On behalf of Borland and the members of BSA, I would like to thank the Committee for the opportunity to testify here today.

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Chairman CRANE. Thank you, Mr. Gottfried. Let me reassure all of our witnesses that your printed statements will be made a part of the permanent record. Mr. Haines.

**STATEMENT OF BOB HAINES, MANAGER, INTERNATIONAL AFFAIRS, EXXON MOBIL CORPORATION, IRVING, TEXAS, AND CO-CHAIR, U.S.-SINGAPORE FREE TRADE AGREEMENT BUSINESS COALITION**

Mr. HAINES. Thank you, Mr. Chairman, Members of the Subcommittee. I am Bob Haines, Manager of International Affairs of Exxon Mobil Corporation, and also a Co-Chair of the U.S.-Singapore FTA Business Coalition. On behalf of the Coalition, I would like to thank the Subcommittee for the opportunity to discuss the economic impact of this agreement, and to convey our enthusiastic endorsement of the U.S.-Singapore FTA.

I would like to acknowledge today Ms. Kristin Paulson, who is the Chair of the U.S. Chamber of Commerce in Singapore, who is here today representing U.S. companies in Singapore, as well as Ambassador Chan and Ambassador Lavin, who worked so hard on the bilateral relationship between the two countries.

The Coalition, which consists of companies and business organizations from across America, is actively working to support the passage of U.S.-Singapore FTA. The Coalition is chaired by the Boeing Company, the United Postal Service, and Exxon Mobil Corporation. Exxon Mobil is the largest single investor in Singapore, with over \$6.5 billion invested. We have a large refining and petrochemical complex, as well as an extensive marketing complex. We have found Singapore to be an excellent place for U.S. companies to do business.

The membership of the Coalition includes the U.S.-ASEAN Business Council, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Business Roundtable, the Emergency Committee for American Trade, AmCham Singapore, and the Coalition of Service Industries, as well as many others. The Coalition represents the bulk of the more than 1,300 American companies that have a presence in Singapore.

The Coalition views this FTA negotiated with Singapore to be significant for many reasons. Economically, we believe this is a landmark pact, which will open new sectors in Singapore to U.S. companies, spur economic growth in both countries, create higher-paying jobs for American workers, and increase investments, trade volumes, and economic integration. Since it will be the first FTA in Asia, this agreement will have historic ramifications. It will send

a strong message that the United States will remain heavily engaged in Asia, and is committed to binding the business and economic affairs of the region with those of America.

Singapore is a stalwart friend of United States and Asia, and an attractive place for American business. Therefore, it is a worthy candidate for an FTA, and one that will serve as a strong model for future FTAs in the Asia-Pacific region. Already it has stimulated interest for other countries in the region to work toward their own FTAs with the United States.

For American companies, the agreement represents new investment opportunities, potential increased bilateral trade flows, and hopefully more profitable business activities. Although Singaporean companies now have a relatively limited presence in the United States, the FTA is expected to stimulate interest in the United States as a potential investment destination. The United States currently has a \$7 billion trade surplus with Singapore, and there are no indications that this trend will change in the near future.

The top State exporters to Singapore include California, Texas, New York, New Jersey, and Missouri; and I think we are going to work on Illinois as well, Mr. Chairman. Arguably, some of the biggest gains made in this FTA are in the area of services. The agreement achieves new and expanded trading opportunities for specific service areas including financial services—such as banking, securities, and asset management—insurance, express delivery, healthcare, telecommunications, IT, transportation, travel, and tourism.

In the banking sector, the FTA will result in the establishment of more branch operations in Singapore, and will allow American banks to provide more services to a broader clientele base by enhancing customer service capabilities through access to the local Automatic Teller Machine network.

The investment chapter of the agreement clarifies the terms and conditions for the free flow of capital, which we believe will serve to enhance investor confidence. With regard to intellectual property rights protection, the U.S.-Singapore FTA breaks new ground and shores up standards that the American high technology industry deems essential for marketing its products abroad.

Under the agreement, American biotech, chemical, pharmaceutical, entertainment, and multimedia companies will enjoy rights and privileges, including nondiscriminatory treatment, government involvement in the intervention and prosecution of violators, as well as the active application of anti-circumvention rules. These protections will allow American manufacturers and service providers to be more competitive by offering superior technology and services without the threat of trade secrets being stolen or copyrights violated. The FTA also contains an e-commerce chapter that is truly pioneering. Its inclusion addresses the realities of the information age.

As you can see from this brief overview, there are many reasons for the U.S.-Singapore FTA Business Coalition to support this agreement, and we urge Congress to do so as well. Thank you.

[The prepared statement of Mr. Haines follows:]

**Statement of Bob Haines, Manager, International Affairs, Exxon Mobil Corporation, Irving, Texas, and Co-Chair, U.S.-Singapore Free Trade Agreement Business Coalition**

I am Bob Haines, Manager of International Affairs, Exxon Mobil Corporation and Co-Chair of the U.S.-Singapore Free Trade Agreement Business Coalition. On behalf of the Coalition, I would like to thank the Subcommittee for the opportunity to discuss the economic impact of this Agreement, and to convey our enthusiastic endorsement of the U.S.-Singapore FTA. In sum, because it is a detailed, comprehensive, and substantive Agreement, we believe the U.S.-Singapore FTA is clearly good for American workers, American business, and American consumers.

The Coalition, which consists of companies and business organizations from across America, is actively working to support the passage of the U.S.-Singapore FTA. The Coalition is co-chaired by The Boeing Company, UPS and Exxon Mobil Corporation. Exxon Mobil is the largest single foreign investor in Singapore, with over \$6.5 billion invested. We have a large refining and petrochemical complex, as well as extensive marketing operations. We have found Singapore to be an excellent place for a U.S. company to do business.

The membership of the Coalition includes the U.S.-ASEAN Business Council, the U.S. Chamber of Commerce, the National Association of Manufacturers, the Business Roundtable, the Emergency Committee for American Trade, AmCham Singapore, and the Coalition of Service Industries, and many others. The most recent list of Coalition members accompanies this written submission. The Coalition represents the bulk of the more than 1,300 American companies having a presence in Singapore.

The Coalition views the FTA negotiated with Singapore to be significant for many reasons. Economically, we believe this landmark pact will: (1) open new sectors in Singapore to American companies; (2) spur economic growth in both countries; (3) create higher paying jobs for American workers; and (4) increase investments, trade volumes and economic integration. Because it will be the first FTA in Asia, this agreement will have historic ramifications. It will send a strong message that the U.S. will remain heavily engaged in Asia and is committed to binding the business and economic affairs of the region with those of America.

Notably, the U.S.-Singapore FTA, along with the U.S.-Chile FTA, will be the first Free Trade Agreements approved by Congress under the expedited fast track procedures. It is the Coalition's hope that these FTAs, symbolized by the U.S.-Singapore FTA, will continue the trend toward greater market liberalization. The U.S.-Singapore FTA comprises deep and broad commitments that break new ground in a number of industry sectors such as financial services, telecommunications, intellectual property rights and e-commerce. It maximizes liberalization in goods and services, and should serve as a model for future bilateral, regional and multilateral negotiations.

In recent years, the United States has fallen behind the rest of the world, which has experienced a proliferation of free trade agreements and bilateral investment treaties. There are now an estimated 130 FTAs in force, of which the United States is only a signatory to four. Singapore is a stalwart friend of the U.S. in Asia and an attractive place for American business. Therefore, it is a worthy candidate for a FTA and one that will serve as a strong model for future FTAs in the Asia Pacific. Already, it has stimulated interest from other countries in the region to work toward their own free trade agreements with the U.S. Under the Bush Administration's Enterprise for ASEAN Initiative, a far reaching program designed as a first step toward bilateral FTAs with ASEAN countries that are committed to economic reforms and openness, there have been trade and investment framework agreements signed with Thailand, the Philippines, and Indonesia. These efforts will enhance competitiveness and lead to more and higher paying jobs, benefiting American companies and the U.S. economy as a whole.

For American companies, the Agreement represents new investment opportunities; potential increased bilateral trade flows, and hopefully more profitable business activities. Although Singaporean companies now have a relatively limited presence in the U.S., the FTA is expected to stimulate interest in the U.S. as a potential investment destination. The United States currently has a \$7 billion trade surplus with Singapore and there are no indications that this trend will change in the near term. The top State exporters to Singapore include California, Texas, New York, New Jersey and Missouri. Currently, the intra-MNC trade volume accounts for approximately 62 percent of U.S.-Singapore trade. With the Agreement's emphasis on bilateral customs cooperation, expedited customs clearances and tariff elimination, trade volume levels are expected to increase across the board.

Next, I would like to focus on the benefits to specific sectors of the U.S. economy. Arguably, some of the biggest gains made in this FTA are in the area of services. The Agreement achieves new and expanded trading opportunities for specific service sectors, including financial services (such as banking, securities and asset management), insurance, express delivery, healthcare, telecommunications, information technology, transportation, travel and tourism. It also provides for transparency in formulating domestic regulations, including licensing decisions, which is an essential investment tool to the services industry.

In the banking sector, the FTA will result in the establishment of more branch operations in Singapore, and it will allow American banks to provide more services to a broader clientele base by enhancing customer service capabilities through access to the local ATM network. This feature will make U.S. banks more competitive in Singapore and the region.

The investment chapter of the Agreement clarifies the terms and conditions for the free flow of capital, which we believe, will serve to enhance investor confidence.

With regard to intellectual property rights protection, the U.S.-Singapore FTA breaks new ground and shores up standards that the American high technology industry deems essential for marketing its products abroad. Adequate and effective protection of intellectual property rights remains a foundation for continued U.S. leadership in many industry sectors. Therefore, the precedent that this Agreement sets for future bilateral and multilateral trade agreements in IPR protection warrants our staunch support for the FTA. Under the Agreement, American biotech, chemical, pharmaceutical, entertainment, and multimedia companies will enjoy rights and privileges, including nondiscriminatory treatment, governmental involvement in the intervention and prosecution of violators, as well as the active application of anti-circumvention rules. These protections will allow American manufacturers and service providers to be more competitive by offering superior technology and services without the threat of trade secrets being stolen or copyrights violated.

The FTA also contains an e-commerce chapter that is truly pioneering. Its inclusion addresses the realities of the information age and supports an industry in which the U.S. enjoys a strong competitive advantage. The Agreement commits Singapore to the nondiscriminatory treatment of digital products and lowers the barriers on the use and development of e-commerce. Singapore has also committed to not apply fees or tariffs on the electronic transmission of digital products and services delivered via the Internet.

As you can see from this brief overview, there are many reasons for the U.S.-Singapore FTA Business Coalition to support this Agreement. We urge Congress to support it as well. Thank you.

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Chairman CRANE. Thank you, Mr. Haines. Some of you highlighted the importance of the strong intellectual property protections found in both of these agreements. Could you explain how these agreements achieve this, and what the economic impact will be to the United States and among our trading partners—any one of you?

Mr. GOTTFRIED. Mr. Chairman, both of these agreements recognize and parallel the provisions in the DMCA, which provides strong anti-circumvention provisions. It also provides strong enforcement standards including civil, ex-parte statutory damages, criminalization of end user piracy, and requires legal software use by the governments. It also provides Internet service provider liability which is consistent with what the DMCA provides. As I mentioned before, strong intellectual property will promote economic growth and tax revenues as well.

Chairman CRANE. Anyone else have any observation beyond that?

Mr. HAINES. I believe the agreement covers four areas: trademarks, copyrights, patents, and trade secrets; and in all of these areas there are additional protections for these intellectual property rights.



Chairman CRANE. It was mentioned that this is the first time that digital products were recognized in terms of trade. Can you explain the significance of this to the high-tech industry? Yes, again, Mr. Gottfried.

Mr. GOTTFRIED. Mr. Chairman, in our industry we are evolving in the way we distribute our products. Traditionally, we have distributed our products in diskette form, and then in Compact Disk (CD) Rom form, but we are now evolving with the Internet, and with high-speed data transmission available, to transmitting our products in digital format so that the customer is able to get the product electronically without having to go to a store to actually physically buy the product. It also makes for quicker upgrades dealing with things like error corrections even made in the software, and it was very important that these FTAs recognize that medium.

Chairman CRANE. Finally, what unique provisions in this agreement do you find most beneficial, and what would you like to see in any new agreements that United States will sign in the future? Anyone have a comment?

Mr. TRAMMELL. Low tariffs is the thing that hinders companies, small manufacturing, even though Chile's is rather low by many countries' standards. It is 6 percent. It can go as high as 30 percent. India, 50 percent. It is the tariffs in companies, small companies like Tramco, that suffer from not having trade agreements. We look forward to more. Thank you.

Mr. JACOBS. I would also like to add that technology neutrality is extremely important, and the nonbinding provisions in these agreements are very good start for Qualcomm. However, what we are looking for is a binding rule that enables us to offer our products in markets and be able to compete without any hindrances and in fair and open competition. I think these agreements are an extremely good start in this area.

Chairman CRANE. Anyone else? Yes, Mr. Gottfried.

Mr. GOTTFRIED. Two things that we like that are in both of those agreements: one is the national treatment and nondiscriminatory provisions on digital products. Also, we support the negative list approach on services.

Chairman CRANE. Mr. Haines.

Mr. HAINES. Our Coalition covers a broad range of companies, so what we enjoy about this agreement is that it is comprehensive, covers many new areas, and gives very good protection. We think that is one of the reasons why it can serve as a model, because it is comprehensive and provides a comprehensive list of protections.

Chairman CRANE. Thank you. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. I would like to thank the panelists for agreeing to participate today. For each of the panelists, since 9/11, there has been an increased focus on the need to provide security for goods imported into the United States. Do you see these trade agreements—do you see them working, the balanced, facilitated trade and security concerns? Mr. Trammell.

Mr. TRAMMELL. It doesn't affect my business at all. We don't do any import. Everything we do is export. So, it is not affecting us at this point. However, the stuff that we manufacture is not

high tech. So, at this point it has not been a problem; and I am not sure if I am answering you, giving you—

Mr. ENGLISH. Mr. Trammell, if I might, let me turn to the other panelists. Would anyone care to focus on this?

Mr. JACOBS. I would just add that we are also focused on exports and doing very little importing ourselves, so it does not affect Qualcomm much.

Mr. ENGLISH. Would anyone like to comment? Very good. Both provisions include provisions allowing businesses to send service providers, professionals, owners, and officers to the other country. This is potentially a controversial component in both trade agreements. How important is this to your respective businesses?

Mr. HAINES. The agreement addresses the problems that U.S. service providers face in obtaining work permits and visas for personnel, but it is on short-term assignments. In some cases now, it may take months for necessary authorization. Thus, that seriously impairs the ability of U.S. companies to compete.

Under this agreement, the U.S.-Singapore agreement, the U.S. and Singapore professionals will be granted temporary visas, but only for a period of 90 days. This is based on some criteria like proof of nationality and so forth, and it is also limited, I believe, to 5,400 people. We think this is a very good accommodation that will allow American businesses as well as Singaporean businesspeople what they need in certain times.

Mr. ENGLISH. Any other comments? Then, in that case, Mr. Jacobs, you spoke about the importance of using trade negotiations to secure binding rules on technology neutrality to ensure that telecom services companies can use the technology of their choice to provide services without governmental interference. Where has this been a problem for your company?

Mr. JACOBS. I have got a few examples, but in general, it happens with technology standards and in the allocation and licensing of radio frequencies. For example, in Europe, when Qualcomm tried to get CDMA deployed into Europe, we were denied access to the most important cellular frequency bands. As a result, our technology has not been allowed in, but a competing technology is allowed. The European Union has now taken that same approach in large, potential markets like China. They are trying to do the same thing there by requesting that specific technology be utilized in a certain frequency band, thus denying the competitive neutrality that we are searching for.

I think the most obvious one for us lately has been in Korea, where there is a standard, less on the air interface standard like CDMA, but more on applications platform, where Korea got very nervous that it was getting dependent on foreign technology. Korea wanted to create its own homegrown industry, and so it developed and funded an applications platform called the Wireless Internet Platform for Interoperability (WIPI). Ultimately, they are trying to mandate that upon all the cellular operators, and obviously that is anticompetitive. There are many competing solutions out there, and when a government mandates something, it obviously is very difficult to compete against it.

Mr. ENGLISH. Finally, and I know my time is short, Mr. Jacobs, we frequently hear from companies operating abroad who complain

that the first time they learn about some new government regulation is when the law enforcement authorities are knocking on their door. How do you rate the various transparency provisions in these two agreements, and how will they make a difference for your business?

Mr. JACOBS. I am not an expert in that subject, so I think I will hold off.

Mr. ENGLISH. Very good. Thank you, Mr. Jacobs.

Chairman CRANE. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you, gentlemen, for your testimony. Let me see if I can focus in on a question for perhaps Mr. Jacobs and Mr. Gottfried, but, please, anyone on the panel if you are interested. It relates to the employer visa program, or employee visa program, that we find in the two FTAs. The H-1B program, as you are very well aware, was a very delicately crafted compromise trying to ensure that the real-time needs of most companies—especially in the high-tech community—were addressed, while at the same time recognizing our obligation to put American workers first in line for any jobs that are here in America. We also had a \$1,000 fee that each company would pay to recognize that, in the future, we don't want to have to seek workers from abroad. We should be hiring them from here, especially with high-tech jobs that are very well paid. The FTAs both include language that provides for, in essence, H-1B workers to come in on top of the limits that we have for existing H-1B programs. It also seems to allow for a generation of those annual caps without regard to how many people leave under the existing cap for the particular country. So, if you have a 1,400 cap in Chile, for example, if 1,400 people come in in 2003, next year, if none of the 1,400 are left, you still can bring in another 1,400 from Chile, and so forth. In Singapore it is 5,400, so there is never a limit.

Question for you: one, should we require companies to pay the \$1,000 fee that is, in essence, a recognition that we have to do more to home-grow our own workforce? Two, should we allow there to be no cap to the global limits on workers that are coming in from the two countries, so that the 5,400 from Singapore and the 1,400 from Chile, 6,800 total, could annually come in regardless of how many of those existing 6,800 in any year go back to their home countries?

Mr. JACOBS. Sir, I am not an expert on this question either, or the spokesman for Qualcomm on this particular issue, but I think it is Qualcomm's goal to hire Americans. We have hired 5,800 employees in the United States, so I think we are hiring a high amount of U.S. citizens, but in this very competitive world market, we certainly want to have access to the best and brightest people. So, the more access we can get to the people, the better. Whether \$1,000 is the right amount or not is not driving whether Qualcomm will pursue aggressively U.S. citizens or not. We also are doing many things to help U.S. institutions, college institutions, to continue to put out very strong future employees. So, that has been our path.

Mr. BECERRA. Thank you. I think everyone recognized that. San Diego obviously has benefited tremendously by what Qualcomm has done, and we hope you continue to do so. No one

wants to deny a company, especially a company that has produced so much, or any industry that has produced so much, the opportunity to just continue to advance. It is our fault in our country if we are not producing enough of those engineers and computer scientists and other folks of technological bent in order to meet the needs of our companies. No one wants to stifle progress. So, I am just wondering, though, if there comes a point where we want to be careful, because there is another provision in the FTAs that seems to remove the requirement that an employer certifies that it has sought out American workers for those particular positions that are open, which to me, if that gets out, that could become a blemish on the FTAs even if it doesn't happen that way. I don't believe that the countries of Chile and Singapore are trying to somehow circumvent the process. I think there is probably some genuine role to be played here. It just seems that we may be going beyond what we need to.

Since my time is getting short, maybe I can get to one other question very quickly. Please tell me, anyone on the panel, if you have a particular disagreement with what I say. Child labor should not be permitted. Slave labor should not be permitted. The right to associate by any employee should not be forbidden. The right to collectively bargain—you must allow people to unionize. The right to associate to collectively bargain should not be forbidden. Also, the right against forced labor—the obligations to forbid discrimination.

Is there any problem with any of those five issues? Outlawing child labor, outlawing discrimination, outlawing slave labor, forced labor, permitting right of association, permitting collective bargaining; does anybody have any problems with those? No? Would you object to having something like that that says you can't allow child labor; you can't allow slave labor, forced labor; you can't permit discrimination; you can't stop someone from associating; you can't stop someone from at least trying to collectively bargain? Would that—would you be opposed to an agreement if it said those things?

Mr. TRAMMELL. Well, Congressman, that is a pretty broad brush. What is child labor? At what age do you consider it child labor? You have got a lot of blocks there, too, in my opinion, that could very well impede agreement. I think we all want to do what is fair.

Mr. BECERRA. What if you used an international standard for child labor; say, if the international community thought that it shouldn't be 18 or 17.

Mr. TRAMMELL. Please, I am not a defender of child labor, but I am just saying that that is a pretty broad brush. I live out on a ranch, and so, 16-year-old kids can work for me under my supervision. I would certainly hate to think that I am abusing the child labor law by having my grandkids help me haul hay or plow or something. So, the term "child labor," of course, is very chilling in just the term "child labor." I think you should be more definite about what you are talking about.

Mr. BECERRA. If you were—and, Mr. Chairman, I know my time has expired, but if I can pursue this for just a second more because I think Mr. Trammell brings up a good point. If we were

to give definition to those five areas, child labor—if we used an international standard that made it very clear what we meant, and we used standards that were internationally recognized, versus by the United States or by some other country, but internationally recognized, would any of you have objections to seeing any of those provisions ingrained, embedded in an FTA?

Okay. I thank you. I assume that that means there is no vocal opposition to that. I only raise that point because I think a lot of us are just saying we could have some great trade agreements, and address some of the concerns that some of us have, and be able to move forward with some of these trade agreements without a problem if we just put in some floor standards there that would help a lot of us have confidence that every agreement, regardless what the good faith of the country and the negotiators was—we would know that there is something there, and it would allow us to move forward and let you all aggressively market your products and do as well as you can for the American people and your companies. Thank you, Mr. Chairman, for the extra time.

Chairman CRANE. Well, I thank you. I thank our distinguished witnesses here. On the child labor question, though, let me tell you that as a kid, when we were 12, we worked on the farm to help load hay and get it in the barn. We milked the cows at 5:30 in the morning and never thought anything about it. We only made 10 cents an hour. We were blessed, we felt, because we could work a 10-hour day and make a dollar.

Mr. BECERRA. Mr. Chairman, I think you are right. Sometimes it seems like we have reversed it, and some of our kids don't feel like they need to work until they become adult age.

Chairman CRANE. Absolutely. Sad to say.

Mr. BECERRA. We do have requirements. We do require you to register, and there are some regulations that require anyone under 18 to work under permits, unless, of course, it is family, which is different. We do provide a regime so that we can ensure that there is no abuse of those individuals. I don't think anyone would challenge that or contest that, because what we have done is, in essence, given a child the chance to become educated, to become the folks who take those jobs that Qualcomm produces, versus have to work for 10 cents an hour on a farm; which farm work is dignified labor, but I think all of us want to make more than 10 cents an hour.

Chairman CRANE. That was back in the forties. That would be, probably, \$20 an hour today.

Mr. BECERRA. Mr. Chairman, I would love to find some of those farms, because I know a lot of folks who are working for a lot less than minimum wage on our farms.

Chairman CRANE. Well, I want to thank our panel for their testimony and for their involvement, and I would like to ask you all to please stay involved, especially in terms of communication, with our colleagues so that as we get closer to voting on this on the floor, they have the information that you have provided us here on the Committee. With that, this panel stands adjourned.

We will invite our next panel to come testify, and that includes Joseph Papovich, Senior Vice President International, Recording Industry Association of America, on behalf of the Entertainment

Industry Coalition for Free Trade; David Spence, Managing Director, FedEx Corporation; Gawain Kripke, Policy Director, Oxfam America; Thea Lee, Chief International Economist, AFL-CIO; and finally, John Audley, Senior Associate and Director, Project on Trade Equity and Development of the Carnegie Endowment for International Peace.

If our witnesses will all please take their seats, we will proceed in the order in which I introduced all of you. Please try and keep your testimony confined to the 5 minutes, and the little lights in front of you there—when the red light goes on, don't cross the intersection. With that, we will start out with Mr. Papovich.

**STATEMENT OF JOSEPH PAPOVICH, SENIOR VICE PRESIDENT INTERNATIONAL, RECORDING INDUSTRY ASSOCIATION OF AMERICA, ON BEHALF OF THE ENTERTAINMENT INDUSTRY COALITION FOR FREE TRADE**

Mr. PAPOVICH. Thank you, Mr. Chairman. On behalf of the Entertainment Industry Coalition for Free Trade, I appreciate the opportunity to testify about the benefits of these two FTAs for America's entertainment industry. Our coalition represents Americans who create, produce, distribute, and exhibit theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members are multichannel programmers and cinema owners, producers and distributors, entertainment guilds and unions, trade associations, and individual companies.

International markets are vital to our companies and our creative talent. Foreign sales account for 40 to 60 percent of the revenues of the record and motion picture industries. This strong export base sustains American jobs. However, America's creative industries are under attack. The impact of piracy has grown in recent years with the advance of digital technology. Market access barriers plague our industries. These two agreements include commitments vital to our coalition, including strong protection of intellectual property and market access for the goods and services we produce and distribute, whether in physical form or over digital networks.

Mr. Chairman, you asked the last panel for some specific examples in the intellectual property rights area that make these agreements good, and I have some I am going to list off for you right now. First, these agreements will help us better protect our intellectual property in Chile and Singapore, while setting important precedents for future FTAs, including the FTAA. The agreements create clear and binding rules for the protection of intellectual property in the digital economy. They ensure that copyright owners have the exclusive right to make their works available online. This is very important. The agreements build upon and improve existing copyright agreements, including the WTO TRIPS agreement. The agreements implement the obligations of the 1996 WIPO Internet Treaties. This includes prohibition against the provision of goods and services that circumvent technological measures used to protect copyrighted works from unauthorized access and copying. The agreements expand the term of protection for copyrighted works in line with international trends.

Strong enforcement is essential to intellectual property protection, and the new agreements contain important advances. They mandate statutory and actual damages against infringements based on the value of the legitimate goods. Enforcement authorities will be able to seize and destroy pirated goods and the equipment used to produce such goods. Singapore, a major trans-shipment port, will enforce these laws against goods and transit, making it more difficult for pirates to use Singapore as a conduit for pirated goods produced in other Asian countries. Singapore also accepted a special provision to control optical disk production, like CDs, CD ROMs, Digital Video Disks (DVDs), which is a major problem in their region.

Second, the FTAs ensure that U.S. audiovisual services will enjoy the Most Favored Nation principle and national treatment with only limited reservations. Singapore and Chile's commitments are excellent where U.S. audiovisual interests are strongest. For example, Singapore is a regional hub for the uplinking and delivery of channels of television content via satellite to cable services and directly to consumers. Singapore has taken full commitments on these services, as has Chile. Recorded music, cinema exhibition, and television and cable transmission services will enjoy full market access and national treatment under these agreements. Home video rental and leasing, and the on-demand delivery of all forms of entertainment content are fully covered.

Third, the agreements offer groundbreaking provisions regarding the treatment of digital products. Among other things, Singapore and Chile committed to nondiscriminatory treatment of digital products and agreed not to impose Customs duties on such products. The agreements require that the valuation for content-based products like films, videos and music CDs will be based on value of the carrier media like the disk, not the value of the content, which would obviously be much higher.

Finally, the agreements eliminate the duties on the physical products created by our industry and for the inputs we use. Therefore, Mr. Chairman, on behalf of the industry, Entertainment Industry Coalition, we call for congressional approval of these two fine trade agreements. We praise the work of Ambassador Zoellick and his staff in concluding these agreements. Congressional approval of these agreements will promote one of our economy's most vital sectors. Thank you very much.

[The prepared statement of Mr. Papovich follows:]

**Statement of Joseph Papovich, Senior Vice President International, Recording Industry Association of America, on behalf of the Entertainment Industry Coalition for Free Trade**

Mr. Chairman and Members of the Subcommittee, on behalf of the Entertainment Industry Coalition for Free Trade (EIC), I appreciate the opportunity to testify about the economic benefits that the U.S.-Singapore and U.S.-Chile Free Trade Agreement will provide for America's entertainment industries, including the men and women who work in our industries. The Entertainment Industry Coalition represents the interests of those men and women who produce, distribute and exhibit many forms of creative expression, including theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members are multi-channel programmers and cinema owners, producers and distributors, guilds and unions, trade associations and individual companies.

Our members include AFMA; AOL Time Warner; BMG Music; Directors Guild of America; EMI Recorded Music; Interactive Digital Software Association; The Inter-

national Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (IATSE); Metro-Goldwyn-Mayer Studios Inc.; Motion Picture Association of America; National Association of Theatre Owners; New Line Cinema; the News Corporation Limited; Paramount Pictures; Producers Guild of America; Recording Industry Association of America; Sony Music Entertainment Inc.; Sony Pictures Entertainment Inc.; Television Association of Programmers (TAP) Latin America; Twentieth Century Fox Film Corporation; Universal Music Group; Viacom; Universal Studios; the Walt Disney Company; Warner Bros.; and Warner Music Group; and The Writers Guild of America, west (WGAW). Additional information regarding our Membership can be found in the attached document: ***“The Entertainment Industry Coalition for Free Trade: WHO WE ARE.”***

The goal of the EIC is to educate policymakers about the importance of free trade for the U.S. economy, the positive economic impact of international trade on the entertainment community, and the role of international trade negotiations in ensuring strong intellectual property protections and improved market access for our products and services.

International markets are vital to our companies and workers. For the record and motion picture industries, for example, exports account for forty to sixty percent of revenues. This strong export base has been significant for sustaining countless U.S. jobs for America’s creative talent and workers.

Unfortunately, America’s creative industries are under attack. Piracy of copyrighted materials has had a devastating impact. The impact has grown in recent years with the advance of digital technology. While the digital revolution has created new ways for all of us to reach consumers with compelling content, and for consumers in turn to access it from almost anywhere, this same technology has also facilitated the work of those who profit from stealing the innovation and creativity of others. Market access barriers also plague segments of the entertainment industries.

All of this increases the importance of international trade agreements. In addition to updating traditional copyright protections, our industry needs new agreements that keep pace with changes in technology.

The EIC, therefore, is committed to the passage of the U.S.-Singapore and U.S.-Chile Trade Agreements. These agreements include numerous commitments that are vital to the members of the Coalition such as: (1) providing strong protection of intellectual property in the digital age; (2) strengthening copyright enforcement; (3) securing market access for the goods and services produced and distributed by our members whether in physical form or over digital networks; and (4) demonstrating that trade agreements can incorporate commitments that open services markets while simultaneously addressing countries’ specific socio-cultural concerns. The Coalition firmly believes that these FTAs, once implemented, will promote our economic interests and contribute to a strengthened U.S. economy.

### **The FTAs Raise Intellectual Property Standards**

The entertainment industries, and the men and women who work in these industries, are dependent for their success, indeed for their survival, on defending their rights to the intellectual content they have created. Achieving enhanced global standards of copyright protection and enforcement, ensuring meaningful market access, and developing trade disciplines that keep pace with technological development are all central to the Coalition Members’ ability to remain competitive and to continue to ensure good jobs for America’s creative community.

Growing levels of physical piracy, online piracy and inadequate enforcement of copyright laws internationally are challenging the competitiveness of our industries worldwide. These two FTAs succeed in addressing these challenges in ways that bode well for high levels of protection in Singapore and Chile and for setting critical, essential precedents for future Free Trade Agreements. These agreements provide high standards of copyright protection for the modern digital age, and ensure that protection is meaningful in practice through strong enforcement. Piracy of our works represents the single largest trade barrier we face in markets outside the United States. Let me quickly highlight a few key areas.

These agreements create clear and binding rules for the protection of intellectual property to the digital economy. They ensure that copyright holders have the *exclusive right* to make their works available online. As you know, this has been a critical problem in the music industry. These agreements build upon and improve in significant ways the existing copyright agreements, including the provisions in the WTO TRIPS Agreement. The agreements implement the obligations of the 1996 WIPO Internet Treaties, including ensuring that copyright owners, including record companies, have the exclusive right to make their works available online. The agree-



ments include strong prohibitions against the provision of goods and services that circumvent technological measures that protect copyrighted works from unauthorized access and copying. In addition, the agreements expand the term of protection for copyrighted works in line with emerging international trends.

Enforcement is essential to intellectual property protection, and the new Agreements contain important new enforcement provisions. They provide strong deterrence against piracy and counterfeiting. They also mandate both statutory and actual damages—based on the value of the legitimate goods—for IPR violations under Singaporean and Chilean law.

The Governments of Singapore and Chile guaranteed that they have the authority to seize, forfeit, and destroy both pirated goods *and the equipment* used to produce such goods. Singapore—as a major trans-shipment port in Asia—will also enforce these tough laws against goods-in-transit, meaning that Singapore will not serve as a conduit for pirated goods produced in other Asian countries.

It is critical that these issues continue to be addressed in each free trade agreement negotiated by the United States.

### **Creating Market Opportunities for the Entertainment Industry**

*Services:* The U.S. entertainment industry will also benefit from the provisions relating to cross-border trade in services. The FTAs ensure that all U.S. audiovisual services will enjoy national treatment and MFN status, with limited reservations. Chile and Singapore each took a reservation (Singapore's broader than Chile's) that limits their obligations for television content broadcast, but their obligations in all other forms of audiovisual services, where U.S. commercial interests are strongest, are excellent. Specifically, Singapore is a regional hub for the uplinking and delivery of channels of television content via satellite to cable services and directly to customers. Singapore has taken full commitments on these services, as has Chile. Chile also agreed to grant national treatment to U.S. providers for any cultural cooperation agreements it enters with third countries.

Both agreements represent good examples of trade agreements that are able to accommodate cultural concerns, while providing solid market opening commitments. They are a model for future agreements, proving that cultural interests can be promoted without significant restrictions on international trade. Recorded music, cinema exhibition, even television and cable transmission services enjoy full market access and national treatment under these agreements. Home video rental and leasing, and the on-demand delivery of all forms of entertainment content are also fully covered. The agreements ensure continued openness in sectors including advertising, distribution, and computer related services which are all critical for both traditional and as well as digital commerce.

*Digital Products:* The agreements offer groundbreaking provisions with respect to the treatment of digital products. The Entertainment Industry Coalition is committed to bringing compelling content to consumers both online and through digital downloads; we are pleased, therefore, with the agreements' e-commerce provisions. Singapore and Chile have committed to nondiscriminatory treatment of digital products, and have also agreed not to impose customs duties on such products.

*Customs Valuation:* The agreements also establish very valuable rules for customs valuation. Specifically, they require that valuation for content-based products (e.g., films or videos or music CDs) be based on the value of the carrier media—not on an artificial projection of revenues. Because Singapore and Chile will eliminate their tariffs, the true significance of this provision will be as a precedent for future negotiations with other trading partners in other bilateral and regional negotiations.

*Goods:* EIC members are interested in reduction of tariffs on the physical products created by this industry and on zero duties for inputs to our various industries, from sound and projection equipment and state-of-the-art seating for cinemas to promotional materials, to the equipment used in the production of films and music. Even before completion of this Agreement, EIC Members had already benefited from Singapore's commitment to zero duties. Singapore's zero duties, of course, are enshrined in this Agreement. Chile to now as part of its commitment will have zero duties on the products essential to our industry.

Singapore and Chile are not major exporters of entertainment products to the United States. Moreover, the United States already has zero import duties on most entertainment products; elimination of the few remaining low U.S. tariffs on entertainment products are not expected to affect the volume of imports of entertainment products from Singapore or Chile or cause any harm to any U.S. industries.

### **Call for Support**

On behalf of the Entertainment Industry Coalition, I want to praise the work of Ambassador Zoellick and his staff in concluding these FTAs. Congressional support for these agreements will help promote one of our economy's most vital sectors.

More broadly, we strongly support the Administration's continuing efforts to pursue simultaneous liberalization through bilateral, regional, and multilateral trade negotiations. Each of these avenues offers significant prospects.

In addition, we urge Members to join the newly forming Congressional Anti-piracy caucus. Congressmen Goodlatte and Schiff co-chair the House Caucus. Senators Biden and Smith co-chair the Senate Caucus. This caucus will help to reinforce the critical importance of IP protection globally.

For decades, the expansion of trade and the protection of intellectual property have been cornerstones of a bipartisan economic policy. The ability of our country to lead—and the ability of our *companies* to lead—will depend upon our continued success through passage of the Chile and Singapore FTA's and beyond.

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### ***Entertainment Industry Coalition for Free Trade (EIC)*** ***WHO WE ARE***

#### **AFMA**

AFMA is the worldwide trade association of the independent film and television industry. Our members represent all facets of the independent film and television industry including sales, production, distribution and financing. AFMA also hosts the American Film Market, the world's largest film market, where more than \$500 million dollars in film license transactions are concluded annually. International exports of film, television and video/DVD rights are a major aspect of the business of AFMA members and constitute about \$2.6 billion dollars in annual sales.

#### **DGA**

The Directors Guild of America (DGA) represents 12,500 directors and members of the directorial team who work in feature film, filmed/taped/and live television, commercials, documentaries, and news. DGA members include Film and Television Directors, Unit Production Managers, Assistant Directors, Associate Directors, Technical Coordinators, Stage Managers and Production Associates. DGA seeks to both protect and advance directors' economic and artistic rights and preserve their creative freedom.

#### **IATSE**

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (IATSE) is an International Union that represents over 100,000 members employed in the stage craft, motion picture and television production, and trade show industries throughout the United States, its Territories and Canada.

#### **IDSA**

The Interactive Digital Software Association is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish video and computer games for video game consoles, personal computers, handheld devices and the Internet. IDSA members collectively account for more than 90 percent of the \$6.9 billion in entertainment software sales in the United States in 2002, and billions more in export sales of American-made entertainment software.

#### **MPAA**

The Motion Picture Association (MPAA) is a trade association representing seven of the largest producers and distributors of theatrical motion pictures, home video entertainment and television programming: Walt Disney Company; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures; Sony Pictures Entertainment Inc.; Twentieth Century Fox Corporation; Universal Studios; and Warner Bros.

#### **NATO**

The National Association of Theatre Owners (NATO) is the largest trade association in the world for the owners and operators of motion picture theatres. NATO represents over 500 movie cinema companies located in the United States and in 40 countries around the world. These companies range from large national and

international circuits with thousands of movie screens, to hundreds of small business operators with only a few movie screens. NATO maintains its main office in North Hollywood, California, and a second office in the Washington, D.C. area.

#### **PGA**

The Producers Guild of America represents nearly 2,000 producers and members of the producing team in film, television and new media. Under the leadership of Kathleen Kennedy, the PGA strives to provide employment opportunities for its members, combat credit proliferation within film and television, and represent the interests of the entire producing team. The producing team consists of all those whose interdependency and support are necessary for the creation of motion pictures and television programs. The producing team includes Producers, Executive Producers, Co-Executive Producers, Supervising Producers, Co-Producers, Associate Producers, Segment Producers, Production Managers, Post-Production Supervisors and Production & Post-Production Coordinators.

#### **RIAA**

The Recording Industry Association of America is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes our members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA® members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. In support of this mission, the RIAA works to protect intellectual property rights worldwide and the First Amendment rights of artists; conduct consumer industry and technical research; and monitor and review—State and Federal laws, regulations and policies. The RIAA® also certifies Gold®, Platinum®, Multi-Platinum®, and Diamond sales awards, Los Premios De Oro y Platino®, and award celebrating Latin music sales.

#### **TAP**

The Television Association of Programmers (TAP) Latin America is a trade association comprising 35 pan-regional subscription programming suppliers serving Latin America and the Caribbean. The Association, founded in 1995, provides a voice in the region for its members and facilitates the exchange of ideas and information on issues affecting the Latin American marketplace. TAP's headquarters are in Miami, and it maintains a network of legal counsel and industry representatives throughout the region.

#### **WGAW**

The Writers Guild of America, west (WGAW) is a labor union that represents writers in the motion picture, broadcast, cable and new technologies industries. Our 8,500 members of the write for news, entertainment, animation, informational, documentary, interactive online services, CD-ROM and other new media technologies. We represent writers in a variety of arenas in addition to traditional bargaining. With representatives in Washington D.C.—as well as other countries—the WGAW furthers the interest of writers through legislation, international agreements and public relations efforts.

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Chairman CRANE. Thank you. Mr. Spence.

#### **STATEMENT OF DAVID W. SPENCE, MANAGING DIRECTOR, REGULATORY AND INDUSTRY AFFAIRS, FEDERAL EXPRESS CORPORATION, AND CHAIRMAN, TRADE COMMITTEE, AIR COURIER CONFERENCE OF AMERICA**

Mr. SPENCE. Thank you, Mr. Chairman. This testimony is submitted on behalf of Federal Express (FedEx) and the Air Courier Conference of America (ACCA). I give this testimony today as managing director in the legal department of FedEx responsible for trade security and customs policy and as Trade Committee Chairman for ACCA.

FedEx and ACCA support the Singapore FTA and believe it will benefit the U.S. express industry, particularly by leading to an increased volume of trade between the two countries. Express operators expect to transport a significant portion of that increased trade. Due to my limited time, I am focusing on the Singapore FTA, but we would be happy to answer questions about the Chile FTA as it also brings many benefits to our industry.

The express industry which ACCA represents specializes in fast, reliable transportation services for documents, packages, and freight. Members of ACCA include large firms of global delivery networks such as Airborne, DHL, FedEx, TNT U.S.A., and United Parcel Service (UPS), as well as smaller businesses with strong regional delivery networks. Together ACCA members employ more than 510,000 American workers. Worldwide, ACCA members have operations in over 1,200 countries, move more than 20 million packages each day, employ more than 800,000 people, operate 1,200 aircraft, and earn revenues of approximately \$60 billion annually.

FedEx and ACCA strongly support free trade. The express industry's success depends on its ability to transport documents and parcels quickly without undue delay or cost. Laws and regulations in a wide range of areas, such as intermodal transportation, distribution, warehousing, customs, insurance, and freight forwarding can significantly affect the ability of ACCA members to compete effectively in foreign markets. Such laws have the potential to restrict trade when they are discriminatory or burdensome.

As noted above, the express industry expects that the Singapore FTA will open new markets for American exporters and therefore enhance business opportunities for providers of express delivery services. Singapore and the other nations of the ASEAN region represent an important and growing market for the express industry. According to the U.S.-ASEAN Business Council, in 1999, express shipments accounted for approximately 20 percent or \$13.6 billion of the \$68 billion in trade transported via air between the United States and the ASEAN nations. The counsel estimated that express delivery in the ASEAN region would grow at an annual rate of approximately 20 percent per year. With the implementation of the Singapore FTA, this rate of growth should increase.

In addition, the Singapore FTA is expected to enhance business opportunities for the U.S. express industry by reducing trade barriers that have the potential to directly affect the express industry's operations in Singapore. Of particular note are the agreement's trade facilitation provision specific to the express industry which should allow express operators to provide the fast, reliable service that businesses and consumers in both countries need. We are pleased that the agreement includes trade facilitation provisions as we believe that trade facilitation is an absolutely essential ingredient of trade negotiations. Trade facilitation provisions should focus on the simplification and harmonization of customs procedures and practices and should also require parties to maintain appropriate measures to ensure efficient and fair customs facilitation of goods that are imported and/or exported by express suppliers. The Singapore FTA's provisions do that. However, we are disappointed with the agreements included and of a 6-hour tar-

get for release of express shipments. We believe that target should be substantially reduced.

The Singapore FTA is one of the first U.S. trade agreements to recognize express delivery as a unique service sector and to clarify that commitments regarding express—the express sector are applicable to all suppliers of the service. This is an important precedent for our industry because our principal competition often comes from national postal administrations. Even though express services provided by private and public operators are identical, they are classified differently under the U.N. Central Product Classification (CPC) System, the classification scheme that has often served as the basis for prior service classifications.

The CPC has several flaws from the perspective of the express industry. First, it does not provide for express delivery services. Instead we are covered under the classifications “postal services” and “courier services.” Furthermore, the definition of postal services and courier services in the CPC are distinctly counterproductive to express delivery service liberalization efforts. They inappropriately focus on the nature of the service procedure rather than the service itself. Under the CPC, express delivery services provided by a private operator are classified as courier services, but when the same services are provided by a public postal administration, they are classified as postal services. This creates a serious problem. Sir, I understand my time is up, so I would be happy to answer any questions.

[The prepared statement of Mr. Spence follows:]

**Statement of David W. Spence, Managing Director, Regulatory and Industry Affairs, Federal Express Corporation, and Chairman, Trade Committee, Air Courier Conference of America**

Mr. Chairman, this testimony is submitted on behalf of Federal Express Corporation (FedEx) and the Air Courier Conference of America (ACCA). I give this testimony today as Managing Director of Regulatory and Industry Affairs in the Legal Department of FedEx, responsible for trade, security, and customs policy, and as Trade Committee Chairman for ACCA. FedEx and ACCA support the U.S.-Singapore FTA and believe it will benefit the U.S. express delivery services (EDS) industry, particularly by leading to an increased volume of trade between the two countries. EDS operators expect to transport a significant portion of that increased trade.

The express delivery service industry, which ACCA represents, specializes in fast, reliable transportation services for documents, packages and freight. ACCA members include large firms with global delivery networks, such as Airborne Express, DHL Worldwide Express, FedEx, TNT U.S.A. Inc. and United Parcel Service, as well as smaller businesses with strong regional delivery networks. Together, ACCA members employ more than 510,000 American workers. Worldwide, ACCA members have operations in over 200 countries, move more than 20 million packages each day, employ more than 800,000 people, operate 1,200 aircraft and earn revenues of approximately \$60 billion annually.

FedEx and ACCA strongly support free trade. The EDS industry's success depends on its ability to transport documents and parcels quickly, without undue delay or costs. Laws and regulations in a wide range of areas, such as intermodal transportation, distribution, warehousing, customs, telecommunications, insurance and freight forwarding, can significantly affect the ability of ACCA members to compete effectively in foreign markets. Such laws have the potential to restrict trade when they are discriminatory or burdensome.

As noted above, the EDS industry expects that the U.S.-Singapore FTA will open new markets for American exporters and therefore enhance business opportunities for providers of express delivery services. Singapore and the other nations of the ASEAN region represent an important and growing market for the EDS industry. According to the U.S.-ASEAN Business Council, in 1999 express delivery shipments accounted for approximately 20 percent, or \$13.6 billion, of the \$68 billion in trade transported via air between the United States and the ASEAN nations. The Council

estimated that express delivery services in the ASEAN region would grow at an annual rate of approximately 20 percent per year. (“The Integrated Express Industry in the ASEAN Region: Delivering Business into the 21st Century” (September 2000)). With the implementation of the U.S.-Singapore FTA, this rate of growth should increase. In addition, the U.S.-Singapore FTA is expected to enhance business opportunities for the U.S. express industry by reducing trade barriers that have the potential to directly affect the EDS industry’s operations in Singapore. Of particular note are the agreement’s trade facilitation provisions specific to the express industry, which should allow EDS operators to provide the fast, reliable service that businesses and consumers in both countries need. We are pleased that the agreement includes trade facilitation provisions, as we believe that trade facilitation is an absolutely essential ingredient of trade negotiations. Trade facilitation provisions should focus on the simplification and harmonization of Customs procedures and practices and should also require parties to maintain appropriate measures to ensure efficient and fair Customs facilitation of goods that are imported and/or exported by EDS suppliers. The U.S.-Singapore FTA’s provisions do that. However, we are disappointed with the agreement’s inclusion of a 6-hour target for release of express shipments; we believe that target should be substantially reduced.

The U.S.-Singapore FTA is one of the first U.S. trade agreements to recognize express delivery services as a unique service sector, and to clarify that commitments regarding the EDS sector are applicable to all suppliers of the service. This is an important precedent for our industry because our principal competition often comes from national postal administrations. Even though EDS services provided by private and public operators are identical, they are classified differently under the U.N. Central Product Classification (“CPC”) system, the classification scheme that has often served as the basis for prior service classifications (such as in several sectors covered by the GATS). The CPC has several flaws from the perspective of the EDS industry. First, it does not provide for express delivery services—instead, we are covered under the classifications “postal services” and “courier services.” Furthermore, the definitions of “postal services” and “courier services” in the CPC are distinctly counterproductive to express delivery service liberalization efforts—they inappropriately focus on the nature of the *service provider* rather than the service itself. Under the CPC, express delivery services provided by a private operator are classified as “courier services,” but when the *same* services are provided by a public postal administration, they are classified as “postal services.” This creates a serious problem. Countries are likely to argue that because the provision of “courier services” under the CPC is a different service than provision of the *same* express services business activities by the postal authority. National treatment violations would be nearly impossible to prove, as a strong argument could be made under the CPC that express delivery services provided by private operators are not “like,” or offered under “like circumstances” as those same express services provided by public postal administrations. Thus, without a specific definition for express delivery services, general FTA provisions on national treatment and most-favored-nation treatment would offer little, if any, help for express delivery service providers that seek competitive equality. FedEx and the EDS industry as a whole therefore applaud the inclusion in the U.S.-Singapore FTA of an appropriate definition of EDS.

The U.S.-Singapore FTA also includes commitments limiting cross subsidization by Singapore Post to benefit its express letter service. While the EDS industry is pleased with this commitment, as it is a first step in addressing a longstanding competitive disadvantage faced by our members in many markets, we strongly believe that cross-subsidization provisions in future trade agreements should be considerably more rigorous than those in the U.S.-Singapore FTA. We believe future trade agreements should embrace the precept that all entities, including postal administrations, providing express delivery services to their customers should be governed by the same rules and market economics. This would preclude postal administrations from using profits they derive from government-granted monopoly operations to cross subsidize their express delivery service operations.

Mr. Chairman, in conclusion, FedEx thanks the Trade Subcommittee for the opportunity to present this statement, and would be happy to respond to any inquiries on the part of Members.

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Chairman CRANE. Thank you, Mr. Spence. Let me reassure all of you folks, too, that your printed statements will be made a part of the permanent record. With that, our next witness is Mr. Kripke.

**STATEMENT OF GAWAIN KRIPKE, SENIOR POLICY ADVISOR,  
OXFAM AMERICA**

Mr. KRIPKE. Thank you. Thank you, Mr. Chairman, Congressman Levin and Members of the Subcommittee. Thanks for giving me the opportunity to testify today, and thanks also for hanging out to listen to us stray cats here at the end. Oxfam America is an international development and relief agency committed to developing lasting solutions to poverty, hunger, and social justice. We are part of a confederation of 12 Oxfam organizations working together in more than 100 countries around the world, and we have an annual budget of more than \$400 million.

Oxfam believes that trade can be an important engine for development and poverty reduction, and that well managed trade has the potential to lift millions of people out of poverty, and for this reason Oxfam is focused on the global trade rules and trade agreements as an integral part of our work to improve the livelihoods of poor people and to reduce poverty in developing countries. Since trade agreements set the rules for ongoing trade relationships, they present opportunities for developing countries, but they also present risks, and that's why we think it is important to look at these trade agreements very carefully to understand their full implications, and especially so since the Administration has made it clear that these trade agreements will serve as models for future agreements that are currently being negotiated.

Today I want to focus on two areas of great concern to Oxfam and our partners in developing countries: intellectual property and investment. Both Singapore and Chile are parties to the existing WTO TRIPS agreement, but both the FTAs include measures that strengthen patent rights and enforcement around pharmaceutical products. Both agreements go beyond existing WTO TRIPS agreement and impose new requirements on our trading partners, implementing so-called TRIPS-plus provisions.

Many public health and intellectual property experts have warned that TRIPS-plus may undermine public health in poor countries. This concern has become a major issue at the WTO and instigated a great deal of controversy, which was resolved in 2001 with the Doha Declaration where all parties affirmed the primacy of public health, and in 2002 Congress also endorsed this as part of the TPA by instructing the U.S. Trade Representative to respect the Doha Declaration.

Unfortunately, Oxfam feels that this commitment to public health is not being upheld by the U.S. Trade Representative, and we are concerned about the TRIPS-plus provisions included in the Chile and Singapore FTAs. At the root of intellectual property rights is a balance between the interests of the patent holders who hold a monopoly and the public interest in disseminating the technologies and the pharmaceuticals. Provisions of these FTAs tipped the balance inappropriately in favor of rights holders, and as a consequence may limit the access to affordable medicines.

Most of the provisions in these FTAs around the pharmaceuticals are aimed at delaying the introduction of generic competition and thereby prolonging the patent holder's monopoly. Generic competition is crucial in bringing down prices to affordable levels, and anything that delays it can have a great impact on access to affordable

medicines. President Bush himself made this point in the State of the Union when he called for a major new commitment of funds to combat AIDS and other diseases. He referenced the fact that antiretroviral drugs to treat AIDS have dropped in price from \$12,000 per patient per year to around \$300. This dramatic difference makes possible treating millions of people with diseases that otherwise wouldn't be able to be—to find treatment.

I will spare you a list of the TRIPS-plus agreements in both the FTAs. Suffice it to say the Singapore agreement has many more, but both of them move forward in that direction, and we find this a very troubling event, and more so looking forward to future trade agreements. Some of the provisions in Singapore and Chile are aimed toward bringing patent law in these countries up to American legal standards. However, some of them appear to go beyond U.S. law in protecting patents and restricting generic competition.

On intellectual property rights, an additional concern comes around the restrictions on the flexibility of these countries to determine the scope of patentability under their national laws. For instance, both the Chile and Singapore agreements require the patenting of plants, which is very controversial among environmentalists and among indigenous communities. Under WTO Agreement, the TRIPS agreement, that is not required, and each country should be free to decide how this issue should be regulated.

So, in summary, imposing more TRIPS-plus standards in trade agreements is troubling from a public health and development point of view, and we believe that patenting of plants should not be part of our trade agenda and should be resolved in the context of a variety of development and environmental considerations.

The rest of my testimony focuses on the investment provisions which we have concerns with also; less so around Chile and Singapore, but more so how they might be applied in other trade agreements, particularly CAFTA, the FTAA, and the negotiations around the agreement with the Southern African Customs Union. So, I will leave that to the written testimony, but be happy to answer questions.

[The prepared statement of Mr. Kripke follows:]

**Statement of Gawain Kripke, Senior Policy Advisor, Oxfam America**

Mr. Chairman, Congressman Rangel, and Members of the Subcommittee, thank you for the opportunity to present the views of Oxfam America at this hearing today. We appreciate the invitation and your interest in gathering a variety of perspectives on the important issue raised by the Chile and Singapore Free Trade Agreements.

Oxfam America believes that trade can be an important engine for development and poverty reduction. Well-managed trade has the potential to lift millions of people out of poverty. For this reason, Oxfam has focused on global trade rules and trade agreements as an integral part of our work to improve livelihoods and reduce poverty in developing countries.

Trade agreements set the rules for ongoing trade relationships. They present opportunities, but also risks for developing countries. That's why we believe that it is very important to get the rules right; and why Congress should look carefully at these FTAs to understand their implications.

**Intellectual Property**

An important area of concern for Oxfam are the intellectual property sections of the Chile and Singapore FTAs. Both FTAs include measures that strengthen patent rights and enforcement around pharmaceutical products. Both agreements go be-



yond the existing TRIPs agreement and impose new requirements on our trading partners, implementing so-called “TRIPs-plus” provisions.

Many public health and intellectual property experts have warned that “TRIPs-plus” may undermine public health in poor countries. This concern has become a major issue at the WTO, and, in 2001, the primacy of public health over patent rights was affirmed in the Doha Declaration by all WTO members, including the United States. In 2002, Congress endorsed this commitment as part of Trade Promotion Authority by instructing the USTR to respect the Declaration in trade negotiations.

Unfortunately, Oxfam feels this commitment to public health is not being upheld by the USTR. We are concerned about several “TRIPs-plus” provisions included in the Chile and Singapore FTAs. At the root of intellectual property rights systems is a balance between the interests of patent holders and the public interest. The provisions of these FTAs tip this balance inappropriately in favor of rights holders and, as a consequence, may limit access to affordable medicines.

Most of these are aimed at delaying the introduction of generic competition, thereby prolonging the patent holder’s monopoly. Generic competition is crucial in bringing prices down to affordable levels, and anything that delays the entry of generic products can have a grave impact on access to affordable medicines.

Both the Chile and Singapore agreements contain “TRIPs-plus” provisions. However, there are more of them, and they are more extensive in the Singapore agreement. The U.S.-Singapore Free Trade Agreement includes provisions that:

- limit the use of “compulsory licensing,” an important mechanism for governments to obtain affordable medicines. Compulsory licenses provide an important safeguard to governments to counterbalance the monopoly rights granted to patent holders. Compulsory licenses enable governments to deal with public health problems or instances of abuse of patent rights. The U.S.-Singapore FTA will make it more difficult for Singapore to issue compulsory licenses in the public interest. The compulsory licensing provisions of the FTA go beyond TRIPs, restricting the circumstances under which this procedure can be used and expanding the rights of patent holders at the expense of the government and the public interest;
- delay or impede the introduction of generic competition by (a) linking marketing approval to patent status, thereby preventing the immediate introduction of generic competition upon patent expiry, (b) mandating the protection of test data for 5 years, again delaying the development of and marketing approval for bio-equivalent generic drugs, and (c) mandating the disclosure of applicants for generic marketing approval;
- extend the term of patent protection to compensate for delays in regulatory approval. This would also delay the introduction of generic competition. Twenty years of patent protection is an adequate monopoly for patent holders to recover investments and generate profit. Extending this monopoly unfairly favors patent holders to the detriment of the public interest in accessing affordable medicines;
- restrict parallel importation of medicines placed on a foreign market at a lower price than in the home market. “Parallel importation” is a key means of obtaining affordable drugs and is not limited under the WTO Agreement on intellectual property (TRIPs). This provision may make Singapore responsible for policing patent violations abroad, by requiring Singapore to restrict parallel importation of certain drugs based on the terms of licensing contracts in other countries. The WTO TRIPs agreement leaves it to countries to decide whether or not to provide for international exhaustion in their national IPR regimes, so language in the Singapore FTA which limits parallel importation in any way is “TRIPs-plus.”

In addition to the intellectual property concerns around access to medicines, patent provisions of the Singapore-U.S. Free Trade Agreement restrict the flexibility accorded to governments under TRIPs to decide the scope of what may be patented under their national laws. For instance, both the Chile and Singapore FTAs require the patenting of plants, which is a controversial issue among environmentalists and indigenous communities. Under the WTO TRIPs Agreement (Article 27.3 (b)) each country is free to decide how this issue will be regulated in national laws.

Oxfam is particularly concerned that the IPR provisions of the Chile and Singapore FTAs may serve as models for other trade agreements. The pharmaceutical industry has lauded the recent Singapore FTA, noting that “it establishes key precedential provisions to be included in other FTAs now being negotiated, including the FTAA” (p. 1, IFAC report).

Experts have concluded that stringent IPR standards (a) do not lead to increased innovation in developing countries, (b) may harm public health, and (c) are not appropriate to countries of lower levels of economic development. Using the Singapore and Chile FTAs as a template for future trade agreements is dangerous and inappropriate. The FTAA, for example, includes a number of poor countries facing health crises, all of which are already subject to IPR protections provided under the WTO TRIPS Agreement. Holding them to “TRIPS-plus” standards of IPR protection could undermine public health and the ability to deal with crises such as AIDS. In addition, requiring the patenting of plants should not be a priority for the USTR because it is a sensitive issue that should be resolved in the context of a variety of development and environmental considerations.

### **Investment**

Oxfam is concerned that the investment rules in the Chile and Singapore agreements serve as a poor template for future trade agreements, and could undermine the ability of developing country governments to assure that foreign investment contributes to development goals. While the investment provisions in the Chile and Singapore agreements are problematic on their own, Oxfam is primarily concerned about the example they set for future agreements with countries that desperately need investment, but also need tools to make that investment serve human and economic development.

Foreign direct investment (FDI) has the potential to stimulate economic activity and create jobs in a manner that is consistent with local and regional development strategies. However, for developing countries, the quality of investment probably matters more than the overall quantity. And the investment rules in the Chile and Singapore agreements restrict the ability of governments to guarantee the quality of investment in their countries. The Chile and Singapore agreements restrict the use of performance requirements, an important tool to assure that investments promote economic and social development. Through foreign investment, developing countries hope to spur economic linkages up and down the production chain. They often hope for technology transfer to allow countries to develop their own production capacities and increase the value added in country. But restrictions on performance requirements—such as requiring use of local materials and technology transfers—means that productive investments can be isolated from the rest of the economy, offering little indirect benefit. In fact, the model often used in developing countries often ensures that investments are confined to enclave zones, with few, if any, backward linkages to the domestic economy. The case of Mexico under NAFTA is instructive. FDI flows to Mexico between January 1994 and September 2002 reached an astonishing \$116 billion. However, nearly half of this has gone to manufacturing low value-added goods in maquiladoras along the U.S.-Mexico border.

Oxfam is troubled by the investor-to-state mechanism by which foreign investors may bring complaints before international arbitral tribunals when their business interests have been impaired by government actions taken in the public interest. The potential use of this mechanism to challenge regulations that are designed to protect public health, safety, and the environment represents a serious threat to governments’ ability to provide for the basic human rights of its citizens. Moreover, Oxfam and many others are concerned that this investor-state dispute settlement mechanism bypasses domestic judicial systems and does not have an appellate process.

The experience of such mechanisms under NAFTA is not encouraging. Since NAFTA came into force in 1994, corporations in all three member-countries have used the investor-state mechanism to file cases challenging domestic law that were designed to protect health, safety, and environment. One of the most noteworthy cases brought under the NAFTA Chapter 11 investor provisions is a 1997 complaint filed by the U.S.-based waste disposal company Metalclad against the Mexican government. Metalclad claimed that the Mexican state of San Luis Potosi had violated its NAFTA rights when it prevented the company from opening a waste disposal plant after the company had taken over a facility with a history of contaminating local groundwater. The local government denied Metalclad a permit to reopen the facility and later declared the site part of a 600,000-acre ecological zone. Mexico was ultimately forced to pay Metalclad over \$15 million in compensation due to these decisions.

Congress was clear when providing the authority to negotiate new trade agreements that the investment provisions of new trade agreements should not provide substantive rights to foreign investors beyond those provided domestic investors. However, it is our judgment that the Chile and Singapore agreements do not comply with this mandate. The provisions in the Chile and Singapore agreements go beyond the set of guidelines for regulatory takings and due process that have been established in U.S. jurisprudence by the U.S. Supreme Court. This failure to appro-

propriately constrain the investment rules not only risks the authority of foreign governments to protect the public health and environment, but also the United States. For example, by failing to appropriately and clearly limit the way in which the rules apply to different types of property and by failing to include the critical 'parcel as a whole' principle, the investment rules could limit the ability of developing country governments—or the U.S.—to establish development moratoriums on projects that are socially or environmentally harmful.

We are also concerned that the Chile and Singapore agreements limit the use of important policy tools that developing countries need to reduce their financial instability in times of crisis. The Chile and Singapore agreements restrict any measure that would impede the free flow of capital, even in cases of emergency balance of payments problems. Economists and policy analysts from range of perspectives agree that this is a very poor idea. Recently, Jagdish Bhagwati and Daniel Tarullo have argued that the ban on capital controls constitutes "bad financial policy, bad trade policy, and bad foreign policy and constitute a bad tradeoff for increased trade and investment flows (Financial Times, March 17, 2003). On April 1, 2003, Bhagwati, Joseph Stiglitz, and Nancy Birdsall testified before the House Financial Services Committee on the capital control provisions of the Chile and Singapore agreements, noting that the restrictions on their use constitute a major source of concern. Even *The Economist* (May 3, 2003) has made the case for maintaining capital controls as a viable policy alternative to prevent financial instability.

In summary, the investment provisions in the Chile and Singapore agreements are important to consider in their own right. But as a model for future trade agreements, particularly for less developed countries, they are terrible. In many of the poorest countries where Oxfam is active, in Latin America and Southern Africa, our partners are extremely concerned about ensuring that their governments will continue to play their legitimate role of regulating investment in order that it contribute to, not undermine, sustainable development.

Finally, the investment provisions in the Chile and Singapore agreements also fail to provide sufficient protections for internationally recognized worker rights and environmental standards. The agreements lay out weak language that each party "strive to ensure that it does not waive or otherwise derogate from" its existing labor and environmental standards. However, this does not commit countries to harmonize upward, to ensure that their laws comply with core labor standards as defined by the International Labor Organization, or international environmental standards.

### **Conclusion**

Oxfam America appreciates the opportunity to testify today and to share our concerns about the Chile and Singapore FTAs. From our perspective as a development and humanitarian organization, it is hard to identify how these agreements will promote the goals of sustainable development and poverty reduction. On the other hand, neither Chile nor Singapore are examples of countries that suffer the extremes of poverty and vulnerability. In that sense, they are more truly trading partners, with relatively robust and diversified economies. Our primary message today is that the IPR and investment provisions of these FTAs would be unacceptable for countries that have fewer options and have populations at greater risk. As you know, the USTR is currently engaged in negotiations for trade agreements with countries where we believe a different standard should be set. In particular, we hope for a much improved outcome to the negotiations around a Central America Free Trade Agreement, the Free Trade Area of the Americas, and the FTA with the Southern African Customs Union.

Thank you again for this chance to share Oxfam's perspective.

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Chairman CRANE. Thank you, Mr. Kripke. Ms. Lee.

### **STATEMENT OF THEA M. LEE, CHIEF INTERNATIONAL ECONOMIST, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS**

Ms. LEE. Thank you very much, Mr. Chairman, Congressman Levin, Members of the Subcommittee. I appreciate the opportunity to come and testify today on behalf of the 13 million working men and women of the American Federation of Labor/Congress of Indus-

trial Organizations (AFL-CIO) on this very, very important topic. These recently signed FTAs with Chile and Singapore are important in their own right, lowering trade barriers on the movement of goods and services between the signatories, and also laying out far-reaching rules in many other areas. The significance and economic impact of these agreements is magnified many times because, as the Administration has made clear, these will serve as templates for future bilateral and regional trade agreements that are now being negotiated. I want to talk both about the agreements themselves and also about the danger of using them as templates.

The AFL-CIO believes that increased international trade and investment can yield broad benefits to American working families and to our brothers and sisters around the world, but we also believe it is essential that we get the rules right, that it isn't enough to call an agreement free trade and to wash our hands of it. We need to really look at the details. For example, we have often said that trade agreements must include enforceable protections for core workers' rights, and must preserve our ability to use our domestic trade laws effectively. They must not undermine the government's ability to regulate in the public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high-quality public services.

Unfortunately we believe the Singapore and Chile FTAs fall short of this standard on several important counts, and we urge Congress to reject these agreements and to ask the U.S. Trade Representative not to use them as a template for future FTAs. I want to focus my oral comments today on two important concerns that we have: workers' rights and the ISI. As you all know, the labor movement has for a long time placed a lot of emphasis on the importance of core workers' rights in all trade agreements that we sign, and the reason is that we don't believe any country or company should gain a competitive advantage in global trade by violating the fundamental human rights of its own workers. We are very disappointed by the weak and back-sliding workers' rights provisions included in the Chile and Singapore agreements.

While the labor chapter is 8 pages long, in fact there is only one paragraph of that chapter which is subject to dispute settlement. As has been discussed earlier today, that paragraph requires that each company enforce its domestic labor laws. It doesn't actually require a country to have labor laws. It just says that whatever laws they have on the books need to be enforced. That is completely inadequate. It is weaker than what we have today in the Generalized System of Preferences program with respect to Chile. It is weaker than what was negotiated in the Jordan FTA, which the AFL-CIO was glad to support.

I was interested to see Ambassador Allgeier earlier today at this hearing answer Congressman Levin's question that he is going to rely on the spirit of the agreement, on continued discussions, and on capacity-building as opposed to any negotiated provisions of the agreement if, in fact, there are problems with a country weakening its labor laws in the very important areas of freedom of association, right to bargain collectively, child labor, forced labor, or discrimination in employment. This is totally inadequate. Of course, while these provisions are problematic in the context of Chile and Singa-

pore, totally unacceptable for any agreement, they would be disastrous in the context of the Central American FTA or the Southern Africa Customs Union where they are being contemplated. In fact, in the case of CAFTA, these weak provisions have been put on the table by U.S. Trade Representative as the initial negotiating position.

We are also very troubled by the ISI provision, a new provision that has been put into the Singapore FTA. This is an open-ended provision that allows certain goods made outside of Singapore to be treated as of Singaporean origin for the purposes of the agreement. We believe there is no justification for the inclusion of this provision in the agreement, and that it alone constitutes sufficient reason to reject the agreement. We are concerned that U.S. Trade Representative has not been clear about what the provision is, and I was very concerned to hear Ambassador Allgeier say earlier today that this relates to the two Indonesian islands of Bintan and Batam. There is no mention of the islands of Bintan and Batam in the Singapore FTA. In fact, this is a provision which would apply to goods made in any country. It could be China, could be Burma, could be any country with an egregiously bad workers' rights and human rights records.

At the moment, the ISI provisions apply only to a specified list of goods which are detailed in Annex 3B. As U.S. Trade Representative has said, these goods already enter the United States duty-free under the IT agreement. However, Article 3.2, paragraph 2 clearly states that the product coverage of these provisions can be expanded within 6 months after the agreement enters into force after consultation between the parties. There is no limitation listed in the language as to whether the additional goods would also be duty-free goods, or what countries they would come from, and there is no mention whatsoever of consultation with Congress prior to expanding product coverage.

In our view, this provision defeats the entire purpose of negotiating an FTA, as it extends the benefit of the agreement without ensuring any reciprocal market access benefits for U.S. products, or preserving any of the negotiated conditions of the FTA itself, including the worker rights provision. I look forward to your questions, and I thank you for your time.

[The prepared statement of Ms. Lee follows:]

**Statement of Thea M. Lee, Chief International Economist, American Federation of Labor and Congress of Industrial Organizations**

Mr. Chairman, Congressman Levin, Members of the Subcommittee, I thank you for the opportunity to testify today on behalf of the thirteen million working men and women of the AFL-CIO on the recently signed free trade agreements with Chile and Singapore.

These agreements will have an important economic impact on working people in all three countries. The immediate impact will be the reduction of tariff and non-tariff barriers on the movement of goods and services between the signatories, but far-reaching rules in other areas such as investment, intellectual property rights, government procurement, e-commerce, and the movement of natural persons will also affect the regulatory scope of participating governments, binding their ability to legislate in certain areas for the foreseeable future.

Perhaps even more important, however, is the precedent set by these agreements. As the first agreements negotiated by this Administration under the 2002 Trade Promotion Authority legislation, these agreements are likely to serve as templates for future bilateral and regional FTAs. Since FTA negotiations are currently under

way with the five Central American countries, the Southern African Customs Union, Morocco, and Australia, in addition to a hemispheric agreement scheduled to reach completion in 2005 (the proposed Free Trade Area of the Americas or FTAA), the economic importance and policy significance of these agreements with Chile and Singapore is magnified many times.

#### **Overall Assessment**

The AFL-CIO believes that increased international trade and investment can yield broad and substantial benefits, both to American working families, and to our brothers and sisters around the world—if done right. Trade agreements must include enforceable protections for core workers' rights and must preserve our ability to use our domestic trade laws effectively. They must protect our government's ability to regulate in the public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high quality public services. Finally, it is essential that workers, their unions, and other civil society organizations be able to participate meaningfully in our government's trade policy process, on an equal footing with corporate interests.

Unfortunately, we believe the Singapore and Chile FTAs fall short of this standard on several important counts, and we urge Congress to reject these agreements and to ask the U.S. Trade Representative's office not to use them as a "template" for future FTAs.

I have attached to my testimony the summary of a detailed report prepared by the Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC). The LAC is the official labor advisory committee to the United States Trade Representative and the Labor Department. It includes national and local union representatives from nearly every sector of the U.S. economy, including manufacturing, high technology, services, and the public sector, together representing more than 13 million American working men and women.

The LAC report details our concerns over the agreements' inadequate and backsliding protections for workers' rights and the environment, as well as problems in the areas of investment rules, temporary immigration provisions, trade in services, government procurement, and intellectual property rights. The full report can be downloaded from the AFL-CIO website, at [www.aflcio.org/mediacenter/prspmt/pr02282003.cfm](http://www.aflcio.org/mediacenter/prspmt/pr02282003.cfm).

I would also like to point out that, contrary to several recent Administration statements and testimonies, the LAC was not the only advisory committee to raise significant concerns about the Chile and Singapore FTAs. Ralph Ives testified on May 8th, that "thirty of the thirty-one advisory committees reported that the U.S.-Singapore FTA advanced and achieved each of the relevant objectives, purposes, policies and priorities set out in the trade act."

In fact, several other Advisory Committees declined to explicitly endorse the Chile and Singapore agreements and made negative findings or no findings at all about the agreements' achievement of congressional negotiating objectives. The chemicals committee was unable to gauge whether the agreement had met negotiating objectives or whether it would serve U.S. economic interests because it felt it had not been adequately consulted regarding the agreement. The fruits and vegetables committee was "greatly disappointed" in the failure of the Chile FTA to resolve sanitary and phytosanitary issues that present market impediments and concluded that the agreement was "far better for the Chilean specialty crop industry than it is for the U.S. fruit and vegetable industry." The Intergovernmental committee made no findings on the specific agreement, and only remarked on the committee's support for trade in general and its concerns about the impact of FTA rules on state and local regulatory authority. The footwear committee said many of its members were neutral on the Singapore FTA, and they would oppose it if Singapore were more significant economically. The footwear committee doubted that the Chile FTA would "significantly promote U.S. economic interests." The apparel and textiles committee was split and said "it is unlikely that U.S. producers will experience much economic gain" from the Chile and Singapore FTAs, with the apparel sector "largely express[ing] disappointment." The standards committee said it would not recommend the Singapore FTA as a model for future FTAs.

Reports from those few industry committees that include non-business representatives—ACTPN, the trade and environment committee, the paper committee and the lumber committee—included dissents from those non-business representatives criticizing the agreement.

#### **Workers' Rights**

The workers' rights provisions in the Chile and Singapore FTAs are unacceptably weak. While they will be problematic in the context of Chile and Singapore, they

will be disastrous if applied to future FTAs with countries and regions where labor laws are much weaker to begin with and where abuse of workers' rights has been egregiously bad.

USTR has characterized the workers' rights provisions of the Chile and Singapore agreements as "innovative." In fact, these provisions represent a giant step backward from provisions in current law. They are substantially weaker than those included in the Jordan FTA, which passed the U.S. Congress on a unanimous voice vote in 2001. Perhaps even more noteworthy, the Chile and Singapore workers' rights provisions also represent a step backward from current U.S. trade policy that applies to Chile (and most other developing countries)—the Generalized System of Preferences. GSP is a unilateral preference program offering trade benefits to developing countries that meet certain criteria, including adherence to internationally recognized workers' rights.

Both the Jordan FTA and GSP require compliance with internationally recognized core workers' rights. A GSP beneficiary can lose all or some of its trade benefits if it is not at least "taking steps" to observe internationally recognized workers' rights. This includes enforcing its own laws in these areas, as well as ensuring that its labor laws provide internationally acceptable protections for core workers' rights.

Under the Jordan FTA, both parties reiterate their ILO commitments to "respect, promote, and realize" the core workers' rights under the International Labor Organization (ILO)'s Declaration on Fundamental Principles and Rights at Work (these include freedom of association and the right to bargain collectively, and prohibitions on child labor, forced labor, and discrimination in employment). The Jordan FTA also commits both parties to effective enforcement of domestic labor laws and non-derogation from labor laws in order to increase trade. All of these provisions are fully covered by the same dispute settlement provisions as the commercial elements of the agreement.

**In contrast, the Chile and Singapore agreements contain only one enforceable provision on workers' rights, that is, an agreement to enforce domestic labor laws.** While the labor chapter also contains a commitment to uphold the ILO core workers' rights and not to weaken labor laws, these provisions are explicitly excluded from coverage under the dispute settlement chapter, rendering them essentially useless from a practical standpoint.

In other words, while the Chile and Singapore agreements commit the signatories to enforce their domestic labor laws, they don't actually commit the signatories to *have* labor laws in place, or to ensure that their labor laws meet any international standard or floor. Under these agreements, a country could ban unions, set the minimum age for employment at ten years old, and reinstate slave labor. The country's only enforceable commitment at that point would be to continue to enforce those new "laws."

Of course, this is entirely unacceptable, both with respect to these agreements and as it might play out in future trade agreements, particularly in Central America, where labor laws are both weak and poorly enforced. These weak provisions will also be problematic in any trade agreement negotiated with the Southern African Customs Union (SACU) or Morocco.

Employers in many of the Central American and Southern African countries covered by ongoing FTA negotiations intimidate, harass, fire and blacklist workers for attempting to exercise their right to join an independent union, especially in sectors and export processing zones producing goods for the U.S. market. Labor laws fall far short of ILO standards, and those labor laws that exist are violated frequently and freely, with few negative consequences for the violators. The AFL-CIO has petitioned for the removal of four of these countries—Costa Rica, El Salvador, Guatemala, and Swaziland—from GSP eligibility for their repeated failure to meet international labor standards. Unions in all four countries are supporting these petitions.

Unlike the Jordan agreement, the Chile and Singapore agreements include a separate dispute resolution process for labor and environment, distinct from that available for the commercial provisions of the agreement. This new and separate dispute resolution process, in our view, does not meet a key objective of the Trade Promotion Authority legislation, to ensure that trade agreements shall "treat United States principal negotiating objectives equally with respect to (i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies."

Unlike the commercial dispute resolution process, the first binding step in resolving labor and environment disputes is a "monetary assessment," a fine which is essentially paid back to the offending government, with the vague direction that it be used for "appropriate labor or environmental initiatives." Also unlike the commercial dispute resolution process, the monetary fine for labor and environment disputes is capped at a fairly low level—\$15 million. It is unlikely that these low fines,

paid back to the offending government, will constitute a meaningful deterrent in the case of determined or egregious violations.

It is crucial to bear in mind that these free trade agreements are being put in place, not with respect only to the current governments, but for all future governments and labor law regimes. Therefore, the adequacy of current labor laws in Chile or Singapore is not the only factor to consider in evaluating the adequacy of the workers' rights provisions included in these agreements. Failing to ensure that labor laws meet international standards is an enormous flaw in these agreements.

#### **Integrated Sourcing Initiative**

The Singapore FTA includes an open-ended provision, called the Integrated Sourcing Initiative (ISI), that allows certain goods made outside of Singapore to be treated as of Singaporean origin for the purposes of the agreement. We believe there is no justification for the inclusion of this provision in this agreement, and that it alone constitutes sufficient reason to reject the agreement.

None of the workers' rights or environmental provisions of the Singapore FTA will apply to products entering under the ISI provision, nor will there be any reciprocal market access for U.S. goods. The U.S. ambassador to Singapore told *Inside U.S. Trade* that the main point of this provision was to allow American companies to take advantage of low-wage production on two neighboring Indonesian islands and export the products to the U.S. duty free. However, nowhere in the agreement are these provisions actually limited to the Indonesian islands, so apparently goods from anywhere in the world will be eligible to enter the United States via Singapore under the ISI provision.

At present the ISI provision applies only to a specified list of goods (detailed in Annex 3B) that enter the United States duty-free under the Information Technology Agreement, as well as a few other products, so the immediate economic impact of the provision will simply be to waive customs duties for these products.

However, Article 3.2, paragraph 2, clearly states that the product coverage of these provisions can be expanded within 6 months after the Agreement enters into force, after consultation between the Parties. The ISI provision lists no limitations on the products that might be added to the product coverage list and makes no mention whatsoever of consultation with Congress prior to expanding product coverage.

This provision defeats the entire purpose of negotiating a free trade agreement, as it extends the benefits of the agreement without ensuring any reciprocal market access benefits for U.S. products or preserving any of the negotiated conditions of the FTA itself. It undermines Congress's role, by allowing USTR to add trade-sensitive products, from anywhere in the world, to the list of goods eligible to enter the U.S. under the Singapore FTA. Without any workers' rights protections, the development benefits of such a provision are likely to be minimal, while the U.S. job costs could be quite significant. This provision has no place in the Singapore FTA and should certainly not be included in any future FTAs.

#### **Temporary Entry**

The Chile and Singapore agreements contain far-reaching and troubling provisions on the "temporary entry" of professional workers. The Singapore and Chile FTAs create entire new visa categories for the temporary entry of professionals. These visa programs are in addition to our existing H-1B system, and will constitute a permanent new part of our immigration law if the agreements are implemented by Congress.

These new professional visas will give U.S. employers substantial new freedom to employ temporary guest workers with little oversight from the Department of Labor and with few real guarantees for workers. This is to the detriment not only of the temporary workers themselves, but of the domestic labor market and American workers now facing a lagging economy and high unemployment in many sectors.

Immigration policy is properly the domain of Congress, not of executive agencies negotiating trade agreements that will be subject to a "fast tracked" up or down vote. The Singapore and Chile FTAs require permanent changes to our immigration policies, and USTR has indicated that future free trade agreements will routinely include the same kinds of new visa categories created in these FTAs. This strategy is entirely unacceptable to the AFL-CIO.

Congress may in the future wish to strengthen, improve, or otherwise change our immigration policies. It makes no sense to bind these policies in free trade agreements, which makes it essentially impossible (or very costly) to change them without actually exiting the entire agreements. For these reasons, we believe trade agreements should refrain from including immigration provisions (beyond those necessary to conduct the trade and investment which are the subject of the agreement), and we urge Congress to convey this view to the Administration.



### **Investment**

We are concerned that the Chile and Singapore FTAs contain many of the controversial investment provisions contained in NAFTA, including the right for individual investors to sue governments when they believe that domestic regulation has violated their rights under the agreement. This provision, known as “investor-to-state” dispute resolution, has proved very problematic under NAFTA, giving investors greatly enhanced powers to challenge legitimate government regulations on public health, the environment, or even “Buy American” rules. Workers and environmental advocates have no similar individual right of action under these agreements.

The Chile and Singapore agreements also constrain the ability of governments to employ capital controls to protect their economies from the destabilizing impact of speculative capital flows and financial crises. Capital controls have been used quite effectively by many governments, including the Chilean government. Even the IMF has conceded that these tools can be legitimate and beneficial.

It therefore does not make sense for the Chile and Singapore FTAs to constrain the use of capital controls. Decisions over whether, how, and for how long to use capital controls should be made by democratically elected domestic policymakers, not bound by trade agreements.

### **Conclusion**

In general, the experience of our unions and our members with past trade agreements has led us to question critically the extravagant claims often made on their behalf. While these agreements are inevitably touted as market-opening agreements that will significantly expand U.S. export opportunities (and therefore create export-related U.S. jobs), the impact has more often been to facilitate the shift of U.S. investment offshore. (As these agreements contain far-reaching protections for foreign investors, it is clear that facilitating the shift of investment is an integral goal of these “trade” agreements.) Much, although not all, of this investment has gone into production for export back to the United States, boosting U.S. imports and displacing rather than creating U.S. jobs.

The net impact has been a negative swing in our trade balance with every single country with which we have negotiated a free trade agreement to date. While we understand that many other factors influence bilateral trade balances (including most notably growth trends and exchange rate movements), it is nonetheless striking that none of the FTAs we have signed to date has yielded an improved bilateral trade balance (including Israel, Canada, Mexico, and Jordan).

The case of the North American Free Trade Agreement (NAFTA) is both the most prominent and the most striking. Advocates of NAFTA promised better access to 90 million consumers on our southern border and prosperity for Mexico, yielding a “win-win” outcome. Yet in 9 years of NAFTA, our combined trade deficit with Mexico and Canada has ballooned from \$9 billion to \$87 billion. The Labor Department has certified that more than half a million U.S. workers have lost their jobs due to NAFTA, while the Economic Policy Institute puts the trade-related job losses at over 700,000. Meanwhile, in Mexico real wages are actually lower than before NAFTA was put in place, and the number of people in poverty has grown.

We believe it is essential for Congress to question how these new FTAs will yield a different and better result for working families in the United States, Chile, and Singapore—especially as the new agreements appear to be modeled to a large extent on NAFTA. If the goal of these bilateral trade agreements is truly to open foreign markets to American exports (and not to reward and encourage companies that shift more jobs overseas), it is pretty clear the strategy is not working. Before Congress approves new bilateral free trade agreements based on an outdated model, it is imperative that we take some time to figure out how and why the current policy has failed. In the meantime, we urge you to reject the Chile and Singapore FTAs and send our negotiators back to the drawing board.

Addendum:

### **Labor Advisory Committee for Trade Negotiations and Trade Policy Report to the President, the Congress and the U.S. Trade Representative on the U.S.-Chile and U.S.-Singapore Free Trade Agreements**

February 28, 2003

#### **I. Purpose of the Committee Report**

Section 2104(e) of the Trade Act of 2002 (TPA) requires that Advisory Committees provide the President, the U.S. Trade Representative (USTR), and Congress with reports required under section 135(e)(1) of the Trade Act of 1974, as amended, not

later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The Committee report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the relevant sectoral or functional area of the Committee.

Pursuant to these requirements, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) hereby submits the following report.

## **II. Executive Summary of the Committee Report**

This report reviews the mandate and priorities of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and presents the advisory opinion of the Committee regarding the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs). It is the opinion of the LAC that the Singapore and Chile FTAs neither fully meet the negotiating objectives laid out by Congress in TPA, nor promote the economic interest of the United States. The agreements clearly fail to meet some Congressional negotiating objectives, barely comply with others, and include certain provisions that are not based on any Congressional negotiating objectives at all. These agreements repeat the same mistakes of the North American Free Trade Agreement (NAFTA), and are likely to lead to the same deteriorating trade balances, lost jobs, trampled rights, and inadequate economic development that NAFTA has created.

The labor provisions of the Chile and Singapore FTAs will not protect the core rights of workers in any of the countries involved, and represent a big step backward from the Jordan FTA and our unilateral trade preference programs. The agreements' enforcement procedures completely exclude obligations for governments to meet international standards on workers' rights. The FTAs' provisions on the temporary entry of professionals erode basic protections for guest workers and the domestic labor market. Provisions on investment, procurement, and services constrain our ability to regulate in the public interest, pursue responsible procurement policies, and provide public services. Intellectual property rules reduce the flexibility available under WTO rules for governments to address public health crises. Rules of origin and safeguards provisions invite producers to circumvent the intended beneficiaries of the trade agreements and fail to protect workers from the import surges that may result.

## **III. Brief Description of the Mandate of the Labor Advisory Committee**

The LAC charter lays out broad objectives and scope for the Committee's activity. It states that the mandate of the LAC is:

To provide information and advice with respect to negotiating objectives and bargaining positions before the U.S. enters into a trade agreement with a foreign country or countries, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The LAC is one of the most representative committees established by Congress to advise the Administration on U.S. trade policy. Only three of the 33 Trade Advisory Committees include any labor representatives, and the LAC is the only Advisory Committee with more than one labor representative as a member. The LAC includes unions from nearly every sector of the U.S. economy, including manufacturing, high technology, services, and the public sector. It includes representatives from unions at the local and national level, together representing more than 13 million American working men and women.

## **IV. Negotiating Objectives and Priorities of the Labor Advisory Committee**

As workers' representatives, the members of the LAC judge U.S. trade policy based on its real-life outcomes for working people in America.

Our trade policy must be formulated to improve economic growth, create jobs, raise wages and benefits, and allow all workers to exercise their rights in the workplace. Too many trade agreements have had exactly the opposite effect. Since

NAFTA went into effect, for example, our combined trade deficit with Canada and Mexico has grown from \$9 billion to \$87 billion, leading to the loss of hundreds of thousands of jobs in the United States. Under NAFTA, U.S. employers took advantage of their new mobility and the lack of protections for workers' rights in Mexico to shift production, hold down domestic wages and benefits, and successfully intimidate workers trying to organize unions in the U.S. with threats to move to Mexico.

In order to create rather than destroy jobs, trade agreements must be designed to reduce our historic trade deficit by providing fair and transparent market access, preserving our ability to use domestic trade laws, and addressing the negative impacts of currency manipulation, non-tariff trade barriers, financial instability, and high debt burdens on our trade relationships. In order to protect workers' rights, trade agreements must include enforceable obligations to respect the International Labor Organization's core labor standards—freedom of association, the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination—in their core text and on parity with other provisions in the agreement.

The LAC is also concerned with the impact that U.S. trade policy has on other matters of interest to our members. Under NAFTA, private investors have challenged a variety of domestic laws in all three NAFTA countries protecting public services, the environment, public health and safety, consumers and workers. Trade policy must protect our government's ability to regulate in the public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high-quality public services. Finally, we believe that American workers must be able to participate meaningfully in the decisions our government makes on trade, based on a process that is open, democratic, and fair.

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Chairman CRANE. Thank you, Ms. Lee. Our final witness is Mr. Audley.

**STATEMENT OF JOHN AUDLEY, SENIOR ASSOCIATE AND DIRECTOR, PROJECT ON TRADE, EQUITY, AND DEVELOPMENT, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE**

Mr. AUDLEY. Thank you, Mr. Chairman, Members of the Subcommittee. My name is John Audley. I am with the Carnegie Endowment for International Peace, an independent research institution here in Washington, D.C. Among my other experiences, I was a longtime advocate in the environmental community, as well as a former member of the U.S. interagency process that developed and negotiated trade agreements. I am here today to convey my overall support for the environmental provisions of the U.S.-Singapore and U.S.-Chile FTAs and to caution against using these agreements' environmental provisions as a model for all trade agreements, especially when dealing with U.S. trading partners with little capacity to protect the environment or promote public health.

Among other reasons, the Singapore and Chile FTAs are important because they are the first agreements to be considered by Congress under the Trade Act of 2002. With some important exceptions, Ambassador Zoellick's team followed TPA's environmental instructions to the letter, in many instances incorporating TPA language directly into the agreements themselves.

The Chile FTA is an especially good example of two countries actively negotiating environment into the trade agreement, and we can thank Chile for a number of important innovations, including the special roster of panel members to hear trade-related environmental disputes and the creation of an environmental affairs council. Chile also argued for the use of fines instead of punitive trade measures, dedicating the fines to efforts that improve environmental protection. In my opinion, one of our best hopes for effective

inclusion of environment in the FTAA negotiations is to encourage Chile to continue its efforts to work with other Latin American governments to develop their own agendas for environment and trade.

There are a number of shortcomings. My colleagues have talked about problems with TRIPS and with capital controls, so I will set those issues aside. It is clear from the input offered by many U.S. Trade Representative advisors that the balance between the rights of investors and regulatory authority hasn't been found yet. Advisors to U.S. Trade Representative point out the lack of clarity regarding a number of legal phrases, and State and local governments continue to worry that trade disciplines will weaken their ability to govern. Negotiators have not yet created an appellate body as instructed by Congress. Instead, in both agreements the parties agree to review this question at a later date. By not establishing an opportunity for affected citizens to formally question the enforcement environmental laws to attract trade, the United States missed a great opportunity to deliver on its commitment to promote good governance. This outcome is particularly unfortunate because I understand the interagency process developed a position to propose to Chile, which was removed by the White House before we tabled it.

Second, the Singapore and Chile FTAs relied upon a new approach to addressing environmental issues that runs parallel to the trade negotiations. Under the authority of the Department of State, the United States now negotiates memoranda of intention or understanding that create opportunities for governments and their citizens to discuss environmental issues of common interest. While the Singapore Memorandum of Intent has not yet been made public, to my knowledge, the U.S.-Chile side of the accord references important subjects like developing a pollutant release and transfer register, reducing mining pollution and improving agricultural practices. Congress should follow these parallel negotiations more closely and ensure that initiatives agreed to by the parties are properly funded. This parallel approach also creates a new opportunity to demystify trade negotiations by making those portions more transparent and available to the public.

Third, U.S. trade negotiations have made providing technical assistance and capacity-building to our trading partner a very high priority. While recent decisions to promote trade-related technical assistance by the United States represent important steps forward in this regard, U.S. officials must work hard to coordinate this trade-led technical assistance and capacity-building efforts with technical assistance already under way. It is especially important to ensure that all technical assistance capacity-building efforts not be captured solely by the interests of promoting trade. Congress could use the environmental review of trade agreement process to stay more fully informed of both the parallel negotiations and technical assistance needs, and it could expand the Congressional oversight to ensure the committees with jurisdiction over these matters are properly represented.

Finally, the Chile and Singapore FTA should not be used as a model for other negotiations particularly when governments lack the capacity to protect their own environment without proper incentives that require governments not to fail to effectively enforce

or ensure that its laws provide for high levels of environmental protection. These are empty promises. Nowhere, as we have discussed today, is this more important than our negotiations with Central America. Thank you.

[The prepared statement of Mr. Audley follows:]

**Statement of John Audley, Senior Associate and Director, Project on Trade, Equity, and Development, Carnegie Endowment for International Peace**

My name is John Audley, and I am a Senior Associate and Trade, Equity, and Development Project Director at the Carnegie Endowment for International Peace. Founded in 1910 by Andrew Carnegie, the Endowment is a private, nonpartisan, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. The Trade, Equity, and Development Project seeks innovative, workable solutions to the tensions between trade liberalization, and environment, development, and labor policies.

In signing the U.S.-Singapore and the U.S.-Chile Free Trade Agreements, President Bush presents Congress with the first trade agreements subject to review under the terms of U.S. Trade Promotion Authority (TPA).<sup>1</sup> For the first time in U.S. trade history, Congress will judge trade agreements in which the environment was a principal subject of negotiation.<sup>2</sup> The way in which Congress evaluates these agreements and enacts implementation legislation using TPA's environment provisions will establish a standard for future trade agreements. I focus my remarks on this opportunity.

Due to time and travel constraints, my written testimony focuses only on the environmental provisions of the U.S.-Singapore agreement. In my oral testimony, I will speak to issues common to both agreements. If the Committee would like a similar written analysis of Chile, I will submit it shortly.

**Background**

Although TPA had not yet been passed when formal negotiations of the U.S.-Singapore FTA began in November 2000, U.S. President Bill Clinton and Singaporean Prime Minister Goh Chok Tong agreed to include labor and environment as part of the negotiating agenda. Taking this step was politically dangerous for both leaders. As a leader among developing nations, Singapore's decision to include labor and environment in the negotiations represented a break from developing countries' steadfast opposition to the trade and environment linkage. Similarly, President Clinton included environment over the opposition of leading Republican Congressional leaders as well as some members of the business community. His decision to do so was later upheld by U.S. President George W. Bush, when U.S. Trade Representative Robert Zoellick resumed negotiations in May 2001 without changing the agenda.<sup>3</sup> Yet opposition to environment in trade negotiations still compelled the Office of the U.S. Trade Representative (USTR) to postpone offering any language on the environment until after TPA provided Congressional guidance—nearly 2 years after negotiations began.

Bilateral negotiations on the U.S.-Singapore FTA were concluded in December 2002. On February 27, 2003, the Trade and Environment Policy Advisory Committee (TEPAC), a "tier two" private Advisory Committee to the USTR, submitted its report on the FTA to the President and Congress. A majority of TEPAC members concluded that the FTA meets Congress's negotiating objectives as they relate to the environment. However, a sizeable TEPAC minority disagreed with that conclusion, focusing most of its criticism on the TPA's investment chapter and dispute settle-

<sup>1</sup>The draft *Consolidated Texts of the U.S.-Singapore Free Trade Agreement* is available online at: <[http://www.ustr.gov/new/fta/Singapore/consolidated\\_texts.htm](http://www.ustr.gov/new/fta/Singapore/consolidated_texts.htm)>.

<sup>2</sup>On August 6, 2002, President George W. Bush received the benefits of TPA when he signed into law the Trade Act of 2002, Public Law 107-210; the full text is available through GPO Access at: <<http://www.gpoaccess.gov/plaws/search.html>>. For a comprehensive discussion of TPA's environmental provisions, see John Audley, "Environment's New Role in U.S. Trade Policy," Trade, Equity, and Development Series, no. 3 (Washington, DC: Carnegie Endowment for International Peace, Sept. 2002). Available at: <<http://www.ceip.org/trade>>.

<sup>3</sup>When the Clinton Administration initiated talks with Singapore, both sides agreed to use the U.S.-Jordan FTA as a model, which allows for trade sanctions against one of the signatories if it persistently violates its own labor or environmental laws. After President Bush took office, Singapore signaled its willingness to take the new Administration's lead on trade-related environment and labor issues. Throughout bilateral negotiations, however, Singapore remained opposed to the inclusion of environment and labor in the multilateral arena. See *Inside U.S. Trade*, March 16, p. 11.

ment procedures.<sup>4</sup> The Intergovernmental Policy Advisory Committee (IGPAC), which represents the views of State and local governments, echoed similar concerns regarding the investment language.<sup>5</sup> The differences of opinion among Advisory Committee members are well documented in the TEPAC and IGPAC reports and will not be reproduced here.

If TPA instructions regarding the environment are to have the impact on U.S. trade policy envisioned by its Congressional supporters, then it is important to evaluate the U.S.-Singapore FTA's adherence to these directives, especially as this is the first trade agreement to be considered by Congress under the new TPA rules. For example, the level of disagreement regarding investment rules expressed by TEPAC and IGPAC members should signal Congress to remain diligent in this area of trade policy. The FTA also raises a number of environmental issues, many of which the TEPAC report did not cover in any detail.<sup>6</sup> This brief examines these issues more fully.

### **Upholding Domestic Environmental Protection Policy**

TPA Section 2102(a)(7) states that negotiators will “ensure that domestic environmental protection policies are not weakened or reduced to encourage trade,” which raises two important issues: rules of origin and ambiguous language.

#### **Rules of Origin**

In a related Trade, Equity, and Development Issue Brief, Sandra Polaski identifies a serious loophole in the FTA's rules of origin's chapter that, if left as negotiated, enables Singapore to export products made in the Indonesian islands of Bintan and Batam into U.S. markets without adherence to the FTA's instructions regarding environmental protections, labor laws, and other provisions of the trade agreement requiring effective law enforcement.<sup>7</sup> No other U.S. trade agreement provides similar preferential market access to a nonsignatory.

While perhaps logical on trade grounds, including two Indonesian islands as beneficiaries of the trade agreement creates two problems in terms of the environment. First, the government of Indonesia is not a party to the FTA and is not bound by its environmental obligations.<sup>8</sup> Second, trade-related environmental problems arising from production practices on the islands would most likely involve process and production methods (PPMs)—one of the most contentious trade and environment issues.

In theory, the FTA's Joint Committee, established in Chapter 20, was designed to consider implementation issues such as these. Moreover, at its first meeting the Joint Committee will be tasked with considering each party's environmental review of the FTA and then providing the public an opportunity to offer views on the agreement's environmental effects.<sup>9</sup> Under the terms of the environment chapter's public participation provisions, it is also possible for both U.S. and Singaporean citizens to voice, on an ongoing basis, their concerns over possible environmental harm caused by manufacturing or other export-related economic activity.<sup>10</sup> However, while the Joint Committee may invite Indonesia to join them in a discussion or even

<sup>4</sup>“The U.S.-Singapore Free Trade Agreement,” Report of the Trade and Environment Policy Advisory Committee (TEPAC), Feb. 27, 2003. Available: <<http://www.ustr.gov/new/fta/Singapore/ac-tepac.pdf>>.

<sup>5</sup>“The U.S.-Singapore Free Trade Agreement,” Report of the Intergovernmental Policy Advisory Committee (IGPAC), Feb. 28, 2003. Available: <<http://www.ustr.gov/new/fta/Singapore/ac-igpac.pdf>>.

<sup>6</sup>Advisory Committee rules only allow 30 days for cleared advisors to review an FTA. President Bush appointed his TEPAC members just prior to submitting the agreement to his Advisory Committees. That meant that 17 of the 29 advisors had not attended the regular meetings with USTR held during the negotiations and could not rely on information obtained during those meetings for their review. In their report, TEPAC members complained that the limited time for review, combined with the document's confidential status, made it difficult for them to render a full opinion on time.

<sup>7</sup>See Sandra Polaski, “Serious Flaw in U.S.-Singapore Trade Agreement Must Be Addressed,” Issue Brief (Washington, DC: Carnegie Endowment for International Peace, April 2003). Available at: <<http://www.ceip.org/trade>>. The specific focus of Polaski's paper concentrates on the “Integrated Sourcing Initiative” established in the U.S.-Singapore FTA, Chapter 3: Rules of Origin, Article 3.2: Treatment of Certain Products, and Annex II.

<sup>8</sup>Taken together, Articles 18.1, 2, and 4(1) state that a party to the agreement has the right to establish its own levels of domestic environmental protection, that it will enforce its own laws so as not to create trade or investment advantages, and that it will ensure that its laws provide for high levels of environmental protection. These commitments do not extend to the government of Indonesia.

<sup>9</sup>U.S.-Singapore FTA Articles 20.1(3), 18.1, and 18.2(1).

<sup>10</sup>U.S.-Singapore FTA Article 18.5 requires each party to develop and maintain procedures for dialog with its respective public concerning the environment provisions of the agreement.

engage Indonesia in consultations regarding the text, it ultimately has no authority over Indonesia. Furthermore, public petitions regarding production practices likely would not result in PPM-based trade restrictions, given the historically controversial nature of such measures.<sup>11</sup> In fact, neither the United States nor Singapore is likely to use General Agreement on Tariffs and Trade (GATT) Article XX to restrict product trade on environmental grounds, even though it is referenced in Article 21.1(1).<sup>12</sup>

Agreeing to allow a third party to enjoy the benefits of an FTA without accepting its obligations is a troublesome precedent. Theoretically speaking, this preferential market access could be awarded to any manufacturing facility in the world owned or operated by Singapore-based companies.<sup>13</sup> If the labor and environment chapters are to have meaning, their obligations must extend to all the beneficiaries of any FTA.

### ***Ambiguous Language***

Article 18.10 defines the terms *statutes* or *regulations* as “an act of the U.S. Congress or regulations promulgated pursuant to an act of the U.S. Congress that is enforceable, *in the first instance*, by action of the Federal Government (emphasis added),” a definition borrowed from the U.S.-Jordan FTA.<sup>14</sup> This definition was not repeated in the U.S.-Chile Free Trade Agreement.<sup>15</sup>

Although the meaning of the phrase *in the first instance* was not defined by the negotiators, based on conversations with U.S. legal scholars it seems to refer to tensions among Federal, State, and local governments over whether or not a Federal Government can insist that a subnational authority enforce its own laws.<sup>16</sup> Tensions between trade disciplines and State and local regulatory authority have been debated in the United States for a number of years; clarifying the relationship between disciplines and subfederal authority in an FTA is one way to set the record straight regarding the effect that international trade rules exert on subnational regulatory authority.<sup>17</sup>

### **Creating a Positive Agenda for Trade and Environment**

TPA Article 2101(b)(11)(D) instructs negotiators to pursue “strengthening the capacity of U.S. trading partners to protect the environment.” FTA Article 18.6(1) indicates that the parties “shall, as appropriate, pursue cooperative environmental activities, including those pertinent to trade and investment and to strengthening environmental performance, such as information reporting, enforcement capacity, and environmental management systems, under a Memorandum of Intent on Cooperation in Environmental Matters to be entered into between the government of Singapore and the United States and in other fora.”

In March 2003, U.S. and Singaporean negotiators began working on the parallel agreement to address the environment.<sup>18</sup> While negotiations remain secret, Singa-

<sup>11</sup> Articulating a common fear, Magda Shahin argues that legitimizing “unincorporated PPMs” would “upset the entire multilateral trading system and would have devastating effects, in particular on developing country exports.” See Magda Shahin, “Trade and Environment: How Real Is the Debate,” in Gary P. Sampson and W. Bradnee Chambers, eds., *Trade, Environment and the Millennium*, 2nd edition (New York: United Nations University Press, 2002), p. 66.

<sup>12</sup> Subject to the terms of the agreement, GATT Articles XX(b) and XX(g) allow countries to restrict trade to protect human, animal, or plant life or health, or when related to the conservation of exhaustible natural resources.

<sup>13</sup> Article 3.2(2) indicates that the parties will regularly review the products listed under Annex II to consider the addition of goods. Singaporean Trade Minister George Yeo said that the agreement could be extended to other countries as well as to other sectors; see “Yeo Lays Out FTA Rules of Origin,” *Inside U.S. Trade*, March 22, 2002.

<sup>14</sup> U.S.-Jordan Free Trade Agreement, Article 18.2(b). Available at: <<http://www.ustr.gov/regions/eu-med/middleeast/textagr.pdf>>.

<sup>15</sup> The U.S.-Chile Free Trade Agreement defines the term as “an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the Federal Government” (Chapter 19, definitions). The complete draft FTA is available at: <<http://www.ustr.gov/new/fta/Chile/text/index.htm>>.

<sup>16</sup> The Tenth Amendment to the U.S. Constitution reserves the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, to the States respectively, or to the people.

<sup>17</sup> See Mark C. Gordon, *Democracy's New Challenge: Globalization, Governance, and the Future of American Federalism* (New York: Demos, 2001).

<sup>18</sup> Executive Order No. 13277, Delegation of Certain Authorities and Assignment of Certain Functions Under the Trade Act of 2002, and Department of State Delegation of Authority 250, Further Assignment of Functions Under the Trade Act of 2002 (Federal Register/Vol. 67, No. 243, December 18, 2002). In accordance with this order, the President assigned the joint authority to establishing consultative mechanisms to the Department of State, the Department of

pore-U.S. trade and environment interests are—in contrast to U.S. negotiations with Central or North America—likely to reflect more global interests, and Singapore’s desire to expand its technological capacities to promote green production. Despite the secrecy surrounding negotiations, it is possible to surmise the probable subjects of negotiation from a number of documents, including the draft U.S. and Singapore environmental reviews of the proposed FTA.<sup>19</sup> Such issues might include:

- Trade in endangered species
- Invasive species
- Ornamental fish/coral reef protection
- Building Singapore’s capacity to act as a regional “green” technology hub.

Addressing environmental issues arising from trade negotiations through parallel policy instruments has become an important part of the U.S. trade policy tapestry, dating back to the parallel agreements in the North American Free Trade Agreement (NAFTA) on U.S.-Mexico border infrastructure and North American environmental cooperation.<sup>20</sup>

However, there are two main problems with the negotiation approach on environmental cooperation being employed in the U.S.-Singapore FTA. First, as yet there is no discussion of the resources required to realize any of the collaborative commitments reached. Congress has not been fully informed of the content of negotiations, and there is no evidence that U.S. Federal agencies with jurisdiction over relevant policy areas are amending their own budgets to support this agenda. Furthermore, with the exception of the U.S.-Asia Environmental Partnership, there are no reliable existing funding sources to support collaborative trade and environment work.<sup>21</sup> In its report, TEPAC members expressed concern over funding: “. . . the Group has concerns about the future of capacity building projects and the achievement of the Congressional mandate in this area.”<sup>22</sup> Second, negotiations over such subjects do not require secrecy; there are no trade secrets under negotiation. The failure of both parties to include the interested public jeopardizes public support for the final negotiated agenda, perhaps even robbing the countries of important technical and financial support from nongovernmental organizations and the private sector.

#### **Trade and Multilateral Environmental Agreements**

TPA Section 2102(c)(10) outlines an important goal for U.S. trade policy: “Promote consideration of multilateral environmental agreements (MEAs), in negotiations on the relationship between MEAs and trade rules, especially as they relate to GATT Article XX exceptions for the protection of human health and natural resource conservation.” FTA Article 18.8 references the World Trade Organization (WTO) negotiations on the relationship between WTO rules and specific trade obligations set out in MEAs, instructing the parties to “consult on the extent to which the outcome of those negotiations applies to this Agreement.” In Article 21.1(1), the United States and Singapore reinforce the legitimacy of GATT Articles XX(b) and XX(g) to protect human, animal, or plant life or health. Recognizing the role played by GATT Article XX in conservation efforts is important, especially given Singapore’s long-standing reluctance to accept this interpretation. However, the weak reference to ongoing WTO consultations and GATT Article XX fails to ensure that both parties will use this opportunity to provide better guidance regarding the relationship between WTO rules and the use of trade measures in MEAs.

Bilateral negotiations can create unique opportunities to forge allies at the WTO on subjects of particular importance to the United States. For example, the U.S.-Jordan FTA was used to strengthen the U.S. efforts to make WTO dispute proceedings more transparent.<sup>23</sup> The United States could use these current negotia-

Labor, and the USTR. The Department of State’s Office of Environmental Policy (OEI) works jointly with USTR’s Office of Environment and Natural Resources on environmental matters.

<sup>19</sup> Documents consulted include the draft environmental reviews prepared by both parties, and U.S. public submissions regarding the U.S. environmental review. See United States Trade Representative, “Draft Environmental Review of the U.S.-Singapore Free Trade Agreement” (Washington, DC: USTR, 2002). Available at: <<http://www.ustr.gov/environment/2002singapore.PDF>>.

<sup>20</sup> See NAFTA’s Commission for Environmental Cooperation, Border Environmental Cooperation Commission, and North American Development Bank at: <<http://www.ustr.gov/regions/whemisphere/nafta.shtml>>.

<sup>21</sup> The U.S.-Asia Environmental Partnership (AEP) was founded in 1994 and has projects in India, Indonesia, the Philippines, Sri Lanka, Thailand, and Vietnam. Singapore does not receive direct support but instead acts as a center for work training for the U.S.-AEP countries. See: <<http://www.usaep.org>>.

<sup>22</sup> TEPAC Report, page 2.

<sup>23</sup> In the “Memorandum of Understanding on Transparency in Dispute Settlement Under the Agreement Between the United States and Jordan on the Establishment of a Free Trade Area,” the United States and Jordan agree to adhere to the same dispute settlement transparency



tions to accomplish a similar objective with regard to the MEA/WTO relationship by signing a Memorandum of Understanding with Singapore stating that WTO rules and MEA obligations are not in conflict.<sup>24</sup>

#### **“Court of Appeals” in Investor-to-State Disputes**

TPA Section 2102(b)(3)(G)(iv) instructs negotiators to “[seek] to improve mechanisms used to resolve disputes between an investor and a government through . . . [the] establishment of a single appellate body to review decisions in investor-to-government disputes and thereby provide coherence to the interpretations of investment provisions in trade agreements.”

In a side letter signed by both parties, the United States and Singapore agree that “within 3 years after the date of entry into force of this Agreement, the parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 15.25 in arbitrations commenced after they establish the appellate body or similar mechanism.”<sup>25</sup>

TPA instructions stipulate that the United States should encourage the establishment of a single appellate body for investor-to-state disputes.<sup>26</sup> That said, because investor-to-state disputes are not part of WTO rules, the WTO would not be the appropriate place to establish this body. If the United States decides not to make changes in dispute settlement procedures in each of its bilateral and multilateral negotiations, then it should make a concentrated effort to make changes in the arbitration rules followed by the UN Commission on International Trade Law (UNCITRAL) and the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID)—the two bodies most often used to settle disputes. Without changing the arrangement at ICSID and UNCITRAL, agreeing to consider whether or not to establish an appellate body falls short of TPA instructions to establish an appellate body to provide coherence to the interpretations of trade disputes.

#### **Trade-Related Intellectual Property Rights and Public Health**

TPA Section 2102(b)(4)(C) instructs negotiators to “respect the Declaration on the TRIPS [trade-related aspects of intellectual property rights] Agreement on Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14th, 2001.” In its Advisory Report to the President, the Industry Functional Advisory Committee (IFAC) praised the intellectual property rights chapter because it clarifies and improves on the standards for patent protection contained in the WTO Agreement on TRIPS.<sup>27</sup> Some industry representatives may view this as an important victory, but limiting a country’s ability to issue compulsory licenses that would enable them to manufacture life-saving medicines for use in poor countries is inconsistent with the spirit of the WTO TRIPS declaration. In December 2002, the United States was the lone defector from an otherwise unanimous decision among WTO members regarding new rules that would allow countries to source the manufacture of generic copies of patented drugs abroad.<sup>28</sup>

#### **Next Steps for Congress**

Most experts expect that the U.S.-Singapore FTA will meet with little opposition in Congress. Singapore is the eleventh largest U.S. export market worldwide. According to the U.S.-Association of South East Asian Nations (ASEAN) Business Council, two-way trade between the United States and Singapore last year totaled \$33 billion, and Singapore enjoys \$27 billion in U.S. direct investment, with more than 1,300 American companies with some presence in Singapore.<sup>29</sup> At the launch of the U.S.-Singapore FTA Congressional Caucus, Co-Chairman U.S. Representative Solomon Ortiz (D-TX) stressed the important role Singapore plays in U.S.

goals outlined in TPA in any dispute to which they are a party. Available at: <<http://www.ustr.gov/regions/eu-med/middleeast/memodis.pdf>>.

<sup>24</sup>The U.S. Declaration of Principles on Trade and the Environment outlines the overall U.S. position on trade and environment policy. Regarding the MEA/WTO relationship, it states, “Trade measures in MEAs are broadly accommodated by the WTO.” Available at: <<http://www.ustr.gov/environment/finpol.pdf>>, p. 7.

<sup>25</sup>The joint letter is attached to the end of the U.S.-Singapore FTA investment chapter.

<sup>26</sup>TPA section 2102(b)(3)(G)(iv) instructs the USTR to “[establish] a single body to review decisions in investor-to-government disputes.”

<sup>27</sup>Document available at: <<http://www.ustr.gov/newfta/Sijgapore/ac-ifac2.pdf>>.

<sup>28</sup>“U.S. Sticks to Hard Line on TRIPS, as Supachai Tries to Broker Deal,” *Inside U.S. Trade*, Vol. 20, No. 51, December 20, 2002.

<sup>29</sup>“U.S. Business Says Capitol Hill Singapore Caucus Is a Good Idea,” U.S.-ASEAN Business Council Press Release, Oct. 7, 2002. Available at: <[http://www.usasean.org/Press\\_Releases/2002/singapore\\_caucus.htm](http://www.usasean.org/Press_Releases/2002/singapore_caucus.htm)>.

counterterrorism efforts. And negotiating an FTA with Singapore marks an important improvement in U.S. trade negotiations in the region, since efforts to stimulate trade under the Asia Pacific Economic Cooperation framework have not proved concrete. With advisory reports that side with the Administration's final product but also with important TPA instructions still clearly not addressed, what should Congress consider as it deliberates the agreement?

First, Congress can address some of these issues in the implementation legislation and statement of administrative action. Once the agreement is submitted, the White House will work with the House Ways and Means Committee and the Congressional Oversight Group to craft these two documents that make the terms of the U.S.-Singapore FTA part of U.S. law and set out the U.S. interpretation of the agreement. In particular, Congress could clarify the ambiguities surrounding the relationship between Federal action and enforcement of State and local laws. It could also underscore the U.S. position regarding the compatibility of MEA and WTO rules and the U.S. desire to ensure that poor citizens worldwide have access to life-saving drugs.

But while this approach helps clarify the U.S. understanding of the FTA, it has no legal impact on the government of Singapore. Therefore, the second thing that Congress should do is to advise the Administration to fix the rules of origin loophole in collaboration with Singapore.

Third, Congress should fund the positive environment agenda outlined in the environment cooperation agreement. If the implementing legislation requires action by the Appropriations Committees, then Congress could stipulate funding at that time. Another approach would be to instruct the Department of State, Department of Interior, Environmental Protection Agency, and U.S. Agency for International Development to fund and staff these projects.

Fourth, as mentioned earlier, Congress should instruct the USTR and the Department of State to lead an effort to negotiate changes to ISCID and UNCITRAL arbitration rules. It is wise to avoid creating a series of appellate bodies; therefore, the United States should correct the errors with regard to public participation in dispute settlements and the use of an appellate procedure to ensure legally sound outcomes.

Fifth, during hearings to review the agreement, Congress should be prepared to ask the Administration to explain why it did not adhere more closely to some of TPA's environment instructions. Perhaps U.S. negotiators tried to convince Singapore to take a stronger position with regard to MEAs and WTO rules, or perhaps they tried to negotiate a stronger reference to GATT Article XX. The Administration's responses to questions such as these should be a matter of public record, and Congressional Members should use these responses to judge the overall merits of the agreement itself.

More generally, Congress should reconsider the degree to which it allows the USTR to negotiate trade agreements in relative secrecy. Inconsistencies between TPA guidelines and the provisions found in a trade agreement can often be traced back to the secretive nature of these negotiations; for example, had State and local governments been better involved in negotiations, perhaps the ambiguities with regard to the definition of an environmental regulation would have been caught and corrected before the agreement was concluded. In addition, Congress should take a close look at the membership of the advisory bodies used by the USTR and other Federal agencies to ensure that all relevant views are represented on the Committees. Finally, Congress could improve oversight of environment and trade policies by expanding the Membership of the Congressional Oversight Group to include representatives from Committees with jurisdiction over national and international environmental policy.

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Chairman CRANE. Thank you, Mr. Audley. I have a question for you, Mr. Papovich, since in your former life you were Assistant U.S. Trade Representative, and you were responsible in the intellectual property arena—you were the chief negotiator, as I understand it, of intellectual property rights with Chile and Singapore; is that correct?

Mr. PAPOVICH. No, actually it is not correct. I did supervise the people who were the chief negotiators—

Chairman CRANE. Okay.

Mr. PAPOVICH. To be precise.

Chairman CRANE. Well, on protection of intellectual property, Singapore has been reluctant to take on much responsibility, relying instead on businesses to police themselves. How do you expect this to change with the Singapore FTA? Are you optimistic that Singapore authorities will use the many new tools to fight against piracy?

Mr. PAPOVICH. Actually, I am. It is my understanding that—unless I am not remembering this correctly—that Singapore agreed to change that provision as part of the FTAs. Whether my memory is accurate on that score or not, the provisions of the agreement require them to take on new obligations that will enable American right holders to get criminal prosecutions of those who violate the rights of our members.

Chairman CRANE. Very good. Mr. Levin.

Mr. LEVIN. Thank you very much. Thanks to each and every one of you for your testimony. I regret that we all can't be here, but I hope all the officers, not only on the Subcommittee, but elsewhere, will read the testimony of each and every one of you. We have touched on some of the subjects earlier today—the ISI subject—and we will look forward to receiving more information from the U.S. Trade Representative. As I believe was made clear, there is a shortage of information and understanding about what this all could mean, and we look forward to receiving that.

As to core labor standards, I had to leave for a memorial service for a few minutes. I understand Mr. Becerra asked the previous panel about that as we followed up on this discussion, and I hope that everybody will take this discussion seriously. There has been less discussion about the intellectual property rights standards, and I do think it is important, Mr. Kripke, that you help us understand what is in them.

Also, in your testimony on page 5, you say using the Singapore and Chile FTAs as a template for future trade agreements—this relates to intellectual property rights—is dangerous and inappropriate, and I think it is important that you spell that out. Mr. Papovich, there was some discussion, and it went on earlier, about fines versus sanctions. I am not sure it has been widely noted that the provisions in Singapore and Chile, as I understand them, allowed a country to pay a fine, 50 percent of the trade impact. This is across the board, as I understand it, with a special limitation in the case of environmental and labor violations. So, tell me, in terms of a template, are we about to embark, for example, as to intellectual property, on a standard that allows a country that violates its obligations to pay a fine of 50 percent of the impact on trade? I guess you supervised it. Is that where we are going? Is that defensible?

Mr. PAPOVICH. You are requiring me to search back into my memory a little bit here. First, the agreement requires that countries have under their laws, penalties adequate to deter further piracy, and that has nothing to do with your reference to 50-percent fines. If a country, as you said, fails to comply with any of the provisions of the agreement, then the question is what sanctions should there be. In an FTA, the only sanction under normal instances, this would certainly be the case with NAFTA, is that the

other country would be free to reimpose tariffs equal to the damage that has been done, but only up to the MFN rate, the rate that would prevail in the absence of the FTA. So, my ability to take you much further with this is now coming to an end, but it seems to me that the existing sanction is already somewhat modest, and so a fine equal to half the damage, if that is the right amount, might be comparable. Yet—

Mr. LEVIN. It may not be.

Mr. PAPOVICH. It might not be. That is right. It might not be. It seems to me there is an option.

Mr. LEVIN. So, wrestling with core labor and environmental standards in the resistance to the use of sanctions at the end of the game, at the end of the process—it was never suggested to be at the beginning—has this led the U.S. Trade Representative to accept a standard across the board that is less than necessary to enforce our trade agreements?

Mr. PAPOVICH. I don't know the answer to the question. I don't have an answer to give you on that.

Chairman CRANE. Well, as you folks know, the bells have gone off, and we have recorded votes coming up on the floor. I want to express appreciation to you also for your testimony today, and if there are Members here who have further questions, you can submit them in writing.

Mr. BECERRA. Mr. Chairman, the first bell only rang, so that means we still have more than 10 minutes. Is it possible to just try to get in about 2 minutes' worth of questioning, and I will be very brief?

Chairman CRANE. Well, Mr. English is first.

Mr. BECERRA. I will yield. I would hate to lose my opportunity—I did sit through most of the hearing. I would love to ask the panelists—and I understand we have to catch our votes.

Chairman CRANE. Okay. As soon as the bells go off, though, we are going to adjourn. So, Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. Much of the criticism I have heard from this panel with these two agreements has to do with these agreements as templates. Yet individual trade agreements are crafted specifically to the countries with which we are engaged. Obviously, I would like to explore this further, but I am going to have to pass—but I would like to follow up with you individually. Thank you for your testimony.

Mr. BECERRA. Mr. Chairman, I will ask just one question, if that is possible.

Chairman CRANE. Go ahead.

Mr. BECERRA. Thank you, Mr. Chairman. I appreciate the indulgence. I asked the question with the previous panel, and if you could just chime in with a yes, if you can do so. Do any of you oppose the right of employees to associate? Do any of you oppose the right of employees to collectively bargain? Do any of you oppose the right—or excuse me, do any of you oppose a prohibition against child labor? Do any of you oppose a prohibition against discrimination? Do any of you oppose a prohibition against forced labor?

Okay. I take it by your silence that no, none of you oppose it, and I appreciate that. I also want to, Mr. Chairman, just acknowledge that both Ambassador Bianchi and Ambassador Chan have been

very gracious sitting through this entire hearing, and I want to thank them for all of their efforts because they have been very diligent in talking to all of us about the importance for their country of these FTAs. I want to thank them for all the work that they have done on behalf of this trade agreement. Thank you.

Chairman CRANE. Yes, indeed. Thank you all. I want to thank all of the witnesses, and we are sorry for this interruption.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

American Association of Law Libraries  
Washington, DC 20001  
*June 19, 2003*

The Honorable Philip M. Crane  
Chair, Subcommittee on Trade  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Crane and Ranking Member Levin,

On behalf of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Medical Library Association, the Special Libraries Association and the Digital Future Coalition, we appreciate the opportunity to comment on the U.S.-Chile and U.S.-Singapore Free Trade Agreements (hereafter the FTAs), which soon will be considered by Congress under provisions of the fast track trade negotiation authority revived last year by passage of the Bipartisan Trade Promotion Authority Act. We ask that you please include these comments in the official record of the Subcommittee's hearing of June 10, 2003.

The **American Association of Law Libraries** (AALL) is a nonprofit educational organization with over 5,000 members nationwide who respond to the legal information needs of legislators, judges, and other public officials, corporations and small businesses, law professors and students, attorneys, and members of the general public. AALL's mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy. The **American Library Association** (ALA) is a nonprofit educational organization of over 65,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, State, and specialized libraries. ALA is dedicated to the improvement of library and information services, to the public's right to a free and open information society—intellectual participation—and to the idea of intellectual freedom. The **Association of Research Libraries** (ARL) is a not-for-profit organization representing 124 research libraries in the United States and Canada. Its mission is to identify and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to, and effective use of, recorded knowledge in support of teaching, research, scholarship, and community service. The **Medical Library Association** (MLA) is a nonprofit, educational organization of more than 900 institutions and 3,800 individual members in the health sciences information field, committed to educating health information professionals, supporting health information research, promoting access to the world's health sciences information, and working to ensure that the best health information is available to all. The **Special Libraries Association** (SLA) is an international professional association serving more than 13,000 members of the information profession, including special librarians, information managers, brokers, and consultants. The **Digital Future Coalition** (DFC) is a unique collaboration of many of the Nation's leading non-profit educational, scholarly, library, and consumer groups, together with major commercial trade associations representing leaders in the consumer electronics, telecommunications, computer, and network access industries. Since its inception in 1995, the DFC has played a major role in the ongoing debate regarding the appropriate application of intellectual property law to the emerging digital network environment.

Our organizations have worked closely with other educational, research, and consumer-oriented groups to oppose copyright policies that threaten to unduly limit access to information or to upset the traditional balance that has existed in copyright law between the rights of the content community and the rights of consumers, li-

braries, and the educational community. We believe that such a balance is essential to the free flow of information. With that in mind, we want to bring to your attention several aspects of the FTAs that are problematic for the library community. While this is not by any means an exhaustive list, the most important issues that we believe require serious examination by Congress are listed below.

#### **The Copyright Provisions**

The copyright sections of these agreements contain several provisions that require our strong opposition. Both the Chile and Singapore agreements require:

- that the duration of the copyright term reflect the U.S. rule of life plus 70 years instead of the international standard of life plus 50 years;
- that anti-circumvention rules be adopted which reflect the expansive provisions of Section 1201 of the Digital Millennium Copyright Act, including strong device prohibitions; and
- that the reproduction right expressly include temporary copies. Under current standards, temporary copies in RAM do not necessarily implicate the reproduction right.

The inclusion of the life +70 copyright term and the detailed anti-circumvention rules also carry the deleterious effect of locking-in current provisions of law that Congress may want to revisit. The extension of the reproduction right to temporary copies raises an even greater problem, as these provisions go well beyond the protections provided under the Copyright Act. It would have profound and far-reaching negative implications for reading and browsing, and has consistently been strongly opposed by consumers and the library and education communities. During the negotiation of the WIPO Copyright Treaty, a similar provision was proposed and ultimately rejected by the Diplomatic Conference.

We believe that a bilateral free trade agreement is a particularly poor vehicle to use to extend the scope of U.S. copyright law in such a drastic manner. By extending the scope of copyright protection well beyond what exists, even under current U.S. law, the agreements exceed the scope of legitimate trade policy beyond even the most liberal interpretation. Congress should send a clear message to the USTR that the traditional balance and concern for the interests of all stakeholders that has historically informed Congressional deliberations in the area of copyright policy is crucial when negotiating trade agreements.

#### **Fast-Track Authority**

Although fast-track authority has been touted as essential to free trade agreements, the cost is very high. The many benefits of Congressional oversight are lost when the President and his designees are essentially given carte blanche to make agreements quickly to benefit the U.S. position among its trading partners. Because there is no ability to amend the trade agreements negotiated by the USTR under fast-track authority, Congress has a minimal role to play while the Executive Branch makes new law in many peripheral areas simply by including the provisions in an FTA.

#### **Lack of Transparency**

In addition to the power bestowed by fast-track authority, the USTR negotiates the FTAs in secret; it is not an open process. Interested parties are discouraged from commenting because there is very little publicity about the provisions themselves and because the comments sent to USTR are not readily available to anyone outside the agency. One must visit the USTR Reading Room to view comments, which are available only on certain days by appointment. While we appreciate the opportunity to comment eventually on these agreements, we would have preferred to do so at a much earlier stage in the process. Because the full text of the agreements is not made publicly available until the end of the negotiation process, the public has been effectively precluded from ongoing participation in these crucial deliberations.

Because Congress must adopt or reject the entire agreement with limited debate and no possibility of amendment, we must oppose ratification and implementation of these two FTAs. We hope that Congress will see the wisdom of removing intellectual property matters from fast track authority at the earliest possible opportunity. It is not appropriate or in the public interest to permit far-reaching intellectual property law to be made without the benefit of public debate and Congressional oversight.

Finally, we submit that the provisions of the WTO-TRIPS agreement as well as the various treaties and conventions administered by WIPO provide an adequate institutional framework for the international harmonization of international intellectual property protection. Institutional duplication within bilateral trade agreements

is both unnecessary and inappropriate. We believe that Congress should encourage the Office of the USTR to pursue the changes in international intellectual property standards within the established frameworks of WTO–TRIPS or WIPO.

Respectfully submitted,

Robert L. Oakley  
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*Special Libraries Association*

Peter Jaszi  
*President*  
*Digital Future Coalition*

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[BY PERMISSION OF THE CHAIRMAN:]

**Statement of Kristin E. Paulson, American Chamber of Commerce in Singapore**

**Introduction**

The American Chamber of Commerce in Singapore, hereafter referred to as “AmCham” or “AmCham Singapore,” represents the interests of the 1,500 U.S. companies operating in the country, and more than 18,000 Americans living and working in Singapore. AmCham strongly supports the U.S.-Singapore Free Trade Agreement (USSFTA), and the roles which the current U.S. Administration and Congress will play in signing the Agreement and implementing related legislation. We also wish to congratulate the Singaporean and United States governments for negotiating a very comprehensive agreement that will further both nations’ trade objectives, while contributing to their respective, future economic growth.

Singapore is an important economic and strategic partner for the United States in Southeast Asia. As the gateway to more than 500 million consumers, Singapore is well positioned to provide open markets and better opportunities for American companies and workers. Featuring a world-class infrastructure, well-educated workforce, and a pro-business environment, Singapore is the United States’ 12th largest trading partner and export market. Total commerce between the two nations in 2002 was close to \$31 billion, with the U.S. having a trade surplus of \$1.4 billion.

Singapore has also been one of America’s key partners in Asia, providing access and logistical support for the U.S. Navy and U.S. Air Force. The nation and its government have played a vital role in the war against terrorism, and have actively worked to ensure the security of American interests and of U.S. citizens and their families living in Singapore.

The USSFTA presents an opportunity for the United States and Singapore to further cement the friendship and strategic partnership which exists between the two nations. It is an historic step, one that will be the first free trade agreement (FTA) that the United States has signed with any Asian nation. This FTA will offer American companies significant benefits, including: increased access to the Singapore market, landmark intellectual property (IP) protection, removal of barriers in the financial services sector, and reduced restrictions on professional services.

Additionally, the Agreement will give U.S. businesses a gateway from which they can expand into the larger ASEAN and North Asia markets. The USSFTA will also serve as a model for other nations who are considering establishing future free trade agreements with the United States. In short, this opportunity will represent significant short- and long-term benefits for American companies, as it will enable them

to open new markets in Asia, and to create higher consumer demand for U.S. products. This will translate into higher U.S. exports and greater employment opportunities for American workers.

#### **USSFTA Analysis and Comments**

AmCham Singapore and our members strongly support passage of the U.S.-Singapore Free Trade Agreement. We would like to highlight several key areas of the FTA and how these will affect U.S. businesses and their respective sectors.

- **Exports:** Singapore guarantees zero tariffs immediately on all American products. The FTA will also eliminate or reduce certain significant non-tariff barriers. For example, it will result in a change in the way Singapore calculates excise taxes on imported automotive vehicles. The Agreement's rules of origin will create new opportunities for American exporters of fiber, yarn, and fabric. Additionally, regulations will be relaxed in other areas.
- **Competition:** The Agreement includes provisions (Chapter 12) that address potential anti-competitive business practices by state-owned enterprises in Singapore and call for the creation of a competition law in Singapore by 2005. We believe that a competition law will best serve the interests of both nations and their respective business communities. AmCham believes that the Agreement will help ensure that U.S. companies can compete fairly for the procurement of government contracts (Chapter 13), and for the buying and selling of goods and services.
- **Express Delivery Services:** The FTA's provisions concerning express delivery services (EDS) provide American EDS companies with greater access to the Singapore marketplace. We are pleased that the Agreement contains a commitment precluding the cross-subsidization of EDS operations by Singaporean postal authorities, the first time such a commitment has been contained in a trade agreement.
- **Financial Services and Insurance:** The FTA will level the playing field for U.S. financial service providers in Singapore's banking and securities sectors. American banks will have access to the Singapore Automated Teller Machine (ATM) network. Restrictions will also be lifted on the number of qualifying full banks permitted to engage in retail business. Additionally, restrictions will also be eased on the number of branches which U.S. banks already licensed in Singapore can operate. With respect to asset management, it will now be easier for U.S. asset managers to qualify to provide approved products under the Central Provident Fund (CPF), Singapore's multi-billion dollar retirement savings/investment program.

In the area of insurance and insurance-related services, AmCham lauds the improved access to Singapore's insurance industry, which was gained through these negotiations.

- **Intellectual Property Rights (IPR):** The FTA will provide substantial enhancements to IPR protection in four main areas: (1) trademarks (and stronger protection for well-established trademarks); (2) copyrights (new protection for digital works, measures to prevent circumvention of copying prevention measures, measures to monitor the production of optical discs); (3) patents (measures that will help pharmaceutical companies address the problem of parallel imports); and (4) trade secrets. Singapore also agreed to cooperate in preventing pirated and counterfeit goods from entering the United States.

The IPR provisions of this Agreement are one of the most significant aspects of the USSFTA, and something which AmCham believes is an important model on which future FTAs with other nations should be based. The Agreement will protect the work of U.S. companies and individuals in Singapore, thereby fostering greater trade and investment opportunities in the future.

- **Professional Services:** American professional services firms, specifically in the areas of legal, architectural, engineering, and land surveying services, will have improved market access to Singapore. For U.S. law firms, Singapore will make it easier for them to enter into joint-law ventures with local companies. It will also recognize law degrees granted by a limited number of American law schools, for purposes of qualifying for the Singapore bar.

With respect to U.S. architectural and engineering firms, the FTA has relaxed local-ownership restrictions. AmCham supports these provisions and believes that the additional discussions (outside of the FTA context) pertaining to mutual-recognition of U.S. and Singaporean architectural and engineering professional qualifications will only further serve the best interest of both nations, af-



fording increased opportunities for Americans and Singaporeans to work in each other's countries. This could indirectly encourage more Americans to consider getting their professional degrees in Singapore, which would allow them to practice architecture and engineering in both countries.

- **Telecommunications:** Chapter 9 of the FTA will ensure greater transparency and non-discriminatory access to the telecom network, leased lines, and related areas. The Agreement also contains important clauses which will prevent anti-competitive practices, thereby ensuring that American firms will be able to compete more effectively with local companies. AmCham Singapore welcomes the progress that has been made to enable U.S. telecom companies to interconnect with Singapore's networks and to have increased opportunities for doing business in the country.

### **Summary**

AmCham Singapore strongly supports approval of legislation to implement the U.S.-Singapore Free Trade Agreement by the Congress. Our members have benefited from a very pro-business environment, supported through an active partnership with the Singaporean government. As outlined above, we believe that this Agreement helps to further cement that relationship with a key strategic partner and will serve as a model for pending negotiations with other ASEAN member countries. This in turn will serve to foster increased business and employment opportunities for American companies and U.S. citizens both at home and throughout the Asia Pacific region.

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### **Statement of Jeffrey S. Levin, Esq., Association of Food Industries, Inc.**

This statement is submitted on behalf of the Association of Food Industries, Inc. (AFI). AFI is a U.S. trade association serving the food import trade, with approximately 200 member-companies located in the United States. The member-companies trade in a vast range of imported food products, including processed foods, nuts and other agricultural products, and honey.

At the outset, AFI notes that the U.S. food importing industry is composed of American companies. Its workers are employed here in the United States, and these companies make a vital contribution to the tax base of our national, state and local economies.

AFI strongly supports the liberalization of trade through the reduction of tariffs and the elimination of non-tariff barriers in the course of bilateral, and multilateral, negotiations. AFI respectfully submits that this intrinsic negotiating objective must be advanced for products across the board, including those products which are considered "import sensitive agricultural products," as that term is defined in section 2104(b) of the Trade Act of 2002.<sup>1</sup>

AFI brings to this proceeding the perspective not just of U.S. food importers but also of U.S. consumers. These are fundamentally important constituencies that are too often overlooked in the course of trade deliberations, particularly in the area of negotiating objectives. Indeed, in reviewing the principle negotiating objectives of the United States with respect to agriculture as defined in section 2102(b)(10) of the Trade Act of 2002, the emphasis on enhancement of export opportunities and the development of overseas markets for U.S. producers of agricultural commodities is manifest. Yet, to a critical extent, the sweeping benefits gained from the import side of the trade equation is overlooked. This is unfortunate, because imported food products have played a vital role in the development of this Nation's economy, and will continue to do so for the foreseeable future. Food imports still account for a relatively small share of the total U.S. diet. However, that share has grown considerably in recent years. Economists at the USDA estimate that imports' share of the total quantity of food consumed domestically increased from an average of 7.5 percent for the period 1979-1994 to 9.1 percent in the late 1990's.<sup>2</sup> Import supplies greatly increase the variety of foods available to the American consumer in line with expanding market demands, temper increases in food prices caused by adverse

<sup>1</sup>Under this provision, "import sensitive agricultural products" are considered to be those products which are subject to tariff-rate quotas, and those products subject to tariff reductions by the United States as a result of the Uruguay Round Agreements, for which the rate of duty was reduced on January 1, 1995, to a rate which was not less than 97.5 percent of the rate of duty that applied to such article on December 31, 1994.

<sup>2</sup>Putnam and Allshouse, *Imports' Share of U.S. Diet Rises In Late 1990s*, Global Food Trade (September-December 2001) at 15.

weather conditions and other market disruptions, and stabilize year-round supplies of fruits and vegetables. In other words, imported foods support adequate supplies of both dietary staples and specialty items especially important to an increasingly diverse population, and do so at a counter-inflationary cost to consumers.

Indeed, U.S. Trade Representative Robert Zoellick estimates that the North American Free Trade Agreement and Uruguay Round Agreements resulted in an annual benefit of between \$1,300 and \$2,000 for the average American family of four.<sup>3</sup> Much of this benefit can be attributed to increasingly open trade in food products. In the absence of due attention to import concerns, much of this benefit could disappear.

Furthermore, attention to the concerns of U.S. importers of food products fundamentally serves the negotiating objectives enunciated in the Trade Act. Enhanced access to markets abroad cannot be achieved in the absence of reasonable market opening measures on the part of this country. Of course, the more our trading partners are able to sell their products to U.S. consumers, the better equipped they are to purchase U.S. products shipped abroad.

AFI applauds the initial decision to enter into a free trade agreement (FTA) with Chile, which we view as a particularly complementary trading partner. We strongly believe that this agreement will have a significant beneficial impact on both the U.S. and Chilean economies, and on the U.S. consumer.

However, like many other companies, associations and public officials in the United States, AFI has a pronounced concern regarding the apparent delay in the submission of implementing legislation by the Administration to the Congress. The U.S.-Chile FTA has been a top negotiating priority for an extended period, spanning at least two Administrations, and the successful conclusion of negotiations should be treated and viewed as an important milestone for U.S. trade policy. It must not be held hostage to temporal, and unrelated, geopolitical vagaries. Indeed, we agree with the notion expressed last month by a number of “pro-trade” Senators and Representatives that it would be a “tremendous mistake” if the Administration delayed presentation of the implementing legislation to Congress. As noted by these legislators, “[t]o delay signing the agreement because of other foreign policy disagreements, no matter how important, would send terribly counterproductive messages—that liberalized trade is neither a desirable end in itself nor a more effective means to strengthen our international alliances.” We implore those policymakers in a position to effect movement on this issue to take those actions necessary to sign, submit and seal this important agreement.

AFI submits that as the Subcommittee on Trade reviews the proposed U.S.-Chile FTA and as it reviews other potential bilateral and multilateral trade agreements, two issues must remain in the foreground. First, apart from the technical definitional parameters established by the Trade Act, relevant policymakers—including those officials charged with negotiation of this and other trade agreements, and lawmakers charged with reviewing the legislation necessary to implement the results of the negotiations—must determine not only whether a particular food product is indeed “import sensitive,” but also whether that sensitivity is an interest demanding tariff protection when placed in the wider context of national objectives. It is axiomatic that trade negotiations should not be designed to protect the parochial concerns of a limited set of market participants, but rather should serve to promote the widest possible set of interests so as to bring the greatest potential benefit across the board. For example, it is one thing if the 14.9 percent tariff on prepared or preserved artichokes—or the tariff rate quota established for this product under the terms of the U.S.-Chile FTA—serves to protect a significant employment base in this country or furthers some other compelling national interest such as the competitive viability of an important U.S. production sector. It is quite another thing if the tariff exists primarily to hinder the access of U.S. importers and consumers to an expanded supply base in order to salvage limited and economically regressive domestic concerns.

The negotiating stature of this country should operate under the presumption of trade liberalization, not protectionism. The burden should fall upon those interests that seek to stifle further tariff reductions for “import sensitive” products to affirmatively demonstrate the specific bases for their claims.

Second, the Subcommittee must evaluate the merits of a potential trade agreement on the basis of its potential effects on the U.S. economy *as a whole*. Further tariff reductions on “import sensitive” agricultural products should be advanced if, on balance, such action would bring greater economic benefit to the range of interests in this country—including the interests of the consuming population—than would the status quo.

<sup>3</sup>Zoellick, *Falling Behind On Free Trade*, N.Y. Times, April 14, 2002, section 4 at 13, col. 1.

The rubric of “import sensitivity” should not constitute a formulaic bar to trade liberalization.

In this context, AFI also applauds the fact that duties on all imported food products from Chile will be eventually eliminated under the terms of the agreement. In particular, AFI strongly supports the agreement provisions that immediately remove the duties on a range of food products and that retain current duty-free treatment for a range of food products.<sup>4</sup> However, we are concerned that a significant number of imported food products will be subject to the lengthiest staging category encompassed by the duty elimination provisions (*i.e.*, 12 years), while a significant number of so-called “import sensitive” food products will be subject to special provisions such as tariff-rate quotas or “competitive need limitation” type provisions.<sup>5</sup> In addition, a number of imported food products will be subject to “agricultural safeguard” provisions, which are in most cases framed by a “trigger price” mechanism.<sup>6</sup>

AFI is very much aware that the text of the U.S.-Chile FTA, and the tariff treatment of specific products under the provisions of the agreement, may well serve as a “template” for ongoing and future FTA negotiations, such as the proposed FTA with Morocco and the Central American Economic Integration System, and the proposed Free Trade Area of the Americas. For this reason, AFI has a particular concern for, and interest in, the basis for the duty elimination provisions regarding food products as set forth in the U.S.-Chile FTA. As we note above, duties on imported food products should be subject to immediate elimination, or, at the least, an expeditious staging category, unless those domestic interests claiming otherwise affirmatively demonstrate the need for more “protectionist” treatment. In other words, a simple claim of “import sensitivity” should not suffice; an affirmative demonstration of the *need* for more “protectionist” treatment, rooted in direct evidence regarding the marketplace and conditions of competition, should be required.

The concerns of AFI in this regard are well-founded. In particular, AFI notes the report of the Agricultural Technical Advisory Committee on Trade In Fruits and Vegetables with respect to the U.S.-Chile Free Trade Agreement. The report states as follows:

Other members who represent highly sensitive products (e.g., canned fruit) had sought particular exemptions and were disappointed that a twelve-year phase-out (with safeguards in some instances) was the best protection provided. Since the Chilean FTA has been described as a template for the Free Trade Area of

<sup>4</sup>AFI has reviewed the tariff treatment for products encompassed by specific Harmonized Tariff Schedule chapters of interest to its member-companies. For example of the 155 tariff schedule items (at the 8-digit level) encompassed by Chapter 7 (edible vegetables), 111 items will be subject to immediate duty elimination or will have current duty-free status retained. Of the 90 tariff schedule items encompassed by Chapter 16 (preparations of meat and fish), 83 items will be subject to immediate duty elimination or will have current duty-free status retained. Of the 170 tariff schedule items encompassed by Chapter 20 (preparations of vegetables, fruits and nuts), 101 items will be subject to immediate duty elimination or will have current duty-free status retained. Of the 88 tariff schedule items encompassed by Chapter 21 (miscellaneous edible preparations), 63 items will be subject to immediate duty elimination or will have current duty-free status retained.

Specific products of interest to AFI member-companies that will be subject to the immediate elimination of duties as of the date that the agreement enters into force are prepared or preserved mackerel (subheading 1604.15.00, HTS), and boiled clams in immediate airtight containers (subheading 1605.90.10, HTS). Specific products of interest that will retain their current duty-free status on a permanent basis include anchovies, whole or in pieces (subheading 1604.16.10, HTS) and frozen blueberries (subheading 0811.90.20, HTS).

<sup>5</sup>A specific example of a product of interest to AFI member-companies that falls within this category is frozen blackberries, mulberries and white or red currants (subheading 0811.20.40, HTS). Pursuant to Annex 1, Note 17 of the agreement, imports from Chile of this product, and other similarly situated food products, will be subject to a zero percent duty as of the date that the agreement enters into force, unless imports from Chile exceed 50 percent of total U.S. imports of the product, or if the value of imports from Chile exceeds \$110 million. If either condition is met, the duty on the product will revert to the appropriate level established under Annex 3.3, Note 1(b) of the agreement (providing for the elimination of duties in four equal annual stages).

<sup>6</sup>A specific example of a product of interest to AFI member-companies that falls within this category is prepared or preserved artichokes (subheading 2005.90.80, HTS). Pursuant to Annex 3.18 of the agreement, the trigger price for this product is established as \$1.29 per kilogram. Pursuant to Article 3.18 of the agreement, the U.S. may impose a safeguard measure on imports of the product if the unit price of such imports falls below this trigger price.

AFI notes that pursuant to Article 3.18(2)(b) of the agreement, “[t]he parties may mutually agree to periodically evaluate and update the trigger prices.” AFI submits that this is a particularly important provision considering the historical volatility in the prices of imported food products, and that the relevant trigger prices for products subject to these safeguard provisions must be vigilantly reviewed on a regular basis to ensure that they reflect conditions in the market.

the Americas (FTAA), Members of the Committee who represent highly sensitive crops believe that these crops should have received a 15-year phase-out as was provided in the North American Free Trade Agreement (NAFTA). This more lengthy time period would help some of the more sensitive industries adjust to changing trade conditions. *The Committee Members representing sensitive interests are seeking tariff exemptions in subsequent FTAs.*<sup>7</sup>

This sentiment expressed in this statement is a clear signal that certain well-entrenched interests in the United States will mount intensive and continuing efforts in ongoing and future FTA negotiations to ensure that trade liberalization is derailed, or at least delayed. While these interests surely retain their right to exert such efforts, legislators must ensure that the claims of such interests are rooted in fact and need before they become a basis for this country's negotiating posture.

On a related issue, AFI is pleased that the U.S.-Chile FTA contains a provision whereby requests for accelerated tariff elimination will be considered by the signatory parties. We anticipate that member-companies of AFI will evaluate the potential for requests under this provision in appropriate circumstances, and hopes that U.S. policymakers, and their Chilean counterparts, will view such requests favorably.

In sum, AFI strongly supports the ideal of trade liberalization embodied by the U.S.-Chile FTA, and fervently hopes that the agreement will be put into effect at the soonest possible date. While AFI also strongly supports the fact that many imported food products will be accorded immediate duty elimination or will retain their current duty-free treatment, it is concerned that a significant number of products of interest to AFI member-companies will not be treated in as favorable a manner. This is detrimental not only to the interests of those U.S. companies that form the U.S. food importing industry, but to the interests of the U.S. consumer as well. AFI respectfully submits that the tariff treatment of imported food products in ongoing and future FTA negotiations be viewed with a predisposition towards the ideal of trade liberalization.

On behalf of AFI and its member-companies, we greatly appreciate the opportunity to submit these comments.

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### Statement of Automotive Trade Policy Council

The Automotive Trade Policy Council and its member companies—DaimlerChrysler, Ford and General Motors—strongly support passage of the U.S.-Chile Free Trade Agreement and the U.S.-Singapore Free Trade Agreement. Passage of both agreements will signal to our other trade partners in the Western Hemisphere and Asia, as well as in the ongoing Doha Development Round of the World Trade Organization, that the U.S. is committed to promoting free trade around the world.

#### U.S.-Chile Free Trade Agreement

Total automotive trade between the United States and Chile has increased significantly since 1995, surpassing \$180 million in 2002. In fact, over 6% of all U.S. exports to Chile are automotive products (vehicles and parts). Today, Chile is the United States' fifth largest automotive-sector export market in the Western Hemisphere, with annual sales of just over 100,000 new vehicles. At the same time, Chile does not export any significant automotive-sector products to the United States, assembling less than 20,000 new motor vehicles annually.

U.S. automakers will benefit from the U.S.-Chile trade agreement by assuring that U.S. access is equal to that which our European and Korean competitors already have. Both the EU and South Korea signed free trade agreements with Chile before the United States, and both are major exporters of motor vehicles and parts. Until Congress agrees on implementing language for the U.S.-Chile agreement, automakers from Europe and Korea will continue to receive significant commercial advantages on both tariffs and taxes, as well as from business facilitation measures.

U.S. automakers will directly gain in four key areas from provisions in the U.S.-Chile free trade agreement. Chile's high luxury tax on automobiles, which disproportionately harms U.S. automakers, will be phased out over four years. This will remove a significant market access barrier for U.S. vehicles. Upon implementation of the agreement, motor vehicles exported from the United States will receive immediate elimination of tariffs—achieving instant parity with the Korean and European

<sup>7</sup>The U.S.-Chile Free Trade Agreement: Report of the Agricultural Technical Advisory Committee on Trade In Fruits and Vegetables (February 26, 2003) at 3-4 (emphasis added).

automakers. The U.S.-Chile FTA also allows Chile to maintain the flexibility to limit imports of used vehicles, the sale of which can undermine sales of new motor vehicles.

Passage of the U.S.-Chile Agreement will also strongly promote the realization of two other important U.S. trade initiatives—the U.S.-Central America FTA and the Free Trade Area of the Americas. By passing the U.S.-Chile agreement, our trading partners in Brazil, Argentina, Central America, and across the entire Western Hemisphere will see clear evidence that the United States strongly supports the economic benefits of free trade and is willing to work with those nations that follow the same course.

#### **U.S.-Singapore Free Trade Agreement**

While the United States and Singapore engage in significant two-way trade in the automotive sector—\$261 million in 2002 (in a market of 70,000 new vehicles annually)—the more important nature of U.S.-Singapore automotive trade is in the regional component, as Singapore serves as a trade hub to the entire Southeast Asian region. This makes Singapore an important trading partner to the U.S. automotive sector, as the ASEAN region is one of the fastest growing and promising new vehicle markets in the world.

For the automotive sector, the U.S.-Singapore FTA addresses a longstanding problem with how the Singapore Customs authorities value imported motor vehicles. The U.S.-Singapore FTA clarifies and makes transparent the process by which Singapore Customs authorities value imported vehicles to comply with the World Trade Organization's Customs Valuation Agreement. As such, the agreement not only facilitates imports of U.S. vehicles into Singapore by reducing the transaction cost, but it provides a model for trade agreements with other countries that have similar customs valuation practices.

Passage of the U.S.-Singapore Free Trade Agreement will also provide an important signal of the strong commitment by the United States to market liberalization and expansion of free trade across Asia, as well as a dedication to free and open political and economic systems generally.

*The Automotive Trade Policy Council, Inc. is a Washington D.C.-based non-profit organization representing the common international economic, trade and investment interests of its member companies. The members of ATPC are DaimlerChrysler Corporation, Ford Motor Company and General Motors Corporation.*

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#### **[BY PERMISSION OF THE CHAIRMAN:]**

#### **Statement of Chilean-American Chamber of Commerce, Las Condes, Santiago, Chile**

The United States is Chile's principal trading partner (16.3% of foreign trade) and foreign investor (31% of 1974–2002 FDI). However, due to the Chilean government's successful policy of unilateral trade liberalization, the United States' relative position on the trade front has deteriorated from 25% in 1995 to 16.3% in 2002. Key factors are:

- Competition from countries with which Chile has signed trade agreements, especially Canada, Mexico and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) has taken opportunities away from U.S. firms, who do not enjoy the same commercial advantages.
- The free trade agreement between Chile and the European Union came into effect on February 1, 2003, putting U.S. companies at an even greater disadvantage.

#### **Lost Market Share:**

- In 1995—before Chile's trade agreements with Canada, Mexico, and the Mercosur countries came into force—25% of all Chilean imports came from the United States. For 2002, this figure had fallen to 16.3%, while countries enjoying free trade with Chile saw their market share soar. Chilean imports from the U.S. reached \$3.8 billion in 1995, but fell to \$2.5 billion in 2002, decreasing by 34% over this period. In contrast, imports from Mercosur over the same period grew by 80%.
- If the United States had maintained its 1995 market share, it would have received an additional \$1.4 billion in earnings from exports to Chile in 2002 alone.
- The accumulated value of these "lost exports" since 1995 is estimated at \$4.9 billion—almost two years' worth of exports.

- During February 2003, the first month in which the FTA with the European Union became effective, Chilean imports from the U.S. grew at 5.6% compared to February 2002. In contrast, total imports from the EU expanded by 30.4%.

**Lost business opportunities:**

- A study of 13 U.S. companies shows lost business opportunities exceeding \$300 million each year due to the lack of a free trade agreement. For instance, an important U.S. fast food chain with presence in Chile buys its potatoes from Canada, not the United States, to take advantage of reduced tariff levels. Other sectors which have lost are heavy machinery producers, financial services firms, engineering services, and telecommunications equipment, to name a few.
- Services purchased from U.S. firms in Chile are subject to a 20% tax, and Canadian companies have capitalized on this clear advantage.
- Without an FTA, U.S. products will pay a 6% tariff in 2003, which is significant compared with other nations' duty-free access.

**Regional opportunities:**

- Chile's influence in South American markets is larger than its GDP suggests.
- In many sectors (i.e. power generation, financial services, telecommunications, as well as passenger and cargo air transport), the Chilean market is a "testing ground" for regional operations. Projects that succeed in Chile usually do so in the rest of Latin America; projects that do not succeed in Chile have little future in the region.
- Chile is a regional mining and engineering center.
  - Detailed engineering performed by a U.S. firm in Chile influenced equipment acquisition for plants in Colombia (a \$350 million expansion) and Peru (an \$80 million expansion).

**Consumers:**

- Competition resulting from a bilateral trade agreement would force companies to continually improve their products and services in order to maintain market share.
- Consumers reap these benefits through lower prices, products that meet their needs more effectively, and a wider selection.
- Chilean products, which are of high quality and compete favorably in world markets, have already attracted United States consumers.
- American consumers will have increased access to fresh fruit and vegetables which they would not have in the winter season due to Chile's complementary seasonality.

**Jobs:**

- The sales of Chilean fruit and seafood to the United States require the intensive use of American labor in its ports; a bilateral agreement would create more traffic, meaning new jobs.
  - The Port of Wilmington handles more than 14 million boxes of Chilean fruit during the months of December through May representing over 60% of Wilmington's volume in the winter season.
- Chile's growing seasons are the reverse of those in the United States, so Chile's agricultural exports do not compete directly with United States farmers.
- The National Association of Manufacturers estimates that the FTA will provide an additional 12,500 jobs annually.
- Every State in the United States exports to Chile, and over a 6-year period, 14 states increased their exports by more than 100%, producing jobs at home.

**What else does Chile have to offer?**

- Chile has undergone far-reaching economic transformation over the past two decades.
  - Moved from a heavily regulated import-substitution-oriented economy to a development strategy based on the expansion of Chile's markets through exports, private investment incentives, and the balancing of the principal macroeconomic variables.
  - Unilaterally opened up its economy more than any other Latin American country, and it made its commitment to a free markets and free trade long before any other country in Latin America.
- Chile is also the oldest democracy in the region, and its economy is one of the most advanced and stable. It is internationally recognized as the Latin American country with the highest rankings for investment security.
- Chile has institutional stability and a transparent system.

- Although Chile is a small country, the United States exports more to Chile than to Russia, New Zealand, or several European countries including Austria and Norway.
- In 2002, Chile was the 37th most important market for United States exports, and the 36th largest exporting country to the United States.
- Chile will play a very important role in the FTAA negotiations. The approval of the FTA between Chile and the United States will emphasize U.S. commitment to free trade in the region and will serve as an example for other countries to actively pursue FTAA negotiations.

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**AmCham Chile strongly believes that the U.S.-Chile free trade agreement must be approved in order for U.S. businesses, consumers and workers to benefit. Approval is especially urgent as U.S. goods are currently at a 6% disadvantage with over 90% of European goods entering Chile as of February 1, 2003 with no duties. In the absence of price differentials, Chilean companies and consumers prefer U.S. products and services.**

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**Statement of Peter H. Cressy, Distilled Spirits Council of the United States, Inc.**

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council) for inclusion in the printed record of the Subcommittee's hearing on the implementation of U.S. bilateral free trade agreements (FTAs) with Chile and Singapore. The Distilled Spirits Council is a national trade association representing U.S. producers, marketers and exporters of distilled spirits products. Its member companies export spirits products to more than 130 countries worldwide, including to Chile and Singapore.

**I. OVERVIEW**

The Distilled Spirits Council and its member companies enthusiastically support Congressional approval and prompt entry-into-force of the free trade agreements with Chile and Singapore, which will bring about significant and measurable benefits for U.S. spirits exporters. Over the past decade, the export market for U.S. distilled spirits products has become increasingly more important to the U.S. distilled spirits industry. In fact, since 1990, U.S. exports of distilled spirits worldwide have doubled, growing to over \$550 million in 2002. While the Uruguay Round negotiations produced significant benefits for U.S. distilled spirits exporters, including substantial reductions in import tariffs and non-tariff barriers, numerous barriers still remain. The U.S. distilled spirits industry actively supports the U.S. government's efforts to seek the elimination or reduction of these remaining barriers within the context of the ongoing World Trade Organization negotiations, and in other multi-lateral and bilateral negotiations.

The recently-concluded Chile and Singapore agreements eliminate several of the barriers that U.S. spirits exporters currently face in these markets. Prompt Congressional approval and implementation of the FTAs will permit U.S. spirits exporters to benefit from improved market access to Chile and Singapore, thus ensuring the continued growth of the U.S. distilled spirits industry.

**II. BENEFITS OF THE U.S.-CHILE AGREEMENT TO U.S. DISTILLED SPIRITS EXPORTERS**

The U.S.-Chile Free Trade Agreement (FTA) will provide three significant benefits for the U.S. distilled spirits industry. First, the U.S.-Chile FTA will ensure that U.S. spirits entering Chile are accorded the same tariff treatment as Chilean spirits entering the United States. As a result of the "zero-for-zero" initiative, which began in the Uruguay Round, the United States has eliminated almost all tariffs on imported spirits products, including *pisco*, Chile's most important spirits export. In contrast, U.S. spirits currently face a tariff of six percent *ad valorem* in Chile. Under the terms of the U.S.-Chile FTA, Chile will eliminate its tariff on all spirits (with the exception of brandy and gin) imported from the United States two years after entry-into-force of the agreement. The tariff on brandy will be eliminated immediately upon the agreement's entry-into-force, and the tariff on gin will be reduced in twelve equal annual stages until the tariff is zero.

Second, the U.S.-Chile FTA will place U.S. spirits exports on a level playing field with our competitors. Chile currently has free trade agreements with Canada, Mexico and the European Union. In both the Canada-Chile and Mexico-Chile agree-

ments, Chile agreed to eliminate immediately its tariffs on all spirits products, including tequila and Canadian Whisky. In the EU-Chile agreement, Chile agreed to a ten-year phase-out of the tariffs on Cognac, Armagnac, Grappa, and Brandy de Jerez and a five-year phase-out of the tariffs on all other EU-origin spirits. The U.S.-Chile FTA ensures, therefore, that U.S. spirits ultimately will be able to compete on an equal footing with spirits from Mexico, Canada and the European Union.

Finally, the U.S.-Chile FTA provides essential protections for Bourbon and Tennessee Whiskey, two distinctly American spirits. Under the U.S.-Chile FTA, Chile has agreed to provide explicit protection in the Chilean market for Bourbon and Tennessee Whiskey as distinctive products of the United States. Such recognition ensures that only spirits produced in the United States, in accordance with the laws and regulations of the United States, may be marketed in Chile as Bourbon and Tennessee Whiskey.

### **III. BENEFITS OF THE U.S.-SINGAPORE AGREEMENT TO U.S. DISTILLED SPIRITS EXPORTERS**

Similarly, the U.S. spirits industry stands to gain significantly as a result of the U.S.-Singapore FTA. First, Singapore will eliminate its discriminatory excise tax policy on distilled spirits. Currently, Singapore assesses significantly lower excise taxes on domestically-produced spirits (samsoo, arrack and pineapple spirits) than on other types of distilled spirits in violation of the General Agreement on Tariffs and Trade (GATT) 1999 Article III, paragraph 2. This discriminatory excise tax policy has placed U.S. distilled spirits at a competitive disadvantage vis-à-vis domestically-produced spirits. Under the terms of the U.S.-Singapore FTA, Singapore will eliminate this discriminatory practice by harmonizing its excise taxes on imported and domestically-produced distilled spirits.

The U.S.-Singapore FTA also guarantees that Singapore will *not* be able, at a future date, to impose tariffs on distilled spirits imported from the United States. Singapore does not currently assess tariffs on most imported distilled spirits products. However, Singapore's WTO bound tariff rates are high and, consistent with its Uruguay Round commitments, Singapore may impose at any time tariffs ranging from S\$30 per liter to S\$70 per liter of alcohol on most categories of distilled spirits. Under the U.S.-Singapore FTA, Singapore has committed to bind *all* tariffs at zero immediately upon entry-into-force of the agreement, thereby ensuring that U.S. spirits exports will continue to enter the Singapore market duty-free.

Finally, provisions in both the U.S.-Singapore FTA and the U.S.-Chile FTA include commitments that those countries will not adopt or maintain a merchandise processing fee for originating goods. This provision will ensure that U.S. spirits exporters will not be subject to additional administrative costs in Singapore and Chile.

### **IV. CONCLUSION**

In summary, the U.S.-Chile and U.S.-Singapore free trade agreements successfully address the principal trade barriers currently impeding U.S. exports of distilled spirits to Chile and Singapore. The Distilled Spirits Council, therefore, strongly supports these agreements, which, once implemented, will provide considerable benefits to U.S. spirits exporters. We stand ready to work closely with the Congress in seeking the swift approval of these agreements, so that U.S. spirits exporters may begin soon to enjoy improved access to the Chilean and Singapore markets.

Thank you very much for your consideration.

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### **Statement of Electronic Industries Alliance, Arlington, Virginia**

The Electronic Industries Alliance (EIA)—a partnership of electronic and high-tech trade associations representing 2,500 companies and more than 80% of the \$430 billion electronics industry—appreciates this opportunity to present its views to the Trade Subcommittee of the House Committee on Ways and Means on the U.S.-Chile and U.S. Singapore Free Trade Agreements (FTAs).

#### **The Agreements Will Advance the Cause of Free Trade**

In concluding these important trade agreements, Ambassador Zoellick and his skilled team of negotiators have made great progress in implementing the far-sighted strategy that the Congress and the Administration laid out in the Trade Act of 2002.

EIA was a leader in the fight last year to obtain Trade Promotion Authority (TPA)—the centerpiece of the 2002 Trade Act—and we are pleased to see the Administration aggressively using this authority to open markets and eliminate trade



barriers as quickly as possible. We hope that the Chile and Singapore FTAs are only the first of many important market-opening agreements reached using this grant of trade negotiating authority in order to further the cause of free trade, which benefits EIA companies and the U.S. economy.

#### **EIA's Stake in Chile and Singapore**

U.S. high-tech goods and services exported to Chile totaled \$865 million in 2001 but, overall, the U.S. share of Chile's import market declined from 24% in 1997 to 16.6% in 2002. In part, this decline may be the result of Chile having concluded FTAs with other countries—notably, with the European Union (EU) and Canada. Signing the U.S.-Chile FTA will put American manufacturers on a level playing field with those in Europe looking for new markets in Chile and allow us to rebuild and grow our market share in Chile.

EIA's member companies also recognize the tremendous opportunities presented by the U.S.-Singapore FTA. This FTA will be the first the United States has signed with an Asian nation, and it will send a message that the United States will pursue trade opportunities in this important region. More generally, bilateral agreements such as this one will signal our commitment to the region to foster stable economic and political ties. Singapore is an especially good place to start. The Heritage Foundation ranked Singapore second in the world in its rankings on economic freedom, and Singapore has a good track record for pursuing open trade. Its investment laws are generally clear and fair, and there is a strong history of protecting private property rights.

New and expanded trade opportunities are critical to the U.S. electronics industry. According to the U.S. Commerce Department's report, "U.S. Jobs From Exports," more than a third of the jobs in the Computers and Electronic Products Manufacturing Sector are supported by exports—this amounted to 603,000 jobs in 1997. In light of the challenges now faced by the high-tech sector, which have resulted in a significant number of layoffs, securing and enhancing access to foreign markets is a priority for our industry. The U.S.-Chile and U.S.-Singapore FTAs can play an important role in building jobs in the electronics sector.

#### **The Agreements Will Have Positive Effects in the Affected Regions**

Both of these agreements will have benefits beyond the countries involved. It is especially noteworthy the Chile FTA would mark the first time that a major South American country has embraced the duty reduction commitments reflected in the 1996 Information Technology Agreement, although it has not signed the ITA. Broadening the pool of countries that are prepared to eliminate tariffs on IT products should be a major priority for U.S. trade negotiators. Hopefully, the Chile agreement will pave the way for similar commitments by other countries, especially in Latin America.

Similarly, the Singapore FTA hopefully will set the stage for additional U.S. trade agreements involving other Asian countries. Ambassador Frank Lavin pointed out earlier this year in a U.S.-ASEAN Business Council interview that Asia is a vast and largely untapped market for most U.S. companies and Singapore is an important next step toward tapping that market. With the recent opening of the Chinese market through the WTO, large and small enterprises alike are working to enter the Asian market and the Singapore FTA will provide a foot in the region's door for U.S. companies.

#### **Specific Benefits of the Chile and Singapore FTAs**

There are particular aspects of both agreements that provide benefit to the electronics industry that should be brought to the Committee's attention.

***Intellectual Property Protection.*** We appreciate the agreements' strong protection for copyrighted works that would facilitate the growth of digital technologies and products while still protecting the legitimate rights of copyright owners, reflecting the balance struck in the Digital Millennium Copyright Act. Moreover, strong enforcement provisions criminalize end-user piracy and commit Chile and Singapore to seize, forfeit and destroy counterfeit and pirated goods and the equipment used to produce them. These protections will apply to goods-in-transit and mandate both statutory and actual damages under Chilean and Singaporean law for violations of intellectual property rights.

***Telecommunications.*** The Chile and Singapore FTAs provide for open markets and non-discriminatory access to telecommunications networks. We strongly support affirmation of the principle of technology choice by public telecommunications service providers. We are particularly pleased that specific provisions in the Singapore

agreement have been included to ensure national treatment among service providers, protection against anti-competitive behavior and transparency in licensing procedures. These and other provisions will contribute to open and transparent telecommunications markets for both service providers and equipment providers.

**Positive Economic Effects.** When the U.S. enters into these FTAs, it will grant Singaporean and Chilean companies better access to the U.S. market than their neighbors enjoy. Rather than hinder trade, however, we believe that this will lead other countries in both regions to seek similar FTAs with the United States. This will create a competition toward trade liberalization that will help reach our goals of zero tariffs, more secure trade, and increased transparency.

The FTA with Singapore will put U.S. manufacturers back on a competitive playing field in Singapore and erase the disadvantage they currently face because Singapore already has FTAs with New Zealand, Japan, the European Free Trade Association and Australia. Talks aimed at new FTAs are also underway between Singapore and Mexico, Canada, ASEAN countries, China, Korea and India. It is important that the United States secure its place in the Singapore market.

As mentioned earlier, other countries and regions already enjoy the benefits of free trade with Chile, including the EU, Central America, Canada and Mexico. A U.S. FTA will allow manufacturers to compete more effectively in the Chilean market.

**Benefits to the Electronics Industry.** Tariffs are less of an issue for the electronics industry with regard to Singapore than is the case with many other countries, since Singapore does not levy tariffs except in four product areas unrelated to our business. And, Singapore is a signatory to the World Trade Organization Information Technology Agreement. However, for its part, the United States still retains duties on some electronics products. Although generally small, these nuisance tariffs still represent a cost to American electronics companies and consumers. With the FTA, electronics imported from Singapore will no longer be subject to duties, another opportunity for the United States to even up tariff treatment in comparison with countries that already maintain reciprocal duty-free relations with Singapore.

Building upon Singapore's already liberal market, the FTA will raise standards even higher in some areas, such as intellectual property rights, e-commerce liberalization and telecom market access. The agreement contains commitments in the e-commerce area that are more advanced than any negotiated under the World Trade Organization. It provides non-discriminatory treatment to products delivered electronically, which will benefit U.S. firms that sell digital products over the Internet. The United States and Singapore also agreed to permanently prohibit customs duties charged on these electronically delivered products.

Chile has been lowering its tariffs on average by 1 percent a year since 1999 to the current rate of 6 percent, but in the U.S.-Chile FTA, Chile has committed to eliminating tariffs immediately on 85 percent of imports in key sectors including computers and other information technology (IT) equipment. This development will almost certainly expand trade and commercial relations between our countries.

#### **Areas in Need of Improvement**

While EIA strongly supports approval of both these agreements, there are two issues that should be brought to the Committee's attention and that need improvement, if not in these agreements then in future ones.

**Rules of Origin.** As long as tariffs remain a global reality, rules of origin remain a key issue in FTAs. Unfortunately, the language on rules of origin in these agreements is too complex and too similar to that under the North America FTA. There is a general consensus among EIA companies that the NAFTA rules of origin are highly complicated and that rules of origin for future FTAs should be much simpler.

Complex rules of origin impose unnecessary administrative burdens on companies and raise the cost of doing business internationally. Accordingly, we appreciate the efforts reflected in these agreements that outline specific, concrete and transparent ways that customs procedures will be implemented, so that companies entitled to the benefits will not be deterred from capitalizing on them because of prohibitively high administrative costs. This is an important issue for EIA. Restrictive rules of origin could work to counteract the benefits of trade liberalization achieved elsewhere in these two FTAs. With respect to the Singapore FTA, the integrated sourcing initiative for products manufactured in third countries is especially useful for electronics and other high tech products that often are produced in stages in multiple countries.

We would welcome, however, a further simplification effort by moving to a simple tariff shift-only approach and encourage thinking in that direction for future FTAs.

Under a simple tariff shift approach an item is deemed a product eligible for FTA benefits if it is transformed from one tariff category to another by manufacturing or processing in an FTA country. We would note that a straight tariff shift-only approach might include a minimum regional value content (RVC) requirement in some cases to ensure that the benefits of an FTA are not unfairly exploited by what amounts to transshipment. If this issue cannot be addressed in these two FTAs, EIA strongly urges the Administration not to follow this precedent in future FTAs.

**Duty Drawback.** Another concern relates to the treatment of duty drawback by the Chile agreement. The duty drawback program, administered by the U.S. Customs Service, is one of the last remaining export promotion programs to help U.S. companies compete in the global marketplace against trading partners that have significantly lower costs of production. Duty drawback reduces production and operating costs by allowing manufacturers and exporters to recover duties that were paid on imported materials when the same or similar materials are exported as finished goods or as component parts of finished goods.

The singular importance of duty drawback to exporters is reflected in the WTO Agreement on Subsidies and Countervailing Measures, which contains specific provisions allowing WTO members to continue to provide drawback and making clear that drawback does not constitute an impermissible export subsidy.

In the U.S.-Chile FTA, drawback is scheduled to be phased-out over a 12-year period. We believe that by phasing out drawback in each FTA that is negotiated, the elimination of this program is being accelerated before it is clear when and if tariffs will be eliminated on a global basis.

At the very least, the EU-Chile FTA language would be preferable as it has an opt-out provision allowing exporters and importers to choose between drawback and a duty preference. By eliminating drawback in the U.S.-Chile FTA, the U.S. will be placed at a competitive disadvantage against our EU trading partners that have more preferable drawback language in the EU-Chile FTA. U.S. exporters need every means at their disposal to help reduce production costs and allow them to compete against lower-priced goods from China and other countries.

### **Conclusion**

Thank you for the opportunity to provide our views on both the U.S.-Chile and U.S.-Singapore FTAs. We look forward to these important agreements being approved by Congress.

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Below is a summary of the major points presented in the following comments:

***The Agreements Will Advance the Cause of Free Trade:*** EIA was a leader in the fight last year to obtain Trade Promotion Authority (TPA) and supports the Chile and Singapore FTAs. EIA hopes that the Chile and Singapore FTAs are only the first of many important market-opening agreements reached using this grant of trade negotiating authority in order to further the cause of free trade, which benefits EIA companies and the American economy.

***EIA's Stake in Chile and Singapore:*** EIA member companies have particular interest in the U.S.-Chile and U.S.-Singapore FTAs. In light of the challenges now faced by the high-tech sector, which have resulted in a significant number of layoffs, securing and enhancing access to foreign markets is a priority for the electronics industry. More than one-third of the jobs in the high-tech manufacturing sector are supported by exports, and EIA believes the U.S.-Chile and U.S.-Singapore FTAs can play an important role in building jobs in the electronics industry.

***The Agreements Will Have Positive Effects in the Affected Regions:*** Both of these agreements will have benefits beyond the countries involved. It is EIA's hope that the Chile and Singapore agreements will pave the way for similar commitments by other countries, especially in Latin America and Asia.

***Specific Benefits of the Chile and Singapore FTAs:*** EIA appreciates and recognizes the agreements' strong intellectual property rights protection provisions. EIA also supports the provisions in the agreement establishing open markets and non-discriminatory access to telecommunications networks. With the FTA, electronics imported from Singapore will no longer be subject to duties, another opportunity for the United States to even up tariff treatment in comparison with countries that already maintain reciprocal duty-free relations with Singapore. The FTA with Chile will also eliminate tariffs immediately on 85% of exports, including on key items such as computers and other high-tech equipment.

**Areas in Need of Improvement:** While EIA strongly supports approval of these agreements, EIA believes that the rules of origin for both agreements and the duty drawback provisions in the U.S.-Chile FTA are deserving of the Committee's attention and require revision, if not in these agreements then in future ones. There is a general consensus among EIA companies that the rules of origin for future FTAs should be much simpler than those negotiated in NAFTA, on which these are based. With respect to drawback, EIA strongly objects to the current U.S. negotiating objective of restricting or eliminating duty drawback in the Chile FTA and in each new free trade agreement while it is still unknown when and if tariffs will be eliminated on a global basis.

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## Statement of Alexander von Bismarck, Environmental Investigation Agency

### 1. SUMMARY AND RECOMMENDATIONS

Mr. Chairman and Members of the Subcommittee, the Environmental Investigation Agency (EIA) is grateful for this opportunity to present recent findings relating to the U.S.-Singapore Free Trade Agreement. EIA has investigated international trade and its environmental consequences for 19 years, and is globally recognized for its expertise in the problems of illegal logging and trade in illegal timber, wildlife, and ozone depleting substances. EIA has conducted a number of recent investigations that describe Singapore's role in these matters, and has recently published the report "*Singapore's Illegal Timber Trade and The U.S.-Singapore Free Trade Agreement.*"

#### Timber Smuggling

EIA fears that the U.S.-Singapore FTA, as it stands, will trigger a significant increase in Singaporean controlled exports of illegally produced timber products into the U.S. The Office of the U.S. Trade Representative, which led the U.S. negotiations, points out that "international trade can play a role in stimulating, enabling or rewarding illegal activities in a number of Asia-Pacific countries where illegal logging (is) a significant cause of deforestation."<sup>1</sup>

Our information suggests that this concern is currently dramatically underestimated. While a FTA could offer excellent opportunities to cooperate and address problems of illegal trade, particularly amidst current concerns over port security, such opportunities have so far remained unexploited. The FTA will reduce tariffs, which for some wood products are significant, and defines the customs policies that are currently allowing Singaporean companies to export a variety of illegal shipments into the U.S. in a dangerously efficient way.

Undercover investigations by EIA and Telapak, our Indonesian partner organization, in April 2003 confirmed Singapore to be a central hub for laundering illegal shipments of Ramin, a highly valuable and endangered tree species found only in Indonesia and Malaysia. Singaporean companies play the key role in paying bribes and falsifying paperwork to allow illegal shipments of wood to enter the world market, including the U.S. Further analysis of trade data reveals that over US\$ 3 million of Ramin was imported illegally into the U.S.—without the required permits—from or through Singapore between September 2001 and July 2002. Fifty-two percent of all Ramin shipments into the U.S. during these ten months passed through or originated in Singapore.

#### Wildlife, Chemicals and Security Concerns

Singapore has also maintained a well deserved reputation as a major center of illegal international trade in endangered wildlife, including poached elephant ivory, tiger bone, parrots and other species. An EIA report published last year documented the current resurgence in elephant ivory smuggling. In June 2002, a foreign tip-off led to the seizure of six tons of ivory in Singapore—the largest seizure since the international ivory trade ban went into effect in 1989.

Singapore is also central to the regional Asian black market trade in chlorofluorocarbons (CFCs), with much of this material transiting through the city-state. EIA investigations reveal that Singapore shipped large amounts of CFCs to Nepal, itself a staging post for CFC smuggling into India. International trade in CFCs is strictly limited by the Montreal Protocol on Ozone Depleting Substances to which both the U.S. and Singapore are signatories.

A variety of factors make Singapore a haven for smugglers and unscrupulous international trade. First, Singapore's loose and porous customs system offers

<sup>1</sup>Office of the USTR. Draft Environmental Review. (p. 23).

unique opportunities to by-pass inspectors, manipulate cargo and paperwork. Secondly, Singapore systematically withholds trade data to shelter evidence that could quantify the scope of illegal activities occurring in and throughout its territory. Finally, Singapore's commitment to multilateral environmental agreements is superficial and its enforcement passive at best.

### **Remedies**

Singapore has been particularly hostile to recent U.S.-led international efforts to take action against illegal logging. President Bush has recognized the global security threat posed by illegal logging and has committed \$50 million in new funding over the next five years. The State Department has played a key role in launching the most promising international framework to combat illegal logging, the Forest Law Enforcement and Governance initiative (FLEG). In September 2001, ten East Asian nations with the U.S. and the UK issued the Bali Ministerial Declaration, a historic agreement in which producing and consuming nations agreed to take far reaching actions to suppress illegal logging. Singapore has been noticeably absent from all FLEG negotiations.

Concerns over Singapore's trade in illicit goods and the impact of this FTA must be addressed now. The U.S.-S FTA has been heralded as a template for future agreements and thus must benefit from a thorough and sober analysis of its implications. Singapore's role as a hub for Asian trade is set to expand as free trade agreements between Singapore and other Asian nations, including China and Japan, are under negotiation. Japan and China are the second and third largest timber importers respectively.

The U.S.-Singapore FTA offers an opportunity to enter into serious bilateral discussions with Singapore to tackle the problem of illegal trade of timber, wildlife, and dangerous chemicals. Implementing legislation should be considered as a means to support regional, bilateral and domestic enforcement initiatives.

Singapore's example as a gateway of illegal timber into the U.S. must also focus our attention on desperately needed legislation to stop the import of illegally sourced timber. In April the 'Clean Diamond Trade Act' was passed to stop the conflict diamond trade. The trade in illegal and conflict timber is equally destructive to the global security and the environment and must be tackled next.

### **RECOMMENDATIONS**

1. **The U.S. should enter into a bilateral agreement with Singapore as an annex to the Free Trade Agreement to establish a licensing system for legally produced timber and to eliminate trade in illegally produced timber and timber products.**
2. **The U.S. should establish an enforcement task force to work in close cooperation with a new parallel Singapore government enforcement body to share information, promote coordination and proactively target environmental crimes involving trade in illegal timber, wildlife products and ozone depleting chemicals linked with import, export and transshipment through Singaporean territory.**
3. **The U.S. should facilitate the establishment of a regional enforcement body with Singapore and other important timber producing, consuming and processing countries in the Asia Pacific region to target trade in illegally produced timber and offer to provide technical and training assistance to the member states of the new body.**
4. **The U.S. should use the provisions of the U.S.-Singapore Free Trade Agreement to ensure that Singapore upgrades its Customs laws and regulations to close loopholes that allow easy movement of goods into Customs ports, warehouses and airports without proper scrutiny and to prohibit the repackaging and processing of goods in transshipment or under Customs control in Singapore. The U.S. should ensure that citizens also have the ability to bring complaints to the dispute resolution mechanism.**
5. **The U.S. should encourage Singapore to:**
  - **formally endorse the Bali Ministerial Declaration of the Forest Law Enforcement and Governance (FLEG) and an action plan to adhere to FLEG commitments.**
  - **adopt a policy of transparency concerning its trade in environmentally sensitive goods and ensure transparent access to key data concerning trade with Indonesia, timber trade, wildlife products and data concerning companies authorized to trade in ozone depleting chemicals.**

6. **The U.S. should ban all trade in Ramin and encourage all other consuming countries to suspend trade in Ramin indefinitely. The U.S. should actively prosecute the companies, especially the repeat offenders, that have been documented to be importing Ramin into the U.S. without proper permits.**
7. **Finally, the United States must develop new legislation to stop the import, export, trans-shipment, purchase, or sale of illegally produced timber. Ongoing initiatives, such as those in the EU, offer templates. The U.S. should commission a study on the implementation of such legislation in the U.S.**

## 2. BACKGROUND AND EVIDENCE

### The U.S. and the Global Illegal Logging Problem

Illegal logging takes place when timber is harvested, transported, bought or sold in violation of national laws and is widespread in most of the major timber producing and exporting countries of the world. In some cases illegal logging represents more than half of production, and large quantities of illegally sourced wood find their way to the major markets of the U.S., Europe, Japan and China in the form of timber, furniture or other products.

Illegal logging has major economic implications. It is estimated that illegal logging on public lands worldwide causes annual losses in revenues and assets in excess of \$10 billion.<sup>2</sup> All too often money which should be going to fund schools, hospitals and clean drinking water in developing countries is instead finding its way into the pockets of illegal timber barons, corrupt enforcement personnel and politicians. The wood furniture, blinds, or flooring made from illegal tropical logs can then be sold in the U.S. at a discount price, undercutting the U.S. timber industry.

Overall, the U.S. has demonstrated a major commitment to promoting international measures to counter illegal logging. Despite the variety of positive initiatives by the U.S. Administration to address illegal logging, no policies or programs have emerged that will close or even restrict its massive domestic market to imports of illegally produced timber.

The U.S. has not concluded any bilateral or multiparty agreements with any of the major timber producers in Asia, while the UK and China have reached separate bilateral agreements with Indonesia to facilitate action programs against illegal logging and trade in illegally cut timber. Japan is also currently negotiating a similar agreement with Indonesia.

The U.S. is the world's largest importer and consumer of timber and wood products.<sup>3</sup> In 2001, the U.S. imported wood and wood products valued at around \$25 billion a year.

### Case Study: Ramin

Many tropical forests in East Asia are under threat from human induced causes, but certain high value species are specifically targeted for the international timber trade. One such species is Ramin (*Gonystylus spp.*), imported to the U.S. for picture and futon frames, moldings, pool cues and other products.

In 2001, the Indonesian government identified Ramin as being so threatened by the illegal practices of powerful timber barons that it turned to the international community for help and banned all export of the species through the Convention on International Trade in Endangered Species (CITES) effective on August 6th, 2001. Selective illegal logging of high value export species like Ramin is often the first step leading to forest clearance, as the tracks and roads built to access and remove the timber become entryways for further illegal cutting, hunting and burning.

Other than for a small amount of wood originating with a company in Sumatra which has been certified as sustainable, no Ramin has been granted an export permit by the Indonesian government since December 31, 2001. Ramin is also found in lesser amounts in Malaysia, but all shipments of Ramin entering the U.S. now require CITES permits and Certificates of Origin.

In January 2002, more than five months after Indonesia banned the export of Ramin, Singapore added Ramin to Schedule II of its Endangered Species (Import and Export) Act, which implements CITES commitments in Singapore. The extent of continued smuggling in the species shows that Singapore has failed to enforce its own environmental legislation, as required by the U.S.-Singapore Free Trade Agreement, allowing Singaporean companies to reap significant profits in the process.

<sup>2</sup> Ibid.

<sup>3</sup> FAO, State of the World's Forests, 2001.

### **Singapore's \$3 Million of Illegal Ramin Exports to the U.S.**

EIA compared data on U.S. Ramin imports obtained from the U.S. Department of Commerce commercial "Port Import Export Reporting Service" (PIERS) and CITES permits for Ramin obtained under the U.S. Freedom of Information Act on U.S. for a ten month period between September 2001 and July 2002.<sup>4</sup>

The data revealed that the U.S. imported at least 324 shipments containing products made of Ramin between September 2001–July 2002 with a total declared value of approximately \$11,388,746.<sup>5</sup> This can be expected to be a fraction of total Ramin imports to the U.S. since it only includes shipments labeled as 'Ramin,' while many are labeled only by their product name.

167 of these 324 shipments (51.5 percent of the total), either originated in Singapore, or used Singapore as a trans-shipment point. Of the 167 Singaporean shipments, 80 percent (or 134 shipments) valued at just over \$3 million did not have any CITES permits or documentation.

PIERS data records over 600 cubic meters of Ramin products arriving in U.S. ports that originated in Singapore between August 2001 to June 2002.<sup>6</sup> U.S. Customs, however, did not have a single Singaporean CITES permit on file for Ramin imports occurring between September 2001 and July 2002.<sup>7</sup> PIERS data further recorded 30 Ramin shipments from Indonesia worth US\$ 700,000, that entered the U.S. after passing through Singapore—all without CITES permits.

### **The Role of Singaporean Timber Companies in Illegal Trade**

EIA and Telapak have undertaken numerous investigations in Singapore, Malaysia and Indonesia over the past five years and have gathered extensive information which demonstrates the central role Singapore plays in the illegal timber trade throughout Southeast Asia and globally. The most recent investigation in April 2003 detailed some of the particular smuggling mechanisms.

Timber processors, traders and agents located in Singapore act as the key enablers of the region's illegal timber trade. More than 150 companies are registered on the Singapore Yellow pages as timber importers and/or exporters. The majority are based in Kranji and the industrial estate of Sungei Kadut in the north of the island.

In April 2003, EIA undercover investigators conducted telephone surveys and visited import/export companies in the Sungei Kadut area. During a visit to one such company, two managers explained their smuggling methods on hidden camera. They called themselves 'mafia' and 'smugglers' and one proclaimed that 'drug smuggling (is) no good, but timber (is) okay.' He was counting upwards of US\$ 10,000 in cash at the time. They explained the following smuggling strategies:

- 'Illegal payments' (in their words) are made to obtain permits that are accepted by Singaporean Customs.
- Permits for 100 tons are used to smuggle in up to 500 tons of Ramin per shipment into Singapore.
- The Ramin is moved out of Free Trade Zones and kept in storage in containers.
- He exports three to five containers per month to China under a false species name, where it is processed and about one-third shipped to the United States.

### **Singapore's Porous Free Trade Zones**

EIA and Telapak have identified the most common entry points of smuggled Ramin to be small landing sites within Singapore's Free Trade Zones (FTZs). Traditional vessels, mostly from Indonesia, dock at certain locations amidst supertankers and industrial cargo ships, and unload their cargo onto trucks using mobile cranes. It is then driven out of the Free Trade Zone to mills or agents who then arrange to ship it to the world market.<sup>8</sup>

The intent of the five FTZs in Singapore is to allow for trade with a minimum of regulation. The rationale is that they are secure and distinct from Singapore proper and therefore can be excused from national regulations without negative consequences. Evidence, however, suggests otherwise.

In October 2002, a tip-off alerted Singaporean CITES Management Authority that a large shipment of Ramin had been collected in a warehouse on the same street as the company described above. Authorities found 120 tons of Ramin without CITES permits, the result of six separate shipments, each having avoided Customs on different occasions. The known entry point of these shipments is in Jurong Port,

<sup>4</sup>PIERS imports data and FOIAed CITES permits from USMA.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>EIA and Telapak Internal Reports. 2002, 2003.

one of Singapore's 5 Free Trade Zones. Somehow the six illegal shipments, each of approximately 20 tons, avoided Customs in this area and reached the heart of the sawmill district in the North of the Island. This seizure is the only Ramin seizure made to date by Singaporean authorities.

EIA and Telapak visited this site in April 2003 and immediately encountered a shipment of approximately 20 tons of sawn Ramin timber being unloaded from a wooden ship flying an Indonesian flag and manned by Indonesian sailors. When Singaporean CITES officials present asked for a permit, the captain produced a document that purported to show the timber was from Malaysia, and the shipment was allowed to continue. The Indonesian flag and crew and the low quality of wood, however, are strong indicators that this was also an illegal shipment from Indonesia.

The U.S. requires CITES listed species or products in transshipment to be accompanied by CITES permits. In contrast, Singapore Customs policy does not require any Customs permit for goods which are "discharged along wharves directly into a Free Trade Zones (sic)."<sup>9</sup> Recent EIA investigations have shown such FTZs to be porous at best. Lax transshipment regulations and insecure FTZs allow protected species like Ramin, African elephant ivory, tiger bone, and endangered parrots to be shipped through Singapore without regulation, control or enforcement by the Singaporean authorities and questions

### **Batam and Bintan**

The Integrated Sourcing Initiative (ISI) of the U.S.-Singapore Free Trade Agreement allows another country to benefit from what should be a bilateral agreement. In the case of the U.S.-S FTA, some 100 items of information technology products produced on the Indonesian islands of Batam and Bintan will be allowed to benefit from the provisions of the FTA. Products produced on these Indonesian islands will be considered as originating in Singapore.

Other countries have already seen the potential advantages that the FTA confers upon products produced on Bintan and Batam. Chairman of the Batam Industrial Development Authority (BIDA), Ismeth Abdullah, has stated that following the U.S.-S FTA signing on May 6th, companies from other countries like South Korea, Japan, and Taiwan had also expressed interest in investing in Batam and Bintan.<sup>10</sup>

Currently the FTA leaves open the possibility of other products and countries being included under ISI provisions. This comes at a time when customs enforcement capacity is overwhelmed by smugglers obfuscating the origin of their products, and ships have been seized leaving Batam with large shipments of illegal wood (see timeline below).

### **Transparency**

Singapore distinguishes itself regionally by refusing to release data that may point to the questionable trading practices of Singaporean companies. Singapore recently drew the ire of Indonesia when it refused to fully release trade statistics between the two nations. Although Indonesia is estimated to be the sixth largest trading partner with Singapore, it is omitted from the list of 149 trade partners in the Singapore Trade Statistics. The trade data that had previously been released point to a great discrepancy between Indonesian and Singaporean records. Singaporean statistics estimated non-oil imports from Indonesia to be \$7.41 billion, while Indonesian numbers put the value at \$4.6 billion.<sup>11</sup>

Analysts in the Indonesian press have said that the Singaporean government is purposely keeping the real trade data a secret to protect "certain vested interest groups" that have continued contraband trade with the country, including Indonesian military figures.<sup>12</sup>

### **"Conflict Timber"**

The province of Aceh, Indonesia has been beset by violent and bloody conflict for the last twenty some years. An Aceh independence/separatist movement led by the Free Aceh Movement (GAM) has tangled with the Indonesian military (TNI) in increasingly bloody battles, the most recent during the military state imposed by President Megawati a little over a month ago. Both GAM and TNI have, in the past,

<sup>9</sup> Customs PM 001.74.08. Circular No. 4/98. Issued February 28, 1998. Available online at: [www.gov.sg/customs](http://www.gov.sg/customs). (See also: "Singapore Customs Policy Overview" available online at: [www.gov.sg/customs](http://www.gov.sg/customs).)

<sup>10</sup> "U.S.-Singapore Trade Pact Good News for Indonesia." The Jakarta Post, May 12, 2003.

<sup>11</sup> "Discrepancies in RI-Singapore Trade Figures Seen as a Result of Smuggling." The Jakarta Post, June 12, 2003.

<sup>12</sup> Ibid.



funded their efforts against each other through illegal logging, drug running and prostitution.<sup>13</sup>

Past EIA investigations have documented the damage caused by illegal logging in the Leuser ecosystem and National Park, in Aceh and parts of Northern Sumatra. Indications are that trade of illegal timber may be continuing despite the current battles raging in Aceh, as the Jakarta Post reported that ships going to and from Singapore and Malaysia (just over the Straits) are allowed to continue their lucrative trade with Aceh.<sup>14</sup> Ships carrying illegal logs from the Leuser ecosystem have already been intercepted several times after leaving Acehnese ports (see timeline below).

Currently, Singapore offers excellent conditions for ‘cleansing’ such timber of its origins and shipping it to the U.S. A free trade agreement without provisions to address illegal and conflict timber will make these conditions even more enticing.

### Recent Examples of Singaporean Involvement in Illegal Timber Trade

The following are some recent examples of Singapore’s role in the international smuggling of illegally cut timber. This is only a partial list of available information in the public domain from a vast array of published sources.

- **April 2003:** Singaporean company offers EIA and Telapak undercover investigators smuggled Ramin from Indonesia and explains how illegally obtained permits for small amounts of the wood are used as cover to smuggle in as much as five times the amount. The wood is then shipped to China under false names, where it is processed and a portion is shipped to the U.S.<sup>15</sup>
- **February 2003:** Singapore flagged and owned vessel Qing Ann was detained off Aceh carrying 4,500m<sup>3</sup> of illegal logs.<sup>16</sup>
- **Early 2003:** Singapore flagged and owned vessel, Asean Premier, detained near Sorong, West Papua, with illegal merbau logs. Still under detention.<sup>17</sup>
- **December 2002:** Indonesian navy seizes 44 containers of illegal wood from a barge in the waters off Belakang Padang in Batam island, Riau province—twenty kilometers across the water from Singapore.<sup>18</sup>
- **December 2002:** Indonesian armed forces seize three ships in waters off Karimun island in Riau carrying 225 tons of illegal processed wood including Kempas. The ships, the KM Sinar Belaras, KM Fendi Indah, and KM Kayu Lestari II, had come from the Sumatran mainland and were carrying the wood to Singapore. A fourth ship evaded capture and escaped to Singapore.<sup>19</sup>
- **October 2002:** Indonesian Navy seizes tugboats carrying 85 containers of illegal processed bengkirai timber in Riau. The wood was estimated to be worth more than U.S. \$9 million. The ships were on their way to Singapore.<sup>20</sup>
- **October 2002:** Singaporean authorities seize 120 tons of Ramin from a Singaporean timber importer which had been imported without CITES permits.<sup>21</sup>
- **October 2002:** Two Singaporean timber companies openly admit to smuggling Ramin from Indonesia to Singapore and re-exporting it to the U.S. and Europe without CITES permits.<sup>22</sup>
- **June 2002:** Customs agents in Batam, an Indonesian island to be included in the FTA under the ISI, seize two more ships carrying illegal sawn Ramin and destined for Singapore. The two ships were carrying a total of 105m<sup>3</sup> of sawn Ramin.<sup>23</sup>
- **June 2002:** 75 tons of Ramin and 130 tons of other wood is seized by the Indonesian navy from three ships in waters off Batam island, near Singapore.<sup>24</sup>
- **January 2002:** The Singapore owned vessel Ever Wise escaped detention off Sorong, Indonesia and was subsequently arrested in China. Fake documents were found for illegal shipment of Ramin.<sup>25</sup>

<sup>13</sup>“Black Economy Threatens Aceh Peace.” The Jakarta Post. March 25, 2003.

<sup>14</sup>“Sea Traffic Unaffected by Closure of Aceh Waters.” The Jakarta Post. June 5, 2003.

<sup>15</sup>EIA and Telapak Internal Reports. 2002, 2003.

<sup>16</sup>Ministry of Forestry official, pers.comm., 2003.

<sup>17</sup>Ministry of Forestry, 2003.

<sup>18</sup>Antara, 14th Dec 2002.

<sup>19</sup>Riau Post, 31st Dec 2002.

<sup>20</sup>Jakarta Post, October 2002.

<sup>21</sup>Pers.Comm.—AVA CITES Management Authority, Singapore, April, 2003.

<sup>22</sup>EIA internal investigation.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

<sup>25</sup>Indonesian Ministry of Forestry, 2002.

- **January 2002:** The Singapore owned vessel Sukaria was detained off Sorong carrying a shipment of merbau. It was subsequently released without explanation.<sup>26</sup>
- **December 2001:** A Kompas news article quotes Djoko (Chairman of East Kalimantan MPI—a timber industry association) saying that “the wood industry in Jakarta is importing Ramin from Singapore which has no Ramin forest.” He states illegal Indonesian Ramin is being smuggled to Singapore, legalized and shipped back to wood product factories in Indonesia.<sup>27</sup>
- **November 2001:** Singapore flagged and owned vessel Mandarin Sea was detained off Central Kalimantan, carrying 12,000m<sup>3</sup> of illegal logs. Linked to Tanja Lingga, implicated in illegal logging in Tanjung Puting National Park.<sup>28</sup>
- **March 2001:** 100 tons of processed illegal Ramin intended for Singapore was seized by Riau police aboard two boats. Two boat captains were arrested. One of the captains states 45 boats go back and forth to Singapore each day carrying processed timber, which would suggest traffic of 100,000 cubic meters a month.<sup>29</sup>
- **August 2000:** A cargo ship was stopped by Indonesian authorities off the coast of Riau province in Indonesia, on its way to Singapore, with illegally sourced Meranti.<sup>30</sup>
- **August 2000:** An NGO investigation discovered barges being loaded with illegal Ramin in Kuala Gaung in Riau province, where there were no legal concessions. The barges bear the logo of a Singaporean company.<sup>31</sup>
- **May 2000:** Indonesian port officials forced by local activists to order a cargo ship bound for Singapore back to Pontianak, Indonesia. Only seven out of the 42 containers of timber onboard had proper documentation.<sup>32</sup>

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### Statement of Dan Stein, Federation for American Immigration Reform

#### Summary

The Singapore and Chile Free Trade Agreements (FTAs), if they enter into force, contain provisions that will preclude the adoption of needed legislative changes in the operation of intra-company transfers (L-1 visas) program. The issue at stake is the FTA's restrictions on correcting abuses in the L-1 visa program. At present, this visa category is being used to sacrifice U.S. jobs to foreign workers. The abuse has been growing, and it has contributed to a record level of unemployment for U.S. high-tech workers. FAIR considers that this provision of the FTAs is so harmful that Congress should reject the Singapore and any other FTA with similar provisions and require the Administration to renegotiate them to retain flexibility for Congress to amend the law to protect U.S. jobs from this abuse.

#### Background on the L-1 Visa Program

The intra-company transfer provision of the immigration law is a longstanding visa category designed to allow transnational firms, whether U.S. or foreign, with operations both in the United States and abroad to exchange personnel on a temporary basis. The primary impetus for the program was to allow for the mobility of management personnel, but the program also provides for personnel with “specialized knowledge” of the company's operations. Visas issued under this category are valid for seven years for management and supervisory personnel and for five years for technical staff.

The number of these L-1 visas issued has been steeply rising in recent years. During the late 1980s and early 1990s, the number of visas was between 60–70,000 per year. Then during the 1990s, the number of visas began to surge: 1992—75,315; 1994—98,189; 1996—140,457; 1998—203,255; 2000—294,658. In 2001, the last year for which the INS (now DHS) has released statistics, the number of L-1 visas issued was 328,480. This meteoric rise in L-1 visa issuance highlights the fact that **at present there is no limit on the number of these visas that can be issued in a given year.**

Increasingly, according to news accounts, (see “Special Visa's Use for Tech Workers is Challenged,” *New York Times*, May 29, 2003) the intra-company transfer L-

<sup>26</sup> Indonesian Ministry of Forestry, 2002.

<sup>27</sup> Kompas, December 2001.

<sup>28</sup> “Above the Law.” EIA Report 2002.

<sup>29</sup> Gamma, May 1, 2002; Riau Pos 31st Dec 2002.

<sup>30</sup> Jakarta Post, August 19, 2000.

<sup>31</sup> Pers. comm. Hakiki, February 2001; KEA website.

<sup>32</sup> Jakarta Post, May 23, 2000.

1 visa is being used to bring high-tech workers to do U.S. jobs similar to the temporary worker H-1B visa program that currently is capped at 195,000 visas per year. However, unlike the H-1B visa, **the L-1 visa does not require that the employer pay the worker in the U.S. the prevailing wage for the type of work being performed.** That means that a subsidiary of a company headquartered in India, for example, can transfer its employees who are computer programmers to a subsidiary incorporated in the United States and continue to pay the workers Indian wage rates while they may be doing subcontract work for a U.S. company, such as Intel. Thus the Indian subcontractor can underbid a competitor paying prevailing wages, and Intel can lay off higher paid U.S. computer programmers.

Another difference between the H-1B visa program and the L-1 visa program is that reforms adopted in 2000 provided that companies that are "H-1B dependent," i.e., that have a significant share of their total workforce composed of these foreign temporary workers, must make attestations that they have attempted to hire U.S. workers and that they had not and would not lay off any American workers in the near term to replace them with foreign workers. This provision was estimated to apply to only about 50 employers in the country. **Even this minimal protection for U.S. workers is absent from the L-1 visa program.**

Because of the growing size of the L-1 visa program and the growing use of it to take the jobs of U.S. workers, who often have been required by their employers to train their foreign replacements, and because of the fraud in the program noted by the General Accounting Office three years ago, Rep. John Mica has introduced legislation (H.R. 2154) to reform the L-1 visa program. Other Members, such as Rep. Peter DeFazio, have also publicly expressed their concern with regard to the operation of the visa program.

#### **Effect of the Singapore and Chile Free Trade Agreements**

On May 6, 2003, President Bush signed the Singapore FTA as an Executive Agreement. As it is not a treaty, it does not require Senate ratification and will go into effect unless Congress initiates action disapproving the agreement.

The Singapore FTA currently before this body for its consideration contains provisions that relate to both the H-1B temporary worker visa program and the L-1 intra-company transfer visa program. We have been told that the Chile FTA which has been negotiated and is due to be signed this month, includes similar provisions. Annex 11A, Section III (2) of the Singapore FTA (dealing with Intra-Company Transferees) states as follows:

*A Party shall not:*

- a. *as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or*
- b. *impose or maintain any numerical restriction relating to temporary entry under paragraph 1.*

This section has the effect of diminishing the ability of Congress to abolish or significantly restrict the program, if it should decide to do so because the L-1 visa program creates unfair competition for U.S. workers. Specifically, the agreement language precludes the adoption of a labor market test as to whether U.S. workers with similar qualifications are available to fill the job, and it bans the adoption of any numerical limit on the program, such as the one for the H-1B visa program. A provision similar to the restriction on amending the L-1 program is contained in Annex 1603 of the NAFTA agreement. It seems clear that unless Congress acts to oppose this restriction on its ability to amend these programs to protect U.S. jobs, U.S. trade negotiators will agree to an unending stream of similar restrictions on Congressional legislative action.

Although the FTA applies only to operations between Singapore and the United States, the existence of this permanent freezing of the current harmful provisions of the L-1 visa represents a major obstacle to efforts to reform the visa program. Foreign companies could easily establish a subsidiary in Singapore—or in Chile, or in Central America, where current negotiations may result in similar agreements—to make use of the provision even if Congress were to decide to change the visa program by, for example, establishing a numerical limit, or including a labor certification test to assure that the program not be used to replace U.S. workers.

In contrast to the effect of the FTA in locking into place the current no-holds-barred provisions for the L-1 visa program, the Administration carefully provided for the ability of Congress to tighten protections for U.S. workers from the operation of the H-1B visa program. By an exchange of letters dated May 6, 2003, the U.S. notified Singapore that, "The United States intends to require all business persons seeking entry as professionals to the United States under the terms of the Agree-

ment to present an attestation of compliance with certain labor and immigration laws from an employer in the United States.”

#### **FAIR's Position**

FAIR strongly believes that the L-1 visa program needs to be significantly amended along lines that are specifically proscribed by the Singapore FTA—and the Chile FTA, as we understand it. It, therefore, would constitute a hindrance to that reform effort for the Congress to accede to the Singapore FTA as it is currently written. Accordingly, FAIR requests that this Committee act to deny accession to the Singapore FTA and to instruct the Administration to renegotiate the portion of the agreement concerning intra-company transfers or simply to delete that section.

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#### **Statement of High-Tech Trade Coalition**

As one of the leading contributors to the U.S. balance of trade, U.S. information technology (IT) and software makers have contributed a trade surplus of \$24.3 billion in 2002. As a leading engine of global economic growth, the industry contributed more than a trillion dollars to the global economy in 2002, according to a recent study conducted by IDC for the BSA. In fact, in the U.S. alone, the IT industry contributed 2.6 million jobs and more than \$400 billion to the U.S. economy, generating \$342 billion in tax revenues in 2002.

Over 50 percent of revenues for most of the leading U.S. high technology companies are generated outside the U.S. If we are to continue the positive contributions of this industry to the U.S. economy, it is critical that free trade agreements (FTAs) establish the highest standards of intellectual property protection. It is also critical that FTAs provide an open trading environment that promotes tariff-free high-tech products, facilitates barrier-free e-commerce and growth of the information technology services sector.

The Singapore and Chile FTAs significantly advance the establishment of strong intellectual property protection, tariff-free and barrier-free e-commerce in Singapore and Chile, and we commend the Administration and Congress for these achievements. Without the leadership provided by Ambassador Zoellick and his team and Congress's thoughtful guidance, these achievements would not have been possible.

The importance to the American high-tech industry of Congressional approval of the Trade Promotion Authority (TPA) cannot be overestimated. The TPA legislation set the standard of strong IP protection and trade liberalization among our trading partners in all trade contexts including FTAs, FTAA and the World Trade Organization (WTO).

With the successful conclusion of these FTAs, and continued progress within the WTO Doha Round of negotiations, including important talks on e-commerce and trade in services, we feel confident that the U.S. will achieve its objectives in promoting barrier-free e-commerce and trade liberalization among our trading partners.

#### Intellectual Property (IP) Provisions in Singapore and Chile FTA:

For the high-tech industry, strong intellectual property protection is essential to foster continued innovation and investment. This is particularly important as copyright infringements and software piracy cost the industry \$13 billion in lost revenues in 2002.

In Singapore and Chile, the IT industry has contributed significantly to their economic growth—\$1.2 billion in Singapore and \$340 million in Chile in 2002. However, both countries continue to have high piracy rates—48 percent in Singapore and 51 percent in Chile, costing the industry \$32 million in Singapore and \$45 million in Chile in lost revenues in 2002.

To promote strong IP protection in a digital world, it is essential that our trading partners establish the level of copyright protection that complies with WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT). It is also essential that our trading partners fully comply with and enforce these obligations.

The mutual obligations under the U.S.–Singapore and Chile FTAs generally set out among the highest standards of protection and enforcement for copyrights and other intellectual property yet achieved in a bilateral or multilateral agreement, treaty or convention.

Both agreements recognize the importance of strong intellectual property rights protections in a digital trade environment by building on the obligations in the TRIPS Agreement, and ensuring that works made available in digital form receive

commensurate protection by incorporating the obligations set out in the WIPO Copyright Treaty.

Some of the highlights in both agreements include:

- Provisions to promote strong intellectual property rights protection and foster electronic commerce by maintaining the balance reflected in the U.S. Digital Millennium Copyright Act. Copyright law is clarified to permit the exploitation of works and effective enforcement of rights in the online environment, while remedies against Internet service providers are limited for infringements they do not control, initiate or direct.
- Requirements to establish prohibitions against the circumvention of effective technological protection measures employed by copyright owners to protect their works against unauthorized access or use, coupled with the ability to fashion appropriate limitations on such prohibitions, again consistent with those set out in the Digital Millennium Copyright Act.
- The application of the reproduction right of a copyright owner to permanent as well as temporary copies.
- Recognition that robust substantive standards for the protection of intellectual property, to be meaningful, must be coupled with obligations providing for the effective enforcement of rights, in both civil and criminal contexts. In this regard, key provisions of the agreements provide for the establishment of statutory damages at levels appropriate to deter further infringement, civil ex-parte measures to preserve evidence of infringement, strong criminal penalties against the most pervasive form of software piracy—corporate and enterprise end user piracy; and strong border measures to combat cross-border trade in infringing goods.
- Obliging governments to lead by example by using only legitimate and licensed software.

As the landscape of international copyright policy continues to evolve, a relatively new issue has emerged on the international scene that could have an impact on American high-tech exports. A number of countries, especially in Europe, are imposing levies (or surcharges) on hardware and software products, which by some industry estimates could cost up to one billion dollars per year, hurting both exports and the profitability of the American technology industry. We hope that the use of levies will not be encouraged through future trade agreements.

#### Trade in Information Technology (IT) Services

During the past decade, a vast array of new e-commerce and information technology services have been developed including data storage and management, web hosting, and software implementation services. Given the increasing trend for technology users to purchase information technology solutions as a combination of goods and services, full liberalization in this area is more important than ever.

It is critical that our trading partners provide full market access and national treatment in information technology services including those that are delivered electronically. It is also important that no barriers are created for evolving information technology services.

In both the Singapore and Chile agreements, parties agreed to provide full market access and national treatment on services. Both agreements adopted a negative list approach, which means that new services will be covered under the agreement unless specific reservations were made in the agreement.

We commend this approach and the achievement in both agreements where liberalization of information technology services was achieved without any commercially significant reservations, leading to the promotion of barrier free trade in services with our trading partners.

#### E-Commerce in Singapore and Chile FTA

With over 500 million people using the Internet worldwide, the promotion of barrier free cross-border e-commerce is critical in encouraging continued e-commerce growth and development. In fact, the trade treatment of software delivered electronically is one of the most important issues facing the software industry and it is essential that software delivered electronically receive the same treatment under the trade laws as software traded on a physical medium.

We are quickly moving to a world where online distribution is the predominant way software is acquired and used. According to a BSA CEO study, by 2005, 66 percent of all software is expected to be distributed online. This will create enormous efficiencies as the newest, most up-to-date software is delivered across borders at

a lower cost and more quickly than when delivered in a physical form, to the benefit of both customers and software developers.

The E-commerce chapters in both the Singapore and Chile FTAs recognize, for the first time, the concept of “digital products” in terms of trade. The chapters also establish requirements that further promote barrier-free e-commerce, essential in promoting growth and development of the IT industry.

- In both agreements, the trading partners agreed not to impose customs duties on digital products. This provision is consistent with the WTO Moratorium on Customs Duties on Electronic Transmissions. The inclusion of this provision is critical in further promoting the growth of cross border e-commerce.
- Both agreements also introduce the concept of “digital products” as the means to ensure broad national treatment and MFN nondiscriminatory treatment for products acquired on-line. This is critical as it recognizes, for the first time, the evolution and development of digital products during the last twenty years and addresses the need for predictability in how digital products are treated by trade law.
- With respect to the physical delivery of digital products, in both agreements, the parties agreed to apply customs duties on the basis of the value of the carrier medium. This provision is essential as valuation on content results in highly subjective assessments of projected revenues.
- The parties also agreed to cooperate in numerous policy areas related to e-commerce, further advancing the work on e-commerce with our trading partners.

#### Information Technology: Tariff Measures

The Uruguay Round agreements on tariff reduction, and the subsequent Information Technology Agreement (ITA) within the WTO, has made significant contributions by addressing the issue of barriers to trade created by high tariffs. Tariffs on information technology products are still very high in some countries, creating a substantial impediment to trade.

In order to foster a barrier free trade environment, it is critical that our trading partners sign and implement the ITA or its equivalent. It is essential that our trading partners eliminate or phase out existing tariffs applied to information technology products since tariffs act as a counterproductive burden that raises the cost of the very technology needed to be competitive in the digital economy.

In both FTAs, Singapore and Chile have agreed to liberalize tariff barriers. Singapore is already a signatory to the ITA. Chile, which is not a signatory to the ITA, has agreed to eliminate tariffs on most high-technology products within the next 4 years. The tariff reduction measure in the Chile agreement also sets an important precedent for the Free Trade Area of the Americas (FTAA), which would significantly increase the high-tech industry’s ability to export its products to Brazil, one of the largest markets for technology products in Latin America.

Finally, both agreements have made important commitments in the areas of customs administration, technical barriers to trade and transparency as well as in the area of telecommunication services. All of these provisions will help facilitate the cross-border flow of high-tech products and services, making our companies more competitive.

In conclusion, the U.S. free trade agreements with Singapore and Chile set new benchmarks in progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services and barrier free e-commerce as well as tariff elimination among our trading partners. In these agreements, new baselines have been set that should lead to significant market opportunities for the U.S. high-tech industries in the years ahead. We commend the achievements made in both agreements and we strongly support their passage in Congress.

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#### **Statement of National Association of Manufacturers**

The National Association of Manufacturers (NAM) strongly supports rapid approval by the House and Senate of the recently signed free trade agreements (FTAs) with Chile and Singapore. Both agreements provide concrete market-opening benefits for U.S. manufacturers, establish world-class precedents for promoting U.S. investment, intellectual property rights and other key disciplines, and boost momentum for further progress in other bilateral, regional and multilateral trade negotiations.

The NAM represents 14,000 U.S.-based manufacturing companies, including 10,000 small and medium enterprises. The NAM views the pursuit of trade-liberalizing agreements under Trade Promotion Authority to be in the national interest of the United States and in the economic interest of its members. Given the general openness of the U.S. market, trade negotiations should be pursued aggressively to level the playing field by knocking down tariffs and other non-tariff barriers that help keep U.S. manufactured exports out of foreign markets.

#### **The U.S.-Singapore FTA**

Singapore's applied tariffs on the vast majority of industrial goods are already at zero. However, Singapore's legally bound WTO tariff rates for some sectors are greater than zero. The FTA binds Singapore's bound rates at zero, a measure that the NAM views as highly desirable because it ensures that Singapore's tariffs on U.S. exports cannot be raised in the future.

Most U.S.-Singapore trade is in high technology sectors, and almost two-thirds of the trade is intra-company trade. U.S. companies have over \$24 billion invested in Singapore, and U.S. firms in Singapore account for 60 percent of total U.S. manufacturing investment in all of Southeast Asia. Furthermore, U.S. investors purchase over 40 percent of all U.S. exports to Singapore. The heavy presence and critical role of U.S. manufacturing investment in Singapore are two significant reasons why the U.S.-Singapore Free Trade Agreement, with its strong investment protections, merits approval.

Another reason is that the Singapore agreement will be seen by all as a precedent for future FTAs in Asia. As Singapore is the most free-trade-oriented country in the region, the agreement's provisions are excellent, and provide a robust template for future agreements in the region. This includes the investment chapter, which can be put forward as a template in future negotiations with other Asian countries that demonstrate much less respect for investors' rights in their laws and practice than does Singapore.

The NAM also applauds the very high standards the Singapore FTA sets with regards to competition policy. Singapore is committed to enact laws regulating anti-competitive conduct and to create a competition commission by January 2005. Because Government-Linked-Corporations (GLCs) carry out about half of Singapore's economic activities, the incorporation of an enforceable requirement ensuring that the GLCs will operate on a commercial, nondiscriminatory basis represents a tremendous advance. This is so, not because Singapore GLCs have abused their authority in the past, but because of the need to ensure openness into the future and to set a strong precedent for FTAs with other countries.

#### **The U.S.-Chile FTA**

Unlike Singapore, Chile currently maintains a six-percent across-the-board uniform tariff on imports. A principal reason the NAM strongly backs the Chile FTA is that it will remove that tariff on 85 percent of U.S. industrial and consumer goods upon the first day of the agreement's implementation. Other tariffs on industrial goods are removed within four years.

The NAM views the front-loading of industrial tariff cuts as critical to restoring a level playing field in the competition for the Chilean import market. This is because we strongly believe that U.S. exports are currently being displaced in Chile, as Chilean buyers switch away from U.S.-made products and increasingly buy goods from suppliers in countries with which Chile has free trade agreements. The proposed U.S. free trade agreement with Chile could reverse this troubling trend.

The United States has lost more than seven percentage points of the Chilean import market since 1997—nearly one-third of America's share of the Chilean market. Until 1997, U.S. products were highly competitive in Chile and captured a growing share of Chile's import market. After 1997, though, the U.S. share of Chile's imports went into a sudden and sharp decline—dropping from 24 percent of the market to less than 17 percent in 2002. The United States did not suffer a similar loss in the rest of South America.

This drop resulted in the loss of over one billion dollars in exports to Chile in 2002, at an annual rate. Countries entering into or implementing trade agreements with Chile in 1997 showed a sharp nine-plus percentage point gain in market share that more than offset the U.S. loss. In the case of Chile, its agreements with countries such as Argentina, Brazil, Canada, and Mexico have diverted major purchases away from U.S. producers.

Using methodology developed by the U.S. Department of Commerce for determining the labor content of U.S. exports, the more than one billion dollar decline in U.S. annual sales to Chile represents the loss of over 12,500 American job oppor-

tunities. With the Chile-European Union free trade agreement's entry into effect on Feb. 1, 2003, both the figures mentioned above are sure to rise dramatically—unless the U.S. Congress quickly approves the U.S.-Chile free trade pact.

#### **Positive Aspects of Both Accords**

In addition to the areas highlighted above, both the Chile and Singapore FTAs contain cutting-edge, 21st century disciplines with respect to customs facilitation, government procurement, intellectual property, electronic commerce, transparency and dispute settlement procedures. The NAM endorses the way these provisions comport with the congressionally mandated TPA negotiating objectives.

The message is clear: America needs to accelerate greatly its efforts to enter into and successfully conclude trade agreements that will reduce barriers to U.S. exports and level the playing field for American firms. The prospective gains in this win-win situation are huge all around, and the first step in the right direction is congressional approval of the U.S.-Singapore and U.S.-Chile free trade agreements.

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#### **Statement of National Electrical Manufacturers Association, Rosslyn, Virginia**

The National Electrical Manufacturers Association (NEMA) is a firm supporter of the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs). Now that both Agreements have been signed, the U.S. electrical industry strongly urges the U.S. Congress to use its fast-track trade promotion authority procedures to quickly ratify them.

NEMA very much welcomes FTAs such as these that serve to expand the benefits of trade liberalization to all parties, and we hope that these FTAs set the course for the completion of many more market opening accords, be they bilateral, regional, or multilateral.

#### **The U.S.-Chile FTA**

Chile may not be one of NEMA members' largest export markets, but it is an important one nonetheless. Moreover, we have seen indications that opportunities for U.S. electrical manufacturers to sell there have been lost to other countries with whom Santiago has already concluded FTAs.

This is why our industry is especially pleased with Chile's swift elimination of its tariffs for most items in the NEMA product scope. NEMA has testified before the International Trade Commission on behalf of the Agreement and met on numerous occasions with representatives of both governments. NEMA also took part in a business delegation that traveled to Chile to meet with government and commercial leaders.

#### **The U.S.-Singapore FTA**

While trade between our two countries is already significant, having an agreement in place will make an excellent commercial relationship even better. In particular, while the Republic of Singapore was already committed to tariff elimination, NEMA welcomes the example the new agreement sets for immediate and guaranteed tariff elimination for U.S. exports. The Agreement also contains useful service provisions that will help our members chip away at the market advantages enjoyed by the Republic's semi-public corporations.

Further, the FTA directs the U.S. and Singapore to seek to enhance their cooperation on technical regulations, standards, and conformity assessment procedures. In this respect, NEMA is also quite pleased that U.S. negotiators heeded our request to not include an electrical products mutual recognition agreement (MRA) in the larger FTA package. Our industry supports MRAs for regulated electrical products such as medical devices, but we oppose them for the majority of NEMA goods, which are unregulated. MRAs are not the answer to conformity assessment needs in non-regulated areas; if anything, they serve to encourage the creation of unnecessary product-related regulation. (Ever since the ill-fated electrical safety MRA with the European Union was concluded a few years ago, the U.S. government has either excluded electrical products from subsequently negotiated MRAs, or refused to sign on to any such accords that include them.)

This is the first FTA between the world's largest economy and an Asian country. With two-way trade totaling \$32 billion in 2002, Singapore is America's 11th largest trading partner. In 2002, U.S. exports to Singapore of products within the NEMA scope of electrical and medical imaging products exceeded \$600 million. With the



Agreement scoring well on the *NEMA Principles for FTAs* (see above), we look forward to further improvement in these marks.

#### About NEMA

NEMA is the largest trade association representing the interests of U.S. electrical industry manufacturers, whose worldwide annual sales of electrical products exceed \$120 billion. Its mission is to improve the competitiveness of member companies by providing high quality services that impact positively on standards, government regulation and market economics. Our 400 member companies manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products, by and large unregulated, are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRT, C-T, X-ray, ultrasound and nuclear products.

#### ***NEMA Principles for FTAs***

- *Immediate tariff elimination*
- *No mutual recognition agreements (MRAs) for non-federally-regulated products*
- *Energy services liberalization*
- *Openness and transparency in government procurement*
- *Protection of intellectual property rights*
- *Reduction in technical barriers to trade (TBTs) and compliance with all world trade organization (WTO) TBT agreement requirements*
- *Inclusive definition of "international standards"*
- *Voluntary, market-driven standards and conformity assessment*
- *Effective monitoring and enforcement mechanisms*
- *Free trade benefits not encumbered by labor or environmental provisions*
- *As many other market opening measures as possible*

#### **Statement of Joe Damond, Pharmaceutical Research and Manufacturers of America**

PhRMA applauds the historic completion of two new bilateral free trade agreements that break down trade barriers for competitive, innovative American goods and services. These are the U.S.-Singapore Free Trade Agreement (FTA) and the U.S.-Chile FTA. Both agreements represent important milestones for their respective regions, and PhRMA member companies are pleased to support them both.

PhRMA is the trade association representing America's leading research-based pharmaceutical and biotechnology companies. Our members are devoted to discovering and developing innovative medicines that allow patients around the world to live longer, healthier and more productive lives.

In the 20th century, breakthroughs in medical and pharmaceutical science, such as antibiotics and vaccines, contributed to major advances in human life expectancy, helping conquer diseases such as polio, pneumonia and smallpox. Today, we are on the verge of a new era in life sciences discovery, driven by unprecedented advances in biotechnology, genomics and biomedical science. These discoveries hold out the promise of effective new treatments for diseases, such as cancer, arthritis, diabetes and AIDS, and new hope for millions of patients around the world. The U.S. is a leader in global life sciences innovation. In 2001, our industry invested more than \$30 billion in discovering and developing new medicines. As a result, PhRMA companies are leading the way in the search for new cures for age-old diseases, such as cancer, and effective treatments for new medical challenges such as SARS.

#### **The U.S.-Singapore Free Trade Agreement (FTA)**

Singapore is a leader in Asian biomedical research and development; maintains one of the most open trade and investment regimes in the world; and is a strong proponent of science-based regulation of pharmaceutical products. As a result, U.S. research-based pharmaceutical companies have invested over \$5 billion in Singapore. In the last decade, Singapore has emerged as a key Asia-Pacific manufacturing center for U.S. life sciences companies, the regional corporate headquarters for many U.S. firms and an increasingly important location for leading U.S. pharmaceutical companies to conduct advanced biomedical research and global clinical trials.

PhRMA supports the U.S.-Singapore FTA because: (1) stronger commercial ties between the United States and Singapore are in the general interest of the private sector of both countries, (2) Singapore has promoted positive, market-oriented and science-based policies in support of this critical sector, and (3) the FTA advances further Singapore's recognition of innovation in our sector, as well as a transparent, science-based regulatory regime and strong intellectual property protections, and is thus not only a good agreement, but it can also serve as a model for other trade agreements in the Asia-Pacific region.

#### Singapore's Positive Approach to the Life Sciences Sector

In Asia, Singapore has long been a visionary proponent of policies to promote life sciences research, development and manufacturing. Years ago, Singapore recognized the potential implications of the global biotechnology revolution and took targeted steps to support the emergence of a key knowledge-based technology. As a result, Singapore is a leader in the Asian life sciences innovation, and it has attracted substantial investments from leading U.S. and European research pharmaceutical companies. These policies work to the benefit of Singapore's economy, life sciences companies doing business in Singapore and, even more importantly, Singaporean patients.

#### Recognition of Innovation

In contrast to some other Asian economies, Singapore has adopted a generally market-oriented approach to health care pricing and reimbursement. Indeed, Singapore has helped pioneer innovative health care finance methods in the Asia-Pacific, including the use of medical savings accounts. Singapore's policies with respect to the pricing of pharmaceuticals recognize the value of innovation, and the Singapore government has strongly supported advanced life sciences discovery as part of its long-term economic strategy of developing knowledge-based 21st century technologies. Accordingly, market access barriers, such as abusive price controls, reference pricing, monopsonistic purchasing practices, state-trading monopolies, unreasonable restrictions on listings in government-established formularies, toleration of illegal discounts and/or discounting practices that represent WTO-illegal subsidies to local manufacturers, which were identified in Section 2108(b)(8) of the Trade Act of 2002 as key negotiating objectives, are not an issue in Singapore. More importantly, Singapore's policies have worked to ensure that Singaporean patients have access to high quality, effective health care.

#### Science-based Regulatory Processes

PhRMA welcomes Singapore's strong commitment to biomedical innovation and support for advanced biotechnology research.

Singapore's strong commitment to science-based drug regulatory procedures, advanced life sciences research and adherence to the rule of law is reflected in the HSA's policies and regulations.

1. **Drug Regulatory Procedures.** Singapore's regulatory procedures for the approval of new medicines are timely, transparent, non-discriminatory, and based on generally accepted international scientific standards.
2. **Science-Based Drug Regulatory Requirements.** In general, the Singapore HSA's regulatory requirements are consistent with global scientific standards, such as the International Conference on Harmonization (ICH). Decisions regarding product approvals are based only on the HSA's assessment of quality, safety and efficacy.
3. **Transparency of Drug Approval Regulations.** In general, Singapore's pharmaceutical laws and regulations are transparent and are formulated through procedures that provide: (1) for notice and comment by interested U.S. stakeholders, (2) timely and effective opportunity for U.S. stakeholders to submit comments, positions and views for due consideration by the relevant authorities; and (3) timely and effective opportunity for U.S. stakeholders to consult meaningfully with the HSA and other relevant authorities and study groups regarding the formulation of health care regulations and laws.

In short, the U.S.-Singapore FTA offers a new and enduring foundation for implementing our shared vision for future health care innovation in the Asia-Pacific. Singapore is an Asia-Pacific leader in supporting advanced biomedical research, science-based regulation, strong intellectual property rights protection and market-based approaches to health care.

### **Improvements in the FTA**

PhRMA is pleased that the FTA builds on Singapore's strong record of support for our sector. In particular, we would like to draw attention to two areas: Intellectual Property Rights (IPR) and regulatory policy.

#### **Intellectual Property Rights**

At the outset, in commenting on the FTA in December 2000, PhRMA noted that Singapore has strong intellectual property systems and has implemented key obligations from the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights. We are pleased that Singapore has taken additional steps in the FTA to improve recognition of intellectual property rights, including data exclusivity and patent-term restoration. We also welcome the new FTA provisions regarding parallel importation, including provisions to respect the contractual rights of patent holders and public health safeguards to ensure that such parallel imports are subject to proper handling and a secure chain of custody. Like many public health authorities in Asia and around the world, we are concerned that rampant counterfeiting could lead to the introduction of counterfeit drug products which pose serious public health risks. The Singaporean public health safeguards, which are modeled on those used by the FDA, would help to reduce this risk.

#### **Life Sciences Working Group**

The Medical Products Annex to the U.S.-Singapore FTA represents an important breakthrough, which will formalize the already existing, strategic partnership between the U.S. Food and Drug Administration (FDA) and Singapore's Health Sciences Administration (HSA). The new FDA-HSA Working Group on Medical Products will seek to ensure that regulatory procedures for new drug approvals are: (1) expeditious, transparent, without conflict of interest and non-discriminatory, (2) based on the International Conference on Harmonization (ICH) and (3) based only on product quality, safety and efficacy. It also seeks to ensure that regulatory measures and policies continue to be developed through a transparent process that provides for notice and comment by interested parties and meaningful opportunities for consultation with the HSA. PhRMA is pleased the Medical Products Annex recognizes HSA's leadership role as the "gold standard" of science-based regulatory policies in the Asia-Pacific region. It can serve as a model for other Asian economies seeking to participate in the advanced life sciences discoveries of the 21st century. We are pleased that the FTA recognizes the important role of the ICH in establishing harmonized, science-based regulatory procedures, which will facilitate global drug development and accelerate the approval of new life-saving medicines around the world. This is the first time that the FDA's strategic relationship with a foreign regulatory authority has been incorporated in an U.S. FTA, and it offers an unprecedented opportunity to strengthen a dynamic FDA-HSA partnership that builds toward our shared vision of ICH and transparent, science-based regulation.

The SARS epidemic underscores the importance of continuing to invest in advanced biomedical research and development in Asia. SARS also illustrates the challenges posed by new forms of life-threatening diseases and the capability of many well-known human and animal viruses to mutate suddenly into devastating threats to public health. The development of a new cure is a protracted and costly process, which can require nearly a decade of research and development, clinical testing and regulatory approvals, and can cost over \$900 million. Singapore's regulatory and intellectual property regimes and longstanding support for biomedical innovation are a vital pillar which can help support innovative medical discovery in the Asia-Pacific.

#### **The U.S.-Chile Free Trade Agreement (FTA)**

PhRMA also strongly supports passage of the recently signed U.S.-Chile FTA. The Chile Agreement represents an important breakthrough in U.S. trade with our Latin American neighbors and trading partners. In the 1980s, Chile helped pioneer free market reforms and open trade policies in Latin America. Chile's performance has been impressive in nearly every economic and social area. Today, it represents a worthy partner for America's first free trade agreement in the region. It will be particularly valuable in ensuring that Chile, a long-time leader in economic reform, meets or exceeds minimum international standards for protection of intellectual property rights. Protection of intellectual property is a necessary precondition for sustainable economic development and growth.

Overall, the Chile FTA is a strong agreement, providing several important benefits for the research-based pharmaceutical industry, particularly in the area of intellectual property rights. The new FTA obligations build on TRIPS by strengthening

patent, trademark, copyright, test data protection and adherence to intellectual property-related treaties.

#### **Data Protection Provisions**

The data protection obligations strengthen existing WTO data protection for products that require the submission of undisclosed safety and efficacy information to regulatory authorities. The FTA builds on TRIPS Article 39.3 by clarifying that data protection bars unfair commercial use of test data (i.e., by refusing to grant drug approvals on the basis of the pioneer approval for at least five years, consistent with U.S. law and practice).

#### **Patent Protections**

The intellectual property chapter also clarifies protections for patented pharmaceutical products, with important provisions including:

1. That the parties may not approve any third party request for marketing approval for a pharmaceutical product that is subject to a patent ("linkage").
2. That the parties must make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process, consistent with the U.S. Hatch-Waxman Amendment.
3. That Chile must introduce legislation to make patents available for plant inventions within four years of the date of implementation of the Agreement.

#### **Trademark Provisions**

The Agreement includes a new provision that specifically prohibits a party from imposing special restrictions on the use of a trademark relative to the generic name of a product to which the trademark pertains. The language significantly strengthens the general obligation in TRIPS that prevents Members from adopting legislation or practices that interfere with the legitimate use of trademark rights.

#### **Other Provisions**

Under the terms of the Agreement, Chile must implement the 1991 Act of the UPOV Convention (concerning protection of new plant varieties) by January 1, 2009 and the Patent Cooperation Treaty by January 1, 2007. These accession obligations have a deadline that is distinct from the general two year implementation period provided for most of the new obligations. We welcome Chile's commitments to strengthen intellectual property rights for pharmaceuticals and for other American knowledge-based products.

#### **Conclusion**

PhRMA views both Singapore and Chile as important trading partners, strongly committed to open trade and investment policies, and leaders in multilateral and regional trade liberalization. With the completion of these historic agreements, we are pleased that the final U.S.-Singapore FTA and U.S.-Chile FTA both incorporate high commercial standards and sets an appropriately high benchmark for future U.S. free trade agreements in their respective regions. We are hopeful this agreement can serve as a precedent for future improvements in recognition of biomedical innovation, transparency, protection of intellectual property rights and science-based regulation of medical products, including pharmaceuticals, in FTAs with Australia, Central America, Morocco and other key U.S. trading partners. The U.S.-Jordan FTA has already created additional growth overall and in the local pharmaceutical sector with growth of exports of approximately 30%, and it provides compelling new data for the positive development impact of strong intellectual property standards for developing countries (See Appendix 1). As in Jordan, these and future FTAs will expand trade in biomedical products, but even more importantly, they will improve access by all patients to advanced life-saving medicines, support worldwide advances in medical treatment and lead to the discovery and development of innovative new cures for age-old diseases, such as Alzheimers, diabetes, cancer, cardiovascular, HIV/AIDS, and for devastating new epidemics, such as SARS.

Software & Information Industry Association  
 Washington, DC 20005  
*June 20, 2003*

The Honorable Philip M. Crane  
 Chair, Subcommittee on Trade  
 Committee on Ways and Means  
 U.S. House of Representatives  
 Washington, DC 20515

Dear Chairman Crane and Ranking Member Levin,

On behalf of the members of the Software & Information Industry Association (SIIA), I am writing to express our strong support for the Singapore and Chile Free Trade Agreements.

With over 600 member companies, SIIA is the principal trade association of the software code and information content industry. Our members are industry leaders in the development and marketing of software and electronic content for business, education, consumers and the Internet. SIIA's members—software companies, ebusinesses, and information service companies, as well as many electronic commerce companies—consists of some of the largest and oldest technology enterprises in the world as well as many smaller and newer companies. All of them—from the largest to the SMEs—depend on access to and confidence in global markets where they are treated in a non-discriminatory manner and their investment in digital products and distribution is protected.

SIIA is also an active member of the High-Tech Trade Coalition, a group of the leading high-tech trade associations representing America's technology companies.<sup>1</sup> We applaud the Administration for its work in reaching these Agreements. The high-tech sector is the largest merchandise exporter in the United States and is the U.S. industry with the most cumulative investment abroad. The HTTC strongly supports these FTAs and urges their approval by Congress.

As detailed below, the Singapore and Chile Agreements offer many potential benefits to the U.S. and chart a unique approach to preventing barriers in international digital trade. We urge implementation of these Agreements as soon as possible, and we hope that the results can serve as a model for WTO multilateral and other regional and bilateral trade negotiations.

#### **eCommerce Goals for Trade Negotiations**

Global eCommerce is fundamental to the success of our industry and our members and more broadly to other sectors of our economy. It is an increasingly dominant means of delivering software and digital content to a wide variety of users around the world. At the same time, the Internet has had a profound and positive impact on trade. The Internet has altered the way goods and services are located, ordered, produced, delivered and consumed, while increasing efficiencies, reducing time to market, reducing costs and improving productivity. These developments have implications for virtually all existing and future multilateral, regional and bilateral obligations.

Taking these developments into account, a number of leaders in the high-tech community and other key industry sectors began over a year ago to work closely to develop four core principles for trade negotiations that should guide U.S. trade negotiators in all negotiations:

- Promote the development of a domestic and global infrastructure that is necessary to conduct eCommerce while avoiding barriers that would hinder such development;
- Promote full implementation of existing commitments and seek increased liberalisation for all basic telecommunications, value-added and computer and related services;
- Promote the development of trade in goods and services via eCommerce; and
- Promote strong protection for intellectual property made available over digital networks.

<sup>1</sup>AeA, Association for Competitive Technology, Business Software Alliance, Computer Systems Policy Project, Computing Technology Industry Association, Electronic Industries Alliance, Information Technology Association of America, Information Technology Industry Council, National Electrical Manufacturers Association, Semiconductor Industry Association, Semiconductor Equipment & Materials International, Software & Information Industry Association, and the Telecommunications Industry Association.

In a trade environment in which commerce is increasingly characterized by rapid and often surprising technological advancements, as well as evolving forms of delivery, international trade law can make a substantial contribution to promoting these very positive developments by providing meaningful rules and disciplines that apply to digital trade; ensuring that trade barriers do not retard the evolution and growth of digital trade; eliminating barriers where they exist; and developing rules to ensure that new barriers will not be imposed.

To achieve these stated goals, a number of complex, and at times, competing factors are in play. There are, first and foremost, the existing WTO agreements (GATT, GATS and TRIPs) each of which is relevant to digital commerce transactions. In some instances, the rules and obligations established by all of these agreements may be implicated. In particular, the level of meaningful commitments in each is different, with more complete commitments found in the GATT (trade in goods) and TRIPs (intellectual property protection) than is currently found in the GATS (relating to services).

Unfortunately, much of the discussion internationally, as well as domestically, has focused on how to classify electronically delivered products that have a physical counterpart. The challenge of promoting confidence in digital trade, nevertheless, involves much more. Thus, while the classification issue is important and relevant, it is only one, and in some instances not the most important, of the issues that must be examined and addressed.

The cross-sector industry effort, working with USTR and others in the Executive Branch, as well as with colleagues multilaterally, has sought to make sure that the classification issue, important as it is, does not act as a "spoiler" to achieving meaningful trade commitments. A productive step toward this end result has been to focus on liberalization at the highest level and equivalent trade commitments regardless of the mode of delivery. These efforts have made classification a less contentious issue and highlighted the need for a flexible and creative examination of these issues that rests on a key assumption that whether or not the product (be it a good or service) that is delivered electronically has a physical counterpart, the following basic objectives should be sought, in all negotiating groups: (i) transparency; (ii) predictability; (iii) ensuring that all methods of delivery by all technological means are available, such that the determination of the most efficient delivery mechanism is not dictated by trade rules; and (iv) ensuring that digital trade is treated in a manner no less liberally than conventional trade.<sup>2</sup>

As described below, these FTAs are major milestones in turning these discussions into practical policy.

### The Chapters on Electronic Commerce

We are pleased that U.S. trade negotiators seized the opportunity in their efforts with Singapore and Chile to translate these goals and objectives into concrete results that recognize the importance of the removal of barriers to electronic commerce, the applicability of WTO rules to electronic commerce and the development of trade in goods and services via eCommerce.

We commend USTR and the entire Administration team in working constructively with the private sector to achieve this result, taking into serious consideration the goals and objectives identified by a cross section of industry, including leaders in high tech.

I also call to your attention that the Electronic Commerce Chapters of the Singapore and Chile FTAs are consistent with and implement a *primary objective* laid out in section 2102(b)(9) of the Trade Act of 2002 which provides the principal negotiating objectives of the United States with respect to electronic commerce.

What are the elements of this result and what are the specific benefits?

<sup>2</sup> Practically speaking, each negotiating group that has applicability for digital trade is urged, as appropriate, to be guided by a number of specific objectives: full market access commitments across a broad range of relevant goods and services; full national treatment and MFN rules shall apply to all transactions; no quantitative restrictions should be permitted; duties on all technology products should be eliminated by taking WTO commitments at the broadest level possible, and duties on all digitized products delivered on a physical medium should be eliminated; no new duties shall be applied to digital trade, either to the transmission or its content; trade formalities shall be transparent, fully notified, shall not constitute a disguised restriction on trade, and shall not impose requirements on how the devices and software used to consummate the transactions are designed or deployed; subsidies, where applied, shall be consistent with existing disciplines; government procurement procedures and practices shall be transparent and non-discriminatory; domestic regulations affecting digital trade shall be transparent and non-discriminatory; and parties shall select the least trade restrictive measure available to address valid public policy objectives.

Central to the Singapore and Chile Agreements is a strategic definition of “digital product” that is not inherently tied to either a goods or services trade law framework and does not prejudice a product’s classification. By broadly defining “digital product” to include computer programs, text, video, images, sound recordings and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically,<sup>3</sup> the FTAs seek a flexible, but practical approach to ensuring that goods and services that combine elements of any of these items are not discriminated against. In other words, no matter how a product may be classified, both Agreements provide for non-discriminatory treatment and promote broader free trade in such products.

I want to note that this construction of the definition of “digital product” is a significant step toward avoiding the pitfalls of the classification debate. It accommodates new technologies and delivery mechanisms without calling into question the applicability of current GATT/GATS trade law regimes to these new developments. This is important, as there are some proponents in international discussions who believe that electronic commerce should be treated differently, arguing for a third category that isolates electronic commerce for treatment. While attractive conceptually to some, this approach is fraught with unintended negative consequences; e.g., some countries could claim under this approach that existing commitments no longer apply leading to greater uncertainty and/or calls for new and potentially counterproductive new rounds of trade negotiations.

As to substantive commitments, the Singapore and Chile Agreements specifically affirm that the supply of a service using electronic means falls within the scope of the obligations contained in current relevant commitments.<sup>4</sup> This is a concrete step to ensure that electronic commerce is not discriminated against vis-à-vis traditional delivery of goods and services under international trade law.

Among the other specific benefits found in the Agreements, Singapore and Chile commit to:

- not impede electronic transmission from the U.S. by applying customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products, and the U.S. commits to the same from Singapore and Chile.
- not discriminate against digital products from the U.S. by giving them less favorable treatment than it gives to other similar digital products from either Singapore/Chile, as the case may be, or other countries just because (i) the products were created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory or (ii) the author, performer, producer, developer, or distributor of such digital products is a foreign person; and the U.S. commits to the same from Singapore and Chile.
- publish or otherwise make available to the public its laws, regulations, and measures of general application which pertain to electronic commerce, and the U.S. commits to the same.
- determine the customs value according to the cost or value of the carrier medium alone, without regard to the cost or value of the digital products stored on the carrier medium, consistent with the longstanding U.S. policy, where digital products are still delivered on disk or other physical medium.<sup>5</sup>

### **The Chapters on Intellectual Property**

The Singapore and Chile FTAs recognize that our trading partners must adhere to the effective level of copyright protection that is found in the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT). The full implementation of the WCT and WPPT in Singapore, Chile and on a global basis at the earliest possible date is a critical goal of our members and others who depend on effective global intellectual property protection. These treaties are essential for de-

<sup>3</sup>This definition is found in the Singapore Agreement. In the Chile FTA, a similar definition of digital products is found and means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and transmitted electronically, regardless of whether a Party treats such products as a good or a service under its domestic law. Footnote 3 of the Chile FTA provides that “for greater certainty, digital products do not include digitized representations of financial instruments, including money. The definition of digital products is without prejudice to the on-going WTO discussions on whether trade in digital products transmitted electronically is a good or a service.”

<sup>4</sup>See, in the case of the Singapore Agreement, Chapters 8 (Cross Border Trade in Services), 10 (Financial Services) and 15 (Investment), subject to any reservations or exceptions applicable to such obligations.

<sup>5</sup>In the case of the Chile FTA, this commitment is found in the provisions on market access.

velopers of software code and digital content in their efforts to safeguard the transmission of valuable copyrighted works over the Internet and by providing higher standards of protection for digital products generally.

The Agreements also recognize that effective enforcement of national laws is essential to the implementation of strong global trading rules. Thus, we are pleased to see that these FTAs include key provisions establishing statutory damages that are important tools to deter further infringement; strong criminal penalties targeted toward corporate and enterprise end user piracy; civil ex-parte procedures to preserve evidence of infringement; and strong border measures to combat cross-border trade in infringing goods.

The Singapore FTA, in particular, sets out a very high standard of protection and enforcement for copyrights and other intellectual property, perhaps the highest yet achieved in a bilateral or multilateral agreement, treaty or convention.<sup>6</sup> Thus, it is an especially important model for future negotiations. It builds on the standards currently in force in the WTO TRIPs Agreement and in NAFTA. Moreover, the Agreement lays out the goal to update and clarify those standards to take into account the experiences gained since those agreements entered into force and the significant technological and legal developments that have occurred since that time. For example, this FTA incorporates the obligations set out in the WCT and the WPPT and requires that Singapore ratify and fully implement these obligations within one year from “entry into force” of the FTA.<sup>7</sup> We are also pleased that the Singapore FTA provides two provisions regarding domain names, including requiring each party to implement (1) the Uniform Domain Name Dispute Resolution procedures for each Party’s country-code top level domain (ccTLDs) and (2) public access to a “reliable and accurate” Whois database of domain name registrants that is an important tool to combat the problems related to copyright and trademark piracy.

The Chile Agreement also represents progress in building on the standards already in force in TRIPS and NAFTA. Among its important achievements, as found in the Singapore FTA, the Chile FTA incorporates the obligations set out in the WCT and the WPPT and provides the important provisions regarding domain names. While the Chile FTA establishes some key precedents to be included in other FTAs now being negotiated, including the Central America FTA and the Free Trade Agreement of the Americas, there are elements of the Agreement that could have been stronger. For example, the transition period before requiring adherence to the WCT and WPPT, as well as other treaties, is far too long.

### **The Chapters on Cross Border Trade in Services**

Consistent with the other Chapters discussed above, the Chapters on Cross Border Trade in Services found in the Singapore and Chile FTAs establish important precedents by adopting the so-called “negative list” approach where *exceptions* to liberalization must be specified. This is an approach that is strategically positive and forwarding looking for the future. It will be more liberalizing and promote greater free trade than an approach where countries must specify their commitments as is currently done in the WTO. The FTAs expand market access commitments in Computer and Related Services and ensure that establishment in either country is explicitly not required for the provision of services. The FTAs also explicitly include access to distribution, transport, and telecom services.<sup>8</sup>

### **Conclusion**

The Singapore and Chile FTAs represent one of those rare moments in trade negotiations when improvements in international trade law can prevent future barriers rather than merely focus on removal of existing impediments.

<sup>6</sup> See “The U.S.-Singapore Free Trade Agreement (FTA), The Intellectual Property Provisions,” Report of the Industry Functional Advisory Committee on Intellectual Property Rights for Trade Policy Matters (IFAC-3), February 28, 2003.

<sup>7</sup> Effectively, this means that Singapore must act within one year after both governments have completed their respective formal approval mechanisms.

<sup>8</sup> The Chile and Singapore FTAs’ telecommunications services chapters include several key provisions to open those markets to U.S. businesses. Non-discriminatory access to and use of public telecom networks and services are ensured. Additional obligations are placed on major suppliers of public telecom services—including providing treatment no less favorable than they accord themselves in terms of availability, provisioning, rates and quality of service—ensuring that market entrants may truly compete. Cost-based access to leased lines, key to network and Internet services providers, is guaranteed. The FTAs also ensure high levels of transparency in telecom services, and they include non-binding language calling for “technology neutrality in the mobile telecommunications sector, which provides a useful starting point, though should be strengthened in future agreements.”



By any measure, the Chapters on Electronic Commerce represent groundbreaking commitments to non-discriminatory treatment of digital products that promote confidence in the global digital trade of such products.

We also support the results achieved by USTR in the Chapters on Intellectual Property that represent significant improvement in the level of protection provided in both countries and will serve as an important baseline to build on in future negotiations.

We also support the results in the Chapters on Cross Border Trade in Services that establish important precedents by adopting the so-called "negative list" approach where *exceptions* to liberalization must be specified. This is an approach that is strategically positive and forwarding looking for the future.

As you know, we are at the beginning stages of seeking a new round of multilateral negotiations that are focused more broadly on services. We commend, in many respects, the offer put forward by USTR at the end of March that reflects a strong negotiation position in continuing to achieve the broader goals outlined at the start of my testimony. There is little doubt that the issues that will have to be addressed in order to achieve real and meaningful commitments in services will be complex and difficult.

The efforts by our trade negotiators to think creatively about how to remove barriers to electronic commerce, however, are an important milestone in developing a global consensus about how to possibly proceed in other bilateral, regional and multilateral negotiations. For all of these reasons, we urge implementation of both the Singapore and Chile Free Trade Agreements as soon as possible.

Sincerely,

Mark Bohannon  
Senior Vice President, Public Policy

Timken Company  
Canton, Ohio 44706  
June 24, 2003

The Honorable Philip M. Crane  
Chairman, Subcommittee on Trade  
Of the Committee on Ways and Means  
U.S. House of Representatives  
1104 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman,

The Subcommittee on Trade in its advisory release of June 10, 2003, provided for the submission of written comments on the subject free trade agreements ("FTAs"). The Timken Company is providing its comments herein for consideration by the Subcommittee. The Timken Company is a leading international manufacturer of highly engineered bearings, alloy and specialty steels and components, and a provider of related products and services. With headquarters in Canton, Ohio, Timken employs 28,000 people in operations in 29 countries. In 2002, the combined Timken and Torrington companies had sales of approximately \$3.8 billion.

Timken has manufacturing plants in the U.S. and abroad and sells its products all over the world. Thus, the company has a strong interest in a fair and efficient international trading system. It supports the reduction and removal of barriers to trade along with the continuance and enforcement of rules that operate to prevent the trade distortions that are created by dumping and government subsidies.

Based on our review of the agreements, The Timken Company has identified a number of topics that it would like to provide its insight on for consideration by the Subcommittee. The company applauds the efforts of U.S. negotiators. Comments are presented by topic below.

#### **Rules of Origin**

Foreign producers have sold bearings into the United States at less than fair value for over 27 years. The Timken Company has sought and obtained relief under U.S. trade laws from these dumped imports. Antidumping duty orders were imposed

on tapered roller bearings from Japan from 1976–1999.<sup>1</sup> Antidumping duty orders have been imposed on ball and other types of bearings from Japan, Europe, and other countries, including Singapore, since 1989. In efforts to evade the coverage of the orders, different global bearing producers have at various times established facilities in third countries for the purpose of assembling bearing components into complete bearings for export to the U.S. as the products of the third countries.<sup>2</sup> Because manufactured bearing components can be assembled into complete bearings with little effort, such facilities have become the means for evasion of the antidumping duty orders.

In response, the United States has followed a strategy of adopting rules of origin the purpose of which is, *inter alia*, the preclusion of such evasion. As part of the North American Free Trade Agreement (NAFTA), the Parties adopted a tariff-switching approach to rules of origin.<sup>3</sup> For bearings, they adopted a special rule that does not allow tariff-switches from bearing components to bearings to qualify as such for rules of origin purposes unless the resulting product has 60% NAFTA content (as measured by a transaction method) or 50% (as measured by a net cost method).

It appears that in the U.S.-Singapore FTA, the Parties agreed to an equivalent rule, allowing tariff-switching from bearing components to bearings to qualify originating products only if there is 50% regional content as measured by the “build-down” method.<sup>4</sup> In the U.S.-Chile FTA, the same rule was adopted, except that the regional content requirement was lowered to 40%.<sup>5</sup>

Timken is pleased that U.S. negotiators have preserved rules of origin that are responsive to the particular circumstances of such products as bearings. The company urges U.S. negotiators to continue to be sensitive to the particular circumstances of individual domestic industries.

#### **Antidumping and Countervailing Duties**

It is important that in exchange for the opening of its markets to freer trade that the United States ensure that there are domestic remedies for any attempts by foreign producers to take unfair advantage of increased market access. As Timken has noted above, it has been forced to rely on, and continues to rely on, antidumping orders to combat unfairly-priced imports of bearings. Given the continued existence of significant excess capacity in bearings, it is important for the company that the United States continues to provide viable trade remedies for domestic industries harmed by unfairly-traded imports. Thus, Timken strongly supports the fact that neither of the FTAs contains any provisions that reduce or otherwise interfere with the ability of the U.S. to provide trade remedies that are consistent with its WTO obligations.

The U.S.-Singapore FTA does not mention antidumping or countervailing duty trade remedies except indirectly.<sup>6</sup> The U.S.-Chile FTA includes specific provisions in Chapter Eight (“Trade Remedies”) which specify that: (1) each Party retains its rights and obligations under the WTO Agreement with regard to the application of antidumping and countervailing duties, and (2) no provisions of the FTA shall be construed as imposing any rights or obligations on the parties with respect to antidumping or countervailing duty measures.

Timken believes that the approach taken in the Chile FTA is suitable for an agreement where there has been discussion of AD and CVD trade remedies during negotiations while the Singapore approach is suitable as the result of negotiations which did not focus significantly on the remedies.

Also important is the fact that neither agreement establishes a binational panel mechanism for addressing any disputes over AD or CVD actions. Chapter 19 of the North American Free Trade Agreement (NAFTA) established such a tribunal and the results have been controversial.

<sup>1</sup>The orders were revoked as the result of sunset reviews at the U.S. International Trade Commission effective December 31, 1999.

<sup>2</sup>See, e.g., Customs Classification Ruling HQ 083455 (9/6/89) (tapered roller bearings assembled from a cup and cone from Romania, rollers from the US, and a cage from either Mexico or the U.S. considered to be products of Romania).

<sup>3</sup>See *Harmonized Tariff Schedule of the United States*, GN 12(t)/84–241 (2003) (Rev. 2).

<sup>4</sup>Singapore Free Trade Agreement, Annex 3A at 3A–219–220 (hereinafter “*US-Singapore*”). This appears to be approximately equivalent to the NAFTA net cost method.

<sup>5</sup>United States-Chile Free Trade Agreement, Annex 4.1 at 65 (hereinafter “*US-Chile*”).

<sup>6</sup>The U.S.-Singapore FTA begins with a statement reaffirming the rights and obligations of the Parties under existing bilateral and multilateral agreements including the WTO Agreement. *U.S.-Singapore* at 3.

### Government Procurement

The United States ensures that it has a domestic supply of bearings for military purposes. Through the Defense Acquisition Regulations (DFAR) it requires that the Department of Defense purchase its bearings from a domestic producer for certain uses and applications.<sup>7</sup> It appears that in both FTAs, the government procurement chapter preserves the right of the U.S. to limit acquisitions of certain bearings to domestic sources.<sup>8</sup>

By maintaining requirements for purchasing certain products from domestic sources, the U.S. has recognized that it has a national security interest in being able to respond quickly to changing circumstances around the globe. We should not foreclose supply sources through trade negotiations. Thus, Timken is pleased to see that U.S. negotiators have preserved the U.S. right to limit procurements that are critical to military readiness to domestic producers.

### Exchange Rates

Article IV of the International Monetary Fund (IMF) Agreement specifies that members should “avoid manipulating exchange rates . . . in order . . . to gain an unfair competitive advantage over other members.” If a country maintains an artificially weak currency relative to the dollar, it obtains an advantage for its goods relative to U.S.-produced goods. The goal of bilateral free trade agreements is to expand trade between the U.S. and other countries. Timken recommends that U.S. negotiators and the Congress consider including a requirement similar to the IMF Agreement provision in all future FTAs. This would help to stop countries that are developing into significant trading partners from weakening their currency artificially relative to the U.S. dollar.

### Tariff Rates

In general, tariff reduction or elimination is likely to reduce sales, market share, and profits for the domestic bearing industry, particularly in times of an economic slowdown. Capacity utilization is particularly important for capital-intensive industries like the bearing industry. Because bearings typically represent only a small portion of the cost of producing manufactured goods, the maintenance of tariffs does not significantly affect the downstream domestic economy.

The United States has committed to reducing tariffs on bearing imports from Singapore to zero within the next four years. Singapore has committed to reducing tariffs on all imports to zero upon entry into force of the FTA. U.S. Government and private bodies have long recognized that the bearing industry is import sensitive. In 1988 for example, in a study regarding the effects of bearing imports on national security, the Department of Commerce found that the effects of such imports on the domestic industry were negative.<sup>9</sup> Thus, it was reasonable for U.S. negotiators to phase out bearing tariffs over time for a country that is a significant bearing producer.

Tariff rates on the trade in bearings between Chile and the United States are being eliminated in tandem. There have been virtually no bearing exports from Chile to the U.S. in the past four years. At the same time, there are a small amount of bearing exports from the U.S. to Chile. Thus, the lockstep reduction was a reasonable step to take for our negotiators.

These issues highlight the need for U.S. negotiators to continue to pursue the goal of tariff parity so that the amount of tariff reduction and the schedule of reductions for all participants are equivalent. A zero-for-zero approach is the simplest and most immediately beneficial. If this goal is impractical, the negotiators should still strive to ensure that tariff rates for the same products are equivalent.

### Investment

Timken supports fair investment rules for foreign investors. Both the U.S.-Chile and U.S.-Singapore FTAs contain chapters on investment.<sup>10</sup> They both contain protections for inter-country investors in the form of procedures for the arbitration of claims of violation of the investment agreements. Such provisions will enhance the ability and willingness of individuals and businesses to invest across borders.

<sup>7</sup> 10 U.S.C. § 2534(a)(5).

<sup>8</sup> See *U.S.-Chile* at 9–17; *US-Singapore* at 149.

<sup>9</sup> US Department of Commerce, *The Effect of Imports of Antifriction Bearings on the National Security*, at IV–4 (1998).

<sup>10</sup> See *U.S.-Chile* at Chapter 10, *US-Singapore* at Chapter 15.

### **Intellectual Property**

The Timken Company has major intellectual property assets. It supports strong intellectual property regimes that provide efficient protection for such rights. The Chile and Singapore FTAs both contain elaborate provisions on intellectual property.<sup>11</sup> The Chile IP chapter begins with the statement that nothing in its provisions is to derogate from the obligations and rights of each party with respect to the other as the result of the WTO TRIPS Agreement. The IP chapters in both agreements contain references to the TRIPS Agreement for clarification purposes. However, neither Agreement provides any additional description or explanation of the relationships between them and the TRIPS Agreement.

These provisions of the FTAs provide another instance where reconciliation with existing WTO provisions would have been helpful. The TRIPS Agreement should be incorporated by reference and there should be clear identification of the enhancements agreed to as part of the FTAs. This would reduce confusion and complexity.

### **Other Trade-Enhancing Provisions**

Both FTAs contain a number of additional provisions designed to enhance the ease of trade between the parties. These include chapters on: Customs Administration, Technical Barriers to Trade, Temporary Entry of Business Persons, and Transparency. Timken strongly supports agreement to provisions in these areas that simplify procedures, reduce costs, and otherwise make it easier to import into, export from, and do business in the Parties' countries.

### **Infrastructure Provisions**

The two FTAs contain provisions on telecommunications, financial services, and electronic commerce. Agreement in these areas will likely enhance infrastructures among the parties; this will reduce the cost of doing business. Timken also strongly supports liberalization in these areas.

Sincerely,

Michael K. Haidet  
*Senior Government Affairs, Specialist-Trade*

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### **Statement of Randi Parks Thomas, United States Tuna Foundation**

The U.S. Tuna Foundation (USTF) requests the following statement be included in the record of the hearing held June 10, 2003, on the implementation of the U.S. bilateral Free Trade Agreements with Chile and Singapore:

The U.S. Tuna Foundation is a trade association representing the interests of the U.S. canned tuna industry, including all U.S. canned tuna processors—Bumble Bee Seafoods, LLC, StarKist Seafood Company (Del Monte Foods), and Chicken of the Sea International (Thai Union)—as well as all U.S. purse seine vessels that harvest tuna for the canned tuna market.

The U.S. Congress and the U.S. International Trade Commission have deemed canned tuna to be an “import sensitive” product. Within the ITC, Section 201 (1984) and Section 332 (1986, 1990 and 1992) investigations reiterated that canned tuna is import sensitive. The facts that made canned tuna an import sensitive product then still apply today. For this and several other reasons, canned tuna should not be included in the list of products deemed eligible for duty-free treatment (either phased or immediate) in any upcoming Free Trade Agreement.

Furthermore, the United States and the European Union comprise the two largest canned tuna markets in the world. The European Union has long maintained a much higher duty on canned tuna products than the United States (24% to 12%). For this reason, duties on canned tuna should not be the subject of bilateral trade negotiations but should only be considered in the context of the World Trade Organization efforts to address trade concessions on a product-by-product basis.

#### **Background on Industry:**

- Canned tuna is consumed by 96 percent of U.S. households. (Source: A.C. Nielsen Homescan data).

<sup>11</sup> See *U.S.-Chile* at Chapter 17, *U.S.-Singapore* at Chapter 16.

- Canned tuna represents the number three item in U.S. grocery stores (behind only sugar and coffee) based on dollar sales per linear foot of shelf space. (Source: A.C. Nielsen and industry analysis).
- The U.S. represents the largest single country market for canned tuna in the world. It is estimated that the U.S. canned tuna market represents 28 percent of global consumption. (Source: U.S. Department of Commerce—National Marine Fisheries Service, Eurostat, Foodnews, industry analysis).
- Three U.S. brands, Bumble Bee, StarKist and Chicken of the Sea represent more than 85 percent of U.S. tuna consumption. (Source: A.C. Nielsen).
- Canned tuna represents a tremendous value versus other sources of canned protein. In May of 2000, lightmeat tuna retail prices were \$0.10/ounce while albacore tuna retail prices were \$0.23/ounce. Competitive proteins were significantly more expensive (canned chicken—\$0.40/ounce, canned turkey—\$0.40/ounce, SPAM—\$0.33/ounce, corned beef—\$0.20/ounce). (Source: Industry market basket survey, May 2001).
- Domestically, canned tuna is currently processed in California, American Samoa, and Puerto Rico.
- U.S. Pack of Canned Tuna:

1,000 Pounds *	
1992	608,981
1993	618,743
1994	609,514
1995	666,581
1996	675,816
1997	627,032
1998	680,860
1999	693,816
2000	671,330
2001	507,417

\*Canned weight.

Source: Fisheries of the United States, 2001, Department of Commerce, National Marine Fisheries Service.

- The quantity of canned tuna imports between 1990 and 2000 increased by 10.0 percent while imports of frozen tuna loins increased by 67.3 percent. (Source: U.S. Department of Commerce—National Marine Fisheries Service).
- During the same ten-year period, U.S. tuna processors moved towards heavier utilization of imported tuna loins (which carry a negligible import duty) taking advantage of low cost labor in Southeast Asia and Andean Pact countries. This led to reduced employment in U.S. factories.
- Over the last twenty years, the U.S. tuna processing industry has shrunk from 14 factories and employment of more than 26,000 to four factories with employment of slightly more than 6,000.
- During the ten-year period between 1990 and 2000, one of the two remaining tuna processing facilities in California closed and four of the five tuna processing facilities in Puerto Rico closed. The two U.S. factories in American Samoa continue to operate, as they are not obligated to pay the U.S. minimum wage rate.
- With the advent of canned tuna imports from low wage rate countries, retail pricing of canned tuna, when adjusted for inflation, has decreased by 53 percent between 1980 and 2000. (Source: Federal Trade Commission and industry data and analysis).

#### 2003 Canned/Pouched Tuna Tariffs:

	General	Special
1604.14.10 (canned/pouched tuna in oil)	35% 11.6% 24.5%	FREE (A+,CA,D,IL,J+) (MX,R) (JO)
1604.14.22 (canned/pouched tuna <i>not</i> in oil, below quota*)	6% 2% 1.5%	FREE (A+,CA,D,IL,J+) (MX,R) (JO)
1604.14.30 (canned/pouched tuna <i>not</i> in oil, above quota*)	12.5% 4.1%	FREE (A+,CA,D,IL,J+) (MX,R)

General	Special
5%	(JO)

\*The tariff rate quota for tuna in airtight containers not in oil (water pack) is based on 4.8 percent of apparent U.S. consumption of tuna in airtight containers during the preceding year.

A+ = GSP least-developed beneficiary countries

CA = NAFTA—Canada

D = Africa Growth and Opportunity Act

IL = Israel

J+ = Andean Trade Promotion and Drug Eradication Act. Only pouched tuna is granted duty-free status. The tuna from which the pouched tuna is prepared must be caught by U.S.-flagged or ATPDEA-flagged vessels.

JO = Jordan

MX = NAFTA—Mexico

R = Caribbean Basin Trade Partnership Act

#### **Canned/Pouched Tuna Tariff Impact:**

The current import tariff provides critical and necessary benefits to what is left of the U.S. tuna processing and fishing industry:

- Support for more than 6,000 U.S. tuna processing jobs in California, Puerto Rico and American Samoa, which jobs would be in jeopardy if the tariff were to be significantly reduced or eliminated.
- Support for the American Samoa economy where 88 percent of private sector employment is provided by the U.S. canned tuna industry.
- Support for the U.S. tuna fishing fleet of approximately 27 vessels that operate out of American Samoa and supply the U.S. tuna processors located there. These vessels enable the United States to have a strong voice in fishery conservation and regulation activities in the Pacific Ocean, the largest tuna fishery in the world.
- The United States and the European Union comprise the two largest canned tuna markets in the world. The European Union has long maintained a much higher duty on canned tuna products than the United States. The EU tariff rate is 24 percent on all canned tuna.
- The U.S. canned tuna industry has maintained for years that there should be international parity regarding tariff rates. We understand the desire of the United States to work toward the elimination of tariffs in the future. However, it makes no sense to us to unilaterally reduce tariffs when this causes an even greater disparity between the major world markets for a product like canned tuna that has repeatedly been found by the ITC to be import sensitive.

#### **International:**

- An import tariff of 12.5 percent is well below import duties on canned tuna imposed by other major canned tuna markets. The European Union, the largest canned tuna market in the world, maintains a tariff of 24 percent on all canned tuna products and on all imports of tuna in any other form; Mexico, our NAFTA trading partner, imposes a tariff of 20 percent on canned tuna; and most other Latin American markets maintain tariffs on canned tuna at 20 percent or more. These tariffs obviously provide an unfair trade advantage against U.S. tuna processors.
- The U.S. trade deficit in fishery products has reached an all time high. The U.S. canned tuna market, once the most dominant canned tuna market in the world, has recently declined in volume.
- As importantly, it is estimated that there is currently a 50 percent over-capacity in the international tuna processing sector. Encouraging new processing capacity without cutting the existing over-capacity situation makes absolutely no sense.
- Due to the intense competitive environment caused by low cost foreign imports, retail prices of canned tuna in the United States are the lowest among all developed nations of the world. Comparison includes Australia, Canada, France, Germany, Italy, Spain and the United Kingdom. (Source: Industry analysis).
- U.S. canned tuna processors face significant wage disparities when compared with major tuna exporters. Average hourly wage rates in U.S. processing facilities in California, Puerto Rico and American Samoa are approximately \$11.00, \$6.50 and \$3.75, respectively. The average hourly labor rate in the key exporting country of Thailand is approximately \$0.60.
- Most canned tuna processors in foreign nations are not required to abide by the same health, welfare, safety, regulatory, conservation or environmental standards imposed on U.S. processors. In addition, they often receive government and other financial subsidies that provide an unfair economic advantage.

- U.S. tuna vessel owners are similarly disadvantaged as they are required to abide by strict regulatory, environmental and conservation standards that are rigorously enforced by the U.S. Department of Commerce—National Marine Fisheries Service and the U.S. Coast Guard. Many of these standards are not observed by foreign flag vessels and are not enforced by their respective governments.

For all of the above reasons and several others, **duties on canned tuna should not be the subject of bilateral trade negotiations but should only be considered in the context of the World Trade Organization efforts to address trade concessions on a product-by-product basis.**

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### Statement of Selina E. Jackson, UPS

UPS respectfully submits this statement in response to the request by the Ways and Means Subcommittee on Trade for comments regarding the implementation of the United States bilateral Free Trade Agreements (“FTAs”) with Singapore and Chile. UPS expects the U.S.-Singapore and U.S.-Chile FTAs to contribute to the growth of the U.S. express delivery services (“EDS”) industry.

UPS is the world’s largest package delivery company and a leading global provider of specialized transportation and logistics services. UPS employs 320,000 workers in the United States and delivers more than 13.3 million packages and documents each day in more than 200 countries and territories worldwide.

UPS strongly supports free trade. The success of UPS depends on its ability to transport documents and parcels quickly, without undue delay or costs. Laws and regulations in a wide range of areas, such as intermodal transportation, air auxiliary services, distribution, warehousing, customs, telecommunications, insurance and freight forwarding, can significantly affect the ability of UPS to compete effectively in foreign markets. It is important to remember that UPS ships documents and parcels for other businesses, including U.S. exporters, many of which rely on just-in-time systems of inventory control and customer delivery. For this reason, such laws have the potential to restrict trade when they are discriminatory and/or unnecessarily burdensome. As such, UPS strongly supports the implementation of international agreements that alleviate restrictions on trade.

Both the U.S.-Singapore and the U.S.-Chile FTAs are expected to contribute to the growth of our company and the EDS industry by increasing the volume of trade between the United States, Singapore and Chile and by reducing some current and potential trade barriers that affect providers of express delivery services. Both Singapore and Chile represent important and growing markets for the express delivery services industry.

#### The U.S.-Singapore Market

According to industry data, the EDS industry has the potential opportunity to transport approximately \$11 billion of goods between the United States and Singapore in 2003. This opportunity is expected to grow significantly over the next five years, with the EDS-related trade opportunity reaching at least \$17 billion in 2008.

Singapore also is a critical market for companies like UPS that provide express delivery services in the broader ASEAN region because the country serves as a commercial hub. Over 40 percent of goods imported into Singapore are re-exported to other nations. In 1999, express delivery shipments accounted for approximately 20 percent, or \$13.6 billion, of the \$68 billion in imports and exports transported via air between the United States and the ASEAN nations.<sup>1</sup> In 2000, it was estimated that express delivery services in the ASEAN region would grow at an annual rate of approximately 20 percent per year.<sup>2</sup> Given the liberalization of trade between the United States and Singapore expected as a result of the U.S.-Singapore FTA, UPS expects the growth of express delivery services in the region to continue.

#### The U.S.-Chile Market

Chile also represents an important market for UPS and the express delivery services industry. The United States is Chile’s largest trading partner, and trade between the two nations has been increasing rapidly. In the seven years prior to 2001, trade in goods between the United States and Chile grew by 44 percent, and trade

<sup>1</sup> See U.S.-ASEAN Business Council, Inc., “The Integrated Express Industry in the ASEAN Region: Delivering Business into the 21st Century” (Sept. 2000), at 21–22.

<sup>2</sup> See *id.* at 22.

in services grew by 37 percent.<sup>3</sup> In 2001, the value of goods and services traded between the two countries reached \$8.8 billion.<sup>4</sup> UPS expects that as the U.S.-Chile FTA is implemented, the flow of goods between the two nations will continue to increase. Because UPS transports many of these goods, UPS expects that its business opportunities will increase as a result of the U.S.-Chile FTA.

#### Reducing Trade Barriers

In addition to expanding business opportunities for the EDS industry by increasing trade volumes, UPS expects that the U.S.-Singapore and U.S.-Chile FTAs will help enhance the industry's business opportunities by reducing some trade barriers that could otherwise impede the industry's operations in both countries. For example, both the U.S.-Singapore and U.S.-Chile FTAs break new ground by specifically recognizing express delivery services as a distinct service sector and by establishing that commitments under the Agreements regarding the EDS sector should apply to all suppliers of the service. As such, many of the Agreements' provisions restricting practices that limit or distort trade apply both to private and public providers of express delivery services. The U.S.-Singapore and U.S.-Chile FTAs also include specific commitments on customs procedures, requiring both transparency and efficiency in customs administration. While these provisions are not perfect in either agreement, they are expected to facilitate the customs process and to enhance the ability of express delivery service providers to quickly and reliably meet the needs of current and future customers.

#### Improving Future Agreements

While UPS supports the implementation of the U.S.-Singapore and U.S.-Chile FTAs and believes these Agreements represent important steps forward in promoting freer trade, it is also important to note that the provisions included in these Agreements regarding cross-subsidization warrant *significant* improvement in future trade agreements. Effectively addressing cross subsidization of express delivery services by those with government-granted special or exclusive rights is a fundamental objective of the EDS industry, as this is a crucial market access issue for our industry. When any entity, including a postal administration, chooses to provide express delivery services to their customers, they should be governed by the same rules and market economics as other providers of express delivery services. Cross-subsidization constitutes an unfair competitive advantage that directly limits the market access of otherwise competitive private express delivery service providers.

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### **Statement of the Honorable Henry A. Waxman, a Representative in Congress from the State of California**

I appreciate the opportunity to share with the Ways and Means Committee my serious concerns about including Hatch-Waxman style patent protections in international trade agreements.

Let me start by saying that I am very proud of the Drug Price Competition and Patent Term Restoration Act of 1984 and what it has accomplished. When Senator Hatch and I proposed this legislation, we were addressing a serious health care problem in the United States. On one hand, we needed to bring down prescription drug prices in this country. Because Federal law did not permit approval of generic versions, competition was stifled in the pharmaceutical marketplace and many Americans could not afford their medication. At the same time, we had to be careful that our response would not discourage the pharmaceutical companies from investing in research to develop new drugs that would save a great many lives.

Hatch-Waxman was a very good, balanced, and tailored solution to that dilemma. The law streamlined the approval of generic drugs, while protecting patent rights and creating other incentives for pharmaceutical manufacturers to remain innovative. The policy ushered in a wave of competition and scientific advances that greatly lowered the price that millions of Americans paid for a wide range of medicines, while maintaining high levels of innovation in emerging new drugs.

Like most good legislation, the Hatch-Waxman compromise was carefully designed for a specific situation, in a specific regulatory system. But our success here does not mean it is appropriate for other countries. That is why I am greatly alarmed by its inclusion in Free Trade Agreements like Chile and Singapore, which are being

<sup>3</sup> See Office of the United States Trade Representative, "U.S. and Chile Conclude Historic Free Trade Agreement," (visited May 5, 2003) <http://ustr.gov/releases/2002/12/02-114.htm>, at 2.

<sup>4</sup> See *id.*



touted as the cookie cutter model of U.S. demands for future trade negotiations. Many of our trading partners face vastly different challenges and circumstances than we do here in the U.S.

As we are all painfully aware, devastating epidemics in the developing world, including AIDS, TB, and malaria are killing millions of people and crippling whole societies. Even in middle-income countries, leading killers like heart disease, diabetes, cancer and other conditions are going untreated because essential medications are unaffordable in these countries, costing many times the average citizen's annual income. While the pharmaceutical industry's approach is to cure this problem with a dose of Hatch-Waxman, this would have the lethal effect of *keeping* drug prices in these countries unaffordable for many years longer than is the case now.

I think it goes without saying that the U.S. faced nothing like these kinds of problems when Hatch-Waxman was enacted here. We did not face a situation where only a tiny percentage of the population was receiving the medicines that they needed to survive. We did not face a situation where a very large percentage of the young people in our society had already contracted diseases that would swiftly and almost certainly kill them if they did not receive such medicines.

If we had, the solution would certainly not have looked like Hatch-Waxman, which delays market entry of low-cost generic drugs for years after a life-saving drug becomes available. That system works in this country because most people in the U.S. have health insurance that pays for essential drugs and because we have a health care safety net to assure that the poorest in our society are not left without medical care and treatment. But to impose such a system on a country without a safety net, depriving millions of people of life-saving drugs, is irresponsible and even unethical. In developing countries, we must do everything in our power to make affordable drugs for life-threatening diseases available *now*.

Let me make clear that I am not talking about increasing the availability of Viagra or drugs for hair-loss, I am talking about preserving the flexibility that governments need to build and maintain a functioning health system. It would be reckless to impose a Hatch-Waxman without close examination of its impact on a case-by-case basis.

As you review these agreements, I hope you will keep in mind that Hatch-Waxman is *not* a "one size fits all" prescription. I believe that the USTR should be obligated to provide a comprehensive review of the potential impact on the health system of any countries where it plans to table Hatch-Waxman requirements. Whether in Central America, Latin America, Morocco, or Southern Africa, there is a long slate of USTR negotiations where the Hatch-Waxman could have devastating results.

