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TRADE IN SERVICES AND E-COMMERCE: THE SIGNIFICANCE OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

MAY 8, 2003

Serial No. 108–19

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

87–485PS WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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TRADE IN SERVICES AND E-COMMERCE: THE SIGNIFICANCE OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

THURSDAY, MAY 8, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE
AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room 2123 Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Upton, Shimkus, Shadegg, Bass, Terry, Ferguson, Otter, Schakowsky, Solis, Markey, Brown, Davis, Green, and Strickland.

Staff present: Manisha Singh, majority counsel; Ramsen Betfarhad, policy coordinator and counsel; Jill Latham, legislative clerk; and Jonathan J. Cordone, minority counsel.

Mr. STEARNS. Good afternoon, and I welcome all our witnesses to this subcommittee hearing, examining the Singapore and Chile Free Trade Agreements with particular focus on the commitments made with respect to trade in services and e-commerce.

I especially want to acknowledge and thank our government witnesses, and I'm pleased that the lead negotiators for both the Singapore and the Chile Trade Agreements from the United States Trade Representative Offices are testifying before us this afternoon.

Their particular insight into the substance and process of developing the FTAs I'm sure will be helpful to all of us and give us better understanding of the agreements.

Now, this is a significant hearing for our subcommittee and, of course, for the full committee.

In exercising its trade jurisdiction, the committee is particularly interested in examining trade agreements as they relate to trade in services and e-commerce, for their impact on our domestic service industries and e-commerce, as many of those industries fall within the purview and jurisdiction of the subcommittee.

Therefore, the committee has closely followed the development of both FTAs as a participant in the Congressional Oversight Group established by the Trade Promotional Authority Act of 2002. Moreover, in this subcommittee we have worked toward both highlighting and removing legal and regulatory barriers to trade and

services and e-commerce barriers that place our Nation at a disadvantage.

To that effect, the subcommittee held a hearing in the 107th Congress on the legal and regulatory barriers impeding trade in advanced telecommunications services and digital products.

Today's hearing is an important continuation of the subcommittee's efforts, as the two FTAs present, in my view, a significant step forward in opening markets and services and, of course, e-commerce.

The markets and services industry to the United States economy today cannot be overstated. The U.S. economy is a service economy where better than two-thirds of the GDP is composed of services output. Just over three-fourths of our employment base is provided by the service industries.

There's also little argument that many aspects of our Nation's economic life is now, to varying degrees, substantially dependent upon e-commerce. Recent data shows that e-commerce growth is even outpacing the rosy prediction of the dot.com bubble period.

In 1999, Forester Research, Incorporated, estimated that the U.S. e-commerce between businesses would reach a staggering $1.3 trillion by 2003. Today, Forester Research estimates that network business to business transactions stand at $2.4 trillion. Now, that is nearly a large percentage of our GDP at a phenomenal growth.

International trade is increasingly becoming an important component of our domestic economy. In a recent article, I spoke to the fact that over the past decade the trade deficit of the United States has steadily risen. In 2002, the trade imbalance reached an all-time high of $435 billion, a $100 billion increase over the 2001 deficit.

Although we suffer from chronic trade imbalances, the trade and services offers a significant bright spot. America ran a record high surplus in services of $69.8 billion in 2001, although that surplus shrank to $44.7 billion in 2002.

Another bright spot in our balance of trade calculus is the steadily increasing international e-commerce, which holds particular promise for United States companies. The Information Technology Industry Council projected that between 1999 and 2003 the market for electronically distributed software alone will grow from $0.5 billion to $15 billion. Thus, the services industry and e-commerce are not only key components of our domestic economy, but increasingly trade in services and electronic commerce are becoming growth areas where U.S. firms have a competitive advantage given open and non-discriminatory access to other markets.

The FTAs under consideration today, as I noted, represent a significant step forward toward the goal of open and non-discriminatory international markets for services and e-commerce. The agreements contain commitments from both Singapore and Chile for substantial market access across nearly all their service sectors, including banking, insurance, telecommunications, computer and related services, energy, direct selling, tourism, professional services and even express delivery services.

This is a significant departure from trade agreements in the past, as all service sectors are opened up, and the few exceptions are memorialized in what is called a negative list. Moreover, the

market access and non-discrimination commitments are bolstered by strong, detailed regulatory transparency requirements, a first in trade agreements.

Regulatory transparency is very important to many service industries, as they are subject to government regulation. Lack of such transparency and regulatory uncertainty are non-tariff barriers that impede trade and services.

In addition, the agreements include significant commitments establishing that the principle of non-discrimination applies to products delivered electronically and prohibiting the levying of custom duties on digital products.

Furthermore, the agreements affirm that commitments made relating to services also extend to the provisioning of such services via electronic delivery.

As noted, the subcommittee plans on a careful examination of both the Chile and Singapore trade agreements, as they contain provisions that the USTR has characterized as being "state-of-the-art" with respect to liberalization of trade and services, e-commerce and the protection of intellectual property rights.

Another reason for careful examination is that Chile and Singapore are the first countries in their respective regions to enter into a comprehensive free trade agreement with the United States. It is anticipated that these agreements will serve as blueprints for future bilateral and multilateral trade agreements, in particular, future free trade agreements with other Southeast Asian and South American nations.

Careful review is also necessary to ascertain whether pursuit of bilateral agreements undermine multilateral efforts.

Are the two approaches mutually exclusive or not? On one side, many have pointed to the fact that others, such as Canada and the European Union, have successfully leveraged bilateral free trade agreements to their advantage. Chile is one example cited, where from 1993 to 2001 its trade with the United States increased 100 percent, while its trade with Canada skyrocketed by almost 400 percent. Most of that gain was made after it concluded a bilateral trade agreement with Chile.

On the other hand, many have spoken of the economic distortion effects and inefficiency that ensued for bilateral trade agreements.

And finally, my colleagues, a few basic questions must be answered, such as when all is said and done are these Federal trade agreements good for all Americans? If so, why? And two, who will lose the most, and who will gain the most, as a result of these and future similar Federal trade agreements?

Global tradeoffers an opportunity in which all nations involved, I believe that the trade agreements should complement America's strength, particularly in the service sector and e-commerce, without imposing disadvantage on the other sectors of the economy.

So, I look forward to our witnesses' testimony.

With that, the ranking member is recognized.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for convening today's hearing, and I want to thank all of our witnesses today on both panels for testifying before us on this important issue.

I strongly support U.S. participation in international trade, not only because it can help U.S. businesses and our economy to grow,

but also because it allows us to develop and strengthen global partnerships.

However, in my view, it is also very important that all countries, including the United States, abide by international human rights, labor rights and environmental standards.

I define responsible trade policy as that which both benefits American businesses and at the same time American workers, and protects and promotes the rights of workers and key environmental standards.

Since President Bush took office, this country has lost 2.7 million private sector jobs. NAFTA has already cost more than 1 million American and Canadian jobs, and I for one will not support future trade policies that threaten to put more American workers on the unemployment roles.

U.S. trade policy should include negotiating objectives and requirements that place equal emphasis on international labor standards, protecting the interests of American workers, and sound environmental stewardship, as we do on potential economic returns.

Although the U.S.-Singapore and U.S.-Chile trade agreements offer many opportunities, they also present some significant problem areas, which must be addressed if they are to yield broadly shared benefits to the United States and those countries.

For example, the AFL-CIO has pointed out that although Chile has ratified all eight core international labor organization conventions, large sectors of the Chilean workforce, including sectors producing the bulk of Chile's exports to the United States, still are not able to fully enjoy their rights as workers.

The Singapore agreement, I am told, may allow for transshipment to occur. In addition, there is a potential loophole that will allow for goods produced elsewhere, specifically, in Indonesia where there are widespread abuses of labor rights, to be treated as Singaporean goods, even if they never go to Singapore. We cannot afford to overlook these practices.

The President's trade agreements will be met with serious congressional opposition if they include such inadequate protections for poor workers and human rights.

The investment provisions in the Chile and Singapore agreements replicate many of the problems in NAFTA's Chapter 11, providing greater rights to private foreign investors than are available under U.S. law, allowing them to challenge public interest and environmental protection, public health, Buy America laws, workplace safety, et cetera.

With the Central American Free Trade Agreement, CAFTA, currently in the negotiation process, the United States must be firm on its stance on human rights, labor rights and the environment. Many of the cuontries in that region have well documented continuing problems with basic rights and the rule of law. Workers are routinely denied their rights in El Salvador, Nicaragua and Honduras, and Guatemala, they actually risk their lives when they try to organize or improve abysmal working conditions.

One recent example, in fact, is the fact that the verdict in the Myrna Mack trial was overturned this week. Myrna Mack was murdered for her efforts to end human rights abuses in Guatemala

and many of us were shocked to learn that this kind of impunity still exists in that country.

We cannot grant enhanced trade benefits to the region until laws that guarantee internationally recognized worker rights are passed and enforced. If the weak labor rights provisions of the Chile and Singapore agreements are replicated in CAFTA, this will cause grave problems and concerns from many Members of the Congress.

I am hoping that we can address some of these issues that I have raised today. I am proud the subcommittee is asserting its jurisdiction over trade issues, and I think we need to carefully consider all facets of trade policy. I'm eager to hear from all of our witnesses today, and I look forward to working toward a solution that will not only spur our economy, but will also protect the rights of workers and our environment.

Thank you, Mr. Chairman.

Mr. STEARNS. And, I thank the gentlewoman from Illinois.

The distinguished chairman of the Subcommittee on Telecommunications and the Internet, the gentleman from Michigan, Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman.

As you know, I have a long record in support of free trade, but I want to make the record clear that as we look at these two agreements I will be looking very closely at the impact of the agreements to ensure that U.S. businesses do not become at a competitive disadvantage.

Now, I have two areas of concern as we look at these two agreements before we get to a vote, one as the chairman of the Subcommittee on Telecommunications and the Internet I'm concerned about the relationship between domestic and international communications policy. I want to make sure that domestic telecommunications policy still has the wiggle room to allow for a stronger trade agreement. And also, with regard to the Chilean agreement, I want to make sure that the impact on agriculture, and particularly the specialty crops like asparagus, are treated fairly under the agreements, and I will look forward to the question period and yield back the balance of my time.

Mr. STEARNS. I thank my colleague.

The gentleman, in order of arriving, Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I briefly wanted to say I look forward to hearing the testimony of the witnesses. Referring to the merits of these individual agreements, I'm familiar that both of these agreements have considerable merit, and I think that the ranking member has raised some worthy questions, and I'm hopeful there will be adequate answers to those.

I also look forward to hearing what the administration's position is on the timing on the Chile agreement. I'm increasingly alarmed about the delay. I'd like to know whether the delay is tied into a view within the administration related to the Iraq issue, and if so, I'd like to hear the argument in support of that position, and when, in fact, the delay will come to an end.

I think these trade agreements are more important instruments as to both foreign policy and economic policy than ever before after

the Iraqi situation, even though it still continues, and I look forward to hearing the testimony on these points.

Thank you, Mr. Chairman.

Mr. STEARNS. Thank the gentleman.

The gentleman from Nebraska, Mr. Terry, waives.

Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, and the ranking member, for holding this hearing on the Chile and Singapore Free Trade Agreements. These agreements have implications that would reach far beyond these two countries. For one, these are the first significant trade agreements negotiated by the President under the Fast Track negotiating authority. The Singapore Free Trade Agreement is first among Southeast Asian nations, while Chile is the United States' first free trade partner in South America.

Additionally, the approval of these two agreements will set certain precedents and serve as a model for future trade agreements in these regions. While I'm encouraged that these trade agreements increase market access to these countries for U.S. goods, I remain skeptical about the effects of these agreements on the U.S. labor force, and have serious concerns regarding some of the labor provisions in these agreements, particularly, the integrated sourcing initiative in the Singapore agreement. This agreement would allow electronics components produced on two Indonesian islands to be considered Singaporean content for trade purposes. However, at the same time these products are enjoying all the benefits of the U.S. Free Trade Agreement with Singapore, the Indonesian production facilities would have no obligation to comply with the agreement's labor standards.

Also, the U.S. goods are not awarded any reciprocal market access to Indonesia. Not only will these provisions encourage offshore export production to the U.S., it could essentially facilitate the proliferation of some of our problems we have with sweat shops on islands.

Furthermore, the agreement in no way limits the extension of this initiative to other territories, and thus sets a dangerous precedent for future free trade agreements to follow.

I am also concerned about the immigration provisions in these agreements that create the potential for the U.S. labor market to be crowded by an influx of foreign workers, without any authority from the law granting the Administration's Fast Track trading authority. The U.S. Trade Rep created a new visa category that would allow U.S. companies to employ foreign workers, even without a domestic labor shortage.

Mr. Chairman, almost 9 million Americans are currently out of work, and I find in unreasonable for the U.S. Trade Representative to negotiate these special privileges for foreign workers, when we already have the skilled labor right here in the United States who need jobs. And, I know that's a separate issue. Under HIB visas we have exceptions for high-skilled workers, but I also understand there's going to be a reduction in that.

Without the authority to amend Trade Agreements, our hands in Congress are tied, and, therefore, I thank the chairman and ranking member for the opportunity to give these two agreements a full examination.

Mr. STEARNS. I thank the gentleman.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I would not speak but I do want the administration to hear a couple comments about trade.

I have always been a strong supporter of trade, and based upon, in Illinois, on the great benefits we receive from the agricultural sector, major companies like Motorola, or Caterpillar, or Deere, the finance and banking industry, and the service sector, but I'm becoming a skeptic as far as the manufacturing sector has been involved, and I'm pleased with what the administration did on the Section 201 filing on steel. And, as it comes up for review, I want to encourage them to be as vigilant as they were in the past as we relook.

You will hear both sides of the aisle talk about free and fair trade. That is a great model to use, and I think if we, as a Nation, push the fairness aspect we will win this debate and everybody will benefit.

How do you get fairness? You have to rapidly lower tariffs, rapidly lower tariffs. You have to ensure market access, and you have to make sure there's a prohibition against illegal subsidization. And, I think in the manufacturing arena that's not occurring, and as long as that doesn't occur, as long as we don't enforce that, we're going to lose a lot of this debate on the other benefits of trade.

I'm aghast at how long the international dispute resolution takes place, how long the process internationally takes to resolve conflict and get to some—because what happens is, companies fold up. By the time we get a dispute resolution through the process, we have already lost the jobs, the factories have already closed.

From a free trader, these should be sending some sorry signals to the administration on how strong they need to be, hopefully, more in a unilateral negotiation where we get country on country agreeing, so that we can get outside the international aspects, because I just personally think this takes too long to resolve conflict.

So, send a message back, if you all need to come talk to me, please come to my office. These comments you should not be hearing from someone who is a strong supporter of trade, and I think the manufacturing sector in this country is at great risk, and I yield back my time.

Mr. STEARNS. Thank the gentleman.

The gentleman from Massachusetts is recognized.

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

I'm just going to raise two points here in my opening statement, and then refer back to them during the question and answer period.

The first subject I'm going to raise is with regard to the government of Singapore, in that the controlling owner of Singapore Technologies is the government of Singapore, and that Singapore Technologies has proposed purchasing 61.5 percent of the remains of Global Crossing for $250 million. My concern is that we may end up with a situation where U.S. companies, which are not controlled by the government, and are having to compete with companies by their own government, Singapore. That is not fair trade, because the foreign competitor is both the owner and the regulator of the

same company. We don't like that in the United States, we don't like government-owned companies, and we don't like it when it's overseas, especially when they purchase an American company.

So, I am going to make the point that our government has to intervene in this Global Crossing acquisition to ensure that the government controlled purchaser's share is not a controlling interest, and that U.S. companies be allowed to bid for the shares not held by Singapore Technologies or by Global Crossing.

The second point that I'm going to make in the question and answer period goes to China, and the precedent which it sets in terms of how it handled the SARS crisis. In November of 2002, what seemed to be the first cases of SARS in the Guangdong Province of China went unreported by the State-run media organizations. These media, although it's ready to print, but they were stopped by Chinese officials, worried that a public health scare would cause people to stay home instead of spending money during the Chinese New Year, adversely affecting its economy.

By early February this year, five people had died due to SARS, and at least 300 people were infected. On February 21, a doctor staying in a Hong Kong hotel spread the infection to other guests on his floor and died of the disease on March 4.

In March, senior Chinese officials maintained that SARS was under control and China was open to and safe for travelers. On March 12, WHO officials issued a global alert about SARS warning travelers to be careful, and on April 4 WHO cautioned against nonessential travel to Hong Kong and Guangdong.

As late as April 28, China removed SARS patients from a Beijing hospital hiding them from doctors and officials with the World Health Organization, who were repeatedly not granted access to hospitals and other affected areas.

Today, China has almost 5,000 cases, 18,000 people are quarantined, and there is a 15 percent fatality rate. The world community outside China has suffered from 3,000 SARS cases and nearly 250 deaths now in 30 countries. Without a doubt, the Chinese government's continued coverup has badly damaged its own economy, the Asian economy, but also the global economy. Travel advisories have now been issued for Hong Kong and Guangdong Province in China, and for Toronto, Canada as well.

I'm sending a letter today, Mr. Chairman, to President Bush, and what I'm saying to him is that I urge you to direct the United States Trade Representative at the next World Trade Organization Roundtable in September in Cancun, Mexico, to raise the issue of China's dangerous departure from well-understood public health procedures as a cause of concern among its WTO trading partners and to urge that the WTO make adherence to World Health Organization guidelines a condition of continuing membership in the World Trade Organization.

We cannot have global trade without also abiding by healthcare standards which ensure that the open trading and travel of citizens of the globe is accompanied by a well-understood adherence to those standards, and I'm going to be pressing on these witnesses the importance for the President to take that stand, and I yield back the balance of my time.

Mr. STEARNS. Thank the gentleman.

The gentleman from New Hampshire is recognized.

Mr. BASS. Thank you, Mr. Chairman, and I appreciate your efforts in making this hearing possible to discuss trade between the U.S., Chile and Singapore. And, I'm also glad that this subcommittee is setting or continuing to set a place in its important role in determining trade policy and reviewing these two agreements that will soon be before the Congress.

Since 1997, total exports to just these two countries from my home State of New Hampshire have totaled over a third of a billion dollars, and for the entire New England region that total grows to more than $6 billion. Almost half of these totals were export coded as computers and electronic products, which is directly relative to this hearing today. In addition, New Hampshire and New England account for an important share of this country's software development and servicing, and we are home to a large number of financial, medical, research, telecommunications and other service firms that will benefit from open trade and precedent setting e-commerce specific provisions in these agreements.

Free people of the world prosper when goods and ideas flow without restriction across borders and oceans, when these goods and ideas are digitally manifested barriers have even fewer justifications than for physical products or services. Yet, important property protections and other international covenants need strengthening, and I believe these FTAs are a good first step and the Trade Representative should be commended for his work.

I'm looking forward to hearing from these witnesses, and I yield back my time, Mr. Chairman.

Mr. STEARNS. Thank the gentleman.

Mr. Brown from Ohio is recognized.

Mr. BROWN. Thank you, Chairman, very much for holding this hearing and engaging this subcommittee on international trade issues.

I have been known to be tough on free trade agreements. I opposed granting the President Fast Track authority, which because of its unpopularity was euphemistically rephrased Trade Promotion authority, but I like the Jordan Free Trade Agreement, and where that agreement represented a step forward in trade policy Singapore and Chile represent a devolution to the failed policies of the North American Free Trade Agreement. We would need several days of hearings to describe the damage that NAFTA has done to Canada, the United States, and to Mexico, but today we are here to discuss Singapore and Chile.

The labor provision in both agreements are completely and intentionally unenforceable. Violations of core labor standards can't be taken to dispute resolution. The commitment to enforce domestic labor laws is subject to remedies weaker than those available for commercial disputes. This violates the negotiating objective of Fast Track that equivalent remedies should exist for all parts of an agreement.

The Singapore agreement also allows for the creation of sweat shops in the Indonesian islands of Bintan and Batam through a program called Integrated Sourcing Initiative. This allows electronic components from these islands to be counted as Singaporean under the agreement. Yet, the islands are not subject to even the

weak labor and environmental standards of the agreement. That gaping loophole benefits companies surely looking to exploit workers.

Proponents of ISI argue that it will prevent terrorism, using 9/11 to accomplish unrelated political goals is to be sure not new around here, but it's hard to see how running low-wage sweat shops will secure peace for the United States.

The administration has taken that tact before, following 9/11 the Trade Representative's office touted Fast Track, then Trade Promotion authority, is necessary against the war on terrorism. Liberalization of global markets and free trade would increase U.S. security and stabilize the world, Mr. Zoellick and others told us.

But now, the Chile agreement is being held up because their government failed to sign up for our war in Iraq. The Administration actually believed that global security was on the line, shouldn't they be acting on all these agreements as quickly as possible.

So often free trade proponents reduce the debate to a choice between free trade and no trade, calling us luddites and protectionists and all, and framing the debate around the priorities adversely affected by irresponsible trade policy, labor protections, the environment, the economy. This isn't a debate on whether one supports trade, almost all of us up here supported the Jordan Free Trade Agreement, it's a debate on whether one supports responsible trade policy. Is the goal to secure a greater prosperity for as many individuals as possible, or is the goal to secure more wealth for those who already have much.

As we consider Singapore, I think of a quote from Gandhi where he said, "Whenever you are in doubt or when the self becomes too much for you, apply the following test: recall the face of the poorest and the weakest man whom you may have seen and ask yourself if this step you contemplate is going to be of any use to him." Call me a skeptic, but I have a feeling that our corporate Commander in Chief and his USTR negotiators are recalling the faces of the wealthiest men they have seen and contemplating how they can exploit poorer countries in ways that will be of use mostly to themselves.

I yield back, Mr. Chairman.

Mr. STEARNS. Thank the gentleman.

Mr. Shadegg.

Mr. SHADEGG. I want to thank you for holding this important hearing. I look forward to hearing the testimony of the witnesses, and I will waive any further opening statement.

Mr. STEARNS. Thank you.

The gentlelady from California.

Ms. SOLIS. Thank you, Mr. Chairman, and thank you for calling this important hearing today.

The trade agreements that we will discuss are going to be very important to, not only this country, but the messages that we will send across the country to the world.

I also want to thank the witnesses for being here and for, hopefully, listening to their incite that they will provide us.

I just want to make clear that I am not an opponent of free trade. Trade with other countries can, in some instances, yield enormous benefits for working families in the United States and

across the globe. But, in my opinion, they should be fair trade, it should be fair trade, and our trade agreements must include environmental, labor and consumer protections.

And, I'm very concerned that the Chile and Singapore Trade Agreements fail in that regard, and I'm particularly concerned that the investment rules included in the Singapore and Chile agreements will have a chilling effect on the U.S. laws and regulations that protect the rights of consumers and workers and a lack thereof preservation of our environment.

And, we should also question the impact that these agreements will have on our ever-growing trade deficit. Let's not forget that none of the Free Trade Agreements that the U.S. has signed to date has yielded an improved bilateral trade balance. Proponents of NAFTA claimed that the agreement would create prosperity in Mexico and increase access to American consumers. Nine years later, our trade deficit with Mexico and Canada has ballooned from $9 billion to $87 billion.

I simply make these points to urge caution as we proceed forward with Chile and Singapore, these agreements and others, and hope that we can become better stewards in this whole area so that protections are provided for those individuals abroad as well as here at home, to protect the safety of those individuals there, but also here in our situation because of our increasing concern with the economy here in the United States, particularly, in a district like mine where we have had several negative impacts, in my opinion, job loss, particularly in manufacturing, because of previous trade agreements.

So, with that, I yield back the balance of my time, Mr. Chairman.

Mr. STEARNS. Thank the gentlelady.

Mr. Otter, the gentleman from Idaho.

Mr. OTTER. Thank you, Mr. Chairman, and I thank you for the opportunity to examine the potential impact and the necessity of these free trade agreements.

I am both pleased and concerned with the functioning of our current trade agreements. In the words of Patrick Henry, "I have but one light to guide my path into the future, and that is by the lamp of experience." And so far, I think my experience with some of the trade agreements that we have and have not enforced has not been very good.

As a proponent of free trade, I am pleased by the continued efforts, however, to open the markets, allowing Americans to sell their goods and products overseas, has long been a key principle of our foreign policy and is one that I support. Unfortunately, while it is based on the right principles, many of our free trade agreements have fallen short of their goals and their promise, because they failed to promote free and fair trade and are not fully enforced.

For example, the Hinex Corporation has been bailed out several times in South Korea over the last few years to the tune of well over $16 billion, and most recently as of December of 2002. These forced debt for equity swaps, in an unprofitable business, violate international trade rules, harm investors and threaten the jobs of workers in competing companies, including one Micron Technology in Boise, Idaho.

I have repeatedly raised my objections to these bailouts with the South Korean government, with the U.S. Department of State, the U.S. Trade Representative's office, and on the floor of the House. Recently, the Department of Commerce issued a preliminary finding which determined, in fact, that the importation of Hinex dynamic ram access memory chips were unfairly subsidized by the government of South Korea, and while I commend the Department for their persistence in this matter I maintain my expectation that the level of the Department's assessment of countervailing duties in this case due in June will reflect an adequate penalty for the violation of this free trade agreement and, perhaps, bring back some of the well over 1,500 jobs that have already been lost in the facility that I mentioned earlier.

We must send a stern message that the United States will protect its citizens from unfair dumping of below market price goods. I support free trade, but I will only support new trade agreements if we maintain an effort to enforce the existing ones. Only enforcement can ensure trade is fair, open and free of injurious subsidies.

When our trading partners fail to abide by these principles, we must be able to defend ourself, and we must count on our government to offer that defense. Americans need to know that the Federal Government is working for them, not against them. You need them to ensure that the Administration insists on full enforcement of our current trade agreements before we expand into new agreements.

I look to the Department of Commerce to continue these efforts, and I thank the Chairman for his leadership, and I look forward to the remarks by the panel.

Thank you, Mr. Chairman, I yield back.

Mr. STEARNS. Thank the gentleman.

The gentleman from Ohio, Mr. Strickland.

Mr. STRICKLAND. Mr. Chairman, I'd like to reserve my time for the questioning.

Mr. STEARNS. Okay, thank you. The gentleman's time is reserved.

Mr. Ferguson.

Mr. FERGUSON. Mr. Chairman, I'd like to reserve my time for questioning as well, but I'd ask consent that I have my opening statement entered in the record.

Mr. STEARNS. By unanimous consent so ordered, and, in fact, anybody who wants to offer an opening statement.

I call on the ranking member, did you want to——

Ms. SCHAKOWSKY. Yes, I just wanted to make a unanimous consent for all members to be able to put their statements in the record.

Mr. STEARNS. So ordered.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Thank you, Mr. Chairman, for holding this timely hearing.

I would also like to thank the distinguished panels of witnesses here today. Your insight into these Free Trade Agreements will be of considerable interest as we navigate these newly charted waters.

I am pleased to see such steadfast work on trade negotiations after Congress worked so diligently on the Trade Act of 2002. The decision to grant President Bush Trade Promotion Authority was one that fostered considerable debate. An important result of that debate is the continued involvement of Congress in trade negotiations.

The Trade Act of 2002 expanded and improved the consultation process between the Administration and Congress before, during, and after trade negotiations and obligates the U.S. Trade Representative to enter into discussions with the House and Senate before it can reach any trade agreement. The Chairman's leadership today is to be commended as he has given us the opportunity to do just that.

While today's hearing targets trade in services and e-commerce, I think it is noteworthy to briefly address overall aspects of trade policy, particularly pertaining to my home state of Wyoming. The president's ability to take steps more rapidly than ever before is invigorating to businesses across the country; the Wyoming Business Council's International Trade Conference, being held next week, is evidence of this as it seeks to educate Wyoming business people about growth opportunities as new markets are opened. While open markets can be extremely valuable in this way, it is important to note their potential danger for such sectors as our agriculture producers.

Wyoming has numerous, superior products like trona, wool, oil, beef, sugar beets, coal, lamb, natural gas, timber and barley. There is no question the quality of our products can compete head-to-head with foreign producers anywhere in the world. That can only be done, however, if our producers are not put at a competitive disadvantage, as they are currently, when selling their goods abroad.

The U.S.-Singapore Free Trade Agreement paves the way for further progress in the free trade arena. I look forward to learning more about this and the potential Chile Free Trade Agreement and thank the panelists for lending their expertise to the dialogue today.

Thank you, Mr. Chairman and I yield back the remainder of my time.

PREPARED STATEMENT OF HON. MIKE FERGUSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

I would like to thank the Chairman for holding this important hearing and the panelists for joining us today to discuss these landmark trade agreements.

The Singapore and Chile Free Trade Agreements represent landmark opportunities for the United States to broaden its trade partnerships and strengthen our nation's economic condition.

When Congress passed Trade Promotion Authority last year, it granted the president the ability to negotiate trade agreements that knock down high tariffs and other trade barriers that stifle the free movement of goods. Expanding free trade will boost our nation's economy by giving American workers and small businesses broad access to new markets.

International trade is critical to my home state of New Jersey's economy and its workers. Since 1993, New Jersey's exports doubled to $29 billion last year, ranking the state 8th in the nation in total exports. Today, one in seven New Jersey manufacturing jobs are directly tied to exports—and those jobs pay 13 to18 percent higher wages than the national average.

Singapore and Chile are two important trade allies for the United States. Currently, Singapore is the largest trading partner of the United States in Southeast Asia with two-way trade of $32.0 billion. Approximately 1,600 U.S. companies and 20,000 American citizens are located in Singapore, and the country is our nation's 11th largest export market.

Due to its political and economic stability, Chile is a prime candidate to be the first free trade partner of the U.S. in South America. Many U.S. businesses see Chile as fertile ground for future trade but have pointed to high tariffs when doing business in Chile as detriments to further involvement in trade with that nation. Many U.S. companies also cite that they are at a competitive disadvantage when competing in Chile with countries, such as Canada, that already have free trade arrangements with that nation.

Congress must continue to maintain strict oversight on the Singapore and Chile Free Trade Agreements, as well as future trade agreements to ensure that American workers and companies receive the strongest possible advantages. In addition, we must continue to strictly monitor our trade partners so that they maintain vital worker protection and environmental standards.

These agreements are going to be heavily scrutinized and will be looked upon at as models for future trade pacts. The Singapore agreement is will be considered the starting point for agreements with other Southeast Asian nations, and the Chile

agreement will be turned to for bi-lateral agreements with other South American nations, as well as the FTAA and Central American Free Trade Agreement (CAFTA).

These two trade agreements that we will discuss today will be very important to the future economic health of our nation. Thank you again, Mr. Chairman for your continued diligence towards these and other trade matters. I look forward to hearing from the witnesses today.

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Good morning. Thank you Mr. Chairman for holding this hearing to evaluate an area that will significantly impact our domestic economy as well as our global outlook. International trade and free trade agreements are currently vital tools in providing new opportunities for our domestic companies as well as shaping our international business and foreign policy. I believe that it is extremely important that the Subcommittee expand the scope of international trade matters that it evaluates. Therefore, I am very pleased that the Subcommittee is holding this hearing today.

Securing greater market access and ease of entry into new markets will greatly enhance the ability of our domestic industries to expand and prosper. The pending free trade agreements with Singapore and Chile provide substantial new opportunities for sale of goods and services to two new consumer markets.

Last year, Congress passed Trade Promotion Authority. TPA is important because it provides an effective means for us to consider and evaluate free trade agreements with other nations. It established a Congressional Oversight Group, and requires the United States Trade Representative to consult with this group on trade agreements. As part of the Congressional Oversight Group, the Energy and Commerce Committee has an important role to play in the implementation of new trade agreements. With jurisdiction over foreign commerce, the Committee will provide oversight and guidance over a significant range of matters contained in these agreements.

We should carefully evaluate these agreements to ensure that they provide the best opportunities for U.S. companies looking to expand into new markets. We should also ensure that our domestic industries will not be injured or threatened by foreign firms entering our markets. Another reason to carefully scrutinize these agreements is because they are with the first country in each of their regions to enter into a comprehensive free trade agreement with the U.S and will very likely serve as the model for future free trade agreements with other Southeast Asian and South American nations.

Both agreements will provide open market access for U.S. companies in key arenas. They will also make sure that U.S. companies going into either of these countries receive the same treatment as the domestic firms of the country. In Singapore, the aspects of the agreement that deal with the services sector are key, because goods currently have relative ease of entry. The equal market access of the services sector is therefore an important gain for us. Some of the service sectors that will benefit are banking, insurance, financial and professional services. The telecommunications and e-commerce sectors will also benefit by receiving non-discriminatory access to facilities, including submarine cable landing stations. Local firms will no longer have right of first access, thereby providing a level playing field for both domestic and foreign firms.

The agreements provide for transparency and non-discrimination for U.S. providers. The result will be new market opportunities for our companies seeking to expand abroad. Going into these new markets will let domestic firms grow and expand their business where they might not have the opportunity domestically.

Another factor to consider is each of these individual countries. It is my understanding that these countries were chosen as the first in their region due to their stable economies and willingness to cooperate with the U.S. on establishing mutually beneficial free trade policies. Indications are that U.S. businesses view each of these markets as prime in which to enter right now.

After a return to a democratic government in 1990, Chile is developing into an open, reformed and developed economy. Since its transition from a state economy to a privatized economy, Chile has shown its willingness to implement market-based principles in every industry sector. In addition to providing additional growth opportunities for our domestic companies, we should also be encouraging free trade with countries who are committed to developing a system of free enterprise. U.S. trade with Chile is currently not of significant proportions. This agreement will be a step toward increasing that trading relationship. Chile and Canada entered into a free

trade agreement in 1997, and since then, trade between the two countries has increased at a rate almost 4 times the rate of increase between Chile and the U.S.

Singapore is also considered to be an open economy committed to market based principles. Prior to entry into the free trade agreement, it has relatively low trade barriers, and has permitted access to U.S. companies and therefore, is an economy we should assist in developing, as it would result in a direct trading benefit to our own economy. The key, of course, is benefit to our domestic industries. During an economic time when U.S. companies may be exploring new markets, these agreements will provide them with an entirely new consumer base for their products and services.

I welcome our distinguished panel of speakers and look forward to their testimony today, and I yield back the balance of my time.

Mr. STEARNS. Now, we will move to our panel. We have Mr. Ralph Ives, Assistant U.S. Trade Representative for Asian, Pacific and APEC Affairs, Office of the United States Trade Representative; Ms. Regina Vargo, Assistant U.S. Trade Representative for Americas, Office of the United States Trade Representative; Ms. Michelle O'Neill, Deputy Assistant Secretary for Information Technology Industry, United States Department of Commerce.

You have heard our opening statements, so I think you have your work cut out for you, so we will let you start with your opening statement.

Mr. Ives, we will start with you. We need you to turn your mike on, by unanimous consent so ordered, and I think all of you know we are limiting you to 5 minutes, and we have a little bit of thing right in front of you that should light up, I think.

STATEMENTS OF RALPH F. IVES III, ASSISTANT U.S. TRADE REPRESENTATIVE FOR ASIAN, PACIFIC AND APEC AFFAIRS, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE; ACCOMPANIED BY REGINA K. VARGO, ASSISTANT U.S. TRADE REPRESENTATIVE FOR AMERICAS, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE; AND MICHELLE O'NEILL, DEPUTY ASSISTANT SECRETARY FOR INFORMATION TECHNOLOGY INDUSTRY, UNITED STATES DEPARTMENT OF COMMERCE

Mr. IVES. I'm sure I will not use the full time.

Thank you, Mr. Chairman, thank you, Congresswoman Schakowsky and members of this subcommittee, for inviting me to testify today on the U.S.-Singapore Free Trade Agreement, and this subcommittee's guidance during the negotiating process.

I welcome this opportunity to review the FTA and present the Administration's request to a favorable consideration of legislation needed to implement this FTA later this year.

The U.S.-Singapore FTA reflects a bipartisan effort to include a trade agreement with a substantial and important trading partner. The FTA was launched under the Clinton Administration in November, 2000, concluded under the Bush Administration, and signed by President Bush and Singaporean President Goh on May 6, 2003.

The U.S.-Singapore FTA will enhance further an already strong and thriving commercial relationship. Singapore was our 12th largest trading partner last year, a two-way trade of goods and services exceeding $40 billion, and U.S. investment in Singapore of approximately $27 billion.

The comprehensive U.S.-Singapore FTA is the first free trade agreement President Bush has signed with any country and our first with an Asian nation. It can serve as the foundation for other possible FTAs in Southeast Asia, as President Bush envisaged under his enterprise, the ASEAN Initiative.

Let me summarize some of the highlights of the U.S.-Singapore FTA, which is comprehensive in scope, covering the full range of areas, in a substantive FTA.

Under this FTA, Singapore will provide substantial access to all types of services, treat U.S. service suppliers as well as it treats its own, and ensure we receive the best treatment that other foreign suppliers receive.

The FTA uses an approach that ensures the broadest possible trade liberalization. The U.S.-Singapore FTA also provides important protection for U.S. investors by ensuring a secure and predictable legal framework. The FTA's provisions on the protection of intellectual property rights provides strong protection for new and emerging technologies, and reflects standards of protection similar to those in U.S. laws.

Enhanced transparency is another important feature of this FTA, in the form of a separate chapter on transparency, and in specific provisions in a number of other chapters.

The chapter on electronic commerce breaks new ground in its treatment of digital products. For example, establishing for the first time explicit guarantees that the principle of non-discrimination applies to products delivered electronically.

Similarly, the telecommunications chapter covers the full range of telecommunications issues, while recognizing the U.S. and Singapore's respective right to regulate these sectors.

The FTA contains a number of provisions to ensure that the United States and Singapore are the actual beneficiaries of the agreement. For example, the FTA contains obligations on how customs procedures are to be conducted to help combat illegal transshipments.

The FTA addresses the sensitive areas of labor and the environment in a way that is consistent with congressional objectives as stated in the Trade Act of 2002.

Finally, the dispute settlement provisions of the FTA encourage resolution of disputes in a cooperative manner, and provide an effective mechanism should such an approach not be successful.

This FTA demands widespread support in our private sector. Thirty of the 31 advisory committees reported favorably on this FTA.

Again, the Administration looks forward to working with this subcommittee and the full Congress in enacting legislation necessary to implement the agreement. We hope we can count on your support and, Mr. Chairman, I'd be pleased to respond to any questions.

Thank you.

[The prepared statement of Ralph F. Ives III follows:]

PREPARED STATEMENT OF RALPH F. IVES, III, ASSISTANT U.S. TRADE REPRESENTATIVE FOR ASIA, THE PACIFIC AND APEC

INTRODUCTION

Thank you Mr. Chairman, Congresswoman Schakowsky, and Members of this Committee, for inviting me to testify today on the U.S.-Singapore Free Trade Agreement (FTA) and for this Subcommittee's guidance during the negotiating process. 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.

The U.S.-Singapore FTA reflects a bipartisan effort to conclude a trade agreement with a substantial and important trading partner. The FTA was launched under the Clinton Administration in November 2000, concluded under the Bush Administration and signed by President Bush and Singaporean Prime Minister Goh on May 6, 2003.

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.

SUMMARY OF THE U.S.-SINGAPORE FTA

Let me summarize some of the highlights of the U.S.-Singapore FTA.

The United States already enjoys duty-free access for almost all products entering Singapore's market. The FTA ensures that Singapore cannot increase its duties on any U.S. product. For Singapore products entering the U.S. market, duties are phased-out at different stages, with the least sensitive products entering duty-free upon entry into force of the FTA and tariffs on the most sensitive products phased-out over a ten-year period.

Services are a major segment of the U.S. economy. Under the FTA, Singapore will provide substantial access for all types of services—subject to a few exceptions—and treat U.S. services suppliers as well as it treats its own suppliers. Singapore will also ensure that we receive the best treatment that other foreign suppliers receive. Singapore's services market access commitments include: financial services, such as banking and insurance; construction and engineering; computer and related services; telecommunications services; tourism; professional services, such as architects, accountants and lawyers; express delivery; and energy services. In many of these areas Singapore agreed to bind its market access commitments at levels that provide substantially better access than that which it currently offers to other WTO Members. In the telecom sector, for example, Singapore's WTO commitment includes a closed list of services and only three basic telecom operators. Under the FTA, the scope of services, and number of operators is unlimited. Singapore has also agreed to liberalize express delivery services and other related services that are part of an integrated express delivery system and will not allow its postal services to cross-subsidize express letters.

In a move that U.S. services industries strongly support, the FTA takes a different approach to making services commitments than the WTO GATS Agreement. The FTA uses a "negative list" approach. While a country's commitments under the GATS Agreement are limited to those sectors listed in that country's schedule, under the FTA, unless Singapore expressly includes a limitation on a particular service, U.S. suppliers will be allowed to provide that service. This approach ensures the broadest possible trade liberalization.

The U.S.-Singapore FTA also provides important protection for U.S. investors. U.S. foreign direct investment in Singapore as of 2001 was over $27 billion. The Agreement ensures a secure and predictable legal framework for such investment. U.S. investors will be treated as well as Singaporean investors or any other foreign investor. The investment provisions draw from U.S. legal principles and practices, including due process and transparency. These investor rights are backed by effective and impartial procedures for dispute settlement. At the same time, Singaporean investors are not accorded greater rights than U.S. investors in the United States.

The FTA is innovative and state-of-the-art in a number of other ways, including its protection of intellectual property rights (IPR) which builds upon the WTO's Agreement on Trade-related Intellectual Property Rights, provides strong protection for new and emerging technologies and reflects standards of protection similar to those in U.S. laws. For example, this FTA specifically requires that plant and animal inventions be patentable and contains obligations which address the growing concerns of piracy on the Internet embodied in the United States by the provisions of the Digital Millennium Copyright Act. The FTA also requires the Parties to extend the minimum term of copyright protection from 50 to 70 years. In the patent area, the FTA requires the Parties to extend the patent term for any loss of protection due to regulatory delays and ensures that a patent can only be revoked on the grounds that would have justified its refusal. In addition, the FTA protects confidential test data against unfair use for five years for pharmaceuticals and ten years for agri-chemicals. This chapter also contains IPR enforcement provisions that are significantly stronger than those contained in the TRIPS Agreement, thereby enhancing the ability of U.S. IPR owners to protect their rights in Singapore.

Enhanced transparency is another important feature of this FTA. An entire chapter is devoted to notice and comment procedures that are modeled on the U.S. Administrative Procedures Act. In addition, many of the other chapters contain specific provisions to ensure regulatory transparency—e.g., in the chapters on services, financial services, competition, government procurement, customs administration, investment, telecom, and dispute settlement.

Improved transparency can be an effective deterrent to combat corrupt business practices. In addition, the United States and Singapore expressly affirm in the FTA their strong commitments to effective measures against bribery and corruption in international business transactions.

The chapter on electronic commerce also breaks new ground. The FTA establishes for the first time explicit guarantees that the principle of non-discrimination applies to digital products delivered electronically (e.g., software, music, videos). This chapter also creates the first binding prohibition on customs duties being levied on digital products delivered electronically and where these products are stored on physical media (e.g., on a CD or DVD) duties are assessed on the value of media as opposed to the content. In addition, the chapter memorializes the principle of avoiding barriers that impede the use of electronic commerce.

Similarly, the telecommunications chapter achieves significant advances over the work undertaken in the WTO. The full range of telecommunication issues, i.e., reasonable and non-discriminatory access to networks, transparent rule making by an independent regulator, and adherence to the principles of deregulation and operator choice of technology—are addressed in a way that opens Singapore's market, while recognizing the U.S. and Singapore's respective right to regulate these sectors.

The competition chapter of the FTA is worth noting because we were faced with a somewhat unique situation in Singapore. Since Singapore's independence about four decades ago, the Government has invested in the private sector—through so-called government-linked companies (GLCs). While Singapore has welcomed foreign investment and treated it fairly, we wanted the FTA to contain certain protections for U.S. firms relating to sales to, and purchases from, these companies. In particular, we wanted to make sure that GLCs in which the Government of Singapore could have effective influence acted in accordance with commercial considerations; did not discriminate against U.S. goods, services and investments; and did not engage in anti-competitive practices. In addition, Singapore will enact laws that will proscribe anti-competitive business conduct and establish an authority to enforce such laws.

The U.S.-Singapore FTA addresses the sensitive areas of trade and labor and environment in a way that achieves Congressional objectives stated in the Trade Act of 2002. Singapore has agreed to consult on its laws in these areas and conduct cooperative activities. The FTA also commits both countries to enforce their respective labor and environment laws and recognizes that it is inappropriate to weaken or reduce such laws to encourage trade or investment.

The FTA contains a number of provisions to ensure that the United States and Singapore are the actual beneficiaries of the Agreement. First, the FTA uses strong

but simple rules of origin designed to ensure that it is U.S. and Singaporean goods that benefit from the FTA.

Second, the chapter on customs administration improves the exchange of information between the United States and Singapore, which is critical to modern risk management practices. The FTA also contains specific, concrete obligations on how customs procedures are to be conducted. Such procedures will help enable U.S. customs to combat illegal transshipments of goods, including on products violating the intellectual property rights provisions—such as pirated CDs.

Third, the textile and apparel chapter contains specific rules on monitoring Singapore's production and extensive anti-circumvention commitments—such as reporting, licensing, and announced factory checks. These provisions are designed to ensure that only Singaporean textiles and apparel receive tariff preferences.

Finally, the dispute settlement provisions of the FTA encourage resolution of disputes in a cooperative manner and provide an effective mechanism should such an approach not prove to be successful. If a Party is found to be in breach of the FTA, it will be asked to bring its offending measure into compliance. Failing that, the preferred remedy is trade-enhancing compensation. If compensation is not possible, the system allows the aggrieve Party to take other action without formal approval of a dispute settlement body. Provisions relating to payment of fines until a measure is brought into conformity with the Agreement are a new feature of the dispute settlement system. Other specific provisions relating to fines apply in the context of dispute involving a Party's failure to enforce its labor or environment laws.

FTA PROCESS

The U.S.-Singapore FTA is truly a bipartisan effort—begun under the Clinton Administration and concluded by Bush Administration. On May 6, President Bush signed this historic FTA.

The U.S.-Singapore FTA is the first agreement that will be implemented under the trade promotion authority (TPA) procedures set out in the Trade Act of 2002 (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 public 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 Singapore, and in December, the Congress and our advisors had access to the full draft of the FTA. At that time, USTR also posted a summary of the FTA on our public web site. On March 6, USTR posted the entire draft of the FTA on the USTR web site.

As with other Agreements, such as the 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 with the FTA achieves the objectives, policies and priorities set out in the Trade Act. Thirty of the 31 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.

A TEMPLATE FOR FUTURE AGREEMENTS IN THE REGION

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.

CONCLUSION

The U.S.-Singapore FTA is the most comprehensive and up-to-date trade agreement the United States has concluded. This FTA commands 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.

The Administration looks forward with working with the Congress in enacting the legislation necessary to implement the Agreement. We hope we can count on your support.

Thank you, Mr. Chairman. I would be pleased to respond to questions.

Mr. STEARNS. Thank you.

Ms. Vargo.

STATEMENT OF REGINA K. VARGO

Ms. VARGO. Thank you, Mr. Chairman.

Mr. STEARNS. You might just pull the mike a little closer to you.

Ms. VARGO. Thank you.

With permission, if you could enter my remarks into the record.

Mr. STEARNS. Unanimous consent, so ordered.

Ms. VARGO. Thank you.

Mr. Chairman, Congresswoman Schakowsky, and members of the subcommittee, I am honored to appear before you today to discuss the benefits of the U.S.-Chile Free Trade Agreement will offer American businesses, workers, farmers and consumers.

At the outset, I want to thank each of you and your staff for the suggestions and support you provided during the negotiation of this agreement.

The agreement, the result of long-term bipartisan efforts and an open transparent negotiating process, makes sound economic sense for the United States and Chile, and represents a win-win, state-of-the-art agreement for a modern economy.

Over the past 15 to 20 years, Chile has established a thriving democracy and an open economy built on trade. It is one of the world's fastest-growing economies and its sound economic policies are reflected in its investment grade capital market ratings unique in South America.

Last year, our bilateral trade stood at $6.4 billion, with $2.6 billion in U.S. exports. But, we can do better. Chile already has free trade agreements with Mexico, Canada, Mercosur, and since February the European Union. This has disadvantaged U.S. exporters.

The National Association of Manufacturers, for example, estimates the lack of an FTA with Chile is costing the United States at least $1 billion in lost exports annually.

An FTA with Chile will ensure that we enjoy market access, treatment, prices and protections, at least as good as our competitors. Consumers will benefit from lower prices and more choices.

The agreement will also spur progress in the free trade area of the Americas, and will send a positive signal throughout the world and, particularly, in the Western Hemisphere, that we will work in partnership with those who are committed to free markets.

The English version of the Chile agreement has been on the USTR website since April 3, and we continue with our internal work to produce an authentic Spanish language text. No decision has yet been made on the timing or venue for signing the Chile FTA. We were, of course, disappointed over Chile's stand at the U.N. on Iraq, but President Bush has said, "They are friends of ours, we have got an important free trade agreement with Chile that we are going to move forward with." That is what we are doing, when the agreement is ready to be signed, we will make final decisions on dates and logistics.

Let me just add that throughout the negotiations we conducted an extensive consultative process of public hearings and briefings and frequent consultations with congressional staff, private sector advisors and civil society groups, to develop positions and provide regular updates on progress in the negotiations.

Like the Singapore FTA, 30 of our 31 official advisory groups support the agreement.

I think the results of this process have yielded an exemplary agreement. I'd like to highlight four features that distinguish the U.S.-Chile FTA from the other 150 or so free trade agreements that other countries in the EU have concluded.

First, it's comprehensive. All growth will be duty and quota free within 12 years, with 87 percent of bilateral trade receiving immediate duty-free access.

Second, it promotes transparency. Transparency provisions, both in the transparency chapter and throughout the agreement, promote open, impartial procedures and underscore Chile's commitment to a rules-based global trading system.

Regulatory procedures require advanced notice, comment periods and publication of all regulations, similar to our own Administrative Procedures Act. There is an explicit provision that requires bribery in government procurement to be treated as a criminal offense, and dispute settlement provisions, both State to State and investor State, provide for open hearings, public release of submissions, and the opportunity for interested third parties to submit views, objectives that the United States has long sought in the WTO.

Third, the agreement is modern. Strengthen protection for intellectual property rights and investment, the broad scope of the services obligations, and new provisions on telecommunications, electronic commerce, express delivery and professional services, recognize the digital age and the emergency of new industry.

Finally, in keeping with TPA mandates, it uses an innovative approach that supports and promotes respect for the environment and worker rights, with enforceable obligations in the agreement subject to effective dispute settlement designed to encourage compliance.

Conclusion 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.

I want to thank you for this hearing today, and I'm happy to answer any questions you may have.

[The prepared statement of Regina K. Vargo follows:]

PREPARED STATEMENT OF REGINA K. VARGO, ASSISTANT U.S. TRADE REPRESENTATIVE FOR THE AMERICAS

Mr. Chairman, Congresswoman Schakowsky, and Members of the Subcommittee: I am honored to appear before you today to testify on the U.S.-Chile Free Trade Agreement (FTA). I also want to thank each of you and your staffs for the suggestions and support you have provided during the negotiations of the agreement.

SOUND ECONOMIC SENSE FOR THE UNITED STATES

I welcome the opportunity to discuss the U.S.-Chile FTA and to describe the benefits it will offer American businesses and consumers. The agreement, the result of a long-term bipartisan effort and an open, transparent negotiating process, makes sound economic sense for the United States and Chile and represents a win-win, state-of-the-art trade agreement for a modern economy.

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 thriving democracy, a thriving economy,

a free market society and an open economy built on trade. A U.S.-Chile FTA will help Chile continue its impressive record of growth and development. 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, 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. 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.

TIMING OF SIGNING

The Administration has not yet set a date for signing of the U.S.-Chile FTA. It should come as no surprise that people within the Administration and in Congress were disappointed with Chile's position on Iraq in the U.N. Security Council. But, as Secretary Powell said in his speech to the Council of the Americas last week, "That's behind us now." He went on to urge Chile and others to support U.S. reconstruction plans for Iraq. Ambassador Zoellick has said, "We feel we have a good agreement, we feel it's good for both countries, and I have no doubt that ultimately we'll proceed." At USTR, we are continuing to move forward with our preparations for signing and implementation. Ambassador Zoellick briefed the Congressional Oversight Group on April 11 on both the Singapore and the Chile FTAs. Both Ambassador Zoellick and I are consulting with others on the Hill on the Chile FTA and would welcome your views on the timing of signing.

There also are very important practical concerns we have with Chile that didn't exist with Singapore. The English and Spanish language texts of the U.S.-Chile FTA will be equally authentic. Chile needs to sign an official Spanish-language version of the text to submit to its congress. This is not a simple undertaking. We are working closely with our Chilean counterparts to obtain final Spanish language translations of all chapters in the agreement to allow the State Department to compare the Spanish and English texts, and to propose any modifications. Once we obtain the State Department's recommendations, we will need to agree on any changes with Chile before the Spanish language version of the text can be finalized.

RESULT OF A LONG-TERM BIPARTISAN EFFORT

The U.S.-Chile FTA is truly a bipartisan effort. Negotiations were launched under the Clinton Administration in December 2000. After fourteen rounds, negotiations were concluded under the Bush Administration in December 2002.

In fact, discussions about a bilateral free trade agreement have been going on much longer. As Ambassador Zoellick stated in his congressional notification last fall, "the origins of an agreement with Chile date back to the Administration of President George H.W. Bush, when the first discussions were held regarding a possible Chile FTA." In the mid-90's, the North American Free Trade Agreement (NAFTA) countries (the United States, Canada and Mexico) invited Chile to dock into the NAFTA. However, with the subsequent lapse of what was then known as "fast-track authority", docking didn't appear feasible. The United States and Chile instead initiated a Trade and Investment Framework Agreement (TIFA) to facilitate bilateral trade and investment liberalization and pave the way for a future FTA.

As a footnote, discussions about a U.S.-Chile bilateral trade agreement have been going on much longer than a decade. Chilean historians inform us that these discussions began in the 1800's when Chilean Ambassador Pangea was sent as a special emissary to the United States to propose a bilateral trade agreement to President Jackson. Unfortunately, President Jackson was not persuaded. Ambassador Pangea may have been a bit ahead of his time, but I think you all would agree the FTA with Chile has been in the works for a long time—and has truly enjoyed bipartisan support.

RESULT OF AN OPEN, TRANSPARENT PROCESS

The process of developing U.S. proposals and concluding the U.S.-Chile FTA was open and transparent. Even before Trade Promotion Authority was granted, the Office of the U.S. Trade Representative (USTR) held public briefings and consulted frequently with Congressional staff, private sector advisors, and civil society groups. We continued this process after the Trade Act of 2002 was enacted in August, meet-

ing with the Congressional Oversight Group, members and staff from interested Committees, and advisory groups, to develop positions and provide regular updates on results of negotiating rounds. We used technology to facilitate access to texts, providing draft texts to cleared advisors via a secure website in early January, and after the legal review, made the text available to the public on USTR's regular website on April 3. Open, transparent, consultative processes throughout the negotiations resulted in a greatly improved agreement.

SUMMARY—A WIN-WIN AGREEMENT

The U.S.-Chile FTA is a win-win, state-of-the-art trade agreement for a modern economy. USTR's website (www.ustr.gov) has a nine-page summary of the agreement as well as the English version of the texts. I will highlight the most salient points.

Four features distinguish the U.S.-Chile FTA from the other 150 or so FTAs that other countries and the EU have concluded:

1) It is comprehensive.
2) It promotes transparency.
3) It is modern.
4) It uses an innovative approach that supports and promotes respect for environmental protection and worker rights.

1. COMPREHENSIVE

We challenged ourselves to be as open as possible, across the board.

Goods. Chile currently has a six percent flat tariff on goods, except for products subject to its price bands (wheat, wheat flour, vegetable oil and sugar). Under the U.S.-Chile FTA, **all goods will be duty-free and quota-free at the end of the transition periods** (10 years maximum for industrial goods and 12 years for agricultural goods). There is generous immediate, duty-free access—more than 87 percent of bilateral trade in goods. Special phase-outs are allowed within these timeframes for goods with sensitivities.

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. Chile's commitment to eliminate its agricultural price bands, which it had retained in previous trade agreements, was an essential component of our decision to liberalize all trade.

Among the key features, access for beef in both countries will be completely liberalized over four years. U.S. beef exporters will be permitted to use U.S. grading standards when they market beef in Chile. Chile is finalizing the administrative regulations necessary to recognize the U.S. meat inspection system—to the benefit of U.S. beef and pork exporters. Tariffs on U.S. and Chilean wines will first be equalized at low U.S. rates and then eliminated. Chile also agreed to eliminate a 50 percent surcharge on used goods (important for capital goods exporters), to end duty drawback and duty deferral programs after a transition and to eliminate its 85 percent "auto luxury tax" in four years.

In addition to longer phase-out periods on sensitive products, the Trade Remedies chapter provides for temporary safeguards to be imposed when increased imports constitute a substantial cause of serious injury or threat of serious injury to a domestic industry. Special safeguards are also provided for certain textile and agricultural products.

Services. Today 80% of Americans work for service companies, and about two-thirds of our GDP is in services. We improved upon the approach used in the WTO and used a "negative list" approach for negotiating market access rights so that all services are included with very few exceptions. There are broad commitments on both sides.

Government Procurement. This is the first FTA to explicitly recognize that build-operate-transfer contracts are government procurement. The Government Procurement provisions cover purchases of most Chilean government infrastructure and resource projects, including ports and airports, as well as central government entities and more than 350 municipalities.

2. PROMOTES TRANSPARENCY

Transparency provisions both in the Transparency chapter and throughout the agreement promote open, impartial procedures and underscore Chile's commitment to the rules-based global trading system. General provisions ensure open, transparent, regulatory procedures by requiring advance notice, comment periods and publication of all regulations.

Provisions to streamline customs procedures and simplify rules of origin will facilitate taking advantage of the new trade openings, and will be particularly helpful to small and medium-sized enterprises. The U.S.-Chile FTA and the U.S.-Singapore FTA will be the first FTAs anywhere in world to have specific, concrete obligations to enhance transparency and efficiency of customs procedures. All customs laws, regulations and guidelines are required to be published on the Internet. The private sector may request binding advance rulings on customs matters. Additional provisions allow rapid release of goods, including expedited treatment for express delivery shipments.

The rules of origin in the agreement are straightforward and simplified. Based on our experience with NAFTA, we were able to minimize the use of complicated regional content value calculations.

The Services chapter provides additional procedural requirements regarding transparency in development and application of regulations, including the requirement to establish a mechanism for responding to questions on regulatory issues. These advancements are particularly crucial for the services sector since many sectors are regulated and transparency is needed to guarantee that market access improvements can be fully exploited.

The Government Procurement chapter requires open and transparent qualification and tendering procedures, with only limited restrictions. It also requires Chile to establish an impartial authority to hear supplier complaints about the implementation of the government procurement obligations. Importantly, it specifically requires that any bribery in government procurement be considered a criminal offense in U.S. and Chilean laws, furthering hemispheric anti-corruption goals.

Dispute Settlement provisions provide for open public hearings, the opportunity for interested third paries to submit views, and public release of submissions, objectives that the United States has long sought in the WTO. Similar transparency provisions apply to investor-state disputes.

3. MODERN

The agreement is modern in its approach to technology and business practices, encompassing strengthened protection for intellectual property rights and investment, and new provisions on telecommunications, electronic commerce, express delivery and temporary entry.

Intellectual Property Rights (IPR). The agreement provides state-of the art protection for digital products such as U.S. software, music, text and videos. IPR protection for patents, trademarks and trade secrets exceeds that in prior agreements and obligates Chile to provide protection at a level that reflects U.S. standards.

Investment. The agreement provides important protections for U.S. investors in Chile. The agreement ensures that U.S. investors will enjoy national treatment and MFN treatment in Chile in almost all circumstances. The investment provisions draw from U.S. legal principles and practices, including due process and transparency. All forms of investment are protected under the agreement, such as enterprises, debt, concessions, contracts and intellectual property. Expedited procedures will help deter and eliminate frivolous claims, and provide for efficient selection of arbitrators and prompt resolution of claims. The agreement also contemplates the establishment of an appellate mechanism to review awards under the Investment Chapter, permitting the Parties to establish a bilateral appellate mechanism or to establish a future multilateral appellate mechanism. Standards are established for expropriation and compensation for expropriation, and for fair and equitable treatment. Performance requirements are prohibited, except in certain limited circumstances. Free transfer of funds is protected. Under special dispute settlement provisions, however, Chile shall not incur liability if Chilean authorities exercise, for a limited period, narrow flexibility to restrict certain capital flows that Chile considers potentially destabilizing.

Telecommunications. The telecommunications chapter improves on Chile's WTO obligations. It ensures non-discriminatory access to, and use of, Chile's public telecommunications network, coupled with sound regulatory measures to prevent abuses by the dominant incumbent service supplier. In addition, the agreement includes a commitment from Chile to allow market entry for basic telecommunications services. This market access to Chile's telecommunications sector is essential for the continued development of innovative and new service offerings.

The agreement will require a greater level of transparency in dealing with major suppliers of public telecommunication services, transparent regulatory processes, and strong regulatory enforcement powers. It also provides flexibility to account for changes that may occur through new legislation or new regulatory decisions. Foreign companies operating in the U.S. telecommunications sector enjoy a high degree

of market access and transparency. With this agreement, U.S. telecommunication service suppliers will enjoy similar access, openness and transparency in Chile.

Electronic Commerce. The E-Commerce chapter is a breakthrough in achieving certainty and predictability for market access of products such as computer programs, video images, sound recordings and other digitally encoded products. The commitments provide that digital products that are imported or exported through electronic means will not be subject to customs duties. Furthermore, each side will determine customs valuation on the basis of the carrier medium, e.g., optical media or tape, rather than content. Both the United States and Chile commit to non-discriminatory treatment of digital products. Electronic commerce is an area of trade that has been, for the most part, free of many traditional trade barriers (duties, discrimination, protectionism). The U.S.-Chile FTA binds the current level of openness for trade in this area by reaching an agreement that prevents such barriers from being imposed in the future.

Services. In addition to obtaining increased market access for U.S. banks, insurance companies, telecommunications companies, and securities firms, the FTA for the first time recognizes "express delivery" as a distinct industry. Express delivery service commitments are based on an expansive definition of the integrated nature of services. Express delivery services obtain expedited customs clearance. Special provisions will deter postal carriers from cross-subsidizing competing services.

Temporary Entry. The Temporary Entry chapter facilitates the movement of businesspersons engaged in the trade of goods and services, and the conduct of investment activities. It establishes transparent criteria and procedures for entry of businesspersons in four categories: business visitors, intra-company transferees, traders and investors, and professionals. The first three categories will be implemented using our current system. Unlike the NAFTA, which includes a list of individual professions, the FTA employs a general definition based on educational achievement. This general definition will be able to accommodate changes to the workforce that take place over time. Based on Congressional consultations, we set an annual numerical limit of 1,400 new Chilean professionals. Finally, the chapter preserves the ability of the Congress and regulators to legislate and develop new procedures in the area of temporary entry subsequent to the entry into force of the agreement.

4. INNOVATIVE APPROACH TO LABOR AND ENVIRONMENT

Both the U.S.-Chile and U.S.-Singapore FTAs took into account Congressional guidance and built upon the Jordan Agreement by including in the agreements mechanisms for consultation, dialogue, and public participation. These FTAs encourage high levels of environmental and labor protection, and obligate the signatories to enforce their domestic labor and environmental laws. This "effective enforcement provision" is subject to dispute settlement and backed by effective remedies, including an innovative use of monetary assessments, that are designed to encourage compliance. If a defending party fails to pay the monetary assessment, the complaining party may take other appropriate steps to collect the assessment, which may include suspending tariff benefits. The Chile FTA includes special rosters of experts for settlement of Labor, Environment, and Financial Services disputes. Our FTAs with Chile and Singapore also provide for bilateral cooperation programs to promote worker rights and environmental protection.

PROMOTES GROWTH AND POVERTY REDUCTION

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 1990's. 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.

PROVIDES MOMENTUM FOR HEMISPHERIC TRADE LIBERALIZATION

Conclusion 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 negotia-

tion of a comprehensive and robust FTAA by January of 2005. We already have followed up on our success with Chile by launching historic negotiations toward a free trade agreement (the so-called CAFTA) between the United States and the nations of the Central America economic integration system: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

The U.S.-Chile FTA and the CAFTA will serve as building blocks for the FTAA. They will give both sides greater access to others' 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.

Together with other more developed countries in the hemisphere, such as Canada, Mexico, Brazil and Chile, we continue to work on the hemispheric cooperation program. The program will help all nations in the hemisphere benefit from the FTAA, by providing appropriate technical assistance and trade capacity building to FTAA nations requiring assistance.

With 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.

Mr. STEARNS. Thank the gentlelady.

Ms. O'Neill.

STATEMENT OF MICHELLE O'NEILL

Ms. O'NEILL. Thank you, and like my colleagues I'd also like to ask that my statement——

Mr. STEARNS. By unanimous consent so ordered.

Ms. O'NEILL. Thank you.

And, thank you very much for inviting me here. My remarks will focus on the benefit of the agreement to the high-tech sector and to global electronic commerce.

As many have noted today, technology is a key driver making our economy more efficient, productive, competitive and integrated, and experts predict that this will continue in the coming decades.

However, in order to facilitate growth in electronic commerce, and expand sales of U.S. information and communications technology products and services, also known as ICTs, in the coming years it will be necessary to work diligently on the trade front to reduce barriers to U.S. exports and to maintain a barrier-free environment for electronic commerce.

The U.S.-Singapore and the U.S-Chile Free Trade Agreements, represent groundbreaking progress toward achieving these goals. First, turning to Singapore, by opening trade in the high-tech sector and keeping the Internet barrier free, the U.S.-Singapore FTA will generate opportunities for U.S. companies to benefit from Singapore's high level of engagement in the digital economy, and their forward-looking approach to the development and use of ICTs. Specifically, in terms of electronic commerce, the agreement establishes explicit guarantees that U.S. digital products will receive the same treatment as Singaporean digital products. The agreement also memorializes a binding commitment on the global moratorium on customs duties on digital products, commits both countries to assess customs duties for digital products delivered on hard media, such as a DVD or CD, on the value of the media, not on the value of the movie, music or software contained on the disc, and affirms that any commitments made related to services also extend to the delivery of such services delivered over the Internet.

In addition, alongside the agreement, we also completed the U.S.-Singapore Joint Statement, which includes a range of cooperative activities in the e-commerce area.

Some of the benefits for the high-tech sector include an immediate reduction to zero of all tariffs on U.S. ICT products entering Singapore. There's also a full range of commitments on telecommunication services that provide for open markets consistent with the regulatory regimes of the U.S. and Singapore.

And finally, the U.S.-Singapore Free Trade Agreement also provides for a high level of intellectual property rights protection, discipline on anti-competitive measures and government procurement, and an innovative dispute settlement mechanism applying to all core obligations of the agreement, which will make it easier for high-tech companies to trade with Singapore.

In addition, Singapore will provide substantial market access across its entire services regime, subject to very few exceptions.

Now, turning to the Chile agreement, the agreement, in our view, will provide new opportunities for U.S. companies looking to export ICTs and will encourage cross border electronic commerce transactions, by guaranteeing a level playing field for companies doing business in Chile.

Conversely, the U.S.-Chile Free Trade Agreement will also make it easier for Chile to obtain ICTs from the United States and stand out in the region as a strong supporter of digital economy developments.

The agreement provides most of the same benefits to industry related to electronic commerce as does the U.S.-Singapore FTA, one exception being that the e-commerce chapter also contains a provision for future cooperation, very similar to that provided for in the U.S.-Singapore Joint Statement on Electronic Commerce.

All tariffs on U.S. ICT products entering Chile will be reduced to zero, which much like in the case of Singapore will be beneficial to U.S. hardware and software exporters who were previously assessed a 6 percent duty on their products.

And then in the telecom area, the key elements are similar to those in Singapore. The completion of the chapter in the U.S.-Chile FTA is significant because it binds two of the most open and advanced telecommunications markets in the world to a set of progressive rules and regulations, building on NAFTA, the GATT's telecommunications annex, and the WTO reference paper, to form a comprehensive provision.

And then in addition, the commitments for deregulation of information services and reasonable access to lease lines are stronger in the U.S.-Chile FTA and U.S. industry will benefit additionally from a commitment to allow access to the market for local-basic services, a commitment Chile does not currently have under the WTO.

As you will probably hear from the next panel, the industry in the high-tech sectors and those engaged in electronic commerce have indicated strong support for these agreements. In the electronic commerce space, U.S. industry has stated that they believe these agreements will set a model for negotiating objectives on electronic commerce in the WTO, and will establish internationally accepted mechanisms for how their goals in electronic commerce can be achieved at a global level.

We also understand that industry is supportive of the telecommunications chapters in the U.S.-Singapore FTA and in the U.S.-Chile FTA.

In conclusion, I would just like to reiterate that the agreements in our view do represent a groundbreaking first step toward establishing a trade rules regime for electronic commerce that will prevent the creation of barriers to this new type of trade. The FTAs will provide a high degree of certainty and predictability for U.S. businesses in these markets that will most likely make it easier for small and medium-sized enterprises to export to Chile and Singapore.

And, with that, I will thank you and be pleased to answer any questions you have.

[The prepared statement of Michelle O'Neill follows:]

PREPARED STATEMENT OF MICHELLE O'NEILL, DEPUTY ASSISTANT SECRETARY FOR INFORMATION TECHNOLOGY INDUSTRIES, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, Congresswoman Schakowsky, and Members of this Subcommittee: Thank you for inviting me to testify today on the benefits to the high-tech sector and to global electronic commerce of the U.S.-Singapore and the U.S.-Chile Free Trade Agreements (FTAs). I welcome the opportunity to talk with you today about how these Agreements represent breakthroughs in the facilitation of global electronic trade.

INTRODUCTION

Despite the downturn in the high-tech sector and the burst of the dotcom bubble, information and communications technologies (ICTs) and electronic commerce remain important parts of our economic growth and continue to revolutionize the way we do business, the way we govern and the way we live.

Technology is a key driver making our economy more efficient, productive, competitive and integrated, and experts predict that this will continue in the coming decades. In fact, private market research firms predict continued growth in the value of global electronic commerce transactions over the next few years. Most project that the value of electronic trade in goods and services will reach somewhere between $3 and $9 trillion by 2005.

This growth has been fueled by substantial increases in the number of people online in 2002, with the total number reaching approximately 655 million or one-tenth of the world's population. (UNCTAD E-Commerce and Development Report 2002)

As a result of the current weakness in U.S. business and consumer spending on ICTs, foreign markets have become even more important to the U.S. high-tech sector. The U.S. software industry continues to dominate both pre-packaged and custom software markets; and the U.S. IT industry is a strong performer, highly regarded for technological leadership, innovation, and for the product quality and reliability.

In order to facilitate growth in electronic commerce and expand sales of U.S. ICT products and services in the coming years, it will be necessary to work diligently on the trade front to reduce barriers to U.S. exports of high-tech products and services, and to maintain a barrier-free environment for electronic commerce.

The U.S.-Singapore and U.S.-Chile FTAs represent ground-breaking progress towards reaching these goals.

SNAPSHOT OF INFORMATION AND COMMUNICATION TECHNOLOGIES AND ELECTRONIC COMMERCE IN SINGAPORE

Singapore is a regional hub for electronic commerce transactions, and has one of the most advanced information and communications infrastructures in the world. This has been facilitated by the small size of the country, the high national income and the government's commitment to develop the country into a global ICT capital by 2010. Singapore's telecommunications services market will exceed $3.8 billion in end-user spending in 2003. Virtually every home in Singapore has a fixed telephone line. Mobile phone penetration reached an all-time high of 78.6 percent in January 2003.

There are more than two million Internet subscribers in Singapore, and every school and public library is equipped with personal computers with broadband ac-

cess. U.S. telecommunications exports to Singapore reached over $238 million in 2002.

Total electronic commerce revenues in Singapore should reach $8.3 billion in 2003, with the United States as the single largest country source for their overseas electronic commerce revenue. Typical electronic commerce transactions in Singapore range from business-to-business order processing, invoicing and payment to business-to-consumer online shopping and Internet banking and trading.

Singapore is a leader in the area of electronic government, with 44 percent of its citizens regularly using government services online. Last year, Accenture ranked Singapore number two in terms of overall maturity in online government services—the United States ranked number three.

BENEFITS OF THE U.S.-SINGAPORE FTA FOR ELECTRONIC COMMERCE

Singapore and the U.S. were able to agree 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, which were the principal negotiating objectives in the area of electronic commerce set out in the Trade Act of 2002.

The Agreement establishes explicit guarantees that the principle of non-discrimination applies to products delivered electronically (software, music, video, text), thus providing fair treatment to U.S. firms delivering products via the Internet. This reflects the development of products traded electronically and the need for predictability in how digital products are treated in terms of trade.

The U.S.-Singapore FTA also prohibits charging customs duties on digital products delivered electronically, such as digital downloads of music, videos, software or text. This makes permanent the moratorium on placing duties on online transactions that is now only voluntary or temporary in the World Trade Organization (WTO).

Another major benefit is that for digital products delivered on hard media (such as DVD or CD), customs duties will be based on the value of the media (e.g., the disk), not on the value of the movie, music or software contained on the disk. This will set a useful precedent in the global arena, even though Singapore will not impose tariffs on either the media or content.

The electronic commerce text also makes a number of commitments permanent and enforceable, that are now only voluntary or temporary in the World Trade Organization (WTO), and it affirms that any commitments made related to services in this Agreement also extend to the electronic delivery of such services delivered over the Internet. This sets a very good precedent for services liberalization efforts in the WTO and in other FTAs.

The U.S.-Singapore FTA will make it easier for U.S. companies to compete in electronic government bid processes, as well, as both the Government Procurement and Electronic Commerce Chapters prevent discriminatory practices related to digital products.

U.S. industry has indicated a strong support for the Electronic Commerce Chapter in the U.S.-Singapore FTA, as they believe that it will set a model for negotiating objectives on electronic commerce in the WTO, and will establish internationally accepted mechanisms for how their goals on electronic commerce can be achieved on a global level. In particular, U.S. industry has expressed its approval that the concept of digital products is without prejudice to the ongoing WTO classification debate.

Alongside the negotiations on electronic commerce, we also completed the U.S.-Singapore Joint Statement on Electronic Commerce, which was signed by Secretary of Commerce Evans and Singapore Minister for Trade, George Yeo on May 5, 2003 in Washington, D.C.

The Joint Statement embodies the U.S. Government's policy priorities in the area of electronic commerce and demonstrates a clear commitment by both Parties to abide by the stated general principles, which includes an agreement to allow the private sector to take the lead in establishing and developing electronic business practices.

As a corollary to this point, the Parties have made a commitment as governments to avoid imposing unnecessary regulations and restrictions on electronic commerce, and when it is necessary for them to take action, they have promised that their measures will be transparent, minimal, nondiscriminatory and predictable.

In addition, the Joint Statement provides for future interaction between the United States and Singapore via video conference, seminars, bilateral meetings and discussions on the sidelines of multilateral events, with the goal of increasing cooperation on the issues laid out in the agreement.

We consider this statement as a key tool in our efforts to eliminate potential impediments to electronic commerce, including cooperation on removing unnecessary regulatory barriers, securing networks, increasing consumer trust and strengthening IPR protections.

BENEFITS OF THE U.S.-SINGAPORE FTA FOR THE HIGH-TECH SECTOR

By locking in zero tariffs on all U.S. products entering Singapore, the U.S.-Singapore FTA will benefit U.S. exports of ICTs. The U.S.-Singapore FTA also provides for a high-level of intellectual property rights protection, provisions relating to anti-competitive behavior and an innovative dispute settlement mechanism applying to all core obligations of the Agreement, which will make it easier for high-tech companies to conduct trade with Singapore.

In addition, a full range of commitments on telecommunications services in the U.S.-Singapore FTA provide for open markets, consistent with the regulatory regimes of the U.S. and Singapore. The Agreement **guarantees reasonable and non-discriminatory access to the network by users, thus preventing local firms from having preferential or "first right" of access to telecommunications networks.**

Under the Agreement, U.S. phone companies obtained the right to interconnect with networks in a timely fashion, on terms, conditions and cost-oriented rates that are transparent and reasonable, and U.S. firms were granted non-discriminatory access to buildings that contain equipment necessary for interconnection and submarine cable equipment when they seek to build a physical network.

U.S. firms also obtained the right to lease lines at reasonable rates and on non-discriminatory terms, and to resell telecommunications services of Singaporean suppliers in order to build a customer base. Both Parties agreed to open rule-making procedures of telecommunications regulatory authority, publish interconnections agreements and service rates, and when competition emerges in a telecommunications services area, deregulate that area.

The Agreement includes the specification that companies, not governments, 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.

U.S. telecommunications service suppliers will enjoy fair and non-discriminatory treatment and the right to invest and establish a local services presence. Regulatory authorities under the agreement 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. In addition, U.S. firms will now have the right to own equity stakes in entities that may be created if Singapore chooses to privatize certain government-owned services.

U.S. industry is supportive of the final Telecommunications Chapter in the U.S.-Singapore FTA. The Industry Sector Advisory Committee 13 in its Report to Congress on the U.S.-Singapore FTA, called the benefits to companies in the Telecommunications Chapter "notable", and are fully satisfied with its provisions.

SNAPSHOT OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES AND ELECTRONIC COMMERCE IN CHILE

Chile is a leader in telecommunications liberalization and competition in Latin America. It was the first country in the region to initiate privatization in the mid-1970s, and by 1989 all state-owned telephone companies were sold. During the 1990s the telecommunications sector grew at an impressive average rate of 20 percent per year. U.S. telecommunications equipment exports to Chile exceeded $260 million in 2000. At the beginning of last year, Chile's main line and mobile phone density outpaced its neighbors at over 25 percent and 30 percent, respectively.

Chile is also among the leaders in the Latin American region in terms of electronic commerce transactions. Chile has an Internet penetration rate of 21 percent, the highest number in Latin America, and is expected to reach 30 percent by next year. Electronic commerce sales in Chile reached $2.5 billion in 2002, up 75 percent from 2001. The Santiago Chamber of Commerce anticipates that electronic commerce sales for 2003 will rise another 70 percent in 2003.

Chile has demonstrated a great interest in integrating its government services into the digital economy. **Since December 2001, all ministries and other government organizations are required to buy supplies over the Internet.** Agencies are able to purchase goods and services online through the government's pro-

curement site www.compraschile.cl, which processes about 1.4m transactions and saves the Government of Chile approximately $200 million annually.

BENEFITS OF THE U.S.-CHILE FTA FOR ELECTRONIC COMMERCE

The benefits of the U.S.-Chile FTA are very similar to those provided by the U.S.-Singapore FTA. The Chile Agreement also contains a section on future areas of cooperation between the United States and Chile. This text specifies that the Parties will work together to overcome obstacles encountered by small and medium-sized businesses in the use of electronic commerce; share information on regulations, laws and programs in areas such as data privacy, consumer confidence and cyber-security; maintain cross-border flows of information; encourage the development of self-regulatory methods by the private sector; and, actively participate in international fora to promote electronic commerce.

We look forward to working with Chile on both a bilateral and multilateral level, including in the WTO and in the Asia Pacific Economic Cooperation (APEC) forum, on these issues. We are particularly pleased with Chile's commitment to work with us on maintaining trans-border data flows, as we consider this to be essential to the future growth of electronic commerce.

As in the U.S.-Singapore FTA, the U.S.-Chile FTA will also make it easier for U.S. companies to compete in electronic government bid processes, as both the Government Procurement and Electronic Commerce Chapters prevent discriminatory practices related to digital products. In addition, both sides committed to future work on electronic government issues.

U.S. industry is equally supportive of the U.S.-Chile FTA Electronic Commerce Chapter, as the U.S.-Singapore FTA. In addition, they believe that the cooperation language related to the cross-border information flows is important, and that it should be included in future FTAs.

BENEFITS OF U.S.-CHILE FTA FOR THE HIGH-TECH SECTOR

Under the U.S.-Chile FTA, all tariffs on U.S. ICT products entering Chile will be reduced to zero, which will be beneficial to U.S. hardware and software exporters who were previously assessed a six percent tariff on their products.

While the key elements of the Telecommunications Chapter are similar to those in the U.S.-Singapore FTA, the completion of the Chapter in the U.S.-Chile FTA is significant because it binds two of the most open and advanced telecommunications markets in the world to a set of progressive rules and regulations that build upon NAFTA Chapter 13, the GATS Telecommunications Annex, and the WTO Reference Paper to form a comprehensive provision. In addition, the commitments for deregulation of information services and reasonable access to leased lines are stronger in the U.S.-Chile FTA, and U.S. industry will benefit additionally from a commitment to allow access to the market for local basic services—this is a commitment Chile does not currently have under the WTO.

U.S. industry has expressed to USG officials appreciation for concluding a WTO-plus Agreement on telecommunications that will hopefully move forward our agenda in the WTO and in other multilateral trade discussions. U.S. industry has, in particular, demonstrated support for the provisions on licensing and transparency.

CONCLUSION

The completion of the U.S.-Singapore and U.S.-Chile FTAs represents a groundbreaking first step towards establishing a trade rules regime for electronic commerce that will prevent the erection of barriers to this new type of trade. The environment for electronic commerce trade is currently free of unnecessary restrictions, and with the passage of these Agreements, we will be one step closer to maintaining a global commitment to continued openness in this space.

The U.S. high-tech sector has a lot to gain from these FTAs, as well. Provisions relating to intellectual property rights protection, anti-competitive behavior, transparency, government procurement and dispute settlement will make the Singapore and Chile markets more predictable for U.S. ICT and content exporters, particularly small and medium-sized enterprises. In addition, zero tariffs will also allow U.S. suppliers of ICTs to better compete with domestic suppliers. Finally, telecom service providers stand to gain much through commitments that ensure open markets, non-discriminatory network access, timely and cost-oriented interconnection, the ability to lease lines at reasonable rates and resell services, a transparent regulatory environment, and industry-led standards setting.

Thank you Mr. Chairman. I would be pleased to respond to any questions.

Mr. STEARNS. All right, thank you very much.

I am going to try and ask three questions for each individual, each one have one question, and I'm hoping you can keep it short. I am not trying to censure you, but you know how it is, we have got other members and so our job is to get through this.

I think a parochial question here for the State of Florida, the Mediterranean fruit fly, med-fly, as you know they found it in Chile, and given that in June table grapes from Chile are scheduled to be offloaded at Fort Canaveral, Florida. You know, what assurance can you give the American people that the Mediterranean fruit fly will not be in the United States, and this is for Ms. Vargo.

Ms. VARGO. Thank you, Mr. Chairman.

The provisions that relate to sanitary and phyto-sanitary issues such as the Mediterranean fruit fly, basically, in this agreement what we do is we affirm the WTO provisions on that, which go back to sound science and then let us restrict the importation of any problem in this area that can be——

Mr. STEARNS. So, you can you say 100 percent today that there will be no Mediterranean fruit fly?

Ms. VARGO. There will be no change in what we could do before after this agreement on that issue, because of the agreement.

Mr. STEARNS. Would a med-fly be on the grapes that come into Fort Canaveral in June? I mean, should we be concerned?

Ms. VARGO. No.

Mr. STEARNS. You feel absolutely sure, okay.

Ms. VARGO. Yes.

Mr. STEARNS. Mr. Ives, I just want to follow on what Mr. Markey from Massachusetts mentioned, one of the issues I hear is lack of truly competitive markets due to government linked corporations in Singapore. Can you explain to us in your negotiations regarding the provisions, in fact, he mentioned Singapore Technologies, but there are others, and this goes to a larger issue. When you deal with companies that subsidize their industries, whether it is Germany, France, wherever, when you talk about free trade and these countries are subsidizing their industry, and they come here and try to compete with our private sector, how do you negotiate that out? So, just explain how you do this to protect our free markets here in the country.

Mr. IVES. Thank you, Chairman.

We were very concerned about that very issue when we began the negotiations with Singapore, recognizing that the government of Singapore, from its very beginnings almost four decades ago, purchased quite heavily into companies.

Mr. STEARNS. Purchased what?

Mr. IVES. They bought companies, they investment heavily into private sector companies.

Mr. STEARNS. And, you know those examples of those companies?

Mr. IVES. Absolutely.

Mr. STEARNS. Yes, okay.

Mr. IVES. We have a chapter, a competition chapter, that addressed on a unilateral basis Singapore's government lien companies, the government of Singapore committed in that chapter that it would not influence the buying, purchasing, and sales behavior of those companies, that it would treat U.S. companies in a non-

discriminatory manner. In other words, it would be very transparent.

We introduced specific transparency provisions in that chapter that would——

Mr. STEARNS. Transparency is one thing, but can a company that is 100 percent owned by Singapore government go and buy a company in the United States?

Mr. IVES. Yes, in terms of the specific company, the Sing-TEL issue that was raised, there we took two additional steps in addition to the competition chapter. One, in the telecommunications chapter we have a provision that ensures that that company cannot interfere with the way the firm operates, and second, we have a provision that the government of Singapore has indicated that over time it will privatize Sing-Tel.

Mr. STEARNS. Okay.

Ms. O'Neill, the question is, these zero tariffs that you are talking about in terms of services in e-commerce and intellectual property rights, dealing with information technology, what net impact on information technology-based employment do you anticipate from these agreements? Do you have any figures? Does that make any sense to you? In other words, what I'm asking you is, in employment in the United States will there be an impact on these agreements in the areas of the information technology?

Ms. O'NEILL. I hope on the positive side, in fact——

Mr. STEARNS. You don't have any figures or any statistics on it?

Ms. O'NEILL. Not with me, but I would be happy to provide those.

The ICT sector in general is highly integrated and uses the global sourcing model, both for hardware production and software. I am hoping what these agreements do is provide greater certainty and transparency to those businesses that are either already operating or taking advantage of some of the talent and expertise provided in Singapore, but that that will be a two-way street as well, and that, again, to provide greater transparency and certainty for those businesses.

Mr. STEARNS. Okay, my time is expired.

The gentlelady?

Ms. SCHAKOWSKY. Thank you.

Mr. Ives, you stated in your testimony, I hope I am quoting you accurately, that 30 of the 31 advisory committees reported favorably on the U.S.-Singapore FTA. I don't know if you have actually read each one of those reports, but if you have then you would know that that simply is not true.

In addition to the Labor Advisory Committee, which found that the agreement did not promote U.S. economic interests, nor fully meet the negotiating objectives of the Trade Act, a number of the other committees declined to explicitly endorse the Singapore agreement, and made negative findings or no findings at all about the agreement's achievement of congressional negotiating objectives.

Let me give you a couple of examples. The Chemicals Committee was unable to gauge whether the agreement had met negotiating objectives or whether it would serve the U.S. economic interest, because it felt that it had not been adequately consulted regarding

the agreement. 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 agreement and that they would oppose it if Singapore were more significant economically. The Textiles Committee said, "It is unlikely that U.S. producers will experience much economic gain from this agreement." The Standards Committee said it would not recommend the Singapore FTA as a model for future FTAs, and reports from those few industry committees that include non-business representatives, and included dissents from those non-business representatives, criticizing the agreement.

So, you know, I am wondering why the USTR first of all continues to unfairly single out the Labor Advisory Committee as the only committee failing to endorse the FTAs with Chile and Singapore, when other committees, even purely corporate committees, also refuse to endorse the agreements.

Mr. IVES. Thank you, Congresswoman.

I was, obviously, summarizing in aggregate term our interpretation of the committees' reports. For example, on the Chemical Committee, we met with them, we were somewhat surprised at that, because we had consulted with them often, they had some questions on the rules of origin, for example, and we felt we satisfied those rules, so we were somewhat surprised that that sentence was even in there. But, in aggregate, it was our understanding that they could support the FTA.

On Footwear, basically, we don't have much trade, in all candor, on footwear. We understood that we had met both sides in the footwear industry's concerns, not fully, but the fact that there is no trade in footwear we felt that there was really not an issue on——

Ms. SCHAKOWSKY. I know, but let me just say that having said that they would oppose it if Singapore were more significant economically, should hardly make that committee included as endorsing the proposal, in my view.

Mr. IVES. Okay.

Well, I was just going to go on, but in terms of the Standards Committee, they did indicate they would not support Singapore to be a model in the future, but they did not have a problem with Singapore, they just preferred the Chile model. And, there again, we were somewhat surprised, because they had never come to us and asked us to do anything different.

Ms. SCHAKOWSKY. Well, let me just say, the fact you were surprised by their criticisms says to me that you were aware of them, and that it is inaccurate to say that 30 of the 31 favorably reported on the agreement. I take issue with that.

Let me ask Ms. Vargo a quick question. You stated, as I recall, that you built on the Jordan Agreement, or you referenced the Jordan Agreement when talking about Chile, but under the Jordan Agreement a violation of any of the labor obligations can be brought to dispute settlement, but under the Chile and Singapore Agreements only one of the labor obligations can actually be enforced through dispute settlement.

In addition, under the Jordan Agreement, labor disputes are subject to the exact same enforcement procedures and remedies as commercial disputes, but the Chile agreement fails to provide such authority. I guess my point is that many of the reasons that Mr. Brown raised for preferring the Jordan Agreement to either the Chile or Singapore Agreement, it is because they are not present in the Chile Agreement, and I am wondering why you would take such a big step backwards from the Jordan Agreement since you say you like it under our unilateral trade laws in these FTAs.

Ms. VARGO. I wouldn't agree with the view that it's a step backwards. I think that there are areas in the dispute settlement where we built on Jordan, in the sense of there is a clear public participation, more dialog, other aspects that we have heard the labor and environmental constituency say that they liked.

We guided ourselves very much by the TPA mandate in terms of the enforceable obligation being effective enforcement of labor laws, but I would also note that the obligations in the other areas in Jordan that are, basically, strive to obligations, are really quite hard to bring to a dispute settlement panel.

With regard to the dispute settlement procedures themselves and the remedies available, TPA called for equivalency, and we do believe that those procedures provide for the same kind of timeliness. There is an opportunity in the agreement for a lot of public participation. There are remedies, the same range of remedies are available in addressing both kinds of disputes, commercial and labor and environment.

We use the remedy that we think is most appropriate to the kind of violation first, but the full range of tools that are available. So, we think we met many of the key provisions that TPA called for.

Ms. SCHAKOWSKY. If I could, Mr. Chairman, just one sentence. Let me just say one thing. For example, fines are capped for the violation of labor rights, but fines are not capped for all commercial disputes. So, parity, I think, is the wrong word.

Mr. STEARNS. The gentleman from Idaho is recognized.

Mr. OTTER. Thank you, Mr. Chairman.

I would like to, I suspect all of you have been around the USTR and the Department of Commerce and everything for quite some time, and I would like to get your expression of whether or not you feel that the trade agreements that we now have, and that in one form or another have been adopted and we are actually operating under, have been fairly and adequately enforced. Would you say Canadian free trade has been adequately enforced, on both sides of the border?

Ms. VARGO. I think we have been vigorous in our enforcement of the obligations in the agreement. We typically attempt to work out the problems with our trading partners if we can, but I don't think that we have been reluctant to use the tools that are available to us.

Mr. OTTER. Well, maybe then, Ms. Vargo, you could respond to this, what did we do with the money under the last Softwood Agreement, Canadian Softwood Agreement, that we had found them in violation, fined them substantial amounts of money, what happened to that money?

Wait a minute, that is not fair, we gave it back to Canada, could you tell me why we did that?

Ms. VARGO. The last Softwood Lumber Agreement that we had with Canada was a negotiated agreement, and that particular provision of the agreement was found to be acceptable to all of the parties. And, in that process we had consulted extensively with our lumber industry.

Mr. OTTER. Well, maybe I should pursue that question a little. What good is it to fine them, and I agree with my colleague here, if we have got penalties but we don't exercise and enforce those penalties, what good is it? I would like the next time I get a speeding ticket, after I go down to the court and pay the fine, whatever it is, to have them turn around and give it back to me and sayor give it to my family, maybe not give it back to me, but give it to my family, and that is, in essence, what we have done, is it not?

Ms. VARGO. That was done in the context of a variety of other constraints that were put on Canadian Softwood lumber exports to the United States, so it was felt in the context of that package to be an appropriate step or measure.

Mr. OTTER. Ms. O'Neill, maybe you could respond relative to agreements that we now operate under, and I was very specific in my opening statement about South Korea. Do you think that we have enforced our trade agreement with South Korea sufficiently enough to have balance between the United States and South Korea, on high-tech?

Ms. O'NEILL. What I'd like to do is comment more broadly on the question of enforcing our trade agreements and some of the programs that we have at the Commerce Department. We have made a concerted effort through our Trade Compliance Center to review agreements, work closely with industry, leverage our domestic and foreign commercial service representatives, our industry experts, to address some of the concerns that have been raised in the context of the trade commitments made under trade agreements.

Specifically, with respect to Korea, you did note the Hynex investigation, that is underway. I think the Department is working very closely with Micron and with the government of Korea as that case proceeds.

Mr. OTTER. Right now, if I may, and we right now have, I think it is around a 57 something, almost 58 percent countervailing duty that we are collecting on, are we going to give that money back to them?

Ms. O'NEILL. I am sorry, I am not familiar with what happens with the duties.

Mr. OTTER. Oh, okay.

Ms. O'NEILL. We can get back to you.

Mr. OTTER. My apologies for interrupting you on that.

Mr. Ives, in a response to one of the Chairman's questions relative to State-owned companies, your answer, the end of your answer you said over a period of time Singapore will privatize the company that they now own. Until they are privatized will they be allowed—will they not be allowed to ship their products into the United States, so that we are not competing against a government-owned company?

Mr. IVES. They will be allowed to, as any Singaporean or any of the other government linked companies can ship their products, what we are trying to ensure in the agreement is that there would not be discriminatory treatment, either in purchases or sales by those companies, and that provision is in the agreement.

Mr. OTTER. I hope I have expressed myself well enough for you to know, that why I'm suspicious about any future agreement is the only thing I can look back at and see is that we haven't done a good job enforcing the ones we have got.

Thank you, Mr. Chairman, I yield back my time.

Mr. STEARNS. Thank the gentleman.

The gentlelady from California.

Ms. SOLIS. Thank you, Mr. Chairman.

Yes, I have a question for any one of the panelists regarding access to the actual agreements. I asked earlier if members of this committee even have access to that, I wonder if that is available to any member of this committee.

Mr. STEARNS. Just a larger question, is this on the Internet, if the gentlelady will yield, are the agreements on the Internet?

Mr. STEARNS. They are available for members to review.

Ms. VARGO. If I might say, as soon as they were concluded they were available to the Members of Congress and the relevantaccording to the different committee's jurisdiction, and they have been publicly available on the Internet, I think, from some time in March, March 6, for Singapore and April 3 for Chile. That is publicly available on the Internet at the USTR website.

Ms. SOLIS. But, the actual point where you are discussing the negotiations, are those transcripts made available, where negotiations are being discussed between different parties?

Ms. VARGO. We come up and consult with the various committees on different aspects of the jurisdiction, and in that process we provide the text that the U.S. proposes to table, so, yes, the committees do have access to that. We do not make those publicly available, we do secure——

Ms. SOLIS. Why is that not made available?

Ms. VARGO. I think in any negotiation where absolutely all the text that you are working with back and forth are publicly available tend to freeze negotiations.

Ms. SOLIS. But, I, as a Member of Congress, can't request that?

Ms. VARGO. No, you as a Member of Congress have access to our proposals.

Ms. SOLIS. But, not to the discussions, I am trying to get back at that.

Ms. VARGO. Yes, we come up and we consult with all of the committees before each round, on the state of play in the negotiations, and any new proposals that the United States plans to table.

Ms. SOLIS. Okay.

Next question I have is regarding, I am a little concerned about the immigration provisions. I understand that their temporary entry of professionals under the H-1B system would allow for professional workers to enter into our country.

It seems to me that this is a role that Congress should really be overseeing and have more authority over, and could you please explain why your proposal does not allow for any further discussion,

or say there's a change in immigration law, how will that affect this treaty?

Ms. VARGO. Well, first of all, let me suggest that we actually held quite extensive consultations with the relevant committees here in the Congress, especially with the Judiciary Committee, and I know that in the Chile area that we had 12 separate congressional briefings last fall. They identified a number of issues that the staff in the Judiciary and Immigration Subcommittee, three concerns that they expressed that we made sure were provided for in the agreement, one was a labor attestation as the H-1B program provides for, another was a numerical limit which we set at 1,400 for Chile and 5,400 for Singapore, and the third was that we would apply the same kind of fee as we do with the H-1B, which those fees are used for worker retraining and other purposes.

So, we made those suggested changes from the Congress. We feel that we have adequate discretion within the way the text is drafted to preserve congressional ability to change U.S. law in this area. So, I think that we made an attempt to reflect the concerns that were raised, and as we move forward with future free trade agreements we are also consulting quite closely.

Ms. SOLIS. Well, I have some caution there, and I am not fully convinced that that is something that I, as a Member of Congress, would want to give away an up or down vote on, because things do change, immigration law is changing, in fact, yesterday out of one of the Judiciary Committee, at the Judiciary Committee, we were looking at actually changing some form of immigration law, and that will be before the House.

The last question I have is for Michelle O'Neill, and this has to do with the Digital Millennium Copyright Act, and I know that this is a very controversial law that is currently being litigated, and I am concerned that the U.S. Trade Representative may have advocated for provisions that will tie our hands as Members of Congress by preventing us from fixing a law that is creating a lot of problems for us now.

If we do make amendments to this piece of legislation, how will that jeopardize this treaty or agreement?

Mr. STEARNS. The gentlelady's time has expired, so we'd appreciate your just answering, because we have a vote pending.

Ms. O'NEILL. Thank you very much for your question. I'm afraid my area of expertise is not in the intellectual property provisions. I would——

Ms. SOLIS. Can any of the other two answer?

Mr. IVES. Thank you.

We believe we preserved sufficient flexibility in the way the agreement is written to allow Congress to make certain changes in the law, and would not be inconsistent with the agreement, but we would obviously have to see which specific provisions you have in mind. We'd be happy to consult with you on that basis.

Ms. SOLIS. Okay.

Mr. STEARNS. The gentlelady's time is expired.

Mr. Davis from Florida.

Mr. DAVIS. Thank you, Mr. Chairman.

My questions are directed to Chile, and, perhaps, mostly to Mr. Ives and Ms. Vargo.

Is it fair to say that ultimate approval of the Chile Trade Agreement by Congress will strengthen the hand of the United States as we enter into the early stages of the FTAA negotiations with Brazil and other South American countries?

Ms. VARGO. I think it does provide momentum in that area. This is, for one thing, these agreements show our ability, we hope, to have bipartisan support for free trade agreements.

I think they are a clear signal to the hemisphere of the kind of level of ambition that we have in free trade agreements. I think they are important in the fact that for the first time the labor and environment are included in agreements breaking new ground, and I think they also demonstrate a willingness to open our markets as we open other markets within reasonable parameters, timeframes, safeguards, et cetera.

Mr. DAVIS. Given the vote, let me be a little curt here. Given that we are already in early conversations on market access and other issues with the FTAA, shouldn't we all be agreeing that Congress should be voting on the Chile Trade Agreement before the August recess to risk the possibility of not having a vote this year, to avoid that risk rather?

Ms. VARGO. I think a positive congressional vote on the Free Trade Agreement would provide a lot of wind to the FTAA negotiations.

Mr. DAVIS. Is there any doubt in your mind as to whether we are going to create disadvantages for ourselves in the FTAA negotiations if we don't have congressional approval of the Chile Trade Agreement this year?

Ms. VARGO. I think that there has always been a tendency for the countries in the region to want to hide behind either the lack of trade promotion authority or the lack of the U.S. Congress voting on a free trade agreement positively.

Mr. DAVIS. So, my next question is, if given a 60-day timeframe has been set aside, which Congress so jealously protects as you have seen here today, aren't we creating problems for ourselves if the Administration doesn't sign the Chile Trade Agreement by the end of this month, so that we can have a vote in Congress before the August recess?

Ms. VARGO. As I stated in my opening remarks, we are not at this point done with having a Spanish language translation, which would also be available, we need both in order to set a signing date.

Mr. DAVIS. Is another reason why the agreement hasn't been signed because there is discussion or debate within the Administration as to whether the position of the Chile government on Iraq should influence our decision on the timing of signing this trade agreement?

Ms. VARGO. The President said in remarks last night that the Chile Agreement is an important agreement, and we want to move forward with it. So, I would expect that we will be making decisions with regard to the location venue when we are ready.

Mr. DAVIS. Final question, Mr. Chairman.

So, Secretary of State Powell has said, with reference to the issue I am raising, that that is behind us now, and you are stating here today, in your testimony, that the USTR regards its marching or-

ders from the White House as being consistent with what Secretary Powell has said, which is, we are moving forward on the timing of signing the agreement entirely unrelated to the position that Chile took on the Iraq situation.

Ms. VARGO. Yes, and I think that we are, as I said, we are moving forward in all of our preparations to be able to sign.

Mr. DAVIS. Thank you.

Mr. STEARNS. We are going to adjourn the subcommittee and then come back for the second panel.

Now, we have a vote, and then there is 10 minutes and then three more votes, so what I am going to do is come back after this vote and we are going to continue on, and we are going to try and get members to come here back and forth so we can continue to expedite.

This has been a very healthy discussion, I don't want you folks to be anything but positive. The fact that all goods are going to enter duty free into Singapore I think is a major achievement. It locks in the zero tariff level, and doesn't permit raising of tariffs by the WTO level. So, I want to congratulate you, and the subcommittee will temporarily adjourn and we will come back right after this vote.

[Brief recess.]

Mr. STEARNS. Let us get started with our second panel. We will start with Mr. Franklin Vargo, Vice President, International Economic Affairs of the National Association of Manufacturers.

STATEMENTS OF FRANKLIN J. VARGO, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS; ROBERT W. HOLLEYMAN II, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BUSINESS SOFTWARE ALLIANCE; DAVID F. WASKOW, INTERNATIONAL POLICY ANALYST AND TRADE POLICY COORDINATOR, FRIENDS OF THE EARTH-U.S.; RONALD T. MONFORD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MIND OVER MACHINES, INC.; BRIAN KELLY, SENIOR VICE PRESIDENT OF GOVERNMENT RELATIONS AND COMMUNICATIONS, ELECTRONIC INDUSTRIES ALLIANCE; MARK BOHANNON, GENERAL COUNSEL AND SENIOR VICE PRESIDENT PUBLIC POLICY, SOFTWARE AND INFORMATION INDUSTRY ASSOCIATION; AND THEA M. LEE, CHIEF INTERNATIONAL ECONOMIST, AFL-CIO

Mr. VARGO. Thank you, Mr. Chairman.

American manufacturing is in a crisis, losing one out of every ten jobs in the last 2 years. Manufacturing has fared much worse than the rest of the economy, and America's factory workers have accounted for nearly 90 percent of the total job loss in the overall U.S. economy. Trade is a major reason for the crisis in manufacturing, particularly the loss of manufactured goods exports—which last year accounted for 75 percent of the total decline in U.S. manufacturing production.

Two things must be done to restore a healthy trade position for U.S. firms: [1] the dollar must return to a more reasonable value—it was as much as 30 percent overvalued a year ago; and [2] we must level the global trading field to bring foreign trade barriers

down to our own level or eliminate them completely. Achieving the latter is why we need free trade agreements, for we are already an open market and need to get other markets open to us.

The Chile and Singapore free trade agreements are extremely significant in this regard, for they eliminate most trade barriers we now face in those markets. They also advance the state-of-the-art in trade agreements and set a high standard for future agreements. Singapore and Chile are the most open countries in their respective parts of the world, and it was wise to negotiate these trend-setting agreements with them before moving on to other agreements.

The agreements benefit all sectors of the U.S. economy, importantly including services and e-commerce as well as manufacturing and farm products. The NAM urges the fastest possible action to bring both the Chile and Singapore agreements into effect.

Passage of the Chile agreement on a timely basis is particularly important, as Chile's trade barriers are higher than Singapore's, and Chile has negotiated many free trade agreements with our competitors, most significantly with the European Union, our major competitor. The NAM estimates that our share losses in Chile's markets are already costing us $1 billion a year, nearly $20 million each and every week. In job terms, the absence of an FTA with Chile is costing us about 13,000 lost job opportunities. That number will rise rapidly as Chile's new FTA with Europe takes business away from U.S. firms and hands it on a platter to our European competitors.

Let me conclude by asking the subcommittee to serve as a spark plug in approving both the Chile and Singapore agreements. Let us focus on creating U.S. jobs. Delay only serves as an export promotion program for our competitors.

Thank you.

[The prepared statement of Franklin J. Vargo follows:]

PREPARED STATEMENT OF FRANKLIN J. VARGO, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman and Members of the Subcommittee: I am pleased to testify today on behalf of the National Association of Manufacturers on the significance of the recently negotiated trade agreements with Chile and Singapore. The NAM represents 14,000 U.S. manufacturing companies, including 10,000 small and medium-sized firms. I know the subcommittee has particular interest in services and in E-commerce, and I will comment on those aspects of the agreements as part of my statement. These two areas are important not only in themselves, but also because they support the further expansion of U.S. merchandise trade. I would, however, like to begin with a broader overview of the significance of the agreements to the U.S. economy.

Representing American manufacturers, I can tell you that manufacturing feels under siege. More than 2 million American factory jobs have been lost in a little over two years—more than one in every ten jobs. Manufacturing lost more than 95,000 jobs last month alone.

The current economic slowdown is essentially a manufacturing recession—a deep one. The rest of the economy, while not growing at its usual rate, has not felt the same pain as manufacturing. Manufacturing represents 14 percent of the American workforce, but has accounted for nearly 90 percent of all the job losses since total U.S. employment peaked in March 2001.

While manufacturing employment has fallen more than 10 percent since that time, employment in the rest of the economy has fallen only two-tenths of one percent. In other words, your odds of losing your job have been nearly 50 times as high in manufacturing as in the rest of the economy. No wonder 75 percent of manufacturers in a recent NAM survey said that manufacturing is in crisis.

Trade is a key reason for this. Trade—both imports and exports—is much more important to manufacturing than to the rest of the economy. Trade has been a key factor in the current manufacturing recession—particularly the decline in U.S. manufactured goods exports. These exports fell $30 billion last year, accounting for 75 percent of the total fall in U.S. manufacturing production in 2002. This is serious not just for manufacturing, but for the whole economy—for manufactured goods account for over 80 percent of all U.S. merchandise exports. Even when services are added in, manufactured goods are two-thirds of all U.S. exports of goods and services.

We face two key trade problems: the more recent problem is a seriously overvalued dollar. After a decade of stability, the dollar started rising against other currencies in 1997, and peaked at an increase of 30 percent in February 2002—making U.S. exports 30 percent more expensive and imports up to 30 percent cheaper. This had a disastrous effect on our trade, which is why the NAM has led efforts to obtain a dollar policy based on market-determined exchange rates reflecting economic fundamentals.

The Administration began enunciating such a policy last year, and since then the dollar has moved about half-way back to normal levels. Major Asian countries, importantly including China and Japan, however, still manipulate their currencies in a way that keeps them weak against the dollar. This is not, strictly speaking, a matter for trade negotiations—although Trade Promotion Authority encourages the Administration to seek consultative mechanisms to examine whether foreign governments are engaged in currency manipulation to provide a competitive advantage in international trade.

The second problem—the long-standing asymmetry between our market openness and the trade barriers maintained by too many of our trading partners—is, however, very directly the goal of trade agreements. We need trade agreements to level the playing field and bring more foreign markets to the same degree of openness that the U.S. market offers. Most individuals do not realize, for example, that the average U.S. import duty is less than 2 percent, and that two-thirds of our merchandise imports enter the United States duty-free. U.S. merchandise exports to many countries, however, frequently face trade barriers equal to 20-30 percent tariffs or even more. This is particularly the case in the industrializing developing countries that account for about half our trade deficit.

The NAM believes that trade agreements, such as the Chile and Singapore accords under consideration today, are vital tools for knocking down these foreign trade barriers. For this reason, we strongly support the speedy passage of both agreements. Let me explain the reasons for our support more fully, including discussing the contributions the two agreements make in the areas of services and e-commerce.

The two agreements are similar to each other, but are not identical—reflecting the different circumstances of U.S. trade with the two countries. My remarks attempt to avoid too much redundancy in discussing the two agreements, and the absence of a comment on one agreement but its inclusion in the other does not necessarily reflect a void in the agreement—merely a desire to minimize duplication of text.

CHILE

Let me begin with the Chile agreement, for Chile provides a textbook example of why we need free trade agreements as fast as they can be negotiated—whether they be multilateral, regional, or bilateral. Until 1998 the United States typically had a 24 percent share of Chile's import market, meaning that Chile bought nearly one-fourth of all its imports from the United States. Starting in 1997, Chile began implementing a growing series of free trade or preferential trade agreements with its trading partners, including Argentina, Brazil, Canada, and Mexico. These agreements have put U.S. exporters at a significant disadvantage.

As the graphs attached to my statement show, starting a year after these agreements went into effect, the U.S. share of Chile's import market began to fall precipitously. Since 1997, U.S. exporters have lost nearly one-third of their share of Chile's imports. That's a lot. Moreover, as is also shown in the graphs, the United States did not have a comparable loss in other South American markets—meaning that something unusual was going on in Chile. The second graph shows why: the countries having trade agreements with Chile took the market share that we lost.

This is not a trivial loss. In fact, the U.S. share loss in Chile works out to roughly $1 billion of lost U.S. exports annually, worth about 13,000 American job opportunities. In other words, 13,000 additional Americans would be employed if we could recover our share loss. We are losing about $20 million a week—week in and week

out. That is why the NAM urges no delay in the signing and passage of this trade agreement. We want to get the playing field leveled in Chile so we can gain back what we have lost.

Time is not on our side, for Chile's largest and most significant FTA just went into effect in February—a free trade agreement with the 15-member European Union (the EU). The EU is already Chile's largest supplier, and the new agreement is the biggest blow yet to American exporters. The NAM figures that if we don't eliminate the EU's advantage quickly, we are going to lose another 6,000 or so jobs.

Competition is very keen between U.S. and European firms, and every day that they have duty-free access to Chile while we don't is just one more day when we are simply giving American business to European firms. That is why the NAM urges that the U.S.-Chile FTA be moved forward as quickly as possible. The Chile FTA is an excellent deal for U.S. exporters. It not only provides market access into Chile, but also provides state-of-the-art disciplines for the bilateral trade relationship. We also believe the agreement is a template for the broader regional negotiation of the Free Trade Area of the Americas.

The NAM's principal interest in the Chilean accord was in negotiating away Chile's across-the-board tariff on U.S. industrial exports. We are extremely pleased that the agreement does that. And it does it right away. The moment that agreement goes into effect, tariffs on 85 percent of our exports to Chile evaporate instantly. This is a very significant accomplishment. It means that we will be back in the game right away, rather than waiting several years for tariff cuts to be phased in gradually.

In addition to tariff elimination, the FTA also provides for improvements reducing non-tariff barriers, importantly including standards, conformity assessment provisions, and other "technical barriers to trade" These types of barriers have always been difficult to identify and negotiate, and the Chile FTA provides an innovative bilateral committee to work on these issues and seek their reduction or elimination.

With respect to services, we believe the FTA provides new and broad market access for U.S. services providers. It is also significant in that it contains state-of-the-art provisions that raise the bar for future agreements. The FTA applies to the cross border supply of services as well as the ability to make investments and build a services presence locally. This is reinforced by strengthened disciplines on regulatory transparency. Given the breadth of services accorded substantial market access under the agreement's "negative list" approach, it appears that the agreement will provide broad opportunities for U.S. business in the services sector.

A particularly important feature of the agreement is its provision for greater "transparency" in domestic regulatory processes. Transparency in the regulatory process is essential for services industries because they tend to be among the most highly regulated. While the U.S. regulatory process is a very open and transparent one, the same is not always true in other countries. Chile committed to transparency steps that include designating a contact point for inquiries and problems, prompt publication of regulations, advance publication with opportunities to comment on prospective regulations, and independent tribunals or procedures for prompt review of administrative actions.

The e-commerce and digital products provisions provide ground-breaking advances that increase market access and provide increased recognition of the importance of this issue with regard to global trade and the principle of avoiding barriers that impede the use of e-commerce. The FTA's guarantees of non-discrimination and its binding prohibition against customs duties on products delivered electronically create a favorable environment for the development of increased e-commerce. The FTA also introduces the new concept of "digital products," providing greater predictability of treatment for this important commercial channel.

The Chile agreement, similar to the Singapore agreement, also contains outstanding provisions for protecting intellectual property—and is notable for its advancement of protections against counterfeit goods, as I discuss more fully in the Singapore section of my statements. Also, the Chile agreement contains excellent provisions for temporary entry of personnel and for investment guarantees. Both these are discussed more fully in the Singapore section.

SINGAPORE

Let me turn now to the Singapore agreement. Like the agreement with Chile, the free-trade agreement (FTA) with Singapore is a comprehensive state-of-the-art agreement that benefits American firms and workers and also will help lead to greater regional and multilateral trade and investment liberalization efforts.

Singapore is already a very open market, and the agreement with Singapore not only solidifies that openness for American exporters of goods and services but also

extends that openness in new areas. Additionally, this agreement also will set a precedent for future FTA's in Asia. A robust agreement with Singapore, the most free-trade-oriented country in the region, sets a high standard for other agreements.

Singapore is an advanced country that depends on shipping, finance, trading, and high technology manufacturing. It is a high-income country, with a per capita income of roughly $25,000—about the level of Europe. It is America's 8th largest export market and 12th largest supplier (counting the EU as a single entity). U.S. trade with Singapore in 2002 was in surplus by $1.4 billion, making Singapore one of the few countries with which there is a U.S. trade surplus. The FTA will further integrate our already-close commercial relationship and provides the basis for even faster two-way growth.

The agreement sets the foundation for the United States to preserve its market share as Singapore continues to move toward additional free trade agreements, including with Japan, Canada, China and Korea. American farmers, workers and service providers would be at a distinct commercial disadvantage without the FTA. Notably, the Singapore agreement reduces the kinds of obstacles that particularly affect smaller U.S. goods and services producers seeking to trade with Singapore. It reduces physical presence and local investment requirements significantly; it eases customs and government procurement procedures; it facilitates electronic commerce and entry into services trade; and it establishes procedures for the elimination of technical barriers to trade.

Given the pre-existing openness of Singapore's markets for goods, the most important market access gains in the FTA are those in the services area. The commitment to substantial market access across most services, with assurances of nondiscriminatory treatment supported by greater regulatory transparency, provides a solid foundation for services trade liberalization. As in the case of the Chile agreement, Singapore committed to steps which lock in transparency, with advance notification provisions, appeal mechanisms, and the like.

The agreement sets high standards for additional agreements to open services trade throughout the region. Particularly notable is that Singapore agreed to a "negative list" approach in which only designated services may be excepted—all other services are open, importantly including new service industries which may emerge in the future. This was an important break-through in a trade agreement with an Asian country.

In addition, the agreement's provision for temporary entry of personnel improves the ability of U.S. services firms to provide competitive services quickly. These provisions also improve the competitiveness of U.S. firms by facilitating their ability to send technicians and other personnel to Singapore to maintain equipment and services sold there. The ability to move highly trained personnel quickly is particularly important in commerce with a high-technology country such as Singapore.

Furthermore, the Singapore FTA's provisions on e-commerce and digital products provide a strong basis for the expansion of this important technology. The establishment of non-discrimination guarantees and a binding prohibition on customs duties on products delivered electronically create a favorable environment for the development of increased e-commerce. The accord also contains a precedent-setting provision that applies all services commitments to their electronic delivery.

The agreement also improves the investment climate and protections for U.S. investors in Singapore. As Singapore accounts for 60 percent of total U.S. manufacturing investment in all of Southeast Asia, the investment provisions of the FTA are extremely important. The provisions are also important for services industries. Foreign direct investment is one of the key ways by which U.S. service industries can function overseas, for many services can only be produced by having a presence in the foreign market.

The NAM commends the FTA's high level of intellectual property protection, including state-of-the-art protection on trademarks and digital copyrights and expanded protection for patents and trade secrets. These are supported by tough penalties for piracy and counterfeiting, including seizure and destruction of products and equipment and mandated statutory and actual damages for violations. Singapore will sign on to global internet treaties, will extend the term of protection for copyrighted works, and will maintain criminal penalties for circumvention and for trade in counterfeit goods.

The NAM is extremely concerned with the rising global level of trade in counterfeit goods. Earlier this year, our members set up a task force to address the issue of global counterfeiting—which not only costs U.S. production and jobs, but also affects health and safety through deluding consumers into purchasing substandard and unsafe products. We are therefore very pleased to note the strong provisions to combat such trade contained in the Singapore agreement. This includes giving effect to the trademark law treaty and 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 register their trademark licenses to assert their rights in a trademark. Singapore's agreement to ensure adequate enforcement resources, especially closer cooperation to prevent the importation of counterfeit goods into the United States, is also important.

With respect to the Singapore agreement, I would highlight one final area where the NAM worked particularly hard to achieve strong results. That is the area of competition policy. We pressed vigorously to have the Singapore FTA set the highest standards with regards to competition policy, so that the agreement would prohibit practices that unfairly restrict competition or unreasonably restrain imports.

We are very pleased, therefore, that the agreement contains provisions to protect U.S. firms against possible anti-competitive and monopolistic behavior by committing Singapore to enact laws regulating anti-competitive conduct, and creating a competition commission by January 2005. Especially important is the commitment that Government-Linked-Corporations (GLCs) will operate on a commercial, non-discriminatory basis. As GLCs account for roughly half of Singapore's economic activity, this was an important accomplishment. Incorporation of these commitments was critical—not because of past Singaporean abuses (Singapore has maintained an open competitive environment)—but so as to provide assurances of future openness, as well as to build a template for agreements with other countries.

CONCLUSION

Both the Singapore and Chile FTA's are cutting-edge agreements that serve American commercial and foreign-policy interests toward those nations and as examples in their respective regions.

I want to add that both agreements break new ground in dealing with labor and environmental issues in FTA's. In our view the provisions of both agreements contribute to ensuring that parties to the trade agreements will enforce their labor and environmental laws so as to avoid a trade disadvantage to the United States, and do so in ways that will prevent these measures from becoming disguised protectionism.

The NAM believes these agreements are strongly in our trade interest, that they serve as excellent models for more trade agreements, and that they will benefit the economic growth and stability of both the United States and our trading partners. The NAM urges positive consideration of both agreements by the subcommittee and the committee, and rapid approval by the entire Congress.

Thank you, Mr. Chairman.

Mr. STEARNS. Thank you.

Mr. Holleyman.

STATEMENT OF ROBERT W. HOLLEYMAN II

Mr. HOLLEYMAN. Mr. Chairman, Ms. Schakowsky and the members of the subcommittee, thank you for the opportunity to appear before you today.

My name is Robert Holleyman and I am President and CEO of the Business Software Alliance, 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 Free Trade Agreements. The information technology is one of the leading contributors to the U.S. balance of trade. IT industries generated a trade surplus of $24.3 billion in 2002. IT also contributed $405 billion to the U.S. economy, 2.6 million jobs, and $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. If we are to continue the positive contributions, U.S. trade agreements must establish an open trading environment that promotes strong intellectual property protection, growth in technology services, and barrier free e-commerce.

I am pleased to express the unequivocal support of BSA and its member companies for the Singapore and Chile Free Trade Agree-

ments. We urge every member of the committee and Congress to vote in favor of these agreements. BSA is also a member of the High Tech Coalition on FTAs, which also actively supports both agreements. The agreements significantly advance strong intellectual property protection and trade liberalization in Singapore and Chile.

We commend Congress and the Administration for these achievements. And, without the leadership provided by Ambassador Zoellick and his team these achievements would not have been possible.

Let me highlight some of the key provisions in the agreements. For the software industry, strong intellectual property protection is key in the fight against piracy, which cost the industry $11 billion in lost revenues last year. Indeed, piracy is the biggest trade barrier we face in many markets. Both Singapore and Chile have piracy rates of 51 percent, costing the industry $41 million in Singapore and $59 million in Chile in 2002. Our trading partners must establish a high level of IP protection that complies with the WTO's Trade Related Aspects of Intellectual Property Rights and the World Intellectual Property Organization's Copyright Treaty. The Singapore and Chile Agreements meet this test.

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 of the key elements of the provisions on Information Technology, another key negotiating objective for the U.S. During the past decade, a vast array of new technology services has proliferated, including data storage, 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 this area is more important than ever. Both the Singapore and Chile agreements provide full market access and national treatment on IT services. Both agreements adopt a comprehensive approach without any exceptions for technology. This will provide evolving IT services with 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 technology 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 in both FTAs recognize, for the first time, the concept of "digital products." As we move to more online distribution of software, we will not face new barriers, and we will have the same ease of access that we had for traditional boxed software.

With the conclusion of these FTAs we believe important precedents have been set for what the U.S. can achieve through the WTO Doha Round of negotiations. We believe that they set new standards that help the U.S. achieve these objectives.

In conclusion, the Singapore and Chile Agreements mark real milestones in progress for the technology industry, new baselines are set, this will open markets for U.S. technology companies which

will mean more jobs for American workers, more tax revenues for the American tax base. We commend these achievements in both agreements and strongly support their passage in Congress.

Thank you.

[The prepared statement of Robert W. Holleyman II, follows:]

PREPARED STATEMENT OF ROBERT W. HOLLEYMAN II, PRESIDENT AND CEO, BUSINESS SOFTWARE ALLIANCE (BSA)[1]

Mr. Chairman, Ms. Schakowsky and the Members of the Committee: Thank you for the opportunity to appear before you today. My name is Robert Holleyman and I am President and CEO of the Business Software Alliance (BSA). BSA is pleased to have the opportunity to testify today on the significance of the Singapore and Chile Free Trade Agreements.

BSA represents the world's leading developers of software, hardware and e-commerce technologies. 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 $405 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 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, two relatively new issues have emerged on the international scene that could have an impact on American software exports. A number of countries are now contemplating enacting preferences in their software procurement policies based on the method of software development, which could have a severe impact on software exports, to the disadvantage of the American software industry. In addition, 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. Both issues should also be part of our nation's trade agenda.

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

BSA is also a member of the High Tech Coalition on FTAs, who also strongly support the FTAs.

These agreements 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 legislation 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 the world's 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 $11 billion in lost revenues last year. In Singapore

[1] BSA members include Adobe, Apple, Autodesk, Avid, Bentley Syatems, Cisco Systems, CNC Software/Mastercam, Entrust, HP, IBM, Intel, Intuit, Internet Security Syatems, Macromedia, Microsoft, Network Associates, Novell, PeopleSoft, SeeBeyond Technology, Sybase and Symantec.

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 of 51 percent, costing the industry $41 million in Singapore and $59 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 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 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 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.

In conclusion, the U.S. free trade agreements with Singapore and Chile mark milestones in progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services and barrier free e-commerce among our trading partners. In these agreements, new baseline have been set that should lead to significant market opportunities for the US 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 the members of BSA, I would like to thank the Committee for the opportunity to testify here today.

Mr. STEARNS. Thank the gentleman.

Mr. Waskow? Just pull it right up close to you and make sure it's turned on.

STATEMENT OF DAVID F. WASKOW

Mr. WASKOW. Good afternoon. Thank you for the opportunity to testify today before the subcommittee concerning the Chile and Singapore agreements. My name is David Waskow, and I am the Trade Policy Coordinator with Friends of the Earth.

The Chile and Singapore agreements may be limited in economic terms, but they are significant when it comes to the environment. In the case of Chile, natural resources are at the heart of the country's trade: its four largest export sectors to the United States are fruit, mined products, forestry products, and fish, and the country has some of the most vulnerable and important forests in the world.

Singapore is known as a significant transportation corridor for environmentally sensitive trade, including endangered species and illegally logged timber.

But these agreements are significant beyond their direct environmental implications, because they will set important and critical parameters for future agreements, such as CAFTA and the FTAA. Unfortunately, the precedents set in these agreements do not provide sufficient protection for the environment and could lead directly to the undermining of critical environmental laws and regulations.

I will touch on three areas. First, the issue of investment. During debate over the Trade Act of 2002, many environmental and public interest groups and State and local lawmakers voiced our deep concerns about the increasing number of cases under NAFTA Chapter 11. Using those rules, foreign investors have challenged and demanded compensation for environmental and public interest laws and regulations. And, we continue to stress that the investment rules of NAFTA provide investor rights that go far beyond those provided under U.S. law, and enable inappropriate challenges to our protections.

Congress, in response, required in the Trade Act that that investment provisions in future agreements "ensure that foreign investors are not accorded greater substantive rights than United States investors under U.S. Law."

Unfortunately, that standard has not been met in these agreements. There have been some limited, very limited changes, and we would especially note the transparency requirements for the investor suit process itself, but at the end of the day this "no greater right standard" has not been achieved.

Nor does the approach address the fundamental problems that environmental groups and others have identified with the NAFTA model.

Supreme Court principles have been inserted completely out of context, and the agreements also fail to include critical standards from U.S. law such as distinctions between land and personal property.

Other critical elements of the investment chapters, including the definition of investment, do not comport with U.S. law, and there's no general environmental exception, and this is somewhat surprising given it's correct, as proponents of investment will say, that there's no threat to environmental laws, why not have a carve out for precisely those laws.

Second, environmental provisions, as global trade increasingly integrates economies, we believe it is vital that the potential environmental impacts of increased trade be fully addressed. However, a plain reading of these agreements makes clear that the environmental provisions do not have the same enforcement provisions as for commercial terms, a step backwards from the Jordan Agreement.

There is also no binding obligation on governments not to lower their environmental standards, but above all we are deeply disappointed that these agreements lack any independent mechanism allowing citizens to bring complaints when governments fail to carry out their environmental obligations under these agreements.

They don't even have the kind of citizen submission process that the NAFTA side agreement on the environment has, and we feel it is fundamentally imbalanced and inappropriate to omit these provisions given that investors in the investment chapter of the agreement have the right to bring private suits, in other words, private foreign investors can but environmentalists can't.

Third, services, and I will just mention briefly that we are concerned because a number of service sectors do have environmental consequences, transportation, energy, including pipelines, electricity and other activities, and water. These are not, perhaps, relevant directly for these agreements, but will be for future agreements such as CAFTA and FTAA, and the precedents set here are troubling.

Let me conclude by saying that the Chile and Singapore agreements are critical as potential precedents for future agreements. As negotiations progress on those agreements, it will be vital not to repeat the serious flaws in the Chile and Singapore agreements. Otherwise, we believe that the United States will go down an unsustainable path in its trade policy.

Thank you.

[The prepared statement of David F. Waskow follows:]

PREPARED STATEMENT OF DAVID F. WASKOW, INTERNATIONAL POLICY ANALYST AND TRADE POLICY COORDINATOR, FRIENDS OF THE EARTH

Thank you for the opportunity to testify before the Subcommittee today on behalf of Friends of the Earth concerning the recently negotiated free trade agreements with Chile and Singapore. Friends of the Earth is a national environmental advocacy organization. We founded and belong Friends of the Earth International, a network of groups with more than one million members in 70 countries worldwide. Friends of the Earth has worked to address trade and environmental issues for many years, including serving on the U.S. government's Trade and Environment Policy Advisory Committee and, recently, the Industry Sector Advisory Committee on Chemicals and Allied Products.

The Chile and Singapore agreements may be limited in economic terms, but they are significant when it comes to the environment. Trade involving both of these countries has substantial international environmental implications. Natural resources are at the heart of Chile's export trade: its four largest export sectors to the United States are edible fruits and nuts, mined products (copper), forestry and wood products, and fish and seafood. The Chilean forestry sector in particular is enormously important. Both in scale and in diversity of species and ecosystems, Chilean native forests are irreplaceable on a global level. The primary temperate forests of Chile represent one-third of the remaining primary temperate forests in the world, and the United States was the largest purchaser of Chilean forestry products in 2000. A 1997 World Resources Institute report showed that 45 percent of Chile's original undisturbed forest already has been lost, while 76 percent of the remaining frontier forest is threatened.

Singapore is known as a significant transportation corridor for environmentally sensitive trade, including trade in endangered species, illegally logged and traded timber, and ozone depleting substances. Most notably, Singapore is a major hub for the laundering of illegal wildlife, particularly from Indonesia and Malaysia.— For example, Singapore is the major exporter of wild-caught sulphur-crested cockatoos, even though the birds' natural range is limited to Indonesia, a country that has prohibited their export. In addition, authorities seized 6 tons of African elephant ivory being transshipped to Asia through Singapore in July 2002, though trade in elephant ivory has been banned for more than a decade. A recent report has also indicated that, during a ten-month period in 2001-2002, Singapore exported millions of dollars of illegal ramin, an internationally protected tree species, to the United States without the permits required by the Convention on International Trade in Endangered Species (CITES).

However, the Chile and Singapore agreements are significant not only because of their direct implications for environmental concerns. They also serve to set critical parameters for future trade agreements, including future bilateral agreements and

broader regional agreements such as the Central America Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA). Unfortunately, the precedents that the Chile and Singapore agreements set for future trade agreements do not provide sufficient protection for the environment and could lead directly to the undermining of critical environmental laws and regulations. We believe these agreements set our trade policy on a wrong course that the environment cannot sustain. I would like to focus attention on two particular areas of concerns—investment rules and environmental provisions—and touch briefly on two other issues—services, which I know is of substantial interest to this committee—and intellectual property rights.

INVESTMENT

During debate over the Trade Act of 2002, many members of Congress, including several on the Committee, raised significant concerns about the investment rules in Chapter 11 of the North American Free Trade Agreement (NAFTA). These rules provide private foreign investors the right to bring complaints before international arbitral tribunals when they believe that the investment provisions of the trade agreement have been violated. Environmental and public interest organizations and state and local lawmakers voiced concern about the increasing number of investment cases in which companies sought compensation for the effects of environmental and public interest laws and regulations. Mexico and Canada have each lost Chapter 11 cases involving environmental protections, and the United States has been challenged under Chapter 11 for such actions as California's phase-out of a toxic gasoline additive, MTBE. The consumer protection mandate of this Subcommittee is surely relevant to addressing the potential threat posed by such challenges.

We continue to stress that that the investment rules in NAFTA provide investor rights that go far beyond those provided in U.S. law and enable inappropriate challenges to be brought against government actions in the public interest. In response to heightened attention to these issues, Congress required in the Trade Act that investment provisions "ensur[e] that foreign investors are not accorded greater substantive rights with respect to investment protections than United States investors in the United States . . ." Section 2102(b)(3).

The approach to international investment rules embodied in the Chile and Singapore agreements contains some incremental improvements over NAFTA's Chapter 11. We would especially note the transparency requirements for the investor suit process itself. We do not believe, however, that the provisions we have reviewed comply with the direction from Congress that new international investment rules not provide foreign investors with "greater substantive rights" than domestic investors enjoy under U.S. law. Nor does the approach address the fundamental problems that environmental groups and others have identified with the NAFTA model.

First, on the issue of expropriation, or takings, the inclusion of clarifications setting out a shared understanding of the expropriation, or takings, standard provides some incremental improvements. However, the clarifications fail to adequately reflect U.S. law in many respects, including the particular Supreme Court decision, *Penn Central*, on which USTR intended to base much of the standard in these agreements. The agreements focus on a limited and imbalanced set of the critical factors used by the Supreme Court in determining takings cases.

Simply listing some of the factors the Supreme Court discussed in the *Penn Central* case, but without the essential explanations and limitations that were set forth in that case and in subsequent rulings, provides no assurance that foreign investors will not in fact be granted greater rights than U.S. investors. This failure to provide explanations and limitations for critical standards includes the use of the "character of government action" as a factor in expropriation analysis. "Character of government action" taken out of context is an extraordinarily ambiguous phrase and could easily be misapplied by tribunals that are neither trained in nor bound by U.S. precedent.

The agreements also fail to include critical standards established in U.S. jurisprudence. For example, they do not include the critical Supreme Court "parcel as a whole" principle that a governmental action must permanently interfere with a property in its entirety in order to meet a threshold requirement to constitute a taking. Property rights are not defined in the agreements, nor are there any reference to the fact that under Supreme Court cases takings claims must be based upon compensable property interests, which are defined by background principles of property and nuisance law. Furthermore, the agreements fail to include the fundamental distinction between land and "personal property" and the significantly different treatment that these categories of property have been afforded under U.S. law. In addi-

tion, the language concerning the analysis of an investor's expectations is too vague, leaves too much to the discretion of the arbitrators, and does not indicate the deference to governmental regulatory authority that is found in U.S. jurisprudence.

The agreements indicate that non-discriminatory regulatory actions to protect legitimate public welfare objectives do not constitute an indirect expropriation, or regulatory taking, except in rare circumstances. But while this language provides some direction for arbitral panels, it fails to adequately convey the degree to which it is unlikely that a regulatory action would be considered an expropriation under U.S. law. It would take an extreme—*not just a rare*—circumstance for any of the thousands of our country's laws and regulations to be found to constitute an expropriation. It would be more accurate to state that regulatory actions designed to protect health, environment, or the public welfare do not constitute an expropriation, except in instances equivalent to a permanent, compelled, physical occupation. Yet the agreements do not say this.

Other critical elements of the investment chapters also do not comport with standards under U.S. law. In regard to minimum, or general, treatment, we are deeply concerned that the standard is inherently subjective and incapable of precise definition and opens the door to wide-ranging interpretation by tribunals. For example, the tribunal decision in the *Metalclad* case under NAFTA Chapter 11 considered a local government's disagreement with the Mexican federal government over a permitting decision for a hazardous waste treatment facility to constitute a violation of this standard. While we welcome the clarification that the minimum treatment standard includes procedural due process, inclusion of one principle in a standard does not eliminate the significant potential of a broader, unbounded interpretation of the standard that goes far beyond U.S. law.

In addition, the definition of investment in these agreements differs markedly from that in NAFTA and appears to be even broader in scope. The definition is broad as to include protection of investments such as shares, stock, and other forms of equity; bonds, debentures, loans, and other debt instruments; and futures, options and other derivatives. The effect of this definition is not clear, but at a minimum it raises questions as to the types of property interests the agreement seeks to protect and whether those notions are consistent with the limited notion of protected property interests under the U.S. Constitution and case law.

The lack of an appellate process under the investment rules and the lack of any clear oversight role for U.S. courts inhibit the development of a clear jurisprudence consistent with U.S. investor protections. There can thus be no assurance that any of the substantive rights in these agreements will be applied in a manner consistent with the U.S. legal norms as required by the Trade Act.

We believe that the failure to include a general environmental exception to the investment chapter is a further indication that international investment rules remain a significant threat to environmental and other policies enacted by governments to further the public interest. If, as the supporters of strong investment protections argue, such rules pose no threat to legitimate environmental regulations or actions of government, then it is difficult to understand why it would not be appropriate to ensure that result by clearly carving out such regulations from the ambit of the rules. The agreements do so for other portions of the agreement, but not for investment.

We are also concerned by the transfer of funds obligations in the investment provisions of the Chile and Singapore agreements. These obligations, which were highly controversial and the cause of a substantial delay in the completion of the agreements, in most cases prohibit the use of capital controls to address financial crises. Capital controls are strongly endorsed by pro-trade economists such as Jagdish Bhagwati as a necessary tool to address global financial volatility. From an environmental viewpoint, the availability of such policy tools is important because financial instability and crises are generally not conducive to sustainable development policies.

Finally, we see the continuation of an imbalanced approach to the treatment of private multinational investors as opposed to citizens generally in international economic law. Investors are given explicit rights and enforcement mechanisms to hold governments accountable. On the other hand, as we will discuss below, there is no citizen enforcement mechanism included in either agreement—not even a process analogous to the NAFTA Commission for Environmental Cooperation citizen submission process.

ENVIRONMENTAL PROVISIONS

As global trade increasingly integrates economies—a fact beyond the control of any of us here today—we believe it is vital that the potential environmental impacts

of increased trade be fully addressed. We therefore believe that environmental concerns about the impacts of trade, in sectors ranging from forestry to transportation, should be treated jointly with the commercial issues addressed in trade agreements. The environmental community's longstanding position is that environmental provisions should have enforcement parity with commercial provisions and must be robust in improving environmental standards in the participating countries. We also believe that environmental provisions must include an effective process for citizens to bring complaints regarding environmental issues that are addressed in the agreement. Unfortunately, while the US-Chile and US-Singapore, include environmental provisions in their core text, they don't meet those tests and also represent steps backward from earlier agreements negotiated by the United States.

Most significantly, the agreements lack any independent citizen petition mechanism to address failures by countries to carry out their environmental commitments under the agreement. The failure to include any such process, even one similar to the process provided for in the NAFTA side agreement on the environment, the North American Agreement on Environmental Cooperation (NAAEC), is a serious omission. The NAFTA procedures are inadequate and lack any clear and effective follow-through mechanism for enforcement. Yet, if nothing more, the framework has allowed some important environmental issues to be raised. For example, just last week, the attorneys general of New York, Connecticut and Rhode Island, along with 48 Canadian and United States non-governmental organizations and two towns in New York State, filed a citizen submission asserting that Canada is failing to effectively enforce the Canadian Environmental Protection Act and the federal Fisheries Act against Ontario Power Generation's (OPG) coal-fired power plants.

We believe that it is fundamentally imbalanced and inappropriate to omit a citizen petition mechanism for environmental provisions when the investment rules in these agreements include a private right of action for foreign investors. Moreover, we believe this imbalance represents a failure to fulfill the Trade Act's mandate to seek equivalent dispute settlement mechanisms. An equivalent dispute mechanism for environmental provisions would grant citizens the right to bring environmental complaints with the same effectiveness as private investors are able to exercise under investor rights rules.

In addition, the Chile and Singapore agreements do not contain binding language to prohibit the countries involved from lowering their environmental standards outright. The countries have agreed merely to hortatory language that each party "*strive* to ensure that it does not waive or otherwise derogate from" its environmental standards. Yet even a country's failure to meet this "non-waiver or derogation" standard cannot be the basis for a dispute settlement proceeding under the agreements. This inability to address a violation of the "non-waiver or derogation" standard through a dispute settlement process makes these agreements a clear step backwards from the Jordan Free Trade Agreement, which allows for such disputes.

It is also quite clear on any plain reading of the agreements that the dispute mechanism for violations of environmental provisions is not equivalent in a number of respects to the dispute settlement process for commercial provisions. The agreements thus clearly fail to provide for parity of enforcement and thereby represent a clear step backward from the Jordan agreement, in which the dispute settlement rules did not distinguish among the agreement's provisions, and a departure from the requirements of the Trade Act.

Finally, it is vital to comment on the cooperative environmental arrangements that are tied to these agreements. These cooperative arrangements are included in the agreement in the case of Chile and are still being negotiated in the case of Singapore. While the aims that these cooperative arrangements aspire to are important and very worthwhile, it seems extremely unlikely that these commitments will be at all effective in practice. Most important, the need for financial resources to realize the cooperative commitments has gone completely unaddressed by the U.S. government, nor has any consultation with Congress concerning funding issues taken place. U.S. agencies have even acknowledged that they lack the necessary resources to carry out the cooperative programs agreed to in negotiations.

SERVICES

While services are not often considered to have impacts on the environment, the environmental implications of services negotiations are in fact quite substantial. Service sectors such as transportation, energy (including pipelines, electricity and other activities) and water all have important environmental ramifications. The NAFTA case involving cross-border trucking, which was decided largely under the agreement's services chapter, dramatically illustrates the environmental effects of such trade provisions. The recent decision by the 9th Circuit Court of Appeals find-

ing that the Department of Transportation had not carried out an adequate environmental review process for the opening of the border to cross-border trucks made the environmental implications quite clear.

In the Chile and Singapore agreements, the services chapters primarily address cross-border services. In the context of these agreements, then, the effects of the agreement for services such as cross-border land transport, pipelines, electricity distribution, and water distribution are limited. However, these agreements do set parameters for the services chapters in future agreements such as the CAFTA and FTAA where these concerns will be relevant. It is particularly troubling that the Singapore and Chile services chapters do not include an exception for "measures relating to the conservation of exhaustible natural resources," an exception that is found in the General Agreement on Tariffs and Trade (GATT) and that the United States has relied on to defend U.S. law before WTO panels.

INTELLECTUAL PROPERTY RIGHTS

The Singapore agreement does not include a critical exception found in Article 27.3(b) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that permits governments not to issue patents for plants and animals. It is unclear whether the Chile agreement implicitly incorporates this exception by reference to the TRIPS agreement, or whether the exception is also omitted in the Chile agreement. The lack of this exception will remove the flexibility needed by governments to enact measures to protect biodiversity, including plant genetic resources, and to ensure sovereignty over genetic resources as provided for in the Convention on Biological Diversity.

CONCLUSION

In conclusion, the Chile and Singapore agreements are important not only in their own right, but also as potential precedents for future agreements. As negotiations progress on other trade agreements, including a number of bilateral agreements and regional agreements such as the CAFTA and FTAA, it will be vital not to repeat the serious flaws in the Chile and Singapore agreements. The concerns that I have laid out here concerning investment rules, environmental provisions, services and intellectual property should all be fully addressed in future agreements. Indeed, lessons from the Chile and Singapore agreements and other past agreements can be built upon to construct a trade policy that is truly inclusive of environmental concerns. Otherwise, we believe that our country's trade policy will proceed down an unsustainable path.

Mr. STEARNS. I thank the gentleman.

Mr. Monford, we have had a roll call vote, but we are going to see if we can get through you and, perhaps, Mr. Kelly, and then we will take a break and then come back. It will just be a 15-minute break and then we will be able to go to the questions and complete the other two.

So, Mr. Monford, go ahead.

STATEMENT OF RONALD T. MONFORD

Mr. MONFORD. Thank you very much, Chairman Stearns, Ranking Member Schakowsky, members of the committee. My name is Ron Monford, and I am the President and Chief Executive Officer of Mind Over Machines, Incorporated of Baltimore, Maryland and Austin, Texas.

I'm here today testifying on behalf of our company and the U.S. Chamber of Commerce, the world's largest business federation, representing more than 3 million business of every size, sector, and region. I am grateful to the subcommittee for the opportunity to testify at this hearing.

Mind Over Machines is a 16-year-old technology firm specializing in the development of custom and commercial software applications that are distributed throughout the United States and abroad. Our custom applications for the legal industry are used by most of the

top U.S. law firms, scores of Fortune 1000 firms and thousands of small to mid-cap companies. Clients in Canada, the Caribbean and Europe use several of these products on a daily basis.

We also distribute accounting related and manufacturing software to clients in many foreign countries, including the United Kingdom, Australia, Canada, Mexico and Jordan. The majority of these applications are delivered electronically, via the Internet or by compact disc.

Mind Over Machines is dedicated to growth through increasing its business with foreign clients and partners and is excited about the opportunities that these two Free Trade Agreements will provide us. We want to do business in countries where there are few trade barriers and where our software products are protected from theft.

I have personally been involved in foreign trade since 1967 and have been responsible for establishing trade relations with firms in Mexico, Colombia, Peru, Costa Rica, The Dominican Republic, China, Japan, Europe, Canada and others.

I was an early participant in U.S. Customs rule 807 operations. We later benefited by NAFTA provisions in trade with Mexico. Consequently, I have been able to witness first hand the benefits that can accrue to small and medium businesses from favorable international trade conditions. I firmly believe that the establishment of Free Trade Agreements with other countries is necessary to enable companies like ours to grow and compete. As I understand them, the proposed Free Trade Agreements with Singapore and Chile offer many advantages that should facilitate trade in e-commerce and services for companies like ours. I would now like to give a brief overview and convey what I understand each agreement to mean for these sectors.

Singapore is the United States' 11th largest trading partner, with two way trade valued at $33 billion annually. Singapore will guarantee zero tariffs immediately on all U.S. products, and will accord substantial market access across its entire service regime, subject to very few exceptions.

U.S. service firms will enjoy fair and non-discriminatory treatment through strong disciplines on both cross border supply of services and the right to invest and establish a local services presence.

Key intellectual property components are contained in the agreement, including the protection of copyrights, patents, trademarks and trade secrets. Provisions also ensure government involvement resolving disputes between trademarks and Internet domain names.

Singapore also agreed to cooperate in preventing pirated and counterfeit goods from entering the U.S. Copyright provisions ensure that only authors, composers, and other copyright owners have the right to make their work available online. These provisions are extremely important to firms like ours in protecting software products from theft.

Of special important for firms in our industry, Singapore and the U.S. agreed to provisions on e-commerce that reflect the issues importance in global trade. The landmark electronic commerce chapter introduces the concept of digital products in trade agreements.

Provisions in this chapter guarantee non-discrimination against these product that are delivered electronically, such as our software. They preclude customs duties from being applied on those products.

As well, for hard media products, such as DVD and compact disc, custom duties will be based on the value of the disc, rather than on the projected revenues from the sale of the content-based products.

The United States is Chile's largest trading partner with two way trade totaling $8.8 billion in 2001. Similar to the Singapore Agreement, the U.S.-Chile Free Trade Agreement contains a high level of intellectual property rights protections that go further than previous free trade agreements.

Chile also agreed to provisions on e-commerce that reflect the issues importance in global trade. These identify Chile as a leader in Latin America for the further development of electronic commerce.

Last, the Chile Agreement contains important provisions that will benefit the investment sector.

In conclusion, both the Singapore and Chile Free Trade Agreements provide tremendous opportunity for small businesses like mine to expand our markets internationally and create jobs in this country. We think the U.S. team did a great job negotiating strong provisions on services and e-commerce. These provisions will ensure that we have access to new markets by knocking down the artificial barriers that have locked us out. Our competitors have been enjoying a free ride for too long. It is time for America to get back in the game.

[The prepared statement of Ronald T. Monford follows:]

PREPARED STATEMENT OF RONALD T. MONFORD, PRESIDENT AND CEO, MIND OVER MACHINES, INC.

Good morning, Chairman Stearns and Ranking Member Schakowsky and members of the House Energy & Commerce Subcommittee on Commerce, Trade and Consumer Protection. My name is Ron Monford, and I am the President and Chief Executive Officer of Mind Over Machines, Inc. of Baltimore, Maryland.

I am here testifying on behalf of my company and the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector, and region. I am grateful to the Committee for the opportunity to testify at this hearing on the significance of the Singapore and Chile Free Trade Agreements, as they pertain to trade in services and e-commerce.

Mind Over Machines is a 16-year-old firm specializing in the development of custom and commercial software applications that are distributed throughout the United States and abroad. Our custom applications for the legal and corporate services industries are used by most of the top U.S. law firms, scores of Fortune 1000 firms and thousands of small to mid-cap companies. Several of these products are used by clients in Canada, the Caribbean and Europe.

We distribute accounting related and manufacturing software to clients in many foreign countries, including the United Kingdom, Australia, Canada, Mexico and Jordan. The majority of these applications are delivered electronically, via the Internet or by CD.

Further, we have developed web sites for firms in Switzerland and Japan, as well as web sites dedicated to the advance of international trade. Since September 2002, company executives have made three trips to China for the purpose of establishing trade relations with web development firms there. We will, this week, hopefully complete negotiations with a Chinese company to outsource the development of some of our software products in China.

Mind Over Machines is dedicated to increasing its business with foreign clients and partners and is excited about the opportunities that these two Free Trade Agreements will provide us.

I have personally been involved in foreign trade since 1967 and have been responsible for establishing trade relations with firms in Mexico, Colombia, Peru, Costa Rica, The Dominican Republic, Jamaica and others. During the period of 1990 through 1995, I was active in the procurement of raw materials from Japan, Korea, South Africa and Europe, as well as the sale of U.S. made products to markets in Japan, Mexico and Canada.

I was an early participant in U.S. Customs rule 807 provisions dealing with duties on value added and later enjoyed the benefits of NAFTA provisions in trade with Mexico. These experiences have enabled me to witness first hand the benefits that can accrue to small and medium firms from favorable trade conditions. I firmly believe that the establishment of Free Trade Agreements with other countries is necessary to enable these firms to grow and better compete in the national and global marketplace. The proposed Free Trade Agreements with Singapore and Chile offer many advantages that should facilitate trade in e-commerce and services for companies like ours. I would now like to give a brief overview and convey what I understand each agreement to mean for the services and e-commerce sectors.

OVERVIEW

The United States' service industry accounts for over 80% of the Gross Domestic Product and employment in the United States, and contributes to the U.S. economy through creating jobs, improving R&D and strengthening our global competitiveness. Both the Chile and Singapore free trade agreements should improve market access to U.S. firms across different service sectors.

U.S.-SINGAPORE FTA

Singapore is the United States' eleventh largest trading partner, with two way trade valued at $33 billion annually. Over 1500 companies are operating in Singapore today, with over 300 of these having made Singapore their regional Asia-Pacific headquarters. Singapore guarantees zero tariffs immediately on all U.S. products and will accord substantial market access across its entire service regime, subject to very few exceptions. Singapore will treat U.S. services suppliers as well as its own suppliers or other foreign suppliers. U.S. services firms will enjoy fair and non-discriminatory treatment through strong disciplines on both cross-border supply of services and 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 issues regulations, provide advance notice and comment periods for proposed rules, and publish all regulations. The FTA's services chapter introduces the definition of Express Delivery Services (EDS), a goal of the U.S. EDS service providers. It is also the first time these services have been defined in a trade agreement. The FTA also contains important commitments by Singapore to prohibit cross-subsidization by postal authorities. Key intellectual property components are contained in the agreement, including the protection of copyrights, patents, trademarks and trade secrets, which are state of the art, going further than previous free trade agreements. In addition to the intellectual property components, the U.S.-Singapore Free Trade agreement will provide new access for U.S. e-commerce companies, telecommunications companies, securities firms, professionals, and banks.

The Singapore FTA will provide high-level intellectual property rights protection in the following areas: 1) trademarks (stronger protection for well-known marks), 2) copyrights, 3) patents, and 4) trade secrets. Provisions ensure government involvement in resolving disputes between trademarks and Internet domain names. Additional provisions streamline the trademark filing process by allowing applicants to use their own national patent-trademark offices for filing trademark applications. Singapore agreed to cooperate in preventing pirated and counterfeit goods from entering the U.S. and to impose criminal penalties as an enforcement mechanism. Copyright provisions ensure that only authors, composers, and other copyright owners have the right to make their work available online. Copyright owners maintain rights to temporary copies of their works on computers. Patent terms can also be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. Further, the agreement mandates both statutory and actual damages under Singaporean law for IPR violations.

In addition to key intellectual property benefits, the agreement will provide a secure, predictable legal framework for U.S. investors operating in Singapore. All forms of investment are protected under the Agreement unless specifically exempted. U.S. investors are provided treatment as favorable as local Singaporean inves-

tors or any other foreign investor. Investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent.

The professional service sector stands to benefit from the agreement as well. Under the FTA, Singapore agreed to reduce restrictions and provide enhanced market access for U.S. professional service firms (e.g., the agreement covers architectural and engineering and legal services sectors). For U.S. law firms, Singapore will loosen the requirements that firms must meet to participate in joint law ventures with local firms. Furthermore, Singapore also agreed to recognize law degrees granted by a limited number of American law schools for purposes of qualifying for the Singapore bar. For U.S. architectural and engineering firms, local ownership restrictions have been relaxed. When fully implemented, the agreement will provide improved market access for U.S. professional services firms and individuals in Singapore.

Under the FTA, Singapore will be obligated to open its telecom service market and allow for non-discriminatory access to its telecom network. U.S. firms will be given the rights to interconnect with Singapore's telecom networks, access telecom facilities, lease components and resell services. Also, the Singapore telecom regulatory authority will be required to make its rule-making transparent. For instance, it will be required to publish its interconnection agreements and service rates. The FTA also calls for the U.S. and Singapore to work on an arrangement that would mutually recognize each other's telecom equipment standards. The telecom chapter should lead to increased market access and help strengthen U.S. competitiveness in Singapore's telecom market.

Lastly, Singapore and the U.S. agreed to provisions on e-commerce that reflect the issue's importance in global trade, and the principle of avoiding barriers that impede the use of e-commerce. The landmark Electronic Commerce chapter in the FTA introduces the concept of "digital products" in trade agreements. Provisions in this chapter guarantee non-discrimination against products delivered electronically (software, video and text) 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. The e-commerce text makes binding a number of e-commerce commitments that are now only voluntary or temporary in the WTO.

U.S.-CHILE FTA

The United States is Chile's largest trading partner, with two-way trade totaling $8.8 billion in 2001. The commitments in services cover both the cross-border supply of services and the right to invest and establish a local services presence. Groundbreaking transparency rules ensure that service regulators operate fairly. 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.

Similar to the Singapore agreement, the U.S.-Chile FTA contains a high level of Intellectual Property rights protection. Protection of copyrights, patents, trademarks, and trade secrets go further than previous free trade agreements. Enforcement of such rights is also enhanced under this agreement. Trademark provisions ensure government involvement in resolving disputes between trademarks and Internet domain names, which is important to prevent cyber squatting. Also, the trademark provisions apply the principle of the first to file for a trademark is granted the first right to use that name. Copyright provisions ensure that only authors, cosponsors and other copyright owners have the right to make their work available online. Copyright owners maintain rights to temporary copies of their works on computers. Protections further ensure that governments only use legitimate computer software, thus setting a positive example for private users. Lastly, patent terms may be extended to compensate for up-front administrative or regulatory delays in granting the original patent consistent with U.S. practice.

The telecommunications provisions in the agreement will allow for an open and competitive market in which users of the telecom network are guaranteed reasonable and non-discriminatory access. This prevents local firms from having preferential access to telecom networks. U.S. phone companies will also obtain the right to interconnect with networks in Chile and non-discriminatory, cost-based rates. Additionally, U.S. firms seeking to build a physical network in Chile granted non-discriminatory access to facilities, such as telephone switches and submarine cable landing stations. U.S. firms will be able to lease elements of Chilean telecom net-

works on non-discriminatory terms and to re-sell telecom services to Chilean suppliers to build a customer base.

The United States and Chile agreed to provisions on e-commerce that reflect the issue's importance in global trade. Each country also recognizes the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. Chile and the U.S. committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce. For digital products delivered on hard media (DVDs and CDs), customs duties will be based on the value of the media, not on the value of the movie, music or software on disc. The e-commerce text identifies Chile as a leader in Latin America for the further development of electronic commerce.

Lastly, the Chile agreement contains important provisions that will benefit the investment sector. The agreement will establish a secure, predictable legal framework for U.S. investors operating in Chile. All forms of investment are protected under the agreement, such as 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, unless specifically stated otherwise. Investor rights are backed by impartial procedure for dispute settlement that is fully transparent.

CONCLUSION

In conclusion, both the Singapore and Chile Free Trade Agreements provide tremendous opportunity for small businesses like mine to expand our markets internationally and create jobs in this country. The U.S. team did a great job negotiating strong provisions on services and e-commerce. These provisions will ensure that we have access to new markets by knocking down the artificial barriers that have locked us out. Our competitors have been enjoying a free ride for too long. It's time for America to get back in the game.

Again, I appreciate the opportunity to testify before the Committee on this important subject. I would be happy to answer any questions.

Mr. STEARNS. I thank the gentleman.

Mr. MONFORD. Again, I appreciate the opportunity to testify.

Mr. STEARNS. Mr. Kelly, we have, we are going to come back after 15 minutes. We've got about 7 minutes to vote, and we want to give you your full 5 minutes.

Mr. KELLY. Mr. Chairman, I am going to be about 30 seconds.

Mr. STEARNS. Okay.

Mr. KELLY. Because I know that you guys need to go vote.

Mr. STEARNS. You know the gig around here.

Mr. KELLY. I know I don't want to see you and Ms. Schakowsky race over there.

Mr. STEARNS. So, go ahead.

STATEMENT OF BRIAN KELLY

Mr. KELLY. Thank you very much.

Three quick things. One, we want to thank the President and Ambassador Zoellick for what they have done to get us this far.

EIA has been supportive of not only any free trade, whether it's TPA, NAFTA, China WTO, this is critical to our industry, and we think, whether it's Jordan, Singapore or Chile, these are great starts to moving to that lower barriers and greater competitiveness for U.S. companies.

The last thing I will say, there are always going to be problems in any agreement, just as you would negotiate with your family or as you deal with these things here, there will be things that need to be fixed. We cannot allow the perfect to be the enemy of the good.

So, I will leave it at that and look forward to you guys coming back and having a discussion.

[The prepared statement of Brian Kelly follows:]

PREPARED STATEMENT OF BRIAN KELLY, SENIOR VICE PRESIDENT, ELECTRONIC INDUSTRIES ALLIANCE

Thank you, Mr. Chairman, Mrs. Schakowsky and Members of the Committee for the opportunity to appear before you today and to provide the views of the Electronic Industries Alliance (EIA) on the U.S.-Chile and the U.S.-Singapore Free Trade Agreements (FTAs). My name is Brian Kelly and I am EIA's Senior Vice President for Government Relations and Communications. EIA is a partnership of electronics and high-tech trade associations and companies that constitute more than 80 percent of the $430 billion electronics industry.

THE AGREEMENTS WILL ADVANCE THE CAUSE OF FREE TRADE

I want to begin by congratulating Ambassador Zoellick and his skilled team of negotiators for concluding these important trade agreements. Ambassador Zoellick is making 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 AGREEMENT 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 an agreement. 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

Once again, I would like to thank the Chairman and the Committee for the opportunity to comment on these agreements on behalf of EIA. We hope the concerns raised can be addressed as we move towards what we hope will be swift congressional approval of the U.S.-Chile and U.S.-Singapore FTAs.

Mr. STEARNS. I think your point is well taken, because lots of times people say well I don't agree with you on that one vote, and I say, my wife and I don't agree 100 percent either, and we have been married 30 years.

Mr. KELLY. Well, I have been losing for 14 years to my wife, so I understand that.

Mr. STEARNS. Okay, so the subcommittee will adjourn and we have three votes after this, and so we should be back roughly in 15-16 minutes, so I appreciate it, I know how valuable your time is, but we will be back, we've got some questions, and you are making some good points, and I think the whole issue is important for America.

[Brief recess.]

Mr. STEARNS. The ranking member is right behind me. She should be here momentarily. So Mr. Kelly finished up and Mr. Bohannon you are next for your opening statement.

STATEMENT OF MARK BOHANNON

Mr. BOHANNON. Thank you, Mr. Chairman. I want to thank you for this hearing and for your patience today in continuing to focus on this issue. On behalf of the Software and Information Industry Association we want to make it clear that we want these agreements implemented as soon as possible. We think that there are tremendous benefits to our members who range from software companies, e-businesses, information services companies, as well as many electronic commerce companies, some of whom are some of the largest in the business and some of the newest. All of them depend on access to and confidence in global markets, where they are treated in a non-discriminatory manner and to make sure that their investment in digital products and distribution is protected.

I also want to reiterate our involvement in the High Tech Trade Coalition, which again strongly applauds the Administration for its work and urges their approval by Congress.

Mr. Chairman, I would ask that my complete statement, which details the benefits in intellectual property and services, be submitted for the record, because this afternoon, and with the short amount of time we have remaining, I really want to focus on the electronic commerce chapter which I know is very important to this committee.

It is appropriate, because this subcommittee, with its longstanding concern for removing and preventing barriers to electronic commerce, has much to gain from supporting and examining and touting the benefits of this agreement.

As indicated in my testimony, the Singapore and Chile agreements chart a very unique approach to preventing barriers to international digital trade, much as you have done domestically in trying to prevent barriers to e-commerce.

As I talk in my testimony, as the effort to get Trade Promotion Authority and the services agreements were getting underway, a number of leaders in the high tech industry and in other industries got together to identify key goals that we could work together on, to promote the development of trade and goods and services via e-commerce. Those goals are detailed in my testimony, I will not repeat them now.

In working together in a cross sector approach, we identified two questions, however, that we needed to drill down on, and which I think the Singapore and Chile agreements go far in helping us do, not only for these two relationships, but for the future. The first is that we needed to take into account the existing WTO agreements, the GATT, the GATS, TRIPs, all of which we depend on

currently, but often did not want to be subject to, perhaps, differences between the various agreements.

The second challenge that we faced in meeting our goals is that we did not want to get trapped in a classification debate about whether our products were goods, services or something in between. The good news is that our cross sector of industry groups worked with USTR's and others in the executive branch, some of whom you saw earlier today, to make sure that the classification issue does not act as a spoiler to achieving meaningful trade commitments. The 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.

We are very pleased that U.S. trade negotiators seized the opportunity in their efforts with Singapore and Chile, to translate these goals and objectives detailed in my testimony, into concrete and meaningful results.

How did they get there? Central to the Chile and Singapore agreements is, as we have heard today, the strategic definition of digital products. The definition is not tied to either a goods trade law regime, or a services trade law regime, and does not prejudice a product's classification.

By ensuring this broad definition, both agreements ensure nondiscrimination and promote broader free trade, no matter how a product may be classified. This approach is significant, Mr. Chairman, and Ranking Member Schakowsky, because it accommodates new technologies and delivery mechanisms without calling into question the debate about whether we are a good or a service, and this is important, because there are some players in the international discussions which believe that electronic commerce should be treated differently, arguing for a third category that isolates electronic commerce for treatment.

While this may be philosophically or academically interesting, it is also an approach or a suggestion that is fraught with unintended negative consequences, because some countries could claim under this approach that existing commitments no longer apply, which could lead to greater uncertainty and/or calls for new and potentially counter-productive new rounds of trade negotiations.

The substantive commitments made by Chile and Singapore are detailed in my testimony and have been discussed earlier. Clearly, services using electronic means fall within current services commitments. There is no longer any doubt about that. Chile and Singapore agree not to impede electronic transmissions from the U.S. by applying customs duties or other duties, or fees, or charges. And, they also agree not to discriminate against digital products from the U.S., by giving them no less favorable treatment than it gives to products from their own countries or from third parties.

Mr. Chairman and Ranking Member Schakowsky, the electronic commerce chapters of 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 only focusing on the existing impediments. By any measure, these chapters represent groundbreaking commitments.

As this committee is aware, we are at the beginning stages of seeking a new round of multilateral negotiations that are focused more broadly on services. We believe that our trade negotiators have thought creatively and effectively about how to remove barriers to e-commerce and we believe these are major models for how to possibly proceed in the next rounds and in other free trade agreements.

Thank you very much.

[The prepared statement of Mark Bohannon follows:]

PREPARED STATEMENT OF MARK BOHANNON, GENERAL COUNSEL AND SENIOR VICE PRESIDENT FOR PUBLIC POLICY, SOFTWARE & INFORMATION INDUSTRY ASSOCIATION

INTRODUCTION

Chairman Stearns, Ranking Member Schakowsky and members of the Subcommittee, I appreciate the opportunity to testify before you today on the benefits of the Singapore and Chile Free Trade Agreements. I want to focus in particular on the Chapters on Electronic Commerce and briefly comment on the Chapters on Intellectual Property Rights and the Chapters on Services.

I am Mark Bohannon, General Counsel and Senior Vice President, Public Policy for the Software & Information Industry Association. 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 are software companies, ebusinesses, and information service companies, as well as many electronic commerce companies. Our membership 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.

Mr. Chairman, I am also here today on behalf of the High-Tech Trade Coalition, a group of the leading high-tech trade associations representing America's technology companies,[1] to applaud the Administration for its work. 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.

I want to commend this Subcommittee for its continued focus on many of the key issues that drive digital trade on the Internet. It is appropriate that this Subcommittee, with its long-standing concern for removing and preventing barriers to electronic commerce and promoting confidence in transactions, is holding this hearing to examine the potential benefits of these two Free Trade Agreements. As indicated in my testimony, the Singapore and Chile Agreements offer many potential benefits to the US and chart a unique approach to preventing barriers in international digital trade. We urge implementation of these Agreements as soon as possible and 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.

[1] 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

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 US trade negotiators in all negotiations:

- Promote the development of the 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.

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 that 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.

A cross-sector of industry groups have been working with USTR and others in the Executive Branch, as well as with colleagues multilaterally, 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 produce meaningful results. As described below, these FTAs are major milestones in turning these discussions into practical policy.

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.

A more generalized statement of the solution rests on a key assumption that whether or not the product (be it a good or service) 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.

THE CHAPTERS ON ELECTRONIC COMMERCE OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

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 note for the Committee that the Electronic Commerce Chapters of the Singapore and Chile FTAs are also 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?

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,[2] 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 which 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.[3] 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 US by applying customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products, and the US commits to the same from Singapore and Chile.
- not discriminate against digital products from the US by giving them less favorable treatment than it gives to other like 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.

[2] 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."

[3] 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.

- 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 long-standing U.S. policy, where digital products are still delivered on disk or other physical medium.[4]

THE CHAPTERS ON INTELLECTUAL PROPERTY OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

While the Chapters on Intellectual Property are not the specific focus of this Hearing, I do want to give the Committee a brief overview of how these Chapters fit into implementing the goals set out at the beginning my testimony. I want to make distinct comments on the Singapore and Chile agreements.

The Singapore FTA 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.[5] 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 and rapid technological and legal developments that have occurred since that time. For example, this FTA incorporates the obligations set out in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and requires that Singapore ratify and fully implement these obligations within one year from "entry into force" of the FTA.[6] The full implementation of the WCT and WPPT both in Singapore and on a global basis at the earliest possible date is a critical goal of our Association and others who depend on effective global intellectual property protection. These treaties are essential for developers 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. 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 Americans, 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 OF THE SINGAPORE AND CHILE FREE TRADE AGREEMENTS

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

[4] In the case of the Chile FTA, this commitment is found in the provisions on market access.

[5] "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.

[6] Effectively, this means that Singapore must act within one year after both governments have completed their respective formal approval mechanisms

country is explicitly not required for the provision of services. The FTAs also explicitly include access to distribution, transport, and telecom services.[7]

CONCLUSION

The Electronic Commerce Chapters of 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 only focus on removal of existing impediments. By any measure, these Chapters represent groundbreaking commitments to non-discriminatory treatment of digital products and promoting confidence in the global digital trade of such products.

We also support the results achieved by USTR in the Chapters on Intellectual Property which 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 this Committee is aware, 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.

Mr. STEARNS. Thank the gentleman.

Ms. Lee, thank you for your patience and we look forward to your opening statement.

STATEMENT OF THEA M. LEE

Ms. LEE. Thank you very much, Mr. Chairman, Congresswoman Schakowsky. I appreciate the opportunity to testify today on behalf of the 13 million working men and women of the AFL-CIO on this extremely important topic.

The free trade agreements of Chile and Singapore are important in their own right, both in terms of direct economic impact and policy relevance, but their real significance to American workers goes beyond Chile and Singapore. As we have talked about much today, they will be templates or blueprints for future agreements being negotiated by this Administration, and as such both their economic importance and their policy significance are magnified many times.

And, therefore, it's extremely important that Congress take the time now to really scrutinize these agreements, to make sure that if there are any flaws or problems they are identified and rectified now, before they are included in future negotiations which are ongoing.

So, we thank you very much for calling this hearing at this time.

[7] 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.

The AFL-CIO does believe 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. Just as the business community has very specific objectives they hope to achieve in any FTA, so, too, does labor.

It is not a question of being for or against trade, being for or against globalization, it is a question of getting the policy right, and understanding the diverse impacts that trade agreements can have on different groups within a country.

And, to maybe paraphrase James Bond, trade agreements are forever, in the sense that once we put in place these agreements it's extremely difficult, if not impossible, to change the provisions. They limit, in many ways, the kinds of policies that the U.S. Congress can put in place in the future, as well as the policies that our trading partners can take, and we have to remember, one of the things I think is important to remember in terms of particularly labor provisions, is that when we write a trade agreement it applies to this government and to future governments that are not now in place. So, even in countries like Chile and Singapore, where we have democratic governments and fairly friendly regimes, we don't know which regimes will be in place five or 10 years from now, and so just to say that the Chile and Singapore governments have decent labor policies doesn't mean that the future governments will as well, and we need to have provisions that are durable, that can last forever.

The key issues for us, as you know, are having enforceable protections for core workers rights, preserving our ability to use our domestic trade laws effectively, protecting our government's ability to regulate in a public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high quality public services.

We think it is very important that the process negotiating these trade agreements be open and accountable to unions and other civil society groups.

Unfortunately, we believe the Singapore and Chile FTAs fall short of this standard, 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 included with my testimony a detailed report evaluating these agreements prepared by the Labor Advisory Committee on Trade Negotiations and Trade Policy, and the full report is also on our web site for anybody who is interested in reading that.

Let me just summarize our concerns in those areas so we can go straight to the questions. In the service sector, we are concerned about whether the carve out on public services is sufficient to protect essential public services like healthcare and education, water and other utilities. We believe that a broad and explicit carve out is necessary in the public service area.

We are very troubled by the temporary entry provisions that are included in this agreement. We believe that they unnecessarily limit the Congress' ability to make immigration policy in this area. The H-1B program is an important program that Congress has a responsibility for, the provisions in these two agreements, essentially, undermine and rewrite the H-1B program. We hope to make

improvement, we hope to have a full debate with Congress in the coming years about the renewal of the H-1B program, both from the levels of entry, but also the particular pieces on how the labor attestation is done, how the labor condition applications are written, and we don't believe it is appropriate or useful to have the free trade agreements constraining Congress' ability to improve and strengthen these programs as we go forward.

We are concerned in the area of e-commerce, the subject today of when and how products sold via electronic commerce will be taxed is a contentious one, which is not finally resolved domestically, either in the legislative or the legal arena. Therefore, it doesn't make sense to make commitments in this area in a legally binding international agreement while this issue is still unresolved domestically.

We share the concerns about NAFTA Chapter 11 that were raised by David Waskow and have been mentioned here, and also the limitations on capital controls. We believe capital controls can be a legitimate and effective policy tool, and that it isn't the place of a trade agreement to limit a government's ability to use those capital controls. The government of Chile, in particular, has used capital controls in the past very effectively, and it doesn't seem appropriate for a free trade agreement to bind the length of time for which they can use them or how they can use them.

Workers rights, of course, is a most important issue that we see in this agreement, and we are disappointed that the provisions in this agreement are unacceptably weak, that they represent a huge step backwards from the provisions in the Jordan Agreement, also existing trade law in the U.S. GSP program, which currently does require countries with whom we give a unilateral trade benefit to, like Chile, to at least live up to some internationally recognized workers rights, to ensure that their laws meet those standards.

And so, we are very disappointed that this agreement moves backwards from the high standard that was set.

And, the integrated sourcing initiative has also been mentioned, allowing goods from the two Indonesian Islands to enter the U.S. as Singaporean of origin. These provisions are simply indefensible, from the point of view of U.S. jobs. When we asked Ambassador Zoellick at the Labor Advisory Committee meeting what the U.S. job benefit was in allowing these goods to come in from the Indonesian Islands, his answer was that this was to create Indonesian jobs. My response is, we should let the Indonesian Trade Minister worry about creating Indonesian jobs, and also to the extent that labor rights of the workers on those Indonesian Islands aren't protected, I am not sure we are doing a big favor to the Indonesian workers either.

So, in conclusion, let me just say I look forward to your questions and we are very troubled by the whole model, the free trade agreement model, that we don't believe has lived up either to the promises of opening markets in other countries, the past free trade agreements we've done with NAFTA, but also including Israel and Jordan, and in terms of market opening, but also haven't lived up to the development promises that are made on their behalf, that these have not turned out to be tremendously beneficial for the workers in our trading partners.

Thank you very much for you patience.
[The prepared statement of Thea M. Lee follows:]

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

Mr. Chairman, Congresswoman Schakowsky, 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 this important topic.

The recently negotiated U.S. free trade agreements with Chile and Singapore 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 is magnified many times.

Therefore, it is crucially important that Congress take the time now to scrutinize these agreements carefully, so that any flaws or problems can be identified and rectified before being included in future agreements. We congratulate and thank this subcommittee for holding this hearing at this time and encourage other Congressional committees to do the same.

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, 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 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.

SERVICES PROVISIONS

We have two key concerns with the service sector provisions of the Chile and Singapore agreements. First, we believe it is essential for trade agreements to explicitly "carve out" important public services, such as health care and education, making it clear that trade agreements can not be used as a backdoor route to deregulation or privatization of these services. The Chile and Singapore agreements fail to contain this carve-out for those public services which are provided on a commercial basis or in competition with private providers. These vulnerable services include water, health care, and education, which are subject to the rules on trade in

services in the Singapore and Chile FTAs. Deregulation or privatization of these services could raise the costs and reduce the quality of these services.

Second, 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.

E-COMMERCE

The U.S. Trade Representative's office has lauded the e-commerce provisions of the Chile and Singapore agreements as a "breakthrough." The agreements provide, among other things, that digital products that are imported or exported through electronic means will not be subject to customs duties.

We would urge caution in this area, noting that the subject of when and how products sold via electronic commerce will be taxed is a contentious one, not finally resolved domestically either in the legislative or legal arena. It does not make sense to make commitments in this area in a legally binding international agreement while this issue remains unresolved domestically. It would be a shame to cut off any of our domestic options without a full and open debate.

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 policy makers, not bound by trade agreements.

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 these agreements as "innovative." In fact, these provisions represent a giant step backwards 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 nonderogation 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.

In addition, 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. It is not clear that this will constitute a meaningful deterrent in the case of determined or egregious violations.

INTEGRATED SOURCING INITIATIVE

The Singapore FTA includes provisions that grant the benefits of the agreement to certain products made on two Indonesian islands. We are very troubled by the inclusion of the ISI provisions in this agreement.

None of the workers' rights or environmental provisions of the Singapore FTA will apply to products made on these islands, nor will there be any reciprocal market access for U.S. goods. The U.S. ambassador to Singapore was quoted in Inside US Trade as saying that the main point of this provision was to allow American companies to take advantage of low-wage production on these islands and export the products to the U.S. duty free. It also appears that these provisions can be expanded to additional products and regions in the future.

This provision will cost American jobs while failing to protect Indonesian workers' rights. Furthermore, it undermines the weak workers' rights provisions contained in the agreement itself.

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 nine 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.

Mr. STEARNS. I thank you.

I am going to start with a question for you and then go to Mr. Kelly.

Under the Clinton Administration, we negotiated GATT and the Jordan Agreement, and now we have these agreements under Bush, too. Does the AFL-CIO have any agreement that has been passed that they like?

Ms. LEE. We were very supportive of the Jordan Free Trade Agreement, enthusiastically supportive, because we did believe that the workers rights provisions and environmental provisions were a major step forward, and we were proud to work with our Jordanian counterparts, the unions, and actually the business community in Jordan were also supportive.

Mr. STEARNS. So, the Jordan agreement is the only one, the GATT, NAFTA, and these, the only one out of all of them that you thought that you could support.

Ms. LEE. That met our standards, that's right.

Mr. STEARNS. That met your standards.

And, you were against the NAFTA agreement from the beginning, from the get go, the AFL-CIO?

Ms. LEE. Well, actually no. With NAFTA, what we've always said was that it was certainly possible to negotiate a trade agreement with Mexico and Canada, but it could have been beneficial to workers in all three countries, but the agreement that was done didn't contain the enforceable workers rights provisions and environmental standards. We were troubled by the investment provisions.

Mr. STEARNS. And, you think with Jordan the enforceable, they enforce the laws there?

Ms. LEE. Yes.

Mr. STEARNS. Okay.

Mr. Kelly, you talked about rules in your opening statement that we have, your testimony, talks about rules of origin provisions in these agreements. You indicate they are in need of improvement, and I guess my question is, maybe you could just give us briefly how you think these rules of origin, you might describe what they are, and then how they can be improved specifically for future agreements that the Administration negotiates.

Mr. KELLY. Thank you, Mr. Chairman.

Let me just start off by saying, the consensus of the EIA members are that these agreements are good, and again, these two specific issues that you brought up, rules of origin and the drawbacks, are issues that need to be addressed.

On the rules of origin, as it has been stated by others, a lot of times when a product is created the components come from different places, because it is cheaper to manufacture them in, say, like the Philippines, it could be made in Malaysia, or in Canada versus Mexico, so all over. What we are looking for is an ease in the ability to categorize what those rules are, because the paperwork is often so burdensome into detailing those items that if we had a simple way to clarify what those items are it erases that burden upon the companies to cut that cost. So, that's what we are looking for.

Under NAFTA, if you had to label every single item, if we were to reduce that it would be easier just to say this item, where it is shipped from, the final product, would make life a lot easier for us.

Mr. STEARNS. You also mentioned that the duty drawback provisions of the Chile agreement put the United States at a competitive disadvantage internationally, and specifically you mentioned with the European Union, so my question is, what provisions are you talking about?

Mr. KELLY. Well, for instance, if a speaker is made in Chile with a U.S. manufacturer, and a microphone is added to that speaker, the manufacturer has to pay for that microphone as an addition to that speaker being made. If you are a European company, and that microphone is added, they don't pay that additional fee, because they have negotiated that out of the agreement.

So, what we are looking for is to have the equal treatment, just the same as the EU does, because they have those agreements around the country, and I can give you a detailed description of how that actually works.

Mr. STEARNS. So, should we tell our trade promotional people that that should be incorporated?

Mr. KELLY. It should be, but again——

Mr. STEARNS. But, they didn't.

Mr. KELLY. they didn't, but again I'd go back to kind of where I closed with earlier, this is still a good agreement, there are going to be items that we are not going to like, but we know that overall this is a good agreement.

Mr. STEARNS. Yes.

Mr. Monford, I think you talked in your testimony concerning the Singapore agreement, you talked about the service sector will benefit significantly. Can you give me specific examples of how the service sector will benefit, domestic service center sectors that will immediately benefit specifically?

Mr. MONFORD. Yes, sir, thank you for the question.

Many of the professional service firms, such as architects, engineers, U.S. law firms, will have an easier opportunity to establish a presence in these countries. They will be treated fairly in the same way as Singaporean companies, as well as companies from other countries.

Some of the legal restrictions on the establishment of law joint ventures have been relaxed substantially by this agreement as well.

Mr. STEARNS. Mr. Bohannon, the question is, you indicated in your testimony the term digital product is defined, that the way the term digital product is defined is significant, and can you highlight for us why that is, because that is extremely controversial and I am having trouble with that, even in dealing with understanding of it. So, how is it defined——

Mr. BOHANNON. The irony, Mr. Chairman, is that the definition that has been come up is probably the least controversial of all of them, so I appreciate the context in which you ask your question.

The benefit of this definition, which by the way has taken a great deal of time to talk about across various sectors, those who depend heavily on intellectual property as their core business unit, those that deliver services, those who are in the transmission of all of that, working together, to come up with a definition that did not prejudice the benefits of greater free trade.

As I indicated in my testimony, there are two issues that we confront. One is that we now have sector-specific trade agreements, whether it be in the WTO, the GATT, which focuses on goods, the GATS, which focuses on services, TRIPs, which is very important to our industry which focuses on intellectual property norms.

We wanted to make sure that as we moved forward, for the multilateral and bilateral discussions, that we not get bogged down that we had to work just inside one of those agreements, because many times our goods and services require commitments in all of those areas, and we did not want to have to get bogged down in saying that, perhaps, the services agreement does not have good MFN treatment, those kinds of issues we wanted to avoid.

The second is, and it's a leftover from the physical world, is that we wanted to avoid having to get bogged down in the classification debate. I mean, is there a difference between software delivered on a diskette versus what you download, and we wanted to make sure that we did not get bogged down in those technicalities as we moved forward in making sure that market access, non-discrimination and effective protections were put in place through the various trade negotiations.

So, the digital products is a way to say, look, we depend on all of these agreements, and we want to make sure that we are raising the common denominator of protection as we move forward across the board. So, it is a way to keep the focus on e-commerce in all for these areas, not just in one or the other.

Mr. STEARNS. I'm just going to close here with this question. We will take a little more time since it is just the gentlelady and I.

Some of you have talked about we have to get going with Chile, particularly, because Canada has already done it and we're losing, they are taking our lunch so to speak. So, the question I guess, Mr. Vargo, I would ask you, if we get this agreement passed, ratified by Congress with Singapore and Chile, what other countries are we, you know, losing a lot of trade because we are not negotiating, where should we go next, and would these agreements that we passed allow us the opportunity to compete, I mean, with Canada? Is this a better agreement for Canada? So, there's two questions. One, where should we go next if we have the same problem? And two, is this agreement strong enough that we will be able to compete with Canada's entry, who has got way ahead of us?

Mr. VARGO. Mr. Chairman, if I could answer those in reverse order, yes, this will level the playing field for us in Chile. For example, right now Chile has a flat across-the-board 6 percent import duty, and we used to export frozen french fries from the U.S., they come from Canada, we used to export a lot of wheat from the U.S., that comes from Argentina, we used to export about $70 million of paper products that we have lost that have gone to Canada and Argentina, et cetera, because the duty makes a difference. So, yes, this puts us back on a level playing field, and we think we will get most of our business back.

Now, our biggest competitor is the European Union. Their agreement just went into effect this February, so it's just starting right now, and as I said, you ain't seen nothing yet, which is why we are in a hurry. We'd really like this agreement to go through.

Other agreements we would like, I can't think of any countries that put us in the same position as Chile right now, where they have a lot of free trade agreements with others but not with us, but I can think of a lot of countries where they have much higher duties and trade barriers on us than we do on them.

Two principal areas of the world are South America and Southeast Asia, and that is where the NAM would like to see future trade agreements. We'd love to see the free trade area of the Americas, you know, the Latin American products pay 2 percent or so average duty in the U.S., and the duties we have to hop over are 20 percent or more, same is true in Southeast Asia. We have a huge trade deficit there. So, that's the place we would like to go.

Ideally, we would rather do this worldwide in the WTO, if we could be optimistic that everybody would feel the same way we do and get it done that way.

Mr. STEARNS. The fact that you want to do a trade agreement with countries that are having serious debt problems, like Argentina, or even Venezuela, does that have any impact, the fact that we would have a trade agreement with these countries that can't pay their debt?

Mr. VARGO. I think it certainly behooves companies to be careful about sort of credit arrangements they make, but, no, we still want to have access to their markets. They are not better off by keeping our products out or charging a higher duty on them.

Mr. STEARNS. So, the instability of a country has no bearing upon our need to have a trade agreement?

Mr. VARGO. I think the trade agreement probably would contribute to the future stability of the country. Benjamin Franklin said, "No country was ever ruined by trade," and we still believe in that.

Mr. STEARNS. Okay, my time has expired.

The gentlelady.

Ms. SCHAKOWSKY. Mr. Vargo, is it a family affair today at the subcommittee?

Mr. VARGO. It is.

Ms. SCHAKOWSKY. Okay, it is?

Mr. VARGO. Is, Congresswoman, yes.

Ms. SCHAKOWSKY. Very good.

Mr. VARGO. First time that has happened.

Ms. SCHAKOWSKY. You know, I sensed a real impatience in your early testimony, and almost an annoyance that we aren't moving forward. So, I hope you will forgive me for bringing up the pesky issue of sweat shops, and I hope you are familiar with the integrated sourcing initiative for the Singapore agreement, which allows production on two Indonesian islands to be treated as Singaporean content for duty free export to the United States. What possible benefit to U.S. manufacturing jobs and the U.S. economy would there be to do this, especially when it's exempt them from any workers rights requirement?

Mr. VARGO. My understanding is that those products would have come into the U.S. duty free anyway, because we don't charge duties on those products under the Information Technology Agreement, so I don't see much of a negative impact.

Frankly, none of our members raised that as an issue with us on either side, and we have not focused that much on it.

Ms. SCHAKOWSKY. Which I see as a problem, Mr. Kelly, you know, though you mentioned some improvements that you want, but, you know, we aren't going to get a perfect bill so we have to move along. But, it seems to me that, particularly since these may be a template for others, that it is a serious disservice to other interests that are involved in this bill, like the workers in our country and the other country, and for all of us, the issues of the environment. And, this, you know, kind of move along, it's unconscionable to be, and that is a word I am using, no one used it today, but we need to move forward. I agree, but I think we have to do it right.

Mr. KELLY. Ms. Schakowsky, you arewe agree with you that there are certain items that need to be fixed. We, as the manufacturers for high tech goods, will always take the view that trade is good for everyone, whether you are a worker on an island in Malaysia, or Indonesia, or you are a worker in the United States, that there are issues that deal with the rules of origin, and like Mr. Vargo our membership never raised those as a concern.

What I will say is, is that because of the nature of building and manufacturing components today, it is impossible not to have to go to multiple places to put those items together, just by the nature of the cost. And, those are some of the laws of unintended consequences, do they need to be addressed? Absolutely.

Ms. SCHAKOWSKY. Okay, I hear you.

I will just take real exception to this notion that trade, just period, trade period, is good for everyone, and actually would like Ms. Lee to comment on that.

Ms. LEE. I think trade, in and of itself, has benefits and I has drawbacks, and we certainly have seen that our experience with past trade agreements, they have all been so, as Frank Vargo said, it is all about opening markets, it is all about selling goods to other countries. NAFTA was sold that way, and yet when it comes right down it, we have signed these trade agreements and we have experienced these massive deterioration in our trade balance, which has really hurt American workers.

Now, for companies that can move around, companies that want to source goods all over the world, I can understand the benefits to you, but I think when you are talking about the American worker, who doesn't have the ability to move to an island in Indonesia, or to go somewhere else, we have to really think about what the impact has been on the domestic manufacturing sector.

I think Ms. Schakowsky talked about the 2.7 million jobs that have been lost in the last couple of years, since 1998, and Frank Vargo knows the numbers in manufacturing, we have lost over 2 million manufacturing jobs.

And, NAFTA, let me just give you one number, I'm not going to bore you, but our trade deficit with Mexico and Canada was $9 billion in 1993, we are told this is going to be a great deal, they are going to allow us to sell a lot of goods to Mexico, 9 years later our trade deficit with Mexico and Canada is $87 billion. It's gone up almost tenfold. And, in fact, every single trade agreement we've signed we have seen a deterioration in our trade balance.

And, I know, and you know, that there are a lot of other factors that affect the trade balance, like different growth rates, and exchange rates, and so on, those are all important, but I do think it's rather striking that we haven't been able to really sell our goods to other markets, and I guess my argument would be that that hasn't been the goal of these trade agreements, to open markets in other countries, it is been to facilitate U.S. companies moving production around and often taking advantage of workers in other countries who lack the right to organize unions, whose basic human rights aren't defended, take advantage sometimes of environmental conditions that aren't ideal, and that is why it is so important that we write the trade agreements to protect the workers in this country and the workers in those countries as well, and not just take it as a standard of faith that trade is good. I think that hasn't been proved by experience.

Mr. VARGO. Congresswoman, could I make a brief comment on that, because the biggest thing that has affected our trade, truthfully, since 1997, has been the extremely high value of the dollar.

Our largest increase in our trade deficit has been with the European Union, which went from a deficit of $15 billion to over $80

billion. We have had increase in deficits globally. These have not been caused by our trade agreements, because we were already open, we'd been open for a long time, and these trade agreements are an effort to get others to open up to us.

So, sometimes trade agreements get a bum rap.

Ms. SCHAKOWSKY. Okay.

But, let me get to an environmental issue. Much has been said now about Canada getting ahead of us in terms of the Canada-Chile agreement, but I just wanted to point out that in their agreement there are provisions which allow citizens and non-governmental organizations of the two countries to make submissions alleging a party's failure to effectively enforce its environmental laws, and also contains provisions for dispute resolution when persistent patterns of non-enforcement occur.

Mr. Waskow, I wondered if you would just comment on your evaluation of some of the language that ought to be a U.S.-Chile agreement.

Mr. WASKOW. Well, in fact, NAFTA also has a process for citizen submissions, whereby individuals and organizations can bring complaints to an independent body, asserting that there has been a violation of the environmental provisions of the agreement.

There is no such process, as I said earlier, in either the U.S.-Chile or the U.S.-Singapore agreements, and we feel that is a fundamental omission, and as I also pointed out, it's really an imbalance because the investment rules in these agreements provide for an investor's right to bring complaints and actual monetary demands against governments, while we don't have any such thing.

And, I would just say, the NAFTA process has been imperfect and could be improved, but it has given an opportunity to really raise important issues, for example, just last week the Attorneys General of three States, including New York, and 45 non-governmental organizations, brought a complaint against Canada because it has not been effectively enforcing its environmental laws having to do with a company that has coal-fired power plants there. And so, we see that it is a quite valuable tool, and not having it, and having this imbalance in the agreements, is a serious issue.

Ms. SCHAKOWSKY. I wanted to talk a little bit about the process, ask a couple of questions of both environment and labor interests. The USTR witnesses today mentioned "frequent consultations" with private sector advisors and civil society groups. Does the Labor Advisory Committee have the same access to briefings and consultations as the Business Committee did?

Ms. LEE. No, we did not, and it was a very frustrating period for us, that first of all the Labor Advisory Committee, the charter expired right after the Bush Administration came into office, 8 months went by before the committee was even rechartered. So, we didn't meet at all for 8 months.

We had one meeting, another 9 months went by where we didn't have another meeting, and despite, I would say, probably weekly phone calls from myself demanding such meetings, asking for meetings to be scheduled, meanwhile the Business Committee, the Industry Sector Advisory Committees, were meeting on a regular basis with some exceptions. I know the Chemicals Committee had problems, because they didn't have an appropriate environmental

representative, but it has been an extremely frustrating process where the Business Advisory Committees have been in the loop, Labor Advisory Committee has barely been allowed to meet, let alone have the kind of frequent—we used to, under previous administrations, both Republican and Democratic, we met every month or every other month, and certainly when lots of negotiations are going on, new free trade agreements are being initiated, at the same time the three labor members who had served on the advisory committee on trade policy negotiations werewell, the entire committee was replaced, but all the labor members, the environment, the consumer members, were asked to step down and replaced with corporate members.

We had to sue. The AFL-CIO had to sue the Administration to ensure that they actually met the congressional statutory requirements that labor, environment and consumer representatives be included in all advisory committees.

Ms. SCHAKOWSKY. And, just briefly, if I could ask Mr. Waskow has public and outside organizations had access or have access to negotiating text for the Chile and Singapore agreements.

Mr. WASKOW. Well, in fact, the broad public did not have access and many non-governmental organizations did not have access to those negotiating texts during the negotiating process.

Because of that, we joined with some other organizations to bring a Freedom of Information Act request to USTR to be able to see those documents. We feel it's quite reasonable to see those, without our ability to see them it's as though a bill went through Congress and nobody saw it until after the vote took place.

That FOIA request was denied by USTR, and we and others had to go to court to get that FOIA request enforced by the court.

Unfortunately, it only had tothe request only covered some early documents in the negotiations, and so we haven't even seen the negotiating texts that came at the end of the day, and this is undoubtedly a process that will still be used by USTR going forward, we won't have access, and they've even said recently they are going to apply a national security classification to many texts so that they can't be seen by the public.

Mr. STEARNS. Well, I think we are going to conclude our hearing. I would say to Ms. Lee that I think it's been pointed out that we have trade surpluses in our service industry and e-commerce, and while we might not have trade surpluses in other areas, generally, I think the sense is that global tradeoffers an opportunity to involve all nations and it doesn't benefit you completely in one area, but it benefits you in another, and that is the tradeoff. And, I know it is difficult, but I think overall the hearing has pointed out that certainly in certain areas it is very, very beneficial for the United States, and I think the hearing has been good because this is the first opportunity to hear both sides, and I think it's been a healthy discussion. People all over Congress and probably over the Beltway will read all this testimony and understand it better, and I think it's good for our membership. The colleagues are probably watching some of it on the screen, so it gets the ideas out there, and I think all of you made a very articulate argument on your behalf, so I think you have done good service.

So, I appreciate your patience here while we went back and forth to vote, and with that the subcommittee is adjourned.

[Whereupon, at 4:08 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

RESPONSE FOR THE RECORD OF RALPH IVES, ASSISTANT U.S. TRADE REPRESENTATIVE

QUESTION FROM REPRESENTATIVE MARKEY

Question: As I understand it, the Government of Singapore is the controlling owner of Singapore Technologies, and that Singapore Technologies has proposed purchasing 61.5 percent of the remains of Global Crossing for 250 million dollars.

My concern is that we may end up with a situation where U.S. companies which are not controlled by the government have to compete with companies that are owned by a government. This is not fair trade, because the foreign competitor is both the owner and the regulator of the same company.

What does the Administration propose to do to ensure that the acquisition of Global Crossing does not result in purchase of a controlling interest by a government-controlled entity? Does the Administration support allowing U.S. companies to bid for the shares that were initially sought by Hutchison Whampoa but are now being sought by Singapore Technologies?

In that way, we could preserve fair trade.

Response: The situation you describe—that of government-owned company competing against a U.S. firm—would exist with or without a U.S.-Singapore FTA. That is, the FTA is not the vehicle that permits such activity to occur.

In fact, the FTA addresses this situation in several ways. First, the chapter on telecommunications requires a Party with national government ownership in a telecommunications company to notify the other Party of its intention to eliminate such interests. The Singapore government has informed us of its intention to eliminate its ownership interests in both SingTel and ST Telemedia. Second, the FTA includes a binding provision that requires Singapore to ensure that regulatory decisions are not influenced by the government's financial holdings in any telecom firm. Third, the FTA includes binding provisions that proscribe anti-competitive behavior by Singapore's government owned companies and prevent the Government of Singapore from taking any action to influence its government owned companies.

Regarding regulatory oversight, both SingTel and ST Telemedia are subject to oversight by the Info-communications Development Authority (IDA) that ensures these companies do not engage in anti-competitive behavior. This agency is separate the entity (Finance) that holds shares in SingTel and ST Telemedia.

USTR would get involved in this type of transaction only if it were to come before the Committee on Foreign Investment in the United States (CFIUS), a process subject to confidentiality constraints. As a general matter, we support foreign investment in telecommunications companies, consistent with our trade obligations, just as we support U.S. companies investing in this sector abroad. That said, we will examine closely the concerns you raised regarding possible government influence of Singapore Technologies.

QUESTION FROM REPRESENTATIVE MARKEY LINKING WTO MEMBERSHIP TO ADHERENCE TO WHO GUIDELINES

Question: The recent Severe Acute Respiratory Syndrome (SARS) epidemic in Asia has caused tremendous global health risks and upended international trade and travel. China, a new member of the World Trade Organization (WTO), was able to cover up a disease outbreak for nearly five months, under the initial intent of protecting its economy during the Chinese New Year celebrations. Let me just go through a quick timeline for you:

In November 2002, what seemed to be the first cases of SARS in the Guangdong Province of China went unreported by the state-run media organizations. These media outlets were ready to print, but were stopped by Chinese officials warned that a public health scare would cause people to stay home instead of spending money during the Chinese New Year celebrations, adversely affecting its economy. By early February 2003m five people had died due to SARS, and at least 300 people were infected. On February 21, a doctor staying in a Hong Kong hotel spread the infection to other guests of his floor and died of the disease on March 4. In March 2003, senior Chinese officials maintained that the SARS virus was under control and China was open to and safe for travelers. On March 12, World Health Organization (WHO) officials issued a global alert about SARS, warning travelers to be careful, and on April 4, WHO removed SARS patients from a Beijing hospital, hiding

them from doctors and officials with the World Health Organization who were repeatedly not granted access to hospitals and other affected areas. Today, China has almost 5,000 SARS cases, 18,000 people quarantined, and a 15% fatality rate. The world community, outside China, has suffered from 3,000 SARS cases and nearly 250 deaths so far in 30 countries.

Without a doubt, the Chinese government's continued cover up has badly damaged its own economy, the Asian economy, but also the global economy. Travel advisories have been issued for Hong Kong and Guangdong Province in China, and for Toronto, Canada as well.

Today, I am sending a letter to the President asking him to use the influence of the United States to ensure that in the future, a country's good standing in the WTO would be linked to its adherence to basic World Health Organization guidelines for fighting infectious disease.

Do you support linking membership in the World Trade Organization to a country's adherence to international recommendations and guidelines on how to contain infectious disease? If not, why not.

Response:

- The example that you provide in the statement of your question is China's actions with regard to the recent Severe Acute Respiratory Syndrome (SARS) outbreak. As you note, China is a member of the World Trade Organization (WTO). Thus, the proposed "linkage" between membership in the WTO and a country's adherence to international recommendations and guidelines on how to contain infectious disease could involve loss of membership in the WTO or some action with similar effect.
- While we share your concern regarding a number of aspects of China's management of the SARS outbreak, the principle of conditioning WTO membership on adherence to other international agreements or recommendations and guidelines could be abused. Such a provision could be used in a manner that could call into question a WTO Member's sovereign right to determine those international obligations that it will assume and how it will implement those obligations.
- The United States has consistently worked to ensure its freedom of action in this respect and would have strong concerns about creating a precedent for this type of linkage.

PREPARED STATEMENT OF COALITION OF SERVICE INDUSTRIES

Introduction

Thank you for this opportunity to submit this statement on behalf of the Coalition of Service Industries (CSI) on the US Free Trade Agreement with Chile. CSI is comprised of US service companies and trade associations seeking to achieve expanded market access in all modes of supply in all negotiating forums. This statement emphasizes the importance of services to the US balance of trade, describes the US global comparative advantage in services, and identifies important aspects of services trade. The testimony then discusses the provisions of the FTA that advance the growth of services trade between the US and Chile.

Service Sector Impact on the US Trade Account

US trade in services is an important element of the US trade account. In 2002, US services exports accounted for 29.8% of the total dollar value of US exports. In 2002, the US trade surplus in services of $48.8 billion in part offset the merchandise trade deficit of $484.4 billion.[1] The US led the world in commercial services exports in 2002, which on a global basis rose by 5% to a market size of $1,522 billion. The service sector's contribution to US exports makes it imperative that the United States continue to open services markets abroad through agreements such as the US-Chile FTA, which should be signed and implemented as soon as possible.

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[1] It is also important to recognize that sales to foreigners by affiliates of US services companies operating abroad are an important element of our services trade. In 2000, the most recent year for which statistics are available, services delivered through nonbank majority owned affiliates exceeded those delivered through cross-border trade. Delivery through affiliates was a larger channel for both US sales and US purchases of private services. In 2000, sales of services to foreign customers by nonbank, majority owned foreign affiliates of US companies were $392.8 billion. Paybacks to US firms from foreign affiliates dramatically increase US shareholder value and the financial strength of the US firm.

US Global Comparative Advantage in Services

US services firms are uniquely positioned vis-à-vis their competitors abroad. The large and dynamic US market provides a very good breeding ground for services firms. The intensity and vigor of the US market gives rise to high quality companies prepared to meet stringent services demands at home and enabled to compete abroad. An important measure of competitiveness of US services firms is labor productivity. US labor productivity exceeds that of our trading partners in many service sectors in Germany, France, the UK, and Japan.[2] The US should therefore leverage the US global comparative advantage in services by opening services markets abroad through bilateral FTA's like the US-Chile Agreement and in multilateral negotiations in the WTO.

Important Aspects of Services Trade

Services are income elastic. As incomes increase, consumers spend a larger portion of their salaries on services and demand higher quality services. As economies develop, the demand for services also rises.[3] The combination of Chile's expected economic growth and the market opportunities created through the US-Chile FTA will therefore benefit US and Chilean services firms.

Chile has for some time undertaken significant unilateral reform. This reform has reduced country risk, provided economic growth, and strengthened domestic institutions. Past services liberalization has benefited Chile by permitting businesses and consumers access to high quality, efficient, low-cost services and improved their ability to trade. Since 1991, services as a percentage of Chilean GDP has grown from 50% to 56.9%. Per capita GDP is expected to grow 2.5% from 2001 to 2005. Thus due to the income elasticity of services, Chile's consumption of services will increase.[4] Given the US comparative advantage in services, US services trade is expected to increase accordingly.

Movement of Key Business Personnel

Proximity to the customer is very important to the delivery of services and a defining characteristic of services trade. If you imagine your own purchase of legal, education, and even health services, it would be difficult to eliminate the human interaction necessary for such transactions. Moving professional people in and out of foreign countries therefore, is a critical aspect of services trade.

The Chile Agreement has useful commitments to freedom of movement of key business personnel consistent with US law. The Agreement provides for multiple entries of business visitors, traders and investors, intracompany transferees, and professionals. The Agreement will allow US firms to quickly move services professionals into the Chilean market on a temporary basis to service their clients.

Rights of Establishment

Many services must be sold from establishments in foreign markets, or they will not be sold at all. Some forms of financial services can't be sold from an office in the United States. For example, life insurance policies require significant exchanges of information with the client. This is best managed on the ground in the foreign market. Threfore to deliver such services requires direct investment in operations abroad.

The US-Chile Agreement has specific provisions on establishment which will facilitate trade. The Agreement provides rights to establish service operations in Chile in whatever form best suits business objectives, whether as a branch or subsidiary, whether wholly owned or majority owned. US firms will therefore be able to operate in the market in a form best suited to their needs.

Transparency

The Agreement embraces strong commitments to transparency in regulation. Opaque regulations provide significant barriers to US services firms in foreign markets. The transparency provisions of the Agreement guarantee a high standard of transparency in administrative, licensing, and adjudicatory proceedings. They are

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[2] Mann, Catherine L. 1999. Is the US Trade Deficit Sustainable? Washington: Institute for International Economics.

[3] Mann, Catherine L. 1999. Is the US Trade Deficit Sustainable? Washington: Institute for International Economics.

[4] Since 1992, US exports to Chile of private services as a whole has more than doubled from $620 million dollars to $1,312 billion in 2001. In the same time period, US imports from Chile of private services has almost tripled from $332 million to $840 million in 2001. Leading US services exports were business, professional, and technical services at $164 million and film and television rentals at $33 million. In addition, sales by foreign affiliates of US companies totaled $96 million (BEA October 2002 US International Services).

laid out in four parts of the Agreement, an initial transparency chapter applicable to all trade under the Agreement, and distinct provisions in the services, financial services, and investment chapters. They are an outstanding achievement and will help US firms to operate competitively in the Chilean market.

E-commerce Chapter

The US-Chile Free Trade Agreement contains a groundbreaking electronic commerce chapter, which introduces the concept of "digital products" in terms of trade. This language reflects digital product development in the last two decades and the need for predictability in how digital products are treated in trade agreements. The United States is unparalleled in its production of digital products. Although such products make up a small percentage of international trade today, they will certainly become a larger percentage of US exports over the next decade.

We believe the Chile Agreement will provide equity and reciprocity for US e-commerce firms and that Chile's demand for digital products will grow based on the country's present levels of connectivity. Today, Chile has seven Internet service providers, 3.1 million Internet users or 4.9% of the population, and a growing Internet infrastructure. As evidence of Chile's comfort with this medium, the Chilean government is quite adept at communicating policy positions over the Web. These factors combined with a modern financial, distribution, and a more liberal telecom environment will increase transactions in digital products between the US and Chile and result in greater demand for US produced digital products.

Telecommunications

The Telecommunications Chapter covers access to and use of the public telecommunications network for the provision of services. It covers all providers of public telecommunications service providers, with a focus on the major supplier of those services. The Agreement also has groundbreaking provisions with respect to flat-rate, cost-based, nondiscriminatory access for leased lines, which are critical for e-commerce service suppliers. Thus, it combines elements of NAFTA Chapter 13, the GATS Telecommunications Annex, and the WTO Reference Paper to form a comprehensive access to and use of provision.

The elements of the Telecommunications Chapter are consistent with each market's regulatory construct. The Chapter built in significant flexibility to account for changes that may occur through new legislation or new regulatory decisions. These disciplines are the hallmark for successful innovation and development of the telecommunications networks; something that is lacking in many markets around the world. In 2001, US exports of unaffiliated telecom services totaled $32 million—with the Agreement, we expect this number to grow.

Financial Services

With respect to financial services, the Agreement locks in Chile's commitments to liberal trade in banking, securities, asset management, and insurance, and provides for freedom of transfers of financial information. Chile commits to allow a wide range of cross border services in banking, securities, and insurance. In 2001, US sales of unaffiliated financial services to Chile amounted to $69 million, we expect these exports to grow with the Agreement.

Asset Management

The Chile Agreement gives US firms the right by March 1, 2005, to compete equally with Chilean firms in managing the voluntary portion of Chile's national pension system. Also, US firms will be provided access to manage the mandatory portion of Chile's pension system without arbitrary differences in the treatment of US and domestic providers. The Agreement also allows US mutual funds established in Chile to provide offshore portfolio management services to Chilean mutual funds on a cross border basis. With the Agreement, we expect US firms to capture a larger percentage of the Asset Management market.

Insurance

The Chile Agreement assures cross border trade in certain insurance products and allows branching within four years of entry into force. Chile also commits to "recognize the importance of developing regulatory procedures to expedite the offering of insurance services by licensed suppliers." The Agreement contains a presumption that Chilean regulators will use the flexibility allowed under their laws to permit the supply of new financial services in Chile, provided they are already offered in the US. These provisions will help propel the growth of US firms in the market. In 2001, US exports of unaffiliated insurance services to Chile amounted to $39 million, we expect this figure to grow with the Agreement.

Advertising

The Agreement should advance the interests of US firms supplying advertising services. Chile guarantees liberal access under the Agreement. In addition, chapters such as e-commerce will further complement such access.

Education Services

One of the largest markets for US education services is South America. The Agreement provides commitments in higher education services and specifically the provision of degree courses delivered across borders and mobility of academic staff. In 2001, US exports of unaffiliated education services amounted to $32 million. With the Agreement and in conjunction with Chile's relatively young population, 0-14 years 26.9%, 15-64 years 65.6%, and a historically high literacy rate of 95.2%, we expect consumption of education services to grow.

Express Delivery Services

The Agreement provides very substantial advantages and important provisions for the sector including an appropriate definition of express delivery services, which is a milestone in and of itself. The Agreement will facilitate customs clearance critical to efficient operation of express carriers.

Healthcare Services

The Agreement on the whole advances a more open, equitable trading environment in health services. The e-commerce chapter will advance applications of distance learning in health care, development of continuing medical education programming, Internet medical training programs, and telemedicine and second opinions.

The inclusion of language to encourage relevant bodies to establish mutually recognized standards and criteria for temporary and certification holds promise for all professional services. Development of the temporary licensing standard can aid in the development of visiting physician programs, joint research and training programs.

Conclusion

CSI members wholeheartedly believe that the Agreement provides substantial, meaningful new commercial opportunities that will provide economic benefits to the United States. The Agreement will consolidate a regime of open finance, national treatment, and non-discrimination of foreign investment and strengthen the juridical certainty for foreign and domestic investment. The Agreement will also benefit the Chilean services sector in the long-term by locking-in domestic regulatory reforms in transparency, procedures for government procurement, and maintenance of a competition law that prohibits anticompetitive business conduct. Furthermore, it will encourage other Latin American economies to consider Chile's commercial strategy of "open regionalism" founded on unilateral reform and engagement in the WTO, and the FTAA. The United States has much to gain from this Free Trade Agreement through expanded services trade and as a precedent in the region and in the WTO.

The U.S.-Chile and U.S.-Singapore Free Trade Agreements

Report of the
Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)

February 28, 2003

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Labor Advisory Committee for Trade Negotiations and Trade Policy
Report to the President, the Congress and the United States 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 backwards 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.

V. Advisory Committee Opinion on the Agreements

The Chile and Singapore FTAs fail to meet these basic goals. The FTAs largely replicate the NAFTA, which has cost the U.S. hundreds of thousands of jobs, led to increasing violations of core labor standards, and resulted in numerous challenges to laws and regulations designed to protect the public interest.

The Chile and Singapore FTAs do not promote the economic interests of the United States. The economic interests of the United States must encompass the needs of the majority of its people, not just the wants of a powerful minority. Yet the FTAs negotiated with Chile and Singapore are tilted towards benefiting those few large companies that hope to ship work out of the United States, exploit guest workers in the United States, and constrain the ability of governments to regulate their behavior. This bias is not only unresponsive to the economic interest of the majority of Americans, it is directly contrary to the interests of ordinary working men and women.

The agreements clearly fail to meet a number of key congressional negotiating objectives, barely comply with others, and include certain provisions that are not based on any congressional negotiating objectives at all. The FTAs clearly fall short of meeting the important negotiating objective in TPA requiring that equivalent dispute resolution procedures and remedies be available for the labor, environmental, and commercial provisions of any trade agreement. As a result, the labor provisions of the Chile and Singapore FTAs make little progress beyond the ineffective NAFTA labor side agreement and actually move backwards from the labor provisions of our unilateral trade preference programs and the U.S. – Jordan Free Trade Agreement. The labor provisions of the Chile and Singapore FTAs are based on an unacceptably narrow interpretation of the negotiating objectives on labor laid out in the TPA, providing no meaningful protection for workers' rights. Ironically, in a number of other areas, USTR has interpreted congressional objectives very broadly, or negotiated FTA language where no congressional objectives exist at all, to the detriment of U.S. workers.

The LAC is not opposed in principle to expanding trade with Chile and Singapore, countries with democratic, labor-responsive governments that have expressed a willingness to discuss the links between trade and workers' rights. We believe trade agreements could be crafted with both countries that would promote the interests of working people in, and benefit the economies of, each country involved.

Unfortunately, the U.S. Trade Representative has failed to reach such agreements with Chile and Singapore.

A. Trade Impacts of the Chile and Singapore FTAs

While the impacts of the Chile and Singapore agreements on the U.S. economy are likely to be much smaller than the impacts of NAFTA and the agreement on China's accession to the WTO, there is no indication that the Chile and Singapore agreements will have a positive impact where past agreements have not. In every case in which the United States has concluded a comprehensive "free trade agreement" with another country, the impact on our trade balance has been negative, despite promises to the contrary.

Our combined trade deficit with Canada and Mexico is now almost ten times what it was before NAFTA went into effect. Since granting China Permanent Normal Trade Relations in 2000, the U.S. trade deficit with China has increased by almost 25 percent, hitting a staggering $103 billion last year – making it our single largest bilateral deficit. The U.S. has even managed to rack up a small trade deficit with tiny Jordan, with whom we had a surplus when we entered into a free trade agreement in 2001. The overall U.S. trade deficit continues to rise as we reach new trade deals; the deficit hit a record high of $435 billion 2002. Even in the services sector, where we are supposed to enjoy a trade advantage, we have seen our surplus fall as U.S. investors move overseas to export services back into the U.S. market.

There is no reason to believe that our trade balance will fare any better under the Chile and Singapore agreements. The administration has still not released any serious analysis of the economic impacts of either agreement, despite clear instructions from Congress to do so. Section 2102(c)(5) of TPA instructs the President to provide a public report to Congress on the impact of future trade agreements on United States employment and labor markets. This review, modeled on an existing environmental review, is supposed to be available as early as possible in the negotiations, before negotiating proposals are put forward. But now, even after negotiations have been concluded, there is still no such review available. The ITC review of the economic impact of new trade agreements, also mandated by Congress in TPA, is not due until the agreements are signed at the end of April.

Despite the lack of concrete analysis from the administration on economic impacts, it is likely that both agreements will, like NAFTA, result in shifts in production from the U.S. and rising trade deficits, leading to more lost jobs. While the U.S. currently enjoys a trade surplus with Singapore, this was preceded by two years of deficits and our current surplus fell by almost 50% in 2002. In addition, we have large areas of deficit with Singapore that may increase if the FTA goes into effect, especially in data processing machines and parts for office machines. Our previous trade surplus with Chile has already turned unto a deficit, and this deficit more than tripled from $377 million in 2001 to $1.2 billion in 2002. U.S. agricultural producers are especially likely to experience increased competition from Chile if the FTA goes into effect.

Both the Chile and Singapore agreements focus more on facilitating the shift of U.S. investment than increasing U.S. exports. The Singapore agreement is even more blatant than the Chile agreement in this regard, since all of Singapore's tariffs on U.S. products were already at zero before negotiations began. The inclusion of two Indonesian islands in the Singapore agreement is specifically designed to facilitate off shore production of electronics for export into the U.S. market. U.S. Ambassador to Singapore Frank Lavin declared that this was the "most significant

economic aspect" of the Singapore FTA, since it would allow U.S. electronics manufacturers to take advantage of low wage rates on those islands to assemble components from Singapore into electronic products that can enter the U.S. duty free (*Inside U.S. Trade*, January 31, 2003). This provision, which requires no reciprocal market access from the Indonesian islands, will have a clear negative impact on U.S. jobs. In addition, the labor provisions of the Singapore FTA appear to not apply at all to workers' rights violations on these Indonesian islands, despite the permanent access to our market that products from these islands will receive. The inclusion of these islands exemplifies the misguided priorities of the USTR, and does nothing to promote the broader economic interests of the U.S.

Transshipment is another major problem in our trading relationship with Singapore, and it is only likely to get worse under the new FTA. USTR reports that Singapore's port is currently the world's second busiest transshipment hub. The FTA's protections against transshipment may do little to counter the increased attractiveness of Singapore as a transshipment route once it becomes the only country in Asia with guaranteed tariff- and quota-free access to the U.S. market.

Market access provisions are not the only aspects of the Singapore and Chile agreements that may have a negative impact on the U.S. economy. Shortly after NAFTA went into effect, Mexico's large external indebtedness and inability to control speculative foreign capital contributed to a devastating financial crisis and the collapse of the peso. While the U.S. stepped in to bail out the Mexican economy, the massive devaluation made Mexican goods so much cheaper in comparison to American goods that our trade deficit ballooned and our economy bled jobs. The crisis also slammed Mexican workers, and nine years after NAFTA went into effect we actually see lower wages and higher poverty in Mexico than before NAFTA began. The Singapore and Chile FTAs do nothing constructive to address these important issues of external indebtedness, currency manipulation, and financial speculation. Instead, the investment rules of both agreements actually constrain Chile's and Singapore's ability to impose capital controls and regulate financial speculation, increasing the likelihood of crisis, devaluation, and chronic imbalances in our trading relationships.

B. Labor Provisions of the Chile and Singapore FTAs

The Singapore and Chile FTAs' combination of unregulated trade and increased capital mobility not only puts jobs at risk, it places workers in all three countries in more direct competition over the terms and conditions of their employment. High-road competition based on skills and productivity can be positive for workers, but low-road competition based on low wages, poor working conditions, and weak workers' rights drags all workers down into a race to the bottom. Congress recognized this danger in TPA, and directed USTR to ensure that workers' rights would be protected in new trade agreements. One of the overall negotiating objectives in TPA's section 2102(a)(6) is "to promote respect for worker rights … consistent with core labor standards of the ILO" in new trade agreements. TPA also includes negotiating objectives on the worst forms of child labor, non-derogation from labor laws, and effective enforcement of labor laws.

Unfortunately, the labor provisions of the Chile and Singapore FTAs fall far short of meeting these objectives. Instead, the agreements actually step backwards from existing labor rights

provisions in the U.S. – Jordan FTA and in our Generalized System of Preferences (GSP) program, which currently applies to Chile. In both the Chile and Singapore agreements, only one single labor rights obligation – the obligation for a country to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapters, many of which are drawn from Congressional negotiating objectives, are explicitly not covered by the dispute settlement system and thus completely unenforceable.

Instead of building upon the Jordan FTA to provide the more effective guarantees for the ILO core labor standards, the Chile and Singapore FTAs actually back track from the minimal workers' rights provisions of Jordan agreement. At first glance, the labor chapters of the Chile and Singapore FTAs look similar to the labor provisions of the Jordan FTA. The Jordan FTA's key commitments to ensure that the core labor standards of the International Labor Organization (ILO) are recognized and protected by domestic law, not to derogate from or waive domestic labor laws, and to effectively enforce domestic labor laws, are all present in the Chile and Singapore FTAs. But there is a crucial difference. Under the Jordan agreement, parties can bring a dispute regarding the other party's failure to comply with any provision of the labor chapter, including the commitments on non-derogation and ILO standards. While it may be difficult to show that the other party is not "striving" to ensure that it meets ILO standards or not "striving" not to derogate from domestic laws, these are questions that can be brought to dispute resolution under the Jordan FTA and debated in the context of the facts of each case. Under the Chile and Singapore agreements, on the other hand, complaints regarding these two key commitments cannot be brought before dispute resolution at all. In fact, the only labor provision that is subject to dispute resolution in both agreements is the commitment to effectively enforce domestic laws. And while the dispute resolution procedures and remedies were identical for the labor, environment, and commercial provisions of the Jordan FTA, the labor and environment enforcement provisions in the Chile and Singapore FTAs are both different from and weaker than the provisions for the enforcement of the agreements' commercial obligations.

The Chile and Singapore agreements thus represent a huge step backwards from our current GSP program, under which countries can be denied trade benefits if they have not taken, or are not taking, steps to afford internationally recognized worker rights. This is a substantive standard, going beyond a mere requirement to enforce domestic laws. GSP explicitly requires countries to ensure that their laws guarantee freedom of association and the right to organize and bargain collectively, bar forced labor, set a minimum age for the employment of children, and reflect acceptable conditions with regard to the minimum wage, hours of work, and health and safety. Workers have used the GSP petition process to review labor rights abuses in dozens of countries, including Chile. The U.S. government has in fact evaluated countries' labor laws and, in some cases, required governments to amend their labor laws in order to continue receiving preferential market access under the GSP program. The GSP petition process, though flawed in its own ways, has produced real gains for workers' rights in a number of countries.

Under the Chile FTA, the GSP petition tool will no longer be available to workers. The tool that replaces it – the labor provisions of the FTA – is significantly weaker; it does not permit either country to withdraw trade benefits based on the fact that domestic labor laws fail to meet international standards. Disputes can only be brought over a country's failure to enforce its own laws, no matter how inadequate those laws are. Even if a violation of this one commitment is

found, the remedy is a weak fine mechanism, rather than the withdrawal of trade benefits permitted under GSP. The FTA is also missing the individual petition procedure available under GSP, which gives workers an important voice in the process of reviewing and improving workers' rights.

By focusing exclusively on enforcement of domestic labor laws, the Singapore and Chile FTAs end up creating a perverse incentive. Under the Chile and Singapore FTAs, a country that is challenged for failing to enforce its existing labor laws could simply weaken or eliminate those laws to avoid dispute settlement. A country could amend its laws to ban unions, allow child labor and forced labor, and invalidate all collective bargaining agreements, and face no possible penalty under the Chile and Singapore agreements. This makes a mockery of the agreements' one enforceable labor provision, essentially gutting the entire labor chapter of both agreements. This is an absurd and self-defeating policy that would not be tolerated in an area of concern to business.

Even for the one obligation that is subject to dispute resolution – the requirement to effectively enforce domestic laws – the procedures and remedies for addressing violations are significantly weaker than those available for commercial disputes in the agreements. This directly violates section 2102(b)(12)(G) of TPA, which instructs our negotiators to seek provisions in trade agreements that "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." The Chile and Singapore FTAs do not treat all negotiating objectives equally, and they do not provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

The labor enforcement procedures allow parties to opt for longer timelines for consultations, cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines to themselves with little oversight. These provisions not only make the labor provisions of the agreements virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes. The following examples from both agreements demonstrate the disparate treatment accorded to disputes regarding the enforcement of labor laws:

- Parties must first go through 60 days of consultations under the labor chapter before they can resort to dispute resolution. Parties can further delay resolution of a dispute by going through a second round of consultations under the dispute settlement chapter before finally proceeding to an arbitral panel. While this second stage of consultations is not required, parties are free to choose the second stage of consultations in order to slow down labor disputes and delay the availability of remedies.

- Under the rules governing commercial disputes, the suspension of trade benefits authorized to sanction a violation should have "an effect equivalent to that of the disputed measure [i.e., the measure that violates the agreement]." Yet under the rules governing labor disputes, the amount of a monetary assessment is not just based on the harm caused by the disputed measure. Instead, the panel also takes into consideration numerous other factors, many of which could be used to justify a lower, and thus less effective, sanction.

These factors include the reason a party failed to enforce its labor law, the level of enforcement that could be reasonably expected, and "any other relevant factors."

- In commercial disputes, the violating party can choose to pay a monetary assessment instead of enduring trade sanctions (the sanctions are supposed to equal the harm caused by the offending measure, as explained above), and in such cases the assessment will be capped at half the value of the sanctions. In labor disputes, however, the assessment is capped at an absolute level, no matter what the level of harm caused by the offending measure.

- Not only are the fines for labor disputes capped, but the level of the cap is so low that the fines will have little if any deterrence effect. The cap in the Chile agreement is $15 million (the amount of the cap is not finalized in the version of the Singapore agreement available to the LAC). This amounts to less than three percent of the import charges we collected on Chilean products in 2002, and less than five percent of the import charges we collected on Singaporean products in 2002. As a percentage of total bilateral trade volume, the cap is less than 0.24% of our trade with Chile and less than 0.05% of our trade with Singapore last year.

- Not only are the caps on fines much lower for labor disputes, but any possibility of trade sanctions is much lower as well. In commercial disputes, a party can suspend the full original amount of trade benefits (equal to the harm caused by the offending measure) if a monetary assessment (capped at half that value) is not paid. In a labor dispute, the level of trade benefits a party can revoke if a monetary assessment is not paid is limited to the value of the assessment itself, or $15 million.

- Finally, the fines are robbed of all punitive or deterrent effect by the manner of their payment. While the LAC supports providing financial and technical assistance to help countries improve labor rights (and all members of the LAC were appalled to see the funds for such activities in the administration's budget for 2004 slashed from $148 million to just $12 million), such assistance is not a substitute for the availability of punitive sanctions in cases where governments refuse to respect workers' rights in order gain economic or political advantage. In commercial disputes under the Chile and Singapore FTAs, the deterrent effect of punitive sanctions is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, a monetary assessment is automatically paid into a fund to improve labor law administration in the violating country, thus compensating the violator for its failure to effectively enforce its own laws. There are no explicit provisions to prevent a violator from simply shifting its budgeting, and thus no assurance that the assessment will actually provide additional money for enforcement. Whether money will actually be spent on enforcement, rather than the kinds of conferences and seminars that have failed to improve workers' rights under the NAFTA labor side agreement, is also not addressed.

The labor provisions in the Chile and Singapore FTAs are woefully inadequate. They fall short of the Jordan FTA and GSP. They also clearly fall short of the TPA negotiating objectives.

They will be extremely difficult to enforce with any efficacy, and any monetary assessments that are imposed will be inadequate to actually remedy violations. In sum, the Chile and Singapore FTAs will do very little to actually ensure that core workers' rights are respected and improved in the U.S., Chile, and Singapore.

C. Temporary Entry in the Chile and Singapore FTAs

USTR has negotiated provisions in the Chile and Singapore FTAs for the temporary entry of professional workers without any authority or directions to do so from Congress. The negotiating objectives that Congress laid out for USTR in TPA do not include even one word on temporary entry. There is no specific authority in TPA to negotiate new visa categories or impose new requirements on our temporary entry system, yet that is exactly what USTR has done in the Chile and Singapore FTAs. 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.

The new Singapore and Chile professional visas will give U.S. employers substantial new freedom to employ and control temporary guest workers with little oversight from the Department of Labor and with few real guarantees for the rights of workers. This is to the detriment not only of the temporary workers themselves, but of the domestic labor market and American co-workers now facing a lagging economy and high unemployment in many sectors.

The Singapore and Chile visa provisions differ from our existing H-1B program in a number of ways:

- The agreements' definition of professionals is unacceptably broad. It includes any job that requires a bachelor's degree, even if we have no domestic labor shortage in that job category. The agreements also include additional job categories – such as management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers – that do not even require a bachelor's degree. This completely ignores the justification for our current H-1B program and all other temporary entry programs for professionals, which is to address domestic labor shortages. Even the new professional visa program created under NAFTA included a limited list of the professions in which entry would be allowed. Doing away with the list opens up the new visa programs to abuse by employers facing no domestic labor shortage who only seek an easy source of low-wage labor.

- The agreements appear to allow workers who do not have direct employment in the U.S., but only a service contract, to use the new visa category. Both agreements define professionals as workers "engaged" in a specialty occupation, not "employed" in a specialty occupation. In addition, side letters seem to suggest that new provisions will have to be crafted to deal with these contract workers, who are not currently permitted entry under our H-1B program. Under these rules, professionals could enter to perform various contracts or work for temp agencies, thus lacking any direct employer and making it almost impossible for our government to regulate abuse and ensure the domestic labor market is not being undermined.

- USTR originally sought to create these new visa categories without any numerical caps, until Congressional committees with jurisdiction over immigration policy found out about their plan and raised strenuous objections. Now both agreements include caps on the number of professionals granted entry each year (1,400 for Chile and 5,400 for Singapore) that are separate from, and in addition to, the global H-1B cap. Even if the global H-1B cap is filled, workers can still come in under the Singapore and Chile caps.

- The agreements grant professional visas for one year, and the visas are renewable without any limits. This basically transforms a temporary entry program into a permanent program, and provides employers with the power to keep permanent workers in a temporary legal status that must be renewed each year. Under the H-1B program, workers are granted a three-year visa that can be renewed only once.

- The agreements limit fees charged to visa applicants, stating that these fees must not unduly constrain trade. This could make it more difficult for the U.S. to collect visa fees that go beyond the costs of processing. Under the H-1B program we currently charge applicants $1,000 for temporary entry visas and use the money to finance job training for American workers. It is unclear whether we will be able to continue this practice under the Chile and Singapore FTAs.

Finally, the Labor Condition Application (LCA) is one of the only safeguards we have in our H-1B system for ensuring that employers do not abuse temporary workers to undermine the domestic labor market. Though the H-1B LCA system is unacceptably weak and needs to be strengthened, it at least requires employers to make some statement about how they will treat H-1B workers. But the LCA allowed under the Chile and Singapore agreements appears to be even weaker than the LCA now required for H-1B workers. First of all, the agreements allow an LCA that certifies employers are complying with domestic labor and immigration laws, but the current LCA goes beyond this to require employers to pay temporary workers the prevailing wage in the industry and to ensure that the conditions of employment do not undermine domestic labor conditions. Additional requirements are included in the LCA for H-1B dependent employers, a category not mentioned in the Chile and Singapore agreements. Secondly, the visa programs set up under the agreements could require the temporary entrants – who have no knowledge of domestic labor conditions or their employer's compliance with them – to submit the LCA rather than employers, especially if contract workers with no direct employment relationship are allowed to take advantage of the new visas.

Immigration policy is a sensitive political issue, and changes in immigration policy have traditionally been the result of intense, open negotiations between workers, employers, immigration advocates, and elected members of Congress. These issues simply do not belong in fast-tracked trade agreements negotiated by executive agencies. The Singapore and Chile FTAs require permanent changes to our immigration system, 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 completely unacceptable to LAC members. It makes no economic sense for workers facing stagnant wages and high unemployment, and it is totally inconsistent with the

our right to engage in a full, democratic debate with our elected representatives on immigration issues.

D. Other Issues in the Chile and Singapore FTAs

In addition to the problems with the labor and temporary entry provisions of the Singapore and Chile agreements outlined above, other commercial provisions of the agreements also raise serious concerns for the LAC.

Investment: NAFTA gave corporations the right to challenge our laws before secret arbitration panels, and to demand compensation from governments if those laws infringed on their rights. Multinational corporations have exploited NAFTA's flawed investment chapter to challenge legitimate government regulations designed to protect the environment, shield consumers from fraud, deliver public services, and safeguard public health. The rights granted to foreign investors under NAFTA exceed the rights guaranteed to domestic investors under our Constitution, and Congress directed USTR to remedy this problem in future trade agreements.

Section 2102(b)(3) of TPA states that new trade agreements should ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." In addition, the section states that standards for expropriation and fair and equitable treatment in new trade agreements shall be "consistent with United States legal principles and practice." This instruction is particularly important with regard to the expropriation provisions of trade agreements. Arbitration panels have interpreted NAFTA's prohibitions on "indirect" expropriations and "measures tantamount to" expropriation to afford protections to foreign investors that are not available to domestic investors under our Constitution. Specifically, panels have relied on this NAFTA language to rule that a regulation can constitute a prohibited expropriation even when that regulation denies an investor just a portion of the rights in his or her property, rather than the entirety of the property as required under our domestic "takings" jurisprudence.

The Chile and Singapore FTAs still contain language prohibiting "indirect" expropriations and "measures equivalent to" expropriation, leaving open the door for many of the same kind of challenges to legitimate public regulations we have seen under NAFTA. Annexes to the Singapore and Chile investment chapters include a list of factors to consider in determining whether or not such an indirect expropriation has taken place. At first glance, the list of factors in each agreement looks like factors that have been laid out by the U.S. Supreme Court in takings decisions. But simply listing some of the factors the Supreme Court has discussed, without the essential explanations and limitations that were set forth by the Court regarding each factor, provides no assurance that foreign investors will not in fact be granted greater rights than U.S. investors. Under the language of the Chile and Singapore agreements, and even considering the factors listed in each agreement's annex, it is still possible that arbitral panels could determine that the mere diminution in the value of property, even if caused by legitimate public interest regulations, constitutes a prohibited expropriation. This directly contradicts U.S. law, and therefore fails to meet the negotiating objectives on investment that Congress specified in TPA.

The FTAs may exceed U.S. law in other ways as well. The agreements' extremely broad definition of what constitutes property ignores the Supreme Court's careful distinctions between

the types of property interests that must be violated to constitute an unconstitutional taking and the broader set of property interests that fall under due process protections. The agreements' definition of "fair and equitable treatment" refers to an undefined notion of customary international law, but has no direct parallel in U.S. law. The agreements state that "fair and equitable treatment" includes, but is not limited to, principles regarding denial of justice and due process, leaving open the question of how else panels may be able to define "fair" and "equitable" without any reference whatsoever to U.S. legal standards. This violates Congress's direction that fair and equitable treatment standards be "consistent with United States legal principles and practice."

The Singapore and Chile FTAs also explicitly constrain the ability of the Chilean and Singaporean governments to regulate the flow of speculative financial capital in order to prevent and redress debilitating financial crises. While allowing for the short-term imposition of controls under some circumstances, the agreements also give investors the right to demand compensation for losses incurred as a result of these controls after a certain window of time. Even the slim threat of future demands for compensation could chill governments' willingness to impose short-term controls that they hope will expire within the agreement's time window.

A government's ability to employ sound capital controls (and Chile's system has been considered a model for sound capital controls around the world) can be the key to averting financial crises that have the potential to not only cripple a country's domestic economy, but to spread contagion effects throughout an entire region. American workers also pay the price as financial crises become more frequent and severe; a country in the grip of crisis often devalues its currency and exports under-priced goods to the U.S. market to earn the cash it so desperately needs to maintain its struggling economy. While the investment provisions of the Singapore and Chile FTAs may provide more freedom and higher profits to some Wall Street firms, these provisions threaten global financial stability and are not in the economic interests of the United States as a whole.

In addition, the FTAs include the deeply flawed investor-to-state dispute resolution provisions of NAFTA. While these disputes may be more transparent under the Chile and Singapore FTAs than they are under NAFTA, any private right of action creates an incentive for investors to bypass domestic complaint procedures and mount novel legal challenges that would not be permitted under domestic law. To control abuse of this private right of action, congressional negotiating objectives in TPA call for measures to eliminate frivolous claims (such as measures requiring the exhaustion of domestic remedies and/or measures allowing a home state to intervene in a dispute involving one of its investors) and the creation of a standing appellate mechanism in new trade agreements.

The Singapore and Chile FTAs create no standing appellate mechanism to guard against inconsistency or abuse in the resolution of investment disputes; they only commit the parties to consider whether or not to create such a mechanism in three years. The agreements also fail to contain any exhaustion requirements or diplomatic controls on investor suits. They do create an expedited procedure for dismissing frivolous claims, but this is not very different from the expedited procedures for considering jurisdictional questions that already exist for NAFTA claims. It is interesting to note that Chile made a reservation to the FTA that bars a foreign

investor from ever taking a claim to arbitration under the agreement if the investor has already brought the case under Chile's own domestic procedures. Yet the U.S. made no such reservation, giving Chilean investors more rights to bypass our own judicial system than our investors will have with regard to Chile! Given Congress's manifest concerns with abuse of investor-to-state dispute arbitration, the failure of the U.S. to establish a similar version of this limited exhaustion requirement for itself in the Chile FTA is extremely puzzling.

Finally, the dispute resolution procedures and remedies available to investors under the Chile and Singapore FTAs provide a marked contrast to the procedures and remedies available for the violation of workers' rights and environmental standards under the agreements. An individual investor's right to pursue arbitration and receive direct compensation is in no way comparable to the extremely limited opportunity to enforce workers' rights and environmental provisions through state-to-state dispute resolution procedures and capped fines paid back to the violating government. This flouts the requirement in section 2102(b)(12)(G) of TPA that all negotiating objectives be treated "equally" regarding the availability of "equivalent" dispute settlement procedures and remedies.

Intellectual Property Rights: In section 2102(b)(4)(C) of TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Agreement on Intellectual Property Rights (TRIPs) and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Doha declaration clearly states that TRIPs "does not and should not prevent Members from taking measures to protect public health." It goes on to reaffirm the right of countries to take full advantage of the flexibility available under TRIPs to: 1) grant compulsory licenses and determine the grounds upon which those licenses are granted; 2) determine what constitutes a national emergency, including in emergencies created by a public health crisis; and 3) establish their own regimes for the exhaustion of intellectual property rights.

Unfortunately, rather than reaffirming and strengthening the Doha declaration's recognition of the primacy of public health concerns, it appears that the Chile and Singapore FTAs undermine the protections for public health contained in TRIPs and the Doha declaration. This not only violates congressional negotiating objectives, it sets a terrible precedent for pending free trade agreements with developing countries in Southern Africa and elsewhere. In countries facing devastating public health crises, governments must have adequate flexibility under international trade rules to provide their people with access to essential medicines.

The Chile and Singapore FTAs contain a number of "TRIPs-plus" provisions which may erode the flexibility that the TRIPs provides to governments to address public health crises. The FTAs establish strong new protections for pharmaceutical test data, which are in addition to the protections for patented medicines themselves. Requiring governments to wait five years before they can allow generic producers access to test data could unnecessarily delay affordable access to quality medicines and make their production more costly. The FTAs also place strict restrictions on the how government provide marketing approval and sanitary permits for medicines. These restrictions go beyond TRIPs, and could be used by pharmaceutical companies to block the production of generic medicines during a public health crisis.

The human costs of tightening patent protections for essential medicines far outweigh any potential gains these rules will produce for U.S. pharmaceutical companies. Congress, recognizing the priority that public health concerns must have over corporate patent protections, specifically instructed USTR to maintain the flexibility granted in the Doha declaration in future agreements. It appears the USTR has refused to do so in the Singapore and Chile FTAs.

In addition, the Singapore FTA is missing the language from Article 27(3)(b) of TRIPs, which allows countries to exclude plants and animals from patent regimes. The Chile FTA is also lacking this provision, along with language form Article 27(2) of TRIPS, which explicitly allows countries to deny patents to inventions in order to protect public morals, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment. If countries are denied the flexibility accorded in Article 27 of TRIPs, they could be required to patent plants and other life forms despite possible harm to the environment or public health and safety.

Government Procurement: NAFTA and WTO rules on procurement restrict the public policy aims that may be met through procurement policies at the federal and state level. For example, in Executive Order no. 13126, of June 12, 1999, signatories to these procurement agreements were specifically exempted from the order's ban on federal purchases of goods made by forced child labor, out of fear that the order would violate trade rules. Singapore is already a signatory to the plurilateral WTO Agreement on Government Procurement (which extends to purchases by 37 states in the U.S.), but Chile is not. Unfortunately, the Chile FTA extends these rules to cover products and services from one more country. Like the WTO agreement (but unlike NAFTA), the Chile FTA's rules extend to procurement at the state level as well as the federal level in the U.S., and they extend to the municipal level in Chile.

The NAFTA, WTO, and FTA rules on government procurement bar the consideration of non-commercial criteria in purchasing decisions covering a broad range of public contracts for goods and services. These rules could thus be used to challenge a variety of important procurement provisions including preferences for small businesses and women- and minority-owned business, incentives for recycling and resource conservation, living wage laws, anti-sweatshop laws, and project-labor agreements. It is especially worrisome that many states have agreed to be covered by the procurement provisions of the Chile FTA with little or no discussion with state legislators or the public.

The U.S. should focus on revising – not extending – this flawed model. Trade agreements should not constrain those procurement rules that serve important public policy aims such as environmental protection, local economic development and social justice, and respect for human rights and workers' rights. Governments have a right to invest their tax money in local firms and to use procurement policy to pursue broader social goals.

Rules of Origin: Any preferential trade agreement must include a rule of origin that assures that products, especially complex goods such as motor vehicles and parts, are manufactured as well as assembled in the beneficiary country. The high degree of international investment in most manufacturing industries makes it essential to set a high rule of origin, focused on manufacturing content rather than on indirect costs or simply on tariff classification changes. The rule of origin

included in the Chile and Singapore agreements would allow products that include many major parts and components made outside these countries to qualify for duty-free benefits. Such a low rule of origin defeats the purpose of the agreements and provides excessive opportunities for multinational corporations to manipulate their production and purchasing to take advantage of these benefits. It also allows companies to invest in production outside the countries that have negotiated FTAs and still benefit from the agreements' benefits. The rule of origin fails to promote production and employment in the U.S. or in Chile and Singapore; it is simply inadequate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Chile and Singapore agreements, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. A surge of imports from large multinational corporations can overwhelm domestic producers very quickly, causing job losses and economic dislocation that can be devastating to workers and their communities. For many American workers losing their jobs to imports, it may be their own employer that is responsible for the surge of imports. In such a case, and similar situations in which an irreversible international sourcing decision has been made on the basis of one of these free trade agreements, the usual remedy of restoration of the previous tariff on the imports will not be enough to reverse the company's decision to move production abroad. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed. The Chile and Singapore FTAs have failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. The U.S. company UPS is arguing that Canada's public postal service violates NAFTA, because governmental support for the postal service is an unfair subsidy. Increased pressure to deregulate and privatize services could raise the cost and reduce the quality of such basic services as health care and education. Yet the Chile and Singapore agreements do not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers, which could include many important services in the U.S. including water, health care, and education, are subject to the rules on trade in services in the Singapore and Chile FTAs.

In addition, the agreements discipline how we regulate private service providers, especially in the financial sector. To comply with these commitments, Chile will have to change its regulations of the privatized portion of its pension system to allow 100% of workers' retirement savings in the system to be invested overseas. Committees of jurisdiction in the U.S. Congress and state and local regulators will have to read the financial services chapters carefully to discover what, if any, changes will be required to our own domestic financial regulations under the new trade agreements. Even if no changes are immediately required, the agreements' rules open up a new avenue for financial firms to challenge existing or future regulations on their operations.

VI. Conclusion

The Singapore and Chile FTAs do not promote the economic interest of the United States. The agreements clearly fail to meet some congressional negotiating objectives, barely comply with others, and include some provisions that are not based on any congressional negotiating objectives at all. These agreements repeat the same mistakes of the 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 LAC recommends that Congress reject both of these agreements, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed. The LAC recommends that USTR reorder its priorities before continuing with negotiations towards new free trade agreements with Central America, Southern Africa, Morocco, and Australia. American workers are willing support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights. The LAC is committed to fighting for better trade policies that benefit U.S. workers and the U.S. economy as a whole. We will oppose trade agreements that do not meet these basic standards.

VII. Membership of the Labor Advisory Committee

1. Ande Abbott, Director, Shipbuilding & Marine Division, International Brotherhood of Railway Building
2. Marjorie Allen, Legislative Representative, AFSCME, AFL-CIO
3. Paul Almeida, President, Department of Professional Employees, AFL-CIO
4. Mark Anderson, Secretary-Treasurer, Food and Allied Service Trades Department, AFL-CIO
5. R. Russell Bailey, Senior Attorney, Airlines Pilots Association
6. Gary Baker, President, International Brotherhood of Teamsters, Local 173
7. John Barry, President, International Brotherhood Of Electrical Workers
8. Albert Battisti, Alkali Chemical Plant
9. George Becker, President Emeritus, United Steelworkers of America
10. Steve Beckman, International Economist, United Automobile, Aerospace and Agricultural Implement Workers of America
11. Joseph Bennetta, Teamsters Local 191
12. Brian Bergin, Assistant to the President, Building and Construction Trades Department, AFL-CIO
13. Carrie Biggs-Adams, Representative-International Affairs, Communications Workers of America
14. Michael D. Boggs, International Affairs Director, Laborers' International Union of North America, LIUNA
15. Stephen Brown, PACE Local 8-0712, Potlatch Corporation, Consumer Products Division
16. Patricia Campos, Legislative Director, Union of Needletrades, Industrial and Textile Employees (UNITE!)
17. Francis Chiappardi, Jr., General President, National Federation of Independent Unions
18. Joseph Coccho, President, American Flint Glass Workers
19. William Cunningham, Associate Director, Department of Legislation, American Federation of Teachers

20. Joseph W. Davis, Assistant Director of International Affairs, American Federation of Teachers
21. Elizabeth Drake, International Financial Analyst, AFL-CIO
22. Jennifer Lynn Esposito, Legislative Representative, International Brotherhood of Teamsters
23. Cathy Feingold, Program Specialist, Women in the Global Economy, AFL-CIO
24. Douglas A. Fraser, Professor, College of Urban, Labor and Metropolitan Affairs, Wayne State University
25. Patricia A. Friend, International President, Association of Flight Attendants
26. Michael W. Gildea, Assistant to the President, Department of Professional Employees, AFL-CIO
27. Stephen Goldberg, Professor, Northwestern University Law School
28. Arthur Gundersheim, Union of Needletrades, Industrial And Textile Employees (UNITE!)
29. Owen Herrnstadt, International Association of Machinists and Aerospace Workers
30. John Howley, Policy Director, Service Employees International Union
31. David Johnson, President, UFCW International Vice President, National Apparel, Garment and Textile Workers Council
32. Harry Kamberis, Director, AFL-CIO Solidarity Center
33. Don Kaniewski, Legislative and Political Director, Laborers' International Union of North America, (LIUNA)
34. Brendan Kenny, Legislative Representative, Air Line Pilots Association
35. Bill Klinefelter, Legislative and Political Director, United Steelworkers of America
36. Anne Knipper, Assistant to the Director, International Affairs Department, AFL-CIO
37. Thea Lee, Public Policy Department, AFL-CIO
38. Larry Liles, International Representative, International Brotherhood of Electrical Workers
39. William "Bill" Luddy, Director, Labor Management Trust, United Brotherhood of Carpenters and Joiners of America
40. Lawrence Martinez, VP Graphic Communication, Graphic Communications International Union
41. Jay Mazur, President, Union of Needletrades, Industrial and Textile Employees (UNITE!)
42. Lindsey McLaughlin, Washington Representative, International Longshoremen's and Warehousemen's Union
43. Douglas Meyer, Director, Economic Research & Public Policy, International Union of Electronic, Electrical, Technical, Salaried & Machine Workers
44. Francis X. Pecquex, Executive Secretary-Treasurer, Maritime Trades Department, AFL-CIO
45. Cheryl Peterson, Senior Policy Fellow, American Nurses Association
46. Keith D. Roming, Jr., Associate Director, National and International Affairs, PACE International Union
47. Michael Sacco, President, Seafarers International Union of North America
48. Jim Sauber, Research Director, National Association of Letter Carriers
49. Denny Scott, Assistant Director of Organizing, United Brotherhood of Carpenters and Joiners of America
50. Michelle Sforza, Public Policy Analyst, AFSCME
51. Barbara Shailor, Director, International Affairs Department, AFL-CIO
52. James Sheehan, United Steel Workers of America
53. Talmage E. Simpkins, Executive Director, AFL-CIO Maritime Committee
54. Alan Spaulding, International Affairs, United Food and Commercial Workers
55. Ann Tonjes, Manager, Policy Planning, Association of Flight Attendants
56. Edward Wytkind, Executive Director, Transportation Trades Department, AFL-CIO
57. Gregory Woodhead, Trade Task Force, AFL-CIO
58. David Yoeckel, Senior Research Analyst, International Brotherhood of Electrical Workers of America

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