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PROPOSED UNITED STATES–CHILE AND UNITED STATES–SINGAPORE FREE TRADE AGREEMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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PROPOSED UNITED STATES–CHILE AND UNITED STATES–SINGAPORE FREE TRADE AGREEMENTS

MONDAY, JULY 14, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 4:06 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Graham, Cornyn, and Feinstein.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. Well, we are happy to convene this Committee hearing. We are here today for the Committee's first hearing of what I hope will be many on international trade agreements and implementing language related to those areas in the agreements that concern matters under the jurisdiction of the Judiciary Committee.

Specifically, today we will examine some of the provisions in the proposed bilateral Free Trade Agreements between the United States and Chile and the United States and Singapore.

I would like to commend the administration in reaching these agreements with Chile and Singapore. Both Chile and Singapore are countries that represent economic stability and growth in their respective regions. The trade agreements will provide new market access for American products, including agricultural, manufactured products, telecommunications equipment, and other high-technology products.

Both of these agreements contain chapters on matters of longstanding interest to this Committee. These include immigration, intellectual property, antitrust, e-commerce, and telecommunications. In all of these areas except immigration, no changes in any U.S. laws under this Committee's jurisdiction require amendment.

In many ways, the substance of the negotiations on matters of Judiciary Committee concern with respect to these two important treaties has focused on ways to encourage our trading partners to harmonize their law with current U.S. standards, and we should be proud of this dynamic.

Today, I expect the Committee will focus its attention on the provisions in the agreements that relate to legislative language being drafted to implement the immigration aspects of the treaties. Key

issues include provisions that relate to the temporary entry of investors, visitors for business, and temporary professional workers.

As I understand it, over the last several months on six occasions the Office of the United States Trade Representative has briefed the Committee on immigration issues related to these agreements. I want to acknowledge and thank the USTR for consulting with the Committee. We need to continue this spirit of cooperation as we move forward on these and other trade agreements.

In the last week, USTR staff and Committee staff have worked closely together as the immigration language has been circulated and revised. Last Wednesday, Committee staff and a representative from USTR, Ted Posner, met to identify and attempt to resolve issues related to immigration. Many of us know and respect Ted from his days as one of Senator Baucus' trade counsels on the Finance Committee. I should also mention the good work of Kent Shigetomi on the immigration portions of these agreements.

In any event, since the Wednesday meeting that walked through the proposed language, a series of informal staff-level consultations have occurred. In fact, it was my hope that the Committee would be able to hold what is known as a mock markup last Thursday. But as anyone who follows the Judiciary Committee knows, we spent another 12 hours on asbestos and we were unable to get to the trade agreements.

My colleagues on the Committee will recall that Senator Grassley, who, in addition to serving on this Committee, chairs the Finance Committee, urged us to take up these trade matters in the hope that the full Senate can adopt these treaties before the August recess. I wholeheartedly agree with Chairman Grassley that the full Senate should act on the Chile and Singapore Free Trade Agreements before we adjourn in August, if at all possible.

Under the Trade Promotion Act of 2002, implementing legislation for trade agreements are fast-tracked, which means that once the administration transmits the language, we can vote for or against it, but cannot amend it.

The TPA legislation also calls for close consultation between the administration and Congress. This consultation takes place in a number of forms. It includes the statutorily created Congressional Oversight Group on Trade, on which Senator Leahy, Senator Cornyn and I serve to represent the interests of our Committee.

The informal staff briefings between USTR and other agencies and Congressional staff are another type of constructive interaction. While not statutorily required, the so-called mock markup is another prudent mode of inter-branch of Government communication. This amounts to an occasion for the relevant committees to give the administration their informal advice in the very formal setting of an executive business meeting on any implementing language that the administration is developing for subsequent submission to the Hill under the fast-track procedures.

Unfortunately, we were unable to reach the mock mark item on last Thursday's agenda. We have had the benefit of several more Judiciary Committee staff and USTR staff interactions over the last several days.

I would suggest that another function of today's hearing will be for members of this Committee to convey any unresolved concerns

they would have raised on Thursday directly to the senior USTR officials responsible for negotiating these two agreements.

I have heard, and to some extent share the concerns that some members of the Committee, including Senator Feinstein, have about the truncated schedule we are operating under and the somewhat fluid nature of the language over the last week.

I do appreciate U.S. Trade Representative Robert Zoellick's attempt to gain our views and to keep this Committee apprised of the status of progress on these agreements and the development of the implementing language that the administration plans to introduce shortly.

I want to emphasize that members of this Committee will expect satisfactory answers and resolution to the questions and concerns that may be raised during today's hearing. If there are reasons why our input cannot be accommodated, we expect to know why.

We live in a global economy where free trade is vital to our Nation. An integral part of this global economy is the flexibility to move existing personnel from one country to another in order to provide much needed support of the companies that conduct business abroad. Further, if we want our trading partners to allow American citizens to enter their borders to conduct business, we must also reciprocate by granting their citizens the same type of privileges.

While I support the principle of free trade and understand the benefits of agreements such as these to the U.S. economy and job market, I will never agree to legislation that does not reflect sound immigration policy, just as I would never agree to any compromise of national security for the sake of selling more products overseas. I would never sacrifice the well-being of hard-working Americans and their families by weakening our immigration laws.

Prior to today's hearing, members of this Committee raised several concerns about a variety of immigration issues. These include the potential for indefinite stay by the foreign workers and the risk that foreign workers may be brought into the United States to interfere with labor disputes. Another concern that I have heard is whether this agreement and implementing language could be viewed as circumventing the existing sensitive numerical limits on H1–B professional workers' visas.

I understand that many of our colleagues on the House Judiciary Committee have made it clear that trade agreements may not be the best place to change immigration law and policy.

I want to make sure that our two representatives from USTR today, Ms. Vargo and Mr. Ives, will go back and give Ambassador Zoellick a message: Presenting the Judiciary Committee with implementing language related to particular trade agreements that raise general issues of immigration policy may not be the best path to travel in future trade agreements.

Having said that, I wish to emphasize that many on this Committee have worked together and with USTR to resolve their concerns with and improve the immigration implementing legislation.

I am hopeful that when the administration transmits its formal legislative package, members of the Judiciary Committee will be satisfied with the outcome with our consultations with USTR.

Despite the fact that we were unable to hold a mock markup last Thursday, I hope that today's real hearing can serve that same type of formal mechanism for the Judiciary Committee to give the administration our informal comments before the fast-track procedures are instituted.

With that, I will turn to the distinguished Senator from California for any remarks she would care to make.

STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I would like to ask you to submit to the record the statement of the ranking member, Senator Leahy, on this issue.

Chairman HATCH. Without objection.

Senator FEINSTEIN. I would like to submit some documents for the record—the Congressional Research Service document entitled "Immigration Issues in Free Trade Agreements"; secondly, temporary entry provisions of the implementing legislation for the Chile and Singapore Free Trade Agreements; thirdly, "Special Visas Used for Tech Workers Is Challenged"; and, finally, an excellent commentary piece, "Is a Stealth Immigration Policy Smart?"

Chairman HATCH. Without objection.

Senator FEINSTEIN. I mention that last one because I think that is what has happened with respect to this bill, and I very much regret I cannot support this as it stands right now.

I believe that the USTR has negotiated a whole new immigration program with no authority of this Congress to do so. Specifically, the legislation before us would create new categories of non-immigrants for free trade professionals, permit the extension or renewal of these visas each year, require the entry of spouses and children accompanied or following to join those professionals; require that the United States submit disputes about whether it should grant certain individuals entry to an international tribunal. I would never find that acceptable.

The definition of specialty occupation that is contained in this legislation is vague and unclear. It will likely be very broadly interpreted. Such interpretation could make it difficult to ensure that temporary workers are entering under the new visa category specifically to fill a skills shortage.

As drafted, visas for the temporary foreign workers could be indefinitely renewable. This, in effect, could transform what on paper is a temporary visa entry program into a permanent visa program. This is unacceptable.

Under this legislation, employers could renew their employees' visas each and every year with no limits, even while they are also bringing in new entrants to fill up annual numerical limits for new visas. This effectively would hamstring Congress' ability to limit such entries when it is in the national interest to do so.

The legislative language would weaken the labor certification attestation process which is now required from employers under the H1–B program. In fact, it would prohibit any approval procedures or labor certifications or labor market tests the Labor Department might ordinarily impose before approving the entry of foreign workers.

Today, the labor certification process is one of the only safeguards in the H1–B system for ensuring that employers do not abuse temporary workers or undermine the U.S. labor market. This weakening is unacceptable.

Unlike the H1–B visa, the legislation would not require that employers seeking temporary workers attest that they are actively trying to recruit U.S. workers for the positions filled by the foreign workers. Thus, if employers do not like the more stringent requirements of the H1–B program, they can simply recruit foreign nationals from Chile and Singapore to circumvent the H1–B visa program's requirements.

The provisions would not provide the Department of Labor authority to investigate instances of U.S. worker displacement and other labor violations pertaining to the entry of foreign workers. Again, this is unacceptable.

In the last two fiscal years, the Department of Labor investigated 166 businesses with H1–B violations. As a result of those investigations, H1–B employers were required to pay more than $5 million in back pay awards to 678 H1–B workers. This suggests to me that there is substantial fraud being practiced in this program.

Finally, I am deeply concerned about a provision in the trade agreement that would require the United States to submit to a panel comprised of international arbiters certain cases when the United States denies a temporary work visa to an individual. This is unacceptable.

Now, Mr. Chairman, the United States Constitution gives the Congress plenary power over immigration. The negotiation of such visa provisions demands Congressional oversight and input, and public scrutiny, especially during a time when security issues are of such paramount concern to us all.

I do not believe that this Committee, indeed this Congress, should relinquish our plenary power over immigration to any administration or to any panel of international arbiters. I do not believe that an immigration program belongs in a free trade bill. So either these immigration provisions come out or I am certainly not going to support this bill and I will do everything I can to prevent it from being passed in the Senate.

Thank you very much.

Chairman HATCH. Well, thank you, Senator.

Senator Cornyn is going to conduct this hearing, and so he would like to make a statement and I am going to turn the Chair over to you, Senator Cornyn.

Maybe I could just recognize the ambassadors who are here. I would like to acknowledge the presence of the Chilean Ambassador, Andres Bianchi, in the back there—Ambassador, we are so happy to have you here and I apologize for the other day not being able to make our appointment together; please forgive me—and Singaporean Ambassador Chen Heng Chee. We welcome them both. We are pleased to have both of you here with us this afternoon, and it is my hope and the hope of many that the ratification of these treaties will strengthen our relationship between our governments, and more importantly our citizens. In any event, we are honored with your presence and we appreciate having both of you here.

Senator Cornyn.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN [PRESIDING.] Thank you, Mr. Chairman. There are obviously some substantive concerns that have been raised about the temporary entry provisions and I think we have already heard about those, the temporary nature of the visits, funding for new visa programs, and the protection of American workers, time limitations for these temporary visas and numerical limitations.

The draft of the proposed language distributed throughout the Committee represents the latest negotiations between the members of both parties on this Committee and the U.S. Trade Representative.

With regard to the substance of the immigration provisions, there have been and continue to be concerns, but I believe there is largely agreement. Indeed, we want to promote trade, but we want to protect American workers from those who abuse our immigration laws.

I want to applaud the U.S. Trade Representative's Office for its effort in reaching these agreements with Chile and Singapore. The U.S.–Chile Free Trade Agreement will provide numerous opportunities for United States workers and manufacturers. U.S. companies currently operate at a disadvantage because competitors such as Canada, Mexico, and the European Union have free trade agreements with Chile. Our lack of an agreement costs American exporters $800 million per year in sales, affecting approximately 10,000 United States jobs.

The agreement with Chile will eliminate tariffs immediately on more than 85 percent of consumer and industrial goods, and most remaining tariffs will be phased out within the next 4 years. The result will be a $4.2 billion increase in the U.S. GDP and a $700 million increase in Chile's GDP.

The U.S.–Singapore Free Trade Agreement will have a similar effect on trade and economic liberalization in Southeast Asia. Despite its small size, relatively speaking, the economy of Singapore is robust and highly competitive. Approximately 1,300 American firms have a significant presence in Singapore, including 330 regional headquarters. The establishment of a free trade agreement with Singapore will further increase opportunities for American workers through improved market access.

We look forward to hearing the testimony of the two representatives here today from the USTR, Ms. Vargo and Mr. Ives.

Have you agreed on who should go first?

Mr. IVES. Ladies first.

Ms. VARGO. I guess we just did.

Senator CORNYN. I guess you won the flip of the coin, so we will be pleased to hear from you.

STATEMENT OF REGINA K. VARGO, ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR THE AMERICAS, AND LEAD NEGOTIATOR FOR THE CHILE FREE TRADE AGREEMENT

Ms. VARGO. Thank you very much. With your permission, I would like to make a written submission for the record.

Senator CORNYN. Without objection.

Ms. VARGO. Mr. Chairman, Senators Cornyn and Feinstein, and members of the Committee, I am honored to appear before you today to discuss the benefits that a 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 staffs for the suggestions and the support you provided during the negotiation of this agreement.

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 agreement for a modern economy.

This agreement makes sound economic sense for the United States. 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 FTAs 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 as 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 protection at least as good as our competitors. Consumers will benefit from lower prices and more choices. The agreement will also help spur progress in the Free Trade Area of the Americas, and will send a positive message particularly in the Western Hemisphere, that we will work in partnership with those who are committed to free markets.

The U.S.–Chile FTA is truly a bipartisan effort. Negotiations were launched under the Clinton administration in December 2000. After 14 rounds, negotiations were concluded under the Bush administration in December 2002. The agreement was signed on June 6 in Miami, in an historic ceremony with Ambassador Zoellick and his Chilean counterpart, Minister Soledad Alvear.

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 advisers, and civil society groups to develop positions and provide regular updates on progress in the negotiating rounds.

The result of this process yielded an exemplary agreement. Four features distinguish the U.S.–Chile FTA from the other 150 or so FTAs that other countries and the EU have concluded.

First, it is comprehensive. All goods 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 advance notice, comment periods, and publication of all regulations, similar to our Administrative Procedures Act. There is an explicit provision that requires bribery

in government procurement to be treated as a criminal offense. 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 and objectives that the United States has long sought in the WTO.

Third, it is modern. Strengthened protection for intellectual property rights in investment, the broad scope of services obligations, and new provisions on telecommunications, electronic commerce, express delivery, and professional services recognize the digital age and the emergence of new industries.

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

The conclusion of a Chile FTA has provided momentum to other hemispheric and global trade liberalization efforts by breaking new ground on new issues and demonstrating what a 21st century trade agreement should be.

Thank you, and I would be happy to answer any questions you may have.

[The prepared statement of Ms. Vargo appears as a submission for the record.]

Senator CORNYN. Thank you, Ms. Vargo.

Mr. Ives.

STATEMENT OF RALPH F. IVES, III, ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR SOUTHEAST ASIA, THE PACIFIC AND APEC, AND LEAD NEGOTIATOR FOR THE SINGAPORE FREE TRADE AGREEMENT

Mr. IVES. With your permission, I would like my full statement to be in the record.

Senator CORNYN. Without objection.

Mr. IVES. Thank you, Mr. Chairman, Senator Cornyn, Senator Feinstein, and other members of this Committee, for inviting me to testify today on the U.S.–Singapore Free Trade Agreement, and for this Committee's guidance during the negotiating process. I welcome this opportunity to review the FTA and present the administration's request for favorable consideration of legislation needed to implement the FTA.

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 and signed by President Bush and Singaporean Prime Minister 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, with two-way trade exceeding $40 billion and U.S. investment in Singapore of over $27 billion.

The comprehensive U.S.–Singapore FTA is the first FTA President Bush has signed with any country and our first with any Asian nation. It can serve as a foundation for other possible FTAs in Southeast Asia, as President Bush envisaged under his Enterprise for 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 an FTA.

Under this FTA, Singapore will provide substantial access for all types of services, treat U.S. service suppliers as well as it treats its own, ensure we receive the best treatment as any other foreign supplier receives, and allow our business persons temporary entry to engage in business activity. The FTA uses an approach that ensures the broadest possible trade liberalization.

This FTA also provides important protection for U.S. investors by ensuring a secure and predictable legal framework. The FTA's provision on intellectual property rights provides strong protection for new and emerging technologies, and reflects standards of protection similar to those in U.S. law.

Enhanced transparency is another important feature of this FTA in the form of an entire chapter devoted to transparency and specific transparency provisions in many 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.

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. This FTA commands wide support in our private sector. The administration looks forward to working with this Committee and the full Congress in enacting the legislation necessary to implement this agreement.

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

[The prepared statement of Mr. Ives appears as a submission for the record.]

Senator CORNYN. Thank you very much, Mr. Ives.

We have heard in both your opening remarks that trade is positive for the American economy, and I agree. However, I hope you have gotten the message that you are on shaky ground when the executive branch makes agreements on immigration matters in these agreements.

Will you explain for the Committee why it was important to include immigration provisions in each of these agreements?

As you can tell, there is some concern about infringement of Congress' plenary powers on immigration matters. Do you believe you have consulted with the Congress adequately in this process prior to entering into the agreements with Chile and Singapore, and can you tell us to what extent you have worked with members of this

Committee, as you undoubtedly have, in preparing the implementing language for these agreements?

Ms. Vargo, would you respond first, please?

Ms. VARGO. Thank you. I would like to begin by noting that what we are talking about here is the temporary entry of business persons and not permanent immigration or employment, and that both FTAs specifically exclude citizenship, permanent residence, or employment on a permanent basis.

Temporary entry relates to the ability of business persons to enter for a temporary period in order to engage in activities related to business, and American businesses need to be able to send their employees to other countries to conduct meetings, negotiate contracts, make sales, establish offices, provide services, or administer investments. The ability of U.S. business persons to enter foreign countries quickly and dependably is directed related to our competitiveness overseas.

Now, with regard to this specific agreement, we provided in our notice of intent to enter into negotiations with Singapore and Chile, which we provided to the Congress in October of 2001, I believe, a specific interest in negotiating in this subject area.

In particular, we said that we would seek appropriate provisions to ensure—and this was both in Chile and in Singapore—that we would facilitate the temporary entry of U.S. business persons into their territories, while ensuring that any commitments by the United States are limited to temporary entry provisions and do not require any changes to U.S. laws and regulations relating to permanent immigration and permanent employment rights.

Now, over the course of the negotiation we held regular communications with Congress as we tabled each new provision in the agreement. But I would particularly note that during the period between about October and December of 2002, as we were nearing conclusion, we held about 20 different consultations with the Congress on this topic of temporary entry.

During those consultations, three particular issues were brought to our attention as being of keen concern. One of those was that we would require a labor attestation. And, in fact, we did provide in the agreement that that can be done, and indicated in the side letter that it would be modeled off of the current H1–B labor condition application.

The second important point we heard was that there was a desire for a numerical limit, and so we negotiated a limit in both the Chile and the Singapore agreements that were several multiples of their current use of H1–B, while we managed to avoid having either country place a limit on the U.S. use of temporary entry into their markets.

And then, thirdly, there was a concern about a fee, that the H1–B program provided for a $1,000 fee. It goes largely into worker retraining, job retraining, and scholarship programs which we had not contemplated up to that point under the agreement. And so we made sure to change the language in the agreement to the broader standard, which was to not unduly impair or delay trade in goods or services, or the conduct of investment activities under this agreement.

So we thought that with those three particular areas that we had, in fact, met the major points of concern that had been brought to our attention. Obviously, in the last week or two we have been engaged in much more extensive discussions with the Judiciary Committees, and under those discussions we identified more than a half dozen different areas where we think we have been able to step up and meet virtually every issue that has been brought to our attention.

If you would like, Senator, I can elaborate on what those are right now.

Senator CORNYN. Why don't we save those perhaps for follow-up questions?

Ms. VARGO. Fine. So I think at this point that, yes, we have heard very much the concern that has been stated by this Committee that immigration policy is the prerogative of the Congress. And I think that through the clarifications in the statement of administrative action and the provisions that we will be putting forward in the implementing legislation, we will have narrowed the scope of the activity that we are talking about here so that it really relates to that which is part of our international services negotiations, or what is called Load 4, providing services through people located in the other person's territory.

Thank you.

Senator CORNYN. Mr. Ives, do you have anything you would like to add with regard to the question of engaging in negotiations which would appear to get involved in the Congress' business on legislating on immigration matters, what you have done in terms of your consultation and discussion with the Congress?

Mr. IVES. Thank you, Senator. I think Ms. Vargo answered the question quite thoroughly. The only additional points I would like to make are the fact that the text of at least the Singapore FTA, and I believe the Chile FTA, was available to Congress in December of last year and we published the Singapore FTA on the Internet in March and the Chile FTA in April. So they have been widely available not only just to members of Congress but the public for quite some time.

Thank you.

Senator CORNYN. Mr. Ives, let me ask you, then, it appears that the temporary entry provisions are reasonable. Can you tell us whether Singapore or Chile are currently extending the similar degree of courtesy and convenience to our professional workers when they enter their country?

Let me then ask you to also tell us what are the consequences if we choose not to reciprocate in terms of the convenience and courtesy that has been negotiated to this point in these agreements.

Mr. IVES. Well, I can answer with respect to Singapore. Singapore currently does extend the courtesy of allowing our professionals and business visitors to enter Singapore and conduct their business. So we do have that privilege currently with Singapore.

I wouldn't want to suggest that Singapore would act otherwise should we not pass this, but the agreement would provide us greater security that Singapore would continue to offer this privilege for us.

Senator CORNYN. Ms. Vargo, do you have anything else to add in that regard?

Ms. VARGO. Yes, thank you. Besides the nature of enjoying the reciprocal obligations on the part of Chile—and I will note again that they have no numerical caps on their professionals—professional services from the very beginning was one of the major objectives of Chile in our U.S.–Chile FTA.

They regarded very much their ability to come along and meet us on issues of concern to us, like telecommunications or financial services or e-commerce, as having a direct bearing on our ability to be able to address with them new opportunities for them in the professional services area. So it was a key area.

Senator CORNYN. Thank you very much.

Senator Feinstein.

Senator FEINSTEIN. Thanks very much. I would like to just clear something up, if I may.

On November 5 of last year, Senator Kennedy, Senator Cantwell and I wrote a letter to Mr. Zoellick and we pointed out in that letter that we believed these proposals may have far-reaching consequences that would permanently alter U.S. immigration policy. We named a number of other countries with whom we believed the administration was seeking to develop similar agreements.

Then we said, "We urge you to more effectively communicate with Members of Congress and other stakeholders, including worker representatives." These proposals have been made available only recently. Although representatives from your office for Committee staff on Friday, November 1, the information that was provided was limited and lacking in specificity. My staff reports to me that there were indeed briefings, but either the wrong briefer was present or couldn't answer the question, or they were, in general, unsatisfactory.

On March 19, we received a response to our letter from Mr. Zoellick which I would like to place in the record, but it makes some comments about these consultations and then it mentions three specific concerns that came up. First, staff wanted to be able to require a labor attestation similar to the labor condition application required under the H1–B program; second, et cetera, and third.

However, the final bill, Annex 14.3, number 3, says this: "Neither party may, as a condition for temporary entry under paragraph (1), require prior approval procedures petitions, labor certification tests, or other procedures of similar effects"—this is what is before us, this is the bill—"or, (b), may impose or maintain any numerical restriction relating to temporary entry under paragraph (1)."

What we have here is a template that will, if carried out—and I believe the administration intends to carry it out with other nations—totally undermine the Congress of the United States with respect to immigration policy. It is a way of getting around it, clear and simple.

The negotiating objectives that Congress laid out for the USTR in the Trade Act of 2002 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 these two agreements.

So my question is under what authority did the USTR include immigration law provisions in the trade agreements? I have sat on the Immigration Subcommittee for 10 years. No one ever picked up the phone and called me, nor was my staff asked for any input.

I come and represent the State in the Union that is most affected by all of this and no one has given me any opportunity, other than we wrote this letter and still there was no opportunity.

So my question is under what authority did USTR include these immigration law provisions in these agreements?

Ms. VARGO. Thank you. While it is true that the TPA negotiating objectives do not specifically address temporary entry, there are a number of aspects of the TPA objectives that are relevant to temporary entry of professionals with respect to the opening of foreign country markets for U.S. services and investment.

The TPA Act calls for reduction or elimination of, quote, "barriers of international trade in services, including regulatory and other barriers that deny national treatment."

Senator FEINSTEIN. How does that affect a temporary worker program which becomes a permanent program?

Ms. VARGO. Well, I would be happy to address separately why it is not a permanent worker program. It is a temporary—

Senator FEINSTEIN. No. I would really like to know what your authority is, your legal authority, to negotiate an immigration program in a trade agreement.

Ms. VARGO. Well, as I began my remarks, we do not believe that this is a negotiation of immigration policy, since it does not relate to citizenship, permanent residence, or permanent employment.

There are two aspects to the TPA objectives—equal access for small business and reducing barriers to trade in services—that we feel are relevant, that provisions of temporary entry are relevant to the ability of U.S. service providers to conduct business through services that they provide and professionals that are listed overseas.

I do understand the concern that you have raised about the idea that through the renewal program that that might suggest that there would be a possibility of continuing to roll over the application to stay here for temporary employment.

I think it is worth noting in that regard two things. One, there is now a provision in the implementing legislation that says that any time the annual renewal enters into its sixth year, it will count against the broader numerical limit that is under the H1–B program.

The second thing that we have done is we have also applied a higher threshold to these workers. They will have to indicate that they are here in the United States, that their stay is temporary, that they are not seeking permanent employment here, and that, in fact, they have a permanent residence overseas. That is a higher threshold than is required on a routine basis off of the H1–B program.

Senator FEINSTEIN. I would counter that by saying these agreements do govern the entry of foreign nationals, and that is a power that has been reserved for the Congress.

I would like to mention a GAO report which was issued on immigration benefit fraud, and the report detailed ongoing vulnerabilities of the H1–B visa program and reported that there was widespread fraud within the L1 visa programs.

The former Immigration and Naturalization Service's California Service Center found through a series of investigations and analyses widespread L1 visa fraud by foreign companies, particularly in the Los Angeles area, and identified this fraud as a growing problem. In one study, an official in the Operations Branch stated that follow-up analysis of 1,500 L1 visa petitions found only 1 petition that was not fraudulent.

I would like to ask this question: What was the rationale to submit any denial of a worker's permit to an international tribunal? What was the rationale for that?

Ms. VARGO. If I could address the first concern you raised about the investigative authority, because clearly this is an important issue, it was not included directly in the free trade agreement because that investigative authority was set to sunset and we did not want to be placing obligations on our trading partners that were more onerous than those countries might bear who did not have free trade agreements with us.

There will be a clarification in the statement of administrative action that if Congress reauthorizes any of the expiring H1–B program provisions, it may apply them to the H1–B(1) visas as long as they are consistent with U.S. obligations under the agreement, and this investigative authority certainly would be consistent.

With regard to your second question, Senator, since these are provisions relating to the temporary entry of business persons, which we see as relating to the way international services are negotiated—it is part of our broad GATS structure—these obligations are subject to dispute settlement under the agreement, which could mean an independent panel would rule on them. But I want to make it quite clear that any independent—

Senator FEINSTEIN. Independent international panel.

Ms. VARGO. No. It would be a panel that would be a roster of people selected by the United States and Chile. So it is not the same thing as going to any international panel. It would be a binational panel, people that each of us had selected.

Senator FEINSTEIN. So in other words, the sovereignty of the United States and the elected representatives of the United States would be subject to an international panel?

Ms. VARGO. They could rule on the issue, but they could not require us to implement their ruling. That would be our own choice, so we do not lose our sovereignty in that area. If we chose not to implement, they would be entitled to take steps that would rebalance the obligations in the agreement, but they could not force us in any way to implement the ruling.

Mr. IVES. Senator, may I expand on the dispute settlement issue?

Senator FEINSTEIN. Yes.

Mr. IVES. One of the concerns that I heard you raise is that individual cases could be brought to a dispute settlement panel. The FTA makes clear that it is not individual cases, but it has to be a pattern of practices that are not in compliance, and also that the business person has exhausted the available administrative rem-

edies regarding the particular issue. So it is not individual cases. There has to be a pattern before any panel would consider this.

Senator FEINSTEIN. Then I don't know why the panel is even there if it is not meaningful. I don't know what game is being played by putting a panel in that makes a decision that the United States doesn't have to abide by in a trade bill. It doesn't seem to make much sense to me.

I am curious about another thing. Why isn't the H1–B program sufficient? Why can't people come in under an H1–B program as opposed to the L program?

Mr. IVES. Well, in the case of Singapore I think it is worthwhile to point out that currently, as we understand it, approximately 660 Singaporeans currently use the H1–B program. So it is not a large number from Singapore. The purpose of the agreement is to provide a certain degree of security for our trading partners, just as we hope to receive a certain degree of security from them by putting it in a trade agreement.

Senator FEINSTEIN. Well, how would that provide security?

Mr. IVES. Well, in the sense that because the provision is subject to dispute under the agreement, if there is a pattern or practice, then, as Regina Vargo indicated, there would have to be a rebalancing if we did not have a pattern or practice of providing professional Singaporeans entry into the United States.

Senator FEINSTEIN. It wouldn't be because the company doesn't have to even look for an American worker before they hire a foreign worker first? It couldn't be because this entitles the individuals to bring their families in, and it couldn't be that the way it is set up it can easily become a permanent immigration program?

Mr. IVES. Well, again, we did not see it as that when we negotiated the agreement.

Senator FEINSTEIN. Mr. Chairman, the bottom line is I think the immigration section should be removed from the bill and that this should just be a trade agreement. I suspect that when you actually read the agreement, there is going to be substantial objection on our side because the Business Week commentary clearly establishes that this is some form of prototype for future trade programs which also incorporate immigration programs.

Perhaps we erred in not really airing a lot of this when the North American Free Trade Agreement came through. But now this is a small program, it is true, but if you read this, "The administration hopes to use the new visa idea as a template for continuing trade talks with Australia, Morocco, and countries in Central America. At the same time, developing nations, led by India and China, are clamoring to make the new visa provisions available to all 146 nations in the World Trade Organization. The result could be a vast influx of foreign professionals from many low-wage nations competing with American citizens for high-paying jobs."

My State has a 7-percent unemployment rate. Very shortly, people are going to exhaust unemployment compensation in large numbers, over a million of them. And yet we will be absorbing tens of thousands of L visas and H1–B visas. It doesn't make sense.

Thank you, Mr. Chairman.

Senator CORNYN. Senator Graham, do you have questions you would like to ask at this time?

STATEMENT OF HON. LINDSEY O. GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. I know this is not really on point in terms of the country we are talking about, but I was coming in today and I represent what is left of the textile industry in the South. A good part of it is in South Carolina.

I know we are here talking about immigration, but generally speaking two out of three textile jobs will be lost to overseas competition in some form, and that very much disturbs me because those are jobs that provide health benefits and a decent place to work and a decent wage to many people in South Carolina and throughout the South traditionally.

One thing that struck me coming over today was the infusion of engineers that are coming our way from India. Apparently, India in any particular year produces as many computer engineers as the world combined and it is having an effect on our market in the sense that companies are outsourcing dramatically computer services that were originally based in this country to India.

When you combine that outsourcing with the ability in trade agreements for companies to bring in highly skilled workers, I just wonder where this takes us. You know, 10 years down the road when you have labor forces being such that you can take a very high-skilled or medium-skilled job and perform it elsewhere outside this country because there are no environmental laws to worry about, there is no minimum wage, there is certainly not nearly as complex tax treatment, where do you see this going in terms of, as she has mentioned, the immigration aspect of trade?

What impact will that have on our economy in terms of people coming from Singapore and Chile to compete with Americans or to outsource? What ability do we have in Congress to look into this? What have you done in terms of fashioning these agreements to look at the consequences to a more liberal policy of allowing people to flow back and forth in terms of job markets?

We will start with Singapore.

Mr. IVES. Senator, in terms of Singapore, as I indicated, the number of Singaporeans using this provision is likely to be relatively small. Currently, as I said, only 660 Singaporeans used the H1–B program. In response to Congressional concerns, we put a total cap on Singaporeans using the professionals category of 5,400. So the impact of Singaporeans coming in should be quite modest.

At the same time, the United States has investments of over—

Senator GRAHAM. But we agree the reason we are putting in these caps is what?

Mr. IVES. In response to Congressional concerns.

Senator GRAHAM. Do you share those concerns?

Mr. IVES. After listening to this Committee, and we also had the opportunity to listen to members of the House Committee, we share those concerns.

Senator GRAHAM. Based on your knowledge of just immigration and trade, in general, do you see this concern being just as real in a situation with India or China or other large nations?

Mr. IVES. Well, I can really only speak regarding Singapore, and given the relative size, I would assume the concerns would be greater with larger countries.

Senator GRAHAM. What about Chile?

Ms. VARGO. Well, first, I think I would say that there is nothing in the FTA that directs itself to outsourcing. But with regard to aliens coming into the United States, certainly one of the important provisions is that they must be paid the prevailing wage.

We kept the four basic core elements of the H1–B that there be no strike or lockout, that they have safe working conditions, that they get the prevailing wage, and I am trying to think for a moment what the fourth one is.

Senator GRAHAM. Would that apply to professionals?

Ms. VARGO. Pardon me?

Senator GRAHAM. Would that apply to professionals?

Ms. VARGO. That specifically applies to professionals.

The second point I would make is, again, the numbers for Chile here are small, 1,400. And in our consultations with Congress, hearing of the concerns that you have in this area, we have indicated that those limits for Chile and Singapore will now count under the total H1–B cap, and that after 5 years renewals under those temporary entry applications will count against the total cap.

Senator GRAHAM. What kind of worker are we talking about coming in, generally speaking, from Chile? What type?

Ms. VARGO. An engineer, an accountant, a lawyer, computer programmer.

Senator GRAHAM. The same in Singapore?

Mr. IVES. Yes.

Ms. VARGO. The basic definition is still the same as the H1–B, a bachelor's degree—

Senator GRAHAM. Is there a shortage of lawyers in America?

Senator CORNYN. I wasn't worried until I heard about that.

Ms. VARGO. Well, if you wanted to interpret the provisions of this agreement and you wanted to now how it would rest under Chilean law, you might want a Chilean lawyer to come up here for a little while to advise you.

Senator GRAHAM. That is true. That is a good point, but primarily that is what you are talking about, expertise related to trade?

Ms. VARGO. Yes.

Senator GRAHAM. But it is not limited to that, is it?

Ms. VARGO. Well, I don't want to say expertise related to trade. It is trade in services. I mean, when you say trade, I heard just trade in goods. Trade in services, which is very big for the United States; two-thirds of our economy is services, 80 percent of our employment is services.

Senator GRAHAM. What would be the average difference in pay between an engineering graduate in Chile and the United States?

Ms. VARGO. I don't know the answer to that question, but if he came up to the United States, he would have to be paid the prevailing U.S. wage or higher under this temporary entry procedure.

Senator GRAHAM. That is true of every category?

Ms. VARGO. Yes.

Senator GRAHAM. Thank you.

Ms. VARGO. True of every professional category. I don't know as much about the traders, investors, business visitors, but some of

those categories are just different. Visitors can't even earn an income here.

Senator CORNYN. Ms. Vargo, in attempting to distinguish the temporary entry provisions under these agreements, you attempted to distinguish them from traditional matters that immigration laws deal with—legal permanent residency, citizenship.

Remind us, what is the term of the temporary entry that would be provided for under these agreements.

Ms. VARGO. It is a 1-year term. It is renewable each year. As I mentioned, we have added a higher threshold now in that renewal to have to establish that it is temporary, that they are not seeking permanent employment. I think this is what is called the presumption of immigrant intent; that the work is temporary, that 1 day they will leave. They have a permanent residence abroad.

And then as I mentioned, after 5 years now, a renewal will count against the cap the same as the initial application in each year, which is a point that Senator Feinstein made as a concern.

Senator CORNYN. So it is an annual period renewable for a period up to 5 years?

Ms. VARGO. No, it has no limit as to how long it can be, but in the sixth year it will begin to count against the cap.

Senator CORNYN. I believe Senator Feinstein was asking about consultations with the Committee, and I just would like for you to confirm for the record that consultations with the Committee staff—and that would be on a bipartisan basis—occurred on November 1, 2002, November 25, 2002, December 12, 2002, and January 24, 2003.

There was a conference call. I assume that was in the nature of a briefing or interaction—and if you have more information, I will ask you to provide confirmation that it occurred on April 28, 2003. And then there was a briefing on July 9, 2003, with staff.

Can you confirm those consultations and what process was involved in consulting with the Congress, and specifically this Committee and its staff?

Mr. IVES. Senator, I am not sure of these exact dates, but we will go back and confirm that these were the dates. We know we consulted extensively with this Committee, as we did on the House side, but we can confirm these exact dates as soon as we get back to USTR.

Senator CORNYN. Thank you. If you would do that, I would appreciate it very much.

Ms. VARGO. It is my understanding, Senator, that those dates are correct.

Senator CORNYN. One of the concerns for various members of this Committee, obviously, is the protection of American workers and their families. In the agreement language for both of these countries, it appears there is room to provide adequate labor protection for the American workers in your implementing language.

Can you explain to what extent you intend to provide labor protection in the implementing language, Ms. Vargo?

Ms. VARGO. Well, when we say labor protections, I would imagine you are talking about the kind of attestation requirements that are contained in the current labor condition application under the H1–B.

Senator CORNYN. Could you explain—

Ms. VARGO. What that is?

Senator CORNYN. —what that is, please?

Ms. VARGO. Yes. First of all, a U.S. company is required to make this labor attestation. That company would have to certify that it is going to pay the temporary entrant the prevailing U.S. wage or higher, that there is not currently a strike or a lockout at the workplace, that the workplace is a safe workplace that meets U.S. workplace requirements. I presume that is OSHA and other things. Lastly, they also have to notify the other workers in the workplace of their intent to hire a foreign worker.

Senator CORNYN. I understand, after hearing Senator Feinstein explain her concerns, why she is concerned about these agreements perhaps providing a template for further agreements which would appear to encroach on Congress' plenary authority to legislate in immigration matters. I can tell that it will be a concern not only of Senator Feinstein, but other members of the Committee as well.

Can you speak to that concern about to what extent the agreements that you have negotiated here for these two countries, which in and of themselves involve rather limited numbers of temporary entrants into the country—in the case of Singapore, 5,400, I believe the figure was, and in the case it was 1,400. Obviously, if this template is going to be extended to other countries, those numbers could increase significantly.

Could you address that, please?

Mr. IVES. I can only authoritatively speak regarding the Singapore FTA, but I can assure you, Senator, in working with this Committee for the past several months on the temporary entry provisions, USTR has heard very clearly and understands the strong concerns of this Committee and other Members of Congress regarding the provisions of the temporary entry provisions in this FTA and regarding the concerns about including that in future FTAs. Those concerns are very important to us and we will examine those concerns in terms of how we proceed for future FTAs.

Senator CORNYN. Well, I think what threatens American workers and a concern I would have specifically is not the arrival of temporary professional workers, but exploitation by some employers of foreign workers by offering them wages below the prevailing wage rate.

I think that legitimate American businesses have no incentive to hire a foreign worker over an identically qualified American. In fact, what our free market system thrives on is the competition on a level playing field and I don't see how this would be undermined.

I do still have the concern, I must say, that Senator Feinstein raised, and we will look forward to continued discussion both here and perhaps on the floor on that subject. But in the end, I think even with the ease of the application process provided in this agreement, I would imagine that it is administratively much easier for an American employer to hire an identically qualified American worker than it would be to hire someone from abroad.

So I don't know to what extent it is a concern, and I am glad to hear that you have provided for protection against exploitation at sub-standard wages of these temporary workers.

Senator Feinstein, if you have other questions, we will turn to you.

Senator FEINSTEIN. Well, I do, and I have a number I would like to send in writing, but let me ask a question on the caps.

USTR originally sought to create the new Singapore and Chile visa categories without any numerical caps, until Members of Congress raised strenuous objections. Now, both agreements include caps on the number of professionals, the 1,400 for Chile and 1,500 for Singapore, that are separate from and in addition to the global H1–B cap.

The USTR seems to want to reject part of the amendment they agreed to from the House Judiciary Committee on this issue and would like to allow workers to still come in under the Singapore and Chile caps even if the global H1–B cap has been filled. This would upset the balance reached in determining the appropriate caps for H1–B workers.

Why do you believe your office was justified in establishing new visa programs that allow employers to circumvent the H1–B cap established by Congress?

Mr. IVES. Well, Senator, first of all, when we initially negotiated the agreement, we recognized we were, in the case of, I think, both Singapore and Chile, dealing with countries that had highly qualified professionals and there would probably not be a large use of this program. I indicated the number of Singaporeans currently using this program.

When Congress expressed a concern about this, we did establish caps that are in the agreements themselves, and that was an attempt to be responsive to Congressional concerns. In addition, in recent consultations with Congress we agreed that those caps would be part of the H1–B program. So, again, we are trying to be responsive to the concerns of Congress.

Finally, an additional attempt to be responsive is, as Ms. Vargo indicated, after 5 years those Singaporean and Chilean H1–B visas would be part of the overall H1–B global limit. So we have attempted to address Congressional concerns regarding this issue.

Senator FEINSTEIN. Okay, thank you. I want to ask you this. You keep going to the point that this is a temporary work program, and yet as I understand it, it can be extended, renewed, every year, for infinity. Additionally, workers can bring their families. Therefore, to me, it is a permanent program.

The indefinite renewability of 1-year visas increases the power of employers to intimidate guest workers and resist their demands for better wages or benefits. Under the H1–B program, by contrast, workers are granted a 3-year visa that can be renewed only once, for a total of 6 years.

So my own view of reading this thing is that you have decided a way of getting around the H1–B program, and you have done these L visas and they form a permanent foreign worker program. That is really of deep concern to me. Now, tell me why I shouldn't believe that if you can renew them every year for any number of years.

Mr. IVES. Well, again, Senator, if the number of Singaporean and Chilean professionals comes in under the overall H1–B cap, then the total number of H1–B visas is capped.

Senator FEINSTEIN. But that is a product of the House, right? The original intent of USTR was to establish this.

Mr. IVES. Well, again, we didn't know the concerns of the Congress until fairly recently in terms of that particular aspect and we addressed them as soon as we understood the concerns.

Senator FEINSTEIN. There is a Labor Advisory Board. Did you consult with the Labor Advisory Board in developing this agreement?

Mr. IVES. I believe we consulted with all the committees in developing this agreement.

Senator FEINSTEIN. Is the answer you did consult with them?

Mr. IVES. Yes. We consulted with all the—there are 31, I believe, advisory committees. We consulted with all 31 committees.

Senator FEINSTEIN. Is that the same thing as the briefings you gave our staff?

Mr. IVES. I am not sure.

Senator FEINSTEIN. The thing that bothers me about this—and I will be very candid—in my history, I have always had a relationship with USTR where either the head or the second hear would pick up the phone and call me and say there is something you should know in an agreement. I really appreciated that and I guess I forgot how much I appreciated it until this administration.

I don't think consultation is having a staff briefing. Consultation is talking with the member. The staff doesn't vote; the member votes. The member makes the decision; at least I make my own decisions. So because you had my staff to a briefing doesn't mean that you have talked with me about it, and I am really surprised on something that sets as big a precedent as this agreement does. Now, perhaps you have talked with other members, but I certainly wasn't one of them.

Mr. Chairman, rather than take your time, I have a number of questions I would like to submit in writing and hopefully can get a response to them before this matter comes before the Committee for markup.

Senator CORNYN. Certainly, and I know the witnesses will respond promptly to those written questions by Senator Feinstein or any other member of the Committee who may have had a conflict and is not here or any of those of us who are present.

Senator Graham, do you have anything?

Senator GRAHAM. Just one last question, basically, trying to find out the forces that pushed this. When it came time to talk about this trade agreement, what were the forces that were pushing the liberalization or the ability to get workers from Chile and Singapore in professional categories to come to the United States? What are those forces? Why do we need this? Why is this essential to the trade agreement?

Ms. VARGO. I think our service providers, in particular, are concerned that they would have easy access or sufficient access to the Chilean market to be able to conduct their business. In the course of the negotiations that we had here, Chile did some things, such as liberalize. They had a particular provision that required that 85 percent of any business start-up had to be nationals, which they modified in the course of the agreement, a few things that our businessmen felt made it easier for them to do business in Chile.

As I mentioned, from Chile's position, they are a very small country and one of their key areas of interest was professional services. They felt that this particular area would have a lot to do with whether or not they would be able to engage in this area to the full extent possible, especially given the distance that Chile is from the U.S.

Senator GRAHAM. So are we responding to Chile or are we responding to American companies?

Ms. VARGO. No. I think at the first order, we are responding to the concerns raised by U.S. companies about being able to get into these other markets. But I wanted to make the additional point that in this particular negotiation, which is not necessarily true of all negotiations, this was a matter of considerable interest to Chile as well. And our ability to address that, I think, also increased our ability to get Chile to seriously entertain obligations in areas like e-commerce and telecommunications and financial services and other areas that they saw were basically of interest to the U.S.

Senator FEINSTEIN. Would you yield for a moment?

Senator GRAHAM. Absolutely.

Senator FEINSTEIN. I just met with the Chilean ambassador, who is in this room now, and that is not what he told me.

Senator GRAHAM. Well, I didn't mean to create a problem, but I was curious. I will let you all work that out.

Singapore?

Mr. IVES. Well, in terms of Singapore, I think it was first and foremost a question of U.S. service providers indicating that the ability to go in and out of Singapore, while currently available, they would like that assurance in the agreement. So in the first instance, we were addressing the concerns and requests of U.S. businessmen.

Senator GRAHAM. To expand the professional category of immigrants?

Mr. IVES. I am not sure they were that specific. They just thought the professional category should be more flexible than it is in the NAFTA, which has very specific categories of professionals. This is a little bit more flexible, but still requires a high degree of professional expertise.

Senator GRAHAM. Has Singapore suggested that this is important to them that we expand the number of professional workers that can come here?

Mr. IVES. I think Singapore was satisfied with the conditions as they were negotiated. It was not a huge issue with Singapore, but it was important for the overall package.

Senator GRAHAM. Thank you.

Senator CORNYN. Senator Feinstein, do you have anything further?

Senator FEINSTEIN. No, Mr. Chairman.

Senator CORNYN. Well, thank you very much for appearing here today to answer the questions we have. I think the concerns are obvious and will be explored further.

With that, this hearing of the Senate Judiciary is now adjourned.

[Whereupon, at 5:27 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

Social Issues

COMMENTARY

By Paul Magnusson

IS A STEALTH IMMIGRATION POLICY SMART?

OPENING A DOOR Goh and Bush inked a trade deal letting more workers into the U.S.

Should trade treaties be used to regulate U.S. immigration policies? That's the question critics are asking about the two new trade pacts the Bush Administration signed this spring with Chilean Foreign Minister Soledad Alvear and Singapore Prime Minister Goh Chok Tong. With little public discussion, the White House agreed to create new visa categories to allow thousands of professionals from each country to work in the U.S., on top of existing visas such as H1(b)s.

It's no small issue. The Administration hopes to use the new visa idea as a template for continuing trade talks with Australia, Morocco, and countries in Central America. At the same time, developing nations, led by India and China, are clamoring to make the new visa provisions available to all 146 nations in the World Trade Organization. The result could be a vast influx of foreign professionals from many low-wage nations, competing with American citizens for high-paying jobs.

This is a hasty way to go about making such fundamental changes to U.S. immigration policy. Indeed, as details of the new visas have begun to emerge, a backlash has been building, even among usually doctrinaire free-traders in Congress. Democrats and even some Republicans argue that the visas haven't been coordinated with existing laws on foreign workers. They make a valid point: Complex trade agreements, which increasingly affect the entire U.S. economy and require changes in U.S. laws and social policies, should not be considered in secret, or in isolation from all other legislation. "Trade agreements aren't just about tariffs but an increasingly broad range of subjects, and that requires openness and a broad bipartisan foundation," insists Representative Sander M. Levin (D-Mich.), a party leader on trade issues.

More broadly, the visa spat stands as the first test of the fast-track procedures Congress established last August for handling trade agreements. Under the fast-track approach, Congress must take an up or down vote on the Chile and Singapore deals, as well as on the accompanying legislation required to implement them. As a result, it can't consider the new visas on their own merits. Instead, Congress must either accept the sweeping changes to immigration law—or vote down the entire trade deal, which slashes tariffs on a wide range of U.S. exports to those two nations.

While the typically secretive nature of trade talks has obscured many details about the new visas, some specifics have come out. The pacts call for a new professional visa category that would allow as many as 6,800 college-educated workers to enter the U.S. each year—1,400 from Chile and 5,400 from Singapore. They could fill virtually any service-sector job in industries such as finance, engineering, medicine, and law. The visas also could be renewed annually with no limit, meaning they essentially would give immigrants open-ended permission to settle in the U.S.

As members of Congress learned more about the visas in recent weeks, some have begun to kick up a

THE TRADE PACTS' FINE PRINT

Tentative new trade deals with Chile and Singapore create new types of visas for foreign professionals to work in the U.S. Such visas would probably:

[illegible]

[illegible]

[illegible]

KEVIN LAMARQUE/REUTERS

fuss. House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.), whose committee has jurisdiction over immigration, was incensed to learn that a pact could rewrite visa law without going through his committee. He has demanded that U.S. Trade Representative Robert B. Zoellick apply tighter restrictions to them before Congress votes yea or nay. "It was very clear that Republicans on the Judiciary Committee do not like this process of changing immigration law through the fast-track procedure," says J. Robert Vastine, president of the Coalition of Service Industries, an industry group that supports the two trade deals and the visa changes.

Administration officials say they are trying hard to accommodate some of the objections. "It has been a collaborative procedure," asserts one trade official. For example, she says that the Administration has agreed to require that the new visa holders be paid prevailing U.S. wages, as in the current H1(b) visa program. But other potentially divisive points aren't yet clear, such as whether all employers must prove they cannot find qualified Americans before bringing in a foreign professional. Initially, the White House shared the terms with only a few members of Congress, mostly friendly Republicans. Critics also point out that the Administration can't substantially change anything it has already agreed to with Chile and Singapore, at least not without ripping up the entire pact.

Supporters of the new visas argue that developing nations will fill many of these jobs one way or another. "If [the U.S.] can't import people, then jobs will just be exported from the U.S.," says Kiran Karnik, president of NASSCOM, India's largest software-industry association. U.S. employers also say they stand to benefit.

Even so, something is missing in the consideration of these two trade deals: a broader and more deliberative debate about all the policies affected. Although it's rarely acknowledged, trade deals today involve substantial rewriting of social and economic policy. For that reason, they're too important to be railroaded through Congress.

With Manjeet Kripalani in Bombay

Immigration Issues in the Free Trade Agreements

Ruth Ellen Wasem

Issue

The U.S.-Chile Free Trade Agreement (FTA) and the U.S.-Singapore FTA create separate categories of entry for citizens of each country to engage in a wide range of business and investment activities on a temporary basis, that is, as nonimmigrants. These FTA provisions on the temporary entry of business personnel and professional workers are raising concerns among many in the field of immigration because immigration law traditionally is spelled out by the Congress, not the executive branch. Some assert that the U.S. Trade Representative (USTR) has negotiated these immigration provisions without any authority or direction to do so from Congress. The USTR maintains that the temporary entry of professionals falls within Trade Promotion Authority (TPA) objectives regarding the opening of foreign country markets for U.S. services and investment, in particular reduction or elimination of barriers that restrict the operations of service suppliers or the establishment or operation of investments. See the U.S.-Chile FTA and the U.S.-Singapore FTA,in this briefing book, for related discussions.

Background

Chapter 14 of the U.S.-Chile FTA and Chapter 11 of the U.S.-Singapore FTA address four specific categories of temporary nonimmigrant admissions currently governed by U.S. immigration law: business visitors; treaty traders; intracompany transfers; and professional workers. These categories parallel the visa categories commonly referred to by the letter and numeral that denotes their subsection in §101(a)(15) of the Immigration and Nationality Act: B-1 visitors, E-1 treaty traders, L-1 intracompany transfers, and H-1B professional workers.

B-1 nonimmigrants are visitors for business and are required to be seeking admission for activities other than purely employment or hire. The difference between a business visitor and a temporary worker depends also on the source of the alien's salary. To be classified as a visitor for business, an alien must receive his or her salary from abroad and must not receive any remuneration from a U.S. source other than an expense allowance and reimbursement for other expenses incidental to temporary stay.

Foreign nationals who are treaty traders enter as E-1 while those who are treaty investors use the E-2 visa. Treaty trader is defined as one who seeks temporary admission to the U.S. solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he/she is a national. Treaty investor is defined as one who seeks temporary admission to the U.S. solely to develop and direct the operations of an enterprise in which he/she has invested, or of an enterprise in which he/she is actively in the process of investing a substantial amount of capital.

Intracompany transferees who work for an international firm or corporation in executive and managerial positions or have specialized product knowledge are admitted on L-1 visas. The prospective L-1 nonimmigrant must demonstrate that he or she meets the qualifications for the particular job as well as the visa category. The alien must have been employed by the firm for at least 6 months in the preceding 3 years in the capacity for which the transfer is sought.

Foreign nationals seeking H-1B visas for professional specialty workers go through a 2-step admissions process. Using a streamlined form of the Labor Condition Application (LCA) known as labor attestation, employers wishing to bring in an H-1B professional foreign worker first must attest in an application to the U.S. Department of Labor (DOL) that the employer will pay the nonimmigrant the greater of the actual compensation paid other employees in the same job or the prevailing compensation for that occupation; the employer will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected; and, there is no strike or lockout. The prospective H-1B nonimmigrants then must demonstrate that they have the requisite education and work experience for the posted positions as well as a baccalaureate degree (or equivalent experience) necessary to be considered a professional specialty worker. The admission of H-1B nonimmigrants is numerically limited, with a statutory cap of 65,000 that is temporarily increased to 195,000 through FY2003.

The FTAs clearly state the desire to facilitate the temporary entry of persons fitting these categories, provided the person complies with applicable immigration measures for temporary entry (e.g., public health and safety as well as national security). Neither Party of the agreement would be allowed to require labor certification or other similar procedures as a condition of entry and would not be able to impose any numerical limits on these categories, with some exceptions noted for the professional workers. Under the FTAs, Chilean and Singapore citizens who are business visitors, for example, would be able to enter the United States for business purposes on the basis of an oral declaration or letter from the employer, detailing in the FTAs an admissions policy not currently specified in statute.

Current Debate

The FTAs' provisions on the temporary entry of business personnel and professional workers are raising concerns that the USTR has overreached its authority. The Labor Advisory Committee, one of six private sector advisory committees for the USTR, is critical of the provisions on the temporary entry of business personnel and professional workers because it appears to enable workers from Singapore or Chile who have no direct employment except a service contract to enter the United States, and such visa programs, they argue, would be in addition to the existing H-1B system without the existing LCA protections for domestic workers. More generally, some point out that these provisions bound by the FTA would constrain current and future Congresses when they consider revising immigration law on business personnel, treaty traders, intracompany transfers, and professional workers because the United States would run the risk of violating the FTA.

In responding to the Labor Advisory Committee report, the USTR argues that it is incorrect to assert that the labor attestations required under the FTA would be less rigorous than the LCA called for under current U.S. law. According to the USTR, the labor attestation required under the FTA also is to be modeled after the LCA that the Department of Labor requires under the existing H-1B visa program, and (as is the case under the H-1B program)

fees may be collected along with the labor attestations. The USTR further argues that ensuring cross-border mobility of professionals and other business persons is critical for U.S. companies in developing new markets and business opportunities abroad.

Resources

CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

CRS Report RS21543(pdf), *Immigration Policy for Intracompany Transfers (L Visas): Issues and Legislation,* by Ruth Ellen Wasem.

CRS Report RL31381(pdf), *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

CRS Contact: Ruth Ellen Wasem(7-7342)

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News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

July 14, 2003 Contact: Margarita Tapia, 202/224-5225

Opening Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Hearing on

"PROPOSED UNITED STATES-CHILE AND UNITED STATES-SINGAPORE FREE TRADE AGREEMENTS"

We are here today for the Committee's first hearing, of what I hope will be many, on international trade agreements and implementing language related to those areas in the agreement that concern matters under the jurisdiction of the Judiciary Committee.

Specifically, today we will examine some of the provisions in the proposed bilateral Free Trade Agreements between the United States and Chile and the United States and Singapore.

I would like to commend the Administration in reaching these agreements with Chile and Singapore. Both Chile and Singapore are countries that represent economic stability and growth in their respective regions. The trade agreements will provide new market access for American products including agricultural, manufactured products, telecommunications equipment and other high technology products.

Both of these agreements contain chapters on matters of longstanding interest to this Committee. These include immigration, intellectual property, antitrust, e-commerce, and telecommunications. In all of these areas, except immigration, no changes in any U.S. laws under this Committee's jurisdiction require amendment. In many ways, the substance of the negotiations on matters of Judiciary Committee concern with respect to these two important treaties has focused on ways to encourage our trading partners to harmonize their law with current U.S. standards. We should be proud of this dynamic.

Today, I expect the Committee will focus its attention on the provisions in the agreements that relate to legislative language being drafted to implement the immigration aspects of the treaties. Key issues include provisions that relate to the temporary entry of investors, visitors for business, and temporary professional workers.

As I understand it, over the last several months on six occasions the Office of the Untied States Trade Representative has briefed the Committee on immigration issues related to these agreements.

I want to acknowledge and thank USTR for consulting with the Committee. We need to continue this spirit of cooperation as we move forward on these and other trade agreements.

In the last week, USTR staff and Committee staff have worked closely together as the immigration language has been circulated and revised. Last Wednesday, Committee staff and a representative from USTR, Ted Posner, met to identify and attempt to resolve issues related to immigration. Many of us know and respect Ted from his days as one of Senator Baucus' trade counsels on the Finance Committee. I should also mention the good work of Kent Shigetomi on the immigration portions of these agreements.

In any event, since the Wednesday meeting that walked through the proposed language, a series of informal staff-level consultations have occurred.

In fact, it was my hope that the Committee would be able to hold what is known as a *mock mark-up* last Thursday. But as anyone who follows the Judiciary Committee knows, we spent another 10 hours on asbestos and we were unable to get to the trade agreements.

My colleagues on the Committee will recall that Senator Grassley, who in addition to serving on this Committee, chairs the Finance Committee, urged us to take up these trade matters in the hope that the full Senate can adopt these treaties before the August recess.

I wholeheartedly agree with Chairman Grassley that the full Senate should act on the Chile and Singapore Free Trade Agreements before we adjourn in August, if it is at all possible.

Under the Trade Promotion Act of 2002, implementing legislation for trade agreements are *fast-tracked*, which means that once the Administration transmits the language, we can vote for or against it but cannot amend it.

The TPA legislation also calls for close consultation between the Administration and Congress. This consultation takes place in a number of forms. It includes the statutorily created Congressional Oversight Group on Trade, on which Senator Leahy, Senator Cornyn and I serve, to represent the interests of our Committee.

The informal staff briefings between USTR and other agencies and Congressional staff are another type of constructive interaction. While <u>not</u> statutorily required, the so-called *mock mark-up* is another prudent mode of inter-branch of government communications. This amounts to an occasion for the relevant Committees to give the Administration its informal advice, in the <u>very</u> formal setting of an Executive Business meeting, on any implementing language that the Administration is developing for subsequent submission to the Hill under the fast track procedures.

Unfortunately, we were unable to reach the *mock mark* item on last Thursday's agenda. We have had the benefit of several more Judiciary Committee-staff and USTR-staff interactions over the last several days.

I would suggest that another function of today's hearing will be for members of this Committee to convey any unresolved concerns they would have raised on Thursday, directly to the senior USTR officials responsible for negotiating these two agreements.

I have heard, and to some extent share, the concerns that some members of the Committee, including Senator Feinstein, have about the truncated schedule we are operating under, and the somewhat fluid nature of the language over the last week.

I do appreciate U.S. Trade Representative Robert Zoellick's attempt to gain our views and to keep this Committee informed of the status of progress on these agreements and the development of the implementing language that the Administration plans to introduce shortly.

I want to emphasize that Members of this Committee will expect satisfactory answers and resolution to the questions and concerns that may be raised during today's hearing. If there are reasons why our input cannot be accommodated, we will expect to know why.

We live in a global economy where free trade is vital to our nation. An integral part of this global economy is the flexibility to move essential personnel from one country to another in order to provide much-needed support of the companies that conduct business abroad. Further, if we want our trading partners to allow American citizens to enter their borders to conduct business, we must also reciprocate by granting their citizens the same type of privileges.

While I support the principle of free trade and understand the benefits of agreements such as these to the U.S. economy and job market, I will never agree to legislation that does not reflect sound immigration policy. Just as I would never agree to any compromise of national security for the sake of selling more products overseas, I would never sacrifice the well-being of the hardworking Americans and their families by weakening our immigration laws.

Prior to today's hearing, members of this Committee raised several concerns about a variety of immigration issues. These include the potential for indefinite stay by the foreign workers and the risk that foreign workers may be brought into the United States to interfere with labor disputes.

Another concern that I have heard is whether this agreement and implementing language could be viewed as circumventing the existing, sensitive numerical limits on H1-B professional workers' visas.

I understand that many of our colleagues on the House Judiciary Committee have made it clear that trade agreements many not be the best place to change immigration law and policy.

I want to make sure that our two representatives from USTR today, Ms. Vargo and Mr. Ives, will go back and give Ambassador Zoellick a message: Presenting the Judiciary Committee with implementing language related to particular trade agreements that raise general issues of immigration policy may not be the best path to travel in future trade agreements.

Having said that, I wish to emphasize that many on this Committee have worked together, and with USTR to resolve their concerns with, and improve, the immigration implementing legislation.

I am hopeful that when the Administration transmits its formal legislative package, members of the Judiciary Committee will be satisfied with the outcome with our consultations with USTR.

Despite that fact that we were unable to hold a *mock mark-up* last Thursday, I hope that today's real hearing can serve that same type of formal mechanism for the Judiciary Committee to give the Administration our informal comments before the fast track procedures are initiated.

# # #

U.S.-SINGAPORE FREE TRADE AGREEMENT

Testimony of Ralph F. Ives, III
Assistant U.S. Trade Representative
for Southeast Asia, the Pacific and APEC
Committee on the Judiciary
United States Senate
Washington, D.C.
July 14, 2003

INTRODUCTION

Thank you Mr. Chairman, Mr. Leahy, and Members of this Committee, for inviting me to testify today on the U.S.-Singapore Free Trade Agreement (FTA) and for this Committee'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.

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 world-class 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 provisions 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 FTA includes provisions for the temporary entry of business visitors, which facilitates trade in services. These provisions strike a careful balance between the needs of the U.S. services industry to provide competitive services while preserving the right of Congress to legislate on immigration policy. The international mobility of business persons has become an increasingly important component of competitive markets for suppliers and consumers alike. U.S. companies developing new markets and business opportunities need to be able to move their personnel quickly. These provisions address only temporary entry and explicitly exclude citizenship, permanent residence, or employment on a permanent basis.

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 Aspects of Intellectual Property, 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 transhipments 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 unannounced factory checks. These provisions are designed to ensure that only qualifying U.S. and 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 is 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. Of the thirty-one advisory committees that provided TPA-required reports on the U.S.- Singapore FTA, only one committee opposed this agreement.

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 this Subcommittee and the full Congress in enacting the legislation necessary to implement the Agreement. We hope we can count on your

NARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510-2101

November 5, 2002

The Honorable Robert Zoellick
United States Trade Representative
Executive Office of the President
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Zoellick:

We urge you to postpone discussion on immigration proposals for temporary entry of professionals in the round of Free Trade Agreement negotiations with Chile and Singapore this month.

The Administration's new proposal to create these professional visas may have far-reaching consequences that would permanently alter U.S. immigration policy. Although the number of nationals from Chile and Singapore covered by this agreement would be relatively small, we understand the Administration plans to negotiate similar agreements with Morocco, Central America, South Africa, and Australia. An analysis of the long-term impact of the proposed provisions is essential prior to negotiating with our trading partners.

We urge you to consult more effectively with members of Congress and other stakeholders, including worker representatives. These proposals have been made available only recently. Although representatives from your office held a briefing for committee staff on Friday, November 1, 2002, the information provided was limited and lacking in specificity.

If we are to provide substantive comments on the proposed immigration provisions, it is important to give us a more thorough summary of the Administration's proposal to create this new visa category. In light of these concerns, we urge you not to begin negotiations with other nations on these provisions until Congress has had time to consider them more thoroughly and provide substantive comments. Thank you for your consideration of this request.

Sincerely,

Edward M. Kennedy | Dianne Feinstein | Maria Cantwell

Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Hearing on "Proposed United States-Chile and United States-Singapore Free Trade Agreements"
July 14, 2003

I want to thank the Chairman for expanding the scope of this hearing to include intellectual property provisions as well as the labor provisions included in the proposed trade agreements. These are important aspects of these agreements and both are worthy of our attention.

The Committee today takes on the important responsibility of offering its comments on legislation that would implement Free Trade Agreements ("FTA") with Chile and Singapore. Under our trade laws, Congress cannot amend legislation transmitted by the Executive Branch to implement such agreements but may only approve or disapprove them. As such, this hearing – along with the "mock markup" that I hope the Committee will hold this week – presents the only opportunity for Members of this Committee to make their views known on these agreements, including the "temporary entry" provisions that are included in both and which are substantially identical to one another.

As an initial matter, I question why the Administration decided to include immigration provisions in this treaty in the first place. Congress has already created the H-1B program, which allows foreign workers with specialized skills to come to the United States to work. That program was created after a lengthy process of public hearings, debate, and negotiation. If the Administration feels that program needs to be changed, or a new visa category created, it would be better to do so through the ordinary legislative process. I hope to hear from our witnesses today the history of the temporary entry provisions, including who requested their inclusion and the reasons for the request. I also want to know whether the Administration intends the entry provisions to serve as a model for future bilateral trade agreements.

Turning to the specifics of the draft implementing legislation, I was deeply concerned by the original draft legislation proposed by the Administration. I thought that its provisions would undercut the H-1B program by offering workers from Chile and Singapore a path to entry that does not provide that program's protections and benefits for our domestic workforce. Thanks to strong bipartisan objections expressed in Congress, particularly in the House Judiciary Committee, many of the original draft's flaws have been corrected. For example, I understand that the Administration has agreed to assess a fee for "temporary entry" visas from Chile and Singapore that is equal to the fee associated with H-1B visas. This is a step in the right direction, since those fees are used in part to fund worker training programs designed as a longer-term solution to worker shortages.

I do have remaining concerns. For example, the visa created by the proposed legislation would be indefinitely renewable. I believe there should be some durational limit – such as the 6-year limit placed on H-1B visas – since these are termed as "temporary entry" provisions. I am pleased, however, that the Administration has apparently accepted a

modest proposal by Representatives Conyers and Berman to count certain visa renewals against the annual numerical caps that are included in the trade agreements.

In addition, the legislation should make clear that the Department of Labor can initiate investigations into potential abuse of these visas, as it can where abuse is suspected in the H-1B program.

These issues are important because these are not the last trade agreements we will see, and our handling of these will set a precedent for the future. If we are going to change our employment-based immigration system, Congress must be involved and we must do so consciously, not simply through acquiescence to FTAs presented to us by the Administration.

We must also bear in mind that these agreements also cover intellectual property and the serious problem of international piracy, an issue that I continue to urge my colleagues in the Senate to address. The United States is the world's leading creator and exporter of intellectual property. But that also means we are the world's leading target for piracy of copyrighted works. New technology has made piracy cheap and easy, and everything from music to films, from books to software is susceptible to this kind of theft.

We have worked very hard on the Judiciary Committee, and in the Senate as a whole, to ensure that copyright holders have the tools they need to face the challenges of new technology. We must continue to respond to these challenges. One of the things we must do is augment international enforcement of intellectual property rights. People in Asia, in Eastern Europe, and elsewhere are stealing billions of dollars from American copyright holders by making illegal copies of American works. The fact that what is being stolen is not tangible should not undermine our conviction to end this wholesale theft.

In addition, the agreements go a long way to harmonize the intellectual property laws of Singapore and Chile with those of the United States. This is important because intellectual property is increasingly an international business, one that needs an international approach to many of its problems. I look forward to working on these issues to ensure the continued vitality of the American intellectual property industries, and to facilitate the development of thriving industries in the countries with which we have free trade agreements. A healthy global environment for the development and marketing of intellectual property will redound to everyone's benefit, and as the world leader in the creation of that property, we should also be at the forefront of its sensible use and reasonable protection.

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May 30, 2003

Special Visa's Use for Tech Workers Is Challenged

By KATIE HAFNER and DANIEL PREYSMAN

SAN FRANCISCO, May 29 — With the economy in a slump, a growing number of American technology workers say their jobs are going not only to lower-cost foreign workers abroad, but also increasingly to workers who enter the United States under a little-known visa category known as L-1.

In the nearly three years since the technology bubble burst, the use of L-1 visas to bring in workers — with a large percentage from India — has become a popular strategy among firms seeking to cut labor costs. The number of these temporary visas granted rose nearly 40 percent to 57,700 in 2002 from 41,739 in 1999.

The visas are intended to allow companies to transfer employees from a foreign branch or subsidiary to company offices in the United States. But they are now routinely used by companies based in India and elsewhere to bring their workers into the United States and then contract them out to American companies — in many instances to be replacements for American workers. The number of Americans who have been replaced by foreign contract workers is unknown. American companies that use contract workers have said that the decision to do so is based on factors like skills, and not on cost alone.

Some immigration experts are questioning the legality of this use of the visa. Officials at the Bureau of Citizenship and Immigration Services, or B.C.I.S., a division of the Department of Homeland Security that oversees the granting of L-1 and other work visas, say the bureau is conducting an assessment of the L-1 visa to determine whether there is misuse.

"If this is a company offering the services of their employee to go work for another company, it sounds dubious," said Bill Strassberger, a spokesman for B.C.I.S.

"To bring someone in ostensibly as an intracompany transfer and then put him to work for somebody else and then to say that we're paying him still, that just sounds like someone's trying to really stretch the envelope on that visa category," Mr. Strassberger said.

The legal questions, however, remain murky. Steve Yale-Loehr, who teaches immigration law at Cornell, said that strictly speaking, what these companies are doing is legal, though perhaps not what Congress intended. However, Mr. Yale-Loehr added, "If Congress is upset about this, then Congress will act on it."

In response to the controversy, Rep. John L. Mica, a Republican from Florida, introduced a bill this month to prevent companies from hiring foreigners with L-1 visas.

"When you have people using this to bring in lower-cost labor to displace Americans, it's something we need to address," Mr. Mica said in a telephone interview.

During the boom years, the technology industries successfully lobbied Congress to expand the number of foreign software engineers who could be permitted to fill programming needs in the United States. In 2000, Congress increased the annual cap on more restrictive temporary visas — known as H-1B visas — for highly skilled foreign workers to 195,000 from 115,000. That quota will drop automatically to 65,000 on Oct. 1 unless Congress approves an extension, a move that is considered unlikely.

In the last two years, the trend in the use of H-1B visas has declined sharply. Many experts say the use of L-1 visas will grow.

Unlike the H-1B visa, the L-1 does not require employers to pay workers prevailing wages. In addition, there is no cap on the number of L-1 visas.

This has ignited an outcry among technology workers who have lost jobs and say that foreign contract workers are paid substantially less than prevailing wages in the industry.

Over the last three years, William O'Neill has seen his small computer consulting firm in East Granby, Conn., dwindle from six contract workers to none. The work itself has not disappeared, said Mr. O'Neill, but his clients, most of them large insurance companies in Connecticut and western Massachusetts, are turning to foreign companies, some with workers who are in the United States on temporary visas. Satyam Computer Services, a consulting firm based in India, for example, now has a contract with the Cigna Corporation that has around 100 Satyam employees working on computer applications management in Cigna offices.

And as others have claimed, Mr. O'Neill said that in many cases, existing technology employees are asked to train their replacements. The L-1 visa requires that the foreign workers possess specialized knowledge of the work to be done.

Mr. O'Neill said that the people he knows who are currently training their replacements will not talk about their situation for fear of losing what is left of their jobs. "They're scared to death they're going to lose their jobs instantly versus six or eight or nine months down the road," he said.

Once the replacement workers are trained, Mr. O'Neill said, the foreign workers are often sent back to India to do programming and computer work there for the American companies.

Wipro, InfoSys and Tata Consultancy Services, all of them based in India, are other companies that are using L-1 visas to get workers into the United States.

Girish Surendran, a human resources manager who oversees immigration issues at Tata, said his company "is committed in letter and spirit to all the requirements and regulations of all visa categories." He added: "If workers are replaced, it's not that T.C.S. comes in and employees get let go." Mr. Surendran said he could not comment on a company's reason for laying workers off.

Wipro plans to lobby against Mr. Mica's bill. If it becomes law, said Sridhar Ramasubbu, investor relations manager at Wipro, the company will simply turn back to H1-B visas. "We will not be affected financially because our compensation is the same whether somebody comes in under an H-1 or an L-1," Mr. Ramasubbu said.

But trade groups representing American workers say the foreign workers are paid considerably less. "I have friends that were told in the last three months that they must take a $30,000 pay cut to keep their job," said John Bauman, president of the Organization for the Rights of American Workers, a nonprofit

group based in Meriden, Conn.

Gary Burns, the legislative director for Mr. Mica, said there were about 325,000 L-1 visa holders in the United States. Those who stay in this country can remain for up to five or seven years, depending on the category of L-1 they hold.

Some experts say that the use of L-1 visas for contract workers is not widespread and that fears of losing jobs to foreign workers are exaggerated.

"Even if this brouhaha is about a real problem, I think when you look at the number of workers involved, it is a totally insignificant drop in a massive labor market," said Daryl Buffenstein, a immigration lawyer in Atlanta who has corporate clients and is general counsel for the American Immigration Lawyers Association.

Mr. Buffenstein said that those who oppose the L-1 visa do not understand how important it is for American industry. "It will hurt employment in the United States if we impede the ability of legitimate users to transfer managers and specialists between different affiliates of international organizations," said Mr. Buffenstein, a lawyer who advised legislators on the law governing L-1 visas.

Mr. Buffenstein said he was also worried that public overreaction would result in measures like the Mica bill, which he contended would go too far in restricting international companies from using L-1 visa holders to do on-site client work.

Controversy over the visa, which has been in existence for 33 years, is not entirely new. Three years ago, the General Accounting Office reported that the the Immigration and Naturalization Services, the precursor to B.C.I.S., had found a high incidence of fraudulent use of L-1 visas and had called abuse of the visas "the new wave in alien smuggling."

But protest over the use of temporary foreign workers has become more vocal in a rocky economy. One 57-year-old computer consultant in Avon, Conn., who has been out of work for five months said, "This isn't just an I.T. issue," referring to the information technology industry.

"It's a big issue with multiple professions, and has a serious effect on the economy," said the consultant, who asked that his name not be used for fear of jeopardizing his chances to find work. "A lot of this is about the economy and the L-1 issue is just exacerbating the problem."

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**Temporary Entry Provisions of th
Implementing Legislation for th Chil and Singapore
Free Trade Agreements (FTAs)**

Sources of Congress' Federal Immigration Power

July 14, 2003

Congress has the plenary power to decide which classes of aliens will be excluded and which ones will be deported. The breadth of that power is considerable, and the courts may not disturb Congress' decision simply because they would have preferred a different resolution. (But that is not to say the congressional power is unlimited. As when it legislates in any other area, Congress is constrained by the Constitution. And ever since Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), the courts have recognized that, with some exceptions, the interpretation of those constitutional constraints is a judicial responsibility.)

- **Commerce Power:** Article 1, Section 8, Clause 3 of the Constitution authorizes Congress "to regulate Commerce with foreign Nations, and among the several States."

- **Naturalization Power:** Article 1, Section 8, Clause 4 of the Constitution provides that Congress shall have power to "establish an uniform Rule of Naturalization." The U.S. Supreme Court has long found that this provision of the Constitution grants Congress plenary power over immigration policy.

The U.S. Supreme court has described the congressional power to regulate immigration power as "plenary."

- The Court has described the congressional power to regulate immigration as "plenary." [Kleindienst v. Mandel, 408 U.S. 753, 766, 768, 769 (1972); Boutilier v. INS, 387 U.S. 118, 123 (1967).

- It has said, "Over no conceivable subject is the legislative power of Congress more complete." [Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909),

quoted in Fiallo v. Bell, 430 U.S. 787, 792 (1977), and in Kleindienst v. Mandel, 408 U.S. 753, 766 (1972)].

- In the early years, this principle of plenary congressional authority over immigration was often expressed in absolute terms; the suggestion was that courts had literally no power to review the constitutionality of Congress's actions. [Lees v. United States, 150 U.S. 476, 480 (1893) (power to exclude aliens is "absolute" and is "not open to challenge in the courts"); Fong Yue Ting v. United States, 149 U.S. 698, 706 (1893) (Congress's decision is "conclusive upon the Judiciary); Chae Chan Ping v. United States [Chinese Exclusion Case], 130 U.S. 581, 606 (1889) (same)].

- In later years the Court began to hedge, leaving open the possibility of some judicial role in assessing the constitutionality of federal immigration statutes. [See, e.g., Fiallo v. Bell, 430 U.S. 787, 792 (congressional power is "largely immune" from judicial review) 793 n.5 (positing a judicial power, admittedly "limited", to review even congressional decisions excluding aliens) (1977); Harisiades v. Shaughnessy, 342 U.S. 580, 588-89 (1952) (immigration legislation "largely immune from judicial interference")].

- In addition, by way of exception, the Court has generally guaranteed one particular constitutional right -- procedural due process -- in deportation cases. [The leading case is Yamataya v. Fisher [the Japanese Immigrant Case], 189 U.S. 86, 100 (1903). Also, Wong Yang Sung v. McGrath, 339 U.S. 33 (1950). See, e.g., Fong Yue Ting v. United States, 149 U.S. 698 (1893)].

Statement of Regina K. Vargo
Assistant U.S. Trade Representative for the Americas
Senate Committee on the Judiciary
July 14, 2003

Mr. Chairman, Ranking Member Leahy, and Members of the Committee:

I am honored to appear before you today to testify on the **U.S.-Chile Free Trade Agreement** (FTA), which was signed on June 6 in Miami in an historic ceremony with Ambassador Zoellick and his Chilean counterpart Soledad Alvear.

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 free market society and a thriving 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.

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 (including small business advisors, such as Industry Sector Advisory Committee 14, the small and minority business advisory committee), and civil society groups. We continued this process after the Bipartisan Trade Promotion Authority Act of 2002 was enacted last August, meeting 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 <http://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. As a matter of fact about one-third of all US small business exporters are in service related fields. 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.

Of special interest to small business are the provisions that streamline customs procedures and simplify rules of origin. These provisions will facilitate taking advantage of the new trade openings. 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 mechanisms 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 parties 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 existing international standards and obligates Chile to provide protection at a level that reflects U.S. standards. This is especially important to US small businesses. It works toward insuring that small businesses, which tend to be on the technological cutting edge, will have a satisfactory recourse if their intellectual property is pirated. Additionally, it provides US businesses with the knowledge that the Chilean government will protect their rights at the same level that the US government protects them domestically.

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 other provisions ensure that 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 international mobility of businesspersons, whether as individuals or employees providing services, has become an increasingly important component of competitive markets for suppliers and consumers alike. The United States has thousands of knowledge-based companies that will be able to benefit from greater opportunities for service providers overseas. Given that services now account for 65 percent of the U.S. economy and that trade in services accounts for 28 percent of the value of U.S. exports, the ability of U.S. business persons to temporarily enter foreign markets is critical. For this reason, the agreement we negotiated with Chile provides unlimited temporary entry for U.S. business visitors, traders and investors, intra-company transferees, and professionals. The FTA also provides for up to 1,400 temporary entry visas into the U.S. for Chilean professionals. These provisions address only temporary entry and explicitly exclude citizenship, permanent residence, or employment on a permanent basis.

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 negotiation 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.

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

MAR 19 2003

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter expressing concerns about the temporary entry provisions of the U.S.-Chile Free Trade Agreement and the U.S.-Singapore Free Trade Agreement.

The international mobility of business persons, whether as individuals or employees providing services, has become an increasingly important component of competitive markets for suppliers and consumers alike. California is a state with numerous knowledge-based companies that will be able to benefit from greater opportunities for service providers overseas. U.S. companies developing new markets and business opportunities must be able to move their personnel quickly. Access to foreign markets is important not only to large firms that conduct business on a global basis, but also to small- and medium-sized enterprises and even sole proprietorships.

I would note that both agreements address only the *temporary* entry of business persons, and not permanent immigration or employment. Both FTAs specifically exclude citizenship, permanent residence, or employment on a permanent basis. Our temporary entry provisions bind access to categories of entry and provide for transparency and predictability in the development and application of laws and regulations.

Staff from USTR and other agencies met with staff from the Immigration Subcommittees from both the Senate and the House, as well as with staff from the Senate Finance Committee, House Ways and Means Committee, and individual members' offices. These consultations provided an opportunity for the Administration to explain its position, as well as answer questions and receive input from Congressional staff. As a result of these consultations, we developed temporary entry provisions in both agreements that reflected the concerns of a variety of constituencies.

Congressional Staff expressed three specific concerns regarding the temporary entry provisions of the Chile and Singapore FTAs. First, they wanted to be able to require a labor attestation similar to the Labor Condition Application (LCA) required under the H-1B program. Second, they wanted a numerical limit on the number of professionals that could enter under the FTA. Third, since the FTA professional category is definitionally similar to the H-1B program, they wanted to be able to apply fees for FTA professionals that were similar to those paid for H-1Bs.

As I just mentioned, under the H-1B program, a U.S. employer must complete and file with the Department of Labor an LCA. The temporary entry chapters include language that allow a Party to require an "attestation of compliance with the Party's labor and immigration laws". We intend to model this attestation on the existing LCA.

With regard to the a numerical limit, the United States imposed a numerical limit of 1,400 approvals of initial applications of Chilean professionals per year. In the Singapore FTA, the U.S. imposed a limit of 5,400 professionals. Applications for continuing employment, admission by spouses or dependents, and Chileans or Singaporeans entering under the H-1B program will not count against the limits. More importantly, American professionals will be able to enter Chile and Singapore without being subject to a numerical limit. Finally, with regard to fees, both agreements grant each Party flexibility in setting fees as long as the fees do not "unduly impair or delay the trade in goods or services."

I believe that both agreements will benefit all Americans. They will slash tariffs and open markets for American workers, farmers, investors and consumers. They also reduce barriers for services, protect leading edge intellectual property, keep pace with new technologies, ensure regulatory transparency and provide effective labor and environment enforcement. The temporary provisions of the agreements will enhance the ability of U.S. business persons to provide services in Chile and Singapore, while assuring that professionals in the United States are protected from abuse of the system.

Thank you for sharing your views on this matter.

Sincerely,

Robert B. Zoellick