

The U.S.-Chile and U.S.-Singapore Free Trade Agreements

**Report of the
Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)**

February 28, 2003

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**Labor Advisory Committee for Trade Negotiations and Trade Policy
Report to the President, the Congress and the United States Trade Representative
on the U.S.-Chile and U.S.-Singapore Free Trade Agreements**

February 28, 2003

I. Purpose of the Committee Report

Section 2104(e) of the Trade Act of 2002 (TPA) requires that advisory committees provide the President, the U.S. Trade Representative (USTR), and Congress with reports required under Section 135(e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135(e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The committee report must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the relevant sectoral or functional area of the committee.

Pursuant to these requirements, the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) hereby submits the following report.

II. Executive Summary of the Committee Report

This report reviews the mandate and priorities of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), and presents the advisory opinion of the Committee regarding the U.S.-Chile and U.S.-Singapore Free Trade Agreements (FTAs). It is the opinion of the LAC that the Singapore and Chile FTAs neither fully meet the negotiating objectives laid out by Congress in TPA, nor promote the economic interest of the United States. The agreements clearly fail to meet some congressional negotiating objectives, barely comply with others, and include certain provisions that are not based on any congressional negotiating objectives at all. These agreements repeat the same mistakes of the North American Free Trade Agreement (NAFTA), and are likely to lead to the same deteriorating trade balances, lost jobs, trampled rights, and inadequate economic development that NAFTA has created.

The labor provisions of the Chile and Singapore FTAs will not protect the core rights of workers in any of the countries involved, and represent a big step backwards from the Jordan FTA and our unilateral trade preference programs. The agreements' enforcement procedures completely exclude obligations for governments to meet international standards on workers' rights. The FTAs' provisions on the temporary entry of professionals erode basic protections for guest workers and the domestic labor market. Provisions on investment, procurement, and services constrain our ability to regulate in the public interest, pursue responsible procurement policies,

and provide public services. Intellectual property rules reduce the flexibility available under WTO rules for governments to address public health crises. Rules of origin and safeguards provisions invite producers to circumvent the intended beneficiaries of the trade agreements and fail to protect workers from the import surges that may result.

III. Brief Description of the Mandate of the Labor Advisory Committee

The LAC charter lays out broad objectives and scope for the committee's activity. It states that the mandate of the LAC is:

To provide information and advice with respect to negotiating objectives and bargaining positions before the U.S. enters into a trade agreement with a foreign country or countries, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The LAC is one of the most representative committees established by Congress to advise the administration on U.S. trade policy. Only three of the 33 trade advisory committees include any labor representatives, and the LAC is the only advisory committee with more than one labor representative as a member. The LAC includes unions from nearly every sector of the U.S. economy, including manufacturing, high technology, services, and the public sector. It includes representatives from unions at the local and national level, together representing more than 13 million American working men and women.

IV. Negotiating Objectives and Priorities of the Labor Advisory Committee

As workers' representatives, the members of the LAC judge U.S. trade policy based on its real-life outcomes for working people in America.

Our trade policy must be formulated to improve economic growth, create jobs, raise wages and benefits, and allow all workers to exercise their rights in the workplace. Too many trade agreements have had exactly the opposite effect. Since NAFTA went into effect, for example, our combined trade deficit with Canada and Mexico has grown from \$9 billion to \$87 billion, leading to the loss of hundreds of thousands of jobs in the United States. Under NAFTA, U.S. employers took advantage of their new mobility and the lack of protections for workers' rights in Mexico to shift production, hold down domestic wages and benefits, and successfully intimidate workers trying to organize unions in the U.S. with threats to move to Mexico.

In order to create rather than destroy jobs, trade agreements must be designed to reduce our historic trade deficit by providing fair and transparent market access, preserving our ability to use domestic trade laws, and addressing the negative impacts of currency manipulation, non-tariff trade barriers, financial instability, and high debt burdens on our trade relationships. In order to protect workers' rights, trade agreements must include enforceable obligations to respect the International Labor Organization's core labor standards – freedom of association, the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination – in their core text and on parity with other provisions in the agreement.

The LAC is also concerned with the impact that U.S. trade policy has on other matters of interest to our members. Under NAFTA, private investors have challenged a variety of domestic laws in all three NAFTA countries protecting public services, the environment, public health and safety, consumers and workers. Trade policy must protect our government's ability to regulate in the public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high-quality public services. Finally, we believe that American workers must be able to participate meaningfully in the decisions our government makes on trade, based on a process that is open, democratic, and fair.

V. Advisory Committee Opinion on the Agreements

The Chile and Singapore FTAs fail to meet these basic goals. The FTAs largely replicate the NAFTA, which has cost the U.S. hundreds of thousands of jobs, led to increasing violations of core labor standards, and resulted in numerous challenges to laws and regulations designed to protect the public interest.

The Chile and Singapore FTAs do not promote the economic interests of the United States. The economic interests of the United States must encompass the needs of the majority of its people, not just the wants of a powerful minority. Yet the FTAs negotiated with Chile and Singapore are tilted towards benefiting those few large companies that hope to ship work out of the United States, exploit guest workers in the United States, and constrain the ability of governments to regulate their behavior. This bias is not only unresponsive to the economic interest of the majority of Americans, it is directly contrary to the interests of ordinary working men and women.

The agreements clearly fail to meet a number of key congressional negotiating objectives, barely comply with others, and include certain provisions that are not based on any congressional negotiating objectives at all. The FTAs clearly fall short of meeting the important negotiating objective in TPA requiring that equivalent dispute resolution procedures and remedies be available for the labor, environmental, and commercial provisions of any trade agreement. As a result, the labor provisions of the Chile and Singapore FTAs make little progress beyond the ineffective NAFTA labor side agreement and actually move backwards from the labor provisions of our unilateral trade preference programs and the U.S. – Jordan Free Trade Agreement. The labor provisions of the Chile and Singapore FTAs are based on an unacceptably narrow interpretation of the negotiating objectives on labor laid out in the TPA, providing no meaningful protection for workers' rights. Ironically, in a number of other areas, USTR has interpreted congressional objectives very broadly, or negotiated FTA language where no congressional objectives exist at all, to the detriment of U.S. workers.

The LAC is not opposed in principle to expanding trade with Chile and Singapore, countries with democratic, labor-responsive governments that have expressed a willingness to discuss the links between trade and workers' rights. We believe trade agreements could be crafted with both countries that would promote the interests of working people in, and benefit the economies of, each country involved.

Unfortunately, the U.S. Trade Representative has failed to reach such agreements with Chile and Singapore.

A. Trade Impacts of the Chile and Singapore FTAs

While the impacts of the Chile and Singapore agreements on the U.S. economy are likely to be much smaller than the impacts of NAFTA and the agreement on China's accession to the WTO, there is no indication that the Chile and Singapore agreements will have a positive impact where past agreements have not. In every case in which the United States has concluded a comprehensive "free trade agreement" with another country, the impact on our trade balance has been negative, despite promises to the contrary.

Our combined trade deficit with Canada and Mexico is now almost ten times what it was before NAFTA went into effect. Since granting China Permanent Normal Trade Relations in 2000, the U.S. trade deficit with China has increased by almost 25 percent, hitting a staggering \$103 billion last year – making it our single largest bilateral deficit. The U.S. has even managed to rack up a small trade deficit with tiny Jordan, with whom we had a surplus when we entered into a free trade agreement in 2001. The overall U.S. trade deficit continues to rise as we reach new trade deals; the deficit hit a record high of \$435 billion 2002. Even in the services sector, where we are supposed to enjoy a trade advantage, we have seen our surplus fall as U.S. investors move overseas to export services back into the U.S. market.

There is no reason to believe that our trade balance will fare any better under the Chile and Singapore agreements. The administration has still not released any serious analysis of the economic impacts of either agreement, despite clear instructions from Congress to do so. Section 2102(c)(5) of TPA instructs the President to provide a public report to Congress on the impact of future trade agreements on United States employment and labor markets. This review, modeled on an existing environmental review, is supposed to be available as early as possible in the negotiations, before negotiating proposals are put forward. But now, even after negotiations have been concluded, there is still no such review available. The ITC review of the economic impact of new trade agreements, also mandated by Congress in TPA, is not due until the agreements are signed at the end of April.

Despite the lack of concrete analysis from the administration on economic impacts, it is likely that both agreements will, like NAFTA, result in shifts in production from the U.S. and rising trade deficits, leading to more lost jobs. While the U.S. currently enjoys a trade surplus with Singapore, this was preceded by two years of deficits and our current surplus fell by almost 50% in 2002. In addition, we have large areas of deficit with Singapore that may increase if the FTA goes into effect, especially in data processing machines and parts for office machines. Our previous trade surplus with Chile has already turned into a deficit, and this deficit more than tripled from \$377 million in 2001 to \$1.2 billion in 2002. U.S. agricultural producers are especially likely to experience increased competition from Chile if the FTA goes into effect.

Both the Chile and Singapore agreements focus more on facilitating the shift of U.S. investment than increasing U.S. exports. The Singapore agreement is even more blatant than the Chile agreement in this regard, since all of Singapore's tariffs on U.S. products were already at zero before negotiations began. The inclusion of two Indonesian islands in the Singapore agreement is specifically designed to facilitate off shore production of electronics for export into the U.S. market. U.S. Ambassador to Singapore Frank Lavin declared that this was the "most significant

economic aspect” of the Singapore FTA, since it would allow U.S. electronics manufacturers to take advantage of low wage rates on those islands to assemble components from Singapore into electronic products that can enter the U.S. duty free (*Inside U.S. Trade*, January 31, 2003). This provision, which requires no reciprocal market access from the Indonesian islands, will have a clear negative impact on U.S. jobs. In addition, the labor provisions of the Singapore FTA appear to not apply at all to workers’ rights violations on these Indonesian islands, despite the permanent access to our market that products from these islands will receive. The inclusion of these islands exemplifies the misguided priorities of the USTR, and does nothing to promote the broader economic interests of the U.S.

Transshipment is another major problem in our trading relationship with Singapore, and it is only likely to get worse under the new FTA. USTR reports that Singapore’s port is currently the world’s second busiest transshipment hub. The FTA’s protections against transshipment may do little to counter the increased attractiveness of Singapore as a transshipment route once it becomes the only country in Asia with guaranteed tariff- and quota-free access to the U.S. market.

Market access provisions are not the only aspects of the Singapore and Chile agreements that may have a negative impact on the U.S. economy. Shortly after NAFTA went into effect, Mexico’s large external indebtedness and inability to control speculative foreign capital contributed to a devastating financial crisis and the collapse of the peso. While the U.S. stepped in to bail out the Mexican economy, the massive devaluation made Mexican goods so much cheaper in comparison to American goods that our trade deficit ballooned and our economy bled jobs. The crisis also slammed Mexican workers, and nine years after NAFTA went into effect we actually see lower wages and higher poverty in Mexico than before NAFTA began. The Singapore and Chile FTAs do nothing constructive to address these important issues of external indebtedness, currency manipulation, and financial speculation. Instead, the investment rules of both agreements actually constrain Chile’s and Singapore’s ability to impose capital controls and regulate financial speculation, increasing the likelihood of crisis, devaluation, and chronic imbalances in our trading relationships.

B. Labor Provisions of the Chile and Singapore FTAs

The Singapore and Chile FTAs’ combination of unregulated trade and increased capital mobility not only puts jobs at risk, it places workers in all three countries in more direct competition over the terms and conditions of their employment. High-road competition based on skills and productivity can be positive for workers, but low-road competition based on low wages, poor working conditions, and weak workers’ rights drags all workers down into a race to the bottom. Congress recognized this danger in TPA, and directed USTR to ensure that workers’ rights would be protected in new trade agreements. One of the overall negotiating objectives in TPA’s section 2102(a)(6) is “to promote respect for worker rights ... consistent with core labor standards of the ILO” in new trade agreements. TPA also includes negotiating objectives on the worst forms of child labor, non-derogation from labor laws, and effective enforcement of labor laws.

Unfortunately, the labor provisions of the Chile and Singapore FTAs fall far short of meeting these objectives. Instead, the agreements actually step backwards from existing labor rights

provisions in the U.S. – Jordan FTA and in our Generalized System of Preferences (GSP) program, which currently applies to Chile. In both the Chile and Singapore agreements, only one single labor rights obligation – the obligation for a country to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapters, many of which are drawn from Congressional negotiating objectives, are explicitly not covered by the dispute settlement system and thus completely unenforceable.

Instead of building upon the Jordan FTA to provide the more effective guarantees for the ILO core labor standards, the Chile and Singapore FTAs actually back track from the minimal workers' rights provisions of Jordan agreement. At first glance, the labor chapters of the Chile and Singapore FTAs look similar to the labor provisions of the Jordan FTA. The Jordan FTA's key commitments to ensure that the core labor standards of the International Labor Organization (ILO) are recognized and protected by domestic law, not to derogate from or waive domestic labor laws, and to effectively enforce domestic labor laws, are all present in the Chile and Singapore FTAs. But there is a crucial difference. Under the Jordan agreement, parties can bring a dispute regarding the other party's failure to comply with any provision of the labor chapter, including the commitments on non-derogation and ILO standards. While it may be difficult to show that the other party is not "striving" to ensure that it meets ILO standards or not "striving" not to derogate from domestic laws, these are questions that can be brought to dispute resolution under the Jordan FTA and debated in the context of the facts of each case. Under the Chile and Singapore agreements, on the other hand, complaints regarding these two key commitments cannot be brought before dispute resolution at all. In fact, the only labor provision that is subject to dispute resolution in both agreements is the commitment to effectively enforce domestic laws. And while the dispute resolution procedures and remedies were identical for the labor, environment, and commercial provisions of the Jordan FTA, the labor and environment enforcement provisions in the Chile and Singapore FTAs are both different from and weaker than the provisions for the enforcement of the agreements' commercial obligations.

The Chile and Singapore agreements thus represent a huge step backwards from our current GSP program, under which countries can be denied trade benefits if they have not taken, or are not taking, steps to afford internationally recognized worker rights. This is a substantive standard, going beyond a mere requirement to enforce domestic laws. GSP explicitly requires countries to ensure that their laws guarantee freedom of association and the right to organize and bargain collectively, bar forced labor, set a minimum age for the employment of children, and reflect acceptable conditions with regard to the minimum wage, hours of work, and health and safety. Workers have used the GSP petition process to review labor rights abuses in dozens of countries, including Chile. The U.S. government has in fact evaluated countries' labor laws and, in some cases, required governments to amend their labor laws in order to continue receiving preferential market access under the GSP program. The GSP petition process, though flawed in its own ways, has produced real gains for workers' rights in a number of countries.

Under the Chile FTA, the GSP petition tool will no longer be available to workers. The tool that replaces it – the labor provisions of the FTA – is significantly weaker; it does not permit either country to withdraw trade benefits based on the fact that domestic labor laws fail to meet international standards. Disputes can only be brought over a country's failure to enforce its own laws, no matter how inadequate those laws are. Even if a violation of this one commitment is

found, the remedy is a weak fine mechanism, rather than the withdrawal of trade benefits permitted under GSP. The FTA is also missing the individual petition procedure available under GSP, which gives workers an important voice in the process of reviewing and improving workers' rights.

By focusing exclusively on enforcement of domestic labor laws, the Singapore and Chile FTAs end up creating a perverse incentive. Under the Chile and Singapore FTAs, a country that is challenged for failing to enforce its existing labor laws could simply weaken or eliminate those laws to avoid dispute settlement. A country could amend its laws to ban unions, allow child labor and forced labor, and invalidate all collective bargaining agreements, and face no possible penalty under the Chile and Singapore agreements. This makes a mockery of the agreements' one enforceable labor provision, essentially gutting the entire labor chapter of both agreements. This is an absurd and self-defeating policy that would not be tolerated in an area of concern to business.

Even for the one obligation that is subject to dispute resolution – the requirement to effectively enforce domestic laws – the procedures and remedies for addressing violations are significantly weaker than those available for commercial disputes in the agreements. This directly violates section 2102(b)(12)(G) of TPA, which instructs our negotiators to seek provisions in trade agreements that “treat United States principal negotiating objectives equally with respect to (i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies.” The Chile and Singapore FTAs do not treat all negotiating objectives equally, and they do not provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

The labor enforcement procedures allow parties to opt for longer timelines for consultations, cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines to themselves with little oversight. These provisions not only make the labor provisions of the agreements virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes. The following examples from both agreements demonstrate the disparate treatment accorded to disputes regarding the enforcement of labor laws:

- Parties must first go through 60 days of consultations under the labor chapter before they can resort to dispute resolution. Parties can further delay resolution of a dispute by going through a second round of consultations under the dispute settlement chapter before finally proceeding to an arbitral panel. While this second stage of consultations is not required, parties are free to choose the second stage of consultations in order to slow down labor disputes and delay the availability of remedies.
- Under the rules governing commercial disputes, the suspension of trade benefits authorized to sanction a violation should have “an effect equivalent to that of the disputed measure [i.e., the measure that violates the agreement].” Yet under the rules governing labor disputes, the amount of a monetary assessment is not just based on the harm caused by the disputed measure. Instead, the panel also takes into consideration numerous other factors, many of which could be used to justify a lower, and thus less effective, sanction.

These factors include the reason a party failed to enforce its labor law, the level of enforcement that could be reasonably expected, and “any other relevant factors.”

- In commercial disputes, the violating party can choose to pay a monetary assessment instead of enduring trade sanctions (the sanctions are supposed to equal the harm caused by the offending measure, as explained above), and in such cases the assessment will be capped at half the value of the sanctions. In labor disputes, however, the assessment is capped at an absolute level, no matter what the level of harm caused by the offending measure.
- Not only are the fines for labor disputes capped, but the level of the cap is so low that the fines will have little if any deterrence effect. The cap in the Chile agreement is \$15 million (the amount of the cap is not finalized in the version of the Singapore agreement available to the LAC). This amounts to less than three percent of the import charges we collected on Chilean products in 2002, and less than five percent of the import charges we collected on Singaporean products in 2002. As a percentage of total bilateral trade volume, the cap is less than 0.24% of our trade with Chile and less than 0.05% of our trade with Singapore last year.
- Not only are the caps on fines much lower for labor disputes, but any possibility of trade sanctions is much lower as well. In commercial disputes, a party can suspend the full original amount of trade benefits (equal to the harm caused by the offending measure) if a monetary assessment (capped at half that value) is not paid. In a labor dispute, the level of trade benefits a party can revoke if a monetary assessment is not paid is limited to the value of the assessment itself, or \$15 million.
- Finally, the fines are robbed of all punitive or deterrent effect by the manner of their payment. While the LAC supports providing financial and technical assistance to help countries improve labor rights (and all members of the LAC were appalled to see the funds for such activities in the administration’s budget for 2004 slashed from \$148 million to just \$12 million), such assistance is not a substitute for the availability of punitive sanctions in cases where governments refuse to respect workers’ rights in order gain economic or political advantage. In commercial disputes under the Chile and Singapore FTAs, the deterrent effect of punitive sanctions is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, a monetary assessment is automatically paid into a fund to improve labor law administration in the violating country, thus compensating the violator for its failure to effectively enforce its own laws. There are no explicit provisions to prevent a violator from simply shifting its budgeting, and thus no assurance that the assessment will actually provide additional money for enforcement. Whether money will actually be spent on enforcement, rather than the kinds of conferences and seminars that have failed to improve workers’ rights under the NAFTA labor side agreement, is also not addressed.

The labor provisions in the Chile and Singapore FTAs are woefully inadequate. They fall short of the Jordan FTA and GSP. They also clearly fall short of the TPA negotiating objectives.

They will be extremely difficult to enforce with any efficacy, and any monetary assessments that are imposed will be inadequate to actually remedy violations. In sum, the Chile and Singapore FTAs will do very little to actually ensure that core workers' rights are respected and improved in the U.S., Chile, and Singapore.

C. Temporary Entry in the Chile and Singapore FTAs

USTR has negotiated provisions in the Chile and Singapore FTAs for the temporary entry of professional workers without any authority or directions to do so from Congress. The negotiating objectives that Congress laid out for USTR in TPA do not include even one word on temporary entry. There is no specific authority in TPA to negotiate new visa categories or impose new requirements on our temporary entry system, yet that is exactly what USTR has done in the Chile and Singapore FTAs. The Singapore and Chile FTAs create entire new visa categories for the temporary entry of professionals. These visa programs are in addition to our existing H-1B system, and will constitute a permanent new part of our immigration law if the agreements are implemented by Congress.

The new Singapore and Chile professional visas will give U.S. employers substantial new freedom to employ and control temporary guest workers with little oversight from the Department of Labor and with few real guarantees for the rights of workers. This is to the detriment not only of the temporary workers themselves, but of the domestic labor market and American co-workers now facing a lagging economy and high unemployment in many sectors.

The Singapore and Chile visa provisions differ from our existing H-1B program in a number of ways:

- The agreements' definition of professionals is unacceptably broad. It includes any job that requires a bachelor's degree, even if we have no domestic labor shortage in that job category. The agreements also include additional job categories – such as management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers – that do not even require a bachelor's degree. This completely ignores the justification for our current H-1B program and all other temporary entry programs for professionals, which is to address domestic labor shortages. Even the new professional visa program created under NAFTA included a limited list of the professions in which entry would be allowed. Doing away with the list opens up the new visa programs to abuse by employers facing no domestic labor shortage who only seek an easy source of low-wage labor.
- The agreements appear to allow workers who do not have direct employment in the U.S., but only a service contract, to use the new visa category. Both agreements define professionals as workers “engaged” in a specialty occupation, not “employed” in a specialty occupation. In addition, side letters seem to suggest that new provisions will have to be crafted to deal with these contract workers, who are not currently permitted entry under our H-1B program. Under these rules, professionals could enter to perform various contracts or work for temp agencies, thus lacking any direct employer and making it almost impossible for our government to regulate abuse and ensure the domestic labor market is not being undermined.

- USTR originally sought to create these new visa categories without any numerical caps, until Congressional committees with jurisdiction over immigration policy found out about their plan and raised strenuous objections. Now both agreements include caps on the number of professionals granted entry each year (1,400 for Chile and 5,400 for Singapore) that are separate from, and in addition to, the global H-1B cap. Even if the global H-1B cap is filled, workers can still come in under the Singapore and Chile caps.
- The agreements grant professional visas for one year, and the visas are renewable without any limits. This basically transforms a temporary entry program into a permanent program, and provides employers with the power to keep permanent workers in a temporary legal status that must be renewed each year. Under the H-1B program, workers are granted a three-year visa that can be renewed only once.
- The agreements limit fees charged to visa applicants, stating that these fees must not unduly constrain trade. This could make it more difficult for the U.S. to collect visa fees that go beyond the costs of processing. Under the H-1B program we currently charge applicants \$1,000 for temporary entry visas and use the money to finance job training for American workers. It is unclear whether we will be able to continue this practice under the Chile and Singapore FTAs.

Finally, the Labor Certification Attestation (LCA) is one of the only safeguards we have in our H-1B system for ensuring that employers do not abuse temporary workers to undermine the domestic labor market. Though the H-1B LCA system is unacceptably weak and needs to be strengthened, it at least requires employers to make some statement about how they will treat H-1B workers. But the LCA allowed under the Chile and Singapore agreements appears to be even weaker than the LCA now required for H-1B workers. First of all, the agreements allow an LCA that certifies employers are complying with domestic labor and immigration laws, but the current LCA goes beyond this to require employers to pay temporary workers the prevailing wage in the industry and to ensure that the conditions of employment do not undermine domestic labor conditions. Additional requirements are included in the LCA for H-1B dependent employers, a category not mentioned in the Chile and Singapore agreements. Secondly, the visa programs set up under the agreements could require the temporary entrants – who have no knowledge of domestic labor conditions or their employer’s compliance with them – to submit the LCA rather than employers, especially if contract workers with no direct employment relationship are allowed to take advantage of the new visas.

Immigration policy is a sensitive political issue, and changes in immigration policy have traditionally been the result of intense, open negotiations between workers, employers, immigration advocates, and elected members of Congress. These issues simply do not belong in fast-tracked trade agreements negotiated by executive agencies. The Singapore and Chile FTAs require permanent changes to our immigration system, and USTR has indicated that future free trade agreements will routinely include the same kinds of new visa categories created in these FTAs. This strategy is completely unacceptable to LAC members. It makes no economic sense for workers facing stagnant wages and high unemployment, and it is totally inconsistent with the

our right to engage in a full, democratic debate with our elected representatives on immigration issues.

D. Other Issues in the Chile and Singapore FTAs

In addition to the problems with the labor and temporary entry provisions of the Singapore and Chile agreements outlined above, other commercial provisions of the agreements also raise serious concerns for the LAC.

Investment: NAFTA gave corporations the right to challenge our laws before secret arbitration panels, and to demand compensation from governments if those laws infringed on their rights. Multinational corporations have exploited NAFTA's flawed investment chapter to challenge legitimate government regulations designed to protect the environment, shield consumers from fraud, deliver public services, and safeguard public health. The rights granted to foreign investors under NAFTA exceed the rights guaranteed to domestic investors under our Constitution, and Congress directed USTR to remedy this problem in future trade agreements.

Section 2102(b)(3) of TPA states that new trade agreements should ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." In addition, the section states that standards for expropriation and fair and equitable treatment in new trade agreements shall be "consistent with United States legal principles and practice." This instruction is particularly important with regard to the expropriation provisions of trade agreements. Arbitration panels have interpreted NAFTA's prohibitions on "indirect" expropriations and "measures tantamount to" expropriation to afford protections to foreign investors that are not available to domestic investors under our Constitution. Specifically, panels have relied on this NAFTA language to rule that a regulation can constitute a prohibited expropriation even when that regulation denies an investor just a portion of the rights in his or her property, rather than the entirety of the property as required under our domestic "takings" jurisprudence.

The Chile and Singapore FTAs still contain language prohibiting "indirect" expropriations and "measures equivalent to" expropriation, leaving open the door for many of the same kind of challenges to legitimate public regulations we have seen under NAFTA. Annexes to the Singapore and Chile investment chapters include a list of factors to consider in determining whether or not such an indirect expropriation has taken place. At first glance, the list of factors in each agreement looks like factors that have been laid out by the U.S. Supreme Court in takings decisions. But simply listing some of the factors the Supreme Court has discussed, without the essential explanations and limitations that were set forth by the Court regarding each factor, provides no assurance that foreign investors will not in fact be granted greater rights than U.S. investors. Under the language of the Chile and Singapore agreements, and even considering the factors listed in each agreement's annex, it is still possible that arbitral panels could determine that the mere diminution in the value of property, even if caused by legitimate public interest regulations, constitutes a prohibited expropriation. This directly contradicts U.S. law, and therefore fails to meet the negotiating objectives on investment that Congress specified in TPA.

The FTAs may exceed U.S. law in other ways as well. The agreements' extremely broad definition of what constitutes property ignores the Supreme Court's careful distinctions between

the types of property interests that must be violated to constitute an unconstitutional taking and the broader set of property interests that fall under due process protections. The agreements' definition of "fair and equitable treatment" refers to an undefined notion of customary international law, but has no direct parallel in U.S. law. The agreements state that "fair and equitable treatment" includes, but is not limited to, principles regarding denial of justice and due process, leaving open the question of how else panels may be able to define "fair" and "equitable" without any reference whatsoever to U.S. legal standards. This violates Congress's direction that fair and equitable treatment standards be "consistent with United States legal principles and practice."

The Singapore and Chile FTAs also explicitly constrain the ability of the Chilean and Singaporean governments to regulate the flow of speculative financial capital in order to prevent and redress debilitating financial crises. While allowing for the short-term imposition of controls under some circumstances, the agreements also give investors the right to demand compensation for losses incurred as a result of these controls after a certain window of time. Even the slim threat of future demands for compensation could chill governments' willingness to impose short-term controls that they hope will expire within the agreement's time window.

A government's ability to employ sound capital controls (and Chile's system has been considered a model for sound capital controls around the world) can be the key to averting financial crises that have the potential to not only cripple a country's domestic economy, but to spread contagion effects throughout an entire region. American workers also pay the price as financial crises become more frequent and severe; a country in the grip of crisis often devalues its currency and exports under-priced goods to the U.S. market to earn the cash it so desperately needs to maintain its struggling economy. While the investment provisions of the Singapore and Chile FTAs may provide more freedom and higher profits to some Wall Street firms, these provisions threaten global financial stability and are not in the economic interests of the United States as a whole.

In addition, the FTAs include the deeply flawed investor-to-state dispute resolution provisions of NAFTA. While these disputes may be more transparent under the Chile and Singapore FTAs than they are under NAFTA, any private right of action creates an incentive for investors to bypass domestic complaint procedures and mount novel legal challenges that would not be permitted under domestic law. To control abuse of this private right of action, congressional negotiating objectives in TPA call for measures to eliminate frivolous claims (such as measures requiring the exhaustion of domestic remedies and/or measures allowing a home state to intervene in a dispute involving one of its investors) and the creation of a standing appellate mechanism in new trade agreements.

The Singapore and Chile FTAs create no standing appellate mechanism to guard against inconsistency or abuse in the resolution of investment disputes; they only commit the parties to consider whether or not to create such a mechanism in three years. The agreements also fail to contain any exhaustion requirements or diplomatic controls on investor suits. They do create an expedited procedure for dismissing frivolous claims, but this is not very different from the expedited procedures for considering jurisdictional questions that already exist for NAFTA claims. It is interesting to note that Chile made a reservation to the FTA that bars a foreign

investor from ever taking a claim to arbitration under the agreement if the investor has already brought the case under Chile's own domestic procedures. Yet the U.S. made no such reservation, giving Chilean investors more rights to bypass our own judicial system than our investors will have with regard to Chile! Given Congress's manifest concerns with abuse of investor-to-state dispute arbitration, the failure of the U.S. to establish a similar version of this limited exhaustion requirement for itself in the Chile FTA is extremely puzzling.

Finally, the dispute resolution procedures and remedies available to investors under the Chile and Singapore FTAs provide a marked contrast to the procedures and remedies available for the violation of workers' rights and environmental standards under the agreements. An individual investor's right to pursue arbitration and receive direct compensation is in no way comparable to the extremely limited opportunity to enforce workers' rights and environmental provisions through state-to-state dispute resolution procedures and capped fines paid back to the violating government. This flouts the requirement in section 2102(b)(12)(G) of TPA that all negotiating objectives be treated "equally" regarding the availability of "equivalent" dispute settlement procedures and remedies.

Intellectual Property Rights: In section 2102(b)(4)(C) of TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Agreement on Intellectual Property Rights (TRIPs) and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Doha declaration clearly states that TRIPs "does not and should not prevent Members from taking measures to protect public health." It goes on to reaffirm the right of countries to take full advantage of the flexibility available under TRIPs to: 1) grant compulsory licenses and determine the grounds upon which those licenses are granted; 2) determine what constitutes a national emergency, including in emergencies created by a public health crisis; and 3) establish their own regimes for the exhaustion of intellectual property rights.

Unfortunately, rather than reaffirming and strengthening the Doha declaration's recognition of the primacy of public health concerns, it appears that the Chile and Singapore FTAs undermine the protections for public health contained in TRIPs and the Doha declaration. This not only violates congressional negotiating objectives, it sets a terrible precedent for pending free trade agreements with developing countries in Southern Africa and elsewhere. In countries facing devastating public health crises, governments must have adequate flexibility under international trade rules to provide their people with access to essential medicines.

The Chile and Singapore FTAs contain a number of "TRIPs-plus" provisions which may erode the flexibility that the TRIPs provides to governments to address public health crises. The FTAs establish strong new protections for pharmaceutical test data, which are in addition to the protections for patented medicines themselves. Requiring governments to wait five years before they can allow generic producers access to test data could unnecessarily delay affordable access to quality medicines and make their production more costly. The FTAs also place strict restrictions on the how government provide marketing approval and sanitary permits for medicines. These restrictions go beyond TRIPs, and could be used by pharmaceutical companies to block the production of generic medicines during a public health crisis.

The human costs of tightening patent protections for essential medicines far outweigh any potential gains these rules will produce for U.S. pharmaceutical companies. Congress, recognizing the priority that public health concerns must have over corporate patent protections, specifically instructed USTR to maintain the flexibility granted in the Doha declaration in future agreements. It appears the USTR has refused to do so in the Singapore and Chile FTAs.

In addition, the Singapore FTA is missing the language from Article 27(3)(b) of TRIPs, which allows countries to exclude plants and animals from patent regimes. The Chile FTA is also lacking this provision, along with language from Article 27(2) of TRIPs, which explicitly allows countries to deny patents to inventions in order to protect public morals, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment. If countries are denied the flexibility accorded in Article 27 of TRIPs, they could be required to patent plants and other life forms despite possible harm to the environment or public health and safety.

Government Procurement: NAFTA and WTO rules on procurement restrict the public policy aims that may be met through procurement policies at the federal and state level. For example, in Executive Order no. 13126, of June 12, 1999, signatories to these procurement agreements were specifically exempted from the order's ban on federal purchases of goods made by forced child labor, out of fear that the order would violate trade rules. Singapore is already a signatory to the plurilateral WTO Agreement on Government Procurement (which extends to purchases by 37 states in the U.S.), but Chile is not. Unfortunately, the Chile FTA extends these rules to cover products and services from one more country. Like the WTO agreement (but unlike NAFTA), the Chile FTA's rules extend to procurement at the state level as well as the federal level in the U.S., and they extend to the municipal level in Chile.

The NAFTA, WTO, and FTA rules on government procurement bar the consideration of non-commercial criteria in purchasing decisions covering a broad range of public contracts for goods and services. These rules could thus be used to challenge a variety of important procurement provisions including preferences for small businesses and women- and minority-owned business, incentives for recycling and resource conservation, living wage laws, anti-sweatshop laws, and project-labor agreements. It is especially worrisome that many states have agreed to be covered by the procurement provisions of the Chile FTA with little or no discussion with state legislators or the public.

The U.S. should focus on revising – not extending – this flawed model. Trade agreements should not constrain those procurement rules that serve important public policy aims such as environmental protection, local economic development and social justice, and respect for human rights and workers' rights. Governments have a right to invest their tax money in local firms and to use procurement policy to pursue broader social goals.

Rules of Origin: Any preferential trade agreement must include a rule of origin that assures that products, especially complex goods such as motor vehicles and parts, are manufactured as well as assembled in the beneficiary country. The high degree of international investment in most manufacturing industries makes it essential to set a high rule of origin, focused on manufacturing content rather than on indirect costs or simply on tariff classification changes. The rule of origin

included in the Chile and Singapore agreements would allow products that include many major parts and components made outside these countries to qualify for duty-free benefits. Such a low rule of origin defeats the purpose of the agreements and provides excessive opportunities for multinational corporations to manipulate their production and purchasing to take advantage of these benefits. It also allows companies to invest in production outside the countries that have negotiated FTAs and still benefit from the agreements' benefits. The rule of origin fails to promote production and employment in the U.S. or in Chile and Singapore; it is simply inadequate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Chile and Singapore agreements, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. A surge of imports from large multinational corporations can overwhelm domestic producers very quickly, causing job losses and economic dislocation that can be devastating to workers and their communities. For many American workers losing their jobs to imports, it may be their own employer that is responsible for the surge of imports. In such a case, and similar situations in which an irreversible international sourcing decision has been made on the basis of one of these free trade agreements, the usual remedy of restoration of the previous tariff on the imports will not be enough to reverse the company's decision to move production abroad. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed. The Chile and Singapore FTAs have failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. The U.S. company UPS is arguing that Canada's public postal service violates NAFTA, because governmental support for the postal service is an unfair subsidy. Increased pressure to deregulate and privatize services could raise the cost and reduce the quality of such basic services as health care and education. Yet the Chile and Singapore agreements do not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers, which could include many important services in the U.S. including water, health care, and education, are subject to the rules on trade in services in the Singapore and Chile FTAs.

In addition, the agreements discipline how we regulate private service providers, especially in the financial sector. To comply with these commitments, Chile will have to change its regulations of the privatized portion of its pension system to allow 100% of workers' retirement savings in the system to be invested overseas. Committees of jurisdiction in the U.S. Congress and state and local regulators will have to read the financial services chapters carefully to discover what, if any, changes will be required to our own domestic financial regulations under the new trade agreements. Even if no changes are immediately required, the agreements' rules open up a new avenue for financial firms to challenge existing or future regulations on their operations.

VI. Conclusion

The Singapore and Chile FTAs do not promote the economic interest of the United States. The agreements clearly fail to meet some congressional negotiating objectives, barely comply with others, and include some provisions that are not based on any congressional negotiating objectives at all. These agreements repeat the same mistakes of the NAFTA, and are likely to lead to the same deteriorating trade balances, lost jobs, trampled rights, and inadequate economic development that NAFTA has created.

The LAC recommends that Congress reject both of these agreements, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed. The LAC recommends that USTR reorder its priorities before continuing with negotiations towards new free trade agreements with Central America, Southern Africa, Morocco, and Australia. American workers are willing support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights. The LAC is committed to fighting for better trade policies that benefit U.S. workers and the U.S. economy as a whole. We will oppose trade agreements that do not meet these basic standards.

VII. Membership of the Labor Advisory Committee

1. Ande Abbott, Director, Shipbuilding & Marine Division, International Brotherhood of Railway Building
2. Marjorie Allen, Legislative Representative, AFSCME, AFL-CIO
3. Paul Almeida, President, Department of Professional Employees, AFL-CIO
4. Mark Anderson, Secretary-Treasurer, Food and Allied Service Trades Department, AFL-CIO
5. R. Russell Bailey, Senior Attorney, Airlines Pilots Association
6. Gary Baker, President, International Brotherhood of Teamsters, Local 173
7. John Barry, President, International Brotherhood Of Electrical Workers
8. Albert Battisti, Alkali Chemical Plant
9. George Becker, President Emeritus, United Steelworkers of America
10. Steve Beckman, International Economist, United Automobile, Aerospace and Agricultural Implement Workers of America
11. Joseph Bennetta, Teamsters Local 191
12. Brian Bergin, Assistant to the President, Building and Construction Trades Department, AFL-CIO
13. Carrie Biggs-Adams, Representative-International Affairs, Communications Workers of America
14. Michael D. Boggs, International Affairs Director, Laborers' International Union of North America, LIUNA
15. Stephen Brown, PACE Local 8-0712, Potlatch Corporation, Consumer Products Division
16. Patricia Campos, Legislative Director, Union of Needletrades, Industrial and Textile Employees (UNITE!)
17. Francis Chiappardi, Jr., General President, National Federation of Independent Unions
18. Joseph Coccho, President, American Flint Glass Workers
19. William Cunningham, Associate Director, Department of Legislation, American Federation of Teachers

20. Joseph W. Davis, Assistant Director of International Affairs, American Federation of Teachers
21. Elizabeth Drake, International Financial Analyst, AFL-CIO
22. Jennifer Lynn Esposito, Legislative Representative, International Brotherhood of Teamsters
23. Cathy Feingold, Program Specialist, Women in the Global Economy, AFL-CIO
24. Douglas A. Fraser, Professor, College of Urban, Labor and Metropolitan Affairs, Wayne State University
25. Patricia A. Friend, International President, Association of Flight Attendants
26. Michael W. Gildea, Assistant to the President, Department of Professional Employees, AFL-CIO
27. Stephen Goldberg, Professor, Northwestern University Law School
28. Arthur Gundersheim, Union of Needletrades, Industrial And Textile Employees (UNITE!)
29. Owen Herrstadt, International Association of Machinists and Aerospace Workers
30. John Howley, Policy Director, Service Employees International Union
31. David Johnson, President, UFCW International Vice President, National Apparel, Garment and Textile Workers Council
32. Harry Kamberis, Director, AFL-CIO Solidarity Center
33. Don Kaniewski, Legislative and Political Director, Laborers' International Union of North America, (LIUNA)
34. Brendan Kenny, Legislative Representative, Air Line Pilots Association
35. Bill Klinefelter, Legislative and Political Director, United Steelworkers of America
36. Anne Knipper, Assistant to the Director, International Affairs Department, AFL-CIO
37. Thea Lee, Public Policy Department, AFL-CIO
38. Larry Liles, International Representative, International Brotherhood of Electrical Workers
39. William "Bill" Luddy, Director, Labor Management Trust, United Brotherhood of Carpenters and Joiners of America
40. Lawrence Martinez, VP Graphic Communication, Graphic Communications International Union
41. Jay Mazur, President, Union of Needletrades, Industrial and Textile Employees (UNITE!)
42. Lindsey McLaughlin, Washington Representative, International Longshoremen's and Warehousemen's Union
43. Douglas Meyer, Director, Economic Research & Public Policy, International Union of Electronic, Electrical, Technical, Salaried & Machine Workers
44. Francis X. Pecquex, Executive Secretary-Treasurer, Maritime Trades Department, AFL-CIO
45. Cheryl Peterson, Senior Policy Fellow, American Nurses Association
46. Keith D. Roming, Jr., Associate Director, National and International Affairs, PACE International Union
47. Michael Sacco, President, Seafarers International Union of North America
48. Jim Sauber, Research Director, National Association of Letter Carriers
49. Denny Scott, Assistant Director of Organizing, United Brotherhood of Carpenters and Joiners of America
50. Michelle Sforza, Public Policy Analyst, AFSCME
51. Barbara Shailor, Director, International Affairs Department, AFL-CIO
52. James Sheehan, United Steel Workers of America
53. Talmage E. Simpkins, Executive Director, AFL-CIO Maritime Committee
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