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**Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
On Trade in Services and E-Commerce:
The Significance of the Singapore and Chile Free Trade Agreements**

May 8, 2003

Mr. Chairman, Congresswoman Schakowsky, Members of the Subcommittee, I thank you for the opportunity to testify today on behalf of the thirteen million working men and women of the AFL-CIO on this important topic.

The recently negotiated U.S. free trade agreements with Chile and Singapore will have an important economic impact on working people in all three countries. The immediate impact will be the reduction of tariff and non-tariff barriers on the movement of goods and services between the signatories, but far-reaching rules in other areas such as investment, intellectual property rights, government procurement, e-commerce, and the movement of natural persons will also affect the regulatory scope of participating governments, binding their ability to legislate in certain areas for the foreseeable future.

Perhaps even more important, however, is the precedent set by these agreements. As the first agreements negotiated by this Administration under the 2002 Trade Promotion Authority legislation, these agreements are likely to serve as templates for future bilateral and regional FTAs. Since FTA negotiations are currently under way with the five Central American countries, the Southern African Customs Union, Morocco, and Australia, in addition to a hemispheric agreement scheduled to reach completion in 2005 (the proposed Free Trade Area of the Americas or FTAA), the economic importance and policy significance of these agreements is magnified many times.

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

Overall assessment

The AFL-CIO believes that increased international trade and investment can yield broad and substantial benefits, both to American working families, and to our brothers and sisters around the world -- if done right. Trade agreements must include enforceable protections for core workers' rights and must preserve our ability to use our domestic

trade laws effectively. They must protect our government's ability to regulate in the public interest, to use procurement dollars to promote economic development and other legitimate social goals, and to provide high quality public services. Finally, it is essential that workers, their unions, and other civil society organizations be able to participate meaningfully in our government's trade policy process, on an equal footing with corporate interests.

Unfortunately, we believe the Singapore and Chile FTAs fall short of this standard, and we urge Congress to reject these agreements and to ask the U.S. Trade Representative's office not to use them as a "template" for future FTAs.

I have attached to my testimony a detailed report prepared by the Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC). The LAC is the official labor advisory committee to the United States Trade Representative and the Labor Department. It includes national and local union representatives from nearly every sector of the U.S. economy, including manufacturing, high technology, services, and the public sector, together representing more than 13 million American working men and women.

The LAC report details our concerns over the agreements' inadequate and backsliding protections for workers' rights and the environment, as well as problems in the areas of investment rules, temporary immigration provisions, trade in services, government procurement, and intellectual property rights.

Services Provisions

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

Second, the Chile and Singapore agreements contain far-reaching and troubling provisions on the "temporary entry" of professional workers. The Singapore and Chile FTAs create entire new visa categories for the temporary entry of professionals. These visa programs are in addition to our existing H-1B system, and will constitute a permanent new part of our immigration law if the agreements are implemented by Congress.

These new professional visas will give U.S. employers substantial new freedom to employ temporary guest workers with little oversight from the Department of Labor and with few real guarantees for workers. This is to the detriment not only of the temporary

workers themselves, but of the domestic labor market and American workers now facing a lagging economy and high unemployment in many sectors.

Immigration policy is properly the domain of Congress, not of executive agencies negotiating trade agreements that will be subject to a “fast-tracked” up or down vote. The Singapore and Chile FTAs require permanent changes to our immigration policies, and USTR has indicated that future free trade agreements will routinely include the same kinds of new visa categories created in these FTAs. This strategy is entirely unacceptable to the AFL-CIO.

Congress may in the future wish to strengthen, improve, or otherwise change our immigration policies. It makes no sense to bind these policies in free trade agreements, which makes it essentially impossible (or very costly) to change them without actually exiting the entire agreements. For these reasons, we believe trade agreements should refrain from including immigration provisions (beyond those necessary to conduct the trade and investment which are the subject of the agreement), and we urge Congress to convey this view to the Administration.

E-Commerce

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

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

Investment

We are concerned that the Chile and Singapore FTAs contain many of the controversial investment provisions contained in NAFTA, including the right for individual investors to sue governments when they believe that domestic regulation has violated their rights under the agreement. This provision, known as “investor-to-state” dispute resolution, has proved very problematic under NAFTA, giving investors greatly enhanced powers to challenge legitimate government regulations on public health, the environment, or even “Buy American” rules. Workers and environmental advocates have no similar individual right of action under these agreements.

The Chile and Singapore agreements also constrain the ability of governments to employ capital controls to protect their economies from the destabilizing impact of speculative capital flows and financial crises. Capital controls have been used quite effectively by

many governments, including the Chilean government. Even the IMF has conceded that these tools can be legitimate and beneficial.

It therefore does not make sense for the Chile and Singapore FTAs to constrain the use of capital controls. Decisions over whether, how, and for how long to use capital controls should be made by democratically elected domestic policy makers, not bound by trade agreements.

Workers' Rights

The workers' rights provisions in the Chile and Singapore FTAs are unacceptably weak. While they will be problematic in the context of Chile and Singapore, they will be disastrous if applied to future FTAs with countries and regions where labor laws are much weaker to begin with and where abuse of workers' rights has been egregiously bad.

USTR has characterized the workers' rights provisions of these agreements as "innovative." In fact, these provisions represent a giant step backwards from provisions in current law. They are substantially weaker than those included in the Jordan FTA, which passed the U.S. Congress on a unanimous voice vote in 2001. Perhaps even more noteworthy, the Chile and Singapore workers' rights provisions also represent a step backward from current U.S. trade policy that applies to Chile (and most other developing countries) – the Generalized System of Preferences. GSP is a unilateral preference program offering trade benefits to developing countries that meet certain criteria, including adherence to internationally recognized workers' rights.

Both the Jordan FTA and GSP require compliance with internationally recognized core workers' rights. A GSP beneficiary can lose all or some of its trade benefits if it is not at least "taking steps" to observe internationally recognized workers' rights. This includes enforcing its own laws in these areas, as well as ensuring that its labor laws provide internationally acceptable protections for core workers' rights.

Under the Jordan FTA, both parties reiterate their ILO commitments to "respect, promote, and realize" the core workers' rights under the International Labor Organization (ILO)'s Declaration on Fundamental Principles and Rights at Work (these include freedom of association and the right to bargain collectively, and prohibitions on child labor, forced labor, and discrimination in employment). The Jordan FTA also commits both parties to effective enforcement of domestic labor laws and non-derogation from labor laws in order to increase trade. All of these provisions are fully covered by the same dispute settlement provisions as the commercial elements of the agreement.

In contrast, the Chile and Singapore agreements contain only one enforceable provision on workers' rights, that is, an agreement to enforce domestic labor laws. While the labor chapter also contains a commitment to uphold the ILO core workers' rights and not to weaken labor laws, these provisions are explicitly excluded from coverage under the dispute settlement chapter, rendering them essentially useless from a practical standpoint.

In other words, while the Chile and Singapore agreements commit the signatories to enforce their domestic labor laws, they don't actually commit the signatories to *have* labor laws in place, or to ensure that their labor laws meet any international standard or floor. Under these agreements, a country could ban unions, set the minimum age for employment at ten years old, and reinstate slave labor. The country's only enforceable commitment at that point would be to continue to enforce those new "laws."

Of course, this is entirely unacceptable, both with respect to these agreements and as it might play out in future trade agreements, particularly in Central America, where labor laws are both weak and poorly enforced. These weak provisions will also be problematic in any trade agreement negotiated with the Southern African Customs Union (SACU) or Morocco.

In addition, unlike the Jordan agreement, the Chile and Singapore agreements include a separate dispute resolution process for labor and environment, distinct from that available for the commercial provisions of the agreement. This new and separate dispute resolution process, in our view, does not meet a key objective of the Trade Promotion Authority legislation, to ensure that trade agreements shall "treat United States principal negotiating objectives equally with respect to (i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies."

Unlike the commercial dispute resolution process, the first binding step in resolving labor and environment disputes is a "monetary assessment," a fine which is essentially paid back to the offending government. It is not clear that this will constitute a meaningful deterrent in the case of determined or egregious violations.

Integrated Sourcing Initiative

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

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

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

Conclusion

In general, the experience of our unions and our members with past trade agreements has led us to question critically the extravagant claims often made on their behalf. While these agreements are inevitably touted as market-opening agreements that will significantly expand U.S. export opportunities (and therefore create export-related U.S. jobs), the impact has more often been to facilitate the shift of U.S. investment offshore. (As these agreements contain far-reaching protections for foreign investors, it is clear that facilitating the shift of investment is an integral goal of these “trade” agreements.) Much, although not all, of this investment has gone into production for export back to the United States, boosting U.S. imports and displacing rather than creating U.S. jobs.

The net impact has been a negative swing in our trade balance with every single country with which we have negotiated a free trade agreement to date. While we understand that many other factors influence bilateral trade balances (including most notably growth trends and exchange rate movements), it is nonetheless striking that none of the FTAs we have signed to date has yielded an improved bilateral trade balance (including Israel, Canada, Mexico, and Jordan).

The case of the North American Free Trade Agreement (NAFTA) is both the most prominent and the most striking. Advocates of NAFTA promised better access to 90 million consumers on our southern border and prosperity for Mexico, yielding a “win-win” outcome. Yet in nine years of NAFTA, our combined trade deficit with Mexico and Canada has ballooned from \$9 billion to \$87 billion. The Labor Department has certified that more than half a million U.S. workers have lost their jobs due to NAFTA, while the Economic Policy Institute puts the trade-related job losses at over 700,000. Meanwhile, in Mexico real wages are actually lower than before NAFTA was put in place, and the number of people in poverty has grown.

We believe it is essential for Congress to question how these new FTAs will yield a different and better result for working families in the United States, Chile, and Singapore – especially as the new agreements appear to be modeled to a large extent on NAFTA.

If the goal of these bilateral trade agreements is truly to open foreign markets to American exports (and not to reward and encourage companies that shift more jobs overseas), it is pretty clear the strategy is not working. Before Congress approves new bilateral free trade agreements based on an outdated model, it is imperative that we take some time to figure out how and why the current policy has failed. In the meantime, we urge you to reject the Chile and Singapore FTAs and send our negotiators back to the drawing board.