108TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 108–225
Part 1

# UNITED STATES-SINGAPORE FREE TRADE AGREEMENT IMPLEMENTATION ACT

JUNE 21, 2003.—Ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

# REPORT

together with

## DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 2739]

[Including cost estimates of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2739) to implement the United States-Singapore Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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19–006

# I. INTRODUCTION

## A. Purpose and Summary

H.R. 2739 would implement the May 6, 2003 Agreement establishing a free trade area between the United States and Singapore.

## B. Background

The United States-Singapore Free Trade Agreement (FTA), signed May 6, 2003, is one of the first trade agreements, together with the United States-Chile FTA, to be considered by the Congress under the "fast-track" procedures outlined in the Bipartisan Trade Promotion Authority Act (TPA), which was approved by the 107th Congress and signed into law in August 2002 as part of the Trade Act of 2002 (P.L. 107–210).

Negotiations for a U.S.-Singapore FTA were launched in December 2000. The final round of negotiations was held in November 2002, and the formal Agreement was concluded on January 15, 2003. Pursuant to requirements established under TPA, President Bush formally notified the Congress on January 30, 2003, of his intention to sign the Agreement. On May 6, 2003, President Bush and Singaporean Prime Minister Goh Chok Tong signed the FTA during a visit to Washington, D.C. by Prime Minister Goh. The U.S.-Singapore FTA is the first U.S. FTA with an Asian nation. The Agreement establishes standards for trade that mirror U.S. law and sets a precedent for future agreements. The U.S.-Singapore FTA will serve as the foundation for other possible FTAs in Southeast Asia. It will also enhance and strengthen the strong U.S.- Singapore trade relationship. Currently, Singapore is the 11th largest trading partner of the United States, with two-way trade approaching $40 billion in 2002. Singapore is the United States' largest trading partner in Southeast Asia.

The Committee believes that the Agreement meets the objectives and priorities set forth in the Trade Act of 2002. Specifically, when the Agreement enters into force, most tariffs will be eliminated immediately, with the remaining tariffs phased-out over a three- to ten-year period. As most trade in goods with Singapore is already tariff-free, the FTA focuses on removing restrictions in trade in services, an important sector in the United States, accounting for around 80 percent of U.S. gross domestic product. The Agreement, through use of a "negative list" approach, benefits U.S. service providers by offering new opportunities for these service providers in the form of barrier-free market access, a transparent regulatory environment, and non-discriminatory treatment across many service sectors. Services firms will not only enjoy equal treatment in cross-border supply of services but will gain the right to invest and establish a local services presence.

Additionally, by binding all of its tariffs at zero, Singapore will open its markets to American agricultural products and create new opportunities for American farmers to sell their produce to a nation whose small size prevents it from being able to grow enough food for consumption by its citizens. Trade in agricultural products represents a net trade surplus for the United States. In 2002, American farmers exported around $259 million worth of food products to Singapore.

The U.S.-Singapore FTA will create a secure and predictable legal framework for U.S. investors operating in Singapore; they will be treated fairly and equitably and will have access to meaningful dispute settlement. These protections cover key sectors such as agriculture, manufacturing, and services. In addition, the Agreement makes improvements to the NAFTA investor-state dispute settlement ("Chapter 11") model called for in TPA by providing more transparency, public input into dispute settlement, mechanisms to improve the investor-state process by eliminating frivolous claims, and a place marker for a future appellate body or similar review mechanisms. The Financial Services chapter provides strong protections for existing and future U.S. investors and investments in Singapore. The Agreement also contains obligations under which each government commits to enforce its domestic labor and environmental laws.

The Agreement additionally contains state of the art protection for U.S. intellectual property, which is increasingly vital in the digital age. The FTA includes specific commitments regarding the conduct of Singapore's government enterprises; reinforced commitments to strong and transparent disciplines on government procurement procedures; strong, simple, and transparent rules of origin; commitments to combat illegal transshipments of traded goods and to prevent circumvention of disciplines pertaining to trade in textiles and apparel; and requirements to ensure effective enforcement of domestic labor and environmental laws.

As noted above, this legislation is being considered under the Bipartisan Trade Promotion Authority Act of 2002. Under TPA, new trade pacts that the President negotiates in close consultation with Congress can be approved and implemented through legislation that Congress considers using streamlined procedures. Pursuant to TPA procedures, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process, and prior to entering into an Agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify the Congress of his intent to enter into a trade Agreement at least 90 calendar days before the Agreement is signed. Within 60 days after entering in the Agreement, the President must submit to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to the Congress the formal legal text of the Agreement, draft implementing legislation, a statement of administrative action proposed to implement the trade Agreement, and other related supporting information as required under section 2105(a) of TPA. Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader in each chamber. The House then has up to 60 days to consider the bill (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under TPA requirements.

### C. Legislative History

On November 16, 2000, the President provided notification to Congress of his intent to negotiate an FTA with Singapore. The

President provided formal notification to Congress of the negotiations with Singapore as required under TPA (which was enacted subsequent to the start of the U.S.-Singapore FTA negotiations) on August 22, 2002. During and after the negotiations, the President continued his consultations with Congress pursuant to the letter and spirit of the TPA requirements.

Following the May 6, 2003 signing of the U.S.-Singapore FTA, in accordance with TPA requirements, President Bush submitted to Congress on July 3, 2003 a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the Agreement.

On June 10, 2003, the Subcommittee on Trade of the Committee on Ways and Means held a hearing on the United States-Chile and United States-Singapore FTAs. The Subcommittee received testimony supporting these Agreements from the Administration and Members of Congress. The Subcommittee also heard testimony from numerous U.S. private sector companies and organizations.

On July 10, 2003, the Committee on Ways and Means considered in an informal markup session draft proposals of the implementing legislation for the Singapore and Chile FTAs concerning matters within the jurisdiction of the Committee.

On July 15, 2003, President Bush formally transmitted to Congress the formal legal text of the U.S.-Singapore FTA, draft implementing legislation, a statement of administrative action proposed to implement the trade Agreement, and other related supporting information as required under section 2105(a) of TPA. Following this transmittal, on July 15, 2003, Majority Leader DeLay and Congressman Rangel introduced, by request, H.R. 2739 to implement the U.S.-Singapore FTA. The bill was referred to the Committee on Ways and Means and the Committee on the Judiciary.

On July 17, 2003, the Committee on Ways and Means formally met to consider H.R. 2739. The Committee ordered H.R. 2739 favorably reported to the House of Representatives by a roll call vote of 32–5. Under the requirements of TPA, amendments were not permitted.

## II. SECTION-BY-SECTION SUMMARY

### TITLE I: APPROVAL AND GENERAL PROVISIONS

*Section 101: Approval and entry into force*

*Current law*

No provision.

*Explanation of provision*

Section 101 states that Congress approves the U.S.-Singapore Free Trade Agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Singapore is in compliance with its Agreement obligations and has exchanged notes with the United States. Section 101 provides that the date of entry into forced will be no sooner than January 1, 2004.

*Reason for change*

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Bipartisan Trade Promotion Authority Act of 2002. The remainder of section 101 provides for entry into force.

*Section 102: Relationship of the Agreement to U.S. and state law*

*Current law*

No provision.

*Explanation of provision*

Section 102 provides that U.S. law is to prevail in a conflict between the Agreement and such law. It also states that the Agreement does not preempt state law that may conflict with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

*Reason for change*

Section 102 is necessary to make clear the relationship between the Agreement and federal and state law, respectively.

*Section 103: Consultation and layover for proclaimed actions*

*Current law*

No provision.

*Explanation of provision*

Section 103 provides that where the President is given proclamation authority subject to consultation and layover, he may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the House Ways & Means and Senate Finance Committees concerning the reasons for the action; and consulted with the Committees. The President may proclaim the proposed action after 60 days have elapsed.

*Reason for change*

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before that authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough manner.

*Section 104: Implementing actions in anticipation of entry into force and initial regulations*

*Current law*

No provision.

*Explanation of provision*

Section 104(a) provides that after the date of enactment, the President may proclaim actions and agencies may issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement enters into force is appropriately implemented, but not before the effective date.

Section 104(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force of the Agreement or the effective date of the provision, as the case may be.

*Reason for change*

Section 104 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner in order to provide maximum clarity to parties claiming benefits under the Agreement. As noted in the Statement of Administrative Action, a regulation-issuing agency will provide a report to Congress not later than thirty days before one year elapses on any regulation that is going to be issued later than one year.

*Section 105: Administration of dispute settlement proceedings*

*Current law*

No provision.

*Explanation of provision*

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any state-to-state dispute settlement panels that may be established under the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses.

*Reason for change*

The Committee believes that the Commerce Department is the appropriate agency to provide administrative assistance to panels.

*Section 106: Arbitration of claims*

*Current law*

No provision.

*Explanation of provision*

Section 106 authorizes the United States to resolve certain claims covered by the investor-state dispute settlement procedures set forth in the Agreement and specifies that all U.S. government contracts are to contain a choice of law provision for resolving any breach of contract claim.

*Reason for change*

This provision is necessary to meet U.S. obligations under Article 15.21 of the Agreement.

*Section 107: Effective dates; effect of termination*

*Current law*

No provision.

*Explanation of provision*

The effective date of this Act is the date of entry into force of the Agreement. However, sections 1–3 and Title I take effect upon enactment, and section 205 takes effect on the date in which the textile and apparel provisions of the Agreement take effect. The Act shall cease to be effective on the date on which the Agreement ceases to be in effect.

*Reason for change*

Section 107 implements U.S. obligations under the Agreement.

TITLE II: CUSTOMS PROVISIONS

*Section 201: Tariff modifications*

*Current law*

No provision.

*Explanation of provision*

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement.

Section 201(b) gives the President the authority, subject to consultation and layover procedures, to proclaim further tariff modifications as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Singapore provided for by the Agreement.

*Reason for change*

Section 201(a) is necessary to put the United States in compliance with the market access provisions of the Agreement. Section 201(b) gives the President flexibility to maintain the trade liberalizing nature of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out this subsection.

*Section 202: Rules of origin*

*Current law*

No provision.

*Explanation of provision*

Section 202 codifies the rules of origin set out in Chapter 3 of the Agreement. Under the general rules, there are three basic ways for a good of Singapore to qualify as an "originating good," and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Singapore, the United States or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 3A of the Agreement; or (3) it is a good listed in Annex 3B of the Agreement and thus considered to be an "originating good" if the good itself is imported into the territory of the United States from the territory of Singapore.

Annex 3A of the Agreement sets forth product-specific rules of origin for a wide variety of products. Under Annex 3A rules, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Singapore, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Singapore from yarn, or fabric made from yarn, that originates in Singapore or the United States. There is a limited amount of apparel that may enter the United States duty free, subject to tariff preference level (TPL) caps if it does not meet the rule of origin.

The goods listed in Annex 3B (also called Integrated Sourcing Initiative or ISI products) are predominantly information technology goods for which the current United States Normal Trade Relations or Most Favored Nation duty rate is zero. In general, imports of these goods into the United States would receive duty-free treatment regardless of origin. The bill makes clear that the Annex 3B good "itself, as imported," is deemed to be an originating good. This means that an Annex 3B good produced outside of Singapore is originating only when transshipped through Singapore, not when the good is incorporated as a component into another product, unless the Annex 3B good is first shipped from the third country to Singapore and then to the United States and back to Singapore. Thus, for purposes of determining origin by way of a transformation using the regional value content formula in section 202(d) of the bill, an Annex 3B good would not be "originating" for purposes of the regional value content calculation unless it was shipped from the United States to Singapore, where it was then incorporated into the final product.

The remainder of section 202 of the implementing bill sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second method for qualifying as an originating good. These provisions include rules pertaining to de minimis quantities of non-originating materials that do not undergo a tariff transformation and the alternative methods for calculating regional value content. Other provisions in section 202 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

*Reason for change*

Rules of origin are needed in order to confine Agreement benefits, such as tariff cuts, to Singapore goods to prevent third-country goods from being transshipped through Singapore and claiming benefits from the United States. Section 202 puts the United States into compliance with the rules of origin provisions of the Agreement.

The Committee believes that the ISI provisions are sufficiently restrictive that they will not disrupt trade. The Committee will ask the International Trade Commission to monitor whether trade in any regional value content good which could contain an ISI component surges after the Agreement goes into effect. If such a surge is detected the Commission will examine whether the increase is due to reliance on ISI provisions allowing third country ISI components in RVC goods to be considered originating under the Agreement because they were first shipped to the United States and then to Singapore and then for final assembly.

In addition, the committee expects the President to carry out faithfully the obligations specified in article 3.18 of the Agreement by applying any affirmative short supply determination in effect on November15, 2002 under another U.S. free trade agreement or trade preference program.

*Section 203: Customs user fees*

*Current law*

Section 58c of Title 19 lays out various user fees applied by customs officials to imports, including the Merchandise Processing Fee, which is applied on an ad valorem basis with a cap.

*Explanation of provision*

Section 203 of the bill implements U.S. commitments under Article 2.8 of the Agreement, regarding the exemption from the merchandise processing fee for originating goods. This provision is similar to the one from the implementing legislation for the North American Free Trade Agreement. The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

*Reason for change*

As with other free trade agreements, the Agreement eliminates the customs merchandise processing fee on qualifying goods from Singapore. Other customs user fees remain in place. Section 203 is necessary to put the United States in compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that MPF funds will not be available.

*Section 204: Disclosure of incorrect information*

*Current law*

No provision.

*Explanation of provision*

Section 204 of the bill implements Article 3.14.4(a) of the Agreement. The provision prohibits the imposition of a penalty upon an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to disclose the error. The Secretary of the Treasury may prescribe regulations that allow one year or more as a time period for such voluntary disclosures.

*Reason for change*

Section 204 is necessary to put the United States into compliance with Article 3.14.4(a) of the Agreement.

*Section 205: Enforcement relating to trade in textile and apparel goods*

*Current law*

No provision.

*Explanation of provision*

Section 205 of the bill implements the textile and apparel good anti-circumvention enforcement provisions of the Agreement. In accordance with Articles 5.4.5, 5.5.5, and 5.8.2 of the Agreement, the provision allows the President to exclude from entry textile and apparel goods from any enterprise that does not permit site visits requested by U.S. officials or that engages in intentional circumvention. The President may also take further action against circumventing enterprises or related enterprises, such as barring future entries of goods, if consultations with Singapore authorities fail to address problems of circumvention.

*Reason for change*

Avoiding textile transshipment remains a concern, and for this reason special textile enforcement provisions were included in the Agreement. Section 205 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

*Section 206: Regulations*

*Current law*

No provision.

*Explanation of provision*

Section 206 of the implementing bill provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to rules of origin and customs user fees.

*Reason for change*

Because the implementing bill involves lengthy and complex implementation procedures by customs officials, section 206 is necessary in order to authorize the Secretary of the Treasury to carry out provisions of the implementing bill through regulations.

## TITLE III: RELIEF FROM IMPORTS

### Subtitle A: Relief from imports benefiting from the Agreement (sections 311–316)

*Current law*

No provision.

*Explanation of provision*

Sections 311–316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a Singaporean product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry. Section 311(a) permits the award of provisional relief under certain circumstances.

Section 311(c) defines "substantial cause" in the same manner as section 201 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Singaporean articles that have previously received relief since entry into force of the Agreement under: the bilateral safeguard provision; the textile and apparel safeguard set out in Subtitle B of Title III of this Act; the global safeguard provisions in section 201 of the Trade Act of 1974; article 6 of the WTO Agreement on Textiles and Clothing; or Article 5 of the WTO Agreement on Agriculture.

Under section 312(c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic or social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further tariff reductions for the article; or an increase of tariffs to a level that does not exceed the lesser of the existing most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate in effect when the Agreement entered into force. The provision further states that if the President provides relief for greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the import relief that the President is authorized to provide may not exceed two years. However, the President may extend the relief under certain circumstances, but the aggregate period of relief, including extensions, may not exceed four years. According to section 313(e), the rate of duty at the end of the relief period is to be the rate that would have been in effect on that date but for such action.

Section 314 provides that no relief may be provided under this subtitle after ten years from the Agreement's entry into force unless Singapore consents.

Section 315 authorizes the President to provide compensation to Singapore consistent with Article 7.4 of the Agreement.

*Reason for change*

The Committee believes that it is important to have in place a temporary, extraordinary mechanism if a U.S. industry experiences injury by reason of increased import competition from Singapore in the future, with the understanding that the President is not required to provide relief if the relief will not provide greater economic or social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Chapter 7 of the Agreement.

Subtitle B: Textile and Apparel Safeguard (Sections 321–328)

*Current law*

No provision.

*Explanation of provision*

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he is to publish a notice commencing consideration and seeking comments. The notice is to include the request itself.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the reduction or elimination of a duty provided under the Agreement, a Singaporean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article constitute a substantial cause of serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. The section defines "substantial cause" as well as "serious damage," directing the President to examine the effect of increased imports on the domestic industry producing the article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide as either a suspension of further duty reductions or an increase in tariffs to the normal trade relations/most-favored-nation duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief will be no longer than two years, although an extension is permitted under certain circumstances as long as total relief, including any extension, does not exceed four years. Section 324 provides that relief may not be granted to an article under the textile safeguard if relief has previously been granted under subtitle A of this title. Under section 325, the duty rate applicable to the article after the safeguard expires is the rate that would have been in force on that date, but for application of the safeguard.

Section 326 of the bill provides that the authority to provide this safeguard relief expires ten years after the textile and apparel provisions of the Agreement take effect. Section 327 of the Act gives authority to the President to provide compensation to Singapore if he orders relief. Section 328 provides for the treatment of business confidential information.

*Reason for change*

The Committee intends that the provisions of Subtitle B be administered in a manner that is in compliance with U.S. obligations under article 5.9 of the Agreement. In particular, the Committee expects that the President will implement a transparent process that will serve as an example to our trading partners.

Subtitle C: Cases Under Title II of the Trade Act of 1974 (Section 331)

*Current law*

The President has no authority under Title II of the Trade Act of 1974 ("section 201") to exclude Singapore articles from the application of a safeguard remedy.

*Explanation of provision*

If, in any investigation initiated under Title II of the Trade Act of 1974 ("section 201" action), the International Trade Commission makes an affirmative determination, the ITC will also find and report to the President whether imports of the article from Singapore are a substantial cause of serious injury or threat thereof. In determining relief to be taken under section 201, the President will determine whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is negative, may exclude products from Singapore from the safeguard relief provided.

*Reason for change*

This provision implements U.S. obligations under Article 7.5 of the Agreement.

## III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 2739.

MOTION TO REPORT THE BILL

The bill, H.R. 2739, was ordered favorably reported by a rollcall vote of 32 yeas to 5 nays (with a quorum being present). The vote was as follows:

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|---|---|---|---|---|---|---|---|
| Mr. Thomas | X | .......... | .......... | Mr. Rangel | X | .......... | |
| Mr. Crane | X | .......... | .......... | Mr. Stark | .......... | X | |
| Mr. Shaw | X | .......... | .......... | Mr. Matsui | X | .......... | |
| Mrs. Johnson | X | .......... | .......... | Mr. Levin | X | .......... | |
| Mr. Houghton | X | .......... | .......... | Mr. Cardin | X | .......... | |
| Mr. Herger | X | .......... | .......... | Mr. McDermott | X | .......... | |
| Mr. McCrery | X | .......... | .......... | Mr. Kleczka | .......... | X | |
| Mr. Camp | X | .......... | .......... | Mr. Lewis (GA) | .......... | X | |
| Mr. Ramstad | X | .......... | .......... | Mr. Neal | X | .......... | |
| Mr. Nussle | X | .......... | .......... | Mr. McNulty | .......... | X | |
| Mr. Johnson | X | .......... | .......... | Mr. Jefferson | .......... | .......... | |
| Ms. Dunn | X | .......... | .......... | Mr. Tanner | X | .......... | |
| Mr. Collins | X | .......... | .......... | Mr. Becerra | .......... | .......... | |
| Mr. Portman | X | .......... | .......... | Mr. Doggett | .......... | .......... | |
| Mr. English | X | .......... | .......... | Mr. Pomeroy | X | .......... | |
| Mr. Hayworth | X | .......... | .......... | Mr. Sandlin | X | .......... | |
| Mr. Weller | X | .......... | .......... | Ms. Tubbs Jones | .......... | X | |
| Mr. Hulshof | X | .......... | .......... | .......... | .......... | .......... | |
| Mr. McInnis | X | .......... | .......... | .......... | .......... | .......... | |
| Mr. Lewis (KY) | X | .......... | .......... | .......... | .......... | .......... | |
| Mr. Foley | X | .......... | .......... | .......... | .......... | .......... | |
| Mr. Brady | .......... | .......... | .......... | .......... | .......... | .......... | |
| Mr. Ryan | X | .......... | .......... | .......... | .......... | .......... | |

| Representatives | Yea | Nay | Present | Representative | Yea | Nay | Present |
|---|---|---|---|---|---|---|---|
| Mr. Cantor | X | .......... | ........... | ........................................ | .......... | .......... | |

## IV. BUDGET EFFECTS OF THE BILL

### A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3009 as reported: The Committee agrees with the estimate prepared by CBO which is included below. In addition, the legislation is governed by procedures of the Trade Agreements Act of 2002.

### B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 3009 would reduce customs duty receipts due to lower tariffs imposed on goods from Singapore.

### C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 21, 2003.*

Hon. WILLIAM "BILL" M. THOMAS,
*Chairman, Committee on Ways and Means,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2739, a bill to implement the United States-Singapore Free Trade Agreement.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Annabelle Bartsch.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
*Director.*

Enclosure.

*H.R. 2739—A bill to implement the United States-Singapore Free Trade Agreement*

Summary: H.R. 2739 would approve the free trade agreement (FTA) between the government of the United States and the government of Singapore that was entered into on May 6, 2003. It would provide for tariff reductions and other changes in law related to implementation of the agreement, such as provisions dealing with dispute settlement, rules of origin, and safeguard measures for textile and apparel industries. The bill also would allow the temporary entry of certain business persons into the United States.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013, net of income and payroll tax offsets. The bill would not have a significant effect on direct spending or spending subject to appropriation. CBO has determined that H.R. 2739 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2739 is shown in the following table.

| | By fiscal year, in millions of dollars— | | | | |
|---|---|---|---|---|---|
| | 2004 | 2005 | 2006 | 2007 | 2008 |
| CHANGES IN REVENUES [1] | | | | | |
| Estimated Revenues | −55 | −80 | −86 | −92 | −98 |

[1] H.R. 2739 also would affect direct spending and discretionary spending, but the amounts of those changes would be less than $500,000 a year.

*Basis of estimate*

*Revenues*

Under the United States-Singapore agreement, all tariffs on U.S. imports from Singapore would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination to partial elimination over 10 years. According to the U.S. International Trade Commission, the U.S. collected $88 million in customs duties in 2002 on about $14.1 billion of imports from Singapore. Of the imports, only $1.3 billion faced non-zero tariff rates. These dutiable imports from Singapore consist mostly of certain electrical machinery, knitted or crocheted apparel, mineral fuels and oils, surgical and precision instruments, and certain nuclear reactor components. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Singapore agreement would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Singapore that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Singapore would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Singapore would displace imports from other countries.

Based on current law, H.R. 2739 would not provide for the assessment of civil monetary penalties on employers for violations of the labor attestation process with respect to certain workers from Singapore. However, if H.R. 2738, a bill to implement the United States-Chile FTA, were to be enacted prior to this bill, H.R. 2739 would allow the Secretary of Labor to assess such penalties. CBO expects that any additional revenues collected as a result would amount to less than $500,000 in any year.

*Direct spending*

Title IV of H.R. 2739 would permit certain traders and investors from Singapore, and their spouses and children, to enter the United States as nonimmigrants. The Bureau of Citizenship and Immigration Services (BCIS) would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency could collect several million dollars annually in offsetting receipts (a credit against direct spending). The agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

However, if H.R. 2738 (a bill to implement the United States-Chile FTA) were to be enacted prior to this bill, title IV would establish a new nonimmigrant category for certain professional workers from Singapore. The legislation would limit the number of annual entries under this category to 5,400, plus spouses and children. The BCIS would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency would collect less than $3 million annually in offsetting receipts. Again, the agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

Under current law, the Department of State also collects $100 application fee for nonimmigrant visas. These collections are spent on border security and consular functions. CBO estimates that the net budgetary impact would be less than $500,000 a year.

*Spending subject to appropriation*

Title I of H.R. 2739 would authorize the appropriation the necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost $100,000 in 2004, and $250,000 in each of the following years, subject to the availability of appropriated funds.

Title III would require the International Trade Commission (ITC) to investigate claims of injury to domestic industries as a result of the FTA. The ITC would have 120 days to determine whether a domestic industry has been injured, and if so, would recommend the necessary amount of import relief. The ITC would also submit a report on its determination to the President. According to the ITC, similar FTAs have resulted in only a handful of cases each year, at an average cost of about $200,000 per investigation. Based on this information, CBO estimates the bill would have no significant effect on spending subject to appropriation.

Summary of effect on revenues and direct spending: The overall effects of H.R. 2739 on revenues and direct spending are shown in the following table.

| | By fiscal year, in millions of dollars— | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
| Changes in receipts ..... | 0 | −55 | −80 | −86 | −92 | −98 | −104 | −110 | −117 | −124 | −132 |
| Changes in outlays ....... | * | * | * | * | * | * | * | * | * | * | * |

*=Less than $500,000.

*Source: The Congressional Budget Office.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Annabelle Bartsch. Federal Spending: Dispute Settlements—Melissa Zimmerman; Immigration—Mark Grabowixz, Christi Hawley-Sadoti, and Sunita D'Monte. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis and, Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

### A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the bill as reported.

### B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.")

## VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

**SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.**

(a) * * *

(b) Limitations on Fees.—(1) * * *

* * * * * * *

*(13) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Singapore Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.*

* * * * * * *

## SECTION 592 OF THE TARIFF ACT OF 1930

**SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.**

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

*(7) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT.—*

*(A) An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.*

*(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.*

* * * * * * *

## SECTION 202 OF THE TRADE ACT OF 1974

**SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.**

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, [and] title II of the United States-Jordan Free Trade Area Implementation Act*, and title III of the United States-Singapore Free Trade*

*Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * * * *

## SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *
(g)(1) * * *

* * * * * * *

**[The purported changes made to paragraph (8) of section 214(g) by this bill are shown below. Section 402(a)(2)(B) of H.R. 2738 inserts at the end of subsection (g) a new paragraph (8), which is presumed to take effect prior to the execution of these amendments.]**

**[**(8)(A) The agreement referred to in section 101(a)(15)(H)(i)(b1) is the United States-Chile Free Trade Agreement.**]**

*(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—*

*(i) the United States-Chile Free Trade Agreement; and*

*(ii) the United States-Singapore Free Trade Agreement.*

(B)(i) * * *

**[**(ii) The annual numerical limitations described in clause (i) shall not exceed 1,400 for nationals of Chile for any fiscal year. For purposes of this clause, the term "national" has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.**]**

*(ii) The annual numerical limitations described in clause (i) shall not exceed—*

*(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and*

*(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.*

* * * * * * *

## VII. EXECUTIVE CORRESPONDENCE

EXECUTIVE OFFICE OF THE PRESIDENT,
THE UNITED STATES TRADE REPRESENTATIVE,
*Washington, DC, July 18, 2003.*

Hon. WILLIAM M. THOMAS,
*Chairman, Committee on Ways and Means,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I appreciate your leadership in moving through the Ways and Means Committee legislation to implement the United States-Singapore and United States-Chile free trade agreements.

Because we have received inquiries about how the tariff suspension provisions of the agreements would operate, I thought it would be useful to provide the relevant text for the enforcement of dispute settlement panel reports. The following provisions are set out in articles 20.5–7 of the U.S.-Singapore Free Trade Agreement (FTA) and articles 22.14–16 of the U.S.-Chile FTA.

*Commercial disputes*

If, in its final report, the panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure is causing nullification or impairment * * *, the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment. * * * If * * * the Parties are unable to reach agreement on a resolution, * * * the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

If the Parties * * * are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or * * * have agreed on compensation or on a resolution * * * and the complaining Party considers that the other Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide written notice * * * that it intends to suspend the application to the other Party of benefits of equivalent effect. * * *

If the Party complained against considers that * * * the level of benefits [that the other Party has] proposed to be suspended is manifestly excessive; or * * * [that the defending party] has eliminated the non-conformity or the nullification or impairment that the panel has found, it may * * * request that the panel be reconvened to consider the matter. * * * If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

The complaining Party may suspend benefits up to the level the panel has determined * * * or, if the panel has not determined the level, the level the Party has proposed to suspend * * * unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

The complaining Party may not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or * * * the Party complained against provides written notice * * * that it will pay an annual monetary assessment. The Parties shall consult * * * with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined * * * to be of equivalent effect or, if the panel has not determined the level, 50 percent of the level that the complaining Party has proposed to suspend.* * *

If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits [under the Agreement].

*Labor and environment disputes*

If, in its final report, a panel determines that a party has not conformed with its [labor or environment] obligations * * * and the Parties * * * are unable to reach agreement on a resolution * * *; or have agreed on a resolution * * * and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party. * * *

The panel shall determine the amount of the monetary assessment in U.S. dollars. * * * In determining the amount of the assessment, the panel shall take into account [various factors set forth in the agreement.]

The amount of the assessment shall not exceed 15 million U.S. dollars annually. * * * Assessments shall be * * * expended * * * for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law.

If the Party complained against fails to pay a monetary assessment, [or, under the U.S.-Singapore FTA, does not make funds available through an escrow account] the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Again, thank you for your efforts in securing passage of this important legislation.

Sincerely,

ROBERT B. ZOELLICK.

## VIII. VIEWS

### DISSENTING VIEWS

If these two trade agreements were truly going to benefit U.S. workers, as the Administration claims, then we would have no reservations and would gladly support both agreements today. However, the lack of strong labor enforcement language, the addition of new permanent work visa program, and the use of these agreements as a template for future trade agreements is sufficient reason to oppose both agreements and the implementing legislation.

Our nation's unemployment rate reached 6.4 percent in June—the highest rate in more than nine years, causing a loss of more than one million jobs in the last three months alone. The Bush Administration's solution to pursue trade agreements that depart from the standard set by the US-Jordan Free Trade Agreement and return to the failed North American Free Trade Agreement (NAFTA) model. As of September 2000, the U.S. lost over half a million jobs due to NAFTA. Over three-quarters of the jobs lost due to NAFTA have been in the manufacturing sector. These are good paying U.S. jobs that have been shipped overseas. But rather than take the successes of the US-Jordan FTA which was heralded by the Clinton Administration, labor and environment organizations, as the new model for trade agreements, the Bush Administration is taking us down the path of further job losses.

Neither trade agreements includes the International Labor Organization's (ILO) five core labor standards. While both countries claim to uphold the ILO's core labor standards, there is nothing in the agreements that require either country to do so. If these countries are truly committed to the five core labor standards then there is no reason to exclude binding agreement language that would have committed these countries to adhering to them. It is time to make labor standards as serious and issue in trade agreements as the commercial provisions—especially when the involved parties claim to uphold ILO's policies anyway.

Furthermore, these agreements fail to provide the same enforcement mechanisms for labor and environmental violations as the agreements provide for commercial violations. Once again, the Administration chooses to relegate labor and environment to a substandard class. Under the Chile and Singapore agreements, once a determination that a labor violation has been made the first course of action is a fine, which is capped at $15 million annually. This is a mere slap on the wrist for a country that could be found in serious violation of the labor provisions. The negotiated course of enforcement pales in comparison to the sanctions that are available for commercial violations.

In addition to the failures of the labor provisions in both trade agreements, both agreements set up a new immigration visa program. This sets a dangerous precedent by including U.S. immigration law in trade agreements. Nor was this provision authorized in the Fast Track negotiating language that narrowly passed the House of Representatives. House Judiciary members of both the majority and minority have expressed serious reservations about including U.S. immigration law in trade agreements, and usurping Congress's constitutional authority. The current H1–B visa program is a 3-year temporary work visa, which may be renewed one time. The new visa program negotiated in these trade agreements will allow an indefinite renewal of 5,800 nationals from Singapore and Chile. This means that we are earmarking ten percent of the current H1–B visa program to nationals from these small countries in these small agreements.

Another serious concern we have is the fact that the implementing language contradicts the trade agreement language with respect to the new visa program. It is doublespeak. The implementing language attempts to address the concern of allowing new immigrant workers only upon certifying that U.S. workers won't be displaced; the negotiated trade agreements prohibit such certification as a condition of entry. As the U.S. experienced with NAFTA, it is the trade agreement, and not the domestic statute that takes precedent under global trade rules.

Finally, these two agreements should not be used as a model for future trade agreements. A vote in support of the agreements signals to the Administration that the model used for Chile and Singapore is acceptable, when it is far from acceptable. We oppose both agreements, the implementing legislation and urge the Administration to avoid using the flawed Chile and Singapore model for future trade agreements.

PETE STARK.
STEPHANIE TUBBS JONES.
JERRY KLECZKA.
MIKE R. MCNULTY.
JOHN LEWIS.

## ADDITIONAL VIEWS OF DEMOCRATIC MEMBERS

*The U.S.-Singapore Free Trade Agreement*

The U.S.-Singapore Free Trade Agreement (FTA) includes strong and comprehensive commitments by Singagore to open its goods, agricultural and services markets to U.S. producers. The agreement includes commitments that will increase regulatory transparency and act to the benefit of U.S. workers, investors, intellectual property holders, businesses and consumers.

At the same time, the economic impact of the Singapore agreement is likely to be minuscule. The U.S. International Trade Commission estimates that the Singapore FTA will account for just one one hundredth of one percent of U.S. GNP.

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

In fact, one of the concerns raised in the consideration of both the Chile and Singapore FTAs has been that the Administration is beginning to use some of their provisions as models for other FTAs, for example the CAFTA, where the conditions make it inappropriate to do so.

We cannot change in the implementing bill major provisions in the basic agreements specifically negotiated between the parties. Unfortunately, the provisions relating to core labor and environmental standards, and investment issues raise serious concerns.

For example, there are separate dispute settlement rules that place arbitrary caps on the enforceability of those provisions. This is a mistaken approach, the difficulties of which would only be magnified if used as a precedent for future FTAs involving very different circumstances.

That is doubly true of any attempt to use as a model for other FTAs the "enforce your own law" standard used in Chile and Singapore. The laws of Chile and Singapore essentially reflect core internationally recognized labor rights and these countries have a history of enforcing their laws. How they are applied does vary in the two countries, reflecting the different characteristics of the two nations. At the same time, there is little practical concern that these countries will back track.

Singapore is very diferent from many other FTA negotiating partners, including certainly most Central American countries and many others that would be a part of an FTAA. Use of the "enforce your own law" standard is invalid as a precedent—indeed, it contradicts the purpose of promoting enforceable core labor standards—when a country's laws clearly do not reflect international standards and when there is a history, not only of non-enforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively. Using this standard in different circumstances will lead to totally different results.

The Office of the U.S. Trade Representative (USTR) has undertaken this misapplication of the "enforce your own law" standard by using it in the core labor proposal tabled in CAFTA and Free Trade Area of the Americas (FTAA). USTR justifies this action by arguing that the Trade Act of 2002 does not allow it to go further. That interpretation is erroneous. Under Trade Promotion Authority USTR can negotiate a provision to adopt and enforce the five core ILO labor standards (ban on child labor, forced labor, discrimination, and the right to associate and bargain collectively).

Expanded trade is important to this country and the world. Benefits will accrue to a broad range of persons in our nation and in other nations if these trade agreements include enforceable commitments on basic labor standards. With such a provision, workers in developing countries, including in Central America, will have the opportunity to become real partners in economic progress and help develop the expanded middle class so vital to those nations, and to the United States.

With regard to other provisions that the Administration has stated it intends to use as a model, we are seriously concerned about any such use and we will be watching carefully their implementation. These provisions include: (1) certain intellectual property provisions that lock in the current state of U.S. law, thereby making it much more difficult for Congress to change those rules in the future; (2) the investor-state provisions and the issue of whether the USTR has adequately ensured that foreign investors will not have greater rights than provided under U.S. law; and (3) the provisions on capital controls and the question of whether USTR's and Treasury's effort to eliminate a country's flexibility to impose on an emergency basis temporary capital controls, is sound policy and should be pursued in future FTAs. In addition, we are interested to know whether more can be done by Singapore to stop the transshipment of illegally harvested timber.

Finally, one area where we would like to see improvements in future FTAs is in the rules of origin. To a large extent, the provisions on rules of origin in the implementing legislation are dictated by the underlying agreements.

The Committee report states that the Agreement contains "strong, simple, and transparent rules of origin." The rules of origin used for the Agreement are different than those for the NAFTA and for other previous FTAs. It is extremely difficult for Congress to gauge whether the rules of origin strike the correct balance between the dual goals of preventing trans-shipment/ensuring economic activity in the FTA partners and ease of compliance and administration. While we trust that the USTR negotiators are seeking the correct balance, the Committee should request the ITC to conduct a study into the operation of various types of rules or origin and their impact on trade.

*The U.S.-Singapore implementing legislation*

The Committee Democrats pressed for the Committee to hold the July 10, 2003, traditional “mock” mark-up. the informal legislative drafting process ensures active congressional involvement in shaping the legislation necessary to implement changes to U.S. law that are required by trade agreements.

In the past, the informal legislative drafting process in the House—prior to the Administration’s introduction of the formal, and nonamendable, legislation—has culminated in the Ways and Means Committee holding an informal markup (sometimes called a “mock markup”) of the draft legislation. This process was used in the case of implementing legislation for the North American Free Trade Agreement (NAFTA), the Uruguay Round agreements and prior agreements dating back more than 20 years.

The mock markup reflects a broadly agreed-upon and well-established practice. Further, it enables the Members of the Committee and the public to understand more fully and clearly the content of the legislation, raise questions about it, and offer “mock amendments” when necessary. Ensuring that the legislative process for the implementing legislation is as open as possible is consistent with the great importance the United States has attached to improving the transparency of international trade agreements and foreign government laws and regulatory practices.

The implementing legislation includes only addresses those portions of the FTA where implementation requires changes to U.S. law. With respect to these provisions, it is important to note the improvements that we have been successful in making to several controversial areas.

First, the Integrated Sourcing Initiative (ISI) was initially described by USTR as a special program to benefit two Indonesian islands near Singapore. In fact, the ISI was much wider than USTR had initially described it. Any country could benefit from the ISI, and it would have allowed Singapore to import certain components directly from any country in the world, incorporate them into other products, and count the components as “Singapore content.” Further, the ISI called for considering an expansion of the list of products that could benefit from this unusual treatment, and the initial draft of the implementing legislation would have allowed expansion through an Executive proclamation.

Democrats on the Ways & Means Committee began raising questions and concerns about the ISI with USTR. The result has been a number of changes:

- *Expansion of the ISI Requires Congressional Approval.* Under the ISI’s primary feature, certain goods listed in an annex to the FTA can be trans-shipped through Singapore and receive the benefits of the FTA. The “trans-shipment” feature of the ISI is not significant in practice, however, as all of the goods currently on the ISI Annex already enter the U.S. duty-free regardless of where they originate. However, Ways and Means Democrats were concerned that the ISI Annex could be expanded by Executive proclamation in the future to include other goods which could be more sensitive. Accordingly, Ways and Means Democrats and other offices succeeded in modifying the implementing legislation to require congressional approval for expanding the ISI.

• *Local Content Feature Restricted.* Ways and Means Democrats raised a number of questions about the fact that the "local content" feature of the ISI would allow components from any other country to be counted as Singapore content in "downstream goods," helping those goods benefit from duty-free treatment under the FTA. As a result, a key sentence in the agreement was deleted. The initial draft of the legislation implementing the agreement contained an ambiguity and the implementation language was modified. While it was our expectation that as a result, the local content feature was being eliminated entirely, the Statement of Administrative Action contained language that indicated that the local content feature had been restricted so that ISI components would first have to be trans-shipped between the U.S. and Singapore before they could count as local content for another good which would itself have to be shipped between the two countries.

In sum, as a practical matter, it would appear that use of the local content feature would be severely restricted. Nonetheless, we are taking steps to ensure adequate monitoring, including through agreement with the Chairman to request detailed monitoring by the U.S. International Trade Commission for the first two years of the agreement to follow trade in products that could be affected by the ISI and to detect surges, if any, in use of the ISI local content provision. If such a surge is detected, the ITC would conduct a special investigation. In any event, the Commission would prepare a report to the Committee on the results of its monitoring.

A second set of troublesome issues in both the U.S.-Chile and U.S.-Singapore FTAs related to H1–B immigration visas. Although not under the jurisdiction of this Committee, we worked actively with our colleagues in both parties on the Judiciary Committee to make meaningful changes to these provisions. The most significant changes include: (1) inclusion of the Singapore and Chile visas within the overall H1–B cap; (2) a requirement that employers pay the H1–B fee (currently $1000) for the initial visa, and for every third renewal of the visa (these fees are used to fund training programs for workers in the United States); (3) a requirement that employers submit labor attestations not only for the initial visa, but also for every third renewal; (4) clarification in the Statement of Administrative Action that visas issued under the Chile and Singapore programs are temporary, and that laws governing temporary visas, including requirements that the visa holder show that the stay is temporary, continue to apply; and (5) a clarification in the Statement of Administrative Action on the scope of occupations covered.

Additionally, as first drafted, bills did not require Administration to consult with trade advisory committees, ITC, or Congress when exercising discretionary authority granted by the legislation. The bill has been amended to require consultation with each of these entities, helping provide greater role for Congress and a more balanced and well-founded trade policy.

This process has worked for improving the problematic provisions in the implementing legislation.

Finally, we are concerned that the legislative implementation of the rules of origin may create unnecessary confusion. The rules of origin in the Chile and Singapore FTAs differ in a number of ways, some substantive, but most non-substantive. In a number of instances, the implementing legislation mirrored the language in the agreements, despite the fact that there were no substantive differences intended. We are concerned that the differences in legislative language between two contemporaneously considered bills could create confusion for Customs and traders. Generally, Congress does not use different language when it means the same thing. Accordingly, we encourage Customs to issue harmonized implementing regulations for the Singapore and Chile FTAs to the maximum extent possible.

*U.S. Trade policy for economic growth and jobs*

Even as we support the Singapore and Chile free trade agreements, it is vital that American trade policy restore a focus on opening markets that achieve big gains for Americans. In particular, numerous barriers to exports of American goods and services, and other unfair trade practices have been allowed to stand for too long. These barriers include international piracy of American copyrights and other intellectual property, discrimination by China against key American high-tech exports, and Japan's discrimination against myriad of manufactured and agricultural goods. A more concerted effort needs to be undertaken to reduce these barriers that cost American jobs and exports.

Additionally, there is a great deal at stake in negotiations currently ongoing under the auspices of the World Trade Organization—the so-called Doha round. These negotiations should be conducted carefully to achieve potential significant benefits to American manufacturing, agriculture and services, and to prove benefits to both the United States and other developed countries, as well as developing countries. Ways and Means Democrats are monitoring these negotiations carefully and urge a greater focus by the Administration on ensuring real and meaningful progress at the upcoming Ministerial meeting in September in Mexico.

CHARLES B. RANGEL.
JIM MCDERMOTT.
MAX SANDLIN.
ROBERT T. MATSUI.
EARL POMEROY.
RICHARD E. NEAL.
BEN CARDIN.
SANDER LEVIN.
XAVIER BECERRA.

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