TESTIMONY OF SANDRA POLASKI
SENIOR ASSOCIATE
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE

BEFORE THE SENATE COMMITTEE ON FINANCE
ON THE IMPLEMENTATION OF THE
U.S. BILATERAL FREE TRADE AGREEMENTS WITH SINGAPORE AND CHILE

JUNE 17, 2003

Mr. Chairman, Senator Baucus, Members of the Committee, my name is Sandra Polaski. I am a senior associate at the Carnegie Endowment for International Peace, where I work on issues of labor, trade and development. Previously I served at the U.S. Department of State as the Secretary's Special Representative for International Labor Affairs. In that capacity I led the team negotiating labor issues in the U.S.-Jordan Free Trade Agreement. I had the pleasure of serving both Secretary Albright and Secretary Powell.

Thank you for the opportunity to address the labor provisions of the U.S.-Singapore Free Trade Agreement. To the extent that the labor provisions are identical to those in the U.S.-Chile Free Trade Agreement, I will be commenting on labor provisions in that agreement as well. I will then briefly discuss a separate provision of the Singapore FTA that has labor ramifications.

I believe that the only appropriate and useful basis for evaluating labor provisions of free trade agreements is whether those provisions are likely to be an effective means of protecting labor rights in the specific countries party to the agreement. That is, labor provisions should not be evaluated in terms of whether they form a precedent or template for other negotiations. That is too heavy a burden to place on any one trade agreement, and further, the important differences in labor practices between our many trading partners make it unlikely that any single model could possibly be useful and effective in all other situations. When it comes to labor provisions, it is certainly true that "one size does not fit all".

The approach taken to the labor provisions of these two agreements, as you know, is that the countries make a binding commitment to effectively enforce their own labor laws. The agreements then discipline the parties to uphold this commitment by making persistent violations subject to dispute settlement procedures. Where dispute panels find such violations, fines may be imposed, with the fines being used to fund activities and programs to remedy the problem of non-enforcement of labor rights. In extreme cases, where a party refuses to pay such a fine, the other party may collect the amount through reinstated tariffs, on an annual basis, as long as the violation persists. This approach can protect and reinforce labor rights and be a meaningful trade discipline where—and only where—the country's labor laws are adequate. Otherwise we would simply lock in low and unacceptable labor standards through our trade agreements.

Using the standard I stated earlier—whether the labor provisions of a particular trade agreement are likely to be an effective means of protecting labor rights in the specific countries party to the agreement—my evaluation is that, on balance, the labor provisions of both the U.S.-Singapore and U.S.-Chile FTAs constitute an acceptable approach to protecting labor rights in the traded sectors of the economies of these two trading partners. I come to that conclusion based on familiarity with the labor laws and practices of both countries. Both Singapore and Chile have labor laws that, while not perfect by any means, give protection to workers' basic rights that is roughly comparable to the U.S. level of protection. At the same time, both Singapore and Chile enforce their labor laws with reasonable vigor. And finally, both Singapore and Chile are societies that function under the rule of law, with administrative mechanisms and backup judicial enforcement systems that provide a means of redress if primary enforcement fails.

This is critically important in distinguishing between these agreements and the agreement that is currently being negotiated between the US and five Central American countries, and it is why I make the point that the Singapore and Chile labor provisions cannot be seen as a model. In the five Central American countries involved in the CAFTA trade talks, there are serious flaws in the labor laws that deny workers one or more of their basic, internationally recognized labor rights. In the majority of those countries labor law

enforcement is weak and irregular, and in several countries the judicial system is so ineffectual or corrupt as to provide no effective redress at all. An approach like that taken in the Singapore or Chile FTAs would not protect labor rights in Central America in any meaningful way.[1] That is why it is important to look at the labor provisions in the Singapore and Chile FTAs only in terms of whether they are appropriate and adequate for trade agreements with these two countries, and not to see them as a precedent or template. Frankly, I urge this Committee to exercise its oversight responsibilities to be sure that the administration makes timely, realistic assessments and reports on the actual labor situation in different countries with which the U.S. negotiates, as required by the Trade Act of 2002, that it makes appropriate distinctions between countries, and then negotiates suitable labor terms that provide meaningful protection of labor rights based on the reality in each country.

Let me turn now to a specific aspect of the labor provisions of the Singapore and Chile FTAs that deserves comment. I think that the decision of U.S. negotiators to limit the availability of dispute settlement solely to the commitment to effectively enforce labor laws was a mistake. In the U.S.-Jordan FTA, we intentionally made all aspects of the labor chapter subject to dispute settlement. That included the parties' pledge to "strive to ensure" that the fundamental labor rights recognized by the ILO and the internationally recognized labor rights listed in the agreement are recognized and protected by domestic law. It also included a commitment to "strive to improve" labor laws in light of those international standards, and a commitment to "strive to ensure" not to waive or derogate from labor laws to attract investment. In the U.S.-Jordan FTA, all such labor commitments are subject to dispute settlement. Now, anyone who has practiced dispute settlement under international agreements knows that a commitment to "strive to ensure" would be very difficult to litigate. But it would not be impossible in extreme cases, such as a wholesale repeal of labor rights protections, or a broad waiver of labor rights in export processing zones. I think this limitation is unfortunate and a real weakness of the Singapore and Chile agreements. Given that both Singapore and Chile are reasonably

[1] For further comments on this topic, see Sandra Polaski, "Central America and the U.S. Face Challenge—and Chance for Historic Breakthrough—on Worker Rights", Carnegie Endowment for International Peace,

democratic societies, where the public is organized through political parties, labor unions and other civil society institutions, the types of egregious actions that could be successfully litigated under the U.S.-Jordan FTA language are not very likely to occur. That political and social context is the only mitigating factor that makes this limitation palatable. But this approach most emphatically is not suitable as a precedent for other U.S. trade agreements, which may be negotiated with countries where civil society is very weak and where governments may operate with severe conflicts of interest or outright corruption and collusion. It is also worth noting that the limitation of access to dispute settlement for labor (and environment) differs from all other issues covered by the agreement. I urge the members of this Committee to make clear to the administration that future agreements, including the CAFTA, should use the Jordan approach, in which all provisions of the labor chapter are subject to dispute settlement.

Finally, I would like to comment on a separate provision of the U.S.-Singapore FTA that has significant labor ramifications. That is the integrated sourcing initiative, or ISI, which allows goods produced in third countries to be treated as if they had been produced in Singapore for the purpose of satisfying rules of origin provisions.[2] Currently a list of electronic and high tech goods is covered, and the agreement explicitly provides for expansion of that list in the future. It is widely noted that the ISI will cover products from the Indonesian islands of Bintan and Batam, but there is no limitation on where such products may originate. What is the labor ramification? Neither Indonesia nor any other country that benefits from this provision is required to effectively enforce its labor laws. The third country beneficiaries take on none of the obligations of the trade agreement, including those—like labor rights—that embody a carefully forged consensus on trade policy in the U.S. This is not a theoretical problem. In the export processing zones of Bintan and Batam there have been widespread violations of basic labor rights. Both the State Department Country Report on Indonesia and recent reports from Indonesian trade unions indicate continuing problems, ranging from failures to pay even the minimum

---

February 2003, available at www.ceip.org/files/publications.

[2] For further comments on this topic, see Sandra Polaski, "Serious Flaw in U.S.-Singapore Trade Agreement Must Be Addressed", Carnegie Endowment for International Peace, April 2003. Available at www.ceip.org/files/publications.

wage to corruption by labor inspectors, to attacks on union supporters by thugs hired by companies or local government. The ISI could extend access to the U.S. market to countries with even worse labor problems, such as Burma. Currently, U.S. investors are banned from new investments there due to severe violations of human and worker rights in that country. But Singaporean investors face no such constraints and if they choose to move production to Burma, products covered by the ISI will gain preferential access to the U.S. market.[3] The ISI is a bad idea that weakens U.S. trade policy by allowing investors, based on their production and sourcing decisions, to decide which countries will gain trade advantages with the U.S—without those countries taking on any of the obligations of trade agreements. As written, it also shifts the balance on trade policy-making between the executive and legislative branches by allowing USTR to add products to the ISI without Congressional votes. I urge members of this Committee to use the implementing legislation to close the loophole created by the ISI and to press the administration not to replicate this approach in any other trade agreement.

At the end of the day, Members of this Committee and other Senators must assess and vote on the U.S.-Singapore and U.S.-Chile trade agreements based on their totality. I don't offer an opinion on that overall calculation, but only a fair assessment of the labor provisions and the labor implications of the integrated sourcing initiative. Thank you for that opportunity.

[3] The Senate recently passed a bill that would restrict imports from Burma. If this bill becomes law after the U.S.-Singapore FTA enters into force, it arguably would provide a basis for Singapore to claim that benefits expected under the FTA had been impaired. Similar foreign policy actions by the U.S. in the future could be exploited by investors to press claims under the investment chapter. These examples serve to illustrate the unpredictable and unintended consequences that could flow from the unprecedented approach taken in the ISI.