Statement of Robert Vastine
President, Coalition of Service Industries
Before the
Subcommittee on Domestic and International Monetary
Policy, Trade and Technology
Committee on Financial Services
House of Representatives
April 1, 2003

Financial Services Provisions of the US-Singapore
and US-Chile Free Trade Agreements

Mr. Chairman and members of the Subcommittee, it is a pleasure to present the views of financial services members of the Coalition of Service Industries on the provisions of the US-Singapore and US-Chile Free Trade Agreements relating to financial services.

The United States is very competitive in global financial services trade, even though many barriers to our international operations remain in a large number of key foreign markets.[1] US financial services firms have thus taken a strong interest in expanding their trade by removing barriers to cross-border trade, to investment, and to the movement of key business personnel.

Removing barriers to financial services trade, and indeed to all US services trade, is a very important US policy objective. The US has run a surplus in its cross border trade with the rest of the world for many years. Last year's surplus of $49 billion offset by 10% the chronic structural US deficit on trade in goods. But the services surplus could be much greater if, through multilateral and bilateral agreements, we were able to remove all barriers to our services exports. A much-cited study under the auspices of the University of Michigan estimated a welfare gain to the US of $450 billion each year were all barriers to our services trade to be removed.

Dual Paths to Liberalization

Since the Uruguay Round concluded in 1994, the US Government, and industry, have focused on removing services trade barriers through multilateral negotiations within the framework of the General Agreement on Trade in Services (GATS). The Uruguay Round mandated a further, separate negotiation on financial services. The first effort to secure this agreement failed in 1995 when the US determined that the draft agreement

---

[1] Detailed lists of specific barriers to US financial services companies' overseas operations are available from CSI on request.

was not sufficiently liberalizing. A subsequent negotiation was concluded in 1997 with full support of the US financial services industry.

Also as mandated by the Uruguay Round, negotiations covering most traded services were begun in the WTO in 2000. After two years of work mainly on rules, the services talks were wrapped into the “Doha Development Round” of negotiations launched in November 2001, in Qatar.

The emphasis on multilateral negotiations in the WTO has given way to a dual approach. With the passage of trade promotion authority (TPA) last year the negotiation of the Singapore and Chile agreements kicked into high gear. The US Trade Representative, Ambassador Zoellick, completed these two FTAs. And this year USTR began talks with the Central America Free Trade Area (CAFTA), Morocco, the Southern African Customs Union (SACU), and Australia.

The drive to secure bilateral FTAs is a bipartisan policy. President Clinton initiated the US-Singapore Free Trade Agreement. And, because the Chileans had long sought an FTA, his Administration also launched negotiations with Chile. Both were expected to be negotiated quickly, but this was not to be the case. Neither agreement was really finished until two months ago, and both are still subject to “legal scrubbing” during the Congressional review process that began when the two FTAs were notified to Congress at the end of January.

This extended effort was necessary to complete complex agreements that would come as close as possible to meeting our goal of providing substantially free trade in financial services. It was very important to industry to get these Agreements right.

Chile and Singapore are not large markets. But our members knew that these Agreements would be very important as precedents for pacts with other countries. If we could “get it right” with Singapore and Chile it would be easier to negotiate good agreements with future partners. We therefore devoted substantial time to this effort.

Both agreements provide meaningful new advantages for US financial services companies and provide a valuable precedent for future FTAs.

US Commitment to the Multilateral WTO Negotiations

The move to secure FTAs has stirred critical comment abroad. The US determination to negotiate meaningful, liberalizing bilateral agreements is said to reflect a lack of commitment to the WTO and to the multilateral process.

As the tabling of a comprehensive US GATS offer yesterday demonstrates, this charge is not accurate. The US government and the services industry remain committed to the WTO as an institution and as a negotiating forum. We simply see - as does our government - that we can make progress bilaterally at a time when the WTO services negotiations are being slowed by disputes about agriculture. Indeed we intend that our bilateral achievements will help motivate progress in the multilateral negotiations.

Further, we believe that these two FTAs can achieve greater economic and trade impact through replication in their regions. We hope equally strong agreements can be negotiated with members of ASEAN, and with members of the Andean Pact, a number of whom, like Colombia, have already expressed interest in an FTA—and with other countries.

Coverage of the Agreements

The two agreements cover barriers both to cross border trade, and to investment. They embrace strong commitments to transparency in regulation. In insurance they also take steps toward better quality regulation. They contain useful commitments to freedom of movement of key business personnel.

Cross-border trade refers to sales and consumption of services from one Party into the territory of the other.[2]

The US has consistently run a surplus in its cross border financial services trade with the rest of the world. This surplus amounted to $6.3 billion in 2001. We have positive cross border financial services trade balances with Singapore and Chile, as Chart I demonstrates.

Sales to foreigners by all affiliates of US services companies operating abroad are an even more important element of our services trade. These sales totaled $393 billion in 2000, of which financial services were $101.8 billion. In the same year, total affiliate sales were $5.4 billion in Singapore, and $3.1 billion in Chile, as shown in Chart II.[3] US foreign investment in services generates the need for extensive support, including substantial new jobs, in home offices in the US.

Many services must be sold from establishments in foreign markets, or not sold at all. Some forms of financial services can't be sold on a cross border basis. For example, life insurance policies can't be sold to Singaporeans from an office in Chicago or New York. To do so requires direct investment in operations in Singapore.[4]

This means that trade agreements must provide rights to establish businesses in foreign markets. Investors should be able to establish in whatever form best suits their business objectives, whether as a branch or subsidiary, whether wholly owned or majority owned. The Singapore and Chile FTAs provide these rights.

---

[2] In the General Agreement on Trade in Services (GATS), this is "Mode One" of services supply.
[3] These statistics aggregate all sales to Singaporeans and Chileans by US affiliates. Breakdowns by sector are not available.
[4] In the GATS direct investment is known as commercial presence, or "Mode Three" of services supply.

Significant Provisions of the US-Singapore Agreement

Singapore commits to permit a wide range of cross border financial services offered by US financial institutions including for example financial information, financial data processing and software, leasing, corporate financial advisory services and trading in money market instruments and foreign exchange.

Singapore also commits to market access and full foreign ownership of financial institutions including insurance companies.

Banking:

With the exception of banking, the Singapore financial services market has been substantially an open market thanks to internal reforms. At the outset of the negotiations Singapore officials made clear that they wished to preserve a domestic Singapore banking industry and thus exclude foreign banks from certain lines of activity. This included maintaining a limit of 6 on foreign Qualified Full Banks (QFBs); a rigid limit on the number of customer service locations (including ATMs) a QFB could open, and a prohibition against foreign participation in locally owned ATM networks or debit services through electronic funds transfer at point of sale (EFTPOS) networks.

The Agreement modifies these restrictions for US banks. Limits on the number of QFBs will be lifted for US banks 18 months after entry into force. United States QFBs will be allowed to establish up to 30 customer service locations upon entry into force, and these limits will be removed altogether after two years. QFBs are permitted to link their proprietary ATM networks to facilitate the creation of a foreign bank network. United States QFBs organized as subsidiaries may participate in local ATM networks two and a half years after entry into force, and QFBs organized as branches may participate in such networks four years after entry into force. Singapore committed to consider applications for access to local bank ATM networks for non-bank issuers of charge and credit cards.

Singapore's limit on 20 new wholesale bank licenses will be removed for US banks 3 years after entry into force of the Agreement.

Asset Management:

The Agreement also provides important benefits for US asset management companies. US firms can compete for asset management mandates from the Government of Singapore Investment Corporation, which manages $100 billion in assets. Also, US firms that establish affiliates in Singapore will be able to use the resources of their US facilities to manage Singapore mutual funds on a cross border basis. Singapore has also liberalized onerous staffing requirements that operated as barriers to entry for US firms.

Insurance:

As noted above, the operating environment for US insurers in Singapore has been favorable because of its internal reforms. The Agreement locks these in, and Singapore liberalized further its regime to include all the types of cross border insurance that we sought. These provisions permit trade in reinsurance, auxiliary services including actuarial, adjustment, and consultancy services, MAT (marine, aviation and transportation) insurance, and brokerage services for reinsurance and MAT. The market access provisions as noted above permit US insurance companies to establish in Singapore without limits on number, and allow full ownership.

The Singapore Agreement contains an important benefit for US insurers. This is the provision permitting insurance companies to offer many products without requiring product filing and approval. In addition, the Agreement provides that when Singapore does require filing and approval, Singapore will allow the product to be introduced in commerce, unless it is disapproved within a reasonable time. This provision is sometimes known as a "deemer" provision, that is, a product is deemed to be approved unless denied. The US sought a similar provision in the Chile Agreement, but obtained a best efforts provision.

<u>Significant Provisions of the US-Chile Agreement</u>

The US-Chile Financial Services Chapter provides the same essential cross border and market access rights as the Singapore Agreement. Because Chile has substantially liberalized its financial services markets the Agreement locks in Chile's commitments to liberal trade in banking, securities, asset management, and insurance, and provides for freedom of transfers of financial information.

Chile commits, as does Singapore, to allow a wide range of cross border services in banking, securities, and insurance. Chile must change its laws to comply with its commitments for cross-border supply of insurance.

Asset Management:

The Financial Services Chapters of both Agreements state that the Agreements do not apply to social security systems or public retirement plans. Thus the US social security system is excluded from the scope of the Agreements. Furthermore the US has taken reservations in the Investment and Financial Services Chapters that give it the right to adopt any future measures applying to its social security system,

However, the Chile Agreement gives US firms the right by March 1, 2005, to compete equally with Chilean firms in managing the *voluntary* portion of Chile's national pension system. Also, US firms will be provided access to manage the *mandatory* portion of Chile's pension system without arbitrary differences in the treatment of US and domestic providers.

The Agreement also allows US mutual funds established in Chile to provide offshore portfolio management services to Chilean mutual funds on a cross border basis. This has been a central industry objective, and this commitment and the similar one contained in the Singapore agreement will be important precedents for future trade agreements.

Insurance:

For both the Chile and Singapore Agreements, industry sought to structure commitments for market access, investment, and regulatory best practices for insurance based on a framework referred to as the Model Insurance Schedule, which industry believes has been substantially accomplished in both Agreements.

The Chile Agreement assures cross border trade in certain insurance products as does the Singapore Agreement. However it does not provide an immediate right for insurance companies to branch, as does the Singapore Agreement. Instead, Chile allows branching within four years of entry into force, with the proviso that Chile may apply certain regulatory requirements to such branches. US insurers will surely follow closely Chile’s implementation of this commitment.

The Chile Agreement repeats the provision in the Singapore Agreement that commits the Parties to “recognize the importance of…developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.”

Advantages Common to Both Agreements

New Financial Services:

The Agreements contain a presumption that Singaporean and Chilean regulators will use the flexibility allowed under their laws to permit the supply of new financial services in Singapore and Chile, provided they are already offered in the US. The two governments may determine the institutional form in which the new financial service may be supplied and impose other criteria. If a company wishes to offer a service that is new to both the US and the other countries, the Agreements assure the right of the company to seek approval to offer the service, consistent with the laws of the country in which it is to be offered. These provisions apply equally to the US.

Transparency:

The Financial Services Chapters of both Agreements contain very good transparency provisions. These provisions build on the general transparency provisions that apply generally throughout the Agreements, and to transparency provisions in their Services and Investment Chapters.

For financial services they require to the extent practicable the publication of regulations in advance, and provide opportunity to comment. Each Party should allow reasonable time between publication of final regulations and their effective dates, and, at the time they adopt final regulations, governments should address in writing comments received.

In addition there are specific provisions regarding applications to provide financial services. Essentially these require regulatory authorities to: disclose all the documentation and other requirements for completing applications; inform applicants about the status of applications and any additional information required; make decisions on applications within 120 days where practicable; and promptly notify the applicant. The rules of self-regulatory organizations (SROs) are also to be made publicly available.

These provisions of the Agreements are consistent with US law and practice and thus require no changes in US law.

CSI is very encouraged by the transparency provisions of the Agreements, because we have been at the forefront in asking US negotiators to seek strong transparency provisions in the GATS negotiations. In 2000 we prepared and provided to USTR a "Framework for Transparency in Services," which helped inspire a US negotiating proposal on transparency tabled in Geneva in July 2001, and the US transparency request tabled last June 30.

The acceptance by Singapore and Chile of the types of transparency commitments that the US has set forth in the GATS should influence those negotiations. Many WTO Members question the value of transparent regulatory processes and doubt their own ability to apply them within the framework of their governmental institutions. These Agreements should provide substantial encouragement.

Temporary Entry:

One of the most important ways in which services are supplied is by the movement of people for temporary assignments abroad. These can be employees of a company needed for temporary assignment in a foreign operation of that company, or to service the foreign clients of that company. Or they can be experts contracted to solve clients' problems in any part of the world. These services are required in the financial services industry just as they are in professional services such as accounting or consultancy. But lengthy and complicated visa processes materially impede these transfers.

Both Singapore and Chile commit to allowing freer movement of US persons to supply financial and other services in their countries. Both will provide for multiple entries of business visitors, traders and investors, intracompany transferees, and professionals. For the first three categories of visitors, the only change required in US law will be for Congress to declare that the FTAs qualify under US law so that Singaporeans and Chileans may obtain treaty trader and treaty investor visas. For the last category, professionals, a new visa will need to be created.

The Agreements offer substantial advantages for the US. US financial services and other professionals can enter Singapore and Chile freely and without limit. Singapore and

Chile addressed US concerns by agreeing to strict numerical caps on the numbers of Singaporean and Chilean professionals that can enter the US: 5,400 for Singapore, and 1,400 for Chile. These caps cannot be increased. Singaporean and Chilean professionals seeking entry to the United States must comply with US labor and immigration laws. The US will require the completion of an attestation certifying compliance.

Freedom of Capital Transfers and Related Provisions:

In the organization of the major multinational institutions and agreements following on the Bretton Woods Conference in 1944, the motivating principle was to create an open world trade and payments system. The United States led this effort, in the belief that such a system would prevent a recurrence of the protectionist policies that led to world wide depression and World War II.

The principle of free capital transfers is embedded in the Bilateral Investment Treaties we have negotiated with 45 countries. Thus it is consistent and appropriate that the US should have sought, and secured, such provisions in the Singapore and Chile Agreements. On the other hand, these Agreements also provide that, should the Parties determine to impose capital controls, they must employ measures to compensate private investors. Other witnesses will have discussed these provisions in more detail. From the standpoint of foreign investors either in portfolio or in direct investments, however, restrictions on movement of funds can chill the investment climate. They may warn investors that a government may choose to impose regulatory solutions to try to cure instability, rather than adopt sound, market-based provisions that fundamentally determine the value of currencies and the stability of economies. In addition, the imposition of even short-term repatriation restrictions raises regulatory compliance issues for US mutual funds that may affect the willingness of US mutual funds to purchase securities in the country. Thus, insistence on the right to control capital flows will likely discourage investments that can contribute to the growth of capital markets.

<u>The Negative List and Acquired Rights</u>

It is one of the strengths of these Agreements that they were negotiated on the basis of the "negative list" approach. One of Ambassador Zoellick's first – and welcome – decisions related to services was to convert the Singapore Agreement from a positive to a negative list approach, and USTR has subsequently sought to base new FTAs on the negative list. Under this approach, also used in NAFTA, only those services *not* liberalized are reserved or excepted. This allows the negotiation to focus on narrowing the other Parties' reservations. By contrast the positive list approach used in GATS requires countries to list all the services that will be liberalized. This often leads countries to hold back offers, requiring other negotiators to laboriously extract concessions.

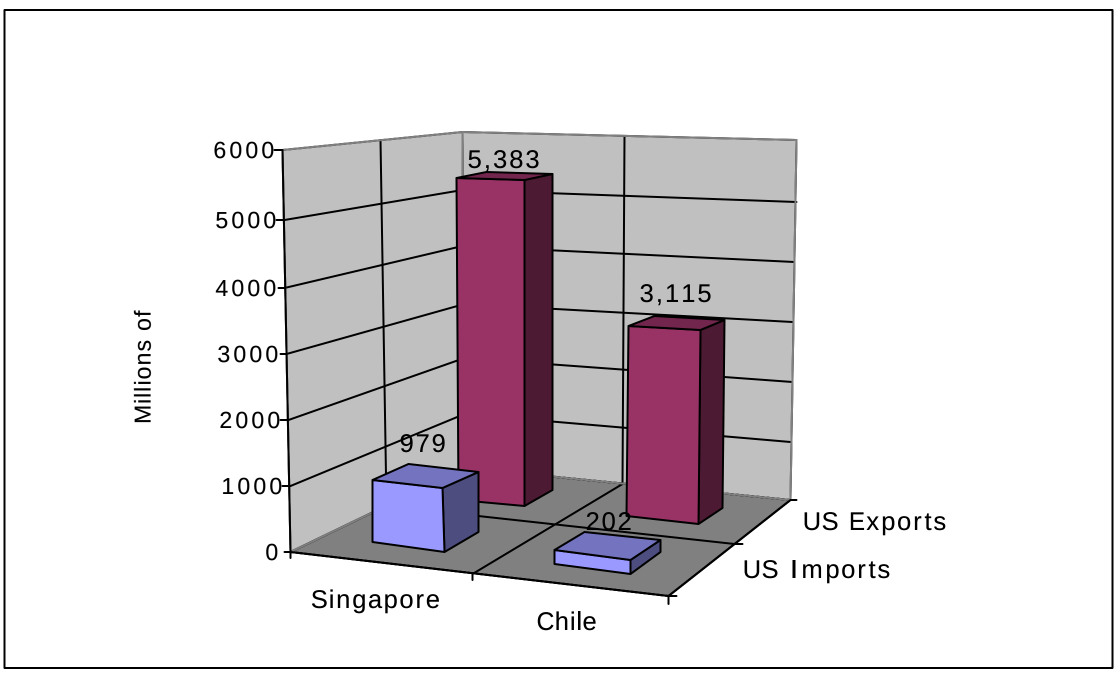
It can be considered a disadvantage of the negative list approach that existing rights, or acquired rights, are not specifically stated. In its reports to Congress on the Agreements, the Industry Sector Advisory Committee on Services, ISAC 13, asked that in order for commercial interests to realize the full benefits of the rights provided by the Agreements, a definitive explanation of those rights should be provided as part of the legislative history of the Agreements.

Conclusion

We have learned in these negotiations that the United States is able to secure meaningful new commercial opportunities through bilateral free trade agreements. We have both secured bindings of liberalization taken by Singapore and Chile autonomously in years prior to the Agreements, and we have achieved new commitments to additional liberalization. This is because of the efforts of dedicated USTR and Treasury negotiators. They sought industry advice on the barriers that should be removed and other provisions, such as transparency, that should be obtained, and we are grateful for their efforts.

CSI members wholeheartedly believe that the Agreements, and their Financial Services Chapters, provide substantial, meaningful new commercial opportunities as indicated above, and we strongly recommend that the Agreements be approved by Congress.

US Trade in Private Financial Services with Singapore and Chile



* This chart shows sales of foreign non-bank affiliates of US firms to Singaporeans and Chileans in 2000, and vice versa. Data on sales of bank affiliates in 2000 are not available. Data on trade through financial services affiliates in Singapore and Chile are unavailable.