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Free Trade Agreements with Singapore and Chile: Labor Issues

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Summary

Singapore and Chile are the fourth and fifth countries to sign trade agreements with the United States that include labor provisions. The first three were Canada and Mexico under the North American Free Trade Agreement (NAFTA), and Jordan under the U.S.-Jordan Free Trade Agreement. These agreements build on historical U.S. support and promotion of worker rights through the International Labor Organization and U.S. trade laws. Major issues for Congress are: (1) do these agreements balance the promotion of worker rights with trade and investment opportunities for businesses; and (2) are these agreements appropriate role models for future trade agreements? This report will be updated as events warrant. The House and Senate are expected to consider the implementing legislation for the U.S.-Chile Free Trade Agreement (H.R. 2738 and S. 1416) and the U.S.-Singapore Free Trade Agreement (H.R. 2739 and S. 1417).[1]

U.S. Historical Policy on Worker Rights

For many years, Members of Congress have heard arguments for and against linking worker rights protections to trade promotion vehicles. In favor of the linkage are human rights activists who argue that some workers in developing countries are being denied protections available to U.S. workers; and labor rights activists who argue that labor protections are necessary to help "level the playing field" against low-wage foreign competition. Against the linkage have been some business interests arguing that worker rights provisions in trade promotion vehicles are a disguised form of protectionism.

Congress has responded to these concerns by promoting worker rights in three ways. First, it has supported the International Labor Organization (ILO), a United Nations organization chartered in 1919 to promote worker rights through voluntary compliance, technical assistance and moral suasion. ILO members are obligated to uphold a handful of "*core labor standards*" which are listed in table 1.

[1] For details on other aspects of the agreements and legislative tracking see: *U.S. Singapore Free Trade Agreement* by Dick. K. Nanto (CRS Report RL31789) and *U.S.-Chile Free Trade Agreement: Economic and Trade Policy Issues*, by J.F. Hornbeck (CRS Report RL31144).

Second, Congress has promoted worker rights through U.S. trade laws which tie preferential trade treatment to adherence to "*internationally recognized worker rights.*" These rights (similar to ILO core labor standards, but grounded in U.S. labor law), are referenced in a variety of U.S. statutes — primarily those offering trade preferences to countries taking steps to afford their workers these rights. Such statutes and programs include the Generalized System of Preferences (GSP), the Andean Trade Preference Act (ATPA), and the Caribbean Basin Initiative (CBI).[2] The extent to which ILO and U.S. standards duplicate each other is evidenced in table 1. The combined lists include six rights, of which four (the right of association, right to organize and bargain collectively, prohibition of forced labor and child labor protections) are virtually identical. ILO core labor standards additionally include freedom from employment discrimination, while the U.S. list includes acceptable conditions of work relating to minimum wages, maximum hours, and occupational safety and health protection.

Table 1. Definition of Core Labor Standards and Internationally Recognized Worker Rights

U.S. Internationally Recognized Worker Rights	ILO Core Labor Standards
1. The right of association;	1. (1 and 2 are combined)
2. The right to organize and bargain collectively;	2. Same
3. Prohibition of forced labor;	3. Same
4 . Minimum age for the employment of children and protection from the "worst forms of child labor" (i.e., drug trafficking, prostitution, and soldiering);	4. Same
5. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.	5. Freedom from employment discrimination.

Sources: ILO and Trade Act of 1974 (P.L. 93-618 as amended by Sec. 503 of P.L. 98-573).

The third way the United States promotes worker rights is through trade agreements which include pledges to uphold both ILO core labor standards and U.S. internationally recognized rights. Promotion of these rights is mandated by trade promotion authority (TPA), previously known as "fast-track" authority, whereby Congress agrees to consider trade agreements the President has negotiated on a "fast-track" basis — voting them up or down without amendment and with limited debate. Since 1993, four trade agreements, the North American Free Trade Agreement (NAFTA), the U.S.-Jordan Free Trade Agreement (FTA, adopted without TPA) and now the pending U.S.-Singapore FTA and the U.S.-Chile FTA pledge partner countries to adhere to standards on both lists.[3]

Labor Provisions: NAFTA, Jordan, Singapore and Chile FTAs

Table 3 shows how the four FTAs that include labor provisions — NAFTA, Jordan, Singapore, and Chile — compare in this regard. Between NAFTA, (implemented by P.L. 103-182, 1993) and the U.S.-Jordan Free Trade Agreement (implemented by P.L. 107-43, 2001), the location of the labor provisions shifted from a side agreement into the body of the agreement, where they have remained in the Chile and Singapore FTAs. The basic

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[2] Internationally recognized worker rights are included in the 1984 amendments to the Trade Act of 1974 (P.L. 93-618, amended by Sec. 503 of P.L. 98-573). See also CRS Report 96-661E, *Worker Rights Provisions and Trade Policy: Should They Be Linked?* by Mary Jane Bolle.

[3] The most recent TPA was included in the Trade Act of 2002, P.L. 107-210.

labor provisions have remained consistent through the four trade agreements. Under them, each Party (country): (a) agrees to support ILO core labor standards and internationally recognized worker rights; (b) agrees to effectively enforce its own labor laws in trade-related matters; and (c) retains discretion in allocating enforcement resources. NAFTA, Singapore, and Chile FTAs also provide for domestic remedies and procedural guarantees.

The NAFTA and Jordan FTAs differ from the Chile and Singapore FTAs in terms of labor provisions subject to dispute panel proceedings, sanctions and maximum penalties. Under NAFTA only failure to enforce occupational safety and health, child labor, or minimum wage standards is subject to these remedies.[4] Under Jordan, violation of any labor provision is subject to any "appropriate and commensurate" action if the dispute cannot be resolved.[5] Under the Chile and Singapore FTAs, only the sustained failure of a Party to enforce its own laws in a matter affecting trade may be subject to the above-mentioned remedies.

Maximum penalties for sanctionable offenses also differ among three of the four trade agreements: NAFTA's maximum penalty is $20 million for the first year, and failure to pay could result in suspension of NAFTA benefits to the amount of the monetary enforcement assessment. Maximum penalties under the Chile and Singapore agreements are $15 million annually, with failure to pay, as under NAFTA, leading potentially to suspension of benefits to the equivalent dollar volume. (Jordan lists no maximum.)

Singapore and Chile FTAS: Labor Advisory Committee Issues

The Labor Advisory Committee (LAC), a U.S. trade advisory committee of 58 members representing unions from every economic sector, evaluated the Chile and Singapore agreements against NAFTA and the U.S.-Jordan FTA and came out against them on three points.[6] First, the LAC argues that the Chile and Singapore FTAs represent a big step backwards from the Jordan FTA and largely replicate NAFTA which permits only communication, investigation, and recommendations to resolve most complaints.

Second, the LAC argues that the Chile and Singapore FTAs will not protect the core rights of workers in any of the countries involved for several reasons: First, they argue, the dispute settlement process may not be used to challenge whether a Party is "striving" to meet ILO standards and to "not derogate from" domestic laws, even though failure in effort may be arguably hard to prove. Second, they argue that either country, if it were challenged for failing to enforce its existing labor laws, could simply weaken or eliminate those laws to avoid dispute settlement. Finally, they argue, labor enforcement procedures

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[4] For more detail, See *Enforcement Aspects of Labor and Environment Provisions of U.S. Free Trade Agreements with Jordan, Singapore, and Chile: Summary and Chart*, by Jeanne J. Grimmett, July 1, 2003, CRS general distribution memo.

[5] However, before Congress approved the implementing legislation, the United States Trade Representative and Jordan's ambassador exchanged letters pledging to resolve any differences that might arise by avoiding "traditional trade sanctions."

[6] *The U.S.-Chile Free Trade Agreement.* Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy, February 28, 2003.

allow parties long timelines for consultations and cap the maximum amount of fines and sanctions available at an unacceptably low level.

Finally, the LAC argues, the Chile and Singapore FTAs neither fully meet the negotiating objectives laid out by Congress for trade agreements nor promote the economic interests of the United States, while potentially threatening job loss. They argue that the labor enforcement provisions of the Singapore and Chile FTAs are weaker than in the Jordan FTA because labor and commercial obligations which were treated identically in the Jordan FTA are treated differently from each other in these most recent trade agreements. This, they argue, violates the TPA legislation on dispute settlement as a principal negotiating objective.[7] Principal negotiating objectives of the TPA legislation call for trade agreements that treat all complaints (e.g., labor and commercial) equally with respect to the ability to resort to dispute settlement, the availability of equivalent dispute settlement procedures, and the availability of equivalent remedies.

Perspective of the USTR and the USITC

The U.S. Trade Representative (USTR) responded to the concerns of the LAC, citing the larger benefits of more open trade — that reducing foreign trade barriers increases economic growth, stimulates job growth, and makes consumer products more affordable. The USTR also emphasized that Chile and Singapore already have strong labor rules consistent with ILO core labor standards (see table 2), and that Chile amended its labor laws to ensure that its standards meet the benchmarks set out in the FTA.

In addressing specific concerns of the LAC, the USTR focused on LAC charges that the FTAs failed to protect core rights of workers. In response to LAC criticism that Chile and Singapore might be tempted to roll back their labor laws if their enforcement of them were under challenge, the USTR replied that (1) Chile had strengthened its labor laws in anticipation of the inclusion of enforceability issues in the FTA; (2) under the Chile and Singapore FTAs a system of labor consultations, available for addressing any matter arising under the trade agreement, creates a forum for discussing any labor disputes; and (3) the U.S. Department of Labor has already embarked on a cooperative program with Chile to improve the administration of its labor laws and enhance labor justice.

Table 2. Core Labor Standards and Internationally Recognized Worker Rights Adopted by Chile and Singapore

Core Labor Standards:
Chile has ratified all core labor standards; Singapore has ratified one (out of two) in each of the four categories: freedom of association and collective bargaining, elimination of forced labor, elimination of employment discrimination, and abolition of child labor. It has denounced convention 105 on forced labor.

Internationally Recognized Worker Rights:
Both Chile and Singapore have laws covering all five internationally recognized worker rights.
Sources: ILO and Department of State.

LAC concerns about potential job loss from the U.S.-Singapore and U.S.- Chile FTAs are addressed in U.S. International Trade Commission (USITC) reports on the

[7] Trade Act of 2002, P.L. 107-210, August 6, 2002, Sec 2102(b)(12)(G).

economic effects of the U.S.-Singapore and U.S.-Chile free trade agreements,[8] based on the Global Trade Analysis Project (GTAP) modeling framework.[9] These studies estimated that the employment effects of the Singapore and Chile FTAs would be quite small. Few of the sectoral impacts are estimated to exceed one-tenth of one percent of sector employment through 2016. This is because tariffs and trade barriers to be removed are generally small and trade with Singapore and Chile, the United States'12th and 36th trading partners, accounts for 1.7% and 0.3% of total U.S. trade (exports and imports combined.) The larger potential job effects are with Chile, where, by 2016, net imports of vegetables, fruits, and nuts could cause U.S. production to decline by 0.05 to 0.08%, and U.S. production of machinery and equipment to expand by 0.02 to 0.05%.

Chile and Singapore FTAs as Potential Role Models

There was much debate when the U.S.-Jordan FTA was being approved about whether it should be a role model for other agreements. Some argued that the Jordan FTA should be a one-time case because it already had strong worker protections; others argued that trade agreements to follow should be further strengthened. The U.S. has begun FTA negotiations with (1) Morocco; (2) five nations in Central America (the Central America Free Trade Agreement, CAFTA, which includes Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua); (3) five nations in the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland); and (4) Australia.

Some argue that the Chile and Singapore FTAs, which authorize dispute resolutions leading to possible sanctions only if a country fails to enforce its own labor laws, would be inadequate as a template for FTAs with certain developing countries — (1) if the text does not address egregious conditions for workers; (2) where a country's laws do not reflect international standards; and (3) where there is a history of non-enforcement and/or a hostile environment toward the rights of workers.

Others argue that the United States is working closely with a number of countries to improve their labor laws and enforcement efforts in anticipation of entering into trade agreements with them. However, certain developing countries, they point out, may lack the funding and resources to adequately enforce their laws, and might balk at pressure from the United States to overhaul existing legislation or introduce new measures. Therefore, it might be difficult for such countries to agree to a trade pact that attempts to go above the Chile/Singapore standard.

Conclusion

Achieving economic growth, better jobs, and improved labor standards are some of the goals of modern-day trade agreements. A challenge in further removing barriers to international trade is to balance the objectives to achieve trade and investment opportunities and worker protections at the same time.

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[8] USITC. *U.S.-Singapore Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*, (USITC Publication 3603), and *U.S.- Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects*, (USITC Publication 3605), both dated June 2003.

[9] This model was based on 1997 data with forecasts from the World Bank.

Table 3. Key Labor Aspects of Four Trade Agreements

Agreement	NAFTA	Jordan	Chile	Singapore
Location of provisions	In a side agreement.	In the body of the agreement	Same as Jordan.	Same as Jordan
Basic labor provisions	Each Party: 1. Strives to improve domestic standards along 11 labor principles (which include ILO core labor standards and U.S. internationally recognized worker rights); 2. Agrees to effectively enforce its own labor laws in a manner affecting trade; 3. Retains discretion in allocating enforcement resources; 4. No similar provision to item 4 in Jordan, Chile, and Singapore; 5. May not undertake labor law enforcement in the other's territory; 6. Is entitled to private remedies and procedural guarantees.	Each Party: 1. Strives to ensure that ILO labor principles and internationally recognized worker rights are protected by domestic law 2. Shall not fail to enforce its own labor laws in a manner affecting trade; 3. Retains discretion in allocating enforcement resources; 4. Agrees not to waive or derogate from domestic labor law to encourage trade; 5. No provision. 6. No provision.	1. Same as Jordan 2. Same as Jordan 3. Same as Jordan 4. Agrees not to waive or derogate from domestic labor law to encourage trade *or investment.* 5. Similar to NAFTA. 6. Similar to NAFTA.	1. Same as Jordan 2. Same as Jordan 3. Same as Jordan 4. Agrees not to waive or derogate from domestic labor law to encourage trade *or investment.* 5. Similar to NAFTA. 6. Similar to NAFTA.
Labor provisions subject to panel proceedings and sanctions	Sanctions are authorized for failure to effectively enforce one's own occupational safety and health, child labor, or minimum wage standards in a manner that is trade-related and covered by mutually recognized labor laws.	Sanctions are authorized for all labor provisions	Sanctions are authorized only for sustained failure to enforce one's own labor laws in a manner affecting trade.	Sanctions are authorized only for sustained failure to enforce one's own labor laws in a manner affecting trade.
Maximum penalty	During first year of agreement: $20 million; thereafter .007% of total trade between parties; maximum penalty for failure to pay fine: suspension of NAFTA benefits to the amount of the monetary enforcement assessment.	The affected party may take any appropriate and commensurate measure.	$15 million annually; for failure to pay: suspension of benefits to the equivalent dollar value.	$15 million annually; for failure to pay: suspension of benefits to the equivalent dollar value.

Source: Congressional Research Service.