CSI Coalition of Service Industries

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

Mr. Chairman and members of the Committee, thank you for this opportunity to submit this statement on behalf of the Coalition of Service Industries (CSI) on the US Free Trade Agreements with Chile and Singapore. My name is Norman Sorensen, and I am the President of Principal International, Inc., an Iowa-based, wholly-owned subsidiary of Principal Financial Group.

I appear before you today in my current role at Principal, and as a member of the Board of Directors of CSI and as the Chairman of CSI's Financial Services Group. CSI is comprised of US service companies and trade associations seeking to achieve expanded market access in all modes of supply in all trade negotiating forums. CSI's Financial Services Group was established in 1995 specifically to ensure the conclusion of a commercially meaningful financial services agreement in the General Agreement on Trade in Services (GATS) in the WTO, and we have sustained our strong intent in financial services trade liberalization since that time.

In addition to benefiting the services sector as a whole in the US, Singapore and Chile, the trade Agreements with these two countries are commercially significant for the Principal Financial Group. We operate three companies in Chile: Principal Vida Chile is one of the largest annuity providers in Chile. Principal Mortgage originates and services retail mortgages. Principal Tanner provides mutual funds as investment vehicles for voluntary retirement plans. Principal Global Investors (Singapore) Ltd. is the dedicated institutional asset management office for Principal Financial Group in Asia. The firm provides retirement plans and institutions with competitive asset management products with a primary focus on government sponsored pension systems and central banks.

The testimony identifies the provisions of the FTAs that CSI's members believe will benefit their trade and investment with Chile and Singapore. It also emphasizes the importance of services to the US balance of trade, and describes the US global comparative advantage in services, and other important aspects of US services trade.

The United States is very competitive in services trade, even though many barriers to our international operations remain in a large number of key foreign markets. US 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 services trade is a very important US policy objective. The US has run a surplus in its cross border services trade with the rest of the world for many years. Last year's surplus of $49 billion offset by 10% the $484.4 billion 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. An October 2000 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.

The US led the world in cross border services exports in 2002 with exports of $289.3 billion and imports of $240.5 billion. The service sector's contribution to US exports makes it imperative that the United States continue to open services markets abroad through Agreements such as the US-Chile and US-Singapore FTAs, which we believe should be implemented as soon as possible.

Services are income elastic. As incomes increase, consumers spend a larger portion of their salaries on services and demand higher quality services. As economies develop, the demand for services also rises.[1] The combination of Chile and Singapore's expected economic growth and the market opportunities created through the two FTAs will therefore benefit the services firms in the US and those two countries.

Multilateral and Bilateral 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 further, separate negotiations on telecommunications and financial services. Negotiations in both these sectors were concluded in 1997 with full support of US industry. The telecommunications agreement was particularly successful because it contained a "Reference Paper" establishing criteria by which WTO Members committed to regulate their telecommunications sectors. Because services are in general so highly regulated, the telecom Reference Paper is considered a forerunner for the negotiation of regulatory "best practices" agreements in other sectors.

In 2000 WTO negotiations covering services, and agriculture, were launched as part of the "built-in agenda" of the Uruguay Round. After two years of desultory work mainly on rules, the US services industry concluded that the best way to energize the services negotiations was to wrap them into the broader WTO agenda that emerged from the "Doha Development Round" of negotiations launched in November 2001, in Qatar. Unfortunately, we have not witnessed the progress we hoped for, and the emphasis on multilateral negotiations in the WTO has now given way to a dual approach.

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[1] Mann, Catherine L. 1999. *Is the US Trade Deficit Sustainable?* Washington: Institute for International Economics.

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 completed these two FTAs. And USTR also began talks with the Central America Free Trade Area (CAFTA), Morocco, the Southern African Customs Union (SACU), and Australia. Negotiations with Bahrain have just been announced. Many other candidates are in the wings.

The drive to secure bilateral FTAs is a bipartisan policy. President Clinton initiated the US-Singapore Free Trade Agreement late in 2000. And, because the Chileans had long sought an FTA, his Administration also launched negotiations with Chile a few weeks later. Both were to have been negotiated quickly, but neither Agreement was really finished until legal scrubbing was completed a few months ago. 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 services.

It was very important to industry to get these Agreements right, because our members knew that these Agreements, though with relatively small economies, 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 FTA partners, and in the multilateral WTO negotiations. We therefore devoted substantial time to this effort.

Both Agreements provide meaningful new advantages for US services companies and provide valuable precedents for future FTAs.

US Commitment to the Multilateral WTO Negotiations

The US determination to negotiate meaningful, liberalizing bilateral Agreements does not demonstrate a lack of commitment to the WTO and to the multilateral process. The US government and the services industry are committed to the WTO as an institution and as a forum in which to achieve substantial new liberalization. We simply believe – as does our government – that we can make progress bilaterally and regionally at a time when the WTO services negotiations are held captive to disputes about agriculture. Indeed we intend that our bilateral and regional 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 like Thailand, and with members of the Andean Pact, a number of whom, like Colombia, have already expressed interest in an FTA—and with other countries.

Scope 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 services trade with the rest of the world. This surplus amounted to $4.9 billion in 2002. As noted above, we have positive cross border services trade balances with Singapore and Chile, as Chart I demonstrates.

The Importance of "Commercial Presence" to Trade in Services

Sales to foreigners by affiliates of US services companies operating abroad are an even more important element of our services trade. These sales totaled $393 billion in 2000. In the same year, total US 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. It also results in the repatriation to the US of substantial profits on overseas activities.

Many services must be sold from establishments in foreign markets, or not sold at all. Life insurance policies can't be sold to Singaporeans or Chileans offices in Chicago or New York. To do so requires direct investment in operations in Singapore or Santiago.[4]

This means that trade Agreements must provide rights to establish a business, or a "commercial presence," in foreign markets. Investors should be able to establish a commercial presence and they should also be able to do so in the legal form that best fits their business objectives, whether as a branch or subsidiary, whether wholly owned or majority owned. The Singapore and Chile FTAs provide these rights.

Commercial Advantages Secured by the Agreements

Audiovisual Services

Both the Singapore and the Chile FTA ensure that all US audiovisual services will enjoy national treatment and MFN status, with some reservations. Singapore took a fairly broad reservation that limits its obligations for television content broadcast to local audiences, but its obligations in all other forms of AV services, where US commercial interests are strongest, are excellent. Moreover, the Singapore FTA avoids the "cultural exceptions" approach that has flawed several prior trade agreements.

The reservations taken by Chile in their FTA were narrow and specific, and they are unlikely to disrupt existing commercial trade in audiovisual services. Chile preserves the right to impose a quota on local content carried on broadcast TV, however, market forces have historically resulted in higher levels of local content than would be required by the quota, so the impact of imposing such a quota would be negligible. Chile also avoided any "cultural exceptions" in its agreement.

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[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.

Education Services

The largest market for US education services is Asia, and Singapore represents half of the critical education hubs for the region. However, even with this FTA, Singapore continues to restrict degree-granting authority to its national universities, thus neutralizing reasonable liberalization in this sector. It is notable that Singapore has recognized a handful of US law schools, and that the US and Singapore recognized each other's educational credentials for purposes of obtaining professional visas.

South America is another one of the largest markets for US education services. The Chile Agreement provides commitments in higher education services, specifically the provision of degree courses delivered across borders and the mobility of academic staff. With the Agreement and in conjunction with Chile's relatively young population, and its historically very high literacy rate, consumption of education services is expected to grow.

Electronic Commerce

Both Agreements contain groundbreaking electronic commerce chapters, which introduce the concept of "digital products" in trade Agreements. This language reflects digital product development in the last two decades and the need for predictability in how digital products are treated in trade Agreements. The United States is unparalleled in its production of digital products. Although such products make up a small percentage of international trade today, they will certainly become a larger percentage of US exports over the next decade.

The two agreements provide broad national treatment and MFN non-discriminatory provisions. These provisions should provide equity and reciprocity for US e-commerce firms, and the demand for digital products in Singapore and Chile will grow based on their present levels of connectivity. For example, Chile has seven Internet service providers, 3.1 million Internet users (or 20% of the population), and a growing Internet infrastructure. As evidence of Chile's comfort with this medium, the Chilean Government uses the Web to communicate policy positions. Combined with a more liberal telecom environment we expect transactions in digital products between the US and Chile to result in greater demand for US-produced digital products.

Both Chile and Singapore agreed to apply customs duties on the basis of the value of the carrier medium, rather than subjecting them to customs duties on content-based products, as is the case in many other countries. The US also agreed with Singapore and Chile to cooperate in numerous policy areas related to e-commerce. In the Singapore FTA, those cooperation issues are set out in a separate joint statement which will help reinforce a progressive policy environment in Singapore and throughout the region.

In Chile, those policy areas include small and medium-sized enterprises, consumer confidence, cyber security, electronic signatures, IPR, and electronic government. Chile agreed on the importance of maintaining cross-border flows of information, and they also stated a preference for self-regulation in terms of codes of conduct and model contracts. Chile also agreed to work cooperatively in international forums with the US on e-commerce issues.

Energy Services

Both of the FTAs will facilitate the provision of energy services between the US and the trading partners in question. Provisions related to regulatory transparency and investment, in particular, will allow US energy services firms to work under the predictable and consistent rules they need to make the kinds of short, medium and long term commitments often required to fulfill contracts and carry out their duties. Overall, the two Agreements will improve the conditions under which energy services firms operate.

Express Delivery Services

Both FTAs contain provisions that are important to the express delivery industry, including an appropriate definition of express delivery services (EDS.) These are the first two trade agreements to contain such a definition, which in and of itself is an important milestone. Both Agreements also include important provisions to facilitate customs clearance, which is critical to the efficient operation of express carriers. However, they fall short in addressing another key problem in the express delivery sector. This is the cross subsidization of express delivery services operations by postal authorities that use revenues and other privileges they derive from their government-granted monopoly rights to secure advantages in competitive express delivery operations. The FTAs contain valuable cross-subsidization statements. These are unilateral, applying only to Singapore and to Chile. In addition, the commitment only states that Chile and Singapore have "no intention" of using "revenues" from postal services to benefit express delivery. The intention expressed does not fully cover the scope of cross subsidization that could occur. Nonetheless, the US express delivery industry believes the text of these Agreements provides very substantial advantages and supports implementation of the Agreements.

Financial Services

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.

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. In 2001, US sales of unaffiliated financial services to Chile amounted to $69 million, We expect these exports to grow with the Agreement. Chile must change its laws to comply with its commitments for cross-border supply of insurance.

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 Singapore 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.

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. With the Agreement, we expect US firms to capture a larger percentage of the Asset Management market.

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,

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 operating environment for US insurers in Singapore has been favorable because of its internal reforms. The Singapore 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.

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.

Both Agreements also contain provisions that commit the Parties to "recognize the importance of...developing regulatory procedures to expedite the offering of insurance services by licensed suppliers."

New Financial Services

Both 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 <u>both</u> 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.

Healthcare Services

Both Agreements, on the whole, advance a more open, equitable trading environment in health services. The healthcare provisions in the Singapore FTA certainly lay the foundation for improved trade.. Singapore is developing into a regional health services hub, and has strengthened its medical research, medical training and medical services for export throughout the Asia Pacific region. Although American health services providers are seeing Singapore as a growing competitor, it is also viewed as a potential base for investment in clinic development, joint educational programming activities and telemedicine applications. However, significant trade barriers remain.

In the Chile FTA, the e-commerce chapter will advance applications of distance learning in health care, development of continuing medical education programming, Internet medical training programs, and telemedicine and second opinions. The inclusion of language to encourage relevant bodies to establish mutually recognized standards and criteria for licensing and certification holds promise for all professional services. Development of the temporary licensing standard can aid in the development of visiting physician programs, joint research and training programs.

Legal Services

On a matter of importance to large numbers of American lawyers, the Agreements move towards codification of existing widespread custom whereby lawyers from one nation may readily enter another nation temporarily to provide their legal services on specific matters for clients with whom the lawyers have some prior relationship. This movement towards codification is a welcome development.

However, the Agreements fall short of a major goal of our legal profession, which was to achieve the right to include in their offices in the two countries host country lawyers who would practice host country law, so that a single office could handle foreign, domestic, and international law issues that frequently arise in a single business transaction. While the Agreements continue existing regulatory regimes that allow American lawyers to open offices in the two countries, they restrict the practice of those offices to American law and American lawyers.

Maritime Services

CSI strongly supports removal of the 50% ad valorem tariff on repairs to US flag vessels as provided in Article 2.6 of the Singapore Agreement and Article 3.9 of the Chile Agreement. We also support immediate elimination of the tariff after the agreements enter into force. These provisions unequivocally remove the unreasonable duty which restrains the choice of US carriers to obtain necessary ship repairs. The ad valorem tariff was established to encourage job creation in US ship building. However, it has failed to achieve its policy objectives, and now represents an unnecessary tax at a particularly difficult time for US flag ship owners and their customers. Therefore, elimination of the tariff benefits both consumers and US carriers. CSI also supports inclusion of the provision on repairs in future bilateral trade agreements.

Telecommunications

The two Agreements contain separate Telecommunications Chapters that cover access to and use of the public telecommunications network for the provision of services. The elements of the Telecommunications Chapters of the Agreements are consistent with each market's regulatory construct. They contain significant flexibility to embrace changes that may occur through new legislation or new regulatory decisions. These disciplines are the hallmark for successful innovation and development of telecommunications networks; something that is lacking in many markets around the world.

The Singapore Agreement will accord substantial market access across its entire services regime, subject to very few exceptions. US services firms will enjoy fair and non-discriminatory treatment and the right to invest and establish a local services presence in Singapore. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules and publish all regulations.

The FTA with Chile covers all public telecommunications service providers, with a focus on the major supplier of those services. The Agreement also includes groundbreaking provisions with respect to flat-rate, cost-based, nondiscriminatory access for leased lines, which are critical for e-commerce service suppliers. Thus, it combines elements of NAFTA Chapter 13, the GATS Telecommunications Annex, and the WTO Reference Paper to form a comprehensive access to and use of provision.

Crosscutting Issues

Transparency

Both Agreements contain very good transparency provisions. Provisions in the Financial Services chapter build on the general transparency provisions that apply generally throughout the Agreements, and to transparency provisions in their Services and Investment Chapters. They are consistent with US law and therefore require no change in US law.

The transparency provisions in the Services Chapters of the Agreements require to the extent possible 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 for licenses 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.

CSI is very encouraged by the transparency provisions of the Agreements, because we have strongly encouraged 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 proposed in the GATS negotiations 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 existing governmental institutions.

Temporary Entry (Mode 4)

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.

Proximity to the customer is very important to the delivery of services and a defining characteristic of services trade. If you imagine your own purchase of legal, education, and even health services, it would be difficult to eliminate the human interaction necessary for such transactions. Moving professional people in and out of foreign countries therefore, is a critical aspect of services trade.

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. 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 investors such as US mutual funds, for example, 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.

The ability to seek investor-state arbitration of disputes is extremely important for US companies investing abroad. This right, provided in US bilateral investment treaties (BITs), in the NAFTA, and in the Singapore and Chile Agreements, allows companies the option to seek resolution of disputes through arbitration rather than through recourse to foreign courts and legal systems, which may be more costly and time consuming and in some instances might not provide a fair hearing. We are deeply concerned that the Administration is considering proposals to weaken this critically important right in some of the FTAs currently being negotiated. We believe that US investors' ability to seek arbitration of disputes must not be weakened by proposals that would exempt certain countries or investment-related contracts from arbitration.

The Negative List and Acquired Rights

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

CSI members wholeheartedly believe that these Agreements provide substantial, meaningful new commercial opportunities that will provide economic benefits to the United States. 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.

The Agreements will consolidate a regime of open finance, national treatment, and non-discrimination of foreign investment and strengthen the juridical certainty for foreign and domestic investment. The Agreement will also benefit the Chilean and Singaporean services sectors in the long-term by locking-in domestic regulatory reforms in transparency, procedures for government procurement, and maintenance of a competition law that prohibits anticompetitive business conduct. The United States has much to gain from these Free Trade Agreements through expanded services trade, as a precedent for other FTAs, and as a stimulant to commercially meaningful liberalization in the WTO.