

BSA Testifies on the Significance of the Singapore and Chile Free Trade Agreements

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**"Trade in Services and E-Commerce:
The Significance of the Singapore and Chile Free Trade Agreements"**

**Before the
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Committee on Energy and Commerce**

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Mr. Chairman, Ms. Schakowsky and the Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Robert Holleyman and I am President and CEO of the Business Software Alliance (BSA). BSA is pleased to have the opportunity to testify today on the significance of the Singapore and Chile Free Trade Agreements.

BSA represents the world's leading developers of software, hardware and e-commerce technologies. As one of the leading contributors to the U.S. balance of trade, U.S. information technology (IT) and software makers have contributed a trade surplus of \$24.3 billion in 2002. As a leading engine of global economic growth, the industry contributed a trillion dollars to the global economy in 2002. In the U.S. alone, the IT industry contributed \$405 billion to the U.S. economy, creating 2.6 million jobs and generating \$342 billion in tax revenues in 2002.

Exports account for over 50 percent of revenues for most of the leading commercial software makers in the U.S., including the majority of BSA members. If we are to continue the positive contributions of this industry to the U.S. economy, it is critical that free trade agreements (FTAs) establish the highest standards of intellectual property protection. It is also critical that FTAs provide an open trading environment that promotes barrier free e-commerce and growth of the information technology services sector.

As the landscape of trade policy continues to evolve, two relatively new issues have emerged on the international scene that could have an impact on American software exports. A number of countries are now contemplating enacting preferences in their software procurement policies based on the method of software development, which could have a severe impact on software exports, to the disadvantage of the American software industry. In addition, a number of countries, especially in Europe, are imposing levies (or surcharges) on hardware and software products, which by some industry estimates could cost up to one billion dollars per year, hurting both exports and the profitability of the American technology industry. Both issues should also be part of our nation's trade agenda.

Mr. Chairman, I am pleased to express the unequivocal support of BSA and its member companies for the Singapore and Chile Free Trade Agreements.

BSA is also a member of the High Tech Coalition on FTAs, who also strongly support the FTAs.

These agreements significantly advance the establishment of strong intellectual property protection and barrier free e-commerce in Singapore and Chile, and we commend the Administration and Congress for these achievements. Without the leadership provided by Ambassador Zoellick and his team and Congress's thoughtful guidance these achievements would not have been possible.

The importance of the Congressional approval of the Trade Promotion Authority (TPA) to the American high tech industry cannot be underestimated. The TPA legislation set the standard of strong IP protection and trade liberalization among our trading partners in all trade contexts including FTAs and the World Trade Organization (WTO).

With the successful conclusion of these FTAs, and continued progress within the WTO Doha Round of negotiations, including important talks on e-commerce and trade in services, we feel confident that the U.S. will achieve its objectives in promoting barrier free e-commerce and trade liberalization among our the world's trading partners.

Intellectual Property (IP) Provisions in Singapore and Chile FTA:

For the software industry, strong intellectual property protection is essential in fostering continued innovation and investment as copyright infringements and software piracy cost the industry \$11 billion in lost revenues last year. In Singapore and Chile, the IT industry has contributed significantly to their economic growth -- \$1.2 billion in Singapore and \$340 million in Chile in 2002. However, both countries continue to have high piracy rates of 51 percent, costing the industry \$41 million in Singapore and \$59 million in Chile in lost revenues in 2002.

To promote strong IP protection in a digital world, it is essential that our trading partners establish the level of copyright protection that complies with WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT). It is also essential that our trading partners fully comply with and enforce these obligations.

The mutual obligations under the U.S. – Singapore FTA mark some of the highest standards of intellectual property rights protection and enforcement yet achieved in a bilateral or multilateral agreement. The U.S.-Chile FTA also makes significant progress in achieving improved intellectual property protection and enforcement.

Both agreements recognize the importance of strong intellectual property rights protections in a digital trade environment by building on the obligations in the TRIPS Agreement, and ensuring that works made available in digital form receive commensurate protection by incorporating the obligations set out in the WIPO Copyright Treaty.

Some of the highlights in both agreements include:

- The clear application of the reproduction right of a copyright owner to permanent as well as temporary copies, including temporary storage in electronic form. This treatment is critical in a networked world where copyrighted materials can be fully exploited without a user ever making a permanent copy. The and the Singapore Agreements contain slightly different obligations. While the Singapore Agreement establishes the much better unqualified protection for temporary copies, the Chile Agreement contains certain limitations. In the future, the United States should in all cases follow the Singapore model.
- Provisions to promote strong intellectual property rights protection and foster electronic commerce

by maintaining the balance reflected in the U.S. Digital Millennium Copyright Act. Copyright law is clarified to permit the exploitation of works and effective enforcement of rights in the online environment, while remedies against Internet service providers are limited for infringements they do not control, initiate or direct.

- Requirements to establish prohibitions against the circumvention of effective technological protection measures employed by copyright owners to protect their works against unauthorized access or use, coupled with the ability to fashion appropriate limitations on such prohibitions, again consistent with those set out in the Digital Millennium Copyright Act.
- Recognition that robust substantive standards for the protection of intellectual property, to be meaningful, must be coupled with obligations providing for the effective enforcement of rights, in both civil and criminal contexts. In this regard, key provisions of the agreements provide for the establishment of statutory damages at levels appropriate to deter further infringement, civil ex-parte measures to preserve evidence of infringement, strong criminal penalties against the most pervasive form of software piracy – corporate and enterprise end user piracy; and strong border measures to combat cross-border trade in infringing goods.
- Obligating governments to lead by example by using only legitimate and licensed software.

Trade in Information Technology (IT) Services

During the past decade, a vast array of new e-commerce and information technology services have been developed including data storage and management, web hosting, and software implementation services. Given the increasing trend for technology users to purchase information technology solutions as a combination of goods and services, full liberalization in this area is more important than ever.

It is critical that our trading partners provide full market access and national treatment in information technology services including those that are delivered electronically. It is also important that no barriers are created for the new and evolving information technology services.

In both the Singapore and Chile agreements, parties agreed to provide full market access and national treatment on services. Both agreements adopted a negative list approach, which means that new services will be covered under the agreement unless specific reservations were made in the agreement.

We commend this approach and the achievement in both agreements where liberalization of information technology services was achieved without any commercially significant reservations, leading to the promotion of barrier free trade in services with our trading partners.

E-Commerce in Singapore and Chile FTA

With over 500 million people using the Internet worldwide, the promotion of barrier free cross border e-commerce is critical in encouraging continued e-commerce growth and development. In fact, the trade treatment of software delivered electronically is one of the most important issues facing the software industry and it is essential that software delivered electronically receive the same treatment under the trade laws as software traded on a physical medium. The e-commerce provisions in the Singapore and Chile FTAs should

be the model for what the United States pursues in all future trade agreements.

We are quickly moving to a world where online distribution is the predominant way software is acquired and used. According to our CEOs, by 2005, 66 percent of all software is expected to be distributed online. This will have enormous efficiencies as the newest, most up-to-date software is delivered across borders at a lower cost and more quickly than when delivered in a physical form, to the benefit of both customers and software developers.

The E-commerce chapters in both the Singapore and Chile FTAs recognize, for the first time, the concept of "digital products" in terms of trade. The chapters also establish requirements that further promote barrier free e-commerce, essential in promoting growth and development of the IT industry.

- In both agreements, the trading partners agreed not to impose customs duties on digital products. This provision is consistent with the WTO Moratorium on Customs Duties on Electronic Transmissions. The inclusion of this provision is critical in further promoting the growth of cross border e-commerce.
- Both agreements also introduce the concept of "digital products" as the means to ensure broad national treatment and MFN nondiscriminatory treatment for products acquired on-line. This is critical as it recognizes, for the first time, the evolution and development of digital products during the last twenty years and addresses the need for predictability in how digital products are treated by trade law.
- With respect to the physical delivery of digital products, in both agreements, the parties agreed to apply customs duties on the basis of the value of the carrier medium. This provision is essential as valuation on content results in highly subjective assessments of projected revenues.
- The parties also agreed to cooperate in numerous policy areas related to e-commerce, further advancing the work on e-commerce with our trading partners.

In conclusion, the U.S. free trade agreements with Singapore and Chile mark milestones in progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services and barrier free e-commerce among our trading partners. In these agreements, new baseline have been set that should lead to significant market opportunities for the US IT and software industries in the years ahead. We commend the achievements made in both agreements and we strongly support their passage in Congress. On behalf of the members of BSA, I would like to thank the Committee for the opportunity to testify here today.