

**Testimony of Jim Jarrett
Vice President, Worldwide Government Affairs
Intel Corporation**

**On behalf of
The Business Software Alliance
And
The High Tech Trade Coalition**

"US Singapore and US Chile Free Trade Agreements"

**Before the
Finance Committee
United States Senate**

June 17, 2003

Mr. Chairman, Senator Baucus and the Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Jim Jarrett, Vice President, Worldwide Government Affairs for the Intel Corporation. I am pleased to testify today on behalf of Intel and the Business Software Alliance¹ ("BSA"), an association of leading developers of software, hardware and e-commerce technologies worldwide. I am also here to testify on behalf of the High Tech Trade Coalition (HTTC), a group of leading high-tech trade associations representing America's technology companies.²

Let me begin by thanking the members of this Committee for holding this important hearing about the significance of fully implementing the Singapore and Chile Free Trade Agreements (FTA). We commend you for recognizing the importance of promoting free trade among our trading partners.

¹ The Business Software Alliance (www.bsa.org) is the foremost organization dedicated to promoting a safe and legal digital world. The BSA is the voice of the world's software and Internet industry before governments and with consumers in the international marketplace. Its members represent the fastest growing industry in the world. BSA educates computer users on software copyrights and cyber security; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cisco Systems, CNC Software/Mastercam, Entrust, HP, IBM, Intel, Intuit, Internet Security Systems, Macromedia, Microsoft, Network Associates, Novell, PeopleSoft, SeeBeyond Technology, Sybase, and Symantec.

² High Tech Trade Coalition Include: AeA- Association For Competitive Technology; Business Software Alliance; Computer & Communications Industry Association - Computer Systems Policy Project; Computing Technology Industry Association - Electronic Industries Alliance; Information Technology Association Of America - Information Technology Industry Council; National Electrical Manufacturers Association - Semiconductor Industry Association; Semiconductor Equipment & Materials International - Software & Information Industry Association; Telecommunications Industry Association.

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 more than a trillion dollars to the global economy in 2002, according to a recent study conducted by IDC for the BSA. In fact, in the U.S. alone, the IT industry contributed 2.6 million jobs and more than \$400 billion to the U.S. economy, generating \$342 billion in tax revenues in 2002.

Over 50 percent of revenues for most of the leading high technology companies in the U.S., including Intel, are generated outside the US. 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 tariff-free high-tech products, facilitates barrier-free e-commerce and growth of the information technology services sector.

Mr. Chairman, I am pleased to express the unequivocal support of Intel, BSA and the High Tech Trade Coalition for the Singapore and Chile Free Trade Agreements.

The Singapore and Chile FTAs significantly advance the establishment of strong intellectual property protection, tariff-free 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 to the American high tech industry of Congressional approval of the Trade Promotion Authority (TPA) cannot be overestimated. The TPA legislation set the standard of strong IP protection and trade liberalization among our trading partners in all trade contexts including FTAs, FTAA 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 trading partners.

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

For the high tech industry, strong intellectual property protection is essential to foster continued innovation and investment. This is particularly important as copyright infringements and software piracy cost the industry \$13 billion in lost revenues in 2002.

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 - 48 percent in Singapore and 51 percent in Chile, costing the industry \$32 million in Singapore and \$45 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 and Chile FTAs generally set out among the highest standards of protection and enforcement for copyrights and other intellectual property yet achieved in a bilateral or multilateral agreement, treaty or convention.

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:

- 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.
- The application of the reproduction right of a copyright owner to permanent as well as temporary copies.
- 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.

As the landscape of international copyright policy continues to evolve, a relatively new issue has emerged on the international scene that could have an impact on American high tech exports. 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. We hope that the use of levies will not be encouraged through future trade agreements.

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 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.

We are quickly moving to a world where online distribution is the predominant way software is acquired and used. According to a BSA CEO study, by 2005, 66 percent of all software is expected to be distributed online. This will create 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.

Information Technology: Tariff Measures

The Uruguay Round agreements on tariff reduction, and the subsequent Information Technology Agreement (ITA) within the WTO, has made significant contributions by addressing the issue of barriers to trade created by high tariffs. Tariffs on information technology products are still very high in some countries, creating a substantial impediment to trade.

In order to foster a barrier free trade environment, it is critical that our trading partners sign and implement the ITA or its equivalent. It is essential that our trading partners eliminate or phase out existing tariffs applied to information technology products since tariffs act as a counterproductive burden that raises the cost of the very technology needed to be competitive in the digital economy.

In both FTAs, Singapore and Chile have agreed to liberalize tariff barriers. Singapore is already a signatory to the ITA. Chile, which is not a signatory to the ITA, has agreed to eliminate tariffs on most high-technology products within the next 4 years. The tariff reduction measure in the Chile agreement also sets an important precedent for the Free

Trade Area of the Americas (FTAA), which would significantly increase the high tech industry's ability to export its products to Brazil, one of the largest markets for technology products in Latin America.

Finally, both agreements have made important commitments in the areas of customs administration, technical barriers to trade and transparency as well as in the area of telecommunication services. All of these provisions will help facilitate the cross-border flow of high-tech products and services, making our companies more competitive.

In conclusion, the U.S. free trade agreements with Singapore and Chile set new benchmarks in progress toward the promotion of strong intellectual property rights protection, full liberalization of trade in information technology services and barrier free e-commerce as well as tariff elimination among our trading partners. In these agreements, new baselines have been set that should lead to significant market opportunities for the US high-tech industries in the years ahead. We commend the achievements made in both agreements and we strongly support their passage in Congress.

On behalf of Intel, the members of BSA, and the High Tech Trade Coalition, I would like to thank the Committee for the opportunity to testify here today.