February 27, 2003

The Honorable George W. Bush, Jr.
President of the United States
1600 Pennsylvania Avenue, NW
Washington D.C.

Dear Mr. President:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, I am pleased to transmit the report of the Advisory Committee for Trade Policy and Negotiations (ACTPN) on the U.S. - Singapore Free Trade Agreement, reflecting the main and dissenting opinions of the ACTPN on the proposed agreement.

The ACTPN, with the exception of the representative from the International Brotherhood of Teamsters, endorses the U.S. – Singapore Free Trade Agreement (the FTA). We believe the agreement substantially meets the negotiating objectives laid out in the Trade Act of 2002, and believe it to be strongly in the best economic interest of the United States. We also believe the FTA is a comprehensive state-of-the-art agreement that not only will benefit the U.S. and Singaporean economies and employment opportunities, but also will provide a strong base on which to construct additional bilateral or regional agreements. The FTA should be enacted into law as soon as possible, so American farms, factories, services providers, and consumers can begin to receive the benefits of this agreement at the earliest possible date.

All ACTPN members concur with this recommendation and with the report of the ACTPN except for the representative of the Teamsters Union, whose dissenting views are included at the end of the main report.

Sincerely,

Jerry Jasinowski
Chairman
Trade Agreements Review Task Force
Advisory Committee for Trade Policy Negotiations

The U.S. – Singapore Free Trade Agreement (FTA)

The Report of the
Advisory Committee
for Trade Policy and Negotiations
(ACTPN)

February 27, 2003

The Advisory Committee
for Trade Policy and Negotiations (ACTPN)

Report to the President, the Congress,
and the United States Trade Representative on the

U.S.-Singapore Free Trade Agreement

I. Preface

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(I) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement. Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations must include an advisory opinion as to whether, and to what extent, the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002

Pursuant to these requirements, the Advisory Committee for Trade Policy and Negotiations hereby submits its report.

II. Executive Summary of Committee Report

The ACTPN, with the exception of the Teamsters Union, believes the U.S.-Singapore Free Trade Agreement (FTA) fully meets the negotiating principles and objectives laid out in the Trade Act of 2002, and believes the FTA is strongly in the interest of the United States. It is particularly important in providing increased access for U.S. services providers, but will also improve market access for American goods in Singapore. It will provide lower-cost U.S. producer and consumer access to Singaporean goods and services, and will do so in a manner that does not disrupt the U.S. economy. Adequate transition and adjustment times have been built into the agreement.

The agreement contains many new and innovative approaches that will advance the expansion of trade and economic relations between Singapore and the United States. These include dispute settlement provisions that provide the option of utilizing monetary fines when enforcement is needed, therefore reducing the need to resort to trade restrictions that can cause significant trade dislocations when used as enforcement mechanisms. Of equal importance, the agreement provides for new consultation mechanisms to expand possibilities for improving trade cooperation and heading off disputes. These include cooperation in addressing technical barriers to trade, environmental cooperation, and other areas.

The FTA is also notable for incorporating labor and environmental protections into the body of the agreement, ensuring that neither party fails to enforce its environmental and labor laws in a manner affecting trade between them. Additionally, the FTA makes significant advances in protecting intellectual property, ensuring fair and effective protection for investors, providing improved business facilitation and state-of-the-art treatment for new forms of doing business, including e-commerce.

The ACTPN, with the exception of one member, the representative of the Teamsters Union, fully believes this agreement to be strongly in the U.S. interest and to be a model and an incentive for additional bilateral and regional agreements. The ACTPN hopes that the Singapore FTA will serve as a template for other agreements in Southeast Asia and the Pacific. We urge its quick adoption and implementation. The Teamsters' dissenting view is included at the end of the ACTPN's main report.

While the ACTPN and other advisory groups have had access to the text of the agreement, the text has not yet been made public. We concur with the need for both governments to complete their detailed legal reviews of the text, but we urge that this be completed quickly. We recommend that the text be provided to the public immediately upon completion of the legal review, so as to allow as much time as possible for the public to examine the text prior to its signing.

III. Description of the Committee

The Advisory Committee for Trade Policy and Negotiations (ACTPN) is the U.S. government's senior trade advisory panel. It was established to provide the U.S. Trade Representative with policy advice on: (1) matters concerning objectives and bargaining positions of proposed trade agreements; (2) the implementation of trade agreements once they are in force; and (3) other matters arising in connection with the trade policy of the United States. The ACTPN provides an overview of trade policy and issues. Advice on matters affecting individual sectors or policy areas is expected to be provided by several Policy Advisory Committees in the areas of defense, agriculture, labor and environment, the Industry Sector Advisory Committees (ISACs), and Industry Functional Advisory Committees (IFACs).

In keeping with its broad charter, the membership of the ACTPN is representative of key economic sectors affected by trade. Members are drawn from business, industry, labor, agriculture, small business, service industries, retailers, and consumer interests. The membership of the ACTPN is appended to this report.

IV. Advisory Committee Opinion on Agreement

The ACTPN (or "the committee"), with the exception of one dissenting member, fully endorses the U.S. – Singapore Free Trade Agreement (the FTA or "the agreement") as negotiated by the President's U.S. Trade Representative. Our report draws on the views of all ACTPN members, representing a broad spectrum of trade-related industries and interests. We believe the agreement strongly promotes the economic interests of the United States and substantially achieves the overall and principal negotiating objectives set forth in the Trade Act of 2002. (The dissenting view is set forth at the end of this report.)

We believe that the FTA is a comprehensive and meaningful agreement that benefits American firms and workers and also complements ongoing regional and multilateral trade and investment liberalization efforts. We believe the FTA will substantially improve market access in Singapore for American industrial and other non-agricultural goods and particularly for services.

Singapore is an advanced country that depends on shipping, finance, trading, and high technology manufacturing. It is a high-income country, with a per capita income of roughly $25,000 – putting it at about the level of the European Union. It is America's 8th largest export market and 12th largest supplier (counting the European Union as a single entity). U.S. trade with Singapore in 2002 registered a trade surplus of $1.4 billion, making Singapore one of the few countries with which there is a U.S. trade surplus. Singapore is an outstanding trade and commercial partner and one of the most open economies in the world. The ACTPN believes that the FTA will make the already close commercial relationship with Singapore even closer and will further solidify U.S. – Singapore joint efforts in organizations such as the World Trade Organization (WTO).

In the services, investment, and IPR areas, the U.S. stands to gain considerably from a completed free trade agreement with Singapore. With U.S. companies' investment of $24 billion in Singapore, and investment in Singapore accounting for 60 percent of total U.S. manufacturing investment in all of Southeast Asia, there is a significant need for impartial investor-state dispute settlement mechanisms and acceptable capital control provisions.

The ACTPN is particularly concerned that the United States, which is currently the largest exporter to Singapore, could lose market share, especially in services trade, with the number of free trade agreements that Singapore is currently ratifying and negotiating, most notably those with Japan, Canada, China and Korea. American farmers, workers and service providers would be at a distinct commercial disadvantage without such an agreement between the United States and Singapore. This agreement will set a precedent for all future FTA's in Asia. A robust agreement with Singapore, the most free-trade-oriented country in the region, sets a high standard for other agreements and encourages significant trade liberalization in the region.

The agreement also helps fulfill a priority of Congress and the Bush Administration by aiding small and mid-sized enterprises (SME's) that wish to do business with Singapore. SME's are disproportionately burdened by nontariff trade barriers that impose significant fixed or incremental costs, for these costs must be spread over fewer units of sales than is the case for large companies. The Singapore agreement includes impressive achievements in reducing the kinds of nontariff barriers that particularly harm SME's. It largely eliminates physical presence and local investment requirements; it increases the simplicity and transparency of customs and government procurement procedures; it facilitates electronic commerce and entry into services trade; and establishes procedures for the elimination of technical barriers to trade.

The Committee also believes that the economic interests of the United States are advanced on the import side of the agreement. Consumers will benefit from trade liberalization, and the staging of U.S. liberalization has taken account of the need of sensitive sectors to adjust to the reduction and eventual elimination of trade barriers to Singaporean goods and services.

The ACTPN's more detailed views on salient parts of the agreement follow, but the committee wants to stress that it endorses all parts of the agreement, including those not discussed in the following section. Our principal concern is timing – we urge the Administration and the Congress to get the agreement into effect as soon as possible. If it is possible to complete all requirements for implementation prior to January 1, 2004, we urge that the agreement go into effect on the earliest date rather than waiting for January 1st.

Agricultural, Consumer, and Industrial Products --Market Access -- The ACTPN believes that the provisions on trade in goods, including agriculture, substantially achieve the Trade Act's market access goals. Although, with few exceptions, Singapore's applied rate on agricultural and industrial goods is already zero, it does maintain bound rates on a number of sectors that are above zero. The binding of Singapore's rates at zero is a desirable achievement for the United States, and ensures that Singapore's tariffs on U.S. exports cannot be raised in the future. Most U.S. - Singapore trade is in high technology sectors, and almost two-thirds of the trade is intra-company trade. On the U.S. side, the ACTPN is pleased with the benefit to consumers from tariff elimination, and notes that the phase-in period allows for adjustment time for sensitive products.

The committee also is pleased that the FTA seeks to improve cooperation in reducing or eliminating technical barriers to trade. Each country is to appoint a "Technical Regulations Contact Point" to facilitate cooperation in addressing technical barriers. This provision does not seem as robust as the Committee on Technical Barriers to Trade in the U.S. – Chile agreement. The ACTPN hopes that the "contact point" provision will serve as the starting point for more intense cooperation with Singapore, given the importance to both countries of reducing technical barriers to trade globally.

Along these lines, however, the ACTPN expresses its concern that health and safety standards be based on strict scientific evidence and not be available as a disguised means of protection that could limit imports of agricultural, fisheries, or other products. The ACTPN urges that this concern be kept at the forefront as additional trade agreements are negotiated.

Services -- Given the pre-existing openness of Singapore's markets for goods, the most important market access issues in the FTA pertain to services trade. The commitment to substantial market access across the entire services regime with assurances of nondiscriminatory treatment supported by strong disciplines on regulatory transparency provides a solid foundation for trade liberalization in the services area. The committee believes that the negotiating requirements for services trade have been met satisfactorily, and that the agreement helps set the basis for additional agreements to open services trade throughout the region. Particularly notable is the fact that Singapore agreed to a "negative list" approach in which only designated services may be excepted from being fully open – all other services are open, importantly including new service industries which may emerge in the future. The ACTPN hopes, however, that once the agreement is in effect, Singapore will revisit the negative list with a view toward reducing its coverage.

The ACTPN believes the Advisory Committee on Services should comment on the individual services sectors, and only points out a couple of the most notable breakthroughs that will have a strongly positive effect across the whole spectrum of trade. These include the lifting of the current ban on full-service U.S. banking facilities in Singapore, and the major success for the express delivery service industry that is important to all trade, but notably to the expansion of trade on the part of small and medium-sized firms.

Temporary Entry of Personnel -- The ACTPN endorses the provisions on temporary entry of business visitors, including intra-company transferees and professionals, with the exception of the dissenting view of the Teamsters Union that is discussed in the dissenting view part of this report.

The committee's other members believe that improvement of temporary entry of personnel provisions has been a critical need, both for the expansion of U.S. service industries' ability to provide competitive services quickly and for other endeavors as well – such as the ability to provide installation services for machinery. These provisions will improve the competitiveness of U.S. firms by facilitating the ability to send technicians and other personnel to Singapore in a manner necessary to maintain equipment and services sold to Singapore and to further build business. The ability to move highly trained personnel quickly is particularly important in commerce with a high-technology country such as Singapore. The ACTPN believes that this provision of the FTA substantially improves the ability of U.S. firms to meet defined needs, without compromising U.S. immigration objectives and procedures.

The ACTPN notes its disappointment, however, that temporary entry for business visitors is limited to only 90 days, while in the Chile agreement a six month time period is permitted. On the related issue of recognition of U.S. professionals seeking to practice in Singapore, the committee believes substantial improvement was achieved. This is particularly the case in reciprocal professional degree acceptance and liberalization in selection of professional boards.

E-commerce -- The e-commerce and digital products provisions meet the expectations of the ACTPN and provide a strong basis for the expansion of this important technology. The establishment of non-discrimination guarantees and a binding prohibition on customs duties on products delivered electronically create a favorable environment for the development of increased e-commerce. The ACTPN applauds the precedent-setting provision that applies all services commitments to their electronic delivery. The ACTPN finds the e-commerce provisions and the liberal treatment of services in this agreement especially important for ensuring future U.S. market access in these critical growth areas.

Investment -- The investment provisions of the Trade Act of 2002 were among the most hotly-debated, resulting in a specific set of negotiating instructions. The Committee believes the FTA fully meets the investment requirements laid out in the Trade Act of 2002. We believe, moreover, that the agreement improves the investment climate and protections for investors while simultaneously addressing the concerns that had been raised regarding possible abuse of investor-state provisions. The FTA provides for rights that are consistent with U.S. law and also contains fully transparent dispute settlement procedures that are open to the public and that allow interested parties to provide their input. The ACTPN fully endorses the investment provisions of the agreement, save for one dissenting view, which is included at the end of the main report of the committee. Given the huge stock of U.S. investment in Singapore, the protections of this world-class agreement are extremely important and provide assurances for the future growth of two-way investment.

Intellectual Property Rights -- The ACTPN is impressed with the high level of IPR protection, including state-of-the-art protection on trademarks and digital copyrights and expanded protection on patents and trade secrets. These are supported by tough penalties for piracy and counterfeiting, including seizure and destruction of products and equipment and mandated statutory and actual damages for violations. Singapore will accede to global internet treaties, will extend the term of protection for copyrighted works, and will maintain criminal penalties for circumvention and for trade in counterfeit goods.

The ACTPN is particularly concerned with the rising global level of trade in counterfeit goods, and commends the FTA for its strong provisions to combat such trade. This includes giving effect to the trademark law treaty and joint recommendation on protection of well-known marks, ensuring that all trademarks will be registrable in Singapore and that licensees will no longer have to register their trademark licenses to assert their rights in a trademark.

Singapore's agreement to ensure adequate enforcement resources, especially closer cooperation to prevent the importation of pirated goods into the United States, is also important. The ACTPN strongly endorses this part of the agreement. We urge the U.S. government to seek similar protections in other agreements, and to build even further protections against piracy and counterfeiting.

Competition Policy -- The ACTPN is pleased that the agreement contains provisions to protect U.S. firms against possible anti-competitive and monopolistic behavior by committing Singapore to enact laws regulating anti-competitive conduct, and creating a competition commission by January 2005. Especially important in the case of Singapore is the commitment that Government-Linked-Corporations (GLCs) will operate on a commercial, nondiscriminatory basis. This is an enforceable requirement under the agreement. As GLC's account for roughly half of Singapore's economic activity, this was an important accomplishment. The committee wants to stress that Singapore has maintained an excellent and open environment, but the purpose of agreements such as the FTA is to provide assurances of an open future – as well as setting a template for agreements with other countries.

Government Procurement -- Both Singapore and the United States are members of the WTO Agreement on Government Procurement. The ACTPN is pleased that the FTA goes beyond the WTO obligations, for example, by lowering the monetary thresholds for coverage, thereby increasing the number of contracts on which U.S. firms may bid in a manner that is covered by transparent procurement disciplines. In addition, the ACTPN believes it is important that Singapore increased its commitments on non-discrimination in government services procurements and reinforced its WTO commitments to strong and transparent disciplines on procurement procedures.

Customs and Rules of Origin -- The ACTPN is pleased with the ground-breaking customs procedures negotiated in the U.S. Singapore FTA. Specifically, the ACTPN applauds the use of technology and the specificity of the provisions requiring transparency and efficiency in customs administration as well as the facilitation of the clearance of express delivery shipments through customs. The FTA devotes considerable attention to combating illegal transshipment of goods. Extensive monitoring and anti-circumvention provisions are incorporated, especially in the textiles and apparel area. With regard to rules of origin, the ACTPN finds them acceptable for this agreement, but wishes to point out that the proliferation of different rules is raising the cost of doing international business and that restrictive rules could well impair future U.S. competitiveness. The ACTPN urges that all future agreements give more attention to the need for flexibility in rules of origin, and that rules be worked out regionally rather than bilaterally to the extent possible.

Labor Provisions -- No other aspect of the Trade Act of 2002 was debated more fully than that of labor issues. The ACTPN, with the exception of the Teamsters Union, believes the FTA fully meets the labor objectives that emerged from the Trade Act of 2002, and views the text of the agreement as providing an effective and balanced means of implementing those negotiating objectives.

The labor provisions are the most far-reaching that have ever been in a U.S. or Singaporean trade agreement, and meet the Trade Act's requirements while still providing strong assurances that the provisions cannot be used as a means of disguised protectionism. After lengthy debate the Congress decided that dispute settlement in labor matters should be limited to failure to enforce existing laws. The ACTPN believes the FTA faithfully implements that requirement.

The committee particularly wishes to commend the agreement's emphasis on cooperation and mutual agreement in working together on this matter. Under the agreement, both countries reaffirm their commitments under the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work. Both guarantee in an enforceable manner, as stipulated in the Trade Act of 2002, that they will not fail to enforce their labor laws in a way that could affect trade. Both also agree to strive to ensure they will not weaken their labor laws in a manner that would affect trade. Members of the ACTPN want to see high labor standards, rising standards of living, and effective enforcement of laws; but also want to ensure that the new labor provisions called for by U.S. law cannot be used as protectionist devices to restrict trade. The ACTPN believes these objectives were achieved.

Environmental Provisions -- The ACTPN, with the exception of the Teamsters Union, endorses the environmental provisions of the FTA and believes they provide effective and creative ways of contributing to environmental improvement. The agreement meets the requirements of the Trade Act of 2002, for example, by requiring that neither country will fail to enforce its environmental laws in a manner that could affect trade, and making this requirement fully subject to effective dispute settlement procedures. Both countries also endeavor to see that their domestic environmental laws provide high levels of environmental protection and that they shall look for further improvements in their laws. In this context, it is particularly noteworthy that the environmental provisions specifically recognize the importance of strengthening capacity to protect the environment and promote sustainable development, thus creating a favorable climate for trade and investment, including the export of environmental goods and services. Both countries also agree not to reduce the level of environmental protection as a means of gaining trade advantage.

Dispute Settlement -- The ACTPN believes that effective dispute settlement provisions are essential to ensure that trade agreements are actually implemented and enforced. These provisions must provide for timely and effective resolution of disputes and application of enforcement mechanisms that are suitable to provide an adequate incentive for compliance when needed. Suspension of tariff benefits under the agreement is available for all disputes, including disputes over enforcing labor and environmental laws, as a last resort -- but there is a clear preference that fines be used for all disputes where consultation fails to resolve matters. The ACTPN views this as a particularly good feature in bilateral trade agreements, since no bilateral agreement can override the parties' World Trade Organization (WTO) commitments – e.g., the maximum U.S. trade retaliation could only be a snap-back to its WTO tariff levels. As the average U.S. WTO tariff world-wide is less than 2 percent, fines are a potent – and non trade-distorting -- alternative.

The ACTPN wants to stress that trade retaliatory measures should be taken as a last resort, for they have the capability of interfering with trade and causing considerable economic disruption. For this reason the committee commends the agreement's provisions that allow for the use of fines. The ACTPN hopes that this avenue will be pursued as a preferred option, holding the use of trade restrictions to an absolute minimum.

The committee also believes that the best way to deal with trade disputes is through consultation and mutual understanding, and expresses its support for the provisions in the FTA that seek such amicable resolution of disputes. The agreement also sets high standards of openness and transparency for panel procedures, although unlike the Chile FTA, there are no provisions in the Singapore agreement requiring that panelists have relevant expertise, for example in environmental issues.

The ACTPN, save for the dissenting view included at the end of this report, believes that the dispute resolution provisions fully meet the requirements of the Trade Act of 2002, and that they provide equivalent enforcement for all parts of the agreement – including the new labor and environmental provisions.

February 27, 2003

DISSENTING VIEWS OF
JAMES P. HOFFA, GENERAL PRESIDENT

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

The International Brotherhood of Teamsters, on behalf of its 1.4 million members, opposes the U.S.-Singapore Free Trade Agreement (FTA) as negotiated by the President's U.S. Trade Representative. We believe that the agreement fails to promote the economic interests of the United States and fails to meet the congressional negotiating objectives laid out in the Trade Act of 2002. We believe the Singapore FTA simply replicates the flawed trade policies of the past and falls far short of incorporating what we, and our allies abroad, have learned about the problems and weaknesses of the current system.

Labor Rights -- Under the agreement, Singapore agrees to reaffirm its commitments under the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and not to weaken its own laws in a manner affecting trade. This was also in the Jordan FTA. However, there are several factors unique to the U.S.-Singapore relationship that differ from the U.S.-Jordan relationship, and the FTA with Singapore does not reflect these differences, both in the labor and environment language, as well as in the rest of the agreement.

First, the language in the Singapore FTA presumes that Singapore's labor laws and practices essentially conform to the internationally recognized core workers' rights as outlined by the ILO and by U.S. trade laws. Singapore's labor laws, however, contain significant weaknesses in the areas of freedom of association, the right to bargain collectively, and child labor. For example, Singapore's labor law violates Convention number 98 by excluding some issues (like promotion, transfer, and dismissal) from the coverage of collective bargaining agreements and by requiring that work conditions contained in new collective bargaining agreements not be more favorable than nationally mandated standards.

Public employees are prohibited by law from joining unions. Singapore's destitute persons law, contrary to Convention number 29, requires welfare home residents to work under the penalty of imprisonment. Child labor laws set the minimum age for employment at 12. More broadly, restrictions on public assembly require a police permit for an assembly of more than five persons in public.

Second, the trade relationship between Singapore and the U.S. is of a greater order of magnitude than that between the U.S. and Jordan, so the potential economic consequences of the agreement are much greater for both countries. This will have ramifications for the dispute settlement mechanism, which as described below falls far short of the congressional negotiating objectives laid out in the Trade Act of 2002.

Enforcement -- The ACTPN assertion that the labor provisions in the Singapore FTA "are the most far-reaching that have ever been in a U.S. trade agreement" is, in our view, false. Both the Singapore FTA and the Chile FTA are a major step backwards from the Jordan FTA.

First, under the Singapore FTA, the procedures and remedies available for labor and environmental disputes are not "equivalent" to those that apply in commercial disputes, as required under the Trade Act of 2002. The Singapore FTA states that the dispute settlement chapter of the agreement shall not apply to any provisions of the labor chapter except Article 2.1(a) on the effective enforcement of domestic laws. In other words, the FTA doesn't allow for dispute settlement procedures for anything other than Singapore's failure to enforce its own laws. Therefore, the provision committing countries to strive to ensure that their domestic laws meet ILO standards and the provision committing countries to strive not to waive or derogate from their labor laws are both completely unenforceable. This falls far short of the Jordan FTA, which does allow both the commitment to ILO standards and the non-derogation commitment to be subject to dispute resolution. In addition, this selective enforcement creates a perverse incentive for countries that are failing to enforce their existing labor laws to get rid of their laws rather than improve enforcement. A country with no labor laws, or with terrible labor laws that fall far short of ILO standards, faces no possible penalty under the Singapore agreement, making the one enforceable labor provision of both agreements essentially meaningless.

Furthermore, under the Singapore agreement, parties must first go through 60 days of consultations before they can resort to dispute resolution. Parties can further delay resolution of a dispute over Article 2.1(a) by going through a second round of consultations of the dispute settlement chapter before finally proceeding to an arbitral panel.

The suspension of benefits to sanction a violation should have "an effect equivalent to that of the disputed measure [i.e., the measure that violates the agreement];" parties request a level of suspension of benefits that meets this criteria, and if they cannot agree, a panel determines what the correct level of suspension is based on this same criteria. Yet under the FTA, the panel determining an amount of a monetary assessment does not just determine what level of sanction would have an effect equivalent to that of the disputed measure. Instead, the panel also takes into consideration numerous mitigating factors including the reason a Party failed to enforce its labor law, the level of enforcement that could be reasonably expected, and any other relevant factors.

A party can choose to pay a monetary assessment instead of enduring trade sanctions (the sanctions are supposed to equal the harm caused by the offending measure, as explained above), and the assessment will be capped at half the value of the sanctions. The assessment is capped at $15 million, no matter what the level of harm caused by the offending measure.

A party can suspend the full original amount of trade benefits (equal to the harm caused by the offending measure) if a monetary assessment (capped at half that value) is not paid. Under the FTA, the level of trade benefits a party can revoke if a monetary assessment is not paid is limited to the value of the assessment itself.

It is presumed that the assessment will be paid out by the violating party to the complaining party, unless a panel otherwise decides, thus providing a punitive disincentive to potential violators. Under the FTA, the assessment is automatically paid into a fund to improve labor law administration in the violating country, thus compensating the violator.

On a separate issue, the Teamsters Union believes that the agreement should have included an independent citizen petition mechanism. Citizen petitions are important in order to implement the labor and environmental obligations of the agreements. Such a process is critical to ensuring that attention is brought to failures to enforce labor and environmental laws. Furthermore, it is imbalanced and inappropriate to omit such a mechanism when the U.S. proposal for investment includes a private right of action. This imbalance represents a failure to fulfill the Trade Act's mandate to seek equivalent dispute settlement mechanisms.

Temporary Entry -- USTR has negotiated temporary entry provisions in the Singapore FTAs without any authority or directions to do so from Congress. The negotiating objectives that Congress laid out for USTR in the 2002 Trade Act do not include even one word on temporary entry. The only negotiating objective on trade in services (the category under which temporary entry falls) is in section 2102(b)(2) of TPA, and it states in its entirety, "The principal negotiating objective of the United States regarding trade in services is to reduce or eliminate barriers to international trade in services, including regulatory and other barriers that deny national treatment and market access or unreasonably restrict the establishment or operations of service suppliers." The term "service suppliers" more likely refers service companies, not service workers, since the "establishment or operations" of a corporation is common usage, while the terms "establishment" and "operations" are not commonly used to describe the temporary entry of individual workers. USTR has negotiated temporary entry provisions in the Singapore FTA without any authority. There is no specific authority in TPA to negotiate new visa categories or impose new disciplines on our temporary entry system, yet that is exactly what USTR has done in the Singapore FTA.

Numerical caps on the number of professionals granted entry each year (5,400 for Singapore) are separate from, and in addition to, the global H1B cap. At a time of high unemployment in the United States, it does not make sense to increase the number of professionals granted temporary entry beyond levels in current law.

The agreement allows a version of the Labor Certification Attestation (LCA), now required from employers under the H1B program, to be required for professionals from Singapore. But the LCA allowed under the Singapore agreement appears weaker than the LCA now required for H1B workers.

- The agreement allows an LCA that certifies employers are complying with domestic labor and immigration laws, but the current LCA goes beyond this to require employers to pay temporary workers the prevailing wage in the industry and to ensure that the conditions of employment do not undermine domestic labor conditions.

- The visa program set up under the agreement would require the temporary entrants – who have no knowledge of domestic labor conditions or their employer's compliance with them – to submit the LCA rather than employers.

- The agreement would bar Congress from strengthening the LCA in the future to actually allow the Department of Labor to enforce an LCA with audit authority.
- The agreement contains no separate LCA requirements for employers who are dependent upon temporary workers, as there currently is under our H1B program.

The agreement's definition of professionals is unacceptably broad. It includes any job that requires a Bachelors degree, even if we have no domestic labor shortage in the job category. This completely does away with the only justification for our current H1B program and all other temporary entry programs for professionals, which is to address domestic labor shortages. Even NAFTA included a list of professions in which entry would be allowed.

The agreement limits fees charged to visa applicants to the costs of processing, making it impossible to collect higher fees and use those for domestic training programs. This is something we already do under the H1B program, charging $1000 for temporary entry visas and using the money to finance training.

Environment -- The Teamsters Union is concerned that the definition of "environmental law" in the Environment chapter excludes laws or regulations whose primary purpose is managing the commercial harvest or exploitation of natural resources. We recognize that this exclusion is subject to the provision indicating that the primary purpose of any particular provision shall be determined separately from the purpose of the law of which it is part. Nonetheless, we are concerned that there may be particular provisions of law and regulations that may be viewed by some as regulating natural resource extraction, although such a provision serves an important environmental purpose. We are concerned that the current definition of environmental law may not be sufficiently clear to ensure that the Environment chapter covers the full range of regulatory provisions that have environmental purposes.

Investment -- The Teamsters Union believes that the Singapore FTA does not accomplish the congressional mandate that trade agreements not grant foreign investors greater substantive rights than U.S. investors are afforded under U.S. law. The agreement fails to include the critical Supreme Court principle that a governmental action must permanently interfere with a property in its entirety in order to meet a threshold requirement to constitute a taking. Penn Central Transportation Co. v. New York City, 438 U.S. 104, 130-31 (1978). Recently, the Supreme Court rejected a taking claim arising out of a temporary moratorium on development. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 122 S. Ct. 1465 (April 23, 2002).

Significantly, the Singapore FTA provides no explanations and limitations for the critical standards, including the proposed use of the "character of government action" as a factor in expropriation analysis. This is important because the Supreme Court's reference to that factor in Penn Central reflects a clear limitation on takings claims under U.S. law. In Penn Central, the Court distinguished between physical takings and regulatory takings. The Court specifically limited a finding of takings in regulatory settings, while distinguishing these from physical invasions of property. Yet, the Singapore FTA fails to reflect this limitation and distinction, and the phrase is thus left open to *any* interpretation by future investment tribunals.

In addition, the language concerning the analysis of an investor's expectations is too vague, and does not indicate the deference to governmental regulatory authority that is found in U.S. jurisprudence.

The agreement does not include critical limitations stating that an investor's expectations are a necessary, *but not sufficient*, condition for liability, that an investor's expectations must be evaluated as of the time of the investment or that an investor must expect that health, safety, and environmental regulations often change and become more strict over time. In Concrete Pipe, the Court reiterated the principle that those who do business in an already regulated field "cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." 508 U.S. at 645.

The agreement's definition of property rights is vague and does not recognize the Supreme Court's holdings that takings claims must be based upon compensable property interests, which are defined by background principles of property and nuisance law. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1029 (1992).

The agreement also fails to include the Supreme Court's fundamental distinction between land and "personal property." "In the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings, [the owner] ought to be aware of the possibility that new regulations might even render his property economically worthless (at least if the property's only economically productive use is sale or manufacture for sale)." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1028 (1992).

The Singapore FTA should have included the standard established in Supreme Court jurisprudence that an adverse effect on economic value does not by itself constitute an expropriation. In fact, the Penn Central opinion refers to cases in which 75% and 87.5% diminution in value did not constitute a taking. As well, in Concrete Pipe a unanimous Supreme Court stated: " [O]ur cases have long established that mere diminution in the value of property, however serious, is insufficient to demonstrate a taking. Euclid v. Ambler Realty Co., 272 U.S. 365, 384 (1926); Hadacheck v. Sebastian, 239 U.S. 394 (1915). Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 645 (1993). 6

In light of this it is clear that the agreement's language clarifying that the exercise of regulatory powers by governments only constitutes an expropriation in "rare circumstances" is unacceptable; it utterly fails to convey that it would take an extreme circumstance for a regulation to be found a "taking." See United States v. Riverside Bayview Homes, Inc., 474 U.S. 121, 126 (1985) where the Court stated that land-use regulations may be takings in "extreme circumstances."

In regard to minimum, or general, treatment, the term "fair and equitable treatment" has been included as an essential element of the standard. "Fair and equitable treatment" opens the door to outcomes in investment cases that go far beyond U.S. law. There is no right corresponding to "fair and equitable treatment" under U.S. law. The closest thing in U.S. law is the Administrative Procedure Act (APA), which allows a court to review federal regulations to determine whether they are "arbitrary or capricious." But the APA does not apply to many governmental actions that are covered under investment agreements. Moreover, the APA does not provide for monetary damages (as these investment provisions would allow); only injunctive relief is allowed.

Foreign investors have the same rights as U.S. investors under the APA to seek injunctive relief. Enshrining this equal access in a trade agreement is one thing, but granting foreign investors the right to be paid the costs of complying with a requirement that may violate the APA but does not constitute a compensable taking under the Constitution as interpreted by the Supreme Court clearly violates Congress' "no greater substantive rights" mandate.

APPENDIX:

MEMBERSHIP OF THE

ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS

February, 2003

Bernard W. Aronson, Managing Partner, ACON Investments, LLC
Paul Norman Beckner, President and CEO, Citizens For A Sound Economy
JoAnn Brouillette, President, Demeter
Melinda S. Johnson Bush, President and CEO, HRW Holdings, LLC
Jill M. Considine, Chair and CEO, The Depository Trust and Clearing Corporation
Edward C. Emma, President and CEO, Jockey International, Inc.
George B. Fitch, President, IOP Associates, Mayor of Warrenton, VA
William E. Frenzel, Guest Scholar, Brookings Institute
Michael Goldstein, Chairman, Toys "R" Us Children's Fund
Robert Edward Grady, Managing Director, The Carlyle Group
F. Henry (Hank) Habicht II, CEO, Global Environment and Technology Foundation
Peter M. Hanna, Chairman, President and CEO, Hanna Steel Corporation
Walter Bernard Duffy Hickey, Jr., Chairman, Hickey Freeman Company, Inc.
James Philip Hoffa, General President, International Brotherhood of Teamsters
Jerome J. Jasinowski, President, National Association of Manufacturers
Fisk Herbert Johnson, Chairman, SC Johnson & Son, Inc.
Hersh Kozlov, Senior Partner, Wolf, Block, Schorr and Solis-Cohen LLP
Luis J. Lauredo, President, Hunton & Williams, Latin American Services, LLC
Larry A. Liebenow, President and CEO, Quaker Fabric Corporation
James Winston Morrison, President, Small Business Exporters Association
Thomas D. Mottola, Chairman and CEO, Sony Music Entertainment
Grace E. Andrews Nichols, President and CEO, Victoria's Secret Stores
Samuel J. Palmisano, President and CEO, IBM Corporation
Edward J. Perkins, Crowe Professor in Geo-Politics and Executive Director of International Programs, University of Oklahoma
Richard E. Rivera, Chief Operating Officer, Darden Restaurants
Steven Rollie Rogel, Chairman, President and CEO, Weyerhaeuser Company
Jean-Pierre C. Rosso, Chairman, CNH Global
John G. Rowland, Governor of Connecticut
Hector Ruiz, President and CEO, Advanced Micro Devices
Rodolphe M. Vallee, Chairman, CEO and Owner, R.L. Vallee, Inc.
Morgan Yaping Wang, CEO and Chairman, Angeles Optics, Inc.
Richard M. Wardrop, Jr., Chairman, CEO and President, AK Steel Corporation
Margaret Cushing Whitman, President and CEO, eBay Inc.
Wythe W. Willey, President, National Cattlemen's Beef Association