

U.S. BILATERAL FREE TRADE AGREEMENTS WITH CHILE AND SINGAPORE

Abstract

In 2003, the United States entered into free trade agreements with Singapore and Chile. In Singapore and Chile, the United States saw an opportunity to establish precedent setting trade agreements that could be used with other “developing” countries. This paper examines the nature of the testimony offered at two legislative hearings, a House Ways and Means Committee hearing and a Senate Finance Committee hearing. At the hearings, contention primarily arose out of issues, such as environmental concerns, that are not strictly trade related. Instead, provisions in these side areas seem to meet the demands of certain special interest groups.

Introduction

In 2003, the United States entered into free trade agreements with Singapore and Chile.² On the surface, these seem like relatively arbitrary free trade partners for the United States. However, Singapore and Chile are two of the most economically open countries in the world.³ Thus, the United States saw an opportunity to establish precedent setting agreements that could be used as templates for other “developing” countries (though some might argue that Singapore no longer truly qualifies as developing).⁴

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² Statement of the Honorable Peter F. Allgeier, Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means, June 10, 2003 (hereinafter W&M Testimony), pp. 1.

³ http://en.wikipedia.org/wiki/Index_of_Economic_Freedom

⁴ See generally Stmt. of Allgeier, W&M Testimony, pp. 1.

As with any treaty, the US Congress had to ratify both free trade agreements before they became effective. As part of this process, the House and Senate held numerous hearings addressing the free trade agreements. This paper focuses on two of those hearings, a House Ways and Means Committee hearing held on June 10, 2003,⁵ and a Senate Finance Committee hearing held June 17, 2003.⁶ Both agreements were ultimately ratified and are currently in operation.^{7,8} During oral testimony, members of Congress, representatives of business groups, and representatives of special interest groups gave testimony regarding their views of the proposed agreements.

In general, the hearings were ordered and calm for relatively significant free trade agreements. (By itself, Singapore was the United States' 12th largest trading partner at the time.⁹) While both sides of the free trade issue presented arguments, those arguing in favor of the agreements generally outnumbered those arguing against the agreements. Even those arguing against the treaties did not seem particularly adamant. Unfortunately, political motivation cannot be ruled out as a possible explanation for the relatively unbalanced lineup of speakers.

Supporters

In general, the supporters of the bills spent a majority of their time distracted from the main issue, the benefits the United States can receive by lowering its own trade barriers to increase international trade. In fact, little to no mention is made of the real benefits of free trade, those benefits related to cheaper consumer products that come from the exercise of specialization and trade under comparative advantage. (One

⁵ <http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=70>

⁶ <http://finance.senate.gov/sitepages/hearing061703.htm>

⁷ http://ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/Section_Index.html

⁸ http://ustr.gov/Trade_Agreements/Bilateral/Singapore_FTA/Final_Texts/Section_Index.html

⁹ Stmt. of Allgeier, W&M Testimony, pp. 2.

representative mentioned comparative advantage in passing¹⁰ and one other actually stated that the United States “deserved” this agreement,¹¹ though it is far from clear that she was referencing the benefits free trade provides to consumers.) The United States will benefit from free trade by lowering its own trade barriers regardless of the trade policies of Singapore and Chile. Bilateral negotiations, such as those carried out in free trade agreements, simply provide a palatable political opportunity to throw in carrots and pet causes to appease opponents of free trade and other interest groups.

The politicians and others giving testimony clearly treated free trade as a bilateral give-and-take negotiation, rather than a strictly beneficial process.¹² Perhaps, this is covertly a ploy to “give up” something that really has negative value to the US and act like the lowering of barriers is really a significant sacrifice. However, attribution of this ulterior motive to a legislative body plagued by short-term political motivations seems rather generous. Instead, the politicians appear to legitimately view the process as a negotiation, where we can only lower our trade barriers for trade partners willing to reciprocate and follow our demands in other areas.¹³ This bias may come from the lobbying efforts of politically powerful groups, such as unions and certain domestic industries, accompanied by the lack of a voice amongst dispersed groups that benefit the most from free trade, such as consumers.

The strongest support at the hearings came from groups that export heavily. Intellectual property intensive companies,^{14,15} agri-business,^{16,17} the US Chamber of

¹⁰ Statement of Earl Blumenauer, W&M Testimony, pp. 1.

¹¹ Statement of Judy Biggert, W&M Testimony, pp. 2.

¹² *See generally* W&M Testimony and Finance Committee Testimony.

¹³ *See generally id.*

¹⁴ Statement of Jeff Jacobs, QUALCOMM, W&M Testimony, pp. 1.

¹⁵ Statement of Keith Gottfried, Borland Software, W&M Testimony, pp. 1.

¹⁶ Testimony of John Caspers, Nat’l. Pork Producers Council, Finance Comm., pp. 1.

Commerce¹⁸ (interestingly represented by at least one textile company¹⁹), and other business groups looking to profit from exports. Several agricultural groups (pork, beef, and grain) spoke in support of opening up foreign markets to US products.²⁰ The agricultural groups also praised the elimination of certain sanitary restrictions that they apparently viewed as unfair.²¹

Other strong supporters of the trade agreements came from intellectual property intensive industries. Representatives from technology groups cited the significant proportion of their sales that come from exported products.²² One of the key issues (and one of the most controversial) in these treaties was the imposition of US intellectual property protections on the target trading partners.^{23,24} At first glance, the United States' insistence on getting its trading partners to enforce rights equivalent to US property seems unrelated to trade. Pirated products imported into the US are just as illegal as any product made in the United States, since US protections already extend to infringing imports. Consequently, the US apparently wanted to protect its exports to other countries. This issue is independent of free trade. US companies can significantly limit the flow of many of the products they create, particularly in areas such as manufacturing technologies and trade secrets, by refusing to do business with countries that do not recognize their IP rights. Presumably, these businesses, with governmental assistance, could negotiate independent agreements with countries with porous intellectual property

¹⁷ Testimony of Keith Schott, Montana Grain Growers Ass'n., Finance Comm., pp. 1.

¹⁸ Statement of Larry Liebenow, US Chamber of Comm. and Quaker Fabric Corp., Finance Comm. pp. 1.

¹⁹ *Id.*

²⁰ *See generally* Testimony of John Caspers, Finance Comm., and Statement of Larry Liebenow, Finance Comm.

²¹ Testimony of Jon Caspers, Finance Comm. pp. 3.

²² Statement of Jeff Jacobs, W&M Testimony, pp. 2. and Statement of Keith Gottfried, W&M Testimony, pp. 1.

²³ Statement of Algeier, W&M Testimony, pp. 6-8 and 12-14.

²⁴ Statement of Gawain Kripke, Oxfam America, W&M Testimony, pp.1-2.

regimes, whereby the country would obtain the technologies it desires and the companies could obtain the enforcement rights they need. However, pragmatically, the carrot of an open US market may be the only way to adequately negotiate on side issues such as intellectual property.

Opposition

In general, the opposition to this bill was actually relatively mild. As mentioned, Singapore and Chile are economically advanced for “developing” countries. Both countries have reached an economic state that allows them to begin addressing relative luxury issues such as environmental and labor conditions. Both countries are already relatively “advanced” in labor standards, with Chile, for example, already having ratified the eight Core Conventions of the International Labor Organization.²⁵ With that in mind, the language of the agreements required the enforcement of local environmental and labor laws and also required that these laws not be lowered to support free trade in a race to the bottom.²⁶ Since Singapore and Chile were clearly not catastrophically poor on these issues, the opponents (though they criticized some aspects of these agreements) focused on avoiding the use of these free trade agreements as templates for dealing with less developed countries.²⁷

One group, the AFL-CIO, made a particularly strong attack on the labor provisions of the agreements.²⁸ While the AFL-CIO representative claimed to have the interests of the foreign countries and their laborers at heart,²⁹ her argumentation seemed

²⁵ Statement of Blumenauer, W&M Testimony, pp. 2.

²⁶ Statement of Allgeier, W&M Testimony, pp. 9-10 and pp. 15.

²⁷ See Statement of Sander M. Levin, W&M Testimony pp. 1-2.

²⁸ See Statement of Thea M. Lee, AFL-CIO.

²⁹ *Id.* pp. 1.

to heavily favor protecting the AFL-CIO's own membership.³⁰ For example, she used evidence of economic activity in Mexico following NAFTA to support the proposition that the current US approach to free trade was not working.³¹ This evidence was effectively presented in a vacuum, separated from other economic factors that could equally have been the actual cause of the stated problems.³² In general, her testimony erroneously painted free trade as some sort of reward for Singapore and Chile, effectively implying that Singapore and Chile must dutifully take certain steps to receive this reward.³³ In general, the representative seemed to conclude that free trade was simply a failed policy, while really only addressing tangential issues that likely should not be dealt with under free trade. With due respect to the AFL-CIO's membership, this testimony is illustrative of the lobbying abilities of a centralized group with considerable political power. While the specific harm to this group is certainly open for debate, their voice is heard more clearly than the hundreds of millions of consumers that unwittingly gain daily from free trade.

It is certainly questionable if either the environmental or labor issues are best addressed as part of free trade. By opening free trade, countries can gain economically and develop the economic liberty to better address environmental and labor issues. Chile and Singapore, at the top end of the developmental curve, could be pushed into an economic state that allows them to really address these "luxury" issues. These issues should be addressed in other arenas, perhaps tied to foreign aid targeted to address related areas of concern and/or multilateral negotiations specifically addressing environmental

³⁰ *See generally id.*

³¹ *Id.* pp. 6.

³² *Id.*

³³ *See generally id.*

concerns and labor issues. However, as previously noted, the US market can provide a powerful carrot to entice other nations to agree to the imposition of American ideologies that might not be adopted without such an incentive.

In addition to the labor and environmental issues, international investment and intellectual property rights caused concern in these agreements. The biggest issues with international investment were Chile's and Singapore's respective agreements to limit capital controls in financial panics to prevent capital flight from their countries.³⁴ Since Singapore and Chile do not seem prone to a stereotypical capital flight scenario, they could actually benefit from the added security foreign investors gain from unrestricted cross-border capital flows. Regardless, this issue again seems out of place in a free trade agreement. Capital flight should be addressed independently in a treaty involving foreign investment guidelines and the enforcement of corporate and business law.

As discussed above, intellectual property provisions were also important parts of these deals. Groups rejecting the deals on intellectual property grounds objected to the imposition of the United States' very strong intellectual property rights.³⁵ In particular, they objected to the extended term of US rights and the controls on the manufacture of drugs under compulsory license for impoverished countries in need of certain drugs.³⁶ Such health issues do not seem to be related to free trade and almost certainly should be dealt with in other arenas, such as international health organizations. Consequently, these naysayers may have rightfully objected to their inclusion in the agreements, but for the wrong reasons.

Conclusion

³⁴ See *id.* pp. 5; Statement of Kripke, W&M Testimony, pp 4.

³⁵ See *supra*.

³⁶ Statement of Kripke, W&M Testimony, pp. 2.

In general, the hearings over these bills were surprisingly pro-trade. This may have been related to the advanced freedoms and economic positions of the United States' partner nations. While the treaties were ultimately approved, the largest real benefits, cheaper imports created by nations specializing in areas where they have a comparative advantage, were almost entirely ignored. The bills' ultimate sources of contention, and the likely the reason why they had adequate political support, were extraneous issues not particularly related to free trade.