Testimony of

The Honorable Patrick Leahy

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Statement of Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
Hearing on "Proposed United States-Chile and
United States-Singapore Free Trade Agreements"
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I want to thank the Chairman for expanding the scope of this hearing to include intellectual property provisions as well as the labor provisions included in the proposed trade agreements. These are important aspects of these agreements and both are worthy of our attention.

The Committee today takes on the important responsibility of offering its comments on legislation that would implement Free Trade Agreements ("FTA") with Chile and Singapore. Under our trade laws, Congress cannot amend legislation transmitted by the Executive Branch to implement such agreements but may only approve or disapprove them. As such, this hearing - along with the "mock markup" that I hope the Committee will hold this week - presents the only opportunity for Members of this Committee to make their views known on these agreements, including the "temporary entry" provisions that are included in both and which are substantially identical to one another.

As an initial matter, I question why the Administration decided to include immigration provisions in this treaty in the first place. Congress has already created the H-1B program, which allows foreign workers with specialized skills to come to the United States to work. That program was created after a lengthy process of public hearings, debate, and negotiation. If the Administration feels that program needs to be changed, or a new visa category created, it would be better to do so through the ordinary legislative process. I hope to hear from our witnesses today the history of the temporary entry provisions, including who requested their inclusion and the reasons for the request. I also want to know whether the Administration intends the entry provisions to serve as a model for future bilateral trade agreements.

Turning to the specifics of the draft implementing legislation, I was deeply concerned by the original draft legislation proposed by the Administration. I thought that its provisions would undercut the H-1B program by offering workers from Chile and Singapore a path to entry that does not provide that program's protections and benefits for our domestic workforce. Thanks to strong bipartisan objections expressed in Congress, particularly in the House Judiciary Committee, many of the original draft's flaws have been corrected. For example, I understand that the Administration has agreed to assess a fee for "temporary entry" visas from Chile and Singapore that is equal to the fee associated with H-1B visas. This is a step in the right direction, since those fees are used in part to fund worker training programs designed as a longer-term solution to worker shortages.

I do have remaining concerns. For example, the visa created by the proposed legislation would be indefinitely renewable. I believe there should be some durational limit - such as the 6-year limit placed on H-1B visas - since these are termed as "temporary entry" provisions. I am pleased, however, that the Administration has apparently accepted a modest proposal by Representatives Conyers and Berman to count certain visa renewals against the annual numerical caps that are included in the trade agreements.

In addition, the legislation should make clear that the Department of Labor can initiate investigations into potential abuse of these visas, as it can where abuse is suspected in the H-1B program.

These issues are important because these are not the last trade agreements we will see, and our handling of these will set a precedent for the future. If we are going to change our employment-based immigration system, Congress must be involved and we must do so consciously, not simply through acquiescence to FTAs presented to us by the Administration.

We must also bear in mind that these agreements also cover intellectual property and the serious problem of international piracy, an issue that I continue to urge my colleagues in the Senate to address. The United States is the world's leading creator and exporter of intellectual property. But that also means we are the world's leading target for piracy of copyrighted works. New technology has made piracy cheap and easy, and everything from music to films, from books to software is susceptible to this kind of theft.

We have worked very hard on the Judiciary Committee, and in the Senate as a whole, to ensure that copyright holders have the tools they need to face the challenges of new technology. We must continue to respond to these challenges. One of the things we must do is augment international enforcement of intellectual property rights. People in Asia, in Eastern Europe, and elsewhere are stealing billions of dollars from American copyright holders by making illegal copies of American works. The fact that what is being stolen is not tangible should not undermine our conviction to end this wholesale theft.

In addition, the agreements go a long way to harmonize the intellectual property laws of Singapore and Chile with those of the United States. This is important because intellectual property is increasingly an international business, one that needs an international approach to many of its problems. I look forward to working on these issues to ensure the continued vitality of the American intellectual property industries, and to facilitate the development of thriving industries in the countries with which we have free trade agreements. A healthy global environment for the development and marketing of intellectual property will redound to everyone's benefit, and as the world leader in the creation of that property, we should also be at the forefront of its sensible use and reasonable protection.