Testimony of Thea M. Lee
Policy Director
American Federation of Labor and Congress of Industrial Organizations
(AFL-CIO)

before the
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Hearing on the
Implementation of the United States-Bahrain Free Trade Agreement

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today on behalf of the working men and women of the AFL-CIO. U.S. trade policy in general, and the U.S.-Bahrain Free Trade Agreement (FTA) in particular, are of great interest and importance to our members, to America's workers, and to workers in Bahrain as well.

In our view, the Bahrain FTA provides precisely the wrong answers to the challenges faced in Bahrain and the United States. The agreement is based on a failed model that will neither address the problems confronted by workers in Bahrain, nor contribute to the creation of good jobs and wages at home. The workers' rights provisions are inadequate to ensure that workers' fundamental human rights are respected, and the dispute settlement mechanism for workers' rights and environmental protections is far weaker than that available for commercial provisions. At the same time, flawed provisions on services, government procurement, and intellectual property rights will undermine the ability of both governments to protect public health, strong communities, and the environment.

Perhaps most disturbing, workers and unions in Bahrain have not been adequately consulted by their government on the provisions contained in the agreement. In fact, the unions have never even received an Arabic translation of the agreement, despite having asked their government repeatedly to provide one. We understand from USTR that an Arabic translation did not even exist at the time that the Bahrain FTA was considered and approved by the Bahrain Parliament. This failure to provide even rudimentary consultation certainly calls into question the government's willingness to engage substantively with its own civil society organizations. On behalf of our union colleagues in the General Federation of Bahrain Trade Unions, we ask our government to insist on adequate and meaningful consultations with unions and other civil society organizations in this and future trade negotiations.

Any vote on the Bahrain FTA must take into account the broader economic reality that we are facing today. Our trade deficit hit a record-shattering $617 billion last year; we have lost more than three million manufacturing jobs since 1998; and average wages

have not kept pace with inflation this year – despite healthy productivity growth. The number of people in poverty continues to grow, and median family income continues to fall. Offshore outsourcing of white-collar jobs is increasingly impacting highly educated, highly skilled workers – leading to rising unemployment rates for engineers and college graduates. Together, record trade and budget deficits, unsustainable levels of consumer debt, and stagnant wages paint a picture of an economy living beyond its means, dangerously unstable in a volatile global environment.

While the Bahrain FTA is not likely to have a significant economic impact on the United States because of the small size of two-way trade and the Bahraini economy, the agreement will likely only exacerbate our trade imbalance, as most previous bilateral FTAs have done. It is likely that the agreement will result in a deteriorating trade balance in some sectors, including sensitive sectors such as apparel. Even where the market access provisions of the agreement themselves may not have much of a negative impact on our trade relationship, these provisions when combined with rules on procurement and services and with the existing Bilateral Investment Treaty between the U.S. and Bahrain, could further facilitate the shift of U.S. investment and production overseas, harming American workers.

The AFL-CIO is not opposed in principle to expanding trade with Bahrain, if a trade agreement could be crafted that would promote the interests of working people in, and benefit the economies of, both countries. Unfortunately, the U.S. Trade Representative has failed to reach such an agreement with Bahrain. Instead, the labor provisions of the Bahrain FTA make little progress beyond the ineffective NAFTA labor side agreement and actually move backwards from the labor provisions of our unilateral trade preference programs and the Jordan FTA. Meanwhile the commercial provisions of the agreement do more to protect the interests of U.S. multinational corporations than they do to promote balanced trade and equitable development.

Mr. Chairman, members of the Committee, we ask you to reject the Bahrain FTA and urge the administration to renegotiate this flawed deal.

Labor Provisions of the Bahrain FTA

The Bahrain FTA's combination of unregulated trade and increased capital mobility not only puts jobs at risk, it places workers in both countries in more direct competition over the terms and conditions of their employment. High-road competition based on skills and productivity can benefit workers, but low-road competition based on weak protections for workers' rights drags all workers down into a race to the bottom. Congress recognized this danger in the Trade Promotion Authority bill (TPA or "fast track"), and directed USTR to ensure that workers' rights would be protected in new trade agreements. One of the overall negotiating objectives in TPA is "to promote respect for worker rights … consistent with core labor standards of the ILO" in new trade agreements. TPA also includes negotiating objectives on the worst forms of child labor, non-derogation from labor laws, and effective enforcement of labor laws.

Unfortunately, the labor provisions of the Bahrain FTA fall far short of meeting these objectives. Instead, the agreement actually steps backwards from existing labor rights provisions in the U.S. – Jordan FTA and in our Generalized System of Preferences (GSP) program. In the Bahrain agreement, only one labor rights obligation – the obligation for a government to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapter, many of which are drawn from Congressional negotiating objectives, are explicitly not covered by the dispute settlement system and are thus completely unenforceable.

This agreement will allow deficiencies in Bahrain's labor laws to persist. In 2002, the King of Bahrain promulgated important labor law reforms to legalize trade unions. While this is an essential step forward towards full recognition of workers' rights in Bahrain, serious restrictions on workers' rights continue to exist, according to reports from the U.S. State Department, the ILO, and the International Confederation of Free Trade Unions (ICFTU).

- Despite the clear enshrinement of freedom of association and the right to organize in the 2002 Trade Union Law, the Bahraini Government has not yet granted the labor movement the right to organize in the public sector. The King of Bahrain issued a 2003 public statement in support of the right of workers to organize in the public sector, but the cabinet, led by the Crown Prince, has taken the opposite view. This issue is due to be addressed by the Bahrain Supreme Court in February 2006.

- Trade unions in Bahrain are prohibited from engaging in political activities, violating Article 3 of ILO Convention No. 87, which grants trade unions the right to formulate their own programs. The ILO has explained that the ability to engage in political activities is a key component of this right. Political parties are also illegal in Bahrain, where the king exerts most political power and is not subject to general elections.

- Bahraini law does not specifically provide for collective bargaining and it places restrictions on the right to strike. The law requires three-quarters of a union's members to approve a strike, presenting an obstacle to the right to strike that is inconsistent with ILO standards, which stipulate that requirements for majority approval must be set at a reasonable level. Strikes are prohibited in security services, civil defense, airports, ports, hospitals, transportation, telecommunications, electricity and water services, in violation of international standards that only allow denial of the right to strike in "essential services." In addition, the employer and Ministry of Labor must be notified of the strike no less than two weeks in advance, and the law requires workers and employers to seek amicable settlement of a labor dispute through conciliation and then arbitration before a strike vote can be cast. The law does not give workers a clear right to call a strike if they disagree with the outcome of this mandatory arbitration, in violation of ILO norms on mandatory arbitration.

- In the area of forced labor, some abuses are found, particularly in the cases of domestic servants and foreign workers. Foreign workers make up approximately two-thirds of the workforce, and are vulnerable to employer abuse. The U.S. State Department reports that foreign workers can become indentured servants in Bahrain, and that employers reportedly withhold salaries from foreign workers for months or years. Workers must get permission from their employers to leave the country, and a foreign worker's sponsor has the power to cancel the worker's residence permit. Employers use this power to intimidate their foreign employees, who are thus hesitant to report abuses and stand up for their rights. The State Department also reports that domestic servants are subject to serious abuse in Bahrain, where they are excluded from the protections of national labor laws.

- Though there is no official minimum wage in Bahrain, government guidelines stipulate a monthly minimum wage of close to $400. The State Department reports that the government fails to monitor compliance with these minimum wage guidelines, and that foreign workers are especially vulnerable to under-payment or non-payment of wages.

The proposed FTA would allow Bahrain to maintain these restrictions on workers' rights in its law, and even to further limit workers' fundamental rights in the future. Even for the one labor obligation in the FTA that is subject to dispute resolution – the requirement to effectively enforce domestic laws – the procedures and remedies for addressing violations are significantly weaker than those available for commercial disputes in the agreement. This directly violates TPA, which instructs our negotiators to seek provisions in trade agreements that treat all negotiating objectives equally and provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

The labor enforcement procedures cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines that end up back in their own territory with inadequate oversight. These provisions not only make the labor provisions of the agreement virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes:

- Under the rules governing commercial disputes, trade sanctions are supposed to have "an effect equivalent to that of the disputed measure [i.e., the measure that violates the agreement]." Yet under the rules governing labor disputes, the amount of a monetary assessment is not just based on the harm caused by the disputed measure. Instead, the panel also takes into consideration numerous other factors, many of which could be used to justify a lower, and thus less effective, sanction. Factors to be considered include the reason a party failed to enforce its labor law, the level of enforcement that could be reasonably expected, and "any other relevant factors." The agreement does not state whether these issues should be considered only as mitigating or aggravating factors, presenting the possibility that a panel could cite these additional factors to reduce the amount of a monetary assessment for a labor violation

below the level necessary to remedy the violation – an outcome not permitted for commercial violations.

- In commercial disputes, the violating party can choose to pay a monetary assessment instead of facing trade sanctions, and in such cases the assessment will be capped at half the value of the sanctions. In labor disputes, however, the assessment is capped at an absolute level, no matter what the level of harm caused by the offending measure. Not only are the fines for labor disputes capped, but the level of the cap is so low that the fines will have little deterrence effect. The cap in the Bahrain agreement is $15 million – less than 1.8 percent of our total two-way trade in goods with Bahrain last year.

- Not only are the caps on fines much lower for labor disputes, but any possibility of trade sanctions is much lower as well. In commercial disputes, 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. In a labor dispute, 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 – capped at $15 million.

- Finally, the fines are robbed of much of their punitive or deterrent effect by the manner of their payment. While the AFL-CIO supports providing financial and technical assistance to help countries improve labor rights (and we were appalled to see the funds for such activities in the administration's budget for 2005 slashed from $99.5 million to just $18 million), such assistance is not a substitute for the availability of sanctions in cases where governments refuse to respect workers' rights in order to gain economic or political advantage. In commercial disputes under the Bahrain FTA, the deterrent effect of punitive remedies is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, the violating country pays the fine to a joint commission to improve labor rights enforcement, and the fine ends up back in its own territory. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If the commission pays the fine back to the offending government, but the government uses the money on unrelated or ineffective programs so that enforcement problems continue un-addressed, no trade action can be taken.

The labor provisions in the Bahrain FTA are woefully inadequate, and clearly fall short of the TPA negotiating objectives. They will be extremely difficult to enforce with any efficacy, and monetary assessments that are imposed are likely to be inadequate to actually remedy violations. The Bahrain FTA will do very little to ensure that core workers' rights are respected and improved in the U.S. and Bahrain.

Other Issues in the Bahrain FTA

In addition to the problems with the labor provisions of the Bahrain agreement outlined above, commercial provisions of the agreement also raise serious concerns.

Intellectual Property Rights: In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Bahrain FTA contains a number of "TRIPs-plus" provisions on pharmaceutical patents, including on test data and marketing approval, which could be used to constrain the ability of a government to issue compulsory licenses as permitted under TRIPs and the Doha Declaration. In addition, the proposed FTA goes beyond TRIPs by, in effect, recognizing the "work for hire" doctrine in Article 14.4(6) of the agreement. This provision is unfair to artists and performers, and is strongly opposed by the LAC.

Government Procurement: The FTA's rules on procurement restrict the public policy aims that may be met through procurement policies at the federal level. These rules could be used to challenge a variety of important procurement provisions including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. The LAC believes that governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate.

Rules of Origin: Any preferential trade agreement must include a rule of origin that assures that products are manufactured as well as assembled in the beneficiary country. The high degree of international investment in most manufacturing industries makes it essential to set a high rule of origin, focused on manufacturing content rather than on indirect costs or simply on tariff classification changes. The "substantial transformation" rule of origin included in the Bahrain agreement is highly problematic. It allows products to qualify for duty-free benefits even if only 35 percent of their value (including content and costs of production) comes from the FTA countries, as long as a "substantial transformation" takes place in the exporting FTA country. There is no minimum amount of value that must originate in the exporting FTA country, as long as a transformation takes place there and as long as the combined FTA country value is 35 percent. This rule is weaker than the Jordan FTA, and could deprive Bahrainis of much of the anticipated employment benefits of the agreement. This rule invites abuse by multinational corporations, who will be able to manipulate their production and purchasing to ship goods made primarily in third countries through Bahrain for a minimal transformation before entering the U.S. duty free. The rule of origin fails to promote production and employment in the U.S. and Bahrain, and it grants benefits to third countries that have provided no reciprocal benefits under the agreement and that are not subject to the agreement's minimal labor and environmental rules.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Bahrain agreement, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. A surge of imports from large multinational corporations can overwhelm domestic producers very quickly, causing job losses and economic dislocation that can be devastating to workers and their communities. For many American workers losing their jobs to imports, it may be their own employer that is responsible for the surge of imports. In such a case, and similar situations in which an international sourcing decision has been made on the basis of a free trade agreement, the usual remedy of restoration of the previous tariff on the imports will not be enough to reverse the company's decision to move production abroad. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed. The Bahrain FTA has failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize could raise the cost and reduce the quality of basic services. Yet the Bahrain agreement does not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services in the Bahrain FTA, unless specifically exempted. The specific exemptions for services in the Bahrain agreement fall short of what is needed to protect important sectors. There are, for example, no U.S. exceptions for energy services, water services, sanitation services, or public transportation services. Even for those services the U.S. did make exceptions for, such as public education and health care, the exemption only applies to some of the core rules of the FTA, not all. These partial exceptions are particularly worrisome given the tendency of trade dispute panels to interpret liberalization commitments expansively, and to interpret exceptions to those commitments narrowly. One manifestation of this problem is the recent WTO decision against the U.S. on gambling services – the U.S. argued unsuccessfully that gambling was not covered by the WTO's General Agreement on Trade in Services, and now faces the prospect of choosing between changing our laws to allow internet gambling or enduring trade sanctions.

Conclusion

Congress should reject the Bahrain FTA, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed.

American workers are willing to support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights. The AFL-CIO is committed to fighting for better trade policies that benefit U.S. workers and the U.S.

economy as a whole. We will oppose trade agreements that do not meet these basic standards.

The U.S. economy continues to break records, but not in ways that help working people. The all-time high U.S. trade deficit is not an abstract issue; it shows up every day as working men and women see their plants close, are asked to train their own overseas replacements or are asked to swallow wage and benefit cutbacks that affect their families' lives in hundreds of ways. Entire communities suffer the consequences of failed trade agreements. We urge the Congress to reject the U.S.-Bahrain FTA and begin work on just economic and social relationships with Bahrain.