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NOMINATION OF CHARLENE BARSHEFSKY

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

CHARLENE BARSHEFSKY TO BE U.S. TRADE REPRESENTATIVE

JANUARY 29, 1997

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WEDNESDAY, JANUARY 29, 1997

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:24 a.m., in room SD–215, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Also present: Senators Chafee, Grassley, Hatch, D'Amato, Murkowski, Gramm, Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham, Moseley-Braun, Bryan, and Kerrey.

OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will please come to order. I am pleased to convene the Finance Committee this morning to consider the nomination of Charlene Barshefsky as U.S. Trade Representative.

I am also very pleased to welcome the three distinguished members of the Congress here with us this morning to introduce the Ambassador, Senators Breaux and Moseley-Braun, who are both members of this committee, as well as Chairman Crane of the House Ways and Means Trade Subcommittee.

John, we will recognize you, first.

OPENING STATEMENT OF HON. JOHN BREAUX, A U.S. SENATOR FROM LOUISIANA

Senator BREAUX. Thank you, Mr. Chairman. I will be very, very brief. I am, indeed, honored to be asked as a non-Illinoisan to introduce our distinguished nominee to the committee, and I appreciate that opportunity.

I just am here to say that I have worked with her, as I think we all have, on many, many occasions throughout the years in her capacity as Deputy USTR. I just want to say to the committee and to the public at large that this is a person with a great deal of talent who is willing to say, when negotiations are not successful, that an agreement is not fit to be brought back to the Congress.

I think in times past there has always been a tendency for people in the trade areas to say, look, I just have to bring an agreement back, because this is my job. My job is to negotiate and if I do not bring back an agreement I am a failure, so I am going to bring

back any kind of an agreement. This is not Charlene Barshefsky, who is up for consideration today.

I can think back to her strong positions and ability to walk away from a bad deal. We need a trade representative that can say this is not something the United States should be part of.

I can think of the GATT Maritime Agreement which was not sufficient to be brought back to the Congress. I can think of the April 30th telecommunications deal, which was a bad deal and needs to be renegotiated. That is the type of tough trade negotiator we need.

If you do not believe me, look at the letters of recommendation we have from people that she has worked with throughout the world. I think that they speak volumes about her ability. I would just quote one. The respected economist Gary Hufbauer from the Institute for International Economics said, "She is easily the most qualified and most knowledgeable person on trade law ever nominated to this post."

Now, my good friend Mickey Kantor may have something to say about that, but I think the statement certainly speaks for itself and it is a very strong statement. But, equally as important, I think that she comes with credentials of integrity, honesty, sincerity, and a sense of humor.

I would just point out one other interesting thing. *Glamour Magazine* voted her Woman of the Year for 1996, obviously taking into consideration the total person. That is the kind of person we need as our trade representative.

We have got some tough issues coming up. I would just mention the OECD shipbuilding agreement which the Chairman and the members have worked so hard on, as well as the upcoming WTO telecommunications agreement, and to make sure that nobody takes advantage of trade rules to the detriment of the United States.

I am confident, and I think the committee will be, that she can handle that job, and I wholeheartedly recommend her.

The CHAIRMAN. Thank you, John.

Senator Moseley-Braun.

OPENING STATEMENT OF HON. CAROL MOSELEY-BRAUN, A U.S. SENATOR FROM ILLINOIS

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman, members of the committee. It is my privilege to join Senator Breaux and Representative Crane in introducing to the committee President Clinton's nominee for the position of United States Trade Representative, Ambassador Charlene Barshefsky. I congratulate the President for making such a splendid appointment, and I do not believe he could have made a better choice.

As you know, the Office of the USTR is responsible for developing U.S. trade policy and negotiating and enforcing trade agreements. In Ambassador Barshefsky the President has nominated a proven trade negotiator and a person who has more than 20 years of experience in the field of international trade law.

She is extremely well-qualified for the position and ranks among the most able people to have had the opportunity to serve as America's chief trade policy formulator and negotiator.

Although Ambassador Barshefsky established her professional reputation here in Washington, I am proud to say that she was born and raised in Chicago. As proof of her pride in her Chicago roots, I understand that on the wall of her den/study is the No Parking/No Stopping by Order of the Chicago Police Department sign that mysteriously disappeared the year that she entered college. [Laughter.]

Moreover, as a testament to her perseverance, her solid Midwestern values and optimism, a Chicago Cubs baseball cap still sits on her bureau.

She received her undergraduate degree from the University of Wisconsin and a law degree from Catholic University.

Ambassador Barshefsky, of course, needs no introduction to the members of this committee. Her record of professional excellence and achievement as Deputy and Acting U.S. Trade Representative is familiar to all of us who have an interest in U.S. trade policy.

Under her leadership, USTR has negotiated a number of groundbreaking bilateral and multilateral trade agreements. The recently concluded Information Technology Agreement, the U.S.-Japan Framework Agreement, the Intellectual Property Rights Enforcement Agreement with China, and the resolution of our longstanding dispute with Japan on insurance illustrate her skill as a negotiator, enforcer of current trade agreements, and settler of trade disputes.

Because of Ambassador Barshefsky's extraordinary negotiating skills and diplomatic savvy, America's commercial and trade interests have been significantly advanced in markets around the world and American workers have increased prospects for a better economic future because of it.

Another reason I strongly support her nomination is her recognition of the growing importance of developing economies to United States business. Capitalizing on business opportunities in these new markets means increased trade for American companies, which, in turn, mean more jobs for American workers, including my constituents in Illinois and our home town.

I look forward to working with the Ambassador to ensure that these trade opportunities in these markets will not be lost or overlooked. As you know, Ambassador Barshefsky enjoys an international reputation as a tough and tenacious negotiator. Her skills were put to good use last year when—in fact, I talked with her shortly after this happened; she was on her way home from an unusually demanding negotiating session in Beijing—she learned that the President was about to nominate her to be the new trade representative.

Unable to find a television, Ambassador Barshefsky forced her most challenging negotiating position: how to persuade three rowdy airport barflies watching a hockey game to give up their game channel so that she could watch the President's news conference. She succeeded.

This, clearly, was an impressive display of her negotiating skills under tough circumstances.

So I want, therefore, to offer the Ambassador the ultimate challenge of attempting the same thing at O'Hare Airport when the Bulls are playing. [Laughter.]

Away from the rigors of a very highly visible, high-ranking government official and an expert at the bare-knuckle brawling that characterizes trade negotiations, Ambassador Barshefsky is the proud mother of two girls. I just met her daughters and her husband.

In the evenings she routinely spends time with her girls, she talks with them, and I imagine does homework by fax, as we have discovered, we working mothers. But her dedication to family speaks volumes about her priorities and what kind of person she is.

Before joining the administration in 1993, Ambassador Barshefsky worked for 18 years as an international trade lawyer with Steptoe & Johnson, one of Washington's leading law firms.

Her private sector experience and public service as Deputy and Acting USTR have endowed her with this deep understanding of our trade laws and international agreements, and an understanding of the need to increase the exports of American products by eliminating foreign trade barriers.

Mr. Chairman, I will put the remainder of my remarks, with your permission, in the record, but would commend to this committee the nomination of Ambassador Barshefsky, and would congratulate the President for a splendid nomination, and one of which we Illinoisans are especially proud.

[The prepared statement of Senator Moseley-Braun appears in the appendix.]

The CHAIRMAN. Well, thank you for your very insightful remarks. I have to tell you, I did not know what a tough negotiator she was until you presented the evidence.

Phil, it is a pleasure to have you and we look forward to your remarks.

STATEMENT OF HON. PHIL CRANE, A U.S. REPRESENTATIVE FROM ILLINOIS

Congressman CRANE. I am delighted to be here. Thank you so much, Mr. Chairman. Good morning, Senators. The reference was made earlier by the Chairman that Illinoisans were here to speak on behalf of Charlene. And, while Senator Breaux is not an Illinoisan, as soon as Mike Ditka takes over down there he is nearly a convert. [Laughter.]

It is a great privilege to be here today in support of Ambassador Charlene Barshefsky and her nomination for U.S. Trade Representative.

First of all, I would like to point out that if she were living in the same house where she grew up in Chicago, we would be almost neighbors. My district almost touches the northern part of the district where she grew up, although she was a north sider and we were south siders when I grew up in Chicago. Our football team was the Chicago Cardinals and our baseball team was the Chicago White Sox, and we thought the Cubs and the Bears were Wisconsin teams. [Laughter.]

That is all right, Carol.

While I usually encourage people to move to our wonderful State of Illinois, I must say I would rather have Ambassador Barshefsky

here in Washington fighting for Illinois businesses and jobs rather than still living on North Bernard Street in the 5th District.

A great deal has been said this morning about Ambassador Barshefsky's toughness, her tenacity, and her aggressive advocacy on behalf of U.S. interests. I want to take this opportunity to echo those sentiments, and add a few of my own.

I know Ambassador Barshefsky is tough, because the companies in my district have benefitted from her toughness. The 8th District of Illinois, my district, is home to some of the leading high-tech companies in the entire country, and they have gained market share and increased their export sales and hired new workers, in part, due to Ambassador Barshefsky's tenacity.

It is because of her toughness that the cellular phone market in Japan is more open now than ever. It is because of her toughness that China has signed a rigorous agreement protecting intellectual property rights. It is because of her toughness that Motorola, to take just one example from my district, has gained greater access to the Chinese market.

I know she is tenacious because I have seen her in action. Ten months ago, Ambassador Barshefsky started building support among the quad-nations for a landmark Information Technology Agreement. She kept the EU at the table, which proved to be a difficult task. She reached out to Asian nations.

In Singapore last month at the WTO ministerial meeting, I watched her work, literally, around the clock to hold together this alliance and put in place an unprecedented market opening agreement. It is an honor and a pleasure to see her roll up her sleeves, get into the nitty-gritty detail and come out with a superior deal. She does not give up and she does not give in.

I am very hopeful that, under her leadership, USTR will be able to pass fast-track legislation that would permit the negotiation of further market opening initiatives.

It has been a real pleasure to work with Ambassador Barshefsky on these issues and others, in large part, because of her rare ability to reach across party lines and work with members from both sides of the aisle to craft good deals that best serve our companies and our workers.

Good jobs and a strong economy are American goals, not Republican or Democrat goals. Ambassador Barshefsky helps us reach those goals together by putting aside politics and hammering out good policy that opens markets, increases exports, creates jobs, and strengthens the American economy so that we can remain the world's most competitive Nation in the next century, and beyond.

As a result, I know that her nomination has extremely strong bipartisan support in the House and I strongly support her nomination as U.S. Trade Representative, and I urge my colleagues from both the House and the Senate to vote for her confirmation.

Thank you so much for this opportunity.

The CHAIRMAN. Thank you for coming over, Mr. Chairman. It is a pleasure to see you.

At this time I would call forward the Ambassador. Madam Ambassador, it is a pleasure to welcome you here today.

Before we begin, I would like to ask you to introduce the members of your family.

Ambassador BARSHEFSKY. Thank you very much, Mr. Chairman. It is a pleasure to be here today.

May I introduce my husband, Ed Cohen.

The CHAIRMAN. Please rise so everybody can see you.

Ambassador BARSHEFSKY. And our daughters, Mari and Devra.

The CHAIRMAN. A very handsome family.

Ambassador BARSHEFSKY. Thank you.

The CHAIRMAN. Well, Ambassador Barshefsky, you have certainly earned your nomination to be U.S. Trade Representative and I congratulate the President on his wise choice.

As Deputy U.S. Trade Representative, and currently as Acting U.S. Trade Representative, you have compiled a strong record of successful, multilateral, bilateral negotiations aimed at opening foreign markets to U.S. exports. You have also distinguished yourself as a vigorous advocate of U.S. interests at the World Trade Organization.

For example, most recently you concluded what I consider to be a very important insurance agreement with the Japanese. This is something in which I have been very actively interested and which, if fully implemented by Tokyo, will result in substantial new opportunities for U.S. insurance providers.

Similarly, at the WTO's ministerial meeting in Singapore last December you were successful in pushing other nations to conclude a path-breaking agreement on information technology products that, once put into effect, will result in billions of dollars of savings to U.S. companies and consumers.

So I commend your performance. I have to say I think your impressive record of accomplishment reminds me of the good works of another able USTR, Carla Hills. You know, it appears that some of our best USTRs are women.

The strong support you enjoy is underscored by the numerous statements of support that the committee has received from the U.S. business community, as well as members of Congress.

And, while you have achieved much during your tenure at USTR, the task before you is, indeed, formidable. For example, as USTR it will largely fall upon your shoulders to manage trade relations with China, which will, indeed, figure very prominently this year.

We face the problem of a growing trade deficit and rising trade tensions with China. Moreover, the matter of China's MFN status arises at a particularly sensitive time, when Congressional views on this question will be influenced by China's action during the reversion of Hong Kong to the PRC in July.

You will also be responsible for negotiating with China to ensure that it enters the World Trade Organization on commercially viable terms which provide for meaningful market access, and an agreement by China to observe the basic rules of the WTO.

In addition, you will be the administration's point person with respect to renewal of fast-track negotiating authority. You will also carry the primary responsibility to ensure that the trade liberalization initiatives through the Free Trade Area of the Americas, the Asia Pacific Economic Cooperation Forum, and the Transatlantic Marketplace proceed according to schedule.

Since President Clinton nominated you to be USTR, there have been questions surrounding the trade work you did for the Govern-

ment of Canada and the Province of Quebec while practicing law in the private sector.

Specifically, there has been concern whether the work you did may fall within the terms of Section 141 B(3) of the Trade Act of 1974, as amended in 1995 by the Lobbying Disclosure Act.

That provision prohibits the President from appointing any person to serve as Deputy USTR or USTR who has directly represented, aided, or advised a foreign government or a foreign political party in a trade dispute or trade negotiation with the United States.

To address questions surrounding this work, the President has formally asked Congress to enact legislation waiving the law in this instance. As Deputy USTR, you were exempted from the prohibition because you were already serving in that capacity when the law went into effect.

In view of the information you have supplied to the committee, I believe that the extension of this exemption by waiver is appropriate. To this end, I, along with my good friend and colleague, Senator Moynihan, introduced a Joint Resolution last week that will waive the prohibition as it applies to Ambassador Barshefsky.

If the committee decides after the conclusion of this hearing that the nomination of Charlene Barshefsky should be approved on its merits, we will also seek to have the committee report out the waiver legislation.

Now, I know many members have questions that they would like to submit to the Ambassador for written responses. To make sure that the committee receives all the information it has sought, I will not file the nomination with the Senate until the Ambassador has answered completely all written questions submitted to her. However, I would ask that the members submit their questions for the Ambassador to my staff by the close of business today.

I now am pleased to yield to my distinguished Ranking Member.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Mr. Chairman, I could scarcely add to the breadth and succinctness of your remarks. I wish to welcome our nominee, Ambassador Barshefsky.

I would make just one general statement, which I think is worth a moment's reflection. For just about the first time in the 20th century we find ourselves as a nation with no large foreign policy debate taking place, no international crisis that generates that debate, no great war or threat of war in place or anticipated, such that the most important issue in foreign affairs today is that of trade and trade-related matters, such as human rights and other aspects of the regimes with which we do trade.

This is a large and wondrous event. If only Cordell Hall could be here to see it, where this whole process began in the 1930's after the huge mistake of the Smoot-Hawley tariff of 1930. As a consequence of that, we have never yet had, in 67 years, a tariff bill on the Senate floor. We work with fast-track authority very effectively.

There has not been a President since 1936, Republican or Democrat, who has not supported this program and advanced it, with en-

ergy. The good Chairman remembered Ambassador Carla Hills, who was just an exemplar of such an enterprise.

So I would hope, Mr. Chairman, and I am sure the Ambassador will speak to the need to extend fast-track authority in the near future.

I would urge the Chairman to remember that what we are seeking from China is normal trade relations—I think that is the term we now have—but with understandings about the nature of that regime, if it is to enter into the partnership of the World Trade Organization.

Finally, sir, to say, and I am sure I speak for members on our side, that the waiver you mention is wholly in order and I hope will be reported out before we conclude business this morning.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

We will recognize the members for any comments they may care to make in the order in which they arrived this morning.

Senator Rockefeller.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman. I am in the unfortunate position of having to leave at 11:15 because we have General Schwartzkopf testifying over at Veterans on Persian Gulf War illness. This deeply distresses me, because Charlene Barshefsky, I think, is one of the better things to happen to government, and particularly trade, in a long time.

I appreciate what you and Senator Moynihan said. I think you are right about the so-called Dole law, that we should move right on through that. It was never, in fact, even a matter of committee hearings, discussions, report language, anything of that sort. It has no legislative history.

The other thing, of course, are the qualifications of the nominee herself. She is extraordinary. I think, if I have a chance to ask questions, I want to ask her about the telecommunications negotiations, also about the same thing Senator Moynihan did, and that is China's entry into the WTO, under what conditions; and also the whole matter of Japan tending now to seem to want to resolve most trade matters through the WTO, and to avoid bilateral trade negotiations, which is where we have traditionally made a lot of progress with them, although sometimes heated.

But she is absolutely superb and very, very tough. We are very lucky that she is in public service.

The CHAIRMAN. I am going to ask the members to keep their opening comments to three minutes or less, because we have a lot to cover. All we are asking for now is an opening statement. You will have an opportunity to ask questions later.

Senator D'AMATO. Mr. Chairman?

The CHAIRMAN. Yes.

Senator D'AMATO. I would like permission to submit my statement in its entirety. I have had an opportunity now for a period of time, as has our distinguished Ranking Member and my colleague, the senior Senator from New York, to work with the designee, Ms. Barshefsky.

I have to tell you, I think she is one of the most uniquely qualified, one of the most industrious, one of the most candid. I want to really simply say that, over the history of time in being here and working on these trade issues, there is no one who has really matched her stewardship and her tenacity in trying to find ways to deal with real problems instead of saying, these are barriers and we cannot get over this, Senator, and this is the problem, that is the problem. So I think she will be a great trade representative for all of the people of this country and represent our interests.

The CHAIRMAN. We will try to take people in the order in which they arrived. Again, we ask everybody to be very brief in their opening comments because we will give you a later chance to ask questions.

Mr. Conrad.

Senator MOYNIHAN. Senator Conrad had to leave, but if I could give an early report from the exit polls, he has left his proxy, aye.

The CHAIRMAN. I think the next person is Senator Chafee.

Senator CHAFEE. I will waive. I would like to get on to the questions.

The CHAIRMAN. All right. Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you very much, Mr. Chairman. Ms. Barshefsky, I think I can speak for everyone in enthusiastically supporting the waiver. I mean, there is no reason why you should not be our next full-time USTR.

I would like to also commend you for just your aggressive pursuit of American trade policy, and in particular thank you for your efforts, along with Ambassador Kantor, with the deluge of Canadian grain that came down a couple of years ago. You worked very hard, along with the former USTR, in helping stem that tide. We very much appreciate that.

With respect to agriculture, when you and I spoke you mentioned working more closely with the USDA in setting up some kind of a program where the two agencies are coordinating agriculture and trade policy much more closely, and I commend you for that. I think that is a great idea and I would be interested, over the course of the next several months, in the progress of those efforts.

I might also say, as I am sure most Americans who have thought about these issues conclude, that probably our greatest trade question, if not problem, is going to be with China. It is a vexing matter. China is so large, growing so rapidly, their culture is so different from ours.

I just urge you, as I know you will, to exercise every ounce of effort to not only with the USTR figure out how to approach China, but also persuade others in the administration, the State Department, Department of Defense, NSE, the President's Chief of Staff, to take a very realistic view towards China.

My concern is that the administration might be a little Polyannish, it might be a little too naive with respect to China. It might assume that, well, we'll just basically let China accede to be a member of the WTO and things will work out. I'm not so sure that is a valid assumption or conclusion, frankly, and I would like

your thoughts on that, both today and certainly we will be talking about that at a later date.

Thank you.

The CHAIRMAN. Senator Gramm.

OPENING STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM TEXAS

Senator GRAMM. Mr. Chairman, I want to make one point in case I am not here for later questions. I think we ought to look at this prohibition as USTR of people who have ever represented a foreign interest.

I think that takes a naive approach that anybody who has ever worked for any foreign interest is somehow tainted. Quite frankly, I hope we have people as potential holders of these positions that are qualified enough that people all over the world would want their services. So, I intend to support this waiver.

But I think, probably, we need to review this prohibition and back away from this mentality that set in in the country a couple of years ago that, even though we are in a free trade agreement with Canada and Mexico, even though we are expanding trade all over the world, that if anybody has ever represented the interests of anybody in any of these other countries, that somehow they are less American or otherwise tainted.

I think that whole thing needs to be looked at, and I think we most likely ought to throw that out. If anybody comes along that is even a marginal case of previous experience, this waiver is going to end up denying them this position. So I think we ought to consider that result, and I would just throw that prohibition out.

The CHAIRMAN. Well, I would say to my good friend that I have some of the same concerns. That is the problem, I think, of adding such proposals at midnight. But I think it is something that deserves investigation.

Senator HATCH.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Let me say ditto to that. I support your nomination. I will be very short. I support your nomination. I know that you are loyal to this country. I am satisfied with regard to that. I think it is ridiculous to put you through a waiver, but I am going to support the waiver as well.

With regard to your qualifications, in all the time I have been here, I cannot recall a USTR nominee who has enjoyed such widespread, diverse, bipartisan and public support for this position. So I just want to commend you for that and wish you the best in this position.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Grassley, the Chairman of the Subcommittee on Trade.

Senator GRASSLEY. I am going to pass.

The CHAIRMAN. Senator D'Amato outflanked me.

Senator Kerrey.

OPENING STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM NEBRASKA

Senator KERREY. Mr. Chairman, I will be leaving as well. I am strongly in support of the nominee, and I appreciate the chance to make a brief statement. I voted for NAFTA, I voted for GATT, I support fast-track, but I am very much aware that trade has become a dirty word for working people who see it as a deal to put downward pressure on their wages.

They read the Chairman of the Federal Reserve's comment in the paper this morning saying that the job insecurity is good for inflation. I mean, these kinds of things create suspicions. I just think that we need to be very much alert that trade, all by itself, is not going to get the job done.

I look forward to supporting efforts to reduce trade barriers, because I think, long-term, it will enable us to raise our standard of living. But there is an awful lot of follow-through, much of which has to be done outside of your control. But I think we need to be very alert to the fact that, for an awful lot of Americans today, the promise of trade has not been fulfilled.

The CHAIRMAN. Senator Murkowski.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I, too, intend to support the nominee. We had a meeting the other day which I found to be most fruitful, and I am absolutely convinced that the nominee has the qualifications based on her past record to address some of the major trade issues such as negotiations with China and Taiwan on WTO accession, among other things.

But I am also convinced that the nominee will address some of the smaller issues relative to trade inequities, such as the protectionist ban on some types of fur imports, which are very important to the northern States.

The failure of Japan to open up its public works construction market is another inequitable situation. I have labored in the vineyard with some frustration on this issue. You cannot get a license unless you have experience and you cannot have experience unless you get a license, and on, and on, and on. The trade agreement with Viet Nam is another important issue and needs fostering now.

Another issue is the injustice that was done by the Canadian Government when they leveled a fee for transit of fishing boats from Puget Sound in the State of Washington to Alaska. Our government repaid our fisherman, but our government has never been reimbursed by the Canadian government for some $284,000 that was collected.

These are some of the issues of a smaller nature that the nominee has indicated her willingness to get out there and address, and I certainly feel gratified that she is willing to give these her attention as well. So I look forward to supporting the nomination, Mr. Chairman, and wish the nominee a very good day.

The CHAIRMAN. As a preliminary matter, I will now swear in the nominee. Will you please rise?

[Whereupon, Ambassador Barshefsky was duly sworn.]

The CHAIRMAN. Please be seated.

Do you have a statement you would care to make at this time?

STATEMENT OF HON. CHARLENE BARSHEFSKY, NOMINEE FOR THE POSITION OF U.S. TRADE REPRESENTATIVE

Ambassador BARSHEFSKY. I do, Mr. Chairman. As you know, I have filed a complete statement for the record, as well as a detailed questionnaire response to the committee's questions. Those, of course, are in the record. If I might make, though, a brief oral statement.

Let me thank you, Mr. Chairman, and the members of the committee, for your extraordinarily kind words and your support for this nomination. This obviously means a great deal to me. It is very, very gratifying to know that, indeed, trade is not a party line issue, but crosses parties and ideologies all for the benefit of U.S. workers and U.S. jobs.

I would also like to thank, Mr. Chairman, the committee staff, who have been extraordinarily gracious and hardworking throughout this period. Nearly four years ago when the committee considered my nomination to be Deputy USTR, I told you how much I appreciated the privilege to serve that the President had offered me.

But I would not have been in the job, except that this committee and the Senate confirmed my nomination.

The past 4 years have been extraordinarily challenging and fulfilling, if not difficult. As I come before the committee again, I hope that I can justify your continued confidence in me. Rest assured, I intend to continue to work closely with the committee and to continue the kinds of close consultations we have had on so many issues ranging, of course, from Japan, to high technology, to Canada and other matters.

Let me also, if I may, acknowledge and thank my friend, Ambassador Mickey Kantor, for his leadership, his tenacity, and his skill as USTR, and of course at the Commerce Department. I believe that his accomplishments, particularly as USTR, are unparalleled and I am well aware of the footsteps that I am following.

Mr. Chairman, within weeks of coming into office President Clinton made clear his view that open and competitive commerce enriched us as a Nation, and that we would compete and not retreat behind walls.

But he also said that, while we welcome the products, services and investment from other countries, we expected that our trading partners would give our products, our services, and our investment comparable access to their markets.

We committed to open foreign markets multilaterally, regionally, and bilaterally. Because our market was generally very open, every time we broke down another barrier we moved closer to the level playing field that our companies, our workers, and our farmers have come to expect.

We sought a system in which every nation played by the same trade rules. The commitment to market opening is what has connected all of our efforts, whether the Uruguay Round or the NAFTA, our bilateral efforts with Japan, China, or a host of other nations, and our regional efforts within APEC and the FTAA.

Because this is a common sense strategy reflecting many of the principles that animated the 1988 Trade Act and reflecting many

of the principles that have long animated bipartisan support for trade policy, we have pursued it. None of the accomplishments of the past 4 years could have occurred without this kind of bipartisan support.

We put our efforts at market opening at precisely the time when our companies, workers, and farmers were at their most competitive. The results have been clear. Our domestic economy is far stronger than it was, and increased exports to increasingly open markets have played an important part in that strength.

In just 4 years, our exports of manufactured products have increased 42 percent, high technology products, 46 percent, services, 26 percent. Our exports are at record levels, our agricultural exports are at record levels. In the past 4 years, fully one-fifth of our domestic economic growth came from exports.

I think we have had significant accomplishments these past 4 years, which the committee and the administration should rightly be proud of. We completed the Uruguay Round, cutting tariffs worldwide by more than one-third, and extending international trade rules to agriculture, services, investment, and intellectual property.

The administration succeeded in winning passage of the NAFTA with strong bipartisan support. Despite the Mexican financial crisis, our goods exports to Mexico are now at record levels: $56 billion this year, $6 billion higher than in any year in our history.

It is also clear that the NAFTA helped to stabilize Mexico through its worst financial crisis in modern history, while keeping Mexico's markets open to our exports.

From the early months of the administration we have worked to open further the Japanese market and to address the imbalance of trade that has plagued this country for 30 years.

In this regard, Mr. Chairman, we built upon key efforts of earlier administrations. You mentioned Carla Hills a moment ago. She was one of the first people I sought out when I became deputy, precisely because of her expertise with respect to Japan, and also China.

Japan policy has been an iterative process over three decades, bipartisan in its successes, and certainly bipartisan in its frustrations.

Since 1993, we have negotiated 24 market access agreements with Japan. Our exports are up at record levels—43 percent in 4 years—growing at a rate five times as fast as imports from Japan.

But, Mr. Chairman, there is much work to be done. We have sustained this effort from the start to what I would call a mid-term finish and we will continue to persist along with the committee.

We have led the world in setting tougher standards for trade with China. We have battled for market access. It is, as the committee knows, very, very difficult. We have negotiated landmark agreements to combat piracy and advance the interests of our software and other copyright industries, as well as to extend the rule of law in China.

We have also recognized that our trading interests go well beyond our traditional partners of the EU and Japan. For this reason, we have forged consensus among APEC countries and have forged the concept of the Free Trade Area of the Americas.

We have not hesitated to push the envelope of the trade agenda to ask that new issues be made a part of it. We have taken the lead in trying to combat bribery and corruption in government procurement around the world.

This is one of the most, if not the most, pernicious trade barriers that our companies face. In recent months we have made some progress in the OECD and in the WTO, but, here again, there is much work to be done.

On trade and labor rights in Singapore, we gained international recognition of the importance of core labor standards, the right to organize, the right to bargain collectively, prohibitions against child and forced labor, and the role of cooperation between the WTO and the ILO. The U.S. has pursued the international recognition of core labor standards since the Eisenhower Administration.

We have also taken the lead in the WTO to ensure that government policies and environmental policies remain mutually supportive. Our leadership in the FTAA process, as well as in other multilateral processes, have focused on sustainable development initiatives, ensuring that economic growth does not come at the expense of environmental protection or, indeed, core labor standards.

I know that not all of our initiatives encounter total international support, and certainly even within our own country there is not necessarily universal acclaim. But it was not too long ago that most of the world objected to the idea of the inclusion of intellectual property rights or trade in services as matters for discussion.

Putting ideology aside on these issues, as a political matter, we maximize support for open trade by constantly making it clear that we will seek ways to address the full range of concerns that people have about the impact of trade on their lives and on their livelihoods.

Of course, Mr. Chairman, we have also focused on the enforcement of our trade laws and existing agreements which are so crucial to our ability to get good agreements abroad and to sustain credibility at home. We have brought some 45 enforcement actions in the last 4 years.

Before describing, very briefly, the agenda that I see for the next 4 years, may I just take a moment to touch on the importance of trade in the post-Cold War economy. In my view, as military alliances shaped the content of global relationships in the 20th century, the end of the Cold War means that trade alliances will play an increasing role in defining relationships among nations in the coming years.

In the next 4 years, the United States must continue, in a proactive and dynamic way, actively to position itself at the center of a constellation of trade relationships, whether the WTO, the FTAA, or APEC, pursuing opportunities to expand trade on a reciprocal basis.This is the path to a stronger economy, to sustained domestic prosperity, and to stability.

To the extent our trade relationships are strong and expanding, our ability to expand our influence abroad and advocate the core values of democracy, the rule of law, and human rights will be enhanced. But, at the same time, success cannot be taken for granted.

The EU is seeking trade agreements with key Latin American and Asian economies. China has targeted Mexico, Brazil, Argen-

tina, Chile, and Venezuela as strategic partners. Without our own strategic vision of trade, we will simply cede opportunities to other nations.

In the next 4 years we will (1) continue to advance our interests in the WTO; (2) move forward on a regional and bilateral basis, with agreements that further open international markets; (3) continue to be vigilant and aggressive in our insistence that our trade partners live up to the agreements they make with us.

Let me take each of these in turn for just another moment. First, are multilateral opportunities. The first order of priority is to finish the Information Technology Agreement, the ITA. We are working on product staging and final coverage issues in Geneva. We are confident the agreement will move forward. It will amount to an annual $5 billion tax cut for U.S. companies exporting abroad.

Second, the deadline for conclusion of our basic Telecom Services Agreement is February 15th. I walked away from an agreement in April because it was not any good. It did not provide to the U.S. the kind of market access we should expect, given the size and already relative openness of our market.

We have seen offers from our trading partners improve substantially since last April, but I am still not satisfied. I cannot tell you right now if the agreement will come to fruition. We hope that it will. But we must see substantial market access in foreign countries in order to bind open our market further.

Next, the built-in agenda of the WTO. We are looking at the start of agriculture negotiations in 1999, and global services negotiations in the year 2000. These are priority areas for us. There are a variety of bilateral issues we would like to clean up and get off the table in advance of the start of those negotiations so that we can use those negotiations to make further market access progress, not simply regain what we thought we had gotten in the Uruguay Round.

As to expanding WTO membership, the administration believes that it is in our interests that China become a member of the WTO. But we have been steadfast in insisting that China's accession will occur only on commercially meaningful terms.

This is not a political accession. The WTO is a commercial institution and we expect commercial commitments. This is true of the 124 member nations and economies of the WTO, it will be no less true of China or any other country that wishes to accede.

With respect to Russia, whose accession is also pending, we have the same view. It is important that Russia be a member of the WTO to enhance its own market openness and to increase stability in Russia. But, again, we expect substantial commercial commitments for that membership.

Our second area of concentration in the next four years will be on regional and bilateral initiatives to advance our efforts to strengthen our economy. Our first order of business, as you know, is Chile's accession to the NAFTA, which has been the subject of promises by three successive administrations. It is time that we fulfill the commitment.

We have important progress to be made in APEC and to be made in the FTAA. These are very high priorities for our market access concerns. With respect to these countries and regions, it is critical

that we be in a position to negotiate comprehensive market opening agreements.

With Europe, our focus will remain on non-tariff barriers, which tend to be the largest impediments to our trade. With respect to Africa, Mr. Chairman, it is vitally critical that, in order to alleviate extraordinary poverty and suffering in that region and in order to create stability and economic reform, we engage more fully with the African countries.

Our third priority, of course, will be to continue an aggressive bilateral agenda: e.g., Japan, China, Canada, Korea, Brazil, Argentina, Russia. There are a number of countries as to which our progress tends to be measured in terms of bilateral market opening agreements.

We will be particularly vigilant on Japan questions, Mr. Chairman, especially in light of the fact that we see some disturbing trends in the trade figures over the last two or three months, suggesting perhaps a return to some increase in the trade deficit with Japan.

Last, Mr. Chairman, is the question of negotiating authority. The President believes that negotiating authority is a key tool for advancing our Nation's economic interests.

To be sure, much of our trade agenda can go on as it has without that authority. But there is no doubt that our ability to negotiate comprehensive regional or bilateral market opening agreements must depend on appropriate terms for fast-track negotiating authority.

If confirmed, I am prepared to work with this committee, its House counterpart, and other interested members of Congress to fashion an appropriate grant of negotiating authority. It is critical that the authority reflect broad bipartisan consensus. There is simply no other way to do it other than that. This will be difficult, but we recognize the importance of this authority.

If the United States cannot negotiate comprehensive agreements with countries, we will remain on the sidelines while other nations move ahead, as they already have, to create new economic alliances and advance their own economic interests, often to the detriment of the United States in terms of our leadership and in terms of our continued domestic prosperity.

May I say, Mr. Chairman, that it is a great honor to serve at USTR, which has, without question, the most dedicated career staff of any agency in the Federal Government. It is a particular pleasure to work with you and with members of the committee. I relish the challenges of this job, and the battles. You pretty much have to, to do what negotiators do. I am acutely aware, though, that there are no final victories in the trade area. The hard work of the past 4 years simply gives us, and me, the opportunity to do the hard work of the next four.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

We will now proceed with the questions. First, let me say I have, on behalf of the Majority Leader, three questions that he wished to ask you: one dealing with textile transshipments, one dealing with Japan, and one dealing with telecommunications. So we would ask you to answer those in writing.

[The questions and answers appear in the appendix.]

The CHAIRMAN. I will now turn to the standard questions we ask of all nominees who come before the Finance Committee.

First, is there anything you are aware of in your background that might present a conflict of interest for the duties of the office to which you have been nominated?

Ambassador BARSHEFSKY. No.

The CHAIRMAN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities to the office for which you have been nominated?

Ambassador BARSHEFSKY. No.

The CHAIRMAN. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Ambassador BARSHEFSKY. Yes, of course.

The CHAIRMAN. Now, before proceeding to additional questions, I would like to make a few comments on your written statement. I read your statement, and I have to be candid with you. I do take issue with your assessment that our trade policy towards Japan in the 1980's was "the major U.S. failure in trade." To read your statement, one would think that only the Clinton Administration was successful in achieving increased market access in Japan for U.S. exports, and with that I strongly disagree.

I believe that in the Reagan and the Bush Administration, U.S. trade negotiators made significant progress in tackling Japanese trade barriers to U.S. exports. In fact, the Clinton Administration's effort to improve U.S. access in Japan builds on, and has benefitted from, the important work done in this area by the Reagan and Bush Administrations.

Let me give you an example. The Clinton Administration regularly cites last year's extension of the semiconductor agreement as an example of improved market access in Japan. Of course, that very successful agreement was first negotiated by the Reagan Administration in 1986, and extended by the Bush Administration in 1991.

Now, I know it is tempting for an administration to think that the one before it did not do a good job. I hope you will not give into that temptation on trade over the next 4 years.

In your statement you note that the cornerstone of a successful U.S. trade policy is, indeed, a bipartisan approach. With that I strongly agree, and hope that we can dispense with partisan statements such as the one I have identified on Japan.

Now, let me turn to you on some other questions. As you know, the committee is obligated to consider the requirements of Section 21 of the Lobbying Disclosure Act of 1995, which places certain restrictions on persons who may be appointed to serve as U.S. trade representatives.

I would appreciate your stating for the record whether you have represented a foreign government before your appointment as Deputy USTR in May 1993, and if so, please describe for the committee the nature of that representation.

Ambassador BARSHEFSKY. Thank you, Mr. Chairman. May I say, first, with respect to your comment on my written statement, that

certainly it was not in any respect intended to smack of partisanship. The statement may have been inartfully drafted, and for that I will take responsibility. The intent of it merely was to indicate——

Senator MOYNIHAN. Ambassador, did you mean that mistakes were made? [Laughter.]

Ambassador BARSHEFSKY. The intent was simply to indicate the massive nature of the problem with Japan. Of course, I am acutely aware that we had a Democratic Congress in the 1980's, in addition, of course to——

The CHAIRMAN. Not totally, but go ahead.

Ambassador BARSHEFSKY. Not totally. But let me say that, in addition, of course, to seeking out prior USTRs when I became deputy, I spent considerable time with the person who had been deputy before me, Mr. Lynn Williams, who had done such an extraordinary job with respect to Japan negotiations.

So this was not intended in any way to be a partisan statement. Your leadership, and that of the committee on Japan issues, has always been of a bipartisan nature, and that is certainly something that I intend to continue.

With respect, Mr. Chairman, to your question, in 1993 when I was confirmed, all of my representations were disclosed to the committee, as well as their nature and extent. In response, of course, to the committee's questionnaire this time, I have provided more specific information with respect to my representation of foreign governments, and if I may, I will summarize the salient points of that response here for you today.

Before becoming deputy USTR in May of 1993, I worked for 18 years as a lawyer in the Washington law firm of Steptoe & Johnson. The vast majority of my work during those 18 years was in the international trade area, particularly trade litigation.

My representation of foreign governments or foreign political parties was limited to Canada, that is, the Government of Quebec and the Embassy of Canada. At no time during the 18 years that I was in private practice did I ever lobby on behalf of any foreign government or foreign entity before the U.S. Government.

With respect to the Government of Quebec, my work involved providing guidance and legal drafting assistance to the Steptoe & Johnson lawyers responsible for the client in connection with on-the-record trade litigation in two trade cases, one involving Canadian pork, and the other involving Canadian beer.

I did not meet with any U.S. Government officials or appear on behalf of Quebec in any proceeding, nor did my name appear on any of the briefs or submissions in any of the proceedings. Indeed, when the lawyer whose client this was left the law firm, both of these matters went with him.

With respect to the Embassy of Canada, my former law firm and I were retained by the Embassy to monitor routine developments in the United States concerning a broad range of substantive areas, including international trade. We routinely reviewed developments in the international trade area, which included administrative, legislative, and judicial actions on issues of relevance.

In the context of the monitoring contract, the Embassy asked for advice on two particular trade matters of interest to the committee.

First, I directed the preparation of memoranda on the options and legal consequences if Canada were to terminate its settlement agreement with the United States involving softwood lumber, as well as the implications on possible future trade litigation.

I did not recommend in these memoranda to the Embassy what course of action Canada should take with respect to the lumber matter. At the time that this work was directed, the settlement agreement between the U.S. and Canada was in force. There was no pending trade litigation and no pending trade negotiations between the United States and Canada on softwood lumber.

My work on the settlement agreement ended several months before the countervailing duty litigation on softwood lumber from Canada began. I represented private Canadian lumber interests in that litigation, not the Government of Canada or the Embassy.

Second, I reviewed certain draft composite texts prepared by the chairmen of two GATT working groups, one on antidumping and one on countervailing duty law, for circulation to all of the approximately 117 countries that participated in the Uruguay Round of multilateral trade negotiations.

The chairmen's drafts that I commented on were prepared by the GATT chairmen as an attempt to reflect the consensus of GATT members. They were not U.S. texts.

My review of these drafts involved comparative legal analyses of the chairmen's drafts with past GATT provisions, prior GATT practice, prior chairmen's drafts, and U.S. laws, and an evaluation of the potential impact of these and alternative texts on U.S. laws.

I would say here, again, these were not U.S. texts. Of course, as the committee is well aware, domestic jurisdiction over U.S. antidumping and countervailing duty laws resides with the Commerce Department, not with the Office of the U.S. Trade Representative.

With respect to the Quebec, lumber, and MTN matters, the total time spent by me represented approximately eight-tenths of 1 percent of my legal practice.

Thank you, Mr. Chairman.

The CHAIRMAN. I note that your current recusal letter has been amended since you last submitted a recusal letter during your confirmation by the Senate for Deputy USTR in May 1993.

For the record, would you please explain these changes from your prior recusal letter.

Ambassador BARSHEFSKY. Yes, sir. As you know, Mr. Chairman I am legally required to recuse myself only from matters in which I, or a member of my family, have a financial interest. I undertook much, much broader recusal obligations in 1993 in order to distance myself from the legal practice that I was just leaving. This was to avoid even any appearance of a conflict.

My broad recusal as to NAFTA and Canada also reflected the reality of my portfolio. I was not the deputy for these issues, focusing instead, as you know, on Asia.

Given that my initial recusals were much broader than required and given the passage of nearly 4 years, far more than the 1-year cooling off period most commonly used, a change in my recusal obligations is entirely appropriate.

Both the USTR ethics officer and the Office of Government Ethics have reviewed my situation and concur with this analysis, and

that I am in full compliance with all applicable laws and regulations governing conflicts of interest. Each also agrees that even the change in my portfolio as Acting USTR necessitated a formal change in the recusal.

My current recusal letter does, however, maintain my commitment to continue to recuse myself from matters involving specific parties in which I served as counsel while in private practice, unless I am otherwise authorized to participate in the matter by our ethics officer and the Office of Government Ethics. In that connection, of course, should that situation arise, I would be happy also to consult with the committee first off.

As I have stated from the outset, I am committed to the very highest standards of ethical conduct for government officials and I believe my recusal obligations, both in 1993 and now, reflect the commitment to adhere strictly to all applicable laws and regulations.

The CHAIRMAN. I think you already answered my next question, but for purposes of the record, at any time in your 18 years of private practice did you ever lobby the U.S. Government on behalf of any foreign government or foreign political party?

Ambassador BARSHEFSKY. No.

The CHAIRMAN. What will the administration do with respect to China's MFN status this year; specifically, will the administration merely seek a 1-year extension of that status or will it seek permanent MFN? May I correct that. I should have said normal trade relations. My colleague corrects me.

Ambassador BARSHEFSKY. Mr. Chairman, the issue that you have raised is one that the administration is beginning to discuss now, and one on which we would wish to consult with the committee. I think that it is, in all likelihood, premature to seek permanent MFN status for China, inasmuch as we are in the process now of negotiating with China for WTO accession.

I believe strongly the United States should not take any action to disincentivize China from making the kinds of market access commitments with respect to WTO accession that permanent MFN might provide.

On the other hand, the administration is looking at the question of this yearly/annual debate which, as you know, is corrosive of the relationship in the longer term. This is a matter that we need to give some considerable thought to, and we would wish to work with you and members of the committee on it.

The CHAIRMAN. You have partially anticipated my next question. Do you think China will gain entry into the WTO this year? I certainly agree with your earlier comments, as I said in my opening remark that it is on a commercial basis.

Ambassador BARSHEFSKY. Yes.

The CHAIRMAN. It is not a political event. I also think it is important that we push ahead as expeditiously and rapidly as possible.

Ambassador BARSHEFSKY. Mr. Chairman, I appreciate the position you have taken on this WTO question. The question of timing of China's accession really depends largely on China. We have indicated to the Chinese that we would view very positively their WTO accession from the point of view of U.S. long-term interests, China's interests, and of course the interests of the world community. This

is particularly true to the extent the WTO can be used as a foundation stone for the building of a rule of law in China.

But, as you have noted in your statement, we have also said to China that the WTO is not a political institution, it is a commercial organization. All members make substantial market access and rules-based commitments, and China can be no exception.

China's offers thus far have been largely inadequate with respect to market access for goods, services, and agriculture, as well as with respect to adherence to the rules. But China has, over the past year, revised its offers several times. We understand China is again in the process of revising, further, its offers. I have a team now in China meeting with the Chinese on this very issue.

We would hope that China would recognize its obligations with respect to WTO accession, and that is to provide substantial market access. We wish to work with China to ensure that its accession can happen in a commercially meaningful and expeditious manner.

The CHAIRMAN. Let me, next, turn to fast-track negotiating authority. You did mention that you intended to proceed with that. How high a priority, a question, is that? Will you attempt to link trade to the environment and labor, are you going to ask for broad, long-term authority, or narrow, short-term authority?

Ambassador BARSHEFSKY. Mr. Chairman, the administration is looking at the question of what type of authority: its breadth, its duration, and so on. We would like to work with the committee because we would like to see if we can achieve some preliminary consensus on the critical elements for a bill.

It is clearly very important that the United States be able to negotiate comprehensive agreements. Yes, certainly we can continue, and will continue, to negotiate bilateral, sectoral accords. But in some countries this is like taking an ice pick to Everest.

We need the authority for very, very broad agreements that cut across sectors, that allow us to achieve overall tariff reduction and overall non-tariff barrier reduction in foreign countries. This is as true for Latin America as it is for Asia.

The bounds, therefore, of fast-track authority, we would hope, should be broad to allow the U.S. to have the flexibility to advance its interests and to seize opportunities as they arise.

With respect to the scope of the authority and the particulars, we obviously want to work with the committee to achieve bipartisan consensus so that we can move forward.

The CHAIRMAN. My final question this round is, to the best of your knowledge, were you or anyone else at the USTR office involved in raising funds from any foreign national or foreign corporation as contributions to a political party or a political campaign?

Senator MOYNIHAN. Mr. Chairman, may I amend that statement to say, and if not, why not? [Laughter.]

Ambassador BARSHEFSKY. Mr. Chairman, the answer as to me is unequivocally, no. The answer as to anyone else at USTR would be, no, to the best of my knowledge.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Ambassador, two things. First, is to say, quite seriously, I think a unanimous Finance Committee is going to propose that the term Most Favored Nation is confusing and is

archaic, and that what we intend by the term is normal trade relations. Would you agree, and could we hope that we would find that term enter your usage, even if we don't require it by ukase?

Ambassador BARSHEFSKY. Senator, I think the change that you are proposing is a very sensible one. The public perception is that Most Favored Nation status means preferential treatment relative to other trading partners when, in fact, it means the same treatment as other trading partners.

Senator MOYNIHAN. And the most favored nation is some other country altogether.

Ambassador BARSHEFSKY. Correct. That is absolutely correct. I was here when you went through the history of the "Most Favored Nation" terminology, which I found very interesting. It is easy to see how the public might misperceive its meaning because of the way it sounds. Why not? But what we are, in fact, talking about is achieving normal trading relations with a variety of countries, and I think this is the terminology that ought to be used.

Senator MOYNIHAN. Thank you. I have a question of just general interest, which is that we saw the WTO recently make a ruling which I hope is understood by our neighbors in Canada that says that the Canadians could not refuse circulation to American magazines—I guess in this case it was *Sports Illustrated*, and perhaps *Time*—in which they arranged for Canadian advertisement, but with an American-produced text, as an issue of cultural integrity.

This is an issue which one can understand perfectly from the Canadian point of view, and from other points of view, but it was not a fair trade practice. The WTO did rule on behalf of the United States. It was our complaint, was it not? So you won one.

Ambassador BARSHEFSKY. It was our complaint. The ruling that has come out is a preliminary ruling, but we would not expect the final ruling to be any different. Of course, we have no objection to the promotion by Canada or other countries of national identity through cultural development, but we do object to the use of culture as an excuse to take commercial advantage of the United States, or as an excuse to evict U.S. companies from the Canadian market. The case with respect to split-run magazine editions is an example, where Canada was using a cultural excuse to erect a commercial trade barrier. We took that issue to the WTO and we won.

Senator MOYNIHAN. Good for you. Could I ask, do you think that this might lead to an effort to dismantle some of the French and Italian restrictions on American motion pictures, and other such things?

Ambassador BARSHEFSKY. We have, in fact, pursued French and Italian restrictions—indeed, Turkish restrictions—on American motion pictures, with respect, for example, to such things as discriminatory box office taxes and the like. We have cases that are now in the WTO consultative stage and we are quite confident of their merit.

Senator MOYNIHAN. And you have a precedent, do you not?

Ambassador BARSHEFSKY. Yes, we do, indeed. We do, indeed.

Senator MOYNIHAN. Well, good for you. Without in any way saying that smaller countries and nearer bigger countries do not have a legitimate reason to want to protect what they can think of as

their culture, but to use that for some other purpose is a different thing altogether. Congratulations, and well done.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

We will limit questions to 5 minutes the first round. Next in line is Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman. Thank the Ambassador for her testimony. I was delighted to hear Senator Phil Gramm's comment earlier on about his concern about our being too sensitive perhaps to people selected to do these jobs by their previous employment.

I think that if we do not use reasonable standards and common sense we are going to end up nominating people who are as pure as the driven snow, but as inexperienced as a kindergarten student. So I think we ought to look at this and the total, big picture. I think we ought to move towards repealing the prohibition that we have gotten mixed up with.

I think we want people who know the business and know the job and know what they are doing and who have been around, not people who have never done anything in the business we are asking them to run, which is negotiate as the Special Trade Representative of the U.S. Government.

So, naturally, there will be people who are very qualified who are loyal and true Americans that should be able to handle these jobs, even though they were involved with foreign governments as clients in the private sector previously. I am glad to have that experience, quite frankly.

I would like you to comment on this. I am getting more and more concerned that when our negotiators go out and negotiate agreements around the world and we enter into elaborate negotiations and compromises, and other countries, in fact, give up some of their positions in order to get an agreement with the United States, then we do not even take up those agreements in the United States Senate. I can think of three right now: the Chemical Weapons Agreement, the Tuna/Dolphin Agreement, and the OECD shipbuilding agreement.

All of those agreements were negotiated by this country with the full faith and credit of the United States supporting our negotiators, and none of those three completed and signed agreements even saw the light of day in the Senate.

Now, how does that affect you as a negotiator? I mean, it has got to be very difficult when you go out and say, well, we want you to sign on the dotted line. Do they ever bring up the fact that, so what, the United States Senate is not even going to take it up?

Ambassador BARSHEFSKY. Senator, you have put your finger on something that is becoming an increasing problem for us. That is, the ultimate inability of the United States to implement the commitments it makes internationally.

If we look at the shipbuilding situation, we see an agreement that did the two things we most needed to do. It restricted dumping practices and made them actionable on an international basis with respect to commercial shipping, and it would have eliminated subsidies, international subsidies, with respect to commercial shipbuilding.

Now, our shipbuilders have one-half of 1 percent of the world's market in commercial ships. One of the reasons is that, while we do provide some modest subsidies to our shipyards, the subsidies provided by Europe, Japan, and Korea to their shipyards is in the tens of billions relative to our hundreds of millions. Indeed, less than one hundred million in most recent years. We simply cannot compete against subsidies of that size.

So the agreement negotiated achieved these two important goals, one on dumping and one ending subsidization. Ultimately, implementing legislation was amended in the House in such a way as to make it incompatible with what was negotiated. We would hope to work with the committee to refashion implementing legislation so that we can put into place this very important agreement.

Likewise, on the tuna/dolphin issue, we had negotiated agreements internationally called the Panama Declaration with respect to dolphin safety, and had hoped to see that pass the Congress. This would have been a legislative change to our Marine Mammal Protection Act in order to implement the Panama Declaration. That legislation was stymied.

The administration would very much like to go forward with it again because it is a terribly important piece of environmental legislation, as exemplified by the range of environmental groups that supported its passage. I cannot speak as knowledgeably about the chemical weapons situation, except to say that the situation presented is as in these other two cases.

To the extent we negotiate these very important agreements and then cannot implement them because of a lack of legislative authority, our credibility for the further negotiation of agreements of this type is severely hindered.

Senator BREAUX. I thank you. Can you make a brief comment on the WTO telecommunications negotiations with regard to two points, both market access and also safeguards that may be necessary for our companies when foreign monopolies may distort the U.S. market with cross subsidies.

Ambassador BARSHEFSKY. Right.

Senator BREAUX. When they come over here they have a lot of choices of service providers to deal with, when we try and go over there to some countries, like France, there is basically only one company. So it is not a level playing field, as far as market access.

Do you have any comments on that?

Ambassador BARSHEFSKY. Sure. With respect to the telecom talks, one of the reasons that I refused to enter into the telecom agreements last April was that, if we looked at global telecom revenue, we saw that market access offers from our trading partners would, along with our offer, have covered a little less than 60 percent of global telecom revenue. Now, we were half of that 60 percent, so near as I could tell we weren't really getting too much out of the deal as it stood last April.

We have been working very, very hard these past nine months to improve the market access offers by our trading partners. And by market access I mean access including the right to control telecom companies abroad, that is, greater than 51 percent investment allowed in telecom companies abroad, as well as a variety of other features.

We have made some very significant progress. Our global telecom revenue coverage now stands in the high 70 percent range. That is still too low, but I think it will increase yet further in these closing weeks and we will make an assessment at that point, along with the committee, as to sufficiency.

With respect to safeguards, of course, the FCC employs a public interest test with respect to the ability of foreign telecom services providers to enter into arrangements with our companies here. That public interest test will remain the standard used.

The one change required, not by the telecom negotiation but by the over-arching GATS agreement, is that nationality would no longer be a legitimate factor to look at when determining the public interest. All other public interest factors, such as effect on competition in the U.S., national security, public safety—there is a range of other factors—will all continue to be utilized by the FCC.

Senator BREAUX. Thank you.

The CHAIRMAN. Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman, and thank the Ranking Member as well for having this important hearing today. I especially want to salute our Trade Representative I think you have done an outstanding job. Every time I listen to you I am proud that you are representing our country, because I think you are very clear, very direct, and very forceful and that is precisely what is needed in this position.

I would like to ask you about a matter that you are familiar with that relates to the United States' relations with our neighbors to the north, Canada, with respect to a very important agricultural issue. As you know, as a result of flaws in the Canadian Free Trade Agreement, our neighbors to the north have had a pattern of flooding us with unfairly traded wheat and barley that has had a very significant and very serious effect on producers in the United States.

In response to urgings from me and others, the administration, in 1994, imposed a tariff rate quota to address this problem. That tariff rate quota worked. It reduced rather significantly, more than a 50 percent reduction, the flood of unfairly traded Canadian imports coming into the United States. That tariff rate quota has now officially expired. The USTR has kept Canada on notice that the U.S. intends to take action if import levels exceed the tariff rate quota amounts.

Now, we are looking at projections that indicate, because of increases we are now seeing after very sharp reductions, the pattern is now developing that we could have serious trouble as we go through this year in terms of the level of imports exceeding those tariff rate quota amounts.

Your predecessor, Mickey Kantor, was committed, privately and publicly, to trying to achieve a long-term agreement with Canada that would address this serious problem. If confirmed, would you also seek to achieve such a long-term agreement with Canada?

Ambassador BARSHEFSKY. Senator, yes. There is no question that the 1994 TRQ accomplished an important purpose. There is also no question that Canadian wheat and barley shipments are right now running at what would be essentially record levels in both commodities, after a year last year in which we saw quite a decrease, even beyond 1994, in levels of wheat and barley.

I have previously alerted the Canadian Trade Minister that we would not tolerate market disruption here because of these excessive shipments, and I intend to ask Canada formally for consultations at the six-month mark in our consultative agreement, which would be along around mid–March. I will, however, talk to the Canadians before that time, quite obviously.

I think if we could achieve a longer-term agreement with Canada, that would be in the best interests of both countries. I do not underestimate the difficulty of trying to do that, but our first step will be these consultations in March.

Senator CONRAD. I appreciate that. I can tell you, not only do I appreciate it, but the wheat and barley producers in the United States appreciate it because they have been the ones who have seen their incomes decline, in some cases sharply, because of unfairly traded Canadian grain coming into this country.

If I could follow up on one other matter, and that involves China trade. I, first of all, want to again commend you for I think the really outstanding role you have played in negotiating with the Chinese.

I am increasingly concerned, as I think others are, with the increasing trade surplus that China enjoys in its relationship with the United States, and what I see as a pattern of backsliding with respect to trade agreements by the Chinese.

Every time we think we have achieved a result in negotiation, it seems like we have to go back to compel the Chinese to abide by their end of the deal. To your credit, you have done that and done it repeatedly, and I respect that and publicly commend it.

But I remain concerned that, on a number of agricultural issues, the Chinese continue to raise spurious phytosanitary concerns to keep out U.S. grains. We have seen it with TCK smut, we have seen it more recently with carnal bunt, and I would be interested in your reaction to that problem.

Ambassador BARSHEFSKY. Let me say with respect to the China trade deficit, this is a problem that merits very close attention and discussion. What we see is a trade deficit, which, when the final figures come out at end 1996, is probably about $39 billion. There are, however, two pieces of good news.

One, is that the rate of increase in the deficit has slowed somewhat, but is still high. Second, our composition of trade with China is still quite favorable to us. That is, we tend to export higher value added goods, whether it is machinery, equipment, airplanes, or telecommunications equipment; they tend to export to the U.S. lower value goods, e.g., toys, textiles, and the like.

Nonetheless, the number, in and of itself, is astonishingly high. We see in 1996 our exports have actually declined somewhat. The decline is particularly acute in agriculture, as well as in textile inputs. The rest of our exports increased fairly handsomely.

On the agriculture side, I think there are two problems. One, China had a bumper crop after a couple of years of very poor crops, but, second, this, as you say, spurious use of sanitary and phytosanitary restrictions to block our sales.

It is true of wheat, it is true of citrus, it is true of meats, pork, poultry, it is true of any one of a number of commodities. China

imposes rules that no other country imposes, indeed, not even Japan. China has, thus far, refused in some sectors to take action.

We have done a couple of things. First off, we have made it clear to China that, unless these agricultural issues are resolved, it does not much matter what else is in their WTO accession package, WTO accession would be impossible to think of.

Second, we have created, along with China, a strike force with a commitment that they will alert us in advance to problems—this arose from the carnal bunt situation—so we can send our USDA folks out there to see if we cannot get the problems resolved before they become bans, or licensing requirements, or other kinds of import barriers.

We will be, and have been, very persistent on the agricultural issues. They are difficult issues. The two most protectionist ministries in almost any government in the world are the agricultural ministries and telecommunications ministries. But we will persist, and China understands fully the implications for its WTO accession of not rectifying these problems.

Senator CONRAD. If I could just conclude by saying, I thank you for that very clear and very strong message to the Chinese with respect to how their adherence to fair trade with respect to agricultural commodities will affect their WTO accession.

The CHAIRMAN. I will turn to Senator Chafee, next, but just let me make a comment. Unfortunately, Senator Grassley had to leave for another appointment, but he has had considerable concern about an article published in the *Journal of Commerce* this morning relating to the staffing of USTR on agricultural issues. He asked me to point out that he will submit a number of questions and would look forward to your response.

[The questions and answers appear on page 75.]

Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. I would just like to make a couple of remarks about the Lobbying Disclosure Act—the legislation that prevents anybody from serving as USTR who has done any negotiating for another country in the past. I might say, Mr. Chairman, in my 20 years in the Senate I have frequently had to eat my words, but this is one instance where the taste is not that bad.

On November 30, 1995, I addressed the Chairman and Ranking Member on this matter: "I think these provisions are draconian, and I think it is going to come back to haunt us at some time. I would like to plant the seed amongst members of this committee, who have always been thoughtful on these matters, and suggest that it behooves us to look into this issue and give some thought to trying to untangle this thing for the future." Chairman Roth then replied: "I would share that concern."

So I am always delighted to have an opportunity to pat myself on the back. I just wanted to say that I think we ought to change this law.

Indeed, Mr. Chairman, it's not clear that a single one of our past USTRs could have been confirmed under this legislation. If we take

Bob Strauss, Bill Brock, Clayton Yeutter, Carla Hills, Mickey Kantor—I think it's possible that none of them could have qualified to be USTRs under this law.

It is an illustrious group you are following, Ambassador Barshefsky, a long line of distinguished predecessors from both parties. All of them were outstanding, and all three of us here have had an opportunity to work with each of them, going back to Bob Strauss in 1977.

Mr. Chairman, it is not going to be easy to change this statute. But I do not think we want to go through a series of waivers. That is really not the solution to the situation.

Now, Madam Ambassador, I would just like to say that you and I discussed an issue previously in my office, and that issue is about the annual budgeting and staffing for your organization. Now, you only have about $21 million for that office. You have had flat funding for some time now.

Yet USTR has been involved, and you are going to be increasingly involved, with new WTO matters. As I understand it, you have some 31 dispute settlement proceedings pending now. I do not think you should be reluctant, if you need more people, to ask for more people and resources, because we all want these cases and disputes to move forward.

Next, I would like to address the matter of fast-track. Fast-track authority is always contentious. It is extraordinary that we have been able to get it through the times that we have. It has not been easy. But, as I understand it, the absence of fast-track is causing us to lose out in South America. You touched on that in your comments. You said the EU was getting into South America before us. What is the matter here? What is the problem?

Ambassador BARSHEFSKY. I think the absence of fast-track leaves a vacuum in our own hemisphere with respect to leadership and with respect to the rules of trade.

What the absence has done has been to lead to an agglomeration by other countries of other trading partners in our own hemisphere as a means of building their own little unit or system of rules and obligations. Mercosur is one such example which, as you know, began as a customs union between Brazil, Argentina, Paraguay, and Uruguay, but has expanded to include free trade agreements with Chile and Bolivia, and negotiations now with the Andean Pact.

Senator CHAFEE. Now, is it true that if you tried to negotiate with them, and you say, well, let us begin talking about a trade agreement, absent fast-track, will they not deal with you?

Ambassador BARSHEFSKY. Absent fast-track, they will not deal with us. Nor, may I say, Senator, will Chile. As you know, it has been a longstanding commitment of several administrations that Chile should become a free trade partner of the United States, principally through NAFTA accession when NAFTA came into being. But the Chileans have also made it clear that, in the absence of fast-track, it is very difficult for them to make the hard decisions to open their market in certain ways.

Senator CHAFEE. Well, I do not think you have stressed that enough in your comments. I mean, the mere fact I asked you the question indicates that it needs to be stated more often. I follow

trade matters fairly closely and am involved in them, and I suspected it was true, but it is helpful to hear you say that.

I think the only way we are going to get fast-track through here is if people, namely the Senators and Representatives, think there is something in it for them. From the point of view of U.S. interests, the manufacturers in their States and districts are going to do better with fast track, or conversely are going to be dealt out, absent it.

Ambassador BARSHEFSKY. I agree with you. If we look at figures on intraregional trade in our own hemisphere and in Asia, we see the growth of intraregional trade far outstripping our growth in exports to these same markets. We simply have to be in the mix in a serious way, anchored in our own hemisphere with respect to the trade rules and trade flows, and anchored in Asia with respect to the trade rules and trade flows.

I do not believe, for the long-term, we can accomplish that solely through bilateral sectoral market access agreements. We are going to need broad authority. Indeed, if I may say, but for the fact that we had residual negotiating authority which Congress left us in the Uruguay Round, there would be no ITA.

Senator CHAFEE. On a parochial matter, your office is aware of the difficulty that the New England companies have had in connection with the influx of wool suits from Canada.

Ambassador BARSHEFSKY. Yes.

Senator CHAFEE. I want to stress that issue again. The Northern Textile Association has spoken to me about it, and they have had difficulties. I just hope you will continue to struggle with this problem.

Ambassador BARSHEFSKY. We will, indeed. We have presented the Canadians with a form of agreement to put an end to the kind of concentration we see of wool suits in particular textile categories, as well as at particular times of the year. Canada has not yet gotten back to us, but we are engaged in negotiation with them.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me just make a couple of comments, first, on fast-track. I think in order to make any progress in that area it is going to take strong leadership on the part of the administration. In the last session of Congress, that leadership was not, in my judgment, forthcoming, at least from the Senate point of view.

I would also want to observe that, as long as fast-track is tied to labor and to environmental questions, that makes it very difficult, if not impossible, to get through because people do not feel that they should not have the right to offer amendments in those areas. So, I would just stress that you review that.

In a more parochial way, I, too, would just like to mention poultry, which is a matter of some concern. I have got a written question, and I will ask you to put the answer in writing. But that is a matter of importance to me, and somewhat tied to some of the questions that were raised by the Senator from North Dakota.

[The questions and answers appear in the appendix.]

The CHAIRMAN. I think this concludes the hearing for today. We are not going to take the vote today because we do not have a quorum, but tomorrow morning Chairman Greenspan is appearing

before us. I expect we will have a large crowd here for that. I think, as you heard on both sides, there is very, very strong support for you.

Would you not agree with that?

Senator MOYNIHAN. Mr. Chairman, again, as an exit poll, all members on this side have given their proxy, aye.

The CHAIRMAN. And I think you heard the favorable statements on this side. So thank you very much today, and we look forward to reporting it out tomorrow morning.

Ambassador BARSHEFSKY. Thank you, Mr. Chairman.

Thank you, Mr. Moynihan.

The CHAIRMAN. The committee is in recess.

[Whereupon, at 12:10 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF AMBASSADOR CHARLENE BARSHEFSKY

Introduction

Thank you, Mr. Chairman and Members of the Committee. It is a great honor to appear before you today as President Clinton's nominee to be United States Trade Representative.

I am deeply aware of the special responsibility of the USTR in defining trade policy objectives, negotiating trade agreements, and striving forward each day with a clear mission to protect and defend the interests of United States' workers, farmers and companies around the world. I am anxious to build upon our work of the past four years. In this respect, I want to acknowledge the vision, creativity, perseverance, and extraordinary accomplishments of my predecessor and friend Ambassador Mickey Kantor. His no-nonsense approach and results-driven trade agenda set an important course which I intend to carry forward.

Today, I would also like to express appreciation for the on-going counsel provided by the members of this Committee. I intend to nurture and strengthen the special relationship that USTR has always had with the Finance Committee and its House counterpart, the Ways and Means Committee, on the whole range of trade issues. If recommended by this Committee and confirmed by the Senate, I will build upon the dialogue we have already established.

The cornerstone of successful U.S. trade policy is a bipartisan approach to defining our interests and pursuing our objectives. This bipartisan approach has been the key to the success we have had in the past four years. I believe our Administration has brought a distinctive approach to trade issues, but that approach reflects a consensus which evolved over a period of years about the trade policy the United States would need to follow. Congress was of course instrumental in that process, including the bipartisan passage of the 1988 Trade Act. Success in trade in the next four years will depend upon a continuation of bipartisan support and cooperation.

The Past Four Years

From the early weeks of his first term, President Clinton made clear his view that the policies which brought us prosperity in the 1950's and 60's would not suffice for the 1990's. The test would now be what policies were needed to compete and win in an increasingly competitive global economy.

The President stated that we would compete, not retreat behind walls, but that we would not allow our trading partners to take advantage of our open market while maintaining closed markets at home. We have relentlessly pursued market opening abroad - multilaterally,

regionally, and bilaterally - because despite the fact that we are the world's most competitive economy we were too often shut out, hampered by market access barriers and unfair practices of other nations. We also committed to working for a system where all trading nations, developed and developing, would adhere to the same set of basic rules, and we made important strides in that regard with the creation of the WTO.

The 200-plus trade agreements -- including NAFTA and the Uruguay Round -- negotiated by this Administration have added considerably to our domestic prosperity and reflect our determination to achieve even further market access gains for our companies and workers around the world. The expanded opportunities from markets opening abroad have come at a time when our companies, farmers and workers are the world's most competitive. We lead the world in agriculture and aircraft; in automobiles and semiconductors; in software and entertainment, and we offer the most competitive services exports anywhere. As a result, in the past four years, our exports of manufactured products are up 42%, our high technology exports are up 46%, our service exports are up 26%, and our agricultural exports have reached record levels.

The importance of trade in our domestic economy today is clear. In 1970, trade represented 13% of U.S. GDP. In 1996, trade was 30% of GDP, or about $2.3 trillion. More than eleven million U.S. jobs now depend on exports -- 1.5 million more than just four years ago. Jobs supported by goods exports wages are 13-16% higher than non trade-related jobs in the economy. Over the last four years, roughly one quarter of our economic growth has come from exports.

The leading trade areas of accomplishment in the last four years include:

- The Uruguay Round. Our Administration provided the leadership to complete the Uruguay Round, following on the work begun by the Reagan and Bush Administrations. The Agreement cut tariffs worldwide on manufactured products by over one-third, the largest reduction in history and extended international trade rules in areas such as agriculture, services, investment and intellectual property rights. Overall, economic analysts estimate that the Uruguay Round will add $100 to $200 billion to U.S. GDP annually when fully implemented. One of the most significant results of the final agreement was the establishment of a system which puts in place a comprehensive set of rules to which all members must adhere, thereby substantially reducing the "free-rider" problem of the past where all enjoyed the benefits but did not share in the responsibilities.

- NAFTA. In November 1993, the administration succeeded in winning passage of the North American Free Trade Agreement (NAFTA). Our goods exports to Mexico, despite the peso crisis, are expected to be over $56 billion this year, 35% higher than in 1993 and almost $6 billion higher than any year in our history. It is clear that NAFTA helped stabilize Mexico through its worst financial crisis in modern history, but also ensured Mexico's market was opened ever more to U.S. goods and services. When Mexico last underwent a deep financial crisis, United States exports dropped 50% and took seven years to recover following action by Mexico to close its market. Considering Mexico is our third largest trading partner it is

imperative its market remain open to the United States, particularly since our market has long been open to Mexico.

- Japan.. Throughout the 1980's, the imbalance of trade and market access with Japan was perhaps the major U.S. failure in trade. We have focused on this problem from the first month of this Administration, and we have made important progress. Through the Framework Agreement reached in July 1993, we pursued market opening and deregulation in Japan on all fronts: macroeconomic, structural and, most visibly, sectoral negotiations. We have reached 24 trade agreements with Japan, including such key areas as autos and auto parts, telecommunications, government procurement, cellular phones, glass, semiconductors, insurance and medical equipment and technology. We have made headway in opening closed agricultural markets, such as rice and apples. Our exports to Japan are at record levels, up 43% in four years, and U.S. merchandise exports to Japan have grown at a rate five times as fast as imports from Japan. Within the last month we reached a landmark insurance agreement which surpassed all expectations, and achieved a breakthrough in wood products as Japan agreed to accept U.S. grade-marked lumber for the first time, increasing the number of U.S. mills that can ship lumber to Japan from 80 to over 1000.

- China. At President Clinton's direction, the United States has led the world in setting tougher standards for trade with China. We have battled to open a highly protected market, still dominated in many areas by the central or provincial governments. We have negotiated landmark agreements to combat piracy and advance the interests of our copyright industries. We have also negotiated -- and vigorously enforced -- agreements on textile trade, designed to prevent transshipments. We have taken the lead in consulting with China on its WTO accession, and insisted that this accession occur on commercially meaningful terms.

- APEC. The elevation of the Asia-Pacific Economic Cooperation (APEC) forum to the Presidential level in Seattle in 1993 was an historic event that breathed new life into this forum. Year by year, APEC has made progress toward its goal of increased trade and investment, and lowering barriers, in the fastest-growing economic area in the world. (APEC represents half the world's GNP, and last year, 62 percent of all U.S. merchandise exports went to APEC countries.) APEC's endorsement of the ITA in Manila was pivotal to reaching the successful conclusion of the Information Technology Agreement (ITA) in Singapore and represented another important step in the region's commitment to concrete trade expansion and market opening. Equally important, through APEC, we have begun to anchor our country more firmly in the Asia-Pacific region.

- FTAA. Our Administration has strengthened the commitment to the nations in our hemisphere. Latin America has become the second fastest growing economic region in the world, and by 2010, we estimate that our exports to Latin America will exceed our exports to Europe and Japan combined. These numbers are impressive, but even more important they reflect the extraordinary spread of free markets and democracy in our hemisphere. The 1994 Summit of the Americas began the process of achieving a Free Trade Area of the Americas

(FTAA) by the year 2005 with concrete progress required by the year 2000; considerable progess has been made to lay the informational groundwork so we can now turn our attention to launching the negotiations.

- Transatlantic Business Dialogue. Our trade and investment relations with the European Union are deep and mutually beneficial, but even in this relationship, trade can be substantially expanded if we together continue to press to eliminate barriers to market access whether it is in the continued reduction of tariffs, or in assuring that we cooperate in the standards area which is so important to improving our trade in manufactured goods. The Transatlantic Business Dialogue was an early supporter of the Information Technology Agreement, and we look to similar leadership on other promising initiatives in the next four years.

- "New Issues". We have taken the lead on several of what are often described as the "new issues": combatting bribery and corruption in government procurement, respect for core labor standards, and the linkage between trade and environmental issues. We are addressing the increasing problem of bribery and corruption confronting U.S. business abroad whether by criminalizing the tax deductibility of bribes as we are seeking in the OECD or in promoting greater transparency in government procurement regimes. Our initiative at the recent WTO meeting in Singapore to pursue an agreement on transparency in all WTO member procurement regimes should make an important contribution to our efforts.

On trade and labor, where the President was given a mandate by Congress, we made important strides. At Singapore, we also gained international recognition of the importance of core labor standards---the right to organize, the right to bargain collectively, prohibitions against child labor and forced labor---sought by the United States since the Eisenhower Administration. Our leadership in the Uruguay Round negotiations led to the incorporation of environmental provisions into the WTO Agreements and the creation of the WTO Committee on Trade and Environment, where WTO governments continue the task of ensuring that trade and environment are mutually supportive. In addition, with U.S. leadership, countries participating in the Free Trade Area of the Americas are also engaged in sustainable development initiatives, to ensure that economic growth does not come at the cost of environmental protection.

We have encountered vigorous international opposition to some of our initiatives. But it is worth remembering that not long ago, most of the world opposed the ideas of intellectual property protection or rules for trade in services when we first advanced them. We maximize the political support for open trade only by constantly making it clear that we seek ways to address the full range of concerns that people have about the impact of trade on their lives and livelihood.

- Enforcement of Trade Laws and Agreements. Our willingness to enforce trade laws and existing agreements is crucial to our support at home and our credibility abroad. The Administration has brought a record number of enforcement actions by using all the trade tools at our disposal -- 48 actions in the past year. And we have reinvigorated efforts to ensure compliance with all of our trade agreements whether negotiated by us or previous

administrations. We have aggressively fought against the market closing practices of competitors using the leverage provided in Section 301, Title VII, and Section 1377 to open foreign markets and ensure fair treatment for our goods and services.

We have filed 21 cases to enforce U.S. rights under the new dispute settlements procedures of the World Trade Organization -- having filed 15 complaints in the last year alone. This caseload is absolutely unprecedented in the history of the GATT and WTO, and we have already begun to see the benefits our enforcement efforts have yielded for U.S. firms and workers. Of the 21 cases brought by us, we reached settlements in six cases and we have prevailed in two cases so far that were referred to panel. The real successes are the settlements that we reach, such as on Japan's protection of sound recordings and Portugal's patent law, where the defendants have already changed their laws. The new WTO dispute settlement rules often make it possible for us to enforce WTO agreements without ever having to reach a panel decision. The fact that the WTO can and will authorize us to retaliate enables us to reach earlier settlements, opening markets for more of our exports.

The Importance of Trade in a Post-Cold War World

One of the dividends of our victory in the Cold War and the collapse of Communism is that it has opened the world for commerce as never before. Trade---as measured by total global exports---has increased nearly 40% in just the last four years. Our country's success in the past four years should remind us: we have every asset needed to succeed in the post-Cold War global economy. At the same time, success in the global marketplace is not automatic for any nation, even one with our great resources.

For example, even as our exports to Latin America grow---on average 40 cents or more of each dollar spent on imports is spent on US goods in the region---other countries are making new inroads. The EU seeks trade agreements with key Latin American economies---MERCOSUR, Mexico and Chile--and is an increasing presence in Asia and Africa. China is building commercial and strategic alliances to compete with U.S. economic power Latin America and is reported to have targeted Mexico, Brazil, Argentina, Chile, and Venezuela as strategic partners. Japan, Korea, and others have undertaken highly visible commercial initiatives and are determined to compete in these same regions. Within Latin America and Asia, intra-regional preferential trading arrangements are rapidly changing trade patterns and the competitive rules of the game.

Without a strategic vision of trade policy, we will not take full advantage of the opportunities for our country to expand trade and enhance domestic prosperity. Moreover, just as military alliances shaped the content of global relationships in the twentieth century, the end of the Cold War means that trade alliances will play an increasingly important role in defining relationships between nations in the twenty-first century. The ability of the United States to expand our influence abroad and advance core values of democracy, the rule of law and human rights will be enhanced to the extent that our trade relations are stable and enduring.

In the next four years, the United States should continue to be a moving, dynamic force, pro-actively positioning itself at the center of a constellation of trade relationships---such as the WTO, APEC, and the FTAA, taking opportunities to expand trade on a reciprocal basis. If we do so, we will be well positioned to compete successfully, create high wage jobs, and provide leadership in the world as the next century begins.

The Upcoming Agenda

In the next four years, the Administration hopes to build on the progress of the first term. We will continue to advance our interests through the WTO. Where it serves U.S. interests, we will move forward on a regional and bilateral basis with agreements that further open international markets. And we will continue to be vigilant and aggressive in our insistence that our trade partners live up to the agreements that they make with us.

With respect to market opening efforts in the WTO:

o In the coming weeks we will be finalizing the staging and other technical details of the Information Technology Agreement (ITA) reached in Singapore. The United States is the world leader in new technology developments and production: semiconductors, computers, telecommunications equipment, and software. These industries support 1.5 million U.S. manufacturing jobs and 1.8 million related service jobs. For these workers and their companies, this agreement amounts to an annual global tax cut of $5 billion because the tariffs on these products are consistently higher in other countries than ours.

o The deadline for conclusion of an International Basic Telecommunications Services agreement is just two weeks away, February 15. One of my first actions upon being named Acting USTR last April was to insist that the telecom negotiations be extended, because it was clear that there was not a critical mass of high quality market opening offers from our trading partners, particularly in the emerging markets of Asia and Latin America. Our test for a good agreement was clear then, and it is clear now. We believe that competition in telecommunications services is valuable, and we welcome it in our market, but we will not open our market further unless other nations reciprocate with genuine market opening proposals. We have seen some important progress in the last nine months, but we are not there yet. It remains to be seen whether an agreement will be reached.

o The "built-in agenda" of the WTO envisions a resumption of further negotiations to further reform agriculture and liberalize trade in services in 1999. Both areas are critical to our continued success in trade and economic prosperity. While the Uruguay Round reduced some of the most difficult barriers to agricultural trade, helping us to attain a record level of agricultural exports in 1996 our work is far from done. We will vigorously enforce the Agreement from the Uruguay Round and focus on the sanitary and phytosanitary area, where "health standards" are routinely invoked without justification to block our exports. Removing agricultural barriers wherever they exist is one of our highest priorities of the next four years, so follow-on

negotiations in the WTO are extremely important. At the same time, in services, the United States is the world leader, with $220 billion in exports in 1996, and a $70 billion surplus. Further removal of barriers, and new commitments by our trading partners, can only be helpful to us.

o We have a full agenda of accession negotiations -- countries seeking to join the WTO. As always, the United States is setting the high standards for accession in terms of adherence to the rules and market access. Accessions offer an opportunity to help ground new economies in the rules-based trading system. The Administration believes that it is in our interest that China become a member of the WTO; however, we have been steadfast in leading the effort to assure that China's accession to the WTO would occur on commercial, rather than political, grounds. China maintains many trade barriers that must be eliminated and we need to ensure that the necessary changes are made before accession occurs. The pace of China's accession negotiations depends very much on Beijing's willingness to improve the offers now on the table.

o While China's accession has attracted far more attention, the United States takes every opportunity to pursue American interests with the 28 applicants that are now seeking WTO membership, and to give leadership to the process. Russia's WTO accession could play a crucial part in confirming, and assuring, Russia's transition to a market economy, governed by the rules of law and international trade. Discussions so far on Russia's accession, while still at an early stage, have been quite positive and we look for more progress. We are excited about the prospects of the accession of many of the former Soviet Republics, and the Baltic States. Others, like Saudi Arabia and Vietnam, are also becoming more active.

In addition to our important multilateral agenda, in the next four years, we also plan to explore a wide range of possible regional and bilateral initiatives to advance our efforts to strengthen the U.S. economy:

---Latin America has been the second most rapidly growing region in the world. Moreover, it is a traditionally important market for us, and our exports to the rest of the hemisphere have already increased enormously, particularly in manufactured goods. The President committed in December 1994 following the Summit of the Americas to negotiate Chile's accession to NAFTA, because of Chile's extraordinary economic performance and its logical position as our next partner in this hemisphere. Our ability to deliver on the commitment to Chile is seen, with some justification, as a litmus test for trade expansion and U.S. interest in this hemisphere. 1997 is the time for demonstrating our commitment to leading the hemisphere toward the creation of the FTAA.

---While our progress in APEC has been gratifying, and increasingly concrete, the APEC process still envisions a very long time frame for achieving free and fair trade in the region. We also face the challenge posed by the extraordinary diversity of the Asia-Pacific nations, in terms of size, relative prosperity, and disposition toward market opening. We intend to be actively involved in the region, exploring all possible options to encourage Asian-Pacific nations along

the path of market opening.

---With Europe, our focus will be on non-tariff barriers which continue to impede transatlantic commerce, most particularly regulatory barriers. Approximately half of our $126 billion of merchandise exports to the EU require some form of EU certification in addition to U.S. requirements. Redundant testing and certification procedures increase the base cost of exports. Our business community strongly supports our current negotiations to complete Mutual Recognition Agreements (MRAs) to eliminate redundant testing between the U.S. and the EU. The areas under discussion include telecommunications, electronics, medical devices, pharmaceuticals and recreational craft.

--- USTR recently completed preparation of a report to Congress on the Administration's trade and development policies for Sub-Saharan Africa. There is an urgent need to integrate Sub-Saharan Africa into the international trading system. We believe the achievement of this goal lies in African countries reforming their own economies an in our encouraging this process. We are reviewing a range of options to promote this and will want to consult with you on them.

We have always said that we would open markets on a multilateral or regional basis wherever possible. When it can be done effectively, this is the most efficient way to reduce the most barriers to U.S. exports, and level the playing field for our companies, workers and farmers. However, we must recognize that certain problems can only be addressed effectively, and with the degree of specificity necessary, on a bilateral basis. Thus, we continue to be engaged in bilateral market opening efforts with virtually every country with which we have a trading relationship: from China on textiles and wheat, to Japan on telecommunications, to Canada on agriculture, to Argentina on patent protection, to Korea on autos. There should be no misunderstanding. Now, as in the past, in many cases, market opening will occur only through intensive bilateral efforts, including the willingness to resort to our trade laws where negotiations fail to eliminate barriers and achieve fair access. And, of course, our monitoring and enforcement activities with respect to agreements already negotiated will intensify.

Important elements of our trade agenda can go forward without Congress giving the President a new grant of trade agreement implementing authority and the negotiating credibility it provides. But there is no doubt that our ability to negotiate comprehensive regional or bilateral market opening agreements, to take full advantage of the opportunities which a dynamic and fluid global economy may present, depends on the ability of the President and Congress to agree on the appropriate terms of such a grant of "fast track" negotiating authority. The President believes that new negotiating authority is a key tool for advancing our nation's economic interests. If confirmed, I am prepared to work with this Committee, its House counterpart and other interested members of Congress to fashion an appropriate grant of negotiating authority, and build a broad, bipartisan consensus in support of it. I do not underestimate the difficulties of building that consensus, but we should also recognize the importance of doing so. Otherwise, we will remain on the sidelines while other nations move ahead as they have been doing, to create new economic alliances and advance their economic interests, to the potential detriment of U.S.

leadership and a continued strengthening of domestic prosperity.

Conclusion

President Kennedy once described himself as "an idealist without illusions." These words provide, I think, an apt description of President Clinton's view of trade. The Administration believes that trade can contribute to the prosperity of both the US and our trading partners, but we are under no illusions about the number of problems facing us. Every foreign trade barrier is there for a purpose -- it may be politically-driven, economically-targeted, culturally-defined, or bureaucratically-based. They do not come down easily. I am acutely aware that there are no final victories in the trade area. The hard work of the past four years gives us the opportunity to do the hard work of the next four.

SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

The Committee requests the nominee provide the following information in a single written statement by typing each question in full followed by the nominee's response. Please provide **three** copies of your typed statement to Jane Butterfield, Chief Clerk, 219 Dirksen Senate Office Building, Washington, D.C. 20510.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   CHARLENE BARSHEFSKY

2. Position to which nominated:

   United States Trade Representative

3. Date of nomination:

   December 13, 1996

4. Address: (List current residence, office, and mailing addresses.)

   3125 Aberfoyle Place, N.W.
   Washington, D.C. 20015

   Office of the U.S. Trade Representative
   600 Seventeenth Street, N.W.
   Washington, D.C. 20508

5. Date and place of birth:

   August 11, 1950
   Chicago, Illinois

6. Marital status: (Include maiden name of wife or husband's name.)

   Married
   Charlene Barshefsky
   Edward B. Cohen

7. Names and ages of children:

Marika (Mari) B. Cohen
Age 13

Devra R. Cohen
Age 8

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Von Steuben High School
Chicago, Illinois
9/64-6/68, High School Diploma

University of Wisconsin
Madison, Wisconsin
9/68-6/72, B.A. (Double major: English and Political Science)

Catholic University, The Columbus School of Law
Washington, D.C.
9/72-5/75, J.D.

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

United States Trade Representative-Designate
Executive Office of the President
Washington, D.C. 20508
12/96 to present

Acting United States Trade Representative
Executive Office of the President
Washington, D.C. 20508
4/96 to 12/96

Deputy United States Trade Representative
Executive Office of the President
Washington, D.C. 20508
5/93-4/96

Attorney-at-Law
Partner and Associate

Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
9/75-4/93

Law Clerk
Wald, Harkrader & Ross
Washington, D.C.
9/74-1/75

Law Clerk
Winston & Strawn
Chicago, Illinois
6/74-8/74

Law Clerk
Federal Trade Commission
Bureau of Consumer Protection
Division of National Advertising
Washington, D.C.
6/73-6/74

10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)

United States Trade Representative-Designate
Executive Office of the President
Washington, D.C. 20508
12/96 to present

Acting United States Trade Representative
Executive Office of the President
Washington, D.C. 20508
4/96 to 12/96

Deputy United States Trade Representative
Executive Office of the President
Washington, D.C. 20508
5/93 to 4/96

Law Clerk
Federal Trade Commission
Bureau of Consumer Protection

Division of National Advertising
Washington, D.C.
6/73-6/74

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Partner, Steptoe & Johnson
Washington, D.C.
(Resigned partnership May 1993)

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

District of Columbia Bar
1975 to present

Member, Temple Sinai, a synagogue, located in the District of Columbia

Member, The Lafayette Home & School Association (D.C. elementary school PTA)

Member, the Watergate Association, Inc. (beach community owners association)

Member, The Smithsonian Institution

Member, ARZA (organization of Reform Jews)

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

None

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

According to the Federal Elections Commission and our personal checks for 1994-1996, my husband and I have contributed the following amounts to political candidates and committees since 1983.

Election Cycle	Candidate/Committee	Amount
1995-96	Democratic National Committee	$ 500
1995-96	Clinton/Gore '96	$1,000
1991-92	Democratic National Committee	$ 200
1991-92	Clinton/Gore '92	$ 550
1991-92	Clinton for President Committee	$ 250

For prior years, I am unable to reconstruct the amounts involved in specific political contributions. My husband and I have contributed jointly to the presidential campaigns of Messrs. Clinton, Dukakis and Mondale, as well as to selected national and local D. C. Democratic candidates. In addition, we have contributed to the Democratic National Committee.

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

Glamour Magazine Woman of the Year, 1996

1996 Catholic University Alumni Achievement Award in Law & Government

Honored by National Committee on United States-China Relations for contributions to U.S.-China relations, 1995

Executive Branch Leadership Award, Semiconductor Industry Association, 1995

University of Wisconsin: Phi Kappa Phi National Honor Society, Mortar Board National Honor Society, Graduate of Distinction. Catholic

University Law School: Scholarship, Associate Editor of Catholic University Law Review.

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

C. Barshefsky, P. Lichtenbaum
Review of Selected 1992 CIT and CAFC Decisions, in Annual Spring Meeting of the ABA Section of International Law and Practice (1993)

C. Barshefsky, M. Abbey
The Safeguards Provisions of the North American Free Trade Agreement, in Business Implications and Legal Rules Under NAFTA, American Conference Institute (1992)

C. Barshefsky, P. Lichtenbaum
Government Procurement and the North American Free Trade Agreement, in The NAFTA:Scope and Implications (ABA 1992)

C. Barshefsky
Rules of the U.S. Court of International Trade, Oceana Publications (1992)

C. Barshefsky
Public Procurement and 1992, European Economic Community Law (1992), reprinted in International Trade Corporate Counsel Advisor, Business Laws, Inc. (1992)

C. Barshefsky
Primer on the U.S. Antidumping and Countervailing Duty Laws, in Georgetown University Law Center Workshop on Trade (1991)

C. Barshefsky
Non-market Economies in Transition and the U.S. Antidumping Law: Remarks on the Need for Reevaluation, 8 B.U. L. Rev. 373 (1991)

C. Barshefsky, A. Sutton, J.A. Swindler
Developments in EC Procurement Under the 1992 Program, 1990 B.Y.U. L. Rev. 1269 (1990)

C. Barshefsky
Articles 1904 and 1907 of the Canada-U.S. Free Trade Agreement: Should There Be a Relationship Between the Two: (Feb. 10, 1989), in 26 Stan. J.Int'l. Law 173 1990

C. Barshefsky, M. Fishburne
Principal Decisions of the Court of International Trade and the court of Appeals for the Federal Circuit, Calendar Year 1989 through March 1990, in Annual Spring Meeting, Section of International Law & Practice (ABA 1990)

C. Barshefsky, M. Davis, B. Hillas
Trade and Investment in the New Europe -- East and West, Europa 1992, May 1990

C. Barshefsky
Remarks Before the Proceedings of the Seventh Annual Judicial Conference of the United States Court of International Trade, 137 F.R.D. 509, 517 (1990)

C. Barshefsky
Private Sector Perspective and the International Trade Issues of EC-1992, in 1992: Doing Business With Europe (ABA 1989)

C. Barshefsky
Synopsis of Activity in Key Uruguay Round Negotiating Groups, in The New Trade Law Omnibus Trade and Competitiveness Act of 1988 (PLI 1988)

C. Barshefsky, M. Firth
International Trade Decisions of the United States Court of Appeals for the Federal Circuit During the Year 1987, 37 Am. U. L. Rev. (Issue 4) (1988)

C. Barshefsky, N. Zucker
Amendments to the Antidumping and Countervailing Duty Laws Under the Omnibus Trade and Competitiveness Act of 1988, 13 NCJ Int'l. Law & Comm. Reg. 207 (1988)

C. Barshefsky
Remarks Before the Proceedings of the Fifth Annual Judicial Conference of the United States Court of International Trade, 126 F.R.D. 335, 341 (1988)

C. Barshefsky
Remarks on Private Remedies Under the Unfair Trade Laws, Before the Fourth Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit, 112 F.R.D. 541 (1987)

C. Barshefsky, R. Diamond, N. Ellis
Foreign Government Regulation of Natural Resources: Problems and Remedies Under United States International Trade Laws, 21 Stan. J. Int'l. Law 29 (1985)

C. Barshefsky
Remarks on International Trade Strategies, Before the Proceedings of the First Annual Judicial Conference of the United States Court of International Trade, 102 F.R.D. 639, 716 (1984)

C. Barshefsky, A. Mattice, W. Martin
Government Equity Participation in State-Owned Enterprises: An Analysis of the Carbon Steel Countervailing Duty Cases, 14 Law & Policy Int'l. Bus. 1101 (1983)

C. Barshefsky, R. Cunningham
The Prosecution of Antidumping Actions Under the Trade Agreements Act of 1979, 6 NCJ Int'l. Law & Com. Reg. 307 (1982)

C. Barshefsky
The Prosecution of Antidumping and Countervailing Duty Actions Before the Commerce Department, in Techniques of International Trade Litigation (D.C. Bar 1981), reprinted in Annual Trade Seminar Series (1982-1988)

C. Barshefsky
Note (Fair Labor Standards Act), 23 Cath. U. L. Rev. 171 (1974)

C. Barshefsky, R. Liebenberg
Voluntarily Confined Mental Retardates: The Right to Treatment vs. The Right to Protection From Harm, 23 Cath. U. L. Rev. 787 (1974)

16. Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)

Speeches marked with an asterisk ("*") are included herewith. Other remarks listed were given from informal notes or extemporaneously. [NOTE: Two copies of speeches for the years

1994-1996 were supplied 12/30/96. Attached will be two copies of speeches for the years 1992 and 1993, to fulfill your amended requirements.]

December 3, 1992 - Washington, D.C.
American Conference Institute
Antidumping and Trade Issues

January 29, 1993 - Washington, D.C.
American Bar Association, National Institute
Antidumping and Trade Issues

* May 19, 1993 - Washington, D.C.
Senate Finance Committee
Confirmation Hearing as Deputy U.S. Trade Representative

May 25, 1993 - Washington, D.C.
House Ways & Means Committee
Re China MFN

* June 8, 1993 - Washington, D.C.
House Ways & Means
Re China MFN

* June 15, 1993 - Washington, D.C.
U.S.-Korea Business Council
Trade re Korea issues

June 24, 1993 - Seoul, Korea
AMCHAM Briefing
Trade re Korea issues

July 1, 1993 - Washington, D.C.
House Ways & Means, Trade Subcommittee
Brief re US-Japan Framework Talks

July 2, 1993 - Washington, D.C.
Senate Finance Committee
Brief re US-Japan Framework Talks

July 14, 1993 - Washington, D.C.
Emergency Committee for American Trade
Brief re US-Japan Framework Talks

July 20, 1993 - Washington, D.C.
Women in International Law
Issues re Trade in Clinton Administration

* July 20, 1993 - Washington, D.C..
US Council for International Business
"Strengthening U.S. Competitiveness Through International Investment

July 21, 1993 - Washington, D.C.
Committee on Foreign Affairs, Subcommittees on Economic Policy & Trade and Asia and the Pacific
Brief re US-Japan Framework Talks

* July 22, 1993 - Washington, D.C.
Senate Finance Committee, Trade Subcommittee
Brief re US-Japan Framework Talks

* September 13, 1993 - Grand Rapids, MI
Midwest US-Japan Association
Re US-Japan Framework Talks

* October 5, 1993 - Washington, D.C.
House Foreign Affairs Committee, Asia Subcommittee
US-Japan Economic Framework Policy

October 6, 1993 - Washington, D.C.
House Ways & Means Committee, Trade Subcommittee
Briefing on US-Japan Framework

October 7, 1993 - Washington, D.C.
Service Policy Advisory Committee
US-Japan Framework and China

* October 14, 1993 - Washington, D.C.
Overseas Development Council, Panel on Regional Trade Pacts
"Regional Trade Pacts: Catalysts or Catastrophes?"

October 15, 1993 - Washington, D.C.
National Association of Manufacturers, Trade Forum
General Trade Issues

October 27, 1993 - Washington, D.C.
Labor Advisory Committee
General Trade Issues

* October 28, 1993 - Washington, D.C.
Columbus Group & Paul H. Nitze School of Advanced Int'l Studies
US-Latin American & Caribbean Trade & Investment Policy

* November 2, 1993 - Washington, D.C.
American Society of International Law
Administration's Goals for APEC Ministerial

* November 8, 1993 - Washington, D.C.
Senate Finance Committee, Trade Subcommittee
US-Japan Framework

November 16, 1993 - Seattle, WA
APEC Ministerial Participants & Washington Business Community
Re Customs & APEC

December 1, 1993 - Washington, D.C.
Business Coalition for US-China Trade
Re China Trade Issues

December 16, 1993 - Washington, D.C.
Japan Information Access Project
Status of US-Japan Framework Talks

* January 21, 1994 - Washington, D.C.
Georgetown University Law Center Symposium
on U.S. Trade Policy in Transition
"The Future of U.S.-Japan Trade Relations"

* February 24, 1994 - Washington, D.C.
House Ways & Means, Trade Subcommittee
Trade Policy Toward China

* March 2, 1994 - Washington, D.C.
Inter-American Dialogue

"Future or Western Hemispheric Trade & Investment Relations"

March 4, 1994 - Washington, D.C.
National Association of Manufacturers, Trade Forum
U.S.-Japan Economic Relations

March 8, 1994 - Washington, D.C.
Washington International Business Council
U.S.-Japan Trade Relations

* March 18, 1994 - Washington, D.C.
Washington International Corporate Circle
Administration's Trade Accomplishments

* March 23, 1994 - Washington, D.C.
House Committee on Government Relations, Subcommittee on Commerce, Consumer, and Monetary Affairs
Testimony re Status of U.S.-Japan Trade Relationship

March 25, 1994 - Washington, D.C.
American Association of Port Authorities
General trade policy issues

March 28, 1994 - Washington, D.C.
Japan Commerce Association
U.S.-Japan Trade Relations

May 10, 1994 - Washington, D.C.
ACTPN
General trade policy issues

June 3, 1994 - Washington, D.C.
The Caribbean Latin American Action Trustees
"The Interim Trade Program for the Caribbean Basin"

* June 6, 1994 - Washington, D.C.
The Caribbean Group for Cooperation in Economic Development
"The Interim Trade Program for the Caribbean Basin"

* June 15, 1994 - Washington, D.C.
House Foreign Affairs Committee, Round table on Policy

Toward East Asia
Statement on Administration's Policies in East Asia

* June 15, 1994 - Washington, D.C.
Global Business Forum
Asia trade policy issues update

* June 16, 1994 - Washington, D.C.
Twelfth Annual Judicial Conference, U.S. Court of Appeals for the Federal Circuit
Update on Asia Pacific and Latin America

* July 22, 1994 - Hong Kong
Hong Kong General Chamber of Commerce
U.S. Trade Policy Toward China

* July 28, 1994 - Washington, D.C.
House Ways & Means Committee, Trade Subcommittee
Testimony on Trade Policy Toward China

August 9, 1994 - Washington, D.C.
U.S.-China Business Council
Update on Asia Pacific Trade Issues

* September 13, 1994 - Washington, D.C.
Council of the Americas, Pre-Summit Round table
"Developing the U.S. Trade Strategy for Latin America and the Caribbean in Preparation for the Summit of the Americas"

September 20, 1994 - Washington, D.C.
Trade Policy Forum
"Japan Framework Talks"

September 27, 1994, Washington, D.C.
NASDAQ & KMPG Peat Marwick
General trade policy issues re Asia

October 14, 1994 - Washington, D.C.
Japan Information Access Project
"U.S.-Japan Trade & Technology"

* October 17, 1994 - New York, NY
  Asia Society
  "U.S.-Japan Trade"

  October 18, 1994 - Washington, D.C.
  ABA "Breakfast at the Bar"
  "The Clinton Administration's Trade Policies"

  October 19, 1994 - Washington, D.C.
  Emergency Committee on American Trade
  "Japan Review/Overview"

* November 17, 1994 - Washington, D.C.
  The Atlantic Council
  "Developments in Taiwan to 2020: Implications for Cross-Strait Relations and for U.S. Policy"

  November 18, 1994 - Washington, D.C.
  Manufacturers Alliance
  "The Clinton Administration's Int'l Trade Policy"

  December 1, 1994 - Washington, D.C.
  Washington Int'l Trade Association
  "Free Trade: The Bridge to Asia"

  December 5, 1994 - Washington, D.C.
  National Association of Manufacturers, Trade Forum
  General trade policy issues

  December 7, 1994 - Washington, D.C.
  American Forest & Paper Assn.,
  Int'l Business Committee & Executive Committee of the Board of Directors
  General trade policy issues

  December 16, 1994 - Washington, D.C.
  Discussion with Japanese Diet Members (Kakizowa Lunch)
  Current U.S.-Japan trade issues

  January 12, 1995 - Washington, D.C.
  Global Business Forum
  General trade policy issues

January 17, 1995 - Washington, D.C.
ABA's Section of Public Contract Law, (General Counsels' Committee)
General trade policy issues

* January 26, 1995 - New York, N.Y.
Nat'l Committee on U.S.-China Relations
General trade policy issues

* February 2, 1995 - Washington, D.C.
House International Relations Committee, Subcommittees on International Economic Policy & Trade and Asia & the Pacific
Testimony on Administration's Trade Policy in the Asia/ Pacific Region

February 8, 1995 - Washington, D.C.
National Association of Manufacturers, International Trade Subcommittee
General trade policy issues

February 9, 1995 - Washington, D.C.
ACTPN
Re WTO/China Accession; China; Intellectual Property Issues; APEC Update

* February 10, 1995 - Washington, D.C.
House Ways & Means Committee, Subcommittee on Trade
Testimony on The Caribbean Basin Trade Security Act

February 13, 1995 - Washington, D.C.
INSPAC
Re WTO; Special 301; APEC

February 16, 1995 - Washington, D.C. @ OEOB
Women in Government Relations
General trade policy issues

February 16, 1995 - Washington, D.C.
National Foreign Trade Council, Trade Committee
Administration's Trade Policy

* March 1, 1995 - Washington, D.C.
  National Assn. of Business Economists
  Panel re general trade policy issues

* March 2, 1995 - Washington, D.C.
  Committee on International Relations, Subcommittees on
  International Economic Policy & Trade and Asia and the Pacific
  Testimony re U.S.-China Intellectual Property Rights
  Agreement: Implications for U.S.-Sino Commercial Relations

March 7, 1995 - Syracuse, New York
  The Maxwell School of Citizenship, Syracuse University
  "U.S. Trade Interests"

* March 8, 1995 - Washington, D.C.
  Senate Foreign Relations Committee, Subcommittee on
  East Asian & Pacific Affairs
  Testimony, "Update on Intellectual Property Agreement with China"

March 16, 1995 - Arlington, VA
  Chemical Mfgrs. Assn., Int'l Trade Committee
  "China: IPR, Investment, Market Access,
  Renewal of MFN, Toxics Registry, WTO Accession"

* March 22, 1995 - Washington, D.C.
  Council of the Americas
  "Maintaining the Momentum for the FTAA"

March 29, 1995 - Washington, D.C. @ Pentagon
  Defense Policy Advisory Committee
  General trade policy issues

* March 29, 1995 - Washington, D.C. @ OEOB
  Dallas Chamber of Commerce's Dallas Delegation Days
  "Future Global Trade Trends"

March 29, 1995 - Washington, D.C.
  Semiconductor Industry Association
  Acceptance Speech for 1995 Trade Leadership Award

March 30, 1995 - Washington, D.C.
  Economic Strategy Institute/Pacific Basin Economic

Council Trade Policy Conference, Panel
"The U.S. & China: Seeking Harmony"

* March 31, 1995 - Washington, D.C.
The Aluminum Association - Spring Meeting
"Administration's International Trade Agenda & Trade Opportunities for the Aluminum Industry"

April 4, 1995 - Washington, DC
Society of International Business Fellows
General trade policy issues

* April 4, 1995 - Washington, D.C. @ OEOB
Sacramento Metropolitan Chamber of Commerce
"Administration's Trade Projects & Initiatives, and Their Impact on California"

April 5, 1995 - Washington, D.C.
ABA's Breakfast at the Bar
General Trade Policy Issues

April 5, 1995 - Washington, D.C.
Business Roundtable Int'l Trade & Investment Task Force
Perspective on Trade Policy for the Coming Months (Asia)

April 5, 1995 - Washington, D.C.
Center for Int'l & Security Studies at Maryland
"U.S. Trade Policy Process"

* April 6, 1995 - Washington, D.C.
Washington Campus
Administration's Economic Objectives

April 11, 1995 - Washington, D.C.
The Brookings Institution - Seminar on U.S. Policymaking and Issues in Nat'l and Int'l Affairs
"Issues in U.S. Trade Policy"

* April 21, 1995 - Washington, D.C.
International Alliance/Financial Women's Assn. of New York; The Washington Briefing
"Trade Policy Agenda"

* April 26, 1995 - New York, N.Y.
Council on Foreign Relations
"Future of U.S.-China Trade"

May 1, 1995 - Washington, D.C.
National Economic Club
Panel on Trade Policy

May 3, 1995 - Washington, D.C.
Motor & Equipment Mfg. Assn's Automotive Presidents Council
"Trade Policy Agenda"

May 3, 1995 - Washington, D.C.
Steel Manufacturers Association
"Trade Policy Agenda"

* May 8, 1995 - Washington, D.C.
USA-ROC Economic Council Board
"U.S.-Taiwan Trade Relations"

* May 15, 1995 - Washington, D.C.
Senate Finance Committee, Trade Subcommittee
Testimony re S.529, The Caribbean Basin Trade Security Act of 1995

May 22, 1995 - Washington, D.C.
U.S. Chamber of Commerce's Asia Task Force
"Asia Trade Issues"

May 22, 1995 - Washington, D.C.
Council of the Americas
Meeting Theme: "Forging a Free Trade Area in the Americas"

* May 23, 1995 - Washington, D.C.
House Ways & Means Committee, Trade Subcommittee
Testimony on Trade Policy Toward China

May 26, 1995 - Washington, D.C.
The Federal Circuit Bar Association's Annual Meeting
"Where Trade Policy is Going in the Next Two Years"

May 31, 1995 - New York, N.Y.
Foreign Policy Association
"U.S.-China Trade Agreements"

June 4, 1995 - Washington, D.C. @ OEOB
Greater Des Moines Chamber of Commerce Federation
Administration's Trade Policy re Iowa

June 5, 1995 - Washington, D.C.
America-China Society Directors
General Trade Issues

* June 15, 1995 - Washington, D.C.
Carnegie Bosch Institute
Government Policies that Influence the Competitiveness of Businesses

* June 21, 1995 - Washington, D.C.
Ways & Means Committee, Trade Subcommittee
Testimony re Importance of a Free Trade Area with Chile

June 26, 1995 - Washington, D.C.
Economic Strategy Institute
Administration's Trade Policy

July 5, 1995 - Washington, D.C.
Inter-American Dialogue
Brief re Denver Summit of the Americas

* July 12, 1995 - New York, N.Y.
Americas Society
"Free Trade in the Americas"

* July 13, 1995 - Washington, D.C.
House Judiciary Committee
Testimony on Copyright Term Extension Act

* July 17, 1995 - Washington, D.C.
Georgetown University sponsored Int'l Workshop for Korean Dignitaries
"Trade Relations Between Korea & U.S."

July 17, 1995 - Washington, D.C.
Export-Import Bank, Interns Program
General Trade Policies

* July 18, 1995 - Washington, D.C.
House Committee on International Relations, Subcommittees on Asia & the Pacific and International Economic Policy & Trade
Testimony on APEC (Asia-Pacific Economic Cooperation Forum)

July 20, 1995 - Washington, D.C.
U.S. Council for International Business
General Trade Issues, plus China

July 24, 1995 - Washington, D.C.
U.S. Korea Business Council
General Trade Issues, plus Korea

* August 1, 1995 - Washington, D.C.
Senate Finance Committee, International Trade Subcommittee
Testimony re several trade issues

August 2, 1995 - Washington, D.C. @ OEOB
American Society of Association Executives
General Trade Issues

September 12, 1995 - Washington, D.C.
Practicing Law Institute
The GATT, the WTO & the Uruguay Round Agreements Act: Understanding the Fundamentals, Policy Overview

September 12, 1995 - Washington, D.C.
INSPAC
Update on China, APEC, Asia, trade issues and status of BIT

September 14, 1995 - Washington, D.C.
ACTPN
Asia Trade Issues and ACTPN Asia Report

* September 18, 1995 - New York, NY
Nat'l Committee on U.S.-China Relations
"Relationship Between US and China"

September 26, 1995 - Washington, D.C. @ OEOB
Women In Government Relations
Brief on trade issues

September 27, 1995 - Washington, D.C.
Assn. Of Embassy Economic Trade Ministers
Brief on trade issues

September 28, 1995 - Washington, D.C.
Trade Advisory Committee on Africa
Brief on trade issues, plus Africa

* October 5, 1995 - Washington, D.C.
U.S.-Vietnam Trade Council, U.S.-Vietnam Forum
"Broader Trade Policy With Vietnam"

October 6, 1995 - Washington, D.C.
Conference on The Evolution of Free Trade In The Americas: NAFTA Case Studies
Brief on Trade Issues, plus Latin America

October 23, 1995 - Washington, D.C. @ NEOB
Portfolio Investors
Brief on Trade Issues

November 1, 1995 - Washington, D.C.
American Society of International Law, Corporate Counsels
General Trade Issues, plus China

November 2, 1995 - Washington ,D.C.
Georgetown International Trade Conference
General Trade Issues, plus Antidumping

November 3, 1995 - Washington, D.C.
The Conference, Council of Chief Legal Officers
General Trade Issues

* November 13, 1995 - Hong Kong
Vision 2047
"Trade in a New Era: Opportunity & Obstacles"

November 28, 1995 - Washington, D.C.
ESI's Global Economic Competitiveness Series
General Trade Issues

* November 29, 1995 - Washington, D.C.
Senate Foreign Relations, East Asian & Pacific Affairs Subcommittee
Testimony, Update on China's Implementation of the IPR Agreement

November 30, 1995 - Washington, D.C.
ACTPN
General Trade Issues

December 7, 1995 - Washington, D.C.
Manufacturers Alliance
General Trade Issues

December 13, 1995 - Washington, D.C.
Council of the Americas
"Future of NAFTA Expansion & FTAA"

December 15, 1995 - Washington, D.C.
US Council for International Business
General Trade Issues

February 13, 1996 - Washington, D.C.
ACTON
Brief re China/Asia & FAA

February 14, 1996 - Washington, D.C.
Institute of the Americas/1996 Hemispheric Policy Forum
Panel re Latin America

February 26, 1996 - Washington, D.C.
IGPAC
General Trade Issues

* March 6, 1996 - Miami, FL
Council on Foreign Relations
Administration's Economic Vision for FAA

March 28, 1996 - Washington, D.C.
Washington Institute of Foreign Affairs
General Trade Issues

March 29, 1996 - Washington, D.C.
American Society of International Law
General Trade Issues

April 1, 1996 - Washington, D.C.
Ambassador's Roundtable
General Trade Issues

* April 16, 1996 - Washington, D.C.
Int'l Fedn. Of Phonogram Industries
General Trade Issues

* May 8, 1996 - Washington, D.C.
House Appropriations Committee, Commerce, Justice, State, Judiciary & Related Agencies Subcommittee
Testimony re USTR FY 1997 Appropriations Request

May 9, 1996 - Washington, D.C.
Council on Foreign Relations, Economic Policy Studies Group
"Understanding China's IPR Policies"

* May 21, 1996 - Washington, D.C.
Pacific Basin Economic Council
"Trade & Investment in the Pacific Basin"

May 30, 1996 - Washington, D.C.
Global Business Forum
General Trade Issues

* June 6, 1996 - Washington, D.C.
Senate Finance Committee
Testimony re U.S.-China Relationship re Intellectual Property Agreement

* June 11, 1996 - Washington, D.C.
House Ways & Means, Trade Subcommittee
Testimony re U.S.-China Relationship re Intellectual Property Agreement

June 17, 1996 - Beijing, ROC
Statement after meeting with ROC President and Vice Premier re Intellectual Property Agreement discussions

September 11, 1996 - Washington, D.C.
Minority Trade Conference of Commerce, State & USTR
General Trade Policy Issues

September 12, 1996 - Washington, D.C.
President's Advisory Committee for Trade Policy and Negotiations (ACTON)
Talk re Business and Administration Cooperation

* September 19, 1996 - Washington, D.C.
Steel Caucus of the U.S. Congress
Overview of Trade Issues

* September 19, 1996 - Washington, D.C.
Ways & Means, Trade Subcommittee
China & Taiwan's Accession to the WTO

September 20, 1996 - Washington, D.C.
National Association of Manufacturers, Trade Forum
General Trade Policy Issues

* September 25, 1996 - San Jose, CA
Group of Semiconductor CEO's
Trade issues and IPR Agreement Status

* September 26, 1996 - Seattle, WA
Business Forum of Seattle
General Trade Issues & Washington State Trade

* October 2, 1996 - Washington, D.C.
Women's Foreign Policy Group
General Trade Policy Issues

October 15, 1996 - Washington, D.C.
Trade Policy Forum
General Trade Policy Issues

October 18, 1996 - Palo Alto, CA
Santa Clara Valley Manufacturing Group
Administration's Trade & Economic Policy Issues

* October 21, 1996 - Washington, D.C.
  Pacific Rim Advisory Committee
  General Economic and Trade Issues

  October 24, 1996 - Tampa, FL
  Tampa World Trade Center Global Marketing Conference
  Administration's Trade & Economic Policy Issues

  November 21, 1996 - Manila, Philippines
  U.S.-ASEAN Business Coalition
  APEC's Goals and their Impact Worldwide

  November 22, 1996 - Manila, Philippines
  APEC Business Advisory Forum
  The Future of APEC

* December 9, 1996 - Singapore
  World Trade Organization (WTO) Ministerial
  Remarks at Opening of Ministerial

* December 12, 1996 - Singapore
  American Chamber of Commerce in Singapore and the U.S.-ASEAN Business Council
  Effectiveness Over Time of WTO and Its Decisions

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

Throughout her tenure at the Office of the U.S. Trade Representative (May 1993 - present), Ambassador Charlene Barshefsky has played a central role in developing and implementing the Administration's trade policy objectives. Upon naming her Acting U.S. Trade Representative in April 1996, the President noted Ambassador Barshefsky's tenacity and labeled her "a brilliant negotiator for our country." In announcing his intention to nominate her as United States Trade Representative on December 13, 1996, President Clinton said, "She is a tough and determined representative for our country, fighting to open markets to the goods and services produced by American workers and businesses...I'm very glad she'll be on the job for America."

In his announcement, the President referred explicitly to the recent World Trade Organization Ministerial Meeting in Singapore where Ambassador Barshefsky marshaled support for a global Information Technology Agreement (ITA) to boost

world technology trade. The Information Technology Agreement would expand trade in an area that today represents more than $500 billion in global trade in which the United States is the world leader in exports and new technological development. *The Washington Post* (December 15, 1996) noted: "the energetic acting U.S. Trade Representative Charlene Barshefsky... deserves much of the credit for the agreement."

As the President's chief trade negotiator and trade policy maker, she has played an instrumental role in solving trade disputes with Japan, China and numerous other nations on behalf of the United States. Ambassador Barshefsky's tenure at USTR demonstrates a consistent focus to open global markets through bilateral and multilateral trade agreements that increase export opportunities for U.S. businesses and workers, a central principle in President Clinton's economic strategy to build domestic prosperity. Of her nomination to serve as U.S. Trade Representative, Gary Hufbauer, Senior Fellow at the Institute for International Economics, said "she is easily the most qualified, most knowledgeable person on trade law ever nominated to this post."

Prior to her appointment as Acting United States Trade Representative, she served as Deputy United States Trade Representative since May 28, 1993. In this role, she was instrumental in successfully negotiating multiple trade agreements and investment treaties, and directed unprecedented efforts to protect intellectual property rights around the world. In the past four years, she has played a leading role in devising and implementing the Administration's strategy to expand trade within the Asian-Pacific Economic Cooperation (APEC) region and throughout the Western Hemisphere through the Free Trade Area of the Americas (FAA).

With regard to Japan, Ambassador Barshefsky has served as a key policy maker and was a negotiator of the comprehensive "1994 Framework Agreement." Under the Framework Agreement, Ambassador Barshefsky has negotiated numerous market access agreements in such areas as Japanese government procurement practices, telecommunications equipment, insurance, flat glass, agricultural products, wood products, computers, semiconductors, medical equipment and technology, and cellular phone service. She was also instrumental in formulating the Administration's strategy with respect to the U.S.-Japan auto dispute. "Charlene Barshefsky is a powerful, effective advocate for American trade interests -- exactly the type of person I want in our corner, as we continue to seek greater access to foreign markets for American products," said Robert J. Eaton, Chairman, CEO & President, Chrysler Corporation.

In August 1996, Ambassador Barshefsky secured a new U.S.- Japan agreement on semiconductor trade that retains key features of previous agreements while encouraging other nations to eliminate tariffs on semiconductors -- another area where the United States is the world leader in production and exports. In December

1996, Ambassador Barshefsky negotiated a market access agreement that builds on the 1994 Framework Agreement by providing for substantial deregulation of the Japanese insurance market while securing concrete opportunities for foreign companies to sell insurance in Japan on a competitive basis.

With regard to trade matters with China, Ambassador Barshefsky negotiated the 1995 and 1996 landmark intellectual property rights enforcement agreements that require closure of illegal CD and software factories and open the Chinese market for the legitimate sale of U.S. software, music, and film products. Ambassador Barshefsky has also fought to increase market access in China for U.S. agricultural products, high-tech equipment, and services such as insurance and telecommunications. She has also been instrumental in formulating the DEC process in Korea and the Alliance for Mutual Growth (AMG) with the ASEAN countries, as well as directing an activist approach with APEC on trade and investment issues.

With regard to agricultural trade, Ambassador Barshefsky has led efforts to open markets for U.S. producers, leading to a 30% increase in the value of agricultural exports from 1994 through 1996. She has aggressively sought to eliminate non-scientific trade barriers with market-opening actions to boost beef exports to Korea and increase the availability of fresh produce in Japan and China. Recently, she successfully fought back potential European trade barriers that could have far-reaching consequences for soybean and corn exports. Dean R. Kleckner, President of the American Farm Bureau Federation noted, "Ambassador Barshefsky's appointment will provide the needed continuity to address the current and growing number of trade barriers facing American agriculture." In November 1996, Ambassador Barshefsky and Israel's Minister of Industry and Trade, Natan Sharansky, launched a new agricultural trade agreement which could push U.S. agricultural exports to Israel to more than $800 million by the year 2000.

Ambassador Barshefsky has been leading U.S. efforts to expand trade with the European Union under the New Transatlantic Agenda, including a round of new mutual recognition agreements that will reduce manufacturers' costs -- a key objective of the U.S.-EU Transatlantic Business Dialogue. She is also directing cooperative trade initiatives with Russia and the former Soviet Republics to accelerate economic development in the region. Ambassador Barshefsky has also called for comprehensive reform of the U.S. General System of Preferences (GSP) trade benefits program to meet the needs of the least-developed countries, particularly in sub-Sahara Africa so that trade policy complements other global development objectives.

In the Western Hemisphere, under the North American Free Trade Agreement (NAFTA), U.S. exports to Canada and Mexico are up by more than 34% over pre-NAFTA levels -- and 1996 exports to Mexico are up 21% from 1995, recovering

dramatically from a temporary fall-off in 1995 due to the Mexican Peso crisis. Ambassador Barshefsky is continuing to press for increased market access on a wide range of issues. For example, she has initiated several actions against restrictive Canadian trade barriers in areas that would increase sales opportunities for U.S. publications, and enhance access for U.S. broadcasters. She has also worked actively to combat restrictive agricultural policies, as well as discriminatory practices in the Canadian entertainment, communications and information industries. At Ambassador Barshefsky's direction, the U.S. has also maintained a close watch on some commodity and staple crops such as wheat and barley to ensure that domestic producers are not adversely impacted by market disruption.

With the rapid growth of U.S.- Latin American trade, Ambassador Barshefsky has served as the lead policy maker and negotiator of the Free Trade Area of the Americas Agreement (FTAA). She has also led the Administration's efforts to develop bilateral and regional trade initiatives with particular emphasis on Brazil, Argentina, the CARICOM countries and Central America. Among these efforts, she has pursued the CBI Parity initiative, as well as promoting policies that ensure the adequate and effective protection of U.S. investment and intellectual property rights within the region.

On a global basis, Ambassador Barshefsky is working to secure an investment agreement among OECD countries in 1997 to protect American interests abroad. Her pioneering efforts in global intellectual property rights enforcement have led to enforcement actions in more than fifteen countries under "Special 301" provisions of U.S. trade law.

Prior to her appointment at USTR, Ambassador Barshefsky was a partner in the Washington, D.C. law firm of Steptoe & Johnson. She specialized in international trade law and policy for 18 years and co-chaired the firm's substantial International Practice Group.

Both during her tenure at USTR and at Steptoe & Johnson, Ambassador Barshefsky has published, lectured, and testified extensively on U.S. and international trade policy and laws.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Not applicable

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

   No

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

   No

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

   It is my current intention to serve my full term in office.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

   My client mix at Steptoe & Johnson (and that of the firm's international practice group) was divided roughly evenly between domestic and foreign representations. With respect to my domestic representations, in 1984, I was retained by the Coalition to Promote America's Trade ("PAT Coalition"), an ad hoc group of U.S. multinationals which formed to oppose then-pending natural resource trade legislation. I was a registered lobbyist in connection with that representation and, as legal counsel to the Coalition, I testified before the House Ways & Means Trade Subcommittee on June 6, 1985 and before the Senate Finance Committee on June 26, 1986.

With respect to my foreign representations, with one exception (COECE), the services performed by me for my clients involved either trade litigation, or monitoring, which involved apprising clients of general developments in fields of interest. No lobbying of U.S. government agencies or the Congress was involved in any of my representations of foreign clients.

With respect to FARA filings, I was registered under FARA in connection with the firm's representation in three matters only, the Embassy of Canada, the Canadian Forest Industries Council (CFIC) (an unincorporated association comprised of trade associations in the Canadian forest products sector, private Canadian softwood lumber producers, Canadian exporters of softwood lumber, and U.S. importers of softwood lumber) and Coordinadora de Organizaciones Empresariales de Enterior (COECE). The Embassy of Canada representation consisted of monitoring. The monitoring contract specifically provided for the following: "to provide legal advice to Canadian Embassy ... on political, legislative and regulatory developments in the U.S. relating to trade and economic issues." The CFIC representation was trade litigation and counseling in connection with that litigation. COECE was a coalition of Mexican private sector companies; the representation involved a review of NAFTA texts to insure their internal legal consistency. None of these representations involved the lobbying of any U.S. government agency or the Congress.

I was also registered under FARA in connection with the representation of Caribbean ISPAT Limited (ISPAT), the entity which leased the Iron & Steel Company of Trinidad and Tobago (ISCOTT) steel plant. Steptoe & Johnson had represented ISCOTT in connection with antidumping and countervailing duty litigation and we were later retained by ISPAT to advise it in connection with steel voluntary restraint negotiations (VRA). The firm de-registered in 1990 after VRA negotiations had concluded.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)

   Recusal Letter of January 6, 1997 - (See Attachment marked "Response to Question #4")

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

   Supplied on January 6, 1997 (See Attachment marked "Response to Question #5")

Attachments to Questions 4, 5, and 6

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D C 20508

January 6, 1997

Jennifer Hillman
General Counsel
Office of the United States
Trade Representative
600 Seventeenth Street, NW
Washington, D.C. 20508

Dear Ms. Hillman:

I am committed to the highest standards of ethical conduct for government officials. In that spirit, and to avoid all appearance of a conflict of interest, I will undertake the following recusals if I am confirmed as United States Trade Representative.

I have maintained interests in the Steptoe & Johnson Retirement Plan and the Steptoe & Johnson Defined Benefit Plan, listed on p. of my Financial Disclosure report. My interest in these plans is accrued and vested and will not change. The assets in the plans are invested in a diversified portfolio selected and independently managed by professional investment advisors. However, I will recuse myself or seek an appropriate waiver in all particular matters having a direct and predictable effect on the willingness and ability of Steptoe & Johnson to honor its obligations to me under these plans.

I will recuse myself from any particular matter involving specific parties in which I served as counsel on that matter while in private practice, unless I have been authorized to participate under the provisions of 5 C.F.R. 2635, Subpart E.

Sincerely,

Charlene Barshefsky

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

January 6, 1997

The Honorable William V. Roth, Jr., Chairman
Finance Committee
United States Senate
Washington, D.C.

Dear Senator Roth:

I am writing in connection with the nomination of Ambassador Charlene Barshefsky as United States Trade Representative. I enclose a copy of her financial disclosure form and recusal undertaking.

I have reviewed the report and the recusal undertaking in light of the functions that Ambassador Barshefsky will undertake. I believe the recusal undertaking appropriately addresses all actual or potential conflicts of interest. Based on my review, I have concluded that Ambassador Barshefsky is in compliance with applicable laws and regulations governing conflicts of interest.

If we can be of further assistance, please let me know.

Sincerely,

Jennifer Hillman
General Counsel and Designated
Agency Ethics Official

RESPONSE TO C.6

Before becoming the Deputy United States Trade Representative in May of 1993, I worked for 18 years as a lawyer with the Washington law firm of Steptoe & Johnson. The vast majority of my work during those 18 years was in the international trade area, particularly in the area of trade litigation, including antidumping, countervailing duty, escape clause, and similar on-the-record litigations arising under the U.S. trade laws. My representation of foreign governments or foreign political parties was limited to Canada, viz. the Government of Quebec and the Embassy of Canada,[1] which were disclosed at the time that I was confirmed in 1993 to serve as Deputy United States Trade Representative. At no time during the 18 years that I practiced law did I ever lobby on behalf of any foreign government or foreign political party.

With respect to the Government of Quebec, my work involved providing guidance and legal drafting assistance to the Steptoe & Johnson lawyers responsible for the client in connection with on-the-record litigation in two trade cases: 1) the administrative reviews of countervailing duty orders on Fresh, Chilled and Frozen Pork from Canada (hereinafter Canadian Pork) and the appeal thereof to an FTA panel; and 2) the petition filed under Section 302 of the Trade Act of 1974 by the G. Heilman Brewing Company (later joined by Stroh's Brewing Company) concerning Canadian beer practices (hereinafter Canadian Beer). I did not meet with any U.S. government officials or appear on behalf of Quebec in any proceeding, nor did my name appear on any of the briefs or submissions in any of the proceedings. With respect to Canadian Beer, neither I nor the firm were involved in the GATT Panel proceeding.

My work related to the Government of Quebec began in October of 1989 and ended in March 1991, almost six years ago. My time on the Canadian Pork and Canadian Beer matters totaled approximately 240 hours, which represented just over 0.50 percent of my work while in private practice.

With respect to the Embassy of Canada, my former law firm and I were retained by the Embassy to monitor developments in the United States concerning a broad range of substantive areas, including international trade. The contract with the Embassy of Canada for this monitoring work stated that Steptoe & Johnson was "to provide legal advice to the Canadian Embassy, in Washington, D.C., on political, legislative and regulatory developments in the United States relating to trade and economic issues." The Embassy explicitly prohibited lobbying on its behalf and I did not lobby.

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[1] In addition, I made one very brief telephone call with another private practice lawyer on behalf of the Embassy of the United Kingdom -- another partner's client -- regarding a rumor about a new trade litigation.

We routinely reviewed developments in the international trade area, which included administrative, legislative and judicial actions on issues of relevance to the Embassy, ranging from changes in U.S. trade law to investment restrictions in various countries. I coordinated the work of other lawyers and paralegals in the firm as well, and routed to them pertinent materials for their use.

Pursuant to the monitoring contract, the Embassy requested that I also provide advice with respect to two specific trade matters. First, I directed the preparation of memoranda on the options and legal consequences if Canada were to terminate its settlement agreement with the United States involving softwood lumber, as well as the implications of judicial, administrative and legislative developments in U.S. trade law on possible future trade litigation in the event that Canada decided to terminate the settlement agreement. I did not recommend to the Embassy what course of action Canada should take with respect to the lumber matter. At the time that I directed this work, the settlement agreement was in force; there was no pending trade litigation and there were no negotiations on softwood lumber between the United States and Canada. In fact, my work on the settlement agreement ended several months before the countervailing duty litigation on Softwood Lumber from Canada began.[a]

Second, I reviewed certain draft composite texts prepared by the Chairmen of the GATT working groups on antidumping and countervailing duty law for circulation to all of the approximately 117 countries that participated in the Uruguay Round MTN. The Chairmen's drafts that I commented on were prepared by the GATT Chairmen as an attempt to reflect the consensus of GATT members. They were not U.S. texts. My review of these draft texts involved comparative analyses of the Chairmen's drafts with past GATT provisions, GATT practice, prior Chairmen's drafts, and U.S. law, as appropriate, and an evaluation of the potential impact of these and alternative texts on U.S. law.

My time spent on the MOU settlement agreement and MTN matters totaled approximately 145 hours, or slightly more than 0.30 percent of my work while in private practice. My work on these two matters was done intermittently from May 1990 to December 1991, and ended more than five years ago.

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[a] My work for the Embassy of Canada did not include representation of the Embassy in the countervailing duty litigation on Softwood Lumber from Canada. The Government of Canada and each of the provinces were represented by separate counsel other than Steptoe & Johnson in the Softwood Lumber countervailing duty litigation. I did, however, represent private Canadian lumber interests in that litigation. See response to question C.3.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

   Yes

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

   I will provide all information that is reasonable and appropriate to provide, in consultation with USTR and relevant Executive Branch and agency personnel.

Written Response to Questions from Senator Baucus
China and WTO Accession

1. **What do you see as the major issues in China's WTO accession talks and what do you see as the broad outlines of a successful negotiation?**

We envision WTO accession for China as a set of three separate but equally important building blocks:

1) a fundamental rules package, which ensures that UPON ACCESSION China adheres to global norms and maintains the foundation principles of the WTO in such areas as national treatment, non-discrimination, transparency and judicial review.

2) a market access package, including specific commitments in areas such as tariffs, NTMs, agriculture, and services, and which eliminates all WTO-inconsistent barriers to trade over a reasonable period of time; and

3) a safeguards and remedies package, which ensures that we maintain our right to have effective redress.

Over the past few months, we have had intensive negotiations with the Chinese on key protocol issues -- especially national treatment, trading rights, TRIMS and other investment issues, statutory inspection, customs valuation and the schedules -- tariffs, NTMs, services and agriculture. We have begun to make progress on some issues, but there is still much work to do. I look forward to working closely with you and other members of Congress as these negotiations move forward.

International Negotiations vs. Section 301

2. **The American Chamber of Commerce in Japan recently noted that our most effective agreements with Japan came through bilateral negotiations, often under Section 301. My impression is that over the past years, we have relied much more on the World Trade Organization than on own trade laws to solve dispute over market access. Will you use our trade laws, including 301 aggressively or do you believe the time has come to rely exclusively or primarily on international dispute settlement?**

I intend to continue to use our trade laws as aggressively as possible-- as the Clinton Administration has done since its inception. In the past year alone we initiated nine Section 301 investigations, invoked the telecommunication trade agreement provisions of the 1988 Omnibus Trade and Competitiveness Act (sections 1374 and 1377) against two countries and the government procurement provisions (Title VII) of that act against Germany. We have invoked the foreign compliance monitoring provisions of section 306 of the Trade Act of 1974 to compel China to comply with our 1995 agreement on the enforcement of intellectual property rights. We have also suspended a portion of Pakistan's GSP benefits as a result of child and bonded labor problems and will suspend one half of Argentina's GSP benefits for intellectual property rights violations. We have on a number of occasions used the leverage of Section 301, Super 301 and our other trade laws to reach agreements without actually invoking them.

Many of our recent Section 301 investigations have involved resort to the WTO dispute settlement procedures. Section 301 requires us to resort to those procedures whenever an investigation involves a WTO agreement. As you know, Section 301 was designed to be used both to enforce our GATT and WTO rights and to address barriers not yet covered by trade agreements. I intend to continue to use vigorously this flexibility in Section 301 to eliminate foreign unfair practices, including in situations where the practices are not covered by WTO agreements as in the case of China.

3. Many agricultural producers feel that in trade policy, federal agencies don't work together as well as they could. How will you improve coordination of efforts on agricultural trade between USTR, the Department of Agriculture and the State Department, and what are your main goals in agricultural trade policy?

The development of trade policy is a cooperative effort involving close consultation between the President, Congress, and the private sector. USTR functions as the coordinator in this effort. It receives advice through a system of private sector advisory committees, and it plays a leading role in coordinating the interagency committee system charged with developing trade policy within the Executive Branch. The Department of Agriculture and the State Department are both members of the committee system. We strive to formulate agricultural trade policy taking into account the views of, and achieving a broad consensus among, other trade related agencies, particularly the Department of Agriculture and the Department of State. I am not aware of any criticism of USTR coordination activities. I will contact my colleagues in the Department of Agriculture and in the State Department. If there are coordination problems, I will resolve them. We have also created a special USTR/USDA tem to better coordinate agricultural trade issues and negotiations.

Our main goals in agricultural trade policy are to:

- Protect U.S. rights under international trade agreements, such as the NAFTA and the WTO, including through effective use of the dispute settlement systems of each agreement for measures that are inconsistent with the agreement or nullify or impair concessions granted to the United States.

- Support WTO accessions only on the basis of commercially meaningful agreements which open markets and end access restrictions for our agricultural products. (e.g. China)

- Secure fast track authority in order to negotiate a comprehensive trade agreements with Chile and with other countries in Latin America and Asia.

- Develop U.S. government proposals to advance the work program in the WTO Committee on Agriculture so that negotiations to continue the reform program in agriculture will resume promptly in 1999.

- Resolve outstanding bilateral issues with a number of countries including China, Korea, the EU and Japan.

- Most immediately, conclude a veterinary equivalence agreement with the EU which will provide for the recognition of U.S. animal and public health requirements as equivalent to EU requirements and thus maintain and increase U.S. exports of livestock and livestock products and fish currently valued at $1.5 billion annually.

Trade Deficit

#4 In each of the past three years, counting goods and services together, the U.S. ran a trade deficit of $100 billion or more -- about 1.5% of GDP. Do you see this as a serious problem? And can the trade deficit be solved through trade policy, or does it reflect essentially domestic issues like savings rates and budget deficits?

As regards our aggregate imbalance with the world, the development of sizable, sustained trade imbalances since the early 1980s largely reflects the decline in U.S. saving rates 15 years ago. I discuss this in more detail below. However, the reduction in U.S. saving rates, combined with the underlying health and attractiveness of our economy has resulted in large capital inflows on the one hand and sustained current account deficits on the other -- each of which, adjusted for statistical discrepancy, have cumulatively summed to roughly $1 3 trillion since 1982 In light of reduced U.S. saving rates, the foreign capital inflows have helped sustain our investment and growth rates. But, many are concerned about the sizable buildup of U S. foreign obligations The President and Congress working together in the past 4 years have, of course, greatly reduced the federal deficit, and the trade deficit has fallen considerably as a share of GDP Moving the budget into balance will sustain this trend and should restore national saving rates further Trade policy per se has relatively small influence on our aggregate trade imbalance with the world because trade policy has little impact on the level of aggregate saving and investment in the economy (the absolute value of the domestic saving-investment imbalance equates to the amount of net foreign capital inflows to the United States and to the current account balance, adjustments made for statistical discrepancies) Trade policy may play more of a role in bilateral imbalances To the extent that bilateral U S trade deficits reflect foreign trade barriers, there is another reason for concern about U.S trade deficits. However, I would add that even if the U S trade balance were in constant surplus, foreign barriers, if they existed would still hurt our workers, compromise our economic potential and need to be addressed no less vigorously than now

Some have argued that any increase in the trade deficit reflects an underlying lack of competitiveness in the U S economy and has been responsible for a loss of jobs overall and of economic growth I do not believe that this is true In industry after industry -- agriculture, manufacturing, and services -- the U S. produces some of the world's best products and some of the best value for the price Our exports, as noted earlier, have accordingly grown rapidly Since 1992, the expansion of exports has accounted for about a fifth of the increase in our GDP

The rise in our trade deficit earlier in the Administration was, in fact, related to the favorable performance of the U S economy. The U S economy began to recover earlier than other countries from the global recession of the early 1990s and to grow faster than the markets of many of our major trade partners For example, since 1992, U S net employment has increased by 10 million, while for the economies of the other six major world economies in the group of G-7 countries, there has been little job growth at all (600,000) over this period Despite the trade deficit, U S industrial production has increased by 18 percent in real terms, while Japan's is up just 2 8 percent and Germany's is actually lower by 3 3% With such relatively strong U S economic performance, our demand for imports rose rapidly at a time when foreign demand for

U.S. exports, though substantial, was dampened by lack of growth in foreign purchasing power. The Japanese economy, for example, is only now emerging from a long recession during which it experienced very little growth for four years.

The full elimination of the trade deficit, however, is likely to depend on addressing the fall in U S saving rates that occurred in the early 1980s. During this time period, higher budget deficits and lower overall savings in the United States induced large net foreign capital inflows These inflows supplemented U.S. saving to maintain investment in the U S. economy at roughly historic averages. But the capital inflows also necessarily implied large corresponding trade deficits. (Net capital inflows are matched by trade deficits while net capital outflows are matched by trade surpluses). The trade deficit, which is a serious problem, can only be ended when U S. domestic saving and investment are brought back into balance with each other Obviously for our future job, growth and living standard potential, it is much better that the trade deficit be closed through higher U.S. saving than through reduced investment in the U S. economy

The greatest influence the federal government has over internal saving rate is through its own budget balance When the government budgets are in deficit, they subtract from the national flow of saving, when in surplus (as are many state budgets), they add to the national saving pool. The President's first Administration, working with the Congress, made good progress in dealing with budget deficits. The deficit has fallen for four years in a row and, at $107 billion last year, was at its lowest nominal dollar level since 1981.

It should also be noted that, in fact, substantial progress has been made on the trade balance front as well. At the previous cyclical peak in 1987, the U S goods and services trade deficit equaled 3.3 percent of U.S. GDP In 1995, arguably the peak for this cycle, that goods and service deficit totaled 1.4 percent of U.S GDP In the first 11 months of 1996, the goods and services deficit was slightly up in dollar value from the corresponding period of 1995 However, rising oil prices are playing a significant role in the increase this year The non-oil deficit has fallen slightly (2%) from $126 4 billion in 1995 to $123 9 billion in 1996 More progress needs to be made on the trade deficit, but that progress needs to work through the strengthening of U S domestic saving rates, as well as the opening of foreign markets

Whatever the level of trade imbalance, the closing of U S markets would hurt U S workers, while the opening of foreign markets would benefit U S workers When the world's playing field is level, U S. workers, because of our higher labor productivity -- much higher on average than in either Europe or Japan can compete successfully against any workers in the world and win! Moreover, U S jobs supported directly and indirectly by goods exports are more productive and pay higher wages than the U S national average The lowering of trade barriers helps shift the growth of U S job opportunities somewhat over time toward more productive, remunerative work for Americans

An aggressive, market-opening trade policy is particularly needed at a time when export opportunities are growing so rapidly For example, the United States is the world's premier

exporter of the tools of economic development --everything from oil exploration equipment to information systems and medical devices. With much of the developing world (where 85 percent of the world's population lives) moving toward freer markets internally and at the border, demand for U.S. exports should grow very rapidly for a generation or more Good, market-opening agreements to secure and expand access to these now rapidly growing markets are fundamentally in the interests of the U.S. economy and U.S. workers.

Pursuing these benefits through an aggressive, market-opening trade policy can help us work smarter, work better, raise average labor productivity and compensation, and increase GDP growth rates and U.S. living standards. These benefits from trade are available, irrespective of the aggregate trade balance position. We need to continue addressing the trade deficit problem as described above. However, our trade policy objectives should be pursued for the benefits they bring no less vigorously, even if the U.S. trade accounts were to move into significant surplus through further success in raising U S. national saving.

Wool Suits from Canada

Montana is one of our largest wool producing states. Thus I am very interested in the problems associated with the wool apparel Tariff Preference Level (TPL). This is in effect a loophole created under the US-Canada Free Trade Agreement (CFTA). The TPL permits Canada to export to the US, at preferential duty rates, wool apparel which fails to meet CFTA rule of origin requirements for this sector. Recognizing the potential for this provision to severely damage the U.S. market, the CFTA mandated renegotiation of the TPL rates before January 1, 1998, to reflect current conditions in the textile and apparel industries. Inexplicably, this renegotiation clause was eliminated in the North American Free Trade Agreement. How will you approach this issue to prevent further damage to U.S. wool producers and wool fabric and apparel manufacturers?

We share your concern over the increase in shipments of wool suits from Canada under the NAFTA Tariff Preference Levels [TPL]. We are disturbed by their usage of the TPL and by the significant impact that Canadian wool suit imports are having on U.S. producers. We have been pursuing, and will continue to pursue aggressively, this issue with Canada.

I have raised this issue with Trade Minister Eggleton. In late November, before the Singapore WTO Ministerial, our chief textile negotiator, Ambassador Hayes, traveled to Ottawa for discussions on this issue and others and re-iterated the importance of reaching an acceptable solution. Specifically, we have proposed adding an anti-concentration provision to the TPL. Our proposal would limit to 25 percent or less the share of the wool apparel TPL which could be concentrated in any of the three most sensitive sectors of the tailored men's wool apparel industry: suits, suit coats, and wool trousers.

While Canada has not indicated a change in its position, Canada has agreed to engage in another round of consultations on this issue. Again, we intend to continue to pursue this matter aggressively with Canada.

6. Several years ago, Ag Canada completed a risk assessment which concluded there was negligible risk in shipping live hogs for slaughter in Canada from U.S. states, such as Montana, which are in stages three, four, and five of pseudorabies (PRV) eradication. The U.S. industry repeatedly has been told that a notice is drafted and ready for publication. Yet no action has been taken. Will you remind Canada of the importance of abiding by the science and urge them to act on this issue?

I will find out what the status of the notice is in Canada, consult with USDA on what action we should take with respect to this issue and report back to you. We fully agree that these decisions should be made on the basis of scientific principles.

NATURAL GAS IN EUROPE

Q. Marathon Oil Company, an important constituent in Louisiana, has encountered some very significant barriers in attempting to successfully invest in the natural gas sector in Europe. As foreign companies invest in the increasingly deregulated US energy sector, it is very important that our energy companies be treated fairly abroad. How do you intend to vigorously pursue this problem, especially as it confronts this particular U.S. company?

A. My staff has met with Marathon officials and their representatives on a number of occasions to discuss the problems Marathon is encountering in its North Sea natural gas operations and the involvement of the Norwegian and German Governments in this matter. We are continuing to examine with Marathon the alternatives available to address this problem.

USTR has not been the only Executive Branch agency actively reviewing the situation with Marathon. The Departments of State (both here as well as in Norway and Germany) and Commerce have each discussed the situation with Marathon and raised the issue with German and Norwegian officials. We will continue to coordinate with them.

More generally, there is already widespread recognition, not just in the U.S., but also in many of the major developed and developing countries, that a fundamental review is necessary of the way in which energy is regulated and delivered to customers.

Europe has concluded that fundamental reform is required. In June of 1996, the EU adopted a new directive to restructure and liberalize the electricity market. A similar directive to deal with the natural gas industry is pending in the EU. Separately, legislation is pending in the German Bundestag to reform the natural gas market in Germany. The USG will be monitoring closely the restructuring initiatives at both the EU and German levels.

The U.S. has provided significant opportunities to foreign firms to participate in our restructured natural gas market. We believe that U.S. firms should benefit from access to the newly created opportunities abroad as well.

Written Response to Questions from Senator Chafee
Argentina Intellectual Property Rights

The United States has experienced perennial difficulties with Argentina regarding the inadequate protection afford in that country to intellectual property. Two weeks ago, shortly after the Argentina Congress approved legislation that failed to meet international standards for intellectual property protection, Ambassador Barshefsky announced the imminent imposition of sanctions against Argentina for an estimated $260 million in trade.

The Argentina situation seems to test the resolve of the US with regard to our commitment to worldwide intellectual property rights protection. Should Argentina continue to balk at enacting effective protections after the proposed sanctions go into effect, what options are available to the Administration as a next step?

I agree that the U.S. must continue its efforts to achieve improved intellectual property protection around the globe, including in Argentina. Hopefully our recent action against Argentina will produce desirable results. We will continue to monitor the situation closely. If serious problems continue to occur, we would be prepared to examine additional options at that time, including the possibility of further GSP removal. Let me assure you that, we will consult closely with you and other members of Congress about additional further steps that could be taken with respect to this matter, should the need arise.

Written Response to Questions from Senator D'Amato
Wool Suits from Canada

My colleagues, Senator Chafee and Chairman Roth have both raised the Canadian wool TPL issue with you here today. It is an issue of great importance to me and my state. This loophole, which allows Canada to circumvent the basic rules of origin provision in NAFTA and its predecessor, the Canadian Free Trade Agreement, must be closed.

You mentioned that the United States has made a proposal to the Canadian government regarding this issue. I would very much appreciate knowing, first, the details of this proposal, and second, since the proposal was first initiated in November, and the United States has yet to receive a response, how much longer will you wait to rectify this problem before initiating unilateral procedures to rectify the problem?

We share your concern over the increase in shipments of wool suits from Canada under the NAFTA Tariff Preference Levels [TPL]. We are disturbed by Canada's usage of the TPL and by the significant impact that Canadian wool suit imports are having on U.S. producers. We have been pursuing, and will continue to pursue aggressively, this issue with Canada.

I have raised this issue with Trade Minister Eggleton. In late November, before the Singapore WTO Ministerial, our chief textile negotiator, Ambassador Hayes, traveled to Ottawa for discussions on this issue and others and re-iterated our interest in settling this. Specifically, we have proposed adding an anti-concentration provision to the TPL. Our proposal would limit to 25 percent or less the share of the wool apparel TPL which could be concentrated in any of the three most sensitive sectors of the tailored men's wool apparel industry: suits, suit coats, and wool trousers. Alternatively, we have proposed that similar levels could be achieved through Canada's unilateral restriction of exports under TPL.

Ambassador Hayes and the other textiles negotiators are now working to schedule further discussions on this whole question. We are planning to schedule sub-cabinet level discussions in early February with Canada on the full range of bilateral trade issues, including this one. In addition, the NAFTA Commission (Ministerial level) meeting is tentatively scheduled for February 19th at which time I will have the opportunity to see the Canadian Trade Minister bilaterally. I intend to push hard on this issue with him at that time.

My staff and I will continue to work with you and your staff on this issue, and we will keep you apprised of developments. If we do not see movement in a reasonable period of time, I will be happy to meet with you to discuss our options.

Canadian Restrictions on Imports of U.S. Dairy, Egg, & Poultry Products

The recent panel decision against the United States on dairy and poultry is of great concern to me. Canada claimed that its rights under the WTO superseded its obligations under NAFTA and it did not have to reduce its extremely high tariff rate.

In effect, even after GATT forced Canada to remove import quotas, they have found a way to effectively bring them back and the NAFTA panel agreed, finding no fault. This action is extremely detrimental to the dairy producers in my state, as well as the entire nation. I would appreciate your continued support on this issue and would like you to stay in touch with my staff on this matter.

1. Are there compromise solutions to the dairy dispute that would move in the direction of meeting U.S. aims for greater market access in Canada?

We, of course, were extremely disappointed with the results of the NAFTA dispute settlement process in this case. There is no appeal process under NAFTA. First, I can assure you that we remain committed to improving U.S. access to the Canadian market by doing everything possible, consistent with our trade laws and obligations, to pursue tariff-free access for all U.S. dairy, poultry, egg, and barley products, and margarine, to the Canadian market. I will therefore of course continue to provide my support on this issue, and keep in close contact with you and your staff on any developments. In preparation for and throughout the NAFTA panel process, we worked extensively and closely with our dairy and poultry industries. We are committed to continuing to work closely and cooperatively with them now and in the future as we explore all available options in pursuit of our goal of eliminating these Canadian tariffs.

2. Should the U.S. impose similar high tariffs on Canada in response to their increase in tariffs, which are currently 250-350% on our dairy and poultry products?

Under the WTO, the United States may apply to Canada the tariffs provided in the U.S. WTO tariff schedule. As a result of comprehensive tariffication in the Uruguay Round, the United States maintains a number of tariff-rate quotas for agricultural products, in particular on dairy, sugar, sugar-containing products, cotton, peanuts and meat. When Canada made it clear that it would apply its WTO over-quota tariffs to U.S. agricultural exports to Canada, it became clear that the United States would need to apply its WTO tariff-rate quotas to imports from Canada. The U.S. WTO tariff schedule does not include tariff-rate quotas for all the same products as those on which Canada is applying its WTO tariffs to U.S. products. The United States maintains quotas on dairy products, but only tariffs on poultry. Canada is not applying its WTO tariffs to U.S. meat, and the United States is not applying its WTO tariffs to Canadian meat. Canada's over-quota tariffs are generally higher than those of the United States, but trade in dairy products in both directions is limited.

3. Can the USTR go after Canada's non-tariff barriers, which include production restrictions, administered prices import controls, and direct payments, with the help of other agencies in the Administration?

The U.S. industry has already raised concerns with us about Canada's new dairy price pooling arrangement that is used to fund increased exports of dairy products into the U.S. market. We and USDA are investigating whether this price mechanism could be equivalent to an export subsidy which would violate Canada's NAFTA and WTO obligations. To that end, we have, along with the Government of New Zealand, raised this matter at the WTO, requesting further information from Canada. Should such further information lead us to conclude that this price pooling mechanism is indeed equivalent to an export subsidy, we will not hesitate to challenge the arrangement in the NAFTA or WTO.

Written Response to Questions from Senator Graham
Florida Citrus

Despite the opening of markets for agricultural products, shipments of U.S. oranges and grapefruit are not permissible in China, Mexico, and Australia. While many countries recognize and accept U.S. scientific protocol, these three countries have delayed decisions on opening their markets.

In the case of China, the Chinese committed to eliminate or justify their restrictions on Florida grapefruit prior to October 1993. It was not until December 1995 when they came to Florida to visit citrus production areas. Unfortunately, thirteen months after their return to Beijing our government still has not received a pest risk assessment from the Chinese indicating what, if any, problems they have with regard to the importation of Florida grapefruit.

What plans do you have to reduce trade barriers which are erected under non-scientifically based phytosanitary restrictions?

Market access for agricultural products is one of my top priorities. An essential component of securing market access is ensuring that our trade partners adopt internationally accepted sanitary and phytosanitary standards. My office will support the efforts of the Secretariat of the International Plant Protection Convention, the International Office of Epizootics, and the Codex Alimentarius Commission of the Food and Agriculture Organization to establish internationally accepted standards for pest risk assessment and continue to use the Sanitary and Phytosanitary Committees of the NAFTA and WTO, where appropriate, to dismantle SPS trade barriers that are not scientifically based.

Concerning Florida citrus exports to Australia, China and Mexico, USTR is working closely with USDA and our trading partners to resolve these phytosanitary issues.

Florida citrus exports to Australia are not allowed entry due to post bloom fruit drop, a fungus with low occurrence rates on Florida grapefruit, and citrus canker. Australia has suggested that site inspections be conducted on Florida citrus as a solution to these problems. Post bloom fruit drop is not of quarantine concern to any other existing export market for Florida citrus. Deputy USTR Jeff Lang met with Australia's Minister for Primary Industry on this issue this week. We will continue to press Australia on Florida citrus issues at the next informal bilateral meeting in March.

In December, Chinese officials presented their long-awaited risk assessment report on U.S. citrus pest concerns to the United States. This report sited several pest concerns for four U.S. states including Florida. On January 27, 1997, U.S. officials submitted a work plan for Florida citrus issues to the Chinese addressing these issues. We have been working very hard with the Chinese to resolve this problem through the framework established in the 1992 Market Access MOU. We will continue to press the Chinese on SPS issues in the next round of technical negotiations scheduled for early April and in WTO accession talks.

Concerning Mexico, the presence of citrus canker was detected in Dade County, a significant distance from the central Florida citrus production areas. It is not present in commercial groves. U.S. plant quarantine officials will continue to discuss this issue with their Mexican counterparts.

Caribbean Economic Situation

Many Caribbean leaders have brought to my attention their concerns with U.S. policy actions that have great impact on their small fragile economies. I am concerned about the impact in the Caribbean of activity in trade policy actions like the WTO where Caribbean vulnerabilities may not be obvious to some of the players. Our trade policy and our Caribbean policy cannot go forward on separate tracks and still succeed. We have certainly welcomed your support for the concept of NAFTA parity, so that free-trade benefits extended to Mexico will not unnecessarily disadvantage product in the Caribbean. Now we see something similar with rum, where a proposal to wipe out our tariffs on an MFN basis threatens to cause economic consequences in the Eastern Caribbean and the U.S. Virgin Islands. In the case of bananas, the dispute in the WTO is perceived by Eastern Caribbean leaders to be a threat to their overall economies.

Recognizing that we have special obligations and interests in this region, Can you assure us that you will take a look at these issues and do what you can not to add unnecessary harm to fragile Caribbean economies?

The United States and the Caribbean share important goals: security, orderly movement of people and control of migration, protection of the environment, the expansion of trade and investment, and improved living standards. These interests are best served by long term and broad based economic growth and political stability in the Caribbean.

Our trade policy, in particular our commitment to negotiate the Free Trade Area of the Americas, is aimed at providing the means to strengthen trade relations and investment links, consolidate and expand economic reforms within Caribbean countries, and attract foreign investment. The FTAA will build on the increased openness of most Caribbean economies over the past decade, and encourage improved macroeconomic stability.

The unique circumstances of the smaller economies in the hemisphere led the Trade Ministers at their first FTAA meeting in Denver in June 1995 to create a working group to explore means to facilitate their integration into the FTAA. To help these countries meet the challenge to make the structural reforms needed to take advantage of the benefits to be derived from a hemisphere-wide free trade agreement, the FTAA working groups are holding seminars to educate countries on their WTO obligations and to look at their specific needs for technical assistance.

On the issue of rum, we are keenly aware that there are a number of unresolved issues involved here. We are working closely with all interested parties in an effort to reconcile different concerns.

The current situation facing banana producers in the Caribbean is not a consequence of the pending WTO case, which seeks to end discrimination against American firms and Latin American producers. Our goals with respect to the WTO banana case are not contrary to our interests in the Caribbean. The U.S. wishes to foster conditions in the Western Hemisphere for economic growth and development. We can accept and have supported tariff preferences for ACP bananas. However, we do not believe that the additional discriminatory treatment of U.S. companies and Latin American interests inherent in the EU's regulations is necessary to ensure continued benefits to the small Caribbean producers.

The EU banana regime is inconsistent with WTO provisions. The small countries of the Caribbean, as well as the U.S. have a major interest in ensuring that all WTO members, especially major trading partners like the EU, abide by the rules of world trade. The United States wishes to see WTO-consistent alternative regulations. Such an alternative regime could offer meaningful market access opportunities for Caribbean countries' bananas.

The United States wants to be helpful and constructive in developing alternatives to the current EU regime. As the Caribbean leaders themselves have acknowledged, the EU banana regime is scheduled to end. A better system should be established soon to prepare the Caribbean for that day. We stand ready to work with others in developing this new regime.

Written Response to Questions from Senator Gramm
Mexico: Broom Corn Brooms & Retaliation

Our trade relations with Mexico are extremely important to the United States, vitally important to my State of Texas. The imposition of trade barriers by either nation against the other is harmful to the interests of the American people and to my constituents. Recently, the Administration announced the imposition of trade barriers on imports of corn brooms from Mexico. Predictably, Mexico has announced retaliatory steps against U.S. exports of flat glass, corn sweeteners, and other products. These trade restrictions have not yet gone into effect but are scheduled to do so soon. What will you do to resolve the dispute before the announced restrictions are implemented?

We could not agree more that our trade relations with Mexico, our third largest trading partner and a growing export market for U.S. goods and services are extremely important. U.S. exports to Mexico for 1996 should reach a historic high of over $56 billion. Furthermore, we recognize the special nature of the commercial ties between Mexico and Texas. Second, it is our strong view that markets should be opened by trade agreements and not closed. The NAFTA has proven to be a major success in this regard, including at a time that severely tested the Government of Mexico during the 1995 financial crisis. With that said, let me address the specific situation regarding broom corn brooms.

The U.S. action regarding the imposition of a temporary safeguard action on broom corn brooms was a measured and modest response undertaken in a manner consistent with the NAFTA and our WTO obligations following the filing of a petition by U.S. industry under the NAFTA safeguard provisions and Section 201 (i.e., global safeguard provisions) of our trade laws. This industry had seen imports increase 82% over the last 4 years, with increases from Mexico alone through November of 1996 of 59% [by quantity]. The ratio of imports to domestic production more than doubled from 1991 to 1995, from 27% to 58%. We believe the U.S. broom corn broom industry can adjust to the realities of increased competition over the three year adjustment period, and that the truly modest relief provided by the President is an appropriate response.

Mexico is our largest corn broom supplier. Pursuant to provisions of the NAFTA, the United States sought to reach a mutually acceptable agreement with Mexico that would maintain the balance of concessions agreed to during the NAFTA negotiations. We also reduced the scope of the tariff remedy to less than one-fourth of that recommended by the International Trade Commission (ITC), and have provided Mexico and other preferential suppliers with continued duty-free access to our corn broom market during the safeguard period.

In short, we have done everything possible to act in a measured and responsible manner towards both the domestic broom corn broom industry and our foreign suppliers. Nevertheless, Mexico decided on December 13, 1996, to exercise its right to take retaliatory action, by raising tariffs on eight U.S. products: fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass and wooden furniture, rather than accepting compensation from the United States, as provided under the NAFTA. We believe that Mexico's response was excessive, and fails to meet the NAFTA test that self-compensation be "substantially equivalent" to the safeguard action taken by the United States. We will raise these concerns with senior Mexican officials in talks being scheduled for the week of February 3.

EU Subsidies on Wheat Gluten

2. As you know, the nations of the European Union provide subsidies at a variety of levels to their wheat gluten producers. What have you done, and what do you foresee doing in the days ahead, to encourage the European Community to abandon these subsidies?

I have for some time been concerned about the potentially distortive effects of EU practices with respect to wheat gluten and wheat starch, and the harm that these practices seem to have caused to our own producers. This concern led us to include in the July 1996 grains and cereals agreement a provision requiring the EU "to consult with a view to finding a mutually acceptable solution if the market share of EC-origin wheat gluten imports into the United States increases in comparison to their average 1990-92." Our discussions with the EU on this problem have so far been unproductive. Nevertheless, we continue to raise this issue with EU officials at every opportunity.

On January 22, the Wheat Gluten Industry Council filed a petition seeking the initiation of a Section 301 investigation of EU subsidies schemes that benefit EU production and exports of wheat gluten. The petition alleges that EU subsidies and other measures are inflicting severe damage on the U.S. wheat gluten and wheat starch industry. My staff and the staff of other concerned agencies are reviewing the industry's petition. Section 301 provides that the Trade Representative must determine within 45 days after filing whether to initiate an investigation. We will keep you apprised of our determination.

Written Response to Questions from Senator Grassley
China and WTO Accession

#1

For the record, I want to get your reaction to two of Secretary Albright's responses to my question of how the U.S. should handle China's accession. Please tell me if you agree with these statements:

"We have requested that China make significant commitments to liberalize its agricultural trading regime, including its state trading system, making substantial tariff cuts, eliminating unjustified sanitary and phytosanitary measures and binding its subsidy level."

"If China is to join the WTO, we will need to have a commercially acceptable protocol package of commitments by China to open its markets in-hand before we will agree to China's accession. That means real market access for U.S. goods and services, including agriculture."

I fully agree with the two above statements. China's WTO accession can only occur on commercially meaningful terms And, just as you quote Secretary Albright, that means market access for our goods, services and agriculture to the fastest growing economy in the world. I look forward to working with you during the course of these ongoing negotiations.

Requesting Views on S.16

#2 **On January 28 I introduced two bills with the Minority Leader, Senator Daschle. Both impose requirements on your office. One requires the USTR to identify those countries who continue to deny market access to value-added agricultural products produced in the United States. The other requires the USTR to determine, under Section 306 of the Trade Act of 1974, whether the European Union has violated its trade agreements with the U.S. by failing to certify U.S. meat packing plants for export.**

I know you are familiar with these two bills. What is your opinion of the substance of these bills and also whether your office could implement them given your budget and staffing constraints?

As the bills have just been introduced, we have not had the opportunity to fully review and discuss them in the Administration. Accordingly, my comments are simply a preliminary reaction: I understand the motivation driving these bills and I believe we share the same trade policy objectives reflected in these bills. Consequently, we are eager to work with you and your congressional colleagues to achieve our common goals.

In my view, the Administration already has authority to carry out most of the actions these bills prescribe. For example, you may be aware that the Administration has recently notified the EU and individual EU Member States which are eligible to ship meats and meat products to the United States that, effective April 1, 1997, FSIS will no longer consider these meat inspection systems equivalent to the U.S. system -- unless the U.S. and the EU have entered into a veterinary equivalence agreement by that date.

Presently, USDA has certified that the the meat inspection systems of the 12 EU Member States that FSIS has reviewed are "equivalent" to the U.S. system. (The other 3 EU Member States have not yet requested FSIS certification.) The EU has not yet determined that our system is equivalent to its own. This is unfair. We are striving to conclude a veterinary equivalence agreement with the EU by April 1, 1997, which should correct this inequity

Australian Automotive Leather Trade Dispute

#5 **I understand that in November of last year you settled a trade dispute with Australia by getting them to eliminate automotive leather from two major export subsidy programs by this April. I'm now told that Australia may replace the automotive leather subsidies with a new and substantial financial aid program. Can you give me any new information on this situation? Will your office seek to eliminate these new subsidies?**

The Australian government has announced, despite our objections, a new $Aus 30 million assistance package for Howe Leather as "compensation" for the export subsidies to this company which it agreed to discontinue as a result of our 301/WTO dispute settlement case.

I have advised the Australian government that this new package appears to replace one unfair subsidy with another. We are closely examining the terms of this new assistance and consulting with our domestic industry to determine the best course of action. I will keep you advised of the status of this matter.

Textiles

#4 **Q. In light of these three reports, what specific steps have been taken to date and are being taken by USTR and by CITA to improve the data and the market statements?**

A. As you note in the background related to your question, USTR is not the agency charged with preparing the market statements used by the CITA agencies to make their determinations. Commerce is the agency responsible for preparing these statements. Nonetheless, USTR, as one of the CITA member agencies, has been working closely with the Commerce Department on steps that should be taken to improve the market statements, including the addition of more information on some of the factors outlined in the WTO Agreement on Textiles and Clothing. I believe that the market statements prepared in the future will reflect changes made as a result of the recommendations that USTR and other agencies have provided.

Q. Would it be helpful to include the Council of Economic Advisors in the process of evaluating the underlying data and the consistency and strength of the arguments supporting the quota action, and in identifying whether the data exists or can be developed addressing the specifying industry at issue? If not, why not? What about the Office of Management and Budget? Please explain fully.

A. At this point, the agencies represented on the Committee on the Implementation of Textile Agreements (CITA) are set forth in an Executive Order which calls for representation from Commerce, State, Treasury, Labor and USTR. There is considerable expertise from a variety of perspectives in each of those agencies, including a good deal of economic expertise, understanding of the labor market, understanding of the customs and trade issues as well as the foreign policy concerns associated with any determination to request consultations due to significant increases in imports. The type of data involved in making determinations are generally quite specific to the particular product at issue. The data are gathered and maintained by the Departments of Commerce, Labor and Treasury and are generally not related to larger macroeconomic issues that the Council of Economic Advisers typically addresses. With respect to the Office of Management and Budget, the establishment of a quota generally would have little to no budget ramifications and given that the decisions are already made through an interagency process, OMB's input would not be needed in order to ensure interagency review.

Oilseed Differential Export Taxes

5. As a senator from one of the leading soybean growing states, I have been concerned about the continuing use of differential export tax schemes (DETs) by certain major exporting countries and their anti-competitive impact in the oilseed sector. Last fall, the government of Brazil significantly advanced our objective of a level playing field for international trade in oilseeds and oilseed products by completely eliminating the taxes it had imposed on exports of raw materials and semi-manufactured goods. Yet despite this commendable achievement, I remain concerned that other countries, such as Argentina and Malaysia, have been slow to follow Brazil's lead.

How do you propose to deal with this problem in those countries and ensure continuing progress towards the level playing field objective in the oilseed sector?

Section 111 of the Uruguay Round Agreements Act (URAA) provides the President considerable flexibility to proclaim accelerated reductions in tariffs or additional tariff reductions in sectors of interest to the United States. This proclamation authority applies to all of those sectors for which the United States sought reciprocal duty elimination (i.e., zero-for-zero) in the Uruguay Round, including those sectors in which the United States did not achieve this objective.

The Statement of Administrative Action specifically mentions oilseeds and oilseed products, and states that "obtaining further reductions and elimination of duties in these sectors is a priority objective for U.S. multilateral, regional and bilateral negotiations." We intend to vigorously pursue the zero-for-zero intiatiative on oilseeds and porducts we introduced at the industry's behest in the final months of the Uruguay Round negotiations. In the course of the negotiations, we will attempt to encompass as broad a scope of policies as possible, including differential export taxes.

China and Pork

#6

China consumes approximately 50 percent of the world's pork but has a de facto ban on pork imports. What assurances can you give me that resolving this problem is a high priority for USTR?

China's *de facto* ban on pork products is a good example of the difficulty U S. exporters face when trying to enter the China market. I am personally very concerned about the pork ban. Market access for meat products is a critical part of our WTO accession discussions. We are working hard to ensure that China opens its market to U S pork exports Toward this end, we have been in close contact with industry representatives to strategize how to tackle this problem I would like to work with you to ensure market access for pork, as with other U.S agricultural commodities. I am determined to find an acceptable resolution to this problem.

Taiwan Pork

#9

What is USTR doing to ensure that Taiwan opens its market in a meaningful way to pork variety meat and belly imports?

Taiwan's market is virtually closed to some key U.S. agricultural goods, including pork. Currently, the U.S. exports approximately $20 million worth of pork to Taiwan a year. According to industry reports, U.S. pork sales to Taiwan should be many times the current level.

Opening Taiwan's market for pork byproducts will also have the effect of improving U.S. access to Japan's pork market. Taiwan subsidizes exports to Japan by protecting its internal market for pork byproducts from foreign competition. Without these subsidies, U.S. pork would out-compete Taiwan pork in the Japan market.

Market access for U.S. agricultural products, such as pork, is a critical part of our negotiations with Taiwan on its accession to the WTO. We will not conclude our negotiations with Taiwan on the WTO without receiving commitments that result in genuine market access for U.S. pork and other agricultural goods.

Mexico: Broom Corn Brooms & Retaliation

8. In December 1996, many U.S. companies exporting such products as such as flat glass, paper notebooks, wine, wine, furniture and corn sweeteners, were caught in the crossfire over brooms made out of broomcorn. When the U.S. placed temporary restraints on the import of brooms, Mexico carried out its well-advertised threat to retaliated against these key products. You will recall that the U.S. had asked Mexico to accelerate the elimination of NAFTA duties on most of the products hit by Mexico's retaliation. The Mexican action was both predictable and excessive. It should not be allowed to stand.

What is your strategy for restoring the export prospects of the U.S. companies that were unfairly caught in the crossfire over broomcorn brooms? Beyond that, what is your strategy for restoring the momentum to bilateral talks aimed at accelerating tariff elimination of priority U.S. exports?

In broader terms, how can U.S. companies protect themselves against having their products involved in unrelated trade sanctions.

Answer:

The U.S. action regarding the imposition of a temporary safeguard action on broom corn brooms was a measured response to the situation of a U.S. industry which has seen imports increase 82% over the last 4 years, with increases from Mexico alone through November of 1996 of 59% [by quantity]. The ratio of imports to domestic production more than doubled from 1991 to 1995, from 27% to 58%.

We believe the U.S. broom corn broom industry can adjust to the realities of increased competition over the three year adjustment period, and that the modest relief provided by the President is an appropriate response to the first such injury determination made by the United States in ten years.

Mexico is our largest corn broom supplier. Pursuant to provisions of the NAFTA, the United States sought to reach a mutually acceptable agreement with Mexico that would maintain the balance of concessions agreed to during the NAFTA negotiations. We also reduced the scope of the tariff remedy to less than one-fourth of that recommended by the International Trade Commission (ITC), and have provided Mexico and other preferential suppliers with continued duty-free access to our corn broom market during the safeguard period.

In short, we have done everything possible to act in a measured and responsible manner towards both the domestic broom corn broom industry and our foreign suppliers. Nevertheless, Mexico decided to exercise its right to take retaliatory action, by raising tariffs on December 13, rather than accepting compensation from the United States, as provided under the NAFTA. We believe that Mexico's response was excessive, and fails to meet the NAFTA test that self-compensation be "substantially equivalent" to the safeguard action taken by the United States. We will raise these concerns with senior Mexican officials in talks being scheduled for the week of February 3.

Regarding tariff acceleration, we expect to conclude work soon on the first round of products. However, since the process operates by consensus, and since Mexico's retaliation list makes very clear its position about several of our priority products, we have little expectation that a significant number of these products will be included on the acceleration list.

We also expect to announce the beginning of a second round of acceleration talks at that time at well. We believe there is substantial interest among U.S. firms in such an exercise, and believe a second round would result in a sizeable trilateral tariff reduction package.

Finally, I would note that U.S. firms are very rarely subject to trade sanctions. As a general rule, firms should follow the progress of disputes in order to minimize any possible exposure to such a possibility. For our part, the United States Government goes to great lengths to make sure that the dispute settlement process, whether under NAFTA or any other trade agreement, is as open and transparent as possible. We would hope that practices such as these are adopted by our trading partners throughout the world. Doing so would certainly reduce the number of instances where negotiations break down and lead to the imposition of trade restrictions.

Section 301 Action on EU Subsidies on Wheat Starch and Gluten

#9 **The U.S. wheat gluten industry has asked USTR to pursue a section 301 action on European Union subsidies and protectionist policies relating to wheat starch and gluten. What is USTR's position on this request?**

I have for some time been concerned about the potentially distortive effects of EU practices with respect to wheat gluten and wheat starch, and the harm that these practices seem to have caused to our own producers. This concern led us to include in the July 1996 grains and cereals agreement a provision requiring the EU "to consult with a view to finding a mutually acceptable solution if the market share of EC-origin wheat gluten imports into the United States increases in comparison to their average 1990-92." Our discussions with the EU on this problem have so far been unproductive. Nevertheless, we continue to raise this issue with EU officials at every opportunity.

On January 22, the Wheat Gluten Industry Council filed a petition seeking the initiation of a Section 301 investigation of EU subsidies schemes that benefit EU production and exports of wheat gluten. The petition alleges that EU subsidies and other measures are inflicting severe damage on the U.S. wheat gluten and wheat starch industry. My staff and the staff of other concerned agencies are reviewing the industry's petition. Section 301 provides that the Trade Representative must determine within 45 days after filing whether to initiate an investigation. We will keep you apprised.

Agricultural Biotechnology

10. Last year, American farmers harvested over 5 million acres of new varieties of crops developed using the techniques of modern biotechnology. The benefits of agricultural biotechnology are enormous--they can reduce the use of pesticides, protect against insects and viruses, improve yields and lower farms costs. America is the leader in this technology and it is helping us meet increasing demands for world supplies of food and fiber. Some of our foreign trading partners, however, have been slow to accept these products. What can you do to gain access to foreign markets for biotech products? What can Congress do to help you in this effort?

With the increasing number of bio-engineered products preparing to enter the marketplace, most of which are developed in the United States, it is critically important that our foreign trading partners, notably the EU, maintain an efficient and open review process. U.S. agencies consult regularly with their foreign counterparts on these review procedures. In particular, the EU's so-called "90/220" approval process for bio-engineered products is far too lengthy and non-transparent. Member States and the European Commission have the ability to extend the review process with little cause, and are not required to reveal the basis for voting positions, which we understand to include issues such as product labeling requirements, which are outside the scope of the 90/220 Directive.

Last year, USTR led inter-agency consultations with the EU on the need to reform this process. The EU has recently prepared a series of recommendations to streamline and strengthen the review procedures. We are reviewing these recommendations, and are preparing to consult again with the EU on these new measures. In addition, an interagency team, led by USTR, will travel to Norway, Sweden, and Denmark at the invitation of those governments in order to describe the U.S. biotechnology regulatory framework to these countries which have been consistently the most negative on biotech products and to encourage them to adopt transparent, science -based, approval procedures. In short, let me assure you that we intend to pursue in every possible way with the EU this issue of transparency and efficiency in the review process.

At the same time, it is important to note that we have a growing record of success in obtaining EU market access approval for bio-engineered products in critically important areas of the U.S. agricultural sector. This past year, USTR worked closely with Monsanto in winning approval for their glyphosate-tolerant soybean. In addition, USTR was very active in securing recent EU approval of an application from Ciba-Geigy for entry of a bio-engineered pest-resistant corn (so-called "BT corn") into the European market. I personally engaged EU Vice President Sir Leon Brittan on several occasions, urging the EU to expedite this process so as not to jeopardize U.S. exports. The Ciba-Geigy product had already been approved for use in the United States, and is co-mingled in $1.2 billion of U.S. corn and corn products exports to the EU. EU approval now permits U.S. export of these products to proceed.

[EU Aluminum]

11. Despite repeated U.S. attempts, the European Union refuses to eliminate or reduce their aluminum tariffs despite the significant disparity that exists between their tariffs and those of the United States. Currently, EU aluminum tariffs are anywhere from two or three times as great as those in the U.S. This barrier clearly has a detrimental effect on American aluminum exports. Is there any way to get the EU aluminum tariffs lowered?

We remain frustrated with the long-standing resistance of the EU to eliminating tariffs on aluminum. The disparity in EU tariffs relative to U.S. tariffs creates distortions in trade flows which are unnecessary and adversely affect export opportunities for U.S. firms and workers in the aluminum sector. In furtherance of the commitments made in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, the Administration continues to seek mutual duty elimination for non-ferrous metals, including aluminum, in the context of the World Trade Organization. We have sought duty reductions on aluminum products as a part of the compensation negotiations with the EU when it enlarged to include Finland, Sweden and Austria. Most recently, we pursued this initiative as part of the WTO Ministerial Conference in Singapore last December. Unfortunately, despite pressure from the United States and other countries, the EU has refused all proposals for meaningful liberalization. Be assured, however, that the Administration will continue to raise this issue with the EU bilaterally, in the "Quad", and in the WTO -- particularly as additional tariff and non-tariff negotiations develop.

Illegal Drugs and Trade Policy

As you know, one of the major items of trade to the United States is illegal drugs smuggled into this country from overseas. These drugs are destroying the lives of many of our citizens. The major criminal gangs that are responsible for this trade are acting in defiance of our laws, international law, and often the laws of the producing and transit countries. It has long been the view in Congress that we must hold other countries responsible for cooperating with international efforts to combat drugs. Do your share this concern? What role do you see for USTR in making this concern a reality in the relationships with our trading partners? Are there circumstances in which you believe that sanctions, trade or otherwise, should be part of our arsenal to deal with other countries that fail to cooperate?

We share the view that illegal drugs are a horrible threat to the lives of Americans and many around the world. This Administration has undertaken a multifaceted strategy to eradicate illegal drugs through unprecedented law enforcement efforts, including border enforcement and cooperative activities with other countries, education, treatment for addiction, etc. These efforts must continue on an unparalleled scale if we are to continue to make progress. We know there are many in Congress, including yourself, who share this view.

As part of this effort the United States must show firm leadership and demand responsible action from other countries. This includes seeking cooperation from other countries in international efforts at multilateral and bilateral fora. This Administration has done that, and will continue to do that. To do otherwise is to retreat in the face of a serious threat to global security.

This Office has not been, and cannot be, the leading force in addressing questions related to illegal drug trafficking. However, we can be part of the Administration team, as we are, that supports the efforts of the lead agencies, including the Office of National Drug Control Policy, the Treasury Department and Customs Service, the Drug Enforcement Administration, the State Department, the Justice Department and the Federal Bureau of Investigation, etc. In this role, and in negotiating trade agreements, this Office will continue to ensure that trade agreements provide a framework in which strong and intelligent border enforcement measures can be undertaken to better control the illegal importation of illegal narcotics. None of the agreements we have negotiated have limited the United States in this regard. In fact, the opening of markets to legitimate commerce can allow customs authorities and related enforcement officials to focus attention to a greater degree on controlling illegal drug trafficking as opposed to the routine processing of legitimate commerce. Under this Administration enforcement efforts along the border with Mexico and across the southern United States have been stepped up significantly, as have seizures of illegal drugs of many varieties. Furthermore, we have stepped up cooperative efforts to work with other countries in an effort to aggressively address this scourge.

Regarding sanctions, U.S. law provides the President the authority to impose sanctions against other countries in appropriate circumstances. The use of sanctions is complicated business, whatever form they take. The threat of their use can, however, be a powerful tool in particularly difficult situations. Beyond that, it is not possible to generalize on when sanctions should be imposed. Rather, the President should retain the flexibility to utilize sanctions when he deems it the appropriate course of action.

Written Response to Question from Senator Hatch
[Medical Procedure Patents]

Ambassador Barshefsky, late in the last session I worked closely with USTR on the issue of medical process patents. In my view, the provision in the omnibus appropriations bill that functionally eviscerated the issuance of medical procedure patents was ill-advised both as a matter of substantive patent law and international trade policy.

Unfortunately, this controversial legislation was slipped into the omnibus bill without the benefit of hearings or mark-ups of either the Finance or Judiciary Committees. Chairman Roth, I might add, joined me in opposition to this provision.

As you are aware, the Administration, through the PTO and USTR, opposed this legislation. Virtually all of the intellectual property associations did as well.

As many experts have noted, this legislation creates an extremely important negative precedent in the application of the TRIPs provisions of the GATT Treaty. As the September 27, 1996 letter from USTR General Counsel stated: "USTR has serious concerns about the consistency of this provision with the TRIPs Agreement...We are particularly concerned because other TRIPs Members might follow this example and apply this type of exception to other technologies."

Ambassador Barshefsky, I commend the Administration in opposing this legislation that provides a roadmap for our trading partners to evade their responsibilities under TRIPs.

My question is this: Will you continue the Administration efforts against this legislation and will you work through the legislative clearance process within the Administration to develop legislation, be it outright repeal or some other mechanism, that corrects the problem that the last session of Congress, unwittingly, I am afraid, created in this important area?

ANSWER: I certainly share your concerns about this matter. As you note, my office opposed insertion into the omnibus appropriations bill of a provision that would generally deny remedies available under title 35 for infringement of patents on diagnostic, therapeutic and surgical techniques. We opposed this legislation in part because of the negative example it might set for other countries seeking to avoid fully implementing the provisions of the TRIPs Agreement. We were also concerned that our trading partners might try to claim that such a provision is inconsistent with our obligations under the TRIPS Agreement.

I continue to share your concerns about this provision and am certainly willing to work with you and others on ways to revisit this matter. At this point, however, we have not had the opportunity to consider and discuss this question with other appropriate agencies within the U.S Government, including the U.S. Patent and Trademark Office which, as you note, has a substantive interest in this as well. As we enter this new legislation session, we will consult with PTO, and then with you and other concerned members of Congress, about how best to proceed .

Wool Suits from Canada

I am hopeful that you can bring Canada to the table to discuss the TPL [trade preference levels] loophole for certain woolen products. Canadian market share has skyrocketed to as much as 70 percent in some product areas, while wool production in my state of Utah among other major wool states has fallen by 40 percent, and employment in the men's and boy's tailored wool apparel is down 50 percent. I'd like to know your plan for moving these talks forward.

We share your concern over increase in the shipments of wool suits from Canada under the NAFTA Tariff Preference Levels [TPL]. We are disturbed by their usage of the TPL and by the significant impact that Canadian wool suit imports are having on U.S. producers. We have been pursuing, and will continue to pursue aggressively, this issue with Canada.

I have raised this issue with Trade Minister Eggleton. In late November, before the Singapore WTO Ministerial, our chief textile negotiator, Ambassador Hayes, traveled to Ottawa for discussions on this issue and others and re-iterated our interest in settling this. Specifically, we have proposed adding an anti-concentration provision to the TPL. Our proposal would limit to 25 percent or less the share of the wool apparel TPL which could be concentrated in any of the three most sensitive sectors of the tailored men's wool apparel industry: suits, suit coats, and wool trousers.

While Canada has not indicated a change in its position, Canada has agreed to engage in another round of consultations on this issue. Again, we intend to continue to pursue this matter aggressively with Canada.

Trade and Competition

Third, I deeply admire your approach toward the upcoming negotiations on international competition policy. Clearly your position that *anti-competitive* practices ought to be the real target of such talks, and that U.S. antidumping and other unilateral trade remedies would NOT be endangered, established important parameters for the talks. However, I am not unconvinced that the talks will grandstand the unpopularity abroad of our necessary domestic trade laws that insure our industries against many unfair practices. Therefore, I would urge that you recruit the International Trade Commission to do an empirical study of the costs to U.S. businesses of anti-competitive policies and practices in selected countries, such as Japan, Korea, Indonesia, and China. I would appreciate your views on this suggestion as well as on the adequacy of the current OECD Work Group on Trade and Competition to address the difficulties in the underlying competition philosophies among OECD members.

At the recent WTO Ministerial in Singapore, we agreed to go along with the creation of a working group to study the issue of trade and competition We agreed to this, in part, because the WTO Agreement on Trade-Related Investment Measures already mandates that this issue be reviewed before the end of 1999, but there are also sound policy reasons for undertaking this work. The U.S. has an important economic and trade interest in promoting the adoption and strong enforcement of domestic competition policies by its trading partners. I also believe that competition-related issues can be a factor in assuring genuine market access under trade agreements The study group established at the WTO Ministerial could help on both of these points

At the same time, as I have said previously, this is an extremely complex area and it must be approached with care. We need to understand, and help others to understand, a lot more about this issue before any conclusions can be drawn about the wisdom of pursuing further work, particularly in the WTO context We have no interest in negotiating binding multilateral rules governing competition laws and policies, and this is not an appropriate forum in which to discuss the legitimacy or application of WTO-sanctioned trade remedies, such as antidumping.

Of course, we cannot prevent others from raising issues which they believe are relevant. That fact, however, underscores why it is important that we affirmatively put forward the issues which we believe are appropriate for study. I, therefore, intend to carefully consider your suggestion to request an ITC study of the anti-competitive policies and practices of certain other countries At the interagency level, we are already considering and developing ideas to propose for this group's work program, and are consulting informally with the private sector.

In terms of OECD work, the OECD's Committees on Trade and on Competition Law and Policy have set up a joint group to look at a number of issues that are relevant to improving our understanding of the relationship between trade and competition issues. The work being done in this particular OECD group is at a relatively early stage. However, among the general objectives that we have for the group is to seek to identify and better understand both private anti-competitive business practices and the differences in the respective national competition policy regimes which are intended to regulate such business behavior. This can help in understanding how competition issues can give rise to market access problems, and how effective competition law enforcement can help to remedy these problems. In this regard, an extensive OECD-commissioned study has already been carried out into the question of variances in competition policies among OECD member countries. Part of the anticipated work program of the OECD's Joint Group on Trade and Competition would follow up on aspects of this study.

Semiconductors

I would like to know what steps the USTR will take to enforce the Japanese commitment to the Semiconductor Agreement.

First, we are in constant touch with our industry regarding implementation of the industry-to-industry agreement, which is the cornerstone of the accords reached on August 2, 1996. If problems arise, we will work with them and the Government of Japan to ensure that they are addressed satisfactorily.

Implementation of the new semiconductor agreement (which we reached last August 2 with Japan) generally seems to be going well In December, the U.S. and Japanese industries concluded a new dumping agreement in line with the provisions of the August 2 agreement reaffirming the need to avoid injurious dumping through effective and expeditious antidumping measures consistent with the GATT and WTO Antidumping Agreement.

However, the industry cooperative activities have been a bit slow getting started. The August 2 agreement places great emphasis on industry cooperative activities, providing not only for continuation of all the cooperative activities of the 1991 agreement but for new activities as well. To date, the Japanese industry has been reluctant to agree to a full schedule of cooperative activities in 1997. We are monitoring the situation closely

Second, we will continue to closely watch the foreign market share situation. We expect to announce the third quarter 1996 foreign market share soon and will continue to announce quarterly the foreign share of Japan's semiconductor market

Although the new agreement transfers responsibility for this calculation to the industries, the USG will continue to do the calculation unilaterally until it is clear that the new system will function effectively. If problems arise with respect to the evolution of market share or other aspects of market access, we will use the consultative mechanism provided by the August 2 accords, as well as the informal channels available to us, to address them We are confident that we will be able to use these tools to provide for continued progress in market access and industry cooperation -- as we did under the 1991 agreement.

The foreign share of Japan's semiconductor market fell in the first two quarters of 1996 (FYI: 26.9% in Q1 96 and 26.4% in Q2 96), after reaching a record high of 29.6% in the fourth quarter of 1995. We think that special factors, such as the fact that DRAM prices plummeted in the first half of 1996, were the main cause of the decline in foreign market share. Moreover, because the United States is not a significant exporter of DRAMs to Japan, the average U S market share in the first two quarters of 1996 was actually higher than the average U S market share during 1995 Nevertheless, the situation underscores the importance of maintaining a government-to-government agreement in semiconductors Please note that if there are unfair trade practices involved in the semiconductor market, we will work with our industry toward an appropriate solution utilizing all available tools

WTO Dispute Settlement Process

5. The bananas dispute with the EU continues to linger. It appears to me that complex issues, like this dispute, may be beyond the capabilities of the Dispute Settlement Bodies. I say this because the examination panels established by the DSB have been late in filing their findings. What changes would you recommend in the DSB process?

Our challenge to the EU's banana regime is complicated, both in terms of the number of measures at issue and the number of WTO Members actively participating in the proceeding. The United States was joined in its complaint by Ecuador, Guatemala, Honduras, and Mexico. In addition, the case involves claims raised under several different WTO agreements: the GATT 1994, the Agreement on Import Licensing Procedures, the Agreement on Trade-Related Investment Measures, the Agreement on Agriculture, and the General Agreement on Trade in Services (GATS). Nevertheless, we anticipate that the Panel will be able to fully address the claims we have made, and indeed, many of them are similar to claims on which a previous GATT panel has ruled.

Although there has been some delay in the Panel's issuance of its report, this has been caused primarily by issues specific to this case, rather than by systemic issues likely to arise in other cases, and we do not expect the delay to be excessive. Thus, I do not believe that the experience of the bananas case will show that the dispute settlement process is incapable of addressing cases involving numerous claims or multiple parties.

Since only two cases have fully completed the dispute settlement process (including the appeals process) during the two years that the WTO has been in operation, we have not yet had an opportunity to determine what changes we might want to propose to the dispute settlement rules. However, the WTO Members have agreed to complete a full review of these rules and procedures by the end of 1998, so we will have an opportunity to carefully assess the system and consider improvements during that review.

China WTO Accession -- Antidumping and "Economy-in-Transition" Status

On the further subject of WTO accession, I could not support China's exemption from the application of our anti-dumping laws on the grounds that it is an "economy-in-transition." I would like your views on EIT status for China.

This Administration has made clear to China that we must retain the ability to apply the special nonmarket economy provisions of U S law to antidumping cases involving China. I continue to strongly support that position.

Although China clearly has made important strides in reforming its economy, the label of "economy-in-transition" is a subjective term that has been used to describe a wide range of economies. While China's economy may be distinct in a number of ways from that of many other countries which are currently members of the WTO, what is most important is that China's accession to the WTO be accomplished on commercially viable terms, just as would any other WTO applicant. While we are prepared to discuss the possibility of negotiating reasonable transition periods for China to assume full WTO obligations in certain areas, as a general rule China must be prepared to assume obligations and commitments that are commensurate with its overall importance in world trade.

China WTO Accession and IPR Enforcement

...on the subject of China, I would like to see the USTR pursue a final commitment from China to close the remaining software pirating operations, which I urge you to make a condition for U.S. support of China's WTO accession.

This Administration has made clear to China that enforcement of the U.S.-China Intellectual Property Rights (IPR) Agreement is a top priority. That is why we twice threatened to impose hefty sanctions on China if they did not take real, concrete steps to crack down on piracy of intellectual property, including but not limited to software.

As a result of the June 1996 Accord, China has launched an anti-piracy campaign to crack down on rampant piracy, and real progress has been made. Over one million people in China are now dedicated to IPR enforcement efforts. Some of the highlights of that effort include:

- Since the June Accord, according to the most recent industry information, a total of 26 production lines have been closed -- in part due to a new campaign granting case rewards between $37,000-$75,000 for individuals who report IPR violations.

- More than 10 million illegal and unauthorized LDs, CDs, and other publications were seized in 1996.

- China's Customs has significantly increased IPR enforcement efforts. For example, the ports of Shantou and Foshan -- two of the biggest offenders -- have been closed. 6130 smuggling cases in 1996 involving goods worth approximately $1.2 million were uncovered. New cooperative efforts between Chinese and Hong Kong customs officials have begun, and Hong Kong/Chinese customs officials carried out 15 joint crack-down procedures in 1996 resulting in the seizure of some 30,000 illicit CDs.

- Over US$491 million worth of IPR-related fines were collected.

- More than 3000 judges have been specifically trained to try IPR cases. China's first government-sponsored IPR Training Center is scheduled to open this year.

- IPR enforcement efforts have also secured greater market access for American products and companies in China. For example, China has dropped quotas on sound recordings, resulting in an increase from 120 titles to approximately 1000 titles in 1996.

That said, I share the Senator's concern about IPR protection, and will continue to be vigilant and aggressive in our enforcement of our IPR agreement with China. Certainly, as we continue to discuss with China its desire to join the WTO, continued progress on key bilateral issues, such as IPR and agriculture, will remain top priorities for USTR and the Administration.

Written Response to Questions from Senator Jeffords
Canada's Restrictions on Imports of U.S. Dairy, Poultry, and Egg Products

1. What specifically does the USTR plan to do to renegotiate the issue of dairy product access in future trade agreements? Will the USTR make this issue a top priority in the Administration's trade agenda with Canada?

We are extremely disappointed with the results of the NAFTA dispute settlement process in this case. There is no appeal process under NAFTA. I can assure you that we are committed to improving U.S. access to the Canadian market by doing everything possible, consistent with our trade laws and obligations, to pursue tariff-free access for all U.S. dairy, poultry, egg, and barley products and margarine to the Canadian market.

In preparation for and throughout the NAFTA panel process, we worked extensively and closely with our dairy and poultry industries. We are committed to continuing to work closely and cooperatively with them now and in the future as we explore all available options in pursuit of our goal of eliminating these Canadian tariffs. The U.S. industry has already raised concerns with us about Canada's new dairy price pooling arrangement that is used to fund increased exports of dairy products into the U.S. market. We and USDA are investigating whether this price mechanism could be equivalent to an export subsidy, which would violate Canada's NAFTA and WTO obligations. To that end, we have, along with the Government of New Zealand, raised this matter at the WTO, requesting further information from Canada. Should such further information lead us to conclude that this price pooling mechanism is indeed equivalent to an export subsidy, we will not hesitate to challenge the mechanism in the NAFTA and/or WTO.

2. It is obvious that this dispute over market access is a major shortcoming in the progression of the NAFTA agreement. Knowing that the expansion of the NAFTA is a major priority for the Clinton Administration for the coming years, what will be done to ensure that U.S. dairy producers are provided with foreign market opportunities, in Canada as well as other countries, in pending free trade agreements?

In the NAFTA negotiations with Mexico, the U.S. sought and obtained the complete elimination of all tariff and non-tariff barriers for all agricultural products. (The U.S.-Canada Free Trade Agreement did not require the elimination of all agricultural non-tariff barriers between Canada and the United States. There were no market access negotiations between the U.S. and Canada as part of the NAFTA. Existing market access provisions of the U.S.- Canada FTA were simply incorporated into the NAFTA.) All agricultural non-tariff barriers between the United States and Mexico were eliminated when the agreement was implemented on January 1, 1994. Once the NAFTA transition period is completed (January 1, 2008 for a handful of the most sensitive products) there will be no tariff barriers between the U.S. and Mexico. We believe the NAFTA agricultural agreement between the U.S. and Mexico is the most appropriate model for expanding the NAFTA to include other countries.

3. Has the U.S. made similar conversions to tariff rate quotas and how do these actions compare to those made by Canada in the case of dairy, poultry and other agricultural products?

Yes, the United States implemented comprehensive tariffication in the Uruguay Round. As a result, the United States maintains a number of tariff-rate quotas for agricultural products, in particular dairy, sugar, sugar-containing products, cotton, peanuts and meat. When Canada made it clear that it would apply its WTO over-quota tariffs to U.S. agricultural exports to Canada, it became clear that the United States would need to apply its WTO tariff-rate quotas to imports from Canada. Canada is not applying its WTO tariffs to U.S. meat, and the United States is not applying its WTO tariffs to Canadian meat.

The United States maintains only tariffs on poultry. Under Uruguay Round rules, only products facing non-tariff barriers could be "tarrified". Both Canada and the United States maintained quotas on imports of dairy products. Both countries were permitted to tariffy these quotas in the context of the Uruguay Round agreement. Canada's over-quota tariff are generally higher than those of the United States, but trade in dairy products in both directions is limited.

4. Is it realistic and legal (under our WTO obligation) for the U.S. to impose tariffs, identical to those recently imposed by the Canadians, on Canadian dairy, poultry, and other agricultural products?

Under the WTO, the United States may apply to Canada the tariffs provided in the U.S. WTO tariff schedule. As noted above, the United States is applying to Canadian agricultural products U.S. WTO over-quota tariffs. The U.S. WTO tariff schedule does not include tariff-rate quotas for all the same products as those on which Canada is applying its WTO tariffs to U.S. products. For example, the United States does not have WTO over-quota tariffs on poultry or poultry products. Only non-tariff barriers were subject to tariffication, and the U.S. has no non-tariff barriers for poultry.

5. Has Canada put forth a similar argument with respect to U.S. tariff treatment of certain Canadian products?

Canada has not argued that the U.S. is not entitled to maintain its WTO tariffs on Canadian agricultural products. However, Canada has expressed concerns with its access under U.S. tariff-rate quotas for refined sugar and sugar-containing products.

6. Are there existing U.S. tariffs on other products that may weaken our negotiating position on the dairy access issue?

The U.S. position has been that the NAFTA does not permit either the United States or Canada to apply tariffs against the other. In negotiations which preceded formal NAFTA dispute settlement, the United States offered to eliminate all tariffs applied to Canadian agricultural products over an appropriate time schedule, as long as Canada would do the same. Canada did not agree.

Written Response to Questions from Senator Bob Kerrey
Telecommunications

Last April when the parties agreed to postpone the deadline for negotiations in the GBT, the U.S. offer did not reflect the statutory language under sections 310(a) and (b) that the foreign ownership limitations under the law apply to "foreign governments or their representatives." Does USTR intend to modify the U.S. offer to adhere to the statutory language of sections 310(a) and (b)? If not, why?

The U.S. offer will reflect our statutory obligations While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity. The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310(a) and (b)(1), (2) and (3) of the Communications Act of 1934 (the "Act") The offer specifically states that foreign governments, aliens, foreign corporations and U S. corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license

Based on Section 310(b)(4) of the Act, the offer places no new restrictions on indirect foreign ownership of a U S corporation holding a radio license Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license. The U S offer is to allow indirect foreign ownership, up to 100%, under this provision.

The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U S market. In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services

The Administration is continuing to consult with Congress and the FCC to determine whether it would be helpful to modify the U S offer to include any additional parts of the statute's text in the offer's text.

In the alternative, if USTR does modify its offer, please cite what precedent gives USTR the authority to hold that the exception under the public interest waiver of section 310(b)(4) vitiates the statutory limitation of control by a "foreign government or the representative thereof" under 310(a), which has no waiver?

Section 310(a) prohibits direct ownership of a radio license by a foreign government or its representative. Similarly, Section 310(b)(1) prohibits direct ownership of a radio license by an alien or its representative. Section (b)(2) contains the same prohibition for foreign corporations Section 310(b)(3) prohibits direct ownership of more than 20% of a U S corporation holding a radio license by a foreign government, an alien or a foreign corporation All these prohibitions on direct ownership are contained in the US offer

Section 310(b)(4) explicitly allows indirect ownership by all three -- a foreign government or its representative, an alien or its representative or a foreign corporation, unless the FCC determines that such ownership is NOT in the public interest. This is also reflected in the U S. offer. In preparing the offer, the Administration has consulted closely with Congress and FCC staff and is continuing to consult on the question of implementing legislation and whether to modify the offer

If USTR successfully negotiates an agreement, would there be any change or limitation on the FCC's use of the Effective Competitive Opportunities test to examine the openness of a foreign market, which it adopted pursuant to the public interest waiver test of section 310(b)(4)?

If the GBT concludes successfully, the FCC will continue to apply the public interest test to applicants under section 214 and to applicants for radio licenses under section 310 The only change that would occur would be that the Executive Branch would advise the FCC not to consider reciprocity as a prong of the test on the basis that the U S would have obtained substantial market access commitments from its major trading partners and the vast majority of countries whose carriers are likely to apply for radio licenses in the U S.

TOBACCO

While the situation has improved in recent years, there was a time when health experts were excluded from tobacco trade policy debates. Are you committed to involving health experts in any matters that might affect tobacco use in other countries, and to relying on them for health-related information?

I am absolutely committed to having health experts involved in these matters. One of the first things we did at the beginning of the Clinton Administration was to institutionalize inclusion of the expertise of the Department of Health and Human Services (HHS) in the tobacco trade policy process. Then-U.S. Trade Representative Mickey Kantor expanded the interagency trade policy coordination committee structure (specifically, the TPRG and TPSC) to include HHS so as to ensure the involvement of the health experts in the determination and implementation of trade policy, including with respect to tobacco products. I will continue this practice.

Assuming you answer affirmatively to the above question, how can we make sure that this policy is followed by all U.S. Government employees? For example, without clear rules, embassy staff around the world could be asked to take inappropriate actions on behalf of tobacco companies. In many cases, they might do what they are asked, without any input from health experts. Will you work with other departments involved to issue government-wide rules to end that behavior?

The question of policy coordination within the U.S. government is an important one. We must always be careful to ensure that agencies' activities are supportive of each other's policies. Just as I am working with HHS in the development of our trade policies, I am always happy to work with the State Department to ensure that embassy staff are familiar with those policies.

Opposition by USTR and other U.S. Government agencies to tobacco control laws in other countries has been another major concern in the past. Will you agree not to oppose laws in other countries that are reasonably expected to reduce tobacco use?

I will continue USTR's efforts to ensure that the policies we pursue abroad are consistent with our own health policies and do not interfere with other countries' legitimate efforts to address health issues. This office cannot be indifferent to the health problems posed by cigarette smoking, and we are not. Our trade negotiators will not seek to prevent foreign governments from taking steps to protect their citizens by adopting legitimate health measures to restrict the consumption of tobacco. To this end, we will not interfere with or object to foreign countries' adoption or enforcement of measures necessary to protect public health, including advertising and promotion restrictions, however, these restrictions should be applied in a non-discriminatory fashion.

China WTO Accession -- Timing

What do you anticipate will be the time frame for successful completion of bilateral negotiations with China?

As I mentioned in my testimony, the question of timing of China's accession depends largely on China. We have indicated to the Chinese that we would view very positively their WTO accession, from the point of view of U S long-term interests, China's interests, and of course, the interests of the world community This is particularly true to the extent the WTO can be used as a foundation stone for the building of a rule of law in China. However, all members make substantial market-access and rules-based commitments, and China can be no exception I have a team now in China, meeting with the Chinese on this very issue We will work with you as we proceed on this matter.

European Union Beef Hormone Ban

The European Union has banned imports of meat from animals treated with certain growth promoting hormones, resulting in an annual loss of an estibmated $100 million in U.S. beef exports to the EU since 1989.

*** Where does the United States stand in its attempts to solve this dispute through the WTO's dispute settlement mechanism?**

*** What actions will you take if the dispute is not resolved in favor of U.S. beef exporters?**

A WTO dispute settlement panel is currently reviewing the challenge by the United States to the EU ban and is expected to issue its final report in May. The same panel is also reviewing a challenge by Canada to the EU ban. USTR has made available to the public the submissions of the United States and the European Union to the panel.

In light of the fact that the panel process is still ongoing, it would be inappropriate to engage in speculation that the panel report will not find in favor of the United States

European Union Third Country Meat Directive

1. The European Union has agreed to allow imports of meat from certified U.S. plants under its Third Country Meat Directive. Unfortunately for our meat industry, very few of our meat processing plants have been certified by the EU. One of the provisions of a bill, The Cattle Industry Improvement Act of 1997, that I have cosponsored along with Sen. Daschle and others will direct USTR to determine whether the European Union has violated its obligations under international law to certify U.S. meat export facilities.

- **Would you support the attempt to clarify whether the EU is living up to its agreements with the U.S.?**

- **Has USTR undertaken any actions in this regard to date?**

S. 16, which you cosponsored with Senator Daschle would require USTR to make a determination under 306 (b)(1) of the Trade Act of 1974 as to whether the European Union is in compliance with its obligations under the Exchange of Letters or under the Agreement on the Application of Sanitary and Phytosanitary Measures. If USTR determines that the EU is not in compliance with either or both of these agreements he/she shall notify The Secretary of Agriculture. The Secretary shall direct the Food Safety and Inspection Service to review certifications of European Union facilities.

We understand the motivation for this bill, and we are willing to work with you to achieve what we believe are our mutual objectives. As you probably know, my staff and their USDA colleagues have been engaged in an effort to reach a "veterinary equivalence agreement" with the European Union for the past two years. While we are close to concluding an agreement, several difficult issues remain unresolved. Among these are a relatively limited number of specific cases where our meat inspection requirement are simply different from the European Union's -- but we believe that our requirements deliver an equivalent level of protection. Our objective is to resolve these differences as part of concluding this agreement.

While we had hoped to conclude a veterinary equivalence agreement by January 1, 1997, we were not able to achieve that objective. Negotiators for both sides have now agreed to work towards completing this project by April 1, 1997.

In this connection, you may be aware that -- with my strong support -- USDA's Food Safety and Inspection Service (FSIS) recently notified the EU and individual EU Member States which are eligible to ship meats and meat products to the United States that, effective April 1, 1997, FSIS will no longer consider these meat inspection systems equivalent to the U.S. system -- unless the U.S. and the EU have entered into a veterinary equivalence agreement by that date.

China and the WTO -- Legal System

Given the poorly developed legal system in China, what guarantees will the U.S. seek that disciplines agreed to by the government of China under the WTO and other international agreements will be enforced?

Over the past four years, we have engaged China to solve real problems, open markets, and create a solid foundation for our trade relationships that creates wealth for U.S. companies and jobs for U.S. workers. During this time China's trade regime has become more open and somewhat more

transparent and rules-based. We continue to engage China on the full range of trade issues, with WTO accession playing a very major part. Accession to the WTO means a commitment by China to adhere to a fundamental package of rules governing trade around the globe. As I mentioned previously, a crucial part of WTO accession is a clear and effective package of safeguards and trade remedies which ensures that we maintain effective redress.

China State Trading

How will you seek to discipline China's use of state trading enterprises in the area of trade, particularly in agricultural commodities?

As you are well aware, we are presently negotiating with the Chinese to determine whether they can bring their system in line with the principles of the WTO. We have pressed the Chinese to liberalize their agricultural trading regime, especially in the area of state trading. We have told the Chinese that a WTO-consistent trade regime involving state trading enterprises must operate according to clear and transparent commercial considerations. Ensuring market access for our agricultural exports is one of my top priorities.

China and Pork

Will you work to ensure that China brings its import restrictions on pork and other products into line with the terms of the Sanitary and Phytosanitary Agreement under the WTO?

China's *de facto* ban on pork products is a good example of the difficulty U.S. exports face when trying to enter the China market. I am personally very concerned about the pork ban. Market access for meat products is a critical part of our WTO accession discussions. We are working hard to ensure China open its market to U.S. pork exports. Toward this end, we have been in close contact with industry representatives to develop a strategy to tackle this problem. I invite you and your staffs to work with us to ensure market access for pork and other U.S. agricultural commodities. I am determined to find an acceptable resolution to this problem.

We have continuing concerns about the lack of sound science to support China's actions. Failure to apply sound science on matters of bilateral concern raises doubt regarding China's ability to comply with WTO Sanitary and Phytosanitary Measures and places further strain on our bilateral trade relationship. As such, we have been working very hard with the Chinese to resolve this problem through the framework established in the 1992 Market Access MOU. We will continue to press the Chinese on outstanding issues in the next round of technical negotiations scheduled for March. Market access for agricultural products is one of my top priorities. An essential component of securing market access is ensuring that our trade partners adopt sound and internationally accepted sanitary and phytosanitary standards.

China and Market Access

What guarantees on access to the Chinese market will you seek from China in its protocol of accession to the WTO?

The Administration will continue to support China's accession to the WTO on a commercially viable basis -- that means genuine market access for our goods, services and agriculture in the fastest growing economy in the world. We are engaging the Chinese on a variety of issues -- such as trading rights, national treatment, tariffs and non-tariff measures. We are in daily contact with our colleagues in other governmental agencies as well as private business representatives to

coordinate our position. My negotiators are currently in China to receive new offers from the Chinese and to determine whether China is genuinely prepared to meet our requests and the conditions of the WTO. I look forward to working closely with you and other members of Congress as these negotiations move forward.

Dispute Resolution Under NAFTA

Under the bilateral agreement between the United States and Canada under NAFTA, both countries agreed not to increase any tariffs on products traded between them. Yet Canada has raised its tariffs on imports of dairy, poultry, and egg products under the multilateral Uruguay Round. Most disturbing is that a NAFTA dispute panel ruled in favor of Canada on this issue.

* **Are there any actions you can take to ensure that Canada honors the terms of its agreement with the United States under NAFTA?**

The United States followed the method prescribed in the NAFTA for settling disputes and ensuring that our NAFTA partners honor the terms of the agreement, i.e. by going through the NAFTA Chapter 20 dispute settlement process. We were, of course, extremely disappointed that the panel did not rule in favor of the United States' position. There is no appeal process under NAFTA.

* **What recourse will the United States have if Canada continues to apply the higher tariffs?**

I wish to reiterate what we said in December when we received the final panel report: the Administration remains committed to improving U.S. access to the Canadian market by doing everything possible, consistent with our trade laws and obligations, to pursue tariff-free access for all U.S. dairy, poultry, egg, and barley products, and margarine. I am not prepared to outline specific approaches at this time. However, we are committed to continuing to work closely and cooperatively with our dairy and poultry industries now and in the future as we explore all available options in pursuit of our goal of eliminating these Canadian tariffs.

* **In light of the fact that the Executive Branch is seeking authority to enter into negotiations to expand NAFTA and to allow additional countries to accede to this agreement, how would you ensure that such a situation does not happen again?**

In the NAFTA negotiations with Mexico, the U.S. sought and obtained the complete elimination of all tariff and non-tariff barriers for all agricultural products. (The U.S.-Canada Free Trade Agreement did not require the elimination of all agricultural non-tariff barriers between Canada and the United States. There were no market access negotiations between the U.S. and Canada as part of the NAFTA. Existing market access provisions of the U.S.-Canada FTA were simply incorporated into the NAFTA.) All agricultural non-tariff barriers between the United States and Mexico were eliminated when the agreement was implemented on January 1, 1994. Once the NAFTA transition period is completed (January 1, 2008 for a handful of the most sensitive products) there will be no tariff barriers between the U.S. and Mexico. We believe the NAFTA agricultural agreement between the U.S. and Mexico is the most appropriate model for expanding the NAFTA to Chile.

Information Technology Agreement

I understand that you recently negotiated to eliminate the U.S. tariff on capacitors in the Information Technology Agreement. Some in the business of manufacturing these capacitors, including a Nebraska company, were very surprised to learn that this was included in the ITA, since they understood that capacitors would NOT be included. Would you discuss the impact of eliminating the U.S. tariff on our domestic industry, including any potential effect on our national security?

The Administration and I, personally, take very seriously our responsibility to consult closely with domestic industry on all ongoing trade negotiations. Early on in the ITA process, we advised the capacitors industry, through its trade association, of a European proposal to include capacitors in the ITA. As a result of this consultative process, I was aware that some domestic producers were opposed to the European proposal.

During the final round of negotiations leading to the conclusion of the ITA, I took this issue up personally with my European counterpart, Sir Leon Brittan. Throughout the negotiations, the Europeans and other trading partners argued forcefully that capacitors are an integral part of the "information superhighway," on which the concept for ITA was based.

The Administration's fundamental objective in launching the ITA was to remove tariff barriers on a comprehensive package of products that will constitute the basic infrastructure of the information society of the 21st century. In view of the positions of our trading partners on this issue, the exclusion of capacitors, which are used in all information technology products, would have put at risk the entire ITA, a result that would not have been in the interest of the U.S. economy or the vast majority of our information technology product exporters.

Under the ITA, countries accounting for over 90% of world trade in information technology products will eliminate tariff barriers on capacitors and all the other products covered. This package is like a massive global tax cut, which will affect over half a trillion dollars in current international trade. The ITA will help to create high-paying American jobs, improve productivity in a wide range of related industrial and service sectors, sustain U.S. competitiveness, and help ensure our future prosperity and international economic leadership

The U.S. capacitor industry is dynamic, globally-integrated, export-oriented and well-placed to take full advantage of the economic stimulus of the ITA. Each year, our capacitor manufacturers export more than half of their total production. In the last five years, exports have increased by an average of more than 30% annually. In the first eight months of 1996, our exports to Mexico and Japan were up by 35% and 25%, respectively, over the same period in 1995. In the same period, exports to Korea and Singapore, whose governments have already committed to eliminate tariff barriers on capacitors under the ITA, also grew by 25%. The elimination of tariffs on capacitors is likely to significantly expand U.S. manufacturers' export opportunities in these and other key emerging markets and to generate greater demand at home

In extensive consultations with technical experts, trade associations, and individual companies, the Administration has not been informed of any potentially adverse affect on national security resulting from the inclusion of capacitors in the ITA. Industry sources advise that the technology and materials required to manufacture capacitors is readily available and, if necessary, easily duplicated.

Written Response to Questions from Senator Lott
Telecommunications

Could you please explain in greater detail the administration's position that no implementing legislation, or legislation of any kind, will be required for the telecommunications agreement currently under negotiation in Geneva.

The U.S. offer will reflect our statutory obligations While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310(a) and (b)(1), (2) and (3) of the Communications Act of 1934 (the "Act") The offer specifically states that foreign governments, aliens, foreign corporations and U S corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license

Based on Section 310(b)(4) of the Act, the offer places no new restrictions on indirect foreign ownership of a U S. corporation holding a radio license Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license The U S offer is to allow indirect foreign ownership, up to 100%, under this provision.

The U S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest. Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U S market In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services

The U.S. offer maintains COMSAT's monopoly on access to INTELSAT and Inmarsat, as required by the Communications Satellite Act (47 U.S C 721).

The offer does not contain any restrictions on licenses to land submarine cables based on the statutory authority of the President (delegated to the Federal Communications Commission in consultation with the Secretary of State) to issue landing licenses The statute permits withholding such licenses to assist in obtaining landing rights in other countries, maintaining the rights or interests of the United States and its citizens and protecting U S security (47 U S C 35). The United States will obtain landing rights in other WTO member countries if the negotiations conclude successfully and will retain its ability to protect its national security

Market Access Problems With Japan

What is your plan for dealing with Japan and ensuring that U.S. companies achieve full access to the Japanese market?

In the past four years, the Administration has worked aggressively to open the market in Japan for U.S. manufactured goods, agricultural products and services. We have used every tool and opportunity available, including multilateral negotiations, our efforts within APEC, bilateral negotiations, enforcement of our trade laws, as well as constant pressure on Japan to make structural changes which would deregulate their economy and open up real opportunities for competitive foreign companies.

We have seen some gratifying progress Our exports to Japan increased 43% in the past four years. We have reached 24 agreements with Japan, including agreements in autos and auto parts, cellular phones, rice, apples, government procurement, medical equipment, glass, semiconductors, insurance and wood products. Many of our products, manufactured and agricultural, are finally reaching Japanese consumers. In December 1996, we reached a landmark agreement to deregulate and open the Japanese insurance market, which far surpassed the expectations of anyone in U.S. industry. Earlier this month, Japan agreed to accept U S grademarked lumber, for the first time. Industry estimates that the number of U S mills eligible to ship lumber to Japan will increase from 80 to over 1000 because of this change. These were two important cases in which our drive for market opening converged with the interest of Japan in deregulation· first in financial markets, and then reducing the cost of housing
It is worth noting that we have also used the WTO dispute settlement system effective to deal with some of Japan's practices. For example, we joined with the EU and Canada in a challenge to Japan's liquor taxes, and won an important WTO decision striking down the discriminatory tax regime. We also persuaded Japan to change its laws protecting sound recordings by beginning a WTO challenge to that law. In the film case, we will be filing our submission in Geneva on February 20. We anticipate that it will be the most comprehensive analysis yet of how Japanese barriers were systematically put in place to frustrate market access for foreign products in an important sector.

We intend to continue the hard work of redressing the imbalance of market access between our countries that our predecessors began, and we will continue to use every tool available to us

China Textiles and Apparel

Q. 1. Transshipment of textiles and apparel manufactured in China is a serious problem. Is China today fully and unequivocally fulfilling its obligations under textiles agreements with the United States? If not, what steps does the Administration intend to take?

A. As you know, the problem of textile transshipments is one that the Administration takes very seriously. In the bilateral agreement we negotiated with China in 1994, the United States insisted on language that would permit us to charge China's quota for three times the amount of goods they transshipped if they were found to have transshipped goods on repeated occasions. Last year, based on repeated instances of transshipping by China, we enforced those provisions and charged China's quota with three times the amount of transshipped goods. In addition, the U.S. Customs Service has stepped up its efforts to find evidence of transshipping and sent an unprecedented number of "jump teams" to other countries to examine their production facilities and other operations to detect possible transshippers. Whenever we obtain evidence of transshipping by China, we will not hesitate to charge China's quota and to enforce fully the provisions of our bilateral textile agreement.

At this moment, USTR has a team in China, led by our chief textile negotiator, Ambassador Hayes, negotiating with China to renew and improve our bilateral textile agreement with them. Among the issues that the United States has insisted on in order to reach an agreement with China is further steps to address the transshipment problem.

Written Response to Questions from Senator Mack
Modifications to Section 202 and 204 of the Trade Act of 1974

I remain concerned that your office continues to support changes to Section 202 and 204 of the Trade Act of 1974 as it relates to seasonal fruits and vegetables. As you know, the ITC is constrained from considering seasonality when determining serious injury or harm to a domestic industry. This flaw in the law has a unique impact on my state because it is Florida's fruit and vegetable industries -- due to their winter harvesting seasons -- that tend to suffer the most harm from foreign import surges.

Last Congress, Senator Graham and I worked with members of the House to correct this flaw in our trade statutes. The office of USTR under your predecessor was supportive of our bill. Are you willing to lend your support to a similar effort this year?

As you know the Clinton Administration has attempted to respond to the legitimate concerns of the Florida fruit and vegetable industry through numerous courses of action, including the successful conclusion of a suspension agreement between the Department of Commerce (DOC) and the Mexican tomato industry - a historic accomplishment under extremely difficult circumstances. DOC continues to enforce the agreement and monitor the trade closely. We will remain diligent in our efforts to advance the interests of the Florida fruit and vegetable industry. We are prepared, as always, to continue our discussions on how best to address the needs of Florida industry, and we remain supportive of the bill to which you refer.

Written Response to Questions from Senator Moseley-Braun
Philippine Market Access Commitments for Pork

As you know, the Philippines continues to violate its Uruguay Round obligations on pork. Last June, Ambassador Lang of USTR told the House Agriculture Committee that the U.S. would request WTO consultations if the Philippines did not promptly implement its WTO obligations. What is USTR doing to resolve this problem?

I share your concern regarding the manner in which the Philippines is administering its Uruguay Round tariff-rate quota (TRQ) commitments for pork imports. We have repeatedly reiterated U.S. concerns at senior levels with the Government of the Philippines. As a result of U.S efforts, in July 1996, the Philippine government promulgated regulations necessary to issue import licenses for 18 months' imports (last half of 1995 and all of calendar 1996) The licenses were issued in October 1996. However, the way in which the Philippine government allocated the licenses raised some new issues. The majority of import licenses were allocated to Philippine producers and actual imports under the TRQ were far below the TRQ level.

During the WTO Ministerial Conference in Singapore, in December 1996, senior USTR and USDA officials reiterated the U.S. position that the Philippines must implement fully and effectively its TRQ for pork. At that time, the Philippines' Secretary of Agriculture promised a written explanation of how his government would comply with its TRQ obligations. Early this week, we received his explanation. My initial assessment is that the proposal does not satisfactorily address U.S. concerns. We are consulting with relevant private sector representatives to ensure that we take the most effective actions to achieve access, including a possible WTO case.

Caribbean/U.S. Trade Relationship

The Administration is on record as supporting the expansion of the US/Caribbean trade relationship. Does the Administration still support this idea? What initiatives has the Administration taken to advance this objective?

The United States and the Caribbean share important goals: security, orderly movement of people and control of migration, protection of the environment, the expansion of trade and investment, and improved living standards. These interests are best served by long term and broad based economic growth and political stability in the Caribbean.

Our trade policy, in particular our commitment to negotiate the Free Trade Area of the Americas, is aimed at providing the means to strengthen trade relations and investment links, consolidate and expand economic reforms within Caribbean countries, and attract foreign investment. The FTAA will build on the increased openness of most Caribbean economies over the past decade, and encourage improved macroeconomic stability.

The unique circumstances of the smaller economies in the hemisphere led the leaders at the Trade Ministers at their first FTAA meeting in Denver in June 1995 to create a working group to explore means to facilitate their integration into the FTAA. To help these countries meet the challenge to make the structural reforms needed to take advantage of the benefits to be derived from a hemisphere-wide free trade agreement, the FTAA working groups are holding seminars to educate countries on their WTO obligations and to look at their specific needs for technical assistance.

The Administration remains committed to enhancing trade benefits for the CBI region, including through CBI parity. Meanwhile, the Caribbean continues to enjoy duty-free access for most products. Since the effective date of the Caribbean Basin Economic Recovery Act exports from the region to the United States have increased dramatically. In 1995 these exports reached $12.6 billion, representing an increase of almost 100 percent since the start of the program.

Written Response to Questions from Senator Murkowski
Taiwan WTO Accession

Is the United States prepared to push for Taiwan's entry into the WTO as soon as she is ready, and irrespective of the status of the PRC's application? If so, what will the United States do to enhance Taiwan's prospects for membership? If the US is not prepared to full support Taiwan's entry, please explain why.

The United States supports Taiwan's accession to the WTO -- but, like with other countries seeking accession, only on commercially meaningful terms. We have been holding negotiations with Taiwan for the past five (5) years to reach agreement on a package that results in genuine market access for U S. goods, agricultural products, and services.

While we have made real progress toward reaching such an agreement with Taiwan, a number of important issues remain unresolved, including but not limited to trade barriers on key U S agriculture products, such as pork, chicken, and beef, and lack of access to government procurement on major contracts. We will continue to work with Taiwan to resolve these and other remaining differences.

Japan Insurance

USTR recently completed an agreement with Japan on supplemental measures to achieve the objectives of the 1994 US-Japan Insurance Agreement. What are your expectations for how American companies will benefit from this agreement? If your expectations are not met, what course of action do you intend to pursue?

The recently concluded agreement on insurance will open up significant new opportunities in Japan for U.S. insurance providers and brokers. Japan agreed to significant measures to deregulate its "primary" insurance sectors which include, among other measures, allowing direct marketing of automobile insurance with differentiated rates and fundamental reform of the rating organization cartels.

All of this will take place while ensuring very limited initial entry into the "third sector" by Japanese insurance firms. Further deregulation of this critically important sector to U.S. companies is to be postponed two-and-one-half years following fulfillment of primary sector deregulatory commitments so as to allow foreign firms to gain a competitive foothold in the primary sectors. We intend to vigorously monitor implementation of this agreement through twice yearly consultations and will take whatever actions necessary to ensure compliance.

Japan's objection to Alaska North Slope oil law

What is the status of Japan's decision to challenge in the World Trade Organization the U.S.-flag vessel requirements for the export of Alaska North Slope oil?

Japan has asserted that the law lifting the ban on export of Alaska North Slope crude oil is inconsistent with the terms of the June 1996 WTO decision suspending the WTO maritime transport services negotiations. We have informed the Japanese officials that we see no inconsistency between the law and this "standstill" commitment; the law did not improve the U S bargaining position in the negotiations and did not create any new restrictions on international shipping services. Further, the commitment is a political undertaking.

To date, there is no information that the Japanese government intends to pursue a formal challenge in the WTO.

NATURAL GAS IN EUROPE

Q. I understand that Marathon Oil Company has been discussing with your staff the very significant trade and investment barriers that company has encountered in attempting to invest in the natural gas sector in Europe. As foreign companies invest in the increasingly deregulated US energy sector, it is important that U.S. energy companies be treated fairly abroad.

How do you intend to pursue this problem?

A. My staff has met with Marathon officials and their representatives on a number of occasions to discuss the problems Marathon is encountering in its North Sea natural gas operations and the involvement of the Norwegian and German Governments in this matter. We are continuing to examine with Marathon the alternatives available to address this problem.

USTR has not been the only Executive Branch agency actively reviewing the situation with Marathon. The Departments of State (both here as well as in Norway and Germany) and Commerce have each discussed the situation with Marathon and raised the issue with German and Norwegian officials. We will continue to coordinate with them.

More generally, there is already widespread recognition, not just in the U.S., but also in many of the major developed and developing countries, that a fundamental review is necessary of the way in which energy is regulated and delivered to customers.

Europe has concluded that fundamental reform is required. In June of 1996, the EU adopted a new directive to restructure and liberalize the electricity market. A similar directive to deal with the natural gas industry is pending in the EU. Separately, legislation is pending in the German Bundestag to reform the natural gas market in Germany. The USG will be monitoring closely the restructuring initiatives at both the EU and German levels.

The U.S. has provided significant opportunities to foreign firms to participate in our restructured natural gas market. We believe that U.S. firms should benefit from access to newly created opportunities abroad as well.

Leghold Traps

Q: **On January 17, 1997, I gave you a letter signed by me and 8 of my Finance Committee colleagues asking you to reject the EU's new demand for a U.S. commitment to ban the use of all steel-jawed leghold traps, irrespective of whether such traps meet the agreed humane standards.**

The letter also states our belief that it is time to use all our diplomatic assets, including the State Department and our embassies in the EU, to advance our interests. Although we believe USTR has been very supportive of the States' position, I am concerned that no diplomatic effort has been made outside the negotiation itself.

What will you do to communicate the U.S. position directly to European member nations?

A: As you know, USTR has been working closely with the States and other interested parties to resolve this problem. We have also worked closely with other Administration agencies, including the Department of State. We will continue this cooperative effort as we seek an acceptable solution.

With respect to your letter, we have made clear to the EU Commission that their demand for both a commitment to the humane trapping standards and a ban on a particular type of trap, regardless of whether such traps meet the agreed humane trapping standards, exceeds the requirements of Regulation 3254/91. We have stressed the importance of focusing on agreement on the humane trapping standard as a basis for resolving this matter.

As the negotiations have proceeded, we have focused our communications on the decision points. Once the Council gave the Commission a negotiating mandate earlier in 1996, the decisions were being made in the Commission and that is where we have focused our efforts. I have spoken and written to EU Commissioner Leon Brittan on this issue several times to be certain that he was personally aware of the U.S. position. When the issue was scheduled for review by the College of Commissioners last December, U.S. Ambassador to the EU, Vernon Weaver, wrote to all twenty Commissioners urging a favorable review of the proposed U.S.-EU solution.

In addition, we have maintained close contact with the Presidency during the negotiations --the Irish during the last half of 1996 and the Dutch in the first half of 1997. We have kept them fully apprised of the U.S. position and progress/problems in the negotiations. Moreover, Member State officials have been observers in negotiating sessions and we have talked with these officials on the margins of the negotiations. Deputy USTR Jeffrey Lang presented the U.S. position at length in meetings with Commission, Council, and Dutch officials this week.

As soon as we have reached agreement with the Commission on a solution, the decision point will shift to the Member States. Accordingly, we are preparing additional approaches to the Member States through our embassies in EU capitals. Ambassador Lang will be urging acceptance of the solution in visits to Member State capitals in February. We will use all necessary channels to achieve acceptable resolution of this issue.

China and Salmon

What is the status of WTO accession negotiations between the U.S. and the PRC on the issue of tariffs on seafood? I am particularly interested in the tariff on salmon exports from the U.S., which I understand are currently subject to tariffs of 30 percent or higher.

WTO accession for China means opening the market and ending restrictions to access for our goods, services and agricultural products in the fastest growing economy in the world. We support WTO accession only on a commercially meaningful basis. We have requested that China make significant commitments to liberalize its trading regime, including making substantial tariff cuts. Clearly a tariff of 30 percent or higher on salmon is of great concern However, the Chinese have informed us that they will bring new offers to the table when my negotiators meet in Beijing, January 30 - February 1. A Geneva Working Party meeting on China's accession is set for the end of February After that we should be in a much better position to judge whether the Chinese are genuinely prepared to enter a serious negotiation I do not know if salmon will be addressed in China's revised offers, but we will press them on this and will keep you apprised.

Written Response to Questions from Senator Rockefeller
China WTO Accession -- WTO Subsidies Disciplines

Further, there are published reports that China may add as much as 40 million tons of steel production capacity over the next few years -- that will all be owned by the Chinese Government. Can you assure the Committee that in the negotiations over Chinese accession to the WTO, no waivers from the WTO subsidies disciplines will be given to China? I know that the U.S. does not apply CVD law to non-market economies, but shouldn't non-market economies that join the WTO still be subject to WTO subsidies code disciplines?

We have said that we welcome China's accession to the WTO, but only on commercially meaningful terms, and one aspect of that involves the assumption by China of WTO obligations in the subsidies area.

As far as China is concerned, we want to ensure that the subsidy obligations which China assumes in its accession are suitable not only to China as it is today, but also reflect that country's growing economic and commercial status for the foreseeable future Therefore, in our bilateral and multilateral discussions with the Chinese, we have devoted considerable attention to ensuring that they understand WTO rules, including how such rules may apply to Chinese industrial and development policies We have made clear that, while we are prepared to discuss the possibility of negotiating reasonable transition periods for China to assume full WTO obligations in certain circumstances, it is important that the Chinese eliminate prohibited subsidy practices and avoiding causing harm to other WTO Members through the use of any subsidy

Korean Steel

In July 1995, the United States and Korea entered into a steel consultative agreement. Under that agreement, the Government of Korea agreed to stop influencing pricing of steel products in Korea and to do away with export restraints, both of which distorted the marketplace. However, in October last year the Korean government announced an eight percent price decrease on hot rolled steel. This appears to violate the agreement. What action is the U.S. Government taking to ensure compliance with the 1995 agreement?

On a related issue, over the last several years, Hanbo Steel has made more than $6 billion in investments in new plants and equipment, and several billion dollars of its debt was guaranteed by the Korean government. This week, the company declared bankruptcy. If past history is any guide, we can probably expect that the Government of Korea will arrange a buyer for this subsidized steel facility -- which already has four million tons of steel capacity and has under construction three million more tons of capacity. Do the WTO subsidies disciplines deal with this kind of subsidization of new capacity? If so, will the U.S. government raise this at the WTO?

The last round of bilateral consultations under the U S -Korea Steel Consultative Agreement took place in November 1996 The U S delegation asked for a clarification of the government announcement concerning POSCO's pricing of hot rolled sheet We also reiterated our concerns that the Korean government may be continuing to influence company decisions concerning steel production and pricing levels The Korean delegation sought to demonstrate that POSCO's decision to lower prices had been announced earlier and independently of the government announcement, and that the government simply reflected this decision in its announcement concerning measures to stimulate the economy Furthermore, the price decrease affected only product from PQSCO's recently completed mini-mill, accounting for a less than one percent of POSCO's production The U S delegation is submitting further questions in writing, and these issues will be further examined under the consultative mechanism Close coordination with U S interests will continue

As for the situation of Hanbo Steel, it is difficult to provide specific guidance on the applicability of WTO subsidy disciplines without knowing more facts, including the potential future actions of the Korean government A number of WTO subsidy disciplines *might* be relevant, depending on the facts. For example, under certain circumstances, government subsidies provided to directly forgive debt or to cover operating losses can create a rebuttable presumption of trade harm, and government loan guarantees can constitute subsidies if a "benefit" is conferred I would be happy to ask my staff to take a close look at whatever information you may have in order to provide a more precise appraisal of the possible options available under WTO subsidy rules

Telecommunications

I understand that you have made significant progress in the WTO telecom talks. Can you give us some idea of the benefits that we can expect if you conclude a deal successfully by February 15?

A WTO agreement that gives us equal value, in terms of market access overseas, would be good for the United States:

-- Our information goods industries would gain new markets and customers abroad;

-- Our information service industries -- from telemarketing to software to Internet commerce -- would be able to develop new demand over newer, faster and less expensive global networks.

-- Our information goods and services companies have the best workers and skills in the world -- they are ready to compete in overseas markets and at home, on a level playing field.

-- The negotiators have put that level playing field in place -- by developing multilateral rules on competition in telecom for the first time, based on the rules the FCC uses to foster competition in the United States. Thirty-one countries so far have signed up to implement these rules.

You had to reject the offers that were on the table last April. Do you expect better offers before the deadline this time?

We will certainly not conclude a deal in February based on offers that were inadequate in April. That said, over 27 countries are working on making offers for the first time or improving their current offers. We are building on the momentum generated by improved US and EU offers and the spirit of the Singapore Ministerial to get the critical mass we need to conclude successfully. Recently, we saw new or improved offers from five countries; we expect more in the next two weeks.

WTO Trade and Competition Policy Working Party

As you know well, during the recent Singapore Ministerial meeting of the WTO (World Trade Organization), a number of other countries sought to expand a proposal to study the relationship between trade and competition policies to permit the renegotiation of the WTO Antidumping Agreement.

I'm pleased with the cooperation you got in this area from Sir Leon Brittan of the EU to ensure that the final language for this working group did not in any way mention a reopening of the Antidumping Agreement. I'm concerned because many of those countries that want to renegotiate the WTO's Antidumping Agreement are the same ones that tried to undermine the international rules against dumping during the Uruguay Round, and I think we can expect them to use every opportunity to try to undermine our antidumping laws in the future. Will you please assure this Committee that you will continue to follow this matter closely to ensure that the Working Party on Trade and Competition Policy is not misused in an effort to weaken the international rules against dumping?

At the recent WTO Ministerial in Singapore, we agreed to go along with the creation of a working group to study the issue of trade and competition. We agreed to this, in part, because the WTO Agreement on Trade-Related Investment Measures already mandates that this issue be reviewed before the end of 1999, but there are also sound policy reasons for undertaking this work. The U.S. has an important economic and trade interest in promoting the adoption and strong enforcement of domestic competition policies by its trading partners. I also believe that competition-related issues can be a factor in assuring genuine market access under trade agreements. The study group established at the WTO Ministerial could help on both of these points.

At the same time, as I have said previously, this is an extremely complex area and it must be approached with care. We need to understand, and help others to understand, a lot more about this issue before any conclusions can be drawn about the wisdom of pursuing further work, particularly in the WTO context. We have no interest in negotiating binding multilateral rules governing competition laws and policies, and this is not an appropriate forum in which to discuss the legitimacy or application of WTO-sanctioned trade remedies, such as antidumping.

Of course, we cannot prevent others from raising issues which they believe are relevant That fact, however, underscores why it is important that we affirmatively put forward the issues which we believe are appropriate for study I, therefore, intend to carefully consider your suggestion to request an ITC study of the anti-competitive policies and practices of certain other countries At the interagency level, we are already considering and developing ideas to propose for this group's work program, and are consulting informally with the private sector. I can assure you that we will make every effort to see that the group focuses on appropriate topics, and we will block any attempt to use this as a vehicle to renegotiate or weaken the WTO's rules against dumping The EU shares our view

Outstanding Trade Issues With Japan

What can you tell me about outstanding trade issues with Japan?

While we have concluded agreements over the past year on several key issues, including insurance, semiconductors, sound recordings, and civilian aviation, there are a number of outstanding trade issues, which we are dealing with bilaterally or multilaterally, as appropriate These include.

Autos. USTR was pleased with the initial results achieved under this agreement, as documented in the comprehensive report on the agreement issued in October 1996 Sales of U S autos in Japan are up significantly. The Japanese Government met its obligations under the agreement for an initial round of deregulation in the parts aftermarket, with new opportunities being created for U.S. auto parts companies. Moreover, Japanese production of autos and complex auto parts, such as engines, in the United States has expanded significantly, as the Japanese auto manufacturers committed in their voluntary plans which accompanied the 1995 agreement Nonetheless, we believe there is room for further progress We are not yet satisfied with the number of Japanese dealerships that have agreed to carry U S automobiles We are also concerned that the pace of deregulation has fallen off We have a USTR-Commerce team in Japan at the present time pressing for further progress

Civilian Aviation. A new all-cargo agreement was reached with Japan in April 1996 This agreement liberalized existing cargo routes and, for the first time in almost 20 years, permitted new entrants into the U.S.-Japan cargo market. Talks aimed at securing new passenger opportunities have been less successful, however, and the additional discussions will continue in the coming months. The U.S. has proposed full deregulation of the bilateral aviation market, and will work toward that goal

Distilled Spirits. Ruling in favor of the U.S , a WTO dispute settlement panel and Appellate Body, found that Japan's liquor tax violates WTO rules by favoring domestic products However, Japan has failed to put forward a proposal to implement the panel report's recommendations and rulings within the timeframe envisioned under the Dispute Settlement Understanding. The U.S. threfore has requested WTO arbitration of the "reasonable period" to be allotted Japan to fully comply with the panel recommendations and rulings The arbirtrator's decision will be issued by February 14

Film. The U.S. referred this dispute over the Japanese barriers to its film market to a WTO dispute settlement panel and the case is currently pending This case highlights the Japanese Government's systematic efforts to implement structural and other informal barriers to close its market to foreign goods

Paper. The 1992 U.S -Japan Paper Agreement, which aims to increase access to competitive for foreign producers to Japan's paper products market, has achieved some limited progress, but many of its goals have yet to be realized. With the agreement set to expire this April, USTR is working closely with U.S. industry to develop a strategy for how to effectively address this issue.

Supercomputers. USTR is concerned about the reversal over the past couple of years in the Japan's record of public procurement of U S. supercomputers. USTR is monitoring this issue closely and continuing to press the Japanese Government on problems with specific supercomputer procurements it made in the past year

Telecommunications USTR is concerned by actions of the National Police Agency to excluded U.S telecommunications equipment manufacturers from participation in the early specifications development phase of a next generation mobile telecommunications system. In addition, we are working closely with U S. industrty to ensure increased access to procurements of NTT beyond the expiration of the current NTT agreement.

Wood. USTR has been pleased with the progress made on this issue over the last year Earlier this month, Japan recognized U S lumber grade marks, making it unnecessary for U S mills to go through a lengthy and expensive certification process in order to be eligible to ship lumber to Japan. In March, additional announcements from Japan further revising their regulations to make them more performance based and open to imported building materials are expected

How do you think the Kodak case is going? Have you had any indication that the Japanese will talk to us about this or are they simply waiting on the WTO case? If we don't win the case, do we consider sanctions or do we find new WTO-legal remedies to accomplish our market opening goals?

We are currently preparing our first submission to the WTO, which is due February 20. We have a strong and well-documented case that reveals the full extent of the Japanese Government efforts to block access to its distribution system over the past three decades.

We are confident in the strength of our case and do not expect to lose. However, if the panel ruled against us, it would be an important indication of the WTO's ability to reach the type of pervasive and exclusionary barriers that exist in the Japanese market It is premature at this time to determine what type of remedies we would pursue were the panel to rule against us

China WTO Accession --Commercially Viable Terms

I know you agree that China must only enter the WTO on commercially viable terms. How do you see the accession talks going over the next year? What kind of support are you getting from the rest of the Administration? From business?

The Administration will continue to support China's accession to the WTO on a commercially viable basis -- that means genuine market access for our goods, services and agriculture in the fastest growing economy in the world. We are engaging the Chinese on a variety of issues -- such as trading rights, national treatment, tariffs and non-tariff measures. We are in daily contact with our colleagues in other governmental agencies as well as private business representatives to coordinate our position. My negotiators are currently in China to receive new offers from the Chinese and to determine whether China is genuinely prepared to meet our requests and the conditions of the WTO. I look forward to working closely with you and other members of Congress as these negotiations move forward.

Timing of Taiwan's WTO Accession

If China's WTO accession negotiations stall for a considerable amount of time, will that necessitate new thinking on Taiwan's entry into the trade body?

The United States supports Taiwan's accession to the WTO -- but, like with other countries seeking accession, only on commercially meaningful terms We have been holding negotiations with Taiwan for the past five (5) years to reach agreement on a package that results in genuine market access for U.S. goods, agricultural products, and services.

While we have made real progress toward reaching such an agreement with Taiwan, a number of important issues remain unresolved, including but not limited to trade barriers on key U S. agriculture products, such as pork, chicken, and beef, and lack of access to government procurement on major contracts. We will continue to work with Taiwan to resolve these and other remaining differences.

Semiconductors

As you know, market access in Japan, the world's second largest semiconductor market, has been and remains a pre-eminent issue for the U.S. semiconductor industry. You did a tremendous job last summer in negotiating a renewal of the U.S.-Japan Semiconductor Agreement to permit continued progress on this market access issue.

Unfortunately, now that the new agreement is in place, I've heard that the Japanese government and industry don't want to continue focussing on foreign access to their market. I see it as one of the jobs of the Trade Representative to keep a spotlight shining on this issue -- like other market access issues -- especially so that last year's agreement is fully implemented and foreign producers can continue to sell in Japan. Will you continue to remind the Japanese government of the importance of this issue to the U.S. government, and will you monitor developments in Japan to ensure full implementation of last year's agreement?

I am confident that the August 2, 1996 semiconductor accords provide us with the tools to ensure that progress continues both in improving access to Japan's semiconductor market and in strengthening industry cooperation Implementation of the new semiconductor agreement generally seems to be going well In December, the U S and Japanese industries concluded a new dumping agreement in line with the provisions of the August 2 agreement reaffirming the need to avoid injurious dumping through effective and expeditious antidumping measures consistent with the GATT and WTO Antidumping Agreement

We are in constant touch with our industry regarding implementation of the industry-to-industry agreement, which is the cornerstone of the accords reached on August 2, 1996 If problems arise, we will work with them and the Government of Japan to ensure that they are addressed satisfactorily.

However, the industry cooperative activities have been a bit slow getting started. The August 2 agreement places great emphasis on industry cooperative activities, providing not only for continuation of all the cooperative activities of the 1991 agreement but for new activities as well To date, the Japanese industry has been reluctant to agree to a full schedule of cooperative activities in 1997. We are monitoring the situation closely.

We will also continue to closely watch the foreign market share situation We expect to announce the third quarter 1996 foreign market share soon and will continue to announce quarterly the foreign share of Japan's semiconductor market

Although the new agreement transfers responsibility for this calculation to the industries, the USG will continue to do the calculation unilaterally until it is clear that the new system will function effectively. If problems arise with respect to the evolution of market share or other aspects of market access, we will use the government-to-government consultative mechanism provided by the August 2 accords, as well as the informal channels available to us, to address them and to remind the Japanese Government of the importance the United States Government places on this issue. We are confident that we will be able to use these tools to provide for continued progress in market access and industry cooperation -- as we did under the 1991 agreement.

The foreign share of Japan's semiconductor market fell in the first two quarters of 1996 (FYI 26.9% in Q1 96 and 26.4% in Q2 96), after reaching a record high of 29.6% in the fourth quarter of 1995. We think that special factors, such as the fact that DRAM prices plummeted in the first half of 1996, were the main cause of the decline in foreign market share. Moreover, because the United States is not a significant exporter of DRAMs to Japan, the average U.S. market share in the first two quarters of 1996 was actually higher than the average U.S. market share during 1995. Nevertheless, the situation underscores the importance of maintaining a government-to-government agreement in semiconductors.

China WTO Accession -- Antidumping

According to press reports, Chinese trade officials have cited U.S. and European use of antidumping laws against Chinese exports as a "trade barrier" they wish to see removed in the negotiations over China's accession to the WTO. In particular, I understand that the Chinese are seeking to eliminate the non-market economy provisions of the U.S. antidumping law with respect to their exports. Without these non-market economy rules, the Chinese government, which continues to control prices for many industrial goods, could manipulate prices in China to mask the true level of dumping taking place. Can you assure this Committee that you will not allow the China WTO accession negotiations to be used to weaken the U.S. antidumping law in this way?

The U.S. antidumping law is fully consistent with our WTO obligations, and it is an important element in ensuring that trade liberalization proceeds on the basis of rules which respect fair trade and market principles. This Administration has made clear to China that we must retain the ability to apply the special nonmarket economy provisions of U.S. law to antidumping cases involving China. I continue to strongly support that position.

China WTO Accession - State Trading

One of the big problems I see with admitting China to the WTO is that in many ways it is still far from being a market economy. State trading enterprises continue to play a key role in the China economy in terms of controlling imports into China and exports out of China. This will continue to be a problem until all foreign enterprises have trading rights of their own. In addition, there are many sectors -- especially those relating to traditional industrial products -- where the government continues to own or control key Chinese companies. It seems to me that, before we let China into the WTO, we either need wholesale reform of these aspects of the Chinese economy, or need some special mechanism to deal with problems that develop when these state trading enterprises are used to block U.S. exports to China. What is your plan for dealing with this issue?

As you are well aware, we are presently negotiating with the Chinese to determine whether they can bring their system in line with the principles of the WTO. We have pressed the Chinese to liberalize it agricultural trading regime, especially in the area of state trading. China has already committed to remove restrictions related to state trading for all but a handful of imports -- mostly agricultural commodities. We have told the Chinese that a WTO-consistent trade regime involving state trading enterprises must operate according to clear and transparent commercial considerations. Ensuring market access for our agricultural exports is one of my top priorities.

Written Responses to Questions from Senator Roth
Number of Political Appointments in 1997 and in 1990

1a. How many politically-appointed positions are there currently at USTR and how does this compare with the number of such positions in 1990?

USTR currently has 28 political appointees. Each of these positions is, however, currently under review. In 1990, the agency had 23 political employees.

Reduction in Number of Political Positions

1.b. In view of Commerce Secretary-designate William Daley's announcement of his intention to reduce substantially the number of politically-appointed positions at the Department of Commerce, are there any plans to reduce the number of such positions at USTR?

In the nine months since the President designated me as Acting U.S. Trade Representative, the number of politically-appointed employees at USTR has decreased from 38 to 28, a reduction of 26 percent. During this time, I have considered a number of staffing and organizational changes to better align USTR's resources with program priorities and emerging workloads. However, at this time I have not made final decisions about staffing in general or about the number of political appointments in particular. If confirmed, I expect to make many of these decisions during the first few months of my tenure as U.S. Trade Representative. In keeping with the President's program for a smaller and more effective Federal Government, my goal would be to keep the total number of USTR employees, including political appointments, at the minimum level needed to allow this agency to effectively carry out the responsibilities the Congress has assigned to it.

Ambassadorial Positions

1.d. In addition to the U.S. Trade Representative and the Deputy USTRs, there are two other positions at USTR with ambassadorial rank -- the Chief Textile Negotiator, and the Senior Negotiator and Counsel for Japan and China. Do you expect that any additional ambassadorial positions will be created for USTR? What are the criteria for deciding that a position at USTR should carry ambassadorial rank?

To effectively manage a growing volume and complexity of international trade activities in the future, USTR may need to re-examine its ambassadorial portfolio.

I understand that there is growing Congressional interest in creating new ambassadorial positions at USTR. As these issues are considered over the coming months, you can be certain that I will examine them fully and consult with this Committee and the Congress about any new Ambassadorial positions.

The rank of ambassador gives USTR's top officers the status they need to negotiate with high ranking officials of foreign governments. Our principal criterion for determining whether a position or individual should have the rank of ambassador is whether that rank is needed to afford appropriately prestigious status to the individual conducting high level trade negotiations. At the highest levels, trade negotiations with foreign governments are often possible only when the United States Government is represented by an individual with ambassadorial rank.

Mexico: Broom Corn Brooms & Retaliation

4. Last December, when the United States put temporary restraints on Mexican exports of brooms made from broomcorn, Mexico retaliated against exports of products such as flat glass, paper notebooks, wine, bourbon and Tennessee whiskey, brandy, furniture and corn sweeteners. You will recall that the United States had asked Mexico to accelerate the elimination of NAFTA duties on most of the targeted products on Mexico's retaliation list. What is your strategy for restoring the position of the U.S. companies caught in the crossfire over broomcorn brooms? Beyond that, what is your strategy for restoring the momentum to bilateral talks aimed at accelerating tariff elimination of priority U.S. exports?

The U.S. action regarding the imposition of a temporary safeguard action on broom corn brooms was a measured response to the situation of a U.S. industry which has seen imports increase 82% over the last 4 years, with increases from Mexico alone through November of 1996 of 59% [by quantity]. The ratio of imports to domestic production more than doubled from 1991 to 1995, from 27% to 58%.

We believe the U.S. broom corn broom industry can adjust to the realities of increased competition over the three year adjustment period, and that the modest relief provided by the President is an appropriate response to the first such injury determination made by the United States in ten years.

Mexico is our largest corn broom supplier. Pursuant to provisions of the NAFTA, the United States sought to reach a mutually acceptable agreement with Mexico that would maintain the balance of concessions agreed to during the NAFTA negotiations. We also reduced the scope of the tariff remedy to less than one-fourth of that recommended by the International Trade Commission (ITC), and have provided Mexico and other preferential suppliers with continued duty-free access to our corn broom market during the safeguard period.

In short, we have done everything possible to act in a measured and responsible manner towards both the domestic broom corn broom industry and our foreign suppliers. Nevertheless, Mexico decided to exercise its right to take retaliatory action, by raising tariffs on December 13, rather than accepting compensation from the United States, as provided under the NAFTA. We believe that Mexico's response was excessive , and fails to meet the NAFTA test that self-compensation be "substantially equivalent" to the safeguard action taken by the United States. We will raise these concerns with senior Mexican officials in talks being scheduled for the week of February 3.

Regarding tariff acceleration, we expect to conclude work soon on the first round of products. However, since the process operates by consensus, and since Mexico's retaliation list makes very clear its position about several of our priority products, we have little expectation that a significant number of these products will be included on the acceleration list.
We also expect to announce the beginning of a second round of acceleration talks at that time at well. We believe there is substantial interest among U.S. firms in such an exercise, and believe a second round would result in a sizeable trilateral tariff reduction package.

NAFTA Cross-Border Trucking

5. When do you expect the United States and Mexico will resolve the dispute over trucking and implement their respective NAFTA obligations regarding market access for trucking services?

As you know, the United States delayed processing of applications from firms seeking authority to provide NAFTA cross-border trucking services because of concerns over safety and border security. Over the past year, U.S. and Mexican transportation officials have had extensive discussions on these issues. Very significant progress has been made on the safety issues, and the U.S. Customs Service has made major strides in allocating additional resources, personnel, and equipment to the border. While no final decisions have been made at this time, we are substantially ahead of where we were a year ago. We are also having discussions with Mexico in an effort to resolve several related land transportation issues, including access to the Mexican border states on certain designated routes for trucks with 53 foot trailers carrying international cargo, a pending investment dispute concerning Schneider Trucking Company, and market access for U.S. small package delivery firms. We are urging Mexico to work with us to promptly resolve these issues.

Canadian Tariffs on Dairy, Eggs, & Poultry

6. As you know, a dispute settlement panel recently ruled in favor of Canada in the complaint brought by the United States under Chapter 20 of the NAFTA against the Canadian tariff rate quota (TRQ) on dairy and poultry imports. In the wake of this decision, what further action do you intend to take to get the Canadians to eliminate their restrictions on U.S. dairy and poultry exports?

We were obviously extremely disappointed with the NAFTA dispute settlement panel results in this case. As you know, there is no appeal process under NAFTA. Nevertheless, I wish to reiterate what we said in December when we received the final panel report: the Administration remains committed to improving U.S. access to the Canadian market by doing everything possible, consistent with our trade laws and obligations, to pursue tariff-free access for all U.S. dairy, poultry, egg, and barley products and margarine to the Canadian market. In preparation for and throughout the NAFTA panel process, we worked extensively and closely with our dairy and poultry industries. We are committed to continuing to work closely and cooperatively with them now and in the future as we explore all available options in pursuit of our goal of eliminating these Canadian tariffs. The U.S. industry has already raised concerns with us about Canada's new dairy price pooling arrangement that is used to fund increased exports of dairy products into the U.S. market. We and USDA are investigating whether this price mechanism could be equivalent to an export subsidy, which would violate Canada's NAFTA and WTO obligations. To that end, we have, along with the Government of New Zealand, raised this matter at the WTO, requesting further information from Canada. Should such further information lead us to conclude that this price pooling mechanism is indeed equivalent to an export subsidy, we will not hesitate to challenge the mechanism in the NAFTA and/or WTO.

Dispute Settlement Personnel

1.c. In view of the increase in the number of dispute settlement cases that USTR must now handle, particularly following implementation of the Uruguay Round Agreement, do you think the number of staff at the General Counsel's office is adequate? If not, how many additional staff do you think are needed?

During the past year we have assigned more lawyers to dispute settlement cases, and added an additional lawyer for that purpose in our Geneva office. We currently have 12 lawyers in Washington and two in Geneva handling disputes, with one lawyer managing our enforcement unit. In addition, we have been able to enhance our litigation teams with lawyers from other agencies, particularly the Departments of State, Commerce and Agriculture, and the International Trade Commission. We are currently developing a staffing plan to increase the number of lawyers devoted full-time to litigation, since most of our litigators currently handle disputes as well as normal general counsel responsibilities such as reviewing and drafting trade agreements, serving as counsel in trade negotiations, and providing legal advice for the agency. We are considering a number of staffing options, including reassignment of existing USTR staff, personnel details from other agencies, and the possibility of hiring additional lawyers. Given the overall ceiling on the number of employees at USTR, the addition of any lawyers to the office will have to be worked out as part of an overall resource allocation strategy.

The increase in the dispute settlement caseload has been unprecedented -- in 1996 alone we filed 15 new complaints with the WTO to enforce the Uruguay Round agreements, having brought a total of 21 cases to the WTO since it began operation in 1995. To effectively manage this expanding caseload, in December 1995 we created a new enforcement office at USTR, responsible for supervising and coordinating the litigation of all disputes to which the United States is a party under the WTO agreements and the NAFTA, as well as monitoring foreign compliance with the hundreds of trade agreements currently in force. This office has been functioning very effectively with limited staff, and it draws upon the resources of the new Compliance Center at the Commerce Department for assistance with monitoring compliance.

Trade Priorities with Europe

As you look to the future of our trade relationship with Europe, and the European Union in particular, what will be the priorities during your tenure as United States Trade Representative? What, if any, new initiatives do you anticipate the Administration will undertake to further develop and reinforce this important trading partnership?

Our trade relationship with Europe in general and the European Union in particular is critical and will be a priority during my tenure as United States Trade Representative. While our trade is growing faster with Asia and Latin America, the EU-15 remains our largest trade and investment partner.

Our three major priorities are:

1) Partner with the EU in Providing Leadership for the Multilateral Trading System

The United States and the European Union are the principal engines which drive the international economy and the multilateral trading system. The trading rules which have brought about unprecedented prosperity worldwide would not have come about, nor will they progress, without the joint commitment of the United States and Europe. We are both mature economies with enormous stakes in the continued accessibility of international markets. Despite our sometimes frustrating differences of philosophy and approach, we need to keep finding ways to cooperate in ensuring a functioning system of rules-based trade.

2) Advance the Transatlantic Marketplace

The size of the U.S.-EU trade and investment relationship, the largest in the world, binding us closely to one another and providing myriad opportunities for disagreement. The New Transatlantic Agenda, announced by the President and European leaders at their December 1995 Madrid Summit, seeks to establish new bases for the bilateral cooperation we have historically pursued in so many areas. The New Transatlantic Marketplace element of the Agenda is meant to demonstrate that we can work together constructively on specific issues in the trade and economics area. We are also looking to the future and are working with our European Commission counterparts on a joint study of possibilities for further eliminating barriers/ distortions to trade and investment between us. We are greatly assisted in all of our endeavors by input from the business communities on both sides of the Atlantic, principally through the Transatlantic Business Dialogue (TABD) process. A number of new initiatives will emerge from both the joint study and the TABD which, in close coordination with interested U.S. industries, I will pursue aggressively.

3) Resolve Outstanding Issues

Our willingness to work constructively with our European colleagues notwithstanding, a large number of serious trade problems continue to restrict the ability of U.S. companies trying to do business with Europe. I will continue to address aggressively issues and disputes that arise between us, many of which are in the agricultural sector, and will take full advantage of the rights we are entitled to under bilateral and multilateral trade agreements.

Ecolabeling

Last year, five Members of the Committee on Finance sent you a letter requesting that the U.S. Government advocate adoption of principles regarding eco-labels in order to prevent their use as non-tariff trade barriers. Limited progress has been made to date on one of these principles -- improved transparency in granting eco-labels. Therefore, what if any steps do you intend to take to ensure that the use of eco-labels conforms to the remaining principles -- that they be truthful and accurate, based on science, verifiable and capable of substantiation and non-misleading to consumers?

I am sensitive to concerns that have been raised that ecolabeling may be misused as a disguised barrier to trade and believe this is a matter that deserves serious attention, both in the WTO and when it arises as a bilateral concern. At the same time, USTR has received pleas from many quarters, which I think have merit, not to go forward with proposals that might increase WTO disciplines on ecolabeling without a full opportunity for all interested parties to assess and provide input on the issues and the implications of proposed solutions.

Two of the principles that were included in the letter to which you refer, non-discrimination and transparency, are already fundamental elements of exiting WTO rules. We have led the endeavors in the WTO's Committee on Trade and Environment to secure an enhanced commitment to transparency for ecolabeling schemes and we have had some limited success. The adoption of the additional principles you have identified into WTO jurisprudence would expand the scope of WTO rules in new directions and, before any decisions can be taken, we need to ensure that we have thought through the implications of such a move, not only for U.S. interests with respect to ecolabeling initiatives but also more broadly. I should note that the proposed principles have been a subject of strong and conflicting advice from members of Congress, the business community and environmental NGOs. I am committed to working with you and your staff in our continuing work on this issue.

[Shipbuilding]

In light of the recent colloquy between Majority Leader Lott and Senator Snowe regarding the OECD Shipbuilding Agreement, which called for renegotiation of the Agreement, what is the intention of the Administration regarding the Agreement?

We realize that, if we are to achieve passage of implementing legislation, we have to try to address the concerns that have been raised by many in Congress and in the industry including those raised in the colloquy of Majority Leader Lott and Senator Snowe. We have had a number of informal discussions to that end and plan to intensify them in the coming weeks. We believe that these concerns can basically be dealt with within the framework of the Agreement. So we are hopeful that an acceptable compromise can be struck. We will keep in close touch with the Finance Committee as these deliberations proceed.

However, we do not think that renegotiation is a viable option. The other Agreement signatories have advised us that they are unwilling to renegotiate. Thus, if we seek to reopen negotiations we will likely end up with no discipline on foreign shipbuilding subsidies.

Argentina Footwear

In addition to the intellectual-property dispute with Argentina, the United States is also challenging Argentina's imposition of WTO-illegal duties on the importation of footwear. My understanding is that Argentina has, in essence, admitted that the duties are WTO illegal, but refuses to make any changes to the import regime. Can you update the Committee on this trade dispute and spell out the specific actions USTR has and intends take to challenge Argentina's trade barrier?

Argentina has imposed duties on footwear, textiles and apparel that exceed its WTO commitments. On October 4, the USTR initiated a section 301 investigation on Argentina's import restrictions on on footwear, textiles and apparel, and at the same time invoked WTO dispute settlement procedures to challenge Argentina's measures. We have held several consultations with Argentina under the WTO to try to resolve this issue. Although the consultations have been useful, we have not been able to reach a resolution. Therefore, we have requested the establishment of a dispute resolution panel in the WTO. We hope to resolve this issue bilaterally, but will nonetheless proceed with the WTO dispute resolution process.

Written Response to Questions from Senator Snowe
Canada/*Journal of Commerce*

The *Journal of Commerce* reported on November 15, 1996, that, as a lawyer in private practice, you were retained by the Canadian federal government and the Government of Quebec on issues involving trade with the U.S. in lumber and pork. What was the specific nature of the services that you provided on these governments on these issues, and at what times did you provide these services?

Following is the verbatim response provided to the Senate Finance Committee Questionnaire Statement of Information for Potential Nominees, Question C.6 on Potential Conflicts of Interest:

Before becoming the Deputy United States Trade Representative in May of 1993, I worked for 18 years as a lawyer with the Washington law firm of Steptoe & Johnson. The vast majority of my work during those 18 years was in the international trade area, particularly in the area of trade litigation, including antidumping, countervailing duty, escape clause, and similar on-the-record litigations arising under the U.S. trade laws. My representation of foreign governments or foreign political parties was limited to Canada, viz. the Government of Quebec and the Embassy of Canada,1 which were disclosed at the time that I was confirmed in 1993 to serve as Deputy United States Trade Representative. At no time during the 18 years that I practiced law did I ever lobby on behalf of any foreign government or foreign political party.

With respect to the Government of Quebec, my work involved providing guidance and legal drafting assistance to the Steptoe & Johnson lawyers responsible for the client in connection with on-the-record litigation in two trade cases: 1) the administrative reviews of countervailing duty orders on Fresh, Chilled and Frozen Pork from Canada (hereinafter Canadian Pork) and the appeal thereof to an FTA panel; and 2) the petition filed under Section 302 of the Trade Act of 1974 by the G. Heilman Brewing Company (later joined by Stroh's Brewing Company) concerning Canadian beer practices (hereinafter Canadian Beer). I did not meet with any U.S. government officials or appear on behalf of Quebec in any proceeding, nor did my name appear on any of the briefs or submissions in any of the proceedings. With respect to Canadian Beer, neither I nor the firm were involved in the GATT Panel proceeding.

My work related to the Government of Quebec began in October of 1989 and ended in March 1991, almost six years ago. My time on the Canadian Pork and Canadian Beer matters totaled approximately 240 hours, which represented just over 0.50 percent of my work while in private practice.

With respect to the Embassy of Canada, my former law firm and I were retained by the Embassy to monitor developments in the United States concerning a broad range of substantive areas, including international trade. The contract with the Embassy of Canada for this monitoring work stated that Steptoe & Johnson was "to provide legal advice to the Canadian Embassy, in Washington, D.C., on political, legislative and regulatory developments in the

United States relating to trade and economic issues." The Embassy explicitly prohibited lobbying on its behalf and I did not lobby.

We routinely reviewed developments in the international trade area, which included administrative, legislative and judicial actions on issues of relevance to the Embassy, ranging from changes in U.S. trade law to investment restrictions in various countries. I coordinated the work of other lawyers and paralegals in the firm as well, and routed to them pertinent materials for their use.

Pursuant to the monitoring contract, the Embassy requested that I also provide advice with respect to two specific trade matters. First, I directed the preparation of memoranda on the options and legal consequences if Canada were to terminate its settlement agreement with the United States involving softwood lumber, as well as the implications of judicial, administrative and legislative developments in U.S. trade law on possible future trade litigation in the event that Canada decided to terminate the settlement agreement. I did not recommend to the Embassy what course of action Canada should take with respect to the lumber matter. At the time that I directed this work, the settlement agreement was in force; there was no pending trade litigation and there were no negotiations on softwood lumber between the United States and Canada. In fact, my work on the settlement agreement ended several months before the countervailing duty litigation on Softwood Lumber from Canada began.2

Second, I reviewed certain draft composite texts prepared by the Chairmen of the GATT working groups on antidumping and countervailing duty law for circulation to all of the approximately 117 countries that participated in the Uruguay Round MTN. The Chairmen's drafts that I commented on were prepared by the GATT Chairmen as an attempt to reflect the consensus of GATT members. They were not U.S. texts. My review of these draft texts involved comparative analyses of the Chairmen's drafts with past GATT provisions, GATT practice, prior Chairmen's drafts, and U.S. law, as appropriate, and an evaluation of the potential impact of these and alternative texts on U.S. law.

My time spent on the MOU settlement agreement and MTN matters totaled approximately 145 hours, or slightly more than 0.30 percent of my work while in private practice. My work on these two matters was done intermittently from May 1990 to December 1991, and ended more than five years ago.

What other Canadian governments, business, industry groups, or organizations have you represented on matters related to trade with the United States? What was the specific nature of the services that you provided to these entities, and at what times did you provide these services?

As indicated in response to question 1, I represented the Canadian Forest Industries Council ("CFIC") in the countervailing duty litigation on Softwood Lumber from Canada. CFIC is an unincorporated association comprised of trade associations in the Canadian forest products sector, private Canadian softwood lumber producers, Canadian exporters of softwood lumber, and U.S. importers of softwood lumber. The services provided included those required in an

on-the-record trade litigation, such as brief writing, assistance with preparation of responses to Department of Commerce questionnaires, and oral advocacy. I was retained in October, 1991, and my involvement ended when I left my former law firm, Steptoe & Johnson, in April, 1993.

Were you ever retained by a Canadian entity to work on a particular issue at a time when that entity was engaged in a formal dispute resolution proceeding with the United States related to that issue under trade agreements signed by the United States and Canada? If so, what was the specific nature of the work that you performed for that entity on that issue?

See question 1 which describes all my work relating to foreign governments. As indicated above, I was retained by CFIC in the countervailing duty litigation on Softwood Lumber from Canada.

Were you ever retained by a Canadian entity at a time when that entity was involved, either directly as a government, or indirectly as an interest lobbying a Canadian Federal or provincial government, in negotiations on bilateral and multilateral trade agreements to which the United States was a party? If so, can you please describe the specific nature of that work?

With respect to being retained directly by the Canadian government, see response to question 1. I was never retained by any client to lobby Canadian Federal or provincial governments.

Were you ever retained by the Canadian federal government, a provincial government, or any other Canadian entity to perform work related to the Uruguay Round negotiations of the GATT, particularly as these negotiations related to the United States? If so, can you please describe the specific nature of this work?

See response to question 1.

(a) Do you think your past work in the private sector on behalf of Canadian entities will in any way hamper your ability to perform your duties as the U.S. Trade Representative as those duties relate to Canada? (b) Do you feel compelled to rescue yourself on any matters that come before the U.S. Trade Representative's office on issues related to Canada?

(a) No.
(b) No. However, I have recused myself from any particular matter involving specific parties in which I served as counsel on that matter while in private practice, unless I have been authorized to participate in that matter under the provisions of 5 C.F.R. 2635, Subpart E.

Can you assure me and other senators that your past work on behalf of any Canadian entity will not have any bearing on the performance of your duties as the U.S. Trade Representative?

Yes, unequivocally.

American businesses need a forceful, aggressive, and indefatigable advocate in the position of U.S. Trade Representative, particularly when dealing with intransigent and unscrupulous governments like Canada's. (a) Do you intend to forcefully defend and advocate American business interests in all international trade disputes, negotiations, and discussions involving the United States? (b) Will you aggressively pursue all effective remedies to unfair trade practices committed by other countries against American businesses? (c) Will you, to the extent authorized in the position of Trade Representative, pursue the strict adherence to and vigorous enforcement of all U.S. trade laws?

(a) Yes
(b) Yes
(c) Yes

Do you intend to make full use of Sections 201, 202, and 203 of the Trade Act to assist American industries that are suffering from injurious import surges?

Sections 201, 202 and 203 are the so-called escape clause or safeguards sections of our trade laws. These provisions are administered primarily by the International Trade Commission (ITC), not the USTR. The law permits an entity that is representative of an industry, including a trade association, firm, union or group of workers to petition the ITC for relief. Alternatively, the President, USTR or House Committee on Ways and Means or Senate Committee on Finance may request the ITC to conduct an investigation. The ITC's investigation is to "determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Once the ITC makes an affirmative injury determination, the ITC then recommends to the President certain actions to address the injury to the domestic industry. USTR is also involved in providing a recommendation to the President as to what course of action would best assist an industry in adjusting to a surge in imports. If confirmed as USTR, I would intend to review all recommendations by the ITC to grant relief to an injured industry in order to ensure that USTR provides the President with the most considered recommendation possible regarding remedy actions that might be taken.

Based on our past discussions, I know that you are aware of the long-running trade problems that the potato industry in Maine and other states has had with Canada. If confirmed, do you intend to make the satisfactory resolution of potato-related trade disputes with Canada a high-ranking and continuous priority of the United States? Will you take steps to ensure that this issue is prominently featured on the agenda of any major bilateral trade discussions with Canada?

As you know, in close consultation with the Maine potato industry, I sent a formal request to Marcia Miller, Chairman of the ITC, requesting a formal 332 investigation on conditions of competition in the fresh and processed potato industry. This investigation will focus on the factors affecting trade between the United States and Canada. I expect to receive this report by July 15. The report will provide information on Canadian prices and costs of production which may be useful to the Maine potato industry and the U.S. government.

I have become very familiar with this issue and will work closely with you over the months ahead on finding ways to address the concerns of this important industry. You can be assured that we will continue to raise the issues of concern for the Maine potato industry at our bilateral meetings with Canada.

Written Questions from Senator Warner
Chile and the Western Hemisphere - The Use of NAFTA TPLs for Textiles/Apparel

Assuming that it is your intention to resume free trade negotiations with Chile and possib. initiate talks with other Western Hemisphere countries, I feel we can learn from current agreements. Many in Congress and in the textile industry believe that the establishment of Tariff Preference Level (TPL's) quotas under the textile and apparel component of NAFTA has created a number of problems. We can use the example of wool apparel imports from Canada to illustrate this point. Can you give me your view of extending TPL's as part of future trade agreements?

Do you believe that current safeguard provisions associated with TPL's, specifically those that govern wool apparel exports from Canada, are adequate?

Would you comment on the concept of granting preferential treatment to non-originating goods?

We understand your concerns and the concern of the U.S. textile industry as it relates to the use of TPLs, particularly regarding Canada and U.S. imports of wool apparel. Regarding Canada, we have continued to raise the U.S. textile industry concern at high levels, most recently by our chief textile negotiator Ambassador Hayes. We will continue to pursue this matter with Canada in an effort to find a satisfactory solution.

Regarding the issue of how we plan to proceed with Chile and others in the hemisphere, the Administration is committed to Chile's accession to the NAFTA. The Administration has not committed to negotiate the accession of additional countries to the NAFTA. Therefore, the question of how the Administration will address NAFTA TPLs is, at this time, a Chile question only. As to the prospects of negotiating agreements with additional countries in the hemisphere as part of pursuing the Free Trade Area of the Americas, we will work closely with the U.S. textile industry to ensure their interests are understood and reflected when we enter into such negotiations.

Recognizing the concerns of the U.S. textile industry, we will continue to take a cautious approach regarding the utilization of TPLs in negotiations with Chile. Furthermore, it is important to point out that the difficulties we are facing with Canada are due to the specific treatment that Canada is provided under the NAFTA on this question. We did not address the situation with Mexico in the same manner, and maintain the authority to impose certain restrictions. Therefore, one cannot assume that the situation with Canada is a parallel situation with Mexico, or will be a parallel situation with Chile.

Regarding the concept of granting preferential treatment to non-originating goods, here again we will approach this question with caution recognizing the views of the U.S textile industry and working with them throughout the negotiating process.

MATERIAL SUBMITTED BY SENATOR JOHN H. CHAFEE FOR THE RECORD
THE JANUARY 29, 1997, SENATE FINANCE COMMITTEE HEARING
ON THE NOMINATION OF CHARLENE BARSHEFSKY TO BE USTR

February 14, 1997

Mr. Chairman, at the Committee's January 29 hearing on the Barshefsky nomination, we heard a number of members make reference to the provision of the Lobbying Disclosure Act that places restrictions on individuals that may be nominated to be US Trade Representative or Deputy US Trade Representative, and that must be waived in order for Ambassador Barshefsky to be confirmed.

Members of the Committee may be interested to know that on February 3, the American Bar Association (ABA) approved a formal resolution on that particular provision of the Lobbying Disclosure Act. For members' information and that of the public, I would ask that a copy of the ABA resolution and the accompanying ABA background report be included in the record.

Thank you.

John H. Chafee

[ENCLOSURE ATTACHED]

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW AND PRACTICE
RECOMMENDATION TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association urges the Government of the United States to proceed as follows:

I. Congress should avoid statutory provisions that disqualify senior executive or judicial appointees on the basis of clients they have previously represented.

II. Congress and the Administration should continue to utilize traditional mechanisms (including the Senate's power of confirmation), rather than special pre- or post-employment rules, to ensure that senior executive and judicial positions are filled only by highly qualified persons who will fulfill the responsibilities of their positions with complete integrity.

III. Ethics-in-government rules, whether addressed to pre- or post-government employment activities, should not single out foreign policy or trade functions for special, restrictive treatment. Congress should repeal the 1995 amendments to 18 U.S.C. §207 and 19 U.S.C. §2171(b), whose effect is to restrict the pre- and post-employment activities of U.S. Trade Representatives ("USTRs") and Deputy USTRs on behalf of foreign interests, and should not extend those provisions to cover other senior government positions.

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW AND PRACTICE
REPORT TO THE HOUSE OF DELEGATES

I. INTRODUCTION

On July 24, 1995, while debating the Lobbying Disclosure Act of 1995 ("LDA"),[1] the Senate accepted an amendment creating a new restriction on who could serve as United States Trade Representative ("USTR") or Deputy USTR.[2] Specifically, the statute defining the positions of USTR and Deputy USTR, 19 U.S.C. § 2171(b), was amended to disqualify from eligibility anyone who at any time in the past had directly represented, aided or advised a foreign government or political party in a trade negotiation or trade dispute with the United States. A related section of the LDA created new restrictions on the post-employment conduct of persons who have served as USTR or Deputy USTR. Prior law had contained a special restriction, enacted in 1992, against a former USTR's representing, aiding or assisting any foreign government within three years of having served as USTR.[3] The LDA extended the ban's duration to a lifetime ban and its coverage to include Deputy USTRs.

The Senate accepted these two provisions (hereinafter the "USTR Amendment," reproduced in full at Appendix I to this Report) virtually without debate, and the provisions passed the House after some unsuccessful attempts to expand their reach. The President signed the Lobbying Disclosure Act, including the USTR Amendment, while recognizing the Justice Department's concern that the new pre-government employment restrictions may unconstitutionally impinge on the President's appointments power. In 1996, more bills were introduced to expand these restrictions to other government officials, but none were enacted.

The American Bar Association ("ABA") urges repeal of the USTR Amendment. While both the pre- and post-employment restrictions are objectionable, as discussed below, it is the pre-

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1/ Pub. L. No. 104-65, 109 Stat. 691 (1995).

2/ *See* 141 Cong. Rec. S10560-61 (daily ed. July 24, 1995).

3/ Pub. L. No. 102-395, 106 Stat. 1873, codified at 18 U.S.C. § 207(f)(2).

employment disqualification that raises the most serious issues, and it is this provision that most urgently should be repealed. The provision sets a dangerous precedent for limiting the availability of qualified candidates to serve in the U.S. Government. It automatically disqualifies potential nominees solely based on a prior relationship with a particular type of client. Such a rule, which effectively equates an advocate's personal views with those of his or her client, reflects an unwarranted and incorrect view of the lawyer/client relationship, especially in view of the ethical obligations of lawyers and the constitutionally-recognized right to counsel. In addition, such a rule takes no account of the nature, length, significance or contemporaneity of the relationship with the former client. With regard to the new lifetime post-employment restrictions for USTRs and Deputy USTRs, there has been no demonstration that such a ban is needed to address any real problem, and there are compelling reasons not to restrict the post-employment conduct of trade negotiators in such an unusual and severe manner.

In sum, this Report supports the accompanying ABA resolution urging that the Congress: avoid enacting disqualifications for service in the U.S. Government which presume that lawyers and other advisors take on the views of their clients; avoid singling out foreign policy and trade functions for extra-restrictive pre- or post-government employment rules; and promptly repeal the USTR Amendment.

II. THE PRE-EMPLOYMENT RESTRICTIONS

The new pre-employment restriction is unique among provisions in the U.S. Code creating "primary officers" of the U.S. Government (*i.e.*, positions requiring nomination by the President and the advice and consent of the Senate). Of the hundreds of appointees in this category, only USTR and Deputy USTR candidates can be disqualified based solely on the identity of their former clients.

There is a serious constitutional objection to this new pre-employment restriction, in that it infringes on the President's appointments power. The ABA notes, but does not rest its concerns on, that objection. The new pre-employment restriction is also troubling on several policy grounds: (1) it arbitrarily limits the flexibility of the President to choose, and the Senate

to confirm, the best possible person for a particular government position; (2) it presumes, without justification, that a person advising a foreign government personally embraces and retains views antithetical to those of the U.S. Government; (3) it creates perverse anomalies unconnected to any legitimate interest in ensuring the loyalty of senior appointees; and (4) comparable disqualifications could easily be enacted, based on the same flawed rationale, for other government positions.

A. The New Disqualification Is of Doubtful Constitutionality

As mentioned above, there is virtually no legislative history accompanying the USTR Amendment and thus, unlike the debate surrounding provisions restricting post-government employment activities, no discussion by the Congress of the legality of the new pre-employment restriction. As also noted above, before the USTR Amendment there were no statutory provisions disqualifying any class of persons from service as USTR or Deputy USTR.

It is well accepted that the Congress has the constitutional responsibility for creating the various government offices not specifically enumerated in the Constitution.[4/] Further, it is well accepted that the Congress can attach qualifications to those government offices:

> While Congress may not appoint those who execute the laws, it may lay down qualifications of age, experience, and so on. Sometimes these qualifications significantly narrow the field of choice. However, any Congressionally imposed qualifications must have a reasonable relation to the office. Otherwise, Congress would be, in effect, creating the appointing power in Congress, rather than in the President.
>
> Congress may, in short, create the office but may not appoint the officer. To distinguish between these two powers, the Court has developed a *germaneness* test.[5/]

4/ *See generally* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 244 (2d ed. 1988) (analyzing the wording of Art. II, § 2, cl. 2).

5/ JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 265 (5th ed. 1995) (footnotes omitted).

The Department of Justice articulated just such serious constitutional concerns with the USTR Amendment as it relates to the President's appointments power:

> The Department of Justice has long opposed broad restrictions on the President's constitutional prerogative to nominate persons of his choosing to senior executive branch positions. The restriction in the bill is particularly problematic because it operates in an area in which the Constitution commits special responsibility to the President, who "is the constitutional representative of the United States in its dealings with foreign nations." See, e.g., United States v. Louisiana, 363 U.S. 1, 35 (1960). The officers in question perform diplomatic functions as the direct representative of the President, a fact that Congress itself has recognized by providing that they should enjoy the rank of ambassador. 19 U.S.C. § 2171(b). Regardless of whether the President would, as a policy matter, be willing to accept this particular restriction, Congress would exceed its constitutionally assigned role by setting such a broad disqualification. See, e.g., Civil Service Commission, 13 Op. Att'y Gen. 516, 520-21 (1871).[6/]

After passage of the Lobbying Disclosure Act by both the Senate and the House, Justice continued to express serious concerns about the new pre-employment provision, but did not recommend that the President veto the Act on this basis.[7/] The President in signing the bill noted the constitutional issue.[8/]

The new disqualification raises serious separation of powers questions. When such provisions are enacted without hearings, with virtually no floor debate or legislative history, and despite constitutional objections noted by the Department of Justice, the justifications underlying them should be carefully

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6/ Letter from Andrew Fois, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to the Hon. Henry Hyde, Chairman, House Committee on the Judiciary, concerning S. 1060 [the Senate bill pending before the House] 2-3 (Nov. 7, 1995).

7/ Letter from Andrew Fois, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to the Hon. Alice M. Rivlin, Director, Office of Management and Budget concerning S. 1060 2 (Dec. 18, 1995).

8/ *See* 51 Weekly Compilation of Presidential Documents 2205-06 (December 25, 1995).

examined. Where such provisions are not only constitutionally suspect but also premised on a mistaken and troublesome view of the lawyer-client relationship, they should be removed.

B. It Is In The Public Interest for the President to Be Free to Appoint the Most Highly Qualified Nominees, Regardless of Past Clients

The new disqualification rules out many qualified individuals who could otherwise serve the nation effectively as senior trade negotiators. The best qualified candidate for a particular USTR or Deputy USTR appointment may be someone who has some experience advising foreign clients. (We note, in this regard, the adage that it is useful for a prosecutor to have experience serving as defense counsel.) Yet, the USTR Amendment would prevent such a person from serving.

While it is wrong to presume a link between advocacy and personal belief, it is even more wrong to freeze such a presumption into a statute. Categorical and difficult-to-amend statutory disqualifications cannot take into account the nuances of a particular candidate's history. These are precisely the factors that the President should weigh in choosing a nominee and the Senate should review in the confirmation process.

The new disqualification does not only restrict the President's appointments power. It also represents a failure to respect the Senate's constitutional role to consider, and where appropriate disapprove, the President's nominees. The Senate should preserve its prerogative to consider a particular nominee's record of advocacy for foreign clients, or foreign government clients, in the confirmation process and to determine whether anything in that record is sufficiently troubling to justify withholding confirmation.[2/]

2/ The unwarranted breadth of the new disqualification is demonstrated by the more narrowly drawn alternatives that Congress did not select. Even assuming *arguendo* that assertive use of the Senate's confirmation authority is insufficient, narrower solutions are available. One is mandatory recusal with penalties for failure to do so, combined with strict reporting of prior activities. *See, e.g.*, 28 U.S.C. § 528 (Justice Department employees). Recent USTR and Deputy USTR nominees have disclosed prior representations, including foreign representations, and have voluntarily recused themselves (temporarily or permanently, as appropriate) with respect to issues involving those particular clients. *Hearing to consider nomination of Michael Kantor Before Senate Comm. on Finance*, 103rd Cong., 1st Sess. (1993); *Nomina-*
(continued...)

C. The Unstated Premise of the New Disqualification -- That An Advocate is Either Tainted By or Continuously Captive to the Interests of a Former Client -- Is Inconsistent with U.S. Traditions and Values

During the 1974 Senate consideration of legislation to establish the office of special prosecutor and to depoliticize the position of Attorney General, former Supreme Court Justice Arthur Goldberg described the attorney-client relationship in the following manner:[10/]

> One of the traditional concepts applicable to the bar at large is too often overlooked in senatorial confirmation hearings involving nominees for Attorney General, Assistant Attorney General, Deputy, and U.S. Attorneys. That concept -- which I fear, Mr. Chairman, in the day of the organization man and big interests which lawyers are called upon to serve, is too often overlooked -- is that *the bar is independent, that it is not a servant of a client, but services a client; and that the men and women of the bar are independent and give counsel and advise independently.* The principal law enforcement officers of the Government should be lawyers in that sense, ... Any nominee of a different mind or character should not be confirmed by the Senate.

9/(...continued)
tion of Carla Anderson Hills: Before Senate Comm. on Finance, 101st Cong., 1st Sess. (1989). *Nominations of Rufus Hawkins Yerxa, Charlene Barshefsky, Walter Broadnex, Avis Lavelle, Jerry Klegner, David Ellwood, Kenneth Apfel, Bruce Vladeck, Harlet Rabb and Jean Hanson: Before Senate Comm. on Finance*, 103rd Cong., 1st Sess. (1993). Other trade officials have done likewise. *See, e.g.*, Rick Jenkins, "Trade Nomination Raises 'Revolving Door' Issue," *Christian Science Monitor* at 8 (Jan. 14, 1994). Another alternative is more extensive mandatory reporting of pre-employment activities over a set period before Senate confirmation, enhancing the Senate's ability to reject a nominee based on prior activities if it wishes. *See, e.g., Hearings on S. 555 (Public Officials Integrity Act of 1977, Blind Trusts and Other Conflict of Interest Matters) Before the Senate Comm. on Governmental Affairs*, 95th Cong., 1st Sess. 108-09 (1977) (testimony of Fred Wertheimer, Vice President for Operations, Common Cause). Requiring disclosure of clients is not without its problems. As noted by the ABA in 1977, such a regime could place a professional person in the position of having to violate the confidentiality of a privileged relationship. *See Financial Disclosure Act: Hearings on H.R. 1, H.R. 9, H.R. 6954, and Companion Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 487, 490 (1977) (testimony of Prof. Livingston Hall and Prof. Herbert S. Miller on behalf of the American Bar Association).

10/ *Removing Politics from the Administration of Justice: Hearings on S. 2803, S. 2978 Before the Subcommittee on Separation of Powers of the Senate Comm. on the Judiciary*, 93rd Cong., 2d Sess. 62 (1974) (emphasis added).

For just such reasons, it is widely accepted that a lawyer should not be ineligible for nomination as a judge solely because of past representation of, for example, criminal defendants.

The USTR Amendment, and the proposals to extend the disqualification so that it applies to other government positions, adopts a different and inaccurate view of the relationship between advocates and their clients. It is wrong to assume that an outside advisor, such as a lawyer, necessarily concurs with the views or actions of his or her client, or will apply those views in carrying out the duties of a public office. Certainly, if someone represents more than one group of clients -- for example, foreign governments in some matters and U.S. corporations in others -- it cannot fairly be presumed that the foreign government representation determines or more accurately represents the person's own beliefs.

When an individual leaves the private sector and becomes a government official, he or she takes on totally new responsibilities and must move beyond *all* prior client interests -- those of domestic and foreign clients alike. Other than preserving their confidences, an appointee has no continuing obligation to prior clients. The USTR Amendment wrongly ignores this aspect of public service.

Reflecting its inconsistency with U.S. traditions and values, the new disqualification is utterly without precedent in the U.S. Code. Appendix 2 to this Report identifies 126 statutory provisions, relating to U.S. Government civilian offices, that impose qualifications in addition to Senate confirmation.[11/] As shown there, those 126 provisions fall into seven groupings:

- 3 provisions requiring that appointees be U.S. citizens;
- 19 provisions requiring that appointees be civilians at the time of their appointment;

11/ These are all the provisions that could be identified through review of the U.S. Code, 1994 Edition, and Supplement I to that Edition. Some of these positions are also subject to statutory requirements designed to ensure a balance of political affiliation on Boards and Commissions, *e.g.*, an equal number of Democrats and Republicans on the U.S. International Trade Commission. Additionally, in some cases an office is required by statute to be filled by an existing federal, state or local government official. Appendix II largely ignores such requirements.

- provisions that establish minimum representation on a board or commission of certain constituent groups;
- provisions requiring technical expertise;
- 6 provisions imposing "cooling off" periods to ensure civilian control of the military;
- 7 provisions imposing other temporary "cooling off" periods (*e.g.*, sitting members of the U.S. Postal Service Board of Governors may not simultaneously be representatives of "special interests using the Postal Service");
- 2 provisions containing permanent, uncurable, disqualifications. Of these, only the USTR disqualification is based on advocacy activities. The other provides that members of the permanent board of the Federal Agriculture Mortgage Corporation shall not be, or have been, officers or directors of a financial institution.

D. The New Disqualification Creates Perverse Anomalies

Before the USTR Amendment, there were no statutory qualifications upon who could be nominated and confirmed to serve as USTR or Deputy USTR. Not even U.S. citizenship, or a record free of criminal behavior, was (or is) statutorily required. Thus, the effect of the new pre-government employment restriction is that a non-citizen, a felon or even a juvenile could in principle be nominated and confirmed as USTR, while a highly skilled trade specialist who briefly advised a foreign government twenty years ago could not.

Such a rule could also deprive the nation of highly skilled and effective public servants. Had it been in effect at the time, the USTR Amendment might have disqualified one of President Reagan's USTRs, Dr. Clayton K. Yeutter, for activities that apparently did not dominate his pre-government professional work.[12/] Extending the principle, as some have proposed, to representing, aiding or advising foreign private companies might

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12/ Dr. Yeutter had served on the board of directors of the Swiss Commodities and Futures Association and had been the first American businessman invited to Japan (in 1982) under a Japanese government program to improve trade relations with the United States. *See Hearing on the Nomination of Dr. Clayton K. Yeutter Before the Senate Comm. on Finance*, 99th Cong., 1st Sess. 28-29 (1985) (vita submitted on behalf of Dr. Yeutter).

have disqualified President Bush's USTR, Carla Hills.[13/] Again, to the extent that questions arise in a particular case about the overlap between prior advocacy efforts and the advocate's own current beliefs, such questions can be effectively explored during the Senate confirmation process.

Broad and seemingly arbitrary interpretations of the USTR Amendment are possible given the lack of definitions, in either the statute or the legislative history, for crucial and open-ended terms such as, but not limited to, "aided" and "advised." For example, if a Senator meets with foreign government officials in an attempt to find a mutually advantageous solution to a particular bilateral trade dispute, it could be argued that he or she has "aided" or "advised" the foreign government in such a manner as to trigger disqualification from future service as USTR. On the other hand, it has been observed that the USTR Amendment would not prevent appointment of a corporate executive who, in order to increase profits at his ailing company, negotiates an enormous tax subsidy from a foreign government in order to move parts of his factory abroad and subsequently fires hundreds of his U.S. workers.[14/]

E. The New Disqualification Sets An Undesirable Precedent for Other Government Positions

A significant danger of the USTR Amendment is that the same principle could be applied to other government positions involving disciplines other than international trade negotiation. Persons could be disqualified, by statute, from being federal judges because they had at some time in their past represented criminal defendants, even if their representations had been the result of occasional court appointment. Positions at the Environmental Protection Agency could be conditioned, by statute, on never having represented, aided or assisted clients in favor of, or opposed to, toxic dump cleanup. Positions at the Department

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13/ According to third-party testimony at the time of her appointment, Ambassador Hills had previously been registered under the Foreign Agents Registration Act as an agent for Daewoo Industrial Co. *See Hearing on the Nomination of Carla Anderson Hills Before the Senate Comm. on Finance*, 101st Cong., 1st Sess. 32, 51 (1989) (testimony of Anthony Harrigan, President, U.S. Business and Industrial Council).

14/ *See* Donald DeKieffer, "The 1995 'Irrelevant Qualifications Act'" *Journal of Commerce* at 7A (Dec. 30, 1996).

of Energy could be conditioned, by statute, on never having represented, aided or assisted clients in favor of, or opposed to, offshore drilling. Positions at the Consumer Product Safety Commission could be conditioned, by statute, on never having represented, aided or assisted clients supporting, or opposing, specific product liability actions. More broadly, anyone who has given advice to entities in a regulated industry could be disqualified from putting his or her expertise to use as a regulator in that industry. Such a rule would dramatically restrict the pool of qualified regulators.

The ABA historically has advanced the view that rigid (*i.e.*, statutory) pre-employment restrictions for government appointments should be avoided. For example, in the wake of the perceived politicization of Justice Department functions during the Watergate period, during consideration of what eventually became the Ethics in Government Act of 1978, the ABA was asked to comment on possible eligibility restrictions for senior law enforcement positions:

> Question. There have been many recommendations to set the statutory requirements for appointees to the Offices of Attorney General, Deputy Attorney General, Director of the FBI, and others. Do you generally believe it is a good idea to set rigid eligibility standards by statute, considering that many highly qualified individuals would be arbitrarily excluded from consideration by such standards? If so, what sorts of standards would you suggest?
>
> Answer. The ABA has not suggested rigid standards for appointment to any of the above-mentioned positions nor does it believe rigid standards are advisable.[15/]

The USTR Amendment, by contrast, fails the test of narrow drafting and scope. It reaches backward in time without limit, disqualifying otherwise qualified candidates by reason of any

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15/ *Watergate Reorganization and Reform Act of 1975: Hearings on S. 495 Before the Senate Comm. on Government Operations*, 94th Cong., 1st Sess., pt. 2 at 174 (1976) (testimony of William B. Spann, Jr., President-Elect Nominee of the American Bar Association and Chairman, American Bar Association Special Committee to Study Federal Law Enforcement Agencies). The ABA did recommend limited measures to address perceived problems of politicization of the Department of Justice. *See also id.* at 270-71, 295, 298.

covered representation or assistance at any earlier point in their careers. The amendment reaches candidates who agreed to assist foreign governments with no idea that doing so might preclude later public service. The amendment applies not to a carefully circumscribed category of activities, but to any representation or assistance, whether significant or insignificant, to any foreign government on any trade "negotiation" or "dispute" involving the United States. Finally, the amendment confuses the advocate's required role with his or her personal views.

III. THE POST-EMPLOYMENT RESTRICTIONS

A. Post-Employment Restrictions of General Application

There have been restrictions on the post-employment activities of various categories of federal workers since 1872.[16/] The earliest versions approximating the current provisions were adopted in 1962, as part of an overall revision of the conflict-of-interest statutes.[17/] In short, a full and generally effective array of government-wide post-employment restrictions has been in place for many years. Those restrictions, subjected to substantial revision and fine-tuning in the Ethics in Government Act of 1978[18/] and the Ethics Reform Act of 1989,[19/] include:

- a lifetime ban on appearing before or communicating with any U.S. Government body on behalf of a party other than the United States, on matters in which the official "participated personally and substantially" while a federal employee;[20/]
- a two-year ban on appearing or communicating with any U.S. Government body on behalf of a party other than the United States on matters that were pending under his or her offi-

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16/ *See* S. Rep. No. 99-396, 99th Cong., 2d Sess. 13-14 (1986); S. Rep. No. 100-101, 100th Cong., 1st Sess. 8-9 (1987).

17/ Prior provisions had barred former employees from prosecuting claims against the United States for two years after terminating government employment. *See* H. Rep. No. 748, 87th Cong., 1st Sess. 2-4 (1961).

18/ Pub. L. No. 95-521, 92 Stat. 1824, 1864-66 (1978).

19/ Pub. L. No. 101-194, 103 Stat. 1716-24 (Nov. 30, 1989).

20/ 18 U.S.C. § 207(a)(1) (1996).

cial responsibility in the year prior to departure from the agency;[21/]

- a one-year ban for enumerated senior officials on all substantive contact with the former agency on behalf of a party other than the United States, which for Cabinet officers and certain other very senior officials extends to contacts with specified top officers of other agencies as well;[22/] and
- a one-year ban prohibiting senior officials of all departments and agencies from (i) representing the interests of a foreign government or political party before any agency or department or (ii) aiding or advising a foreign government or political party with the intent to influence a decision of any department or agency.[23/]

The last of these provisions, a special rule against senior officials' representing or advising foreign governments, drew a number of policy and constitutional objections prior to and at the time of its enactment.[24/] This Report does not address the propriety of a broad, government-wide, one-year ban on post-employment activity for foreign governments. It is noteworthy, however, that this provision was justified against due process attack on the ground that it presented no absolute bar to pursuit of employment by covered officials, but "merely imposed a waiting period" of one year.[25/]

21/ 18 U.S.C. § 207(a)(2).

22/ 18 U.S.C. §§ 207(c), (d).

23/ 18 U.S.C. § 207(f).

24/ H. Rep. No. 1068, 100th Cong., 2d Sess. 13 (1988) (regarding H.R. 5043); *Post-Employment Conflicts of Interest: Hearings on H.R. 5097 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 99th Cong., 2d Sess. 79-80 (1986) (testimony of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice, on legislation leading up to the 1989 Act, arguing that post-employment restrictions could prohibit representations which were in the national interest). Similar views were forwarded by the ACLU, which maintained that a statute prohibiting the representation of foreign interests regulated political activity and, to be upheld, must withstand strict judicial scrutiny. *See Post-Employment Restrictions for Federal Officers and Employees: Hearings on H.R. 2267 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 101st Cong., 1st Sess. 200, 204-06 (1989). *See also* Appendix III to this Report.

25/ S. Rep. No. 101, 100th Cong., 1st Sess. 14 (1987).

These post-employment restrictions establish a comprehensive set of rules that apply across the board to federal officials and employees in all agencies and departments. For the most part, these rules appear to have worked successfully.[26/] They apply with full force to USTRs and Deputy USTRs, and thereby provide a solid framework for protecting the public interest in regulating the post-employment activity of persons who occupy those positions.

B. Special Restrictions Placed Upon Senior Trade Negotiators

Beginning in 1992 and by expansion in the 1995 USTR Amendment, Congress created a special rule that singles out former USTRs and Deputy USTRs for special, more restrictive treatment than other, similarly-situated, former senior officials. Congress did so with virtually no meaningful deliberation or explanation. It is the ABA's view that, in so doing, Congress created a separate category of post-employment treatment for the senior U.S. trade officials that cannot be justified and should be eliminated.

The first step along this path occurred in 1992, when Congress, as part of an appropriations bill, enacted a new Section 207(f)(2) which lengthened to three years the foreign entity ban as it applied to the USTR.[27/] The Senate report describing this provision contained no meaningful explanation or justification of the longer period.[28/] In signing the bill, President Bush took strong objection, noting that the change had been passed without any public discussion of the merits, without consideration of its relationship to the comprehensive amendments passed in the Ethics Reform Act of 1989, and without evaluation of "the implications of targeting for coverage just one posi-

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26/ The ABA may, of course, have occasion in the future to comment or suggest improvements that would enhance the effectiveness of these rules. That is not the subject of this Report.

27/ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Section 609, Pub. L. No. 102-395, 106 Stat. 1828, 1873 (1992).

28/ *See* S. Rep. No. 102-331, 102d Cong., 2d Sess. 118 (1992).

tion."[29] President Bush signed the bill because it was a necessary funding measure.

Continuing this pattern of acting without legislative hearings or development, the 1995 USTR Amendment enlarged this special USTR restriction to a lifetime ban, and expanded the ban to cover Deputy USTRs as well as USTRs. Like the initial 1992 creation of the special post-employment rule for USTRs -- and unlike the broadly-applicable post-employment rules of the Ethics in Government Act of 1978 or the Ethics Reform Act of 1989, each of which underwent extensive legislative consideration -- the USTR Amendment did so without any meaningful legislative background.

This action raises serious legal and policy questions. In departing from the "waiting period" rationale that underlay the general one-year ban on representation of foreign governments in the Ethics Reform Act of 1989,[30] the new lifetime ban raises the very constitutional questions that led the Justice Department and other witnesses to express concern during the 1989 reform legislation. One of the bills leading to the 1989 Act contained a lifetime ban on certain high ranking officials representing or advising foreign entities. In hearings on that bill, a Justice Department spokesman agreed that the lifetime ban raised a serious constitutional problem.[31] Another Justice Department official doubted that reducing the ban to 10 years would remove the constitutional problem.[32] Commenting on a substitute version of the bill, a spokesperson for Common Cause agreed with shifting away from a lifetime ban on representing foreign governments in favor of a shorter period. While believing that the period for the ban should be longer than for other representations, Common Cause was "very troubled by a lifetime ban and would not recom-

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29/ 28 Weekly Compilation of Presidential Documents 1874 (Oct. 12, 1992) (statement by President George Bush upon signing H.R. 5678).

30/ *See supra*, fn. 25.

31/ *Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 37-38, 41-43, 66 (1986) (testimony of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice).

32/ *Id.* at 87-88 (testimony of Stephen S. Trott, Assistant Attorney General for the Criminal Division, Department of Justice).

mend that."[33] Others testified that even a 10-year ban was too long.[34] The ACLU suggested that "[a]t the very least such a prohibition should expire if the party controlling the White House changes in the interim."[35]

More importantly, no persuasive rationale has been advanced for applying special rules to senior trade officials. Former USTRs were barred by pre-1992 law, for example:

- from ever assisting foreign governments in any matter in which they had direct involvement while in government;[36]
- from communicating with USTR officials on any policy issue for a period of one year;[37]
- from communicating with USTR officials within two years on any matter that was active within USTR during the last year of the former USTR's service;[38] and
- from appearing before any agency, within one year after leaving government, on behalf of a foreign government or political party.[39]

Taken together, these rules adequately protect against the possibility, *and against the appearance* of "influence peddling" or "misuse of inside information" by former trade officials on behalf of foreign interests.

33/ *See id.* at 179 (testimony of Ann McBride, Senior Vice President, Common Cause); *Post-Employment Conflicts of Interest: Hearings on H.R. 5097 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 99th Cong., 2d Sess. 103-04 (1986) (testimony of Ann McBride, Senior Vice President, Common Cause).

34/ *See id.* at 183, 186 (testimony of Norman J. Ornstein, American Enterprise Institute).

35/ *Hearings on S. 2334 (Integrity in Post Employment Act of 1986) Before the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 199 (1986) (testimony of Morton H. Halperin and Jerry J. Berman on behalf of the American Civil Liberties Union).

36/ 18 U.S.C. § 207(a)(1) (1989).

37/ 18 U.S.C. § 207(c).

38/ 18 U.S.C. § 207(a)(2).

39/ 18 U.S.C. § 207(f).

There are at least three other compelling reasons to repeal the new post-employment restrictions. First, the restrictions could easily hinder advancement of U.S. interests by diminishing the pool of qualified senior trade negotiator candidates. Among the factors cited in discouraging people from public service are increasingly severe post-employment restrictions. Past USTRs and Deputy USTRs have not made a full career of public service; like other senior appointees, they have returned to their communities and their private practices after serving in public office. Qualified candidates may decline to serve if their livelihoods -- often after a relatively short period of government service -- would thereby be materially jeopardized. Second, there has been no documented misconduct by former USTRs or Deputy USTRs which would justify the new, heightened restrictions. Third, there is no principled reason to single out trade negotiators; rather, the new restrictions simply penalize or demonize the representation of foreigners. Other government officials -- *e.g.*, the Secretaries of Defense or Transportation, or the Attorney General -- could just as easily be subject to the same lifetime ban.

Meanwhile, there has been absolutely no showing that the general rules applicable to all other government officials insufficiently protect the interests of the United States. The public interest is in having nominees who become public officials adhere to the highest standards while executing the duties of their office. After someone leaves office, the government's interest is properly limited to preventing the misuse of its confidential information and the misuse of influence.[40/]

IV. CONCLUSIONS AND RECOMMENDATIONS

For the reasons set out above, it is the view of the ABA that:

40/ *See Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 79-80 (1986) (testimony of David H. Martin, Director, Office of Government Ethics). The American Civil Liberties Union ("ACLU") also opined that the misuse of inside information should be the focus of ethics laws, rather than the identity of the client. *Id.* at 198 (testimony of Morton H. Halperin and Jerry J. Berman on behalf of the American Civil Liberties Union); *Hearings on H.R. 2267 and Related Bills (Post-Employment Restrictions for Federal Officers and Employees) Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary*, 101st Cong., 1st Sess. 200, 210-11 (1989).

- Congress should avoid statutory provisions that disqualify senior executive or judicial appointees on the basis of clients they have previously represented.

- Congress and the Administration should continue to utilize traditional mechanisms (including the Senate's power of confirmation), rather than special pre- or post-employment rules, to ensure that senior executive or judicial positions are filled only by highly qualified persons who will fulfill the responsibilities of their positions with complete integrity.

- Ethics-in-government rules, whether addressed to pre- or post-government employment activities, should not single out foreign policy or trade functions for special, restrictive treatment. Congress should repeal the 1995 amendments to 18 U.S.C. §207 and 19 U.S.C. §2171(b), whose effect is to restrict the pre- and post-employment activities of U.S. Trade Representatives ("USTRs") and Deputy USTRs on behalf of foreign interests, and should not extend those provisions to cover other senior government positions.

Respectfully submitted,

Lucinda A. Low
Chair,
Section of International Law and Practice
January, 1997

PREPARED STATEMENT OF HON. ALFONSE D'AMATO

Good morning Mr. Chairman and thank you for holding this important hearing. Welcome, also Ambassador Barshefsky.

Mr. Chairman, the area of trade is one of the most important issues that this Committee is faced with. The United States' Trade imbalance with countries like Japan and our largest trading partner, Canada, is of great concern to me. It is imperative that the United States maintain open markets throughout the world, in every corner of the globe.

I am confident that Ambassador Barshefsky will continue to work tirelessly in her efforts to ensure open markets for all U.S. companies and fight for fairness in every negotiation she undertakes on behalf of the United States. American workers and the prosperity of the U.S. economy depend on it.

I am proud to support Ambassador Barshefsky today. She has always been a tenacious, strong representative of U.S. interests, and I look forward to continuing our strong working relationship.

Thank you Mr. Chairman.

PREPARED STATEMENT OF ORRIN G. HATCH

Mr. Chairman, I want to add my support for the nomination of Ambassador Charlene Barshefsky to be the U.S. Trade Representative.

I have spoken to Ambassador Barshefsky personally; I have reviewed her background prior to taking office; and I have reflected on her performance over the past three and one-half years as Deputy and as Acting USTR. In short, I am satisfied that Ambassador Barshefsky is utterly loyal to U.S. interests and will continue to represent those interests in an outstanding manner.

To repeat her qualifications would be to echo much of what is being said here today. Additionally, I can't recall a USTR nominee who has enjoyed such widespread—and diverse—public support.

Despite this strong support, this Committee must justify its waiver in conformance with the law. I voted for the Lobbying Disclosure Act and the restrictions that it imposes on foreign influence on the US policy-making process. But, in the particular case before us, I have found no lawful basis or other reason for denying Ambassador Barshefsky the benefit of a waiver. She was, in fact, serving in a position, that of Deputy USTR, at the time the law was enacted. Accordingly, I fully support the Roth-Moynihan resolution, S.J. Res. 5.

Before closing, Mr. Chairman, I want to raise a number of trade-related questions that I will submit for the record and to which Ambassador Barshefsky is requested to reply to in writing.

PREPARED STATEMENT OF HON. CONNIE MACK

Ambassador Barshefsky, in your capacity as Deputy Trade Representative, you have shown yourself to be an extremely able negotiator. Indeed, it is my understanding that some of your colleagues overseas were not overly enthusiastic upon learning of your nomination. However, you can be assured that I consider this to be a positive sign.

The position of Trade Representative requires the tireless pursuit of unfair trade practices and when found, an aggressive approach to negotiations to bring about their elimination. Given your past performance, and by all press accounts I have read, you appear to possess both of these traits in abundance.

As you well know, free trade secures the benefits of a nation's comparative advantage. It leads to greater economic growth, more jobs, greater efficiency and a higher standard of living. Free trade improves the flow of ideas and technological advances that improve our standard of living. Additionally, free trade sharpens competitive pressures that lead to productivity gains and it broadens the availability of resources for producers and gives consumers greater access to goods and services.

Free trade between nations is critical to long-term economic growth. And, it is no coincidence that the U.S. has been a long-time leader in promoting free trade across borders to the benefit of its citizens.

I firmly believe the future of our nation's economic growth is greatly dependent on successfully competing in a global economy. U.S. trade now runs roughly 23 percent of GDP--nearly triple their 1950s level. Additionally, export of U.S. goods and services has risen by 20% and some 12 million U.S. workers now owe their jobs to exports.

In order to expand upon the tremendous economic gains the U.S. has achieved through free and open trade, we must continue our policies of reducing trade barriers, high tariffs, and anti-competitive tax and spending policies. As the international world market continues to grow, it is essential to the health of our economy that U.S. businesses have full access to foreign goods and services. Without this, many of our country's businesses, and the jobs resulting from them, will disappear as their market share is lost to foreign competitors.

It falls upon you, Ambassador Barshefsky, to continue the fight for the elimination of foreign trade barriers to U.S. exports wherever they exist and to ensure that the United States remains the economic envy of the world in an ever expanding international market place.

I look forward to working with you in the future and wish you the best of luck in your new position.

PREPARED STATEMENT OF HON. CAROL MOSELEY-BRAUN

Mr. Chairman, members of the Committee, it is my privilege to introduce to the Committee President Clinton's nominee for the position of United States Trade Representative, Ambassador Charlene D. Barshefsky. I congratulate the President for such a splendid appointment. I do not believe he could have made a better choice for Trade Representative.

As you know, the Office of the United States Trade Representative is responsible for developing U.S. trade policy, and negotiating and enforcing trade agreements. In Ambassador Barshefsky, the President has nominated a proven trade negotiator and a person who has more than 20 years experience in the field of international trade law. She is extremely well-qualified for the position and ranks among the most able people to have the opportunity to serve as America's chief trade policy formulator and trade negotiator.

Although Ambassador Barshefsky established her professional reputation in Washington, she was born and raised in Chicago. As proof of her pride in her Chicago roots, on the wall of her study is the "No Parking, No Stopping By Order of the Chicago Police Department" sign that mysteriously disappeared from the elm tree in front of her childhood home the same year she entered college. Moreover, as testament to her perseverance, solid Midwestern values and optimism, a Chicago Cubs baseball cap sits on her bureau. She received her undergraduate degree from the University of Wisconsin and a law degree from Catholic University.

Ambassador Barshefsky, of course, needs no introduction to the members of this Committee. Her record of professional excellence and achievement as Deputy and Acting U.S. Trade Representative is familiar to all of us who have an interest in U.S. trade policy. Under her leadership, USTR has negotiated a number of groundbreaking bilateral and multilateral trade agreements. The recently concluded Information Technology Agreement, the U.S.-Japan Framework Agreement, the Intellectual Property Rights Enforcement agreement with China, and the resolution of our long-standing dispute with Japan on insurance illustrate her skill as a negotiator, enforcer of current trade agreements and settler of trade disputes. Because of Ambassador Barshefsky extraordinary negotiation skills and diplomatic savvy, America's commercial and trade interests have been significantly advanced in markets around the world and American workers have increased prospects for a brighter economic future.

Another reason I strongly support Ambassador Barshefsky's nomination is her recognition of the growing importance of developing economies, particularly those in Africa, to United States business. Capitalizing on the business opportunities in these new markets means increased trade for American companies, which in turn means more jobs for American workers, including my constituents in Illinois. I look forward to working with the Ambassador to ensure that the trade opportunities in these markets will not be lost or overlooked.

As you know, Ambassador Barshefsky enjoys an international reputation as a tough and tenacious negotiator. Her skills were put to good use last year when, on her way home from an unusually demanding negotiating session in Beijing, she learned that the President was about to nominate her to be the new Trade Representative. Unable to find a television, Ambassador Barshefsky faced her most challenging negotiation: how to persuade three rowdy airport barflies watching a hockey game to change the channel to the president's news conference. After a brief conversation, they grudgingly agreed to interrupt their viewing of the hockey game for a few minutes. This was clearly an impressive display of negotiating skills. I therefore want to offer the Ambassador the ultimate challenge: attempting the same thing at O'Hare airport when the Bulls are playing.

Away from the rigors of being a very visible, high-ranking government official and an expert at the bare-knuckled brawling that characterizes trade negotiations, Ambassador Barshefsky is the proud mother of two girls. In the evenings, she routinely ignores ringing telephones so she can spend time with her daughters and help them with their homework and music lessons. When the demands of her position require her to travel, she spends endless hours on the telephone talking with her daughters about their activities and school work. Her dedication to family speaks volumes about Ambassador Barshefsky's priorities and what kind of person she is.

Before joining the Administration in 1993, Ambassador Barshefsky worked eighteen years as an international lawyer trade with Steptoe & Johnson, one of Washington's leading law firms. Her private sector experience and public service as Deputy and Acting U.S. Trade Representative have endowed her with a deep understanding of our trade laws and international agreements and an understanding of the need to increase the exports of American products by eliminating foreign trade barriers.

I have had the opportunity to work with Ambassador Barshefsky on a number of trade related issues over the past four years. She is extremely intelligent and without peer in her understanding of U.S. trade policy and international trade agreements. Most important, perhaps, Ambassador Barshefsky clearly understands the difference between a good trade agreement that benefits the United States and a bad agreement that will hurt American interests. She will walk away from an agreement before she compromises the interests of American business and American workers.

In both word and deed, Ambassador Barshefsky has demonstrated an interest in and grasp of a broad range of trade issues, including agriculture, textiles intellectual property, and high-technology to name but a few. She has worked tirelessly to enforce our trade agreements and open foreign markets for U.S. products. Her reputation for aggressiveness in promoting U.S. economic interests is legendary. She has earned high marks from both American business and labor and the grudging respect of our trade partners.

With the WTO still in its formative stage, the U.S. in dispute with major trading partners, and the need to ensure that hard won concessions at the negotiating table will not be lost because of our trade partners' failure to honor the agreements they have signed, I am convinced that Ambassador Barshefsky is the best person to address these issues and resolve any future trade disputes. I strongly support her confirmation and look forward to working with her to tackle the challenges facing American business and workers in the global marketplace.

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV

Mr. Chairman, I wholeheartedly support the nomination of Charlene Barshefsky to be the United States Trade Representative. And thank you, Mr. Chairman and Senator Moynihan, for moving so quickly on this and the need to pass the waiver of the so-called "Dole Law," to allow for Ambassador Barshefsky's formal promotion.

I hope this Committee and then the entire Senate will recognize that we are in the position to confirm a highly qualified nominee for a critical job, and that time is of the essence. Ambassador Barshefsky has earned this post through a track record of tremendous achievement for American business and economic interests in her work at the USTR. She now should have the title and the strong vote of confidence from the U.S. Congress to proceed with the job awaiting her in trade negotiations and efforts with high stakes for our industries and our economy.

After reviewing the record carefully, and speaking to Ambassador Barshefsky extensively, I also believe it is entirely appropriate to waive the Dole Law in her case. I might remind everyone that in passing this law, there was no discussion of it on the Senate floor or in any committee, and there is no legislative history or committee report language which explains the provision. I think we are now finding out that this lack of deliberation is not necessarily useful.

Fortunately, Ambassador Barshefsky was allowed to remain a Deputy USTR under a grand-fathering provision that applied only to her and Mickey Kantor who was then USTR. This waiver merely says that it should continue to apply to her for her promotion from Deputy to USTR. I also do not think there is any basis for worrying about this setting a precedent. This is a special situation calling for swift, specific action to take advantage of a highly qualified, effective nominee for this major position at a very critical time for trade and our economic interests.

One of her strongest qualifications is her grasp of the complicated issues surrounding China's integration into the global economy. This is the single biggest long-term macroeconomic challenge facing the United States and the nations of the world. China is the world's largest country, in terms of population, and its economy

will become the world's largest in the years to come. If its accession to the WTO in particular is not handled properly, the ramifications will negatively affect all of us for years.

I also want to register a strong vote of approval for Ambassador Barshefsky as we face the challenge of how to proceed with our bilateral dealings on trade with Japan. I have just returned from leading a trade delegation of West Virginia business people to Japan and Taiwan. One of the messages we heard from Japan was its desire to move away from bilateral discussions about our trade disputes. I wouldn't be surprised if one of the factors they would like to avoid is a U.S. negotiating team headed up by someone as forceful and capable as Charlene Barshefsky. My response is that overall U.S.-Japan relations depend on our ability to deal with one another on our trade issues, and that we couldn't do any better than to have Ambassador Barshesky at the helm representing the United States.

The next several years could and should be a time when trade plays an important role in our country's agenda in the world, and when this committee has the opportunity to help ensure that progress is made in opening up markets and shaping trade policy. We have before us a nominee who has the experience and the skill to lead the way.

And it will matter how quickly we act on this nomination. We are running up against the deadline on negotiations over an agreement on basic telecommunications services—an industry with over $500 billion in revenues in 1994 alone. We will also be asked to look at new trade regimes, in this Hemisphere and across the Atlantic, and the swathe encompassed by APEC. These are monumental issues, all of them run through the Trade Representative's office, and American business is counting on us to act swiftly.

Again, Mr. Chairman, I have full confidence in Charlene Barshefsky's ability to be one of the great U.S. Trade Representatives. I again thank the Chairman and the Ranking Member for moving so quickly to consider this nomination, and to pass the waiver legislation, so she can get on with work that is of such vital importance to all Americans.

COMMUNICATIONS

February 13, 1997

Editorial Section
United States Senate
Committee on Finance
Washington, DC 20510

RE: Confirmation Hearings for Ambassador Charlene Barshefsky
January 29, 1997

Dear Sir:

I am writing to express my unqualified support for Ambassador Charlene Barshefsky to serve as the US Trade Representative. I feel her appointment is long overdue and I encourage the Senate to confirm her to this position expeditiously.

I am also writing to express my equally strong opposition to Section 21 of the Lobbying Disclosure Act of 1995, which imposes pre- and post-employment restrictions on the USTR and the Deputy USTR. In this regard, I am submitting for the record a copy of a guest editorial that I published in the Journal of Commerce on January 29, 1997.

Sincerely,

Stephen Lamar

Stephen Lamar

The price of pragmatism

BY STEPHEN LAMAR

Earlier this month, President Clinton formally nominated Charlene Barshefsky to be the U.S. trade representative in his second term. Such a move is long overdue and has been widely welcomed because of Ms. Barshefsky's skill and expertise in advancing U.S. trade interests.

Nevertheless, the manner in which the administration handled the Barshefsky nomination may become a source of uncertainty for long-term U.S. trade policy.

By all accounts, Ms. Barshefsky is a skilled negotiator with an expert grasp of trade law and diplomacy. As the deputy U.S. trade representative, she has played a central role in the negotiation of over 200 trade agreements in the past four years and has earned the respect of many in Congress and in foreign capitals. Making her the USTR is not rocket science.

It is, however, against the law.

Unfortunately for Ms. Barshefsky and the country, a little understood provision of the Lobbying Disclosure Act of 1995 prohibits the president from appointing as USTR or deputy USTR any "person who has directly represented, aided, or advised a foreign entity . . . in any trade negotiation, or trade dispute, with the United States."

As a lawyer in private practice, several years before the law was enacted, Ms. Barshefsky briefly served as an adviser on trade matters to the Canadian government. While the disclosure act effectively grandfathers Ms. Barshefsky in her existing position, it technically prevents her from getting a promotion.

To get around this inconvenience, Mr. Clinton has proposed legislation to waive the effect of this prohibition on Ms. Barshefsky, arguing that the effect of the grandfathering should apply to the USTR position as well.

By requesting a waiver from the law's restrictions, rather than pushing for outright repeal of the law as an unconstitutional infringement of his powers, Mr. Clinton is trying to reach a pragmatic and politically acceptable solution. In all fairness, one can hardly blame him for taking such a step, given the bad name trade has got because of the questionable fund-raising by some Democratic operatives and the anti-trade rhetoric of Ross Perot and Pat Choate.

At a time when the president is expected to articulate the compelling need for fast-track trade negotiating authority, it is disturbing to see he cannot mount a spirited defense for his senior trade adviser.

But the damage caused by Mr. Clinton's action will be fourfold. First, the law gains some validity because Mr. Clinton's request for a waiver supports its implementation. Mr. Clinton thus becomes an accomplice in the erosion of the power of the presidency both to make appointments and to define and advance trade policies.

At a time when the president is expected to articulate the compelling need for fast-track trade negotiating authority, it is disturbing to see he cannot mount a spirited defense for his senior trade adviser.

Second, future USTRs will now be screened to make sure they are pure of any foreign elements. Such a screening process will greatly reduce the pool of potential candidates, depriving the United States of their talents.

This is unfortunate. The mark of a successful USTR is an individual who can understand the range and competing nature of U.S. interests, synthesize them into a cogent position, and argue that position with foreign governments. Many past USTRs have been successful because they brought a variety of experiences, including those gained through exposure to foreign governments, to the job.

Third, because the request for the waiver implicitly accepts the main premise of the law — that individuals who have worked with foreign governments are damaged goods — Mr. Clinton inadvertently fuels the very arguments that are advanced by Mr. Perot and Mr. Choate. Having a USTR who has advised and worked with foreign governments and companies helps dispel the popular myth that foreigners are simply a source of job losses.

Finally, the apparent acceptance of the law by the executive branch has rendered hundreds, if not thousands, of potential USTRs ineligible for the job. As those individuals scramble to inoculate themselves from their past, current, or future foreign clients, there will be a chilling effect on public disclosure records. Such a result is ironic for a provision contained in a bill to promote greater disclosure of such activities.

Mr. Clinton would have served himself and the nation better by nominating Ms. Barshefsky and then challenging the law as an unconstitutional encroachment on his ability to make appointments. With Ms. Barshefsky at the center of the argument, he would have had a good chance of winning both the political and legal debates.

While such a strategy is fraught with risk, it is also the only one that offers a win-win scenario.

Stephen Lamar is an international trade consultant in Washington.

The Journal of Commerce

WEDNESDAY JANUARY 29, 1997