S. HRG. 105–881

NEED FOR RENEWAL OF FAST-TRACK TRADE NEGOTIATING AUTHORITY

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

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FIRST SESSION

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COMMUNICATIONS

NEED FOR RENEWAL OF FAST-TRACK TRADE NEGOTIATING AUTHORITY

TUESDAY, JUNE 3, 1997

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

The hearing was convened, pursuant to notice, at 10 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, Gramm, Kerrey, Bryan, Graham, Breaux, Rockefeller, Baucus, and Moynihan.

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

The CHAIRMAN. The committee will please be in order. I want to announce the procedures I am going to use. Unfortunately, I have to be away in about an hour. So we are going to start out with myself and Senator Moynihan making our opening statements, then there will be a very brief recognition of Senator Breaux for a special announcement he cares to make.

But then we will ask the USTR to come forward and make her statement, and we will begin the questions immediately afterwards.

For those members who have no opportunity to make an opening statement, we will give you 8 minutes, 5 minutes for questions and 3 minutes for your opening statement, and then we will proceed according to custom, if that is satisfactory with everyone.

Well, I am very pleased to have the opportunity to hold this hearing on one of the most critical trade issues confronting us, reauthorization of fast-track negotiating authority.

Fast track described a set of special rules, first established by Congress in 1974 for negotiating and implementing trade agreements. The key element in fast track is the requirement that Congress must vote up or down on a fast-track bill and may not amend it once it has been introduced.

This limitation prevents Congress from delaying implementation of a trade agreement or picking it apart to force its renegotiation by amending the implementing legislation in a manner inconsistent with the underlying agreement.

Fast track was critical in negotiating a number of important trade agreements, including the 1979 Tokyo Round Agreement of GATT, the United States and Canada Free Trade Agreement, the NAFTA, and the Uruguay Round Agreement of GATT. It is no ex-

aggeration to say that these agreements, which have contributed significantly to our economic growth, would never have been completed without fast track.

It is also no exaggeration to say that fast track is essential to the success of any future trade agreements. Without fast track, we are unable to pursue important trade initiatives, such as Chilean accession to NAFTA, the creation of a free trade area of the Americas by 2005, the transition to free trade among member countries of the Asia Pacific Economic Cooperation Forum and a number of important sectorial negotiations at the World Trade Organization, including talks beginning in 1999 to continue the dismantling of barriers to agricultural trade.

It is also very difficult for the United States to assert a leadership role in advancing global trade liberalization without fast-track authority. Our trading partners will simply not negotiate trade agreements with us if the U.S. Congress is able to change any agreement that is reached or if one or two Senators can hold up its consideration.

And finally, without fast track, U.S. companies would be unable to take advantage of new export opportunities in other countries where 95 percent of the world's consumers are located.

These lost export opportunities can make it more difficult to sustain a growing and healthy economy for the simple reason that exports account for an increasing share, around 30 percent, of our total economic growth. These lost export opportunities will also make it harder to create export-related jobs here at home, which demand higher skills, pay 13 to 16 percent more on average than other jobs, and are the kind of jobs we need to remain competitive and prosperous in the new economy.

Let me give one concrete example. In my State of Delaware there is an industrial nylon plant in the Town of Seaford that exports millions of dollars worth of products every year to both Europe and Asia. But exports from this plant to South America are almost nonexistent because of high tariffs.

This is a missed opportunity that costs Delaware jobs; good jobs. The Seaford nylon plant is just one factory from one company in one state. Imagine how many export-related jobs could be created in Delaware, across the country, if American companies had fair access to foreign markets.

That access is only possible by negotiating agreements with fast-track authority to get foreign countries to eliminate their trade barriers. The importance of fast track in passing legislation to implement such agreements was clearly demonstrated last year when Congress failed to pass legislation to implement an agreement to eliminate foreign shipbuilding subsidies, primarily because the agreement was not subject to fast-track authority.

Reauthorization of fast track is one of my top trade priorities, and my goal is to get fast track back in place as soon as possible so that we can continue to advance our free trade agenda, open foreign markets to American goods and services, enhance U.S. competitiveness and create more jobs in our strongest and most competitive industries.

As a practical matter, we must work with the President in a bipartisan manner if we have any hope of getting fast track done this

year. And while the President has stated several times that fast track is one of his top priorities, I am disappointed that we have seen so little action so far from the White House, primarily due to indecision on how to handle certain political problems.

One of the most contentious of these problems has been the one hanging over the debate on fast track during the past 4 years. The disagreement between Congressional Republicans and Democrats in the White House and Congress over trade and environmental measures and trade agreements.

I want to be clear about what I find objectionable about linking labor and environmental issues to trade. I do not object to the President seeking to improve labor rights and environmental conditions in other countries; however, I must object strongly to attempts to use the special fast-track process to pursue these and other policy goals that, at best, have only a tangential relationship to trade and, at worst, are inconsistent with the objective of liberalizing trade, tearing down trade barriers and increasing U.S. competitiveness.

Before this gets out of hand, we have to draw the line to limit fast track to what it was originally intended to cover, international trade. If the President and Members of Congress want to address these other issues, let it be done through its normal legislative process.

However, the question of how to deal with labor and environment is not the only problem facing us in reauthorizing fast track. For example, there is concern that the rule limiting the inclusion on fast-track bills of only those provisions that are necessary or appropriate to implementing the trade agreement may be too broad.

And while the White House works out how to deal with these issues, Ambassador Barshefsky has been left to try to keep the issue of fast track alive in Congress. I cannot fault the Ambassador's dedication on this matter, but the simple fact is that fast track will not go anywhere unless and until the President becomes actively involved, as he did in getting ultimate passage of the NAFTA.

If fast track really is a priority in this administration, the President must not only talk the talk, but walk the walk. The administration does not have a lot of time to dither on this.

I am concerned that while we wait for the President to focus on fast track, our trade agenda, particularly with respect to Latin America, remains stalled. Meanwhile, in our back yard, Latin American countries are moving ahead to negotiate trade agreements among themselves with the Canadians, the Europeans and Asians as if the Monroe Doctrine has been stood on its head.

I had hoped and expected the President to make concerted effort this spring. I understand that the President now intends to wait until September to present a substantive proposal on fast track. I think that by delaying action until the fall the President runs the risk that we will not be able to complete fast track this year or next.

Nevertheless, I do not think the window opportunity has closed yet, but if there is any hope of getting fast track done before the end of the year, the President must begin to lay the groundwork

now and not wait until September to start the difficult work with the Congress.

In particular, he has to convince members that he needs fast track this year, spell out what he intends to use fast track to achieve and begin the effort to craft the bipartisan coalition necessary to get fast track passed.

I hope this hearing will provide a jump start for the administration to start laying that groundwork, with Republicans as well as Democrats, and in the Senate as well as in the House.

I will do whatever I can to work with the President to pull together a bipartisan coalition so that we can complete fast track this fall.

Senator Moynihan.

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

Senator MOYNIHAN. Mr. Chairman, I would wish to associate myself with almost each of the points you have made, which might be summed up in the most important one, which is that it is time the administration got on a fast track.

The last time this committee approved fast-track extension it was June 23, 1993, by an 18 to 2 vote. What the chairman has said is precisely the case we have. There has been a bipartisan support for this program. It goes back before 1974. As our distinguished Ambassador knows, it goes back to 1934.

Under Cordell Hull, the reciprocal trade agreements began, and they have had an enormous effect on the world and on our own Nation. But this authority expired April 15, 1994, and we have not heard much from the administration since. That is no way the fault of our distinguished Ambassador.

But I have to say to you—and I think it falls also on our side to say—if this is being held up because of the politics of the New Hampshire primary in the year 2000, that is a dishonorable act. This administration needs to do its work in its time, and I think you heard that opportunity could be lost, unless we hear quickly and emphatically what the President wants, and we will respond, and you know that, because we care about this program.

With that, the time being short, sir, I would ask the statement be placed in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Moynihan appears in the appendix.]

The CHAIRMAN. Let me repeat what I said a few minutes ago, because I have to leave for another meeting. We are going to have the Ambassador speak first, but each member, afterwards, will get 8 minutes; 5 minutes for questions and 3 minutes to make any opening remarks that they may care to make.

In the meantime, I did say I would recognize, for 30 seconds, Senator Breaux.

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

Senator BREAUX. Thank you, Mr. Chairman. I thank you and Senator Moynihan for holding this hearing. Because it is a trade

hearing, I just wanted to make a comment on a trade agreement, the OECD Agreement.

I was really shocked this morning to see in the *Wall Street Journal* an editorial entitled, "Drinking Sea Water on the OECD Ship Building Agreement," an agreement where implementing bill has been reported out of this committee unanimously, the editorial takes on the majority leader, Senator Lott, saying that if left unobserved and free to respond to the incentives of the place, Republicans and Democrats on Capitol Hill will be the same way, that is, like Democrats, which is not necessarily, I guess, that bad.

Senator MOYNIHAN. But not meant to be complimentary.

Senator BREAUX. It states that Senator Lott has made himself the obstacle to ratifying the OECD Ship Building Agreement and points out, in the last sentence, that maybe with a little light on the subject Republicans will get out of their Democratic drag and start acting like Republicans again.

Since this is a trade hearing, I take very strong exception to that erroneous reporting of the Majority Leader's position on this trade issue. If they had read the *Journal of Commerce* front page story about "Lott Moves to end ship yard aid by supporting the OECD Agreement," they would have known that.

And finally, if they would have read the Congressional Record of May 22, on page S. 4999, there was a colloquy between Senator Lott and myself on this very important trade agreement, in which Senator Lott is quoted as saying, "I plan on working with my colleagues in both the Senate and the House to insure that acceptable ratification and implementation legislation for the OECD Ship Building Agreement is passed by this Congress."

This is an example of Democrats and Republicans working together, and this editorial just dismissed that point completely. Thank you.

The Chairman. Thank you, Senator Breaux.

Madam Ambassador, it is always a pleasure to welcome you. I want to again compliment you for your leadership. We look forward, very much, to working with you. Your full statement, of course, will be included in the record. Please proceed.

STATEMENT OF HON. CHARLENE BARSHEFSKY, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Ambassador BARSHEFSKY. Thank you very much, Mr. Chairman. May I say that it is a pleasure to be here. I am very grateful to you and to the committee for having this hearing. It is very timely. And let me also thank you and the members of the committee for your leadership on trade issues.

Trade, as you know, is essential to our domestic prosperity, and it is essential to our longer term economic security. It is both a pocketbook issue and a strategic issue. More than 11 million Americans now work in jobs supported by U.S. exports. These jobs, as you noted, Mr. Chairman, pay 13 to 16 percent above the national average wage.

Our global exports are at record levels across the board. Over the last 4 years, manufactured exports have increased 42 percent; high tech exports, 45 percent; agriculture, 40 percent; services, 26 per-

cent. Virtually every State has contributed to this record performance and has benefited from it.

Consider exports from California up 45 percent; Michigan, 68 percent; Illinois, 64 percent; Ohio, 42 percent; Texas, 40 percent; Nebraska, 54 percent; North Dakota, 76 percent; Montana, 72 percent. I could go on and on with literally every State in the United States.

Over the last 4 years, trade has accounted for fully one quarter of the growth in our GDP. Export driven growth is one of the reasons the American economy today is strong and sound.

Over the past 4 years, we have created nearly 12 million new jobs. If you look at the G–7 countries combined and subtract the United States, you will see total job creation in the G–6 of 600,000 new jobs. In the United States, we have created 12 million net.

Inflation is down to a low level of 2.5 percent. Unemployment is at its lowest in 24 years, a factor again reflected in almost every State. At the same time, family incomes are up significantly. Home ownership has hit a 15-year high. The growth of our industrial capacity is at its highest level since 1970. Business investment has been stronger than at any time since 1960.

Our current economic expansion has been investment-led, and this establishes a firm footing for an even greater climb.

The best way to continue this prosperity is to give our companies and our workers a full and fair chance to tap into the global economy. This is absolutely essential. Ninety-five percent of the world's population live outside our boundaries, and eighty-five percent of them reside in developing countries. These are the large growth markets for us.

Last year, the developing world imported over a trillion dollars in manufactured goods, and this is the tip of the iceberg. Over the next decade the global economy will grow at twice the rate of our economy. Asia and Latin America will grow at three times the rate of our economy. We must work to create absolute access to these expanding markets.

This is not, Mr. Chairman and members of the committee, merely a matter of short term economic prosperity. This implicates our long-term economic security. Trade alliances play a pivotal role in defining strategic relationships between nations and regions.

Our commercial competitiveness is at stake, but so too is U.S. leadership in the world. We must seize the opportunities of the global economy; we must maintain the centrality of America's role in world trade; we must respond to the staggering increase in the number of preferential commercial alliances struck by Latin America, Europe, China, Asia, and other countries, arrangements that go around the United States rather than arrangements with the United States, and we must fully meet very sophisticated and determined international competition.

In order to win, the President will seek a new grant of authority to implement global, sectoral, and regional trade agreements—fast-track authority.

In consultation, Mr. Chairman, with you and other members of the committee, as well as in consultation with members of the Ways and Means Committee and the House and Senate leadership, we have determined that proceeding with fast-track legislation in

September provides the best opportunity for proper consideration and passage of this legislation by year end.

Between now and September, we will work with you toward developing legislation that will allow us to continue to move forward. There is no substitute for our ability to implement comprehensive trade agreements. The absence of fast-track authority is the single most important factor limiting our capacity at this time to open markets and expand American exports.

Our market is already open. It is their markets that must be opened so that we have full and fair access. Our trade policy has created enormous economic opportunity thus far, but to sustain progress we must remain aggressive, and we must remain very focused.

If we look at the breadth of the trade agenda over the next 3½ years, we can see immediately the importance of fast-track authority. There are three basic uses for that authority in our agenda.

May I proceed, Mr. Chairman?

The CHAIRMAN. Yes, please.

Ambassador BARSHEFSKY. Thank you.

First of all, multilaterally, in the next 3½ years, we will renew global negotiations in the WTO on agriculture. That is a $526 billion global market. Services, a $1.2 trillion global market; government procurement, a trillion dollar market in Asia alone over the next decade; intellectual property rights; financial services.

We will also review and try to improve upon agreements on standards, sanitary and phyto-sanitary barriers, customs valuation, pre-shipment inspection and import licensing.

In the OECD, we are in active negotiations over a multilateral agreement on investment to insure fair and equitable treatment for U.S. investors, and we are engaged in efforts to address bribery and corruption, where we have been rather successful of late, competition policy, transparency and government procurement.

Fast track is essential if we are going to capitalize on the market access opportunities presented by this full range of WTO-related negotiations and OECD initiatives.

Second, sectoral efforts. We intend to use fast-track authority to negotiate agreements in sectors where the United States is the world's most competitive. The recent Information Technology Agreement, for example, eliminates tariffs and unshackles $500 billion of trade in semiconductors, computers, telecommunications equipment, and software.

This is a $5-billion tax cut for American exports. With fast-track authority, we can tear down more barriers in sectoral areas, like medical equipment, environmental products and services, areas where America leads the world.

Indeed, in the APEC and in the QUAD we have now achieved agreement among our trading partners to launch in the fall the ITA–2, that is to expand upon the ITA in terms of product scope, to enter into negotiation on non-tariff barriers and to increase the number of participating countries.

In addition, further market opening initiatives on a sectoral basis are likely to be announced at the APEC leaders meeting in November of this year.

And last, the third area for which we would use fast-track authority is to complete regional and sub-regional free trade agreements. Continuing regional initiatives present vast opportunities for us, and I will point simply to two regions.

First, Latin America and the Caribbean. This is the fastest growing market for U.S. exports. If trends continue, Latin America and the Caribbean will exceed the EU as a destination for our exports by the middle of this year and exceed Japan and the EU combined by 2010. Chile is the first step. We need to get that agreement done.

Second, Asia. Asia contains the fastest growing economies in the world with nearly three billion people. Independent forecasts put 1996 GDP for the region at $2.8 trillion and real growth of 6 to 7 percent is expected annually for the next 15 years. Market opening agreements with key economies or in key sectors in Asia would provide both economic and strategic advantages to the United States.

If we do not act, our competitors will. Other countries are breaking down barriers for its workers; for its companies. We talk a lot about leveling the playing field, but our competitors are winning while we have side lined ourselves.

Since 1992, more than 23 trade agreements have been entered into in our own hemisphere and in Asia, none of which include the United States. If we look at the countries in the world and sub-regional arrangements, we see that they are moving aggressively forward to form preferential trade alliances.

Mercosur is developing a customs union with ambitions to expand to all of South America. The EU has begun a process to reach free trade with Mercosur, Canada and others. China's strategic priorities include Mexico, Argentina, Brazil, Chile and Venezuela. Japan has undertaken high level efforts in Asia and Latin America.

India and its neighbors are entering a free trade pact. Asean and Australia and New Zealand are in discussions, as are Asean and Mercosur, and individual countries are equally aggressive, doing bilateral FTA agreements. These countries include Chile, Venezuela, Mexico and others.

The costs of this inaction for us are very high. The consequences are quite real and not theoretical. For example, Canada has reached a free trade agreement with Chile, which will eliminate Chile's across the board 11 percent tariff on Canadian goods. That means in any competition that we enter into with Canada and Chile, Canadian exporters have an immediate 11 percent price preference.

Let me close by saying, Mr. Chairman, that as we approach a fast-track bill, we must develop a bipartisan approach to the issues of labor, environment and institutional prerogatives. We simply must forge a consensus on these issues. The stakes are enormous and the costs of inaction are absolutely detrimental to our own prosperity and to our economic security.

We look forward, Mr. Chairman, to working with you and members of the committee as we move ahead to enact a trade agenda fit for the 21st century.

[The prepared statement of Ambassador Barshefsky appears in the appendix.]

Mr. Chairman. Thank you. Let me say that I am concerned about delaying action until September. Do you really think that we can get the job done this year by waiting until that date?

I think it is critically important that we begin building bipartisan support, which we are going to need. It will take strong Presidential leadership. Do you know what the White House's intentions are? I know that they say they want to wait until this fall, but will they at least begin to build the kind of consensus that I think is critically important to make progress?

Ambassador BARSHEFSKY. Yes, Mr. Chairman. Let me say, first of all, that I am well informed of White House intentions on this matter, having spent considerable time with both the President and the Vice President on the subject of fast track.

There is no question that the White House is committed to fast track, there is no question that the White House wants to achieve fast track in 1997. It is, for this reason, that we discussed at length with the leadership of the Senate and the leadership of the House a schedule that would allow us to begin in September and complete the process by the time of the recess at the end of 1997.

We have already begun to lay the groundwork, and, as you know, that groundwork laying will take considerable time. I have met personally with about 150 members of the Congress—this is principally in one on one meetings—to get a better sense of where members are, of what their concerns might be, so that we can come up with a consensus bill that tries to address those concerns.

We do not expect unanimity on fast track. There is no question about that. But we must have a strong bipartisan consensus, not only to enact legislation, but to demonstrate to our trading partners that this country has a definite direction on a bipartisan basis that it intends to pursue.

The CHAIRMAN. Let me turn to a different matter. As you know, previous fast-track rules have limited provisions to matters that are necessary or appropriate to implement the subject trade agreement, and the number of members—I believe you, Senator Gramm, Senator Lugar and others—have argued that it should be even more narrow and should only allow provisions that are "necessary" to implement the subject matter.

What are your views on this matter?

Ambassador BARSHEFSKY. Mr. Chairman, I am well aware of a number of proposals that have been made, Senator Gramm's, Senator Lugar's and others, and we will look at all of those proposals as we attempt to formulate a bill. I do not have a position on the individual bills and ideas, except to say that we will work very hard to achieve a consensus.

There is no question that the issue of whether legislation should be necessary or whether it should be necessary and appropriate, or any one of the number of formulations, is a complicated one, impacting not only the scope of a bill that comes before Congress, but the ability of Congress to enact a bill, insuring that member interests are fully reflected.

As I say, we intend to work with the committee on this rather complicated issue.

The CHAIRMAN. As you know, one of the most controversial matters before us is the question of labor standards and environmental

protection. You state the importance of working that out, but even if we are able to reach some kind of agreement, do you think labor, for example, will support fast track?

Ambassador BARSHEFSKY. I cannot speak for labor on this issue. I understand that there will be a panel on which some labor representatives will speak, and I certainly will also be interested to hear the views that they express.

The question for the United States is how to move forward and capitalize on our competitiveness. How do we compete in a global market place that will not stand still and wait for us? How to insure that we maintain our economic dominance, how to insure that we maintain our global leadership, how to insure that the rules that are written internationally are written in a manner that are favorable to us or that, at a minimum, reflect our interests and our values.

These are the critical questions, none of which will be answered affirmatively if we do nothing. The rest of the world is moving forward. The only question is whether we will move forward and lead or whether we will isolate ourselves at the expense of our economic prosperity and at the expense of our long-term economic security.

That is the focus the President and the Vice President bring to this issue, and it is the focus a fast-track bill will bring to this issue.

The CHAIRMAN. Well, I cannot emphasize too much the importance of moving ahead with fast track, and I cannot emphasize too much the fact that fast track was developed as a means of promoting international trade relations and not to get involved in other goals and objectives.

I think it is critically important that we not permit these other issues, admittedly important issues, to delay or prevent us from having fast track when we need it, and that is to negotiate trade agreements.

With that, I am going to call upon Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, you have been very tactful, as ever, and at times even indirect. But I will say to the Ambassador I do not envy your situation, having come here and saying it is urgent that this committee act upon a bill, which you have not sent us, and will not, you say, until after September.

Do you mean after the New Hampshire primaries in 2000? There would still be time, I think, technically.

Senator GRASSLEY. And the Iowa caucus.

Senator MOYNIHAN. And the Iowa caucus. I am sorry. I forgot. Forgive me. I mean the Iowa caucus.

We will do this for the reasons you say we ought, but we cannot without a bill, and it is not seemly. And the Vice President should be told it is not seemly, if this is being held up out of calculations, and it is, and we know it is. And you do not have to say a word about that, ma'am. Do not even nod yes one way or the other.

But you are putting at jeopardy a tradition that goes back to 1934 when the Reciprocal Trade Agreements Act was first approved in this committee. What did you say? There were some 23 trade agreements in this hemisphere alone?

Ambassador BARSHEFSKY. In this hemisphere and in Asia there have been over 23 trade agreements since 1992.

Senator MOYNIHAN. Since 1992?
Ambassador BARSHEFSKY. Yes.
Senator MOYNIHAN. And we are not part of them.
Ambassador BARSHEFSKY. Correct.
Senator MOYNIHAN. We are being kept out of a great idea, which we created and which this administration moved wonderfully well with the World Trade Organization, finally consummating an understanding, which was part of the post-war arrangement of the World Bank and the International Monetary Fund and what was to be the International Trade Organization.
We have all those things. Now we are stalled.
Ambassador BARSHEFSKY. Mr. Moynihan, may I respond to something you just said?
Senator MOYNIHAN. Please. Anything you would like. Yes.
Ambassador BARSHEFSKY. It was the unanimous view of the members of the cabinet that led to the sense that fast-track legislation should be put forward in September, and this was communicated by way of recommendation to the President and the Vice President.
The reason, frankly, is that fast track will take substantial Presidential and Vice Presidential time. As Mr. Roth said, along the lines of the amount of time spent on the NAFTA, which was very, very considerable and very intense on both of their parts.
We are in the midst now, particularly on the House side, of budget, including a variety of issues attendant to that for this month and next month, as well, next month, as China MFN.
There was a strong view, on the part of those of us who looked at the situation carefully, that to put forward a fast-track bill and not, at that same time, have the resources of the President and the resources of the Vice President would be a mistake. And for that reason, we recommended that fast track go forward at such time as White House resources would be fully available because this is a priority of the President and this is a priority of the Vice President.
Senator MOYNIHAN. That is a perfectly fair comment. But would you pass the word back that they might consider enlisting the resources of the Senate Committee on Finance? We know about the subject. We have been around it a long time.
The vote to extend fast track in 1993 was 18 to 2, and if we had a bill right now, we would be marking it up and sending it out to the floor.
One other question, just to put up a flag. I was involved in trade and labor matters under the Kennedy administration. We worked out the Long-Term Cotton Textile Agreement, and measures that became the Kennedy Round, the Trade Expansion Act of 1962.
The labor movement was very much supportive of that measure, but it wanted some provision for people who lost work, lost jobs because of agreements we made and that is inevitable, a part of this expansion of trade. You gain jobs, but you also lose.
So we put in place the Trade Adjustment Assistance Act in 1962.
Ambassador BARSHEFSKY. Yes.
Senator MOYNIHAN. It is about to expire in 1998. Are you going to propose a continuation? Will that accompany your proposal on fast track? Or what is your thinking at this point?

Ambassador BARSHEFSKY. My understanding is that trade adjustment assistance is carried forward in the budget agreement. With respect to the NAFTA trade adjustment assistance, that program is funded through October 1998 I believe, and there will be proposals for extension of that as well.

Senator MOYNIHAN. Could I ask that you let us have something in writing, if you have something you can put in writing at this point?

Ambassador BARSHEFSKY. Certainly.

Senator MOYNIHAN. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Grassley.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I think we and the majority should rest on the admonition that Senator Moynihan has already expressed and say that it is expressed very well, and I want to associate myself with those remarks and also the remarks of the Chairman of the committee, both very strong statements.

I suppose if there is any sort of goal, I feel it is that the President, so many times since the first of the year, has kept saying, both domestically and to international people, he hopes that Congress will give him fast-track authority, like somehow we are holding it up here in the Congress of the United States.

And I think if we could have a bill, even though the President cannot exert energy on this until after Labor Day, we could be working on it and be able to reflect on it. We should not have to wait until September to actually get the legislation.

Instead, we are sitting here kind of on the sidelines while the rest of the world, particularly in our own hemisphere, seems to be moving on without us. In 1994, as we know, the President promised Chile that they would be part of NAFTA, and today, Chile is a party to a free trade agreement with Canada and with Mercosur nations, but is still not part of NAFTA.

And also in 1994, President Clinton promised that there would be a hemispheric trade agreement by the year 2005, and last month's meeting in Belo Horizonte ended with very little progress being made, and several of our Latin American trading partners, including Brazil, said that it would not begin negotiations on a free trade agreement of the Americas until the President has fast-track authority.

So, just days after those public statements by Brazil then, the President announced that a fast-track proposal would not be sent to Congress until September. And so I wonder, obviously, what Brazil and other Latin American countries think about the President's commitment to the free trade agreement for the Americas when they heard that he was not going to ask for fast-track authority until September?

Of course, that is what I am most concerned about. It is a perception that the United States has lost its will to lead the world in trade liberalization, a lead that we have been exercising since those 1934 trade reciprocity agreements.

And this is a loss of jobs and loss of income for American workers. Recently a telecommunication firm lost a $200 million contract with Chile to a Canadian firm that enjoyed preferential tariff treatment. In agriculture, the United States currently has up to 90 percent of the market share on feed grain exports to Chile.

These exports are expected to double within the next 10 years, but this market has been put in jeopardy because our biggest competitors for this market, Brazil and Argentina, enjoy preferential tariff treatment.

And we are the No. 1 exporter of phosphate and the No. 2 seller of nitrogen to Chile. Our biggest competitors are Canada, Mexico, and Argentina and they all have advantages over U.S. companies because of free trade agreements.

So how long will it be before the inaction on the part of the administration begins to affect jobs of American workers? These are good enough reasons alone to pursue fast-track authority. But my most important reason for pushing for fast-track authority and having it available all the time—there should not have been 3 years with fast-track authority—is because the most important reason is to reestablish the moral authority of the United States to lead on trade issues, and we have done that since the reciprocal trade agreements. And more importantly, since World War II.

We have led the way in the world to reducing barriers to trade. Democrat Presidents FDR, John F. Kennedy, Linden Johnson passionately advocated that U.S. commerce around the world is important. And remember what JFK said, "You either trade or you fade."

Most recently, American leadership made possible the consummation of the Uruguay Round and NAFTA.

And, Ms. Barshefsky, we saw your strong leadership for the Information Agreement in Singapore. I was there, and I saw how you personally pushed that to get it done. And so American leadership does make a difference. We would not have had the Information Technology Agreement without your strong energy, and your strong energy fills a vacuum left by the administration not asking for fast-track authority, but that energy cannot last long enough I think. So we have to have it.

So I think we have to let the debate begin, and we can do that by having a bill up here, even though the President cannot spend time on it.

My first question: What is the economic impact of the President not having fast-track authority up here? Or another way to put it, at what point does the lack of fast-track authority result in the significant loss of economic opportunity for U.S. companies and workers, and I am talking beyond the telecommunications deal that we lost? I am talking beyond the fact that we not be able to export American corn for feed grain to Chile.

Ambassador BARSHEFSKY. Thus far, Senator, in terms of major initiatives, we really have not been held back by the lack of fast-track authority, and there are a couple of reasons for that.

On the regional side, with respect to the FTAA and with respect to APEC, very substantial ground work laying has been needed in both of those forums with respect to further market access liberalization. On the FTAA side, we do now have agreement coming out of the Brazilian meetings that the leaders should announce the

start of formal FTAA negotiations when they get together in Santiago, Chile for the second Summit of the Americas in 1998.

Prior to this March 1998 date, and what we have been doing the last several years, is all the prepatory work needed for negotiation. If you look at the Uruguay Round, about the first 3½ years was all in prepatory work.

With respect to APEC, we were now successful in achieving, among our APEC trading partners just a few weeks ago in Montreal, an agreement that we should use the ITA as the model for further sectoral liberalization across the world, and the APEC economies will put forward, collectively, ideas for further sectors to open, just on the same basis we did the ITA, in November at the leaders meeting.

There again, we are not prejudiced by not having fast-track authority.

So, first off, we are doing a fair amount of prepatory work. Once the Santiago Summit comes into being in March 1998—once the APEC leaders meeting takes place and other sectors are indicated—fast-track authority will obviously be necessary.

Senator GRASSLEY. Thank you.

Senator CHAFEE. Thank you, Senator.

That is the order of appearance here; Grassley, Breaux, Gramm, Chafee, Graham, Kerrey, Rockefeller, Baucus.

Senator BREAUX. Thank you very much for your testimony, Charlene, and we appreciate the good work that you do.

Does the administration envision a fast track that would cover several countries or targeted countries in their proposal?

Ambassador BARSHEFSKY. We are looking now at the question of scope, and preliminarily the thinking is the scope will cover three kinds of agreements. First, of course, would be in the WTO, a strictly multilateral setting of the type I just noted; agriculture, services, IPR, government procurement, so on and so forth.

Second, the notion of sectoral liberalization, whether it is in the WTO or outside, like the ITA, like the Telecom Agreement. We will not mention specific sectors, but it is critical to have that authority. As I indicated, we now have agreement to push ahead on an ITA–2. We are going to need fast track to implement that.

And then third, the question of free trade agreements. And here, it would not be our intention to indicate simply a single country, but to make provision for a very substantial pre-consultation with the Congress before we advance any particular free trade agreement. The exception to that preconsultation would be in the case of Chile where it would be understood that enactment of fast-track legislation would also lead to Chilean talks, in specific, to go forward since that has been the subject now of two successive Presidential commitments, President Bush and President Clinton. And, of course, the bounds of that are quite well known at this juncture.

Senator BREAUX. Well, this is different from the way we handled the NAFTA negotiations with Canada and Mexico where we had a country specific.

Ambassador BARSHEFSKY. In those cases, you did have country specific. Here I think we want to try and maintain our flexibility. The world is moving very, very rapidly, and provided there is adequate consultation and provided that Senatorial prerogatives are

adequately taken care of, we would like to see authority that is as broad as possible, as broad as the political traffic will bear.

Senator BREAUX. Would you try to get something passed through Congress the parameters of which would be such that countries could come in and fit into those requirements and boundaries and automatically be qualified to receive those benefits or not?

Ambassador BARSHEFSKY. That is something that we are looking at now. That is a bit of a complication because to set out specific boundaries may unintentionally leave out countries that are right on the cusp and that would then diminish our authority to interact with those countries. But that is something that we are looking at right now.

Senator BREAUX. The specific agreements with individual countries that fit into those parameters would ultimately come back to Congress for approval on a fast-track procedure?

Ambassador BARSHEFSKY. Ultimately, of course, the implementing legislation would come for approval. The idea behind very extensive preconsultation is that if that preconsultation has not been held or is deemed inadequate, fast-track authority could be stripped.

Senator BREAUX. NAFTA had a number of labor and environmental provisions basically as side agreements to the NAFTA Agreement, which were fairly detailed about labor requirements and environmental requirements.

Does the administration envision the request for extension of the fast track to have similar type of labor and environmental side agreements? Or what would be the way that you would suggest those issues be handled with regard to an expansion of fast track?

Ambassador BARSHEFSKY. Senator, this is probably the single most difficult set of issues because it is on these issues that there appear to be substantial ideological divides within the parties and between the two parties and perhaps between the House and the Senate.

It is very important to recognize that this administration is committed to the promotion and the furtherance of core labor standards. We view this as critical. These are not new issues. These are issues that were raised in the Havana Charter, these are issues that have been addressed by many in the administration and appear in many pieces of trade legislation, such as GSP, the Indian Trade Preference Act, the Caribbean Basin Initiative, the NAFTA and others.

Similarly, on the environmental side, we are committed to the protection of the environment, committed to sustainable development. We must insure that trade agreements and environmental objectives are mutually compatible and that environmental objectives are not sacrificed in the interest of pure economic gains.

These are fundamental. The only question is not the importance of these issues or the dedication of the administration to these issues, or the dedication of the Congress to these issues. The only question is how we do maximize progress on the full range of interests the United States has as we engage in negotiations with countries? Interests that are economic, interests of the environment, interests with respect to worker rights and workers welfare.

Other interests, include perhaps democratization, institution building, and drugs. There are a variety of interests that we have. The only question is how do we maximize those interests. And it is on that issue that we need to try and achieve some consensus, some understanding of how we maximize those interests.

Senator BREAUX. I think that is a correct balance. I think, from my perspective, that those issues should be on the table, but we cannot remake the rest of the world to look just like the United States in everything that they do.

But, at the same time, we do not give away our markets to countries that use slave labor and export drugs. We have to use a legitimate amount of influence in order to negotiate these agreements as a proper balance here.

The success of NAFTA, if you look from last year to the year before, auto makers—a lot of labor there—have seen exports of light vehicles to Mexico soar 30 percent. Agricultural exports jumped 34.4 percent; shipments of wheat and rice from my State, soybeans and cotton from my State reached their highest level since 1970.

I think that what we have done in the past is indicative of what the future is likely to bring, and the United States cannot be sitting on the sidelines and be nearly spectators to history. There are 400 million people down there, there is a market, and we need to move expeditiously on it. Thank you.

Senator CHAFEE. Thank you, Senator.

Senator Gramm.

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

Senator GRAMM. Thank you, Mr. Chairman.

I want to be emphatic, so let me give you a little bit of history. I led the effort to kill an oil import fee when it was introduced in the Senate, and I am from the preeminent oil producing State.

I was a leader in killing the textile quota bill twice, though my State was 1 of the 10 top textile producing States. I have never supported a protectionist measure and never intend to as long as I serve in Congress.

I was the first member of Congress to introduce a proposal calling for a free trade agreement for the Americas since Stephen A. Douglas did so in 1861. I am a strong proponent of trade. I hate protectionism and protectionists as a group.

But I want to make it very clear to you how strongly I feel about fast track and the extraordinary powers it gives to the President. The granting of fast-track authority to any President is an extra ordinary grant of powers entrusted to the Congress by the Constitution.

The only circumstances under which that has worked or can work successfully and appropriately is where there is a bipartisan consensus on what we want to do. I agree with our distinguished colleague from New York, Senator Moynihan. I believe there is a bipartisan consensus on this committee, in the Senate and in the Congress for fast track.

I think the principal reason that we have not yet dealt with this issue has been the slowness of the administration in sending us a bill. I do not believe we can maintain the bipartisan consensus for

the transfer of constitutional power on trade issues from the Congress to the President unless we can impose some restraint on negotiations related to international environmental agreements or labor agreements.

Now, I think if the administration wants to kill fast track, and they do not want to leave their fingerprints on it, it is very easy to do. All they have got to do is say that they will accept no restrictions on negotiating power because no other President has had similar restrictions.

We have had very vague fast-track provisions in the past relating to inclusive relevant matters. But the difference is no other administration has ever suggested the use of fast track for broad agreements related to environmental law or to labor law.

My own view is that fast-track authority is intended to promote trade. I do not have any objection to the environmental provisions that were in NAFTA. I think basically they are reasonable provisions that are directly related to trade. There are no real "blue" provisions or labor provisions, in NAFTA. There were some provisions in the side agreements.

I think it is perfectly reasonable that we ask that in entering into a free trade agreement we not lower our environmental standards to attract investment. I see that as a legitimate part of a trade agreement.

What you have to understand is that we see under unrestricted fast track the possibility of massive environmental provisions that could carry revenue implications, that could be part of trade implementing bills, that could be sent to the Congress, and they would be guaranteed a vote with no amendments. We would surrender our constitutional powers of unlimited debate in the Senate, and I think this is something that we are very concerned about.

And I remind you, Madam Ambassador, that on June 21, 1994, every Republican member of Congress—there were 44 then—every single member signed a letter to the President raising this issue.

I want fast track. I would like to make it permanent. I would like to end this lapsing of fast-track authority. I am willing to be a strong leader in this effort. But in order for that to happen, we have to have a guarantee that fast track is going to be used for trade agreements, that it is not going to be used to impose environmental law or international labor standards.

We think labor and environmental issues are legitimate issues, if the President wants to negotiate them and then bring them to Congress where they can be debated, where they can be amended, where they can be filibustered. And if they are treaties, they are subject to a super majority vote in the Senate.

In terms of simply granting blanket fast-track authority, I can guarantee that is not going to happen. To have any chance of finishing fast track this year, which we need to do, we are going to have to negotiate and come up with an agreement well before you submit the bill in September. If you simply submit a bill in September that in no way addresses these issues, I do not see how we get home.

I am in agreement with everything you said about the need to get to the free trade agreement with Chile. We are going to see free trade pass us by in South America, and we are going to be facing

trade barriers no one else faces and possibly expanded trade barriers.

This is critically important. But if we want to solve this problem, we have got to deal with this issue sooner than later. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

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

Senator CHAFEE. It is my time now, and I will be brief. I have a statement I will put in the record, Madam Ambassador.

First of all, I want to say that I associate myself totally with the remarks of Senator Roth and Senator Moynihan. I am, likewise, a strong free trader, as you know, and feel strongly about getting on with fast track.

I am concerned, one, as Senator Moynihan said, you are here, but you do not have a piece of legislation before us. We are having a hearing on a bill that does not exist.

Second, I am concerned about your delay until September. I checked. The leadership puts out a little calendar, and in that calendar—this is not in concrete, it is not inscribed forever—it provides for us to adjourn on November 13.

So you do not have much time when we come back after the August recess. When are you talking about? Do you mean early September or late September?

I am extremely impressed with the statistics that you gave, to think that what we have done in the past has paid off. The statistics you had about Mexico, I had not realized that. There are many companies in my State that ship to Mexico, and we are pleased with that. But I had not realized that now Mexico is moving, as you say, on the verge of passing Japan as our second largest market. Our first being, I presume, Canada.

So is it not wonderful that NAFTA, which is Canada and Mexico, is ending up with our two largest trading partners.

You say you visited with 150 members of Congress. That is nice. It is dangerous to quote yourself. I know. However, 4 years ago I, on this podium, spoke to your predecessor, Mickey Kantor, and this is what I had to say at the time, and I think it is worth repeating.

"Thus, most of the complaining Senators are and always have been flat out opposed to NAFTA." This was when it was apparent that some Senators were opposed to NAFTA. "Some will grab any handy rationale, including becoming born again environmentalist, to defeat it, or at least slow it down until it does a painful, lingering death."

"Mr. Ambassador," Ms. Ambassador, "no matter what modifications you make, you are not going to satisfy most of those Senators. There are more of them then there are of you, and they keep you working night and day with more and more demands."

"I advise you to save your strength and instead to simply do what you think is right and do it quickly, no matter what criticism from that quarter is hurled your way."

I think that is worth repeating. You are not going to satisfy everybody. And if you keep trying to accommodate them, you are going to lose some of the rest of whatever the issue might be.

You are getting a lot of advice here today, but it is not all bad. As a matter of fact, I think some of it is quite good, having marked myself high.

So, next is Senator Bryan.

OPENING STATEMENT OF HON. RICHARD H. BRYAN, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator BRYAN. Thank you very much, Mr. Chairman.

I have read your testimony, and I have heard your testimony this morning. You make a very, very powerful argument for free trade and expanding and liberalizing our trade agreements. As I look at the history of our country, I think that the United States has, by and large, benefitted from an expansion of free trade.

I was not a member of the Senate Finance Committee when fast track last visited, but I am going to support fast track.

Let me ask a question of you. I think most people in this country really do not follow fast track. If you ask the average person about fast track, what are you talking about? They do not follow the nuances that you have discussed with us. They do not know, unfortunately, that in you we have a tremendously effective advocate, and I am delighted to see you there and have great confidence with the kind of leadership and the effective advocacy that you provide for the country.

But when the American people see issues of trade, frequently it is in the context of the nagging trade deficits that we have with Japan, with China, and kind of a sense of wait, we can enact all of these kinds of provisions, but the other guys do not play by the same rules.

My only question: What assurance, what can you tell the American people about the prospect in terms of getting fair trade, not just free trade, in terms of the expansion that we want to provide you with this fast-track authority?

Ambassador BARSHEFSKY. Senator, I think you raise a very good question. I actually almost never use the phrase free trade because there is no such thing. We are the world's most open major economy, but there is no free trade here, and we are among the best in the world with respect to that benchmark.

I prefer to think of the fast-track exercise as one to establish reciprocal trading relationships. If you look at, for example, the ITA, which we did, what you see is an agreement where we agreed we would reduce our tariffs to zero on information technology products, computers, telecommunications equipment and so on, and 42 other countries agreed they would reduce their tariffs on exactly the same products to zero over the same time frame.

And where there were exceptions, the exceptions were to give a little more time to get to zero. But, at the end of the day, everyone is at zero on all of the same products. Reciprocal trade. We give, they give, and we end up, most importantly, at the same place at the same point in time.

That is what fast track allows us to do. It is precisely what it allowed us to do in the NAFTA; in the Canada Agreement; in the Israel Agreement. This is a very, very important tool to achieve more reciprocal trading relationships.

To the extent the trading relationships are reciprocal, trade deficits may well arise, as may trade surpluses because of macro economic factors, but it will not have to do with inequitable or unfair trading relationships.

Senator BRYAN. Well, I thank you for the response, and I am going to have to go to another meeting. Let me just associate myself with the comments of the ranking member, that we do need to get moving on this if we are going to get it done this year.

Senator CHAFEE. Thank you, Senator.

Senator Graham.

OPENING STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman.

Mr. Chairman, this is a difficult hearing because so many of us have such high regard for the Ambassador since she is less here as a messenger today as one to hear our message to the administration of how strongly we feel about this issue.

As she knows, I am personally discouraged at the decision to delay, particularly in the context that we heard in the winter, that we were going to wait until the Ambassador was confirmed before we would deal with fast track.

In the spring we heard that we were going to wait until we had a balanced budget agreement before we would deal with fast track. Now, in the summer, we are hearing that we are not going to deal with fast track until the fall, until China and the final details of the budget agreement have been resolved.

That pattern, frankly, raises concern at the level of commitment to fast track. I would like to briefly mention three of what I think are a rather lengthy list of consequences of this pattern of behavior.

First, within our closest neighbors, in the Caribbean and Latin America, it has raised an extreme level of disappointment, cynicism, and frankly, déjà vu. One of the recurring themes of American history in the Western Hemisphere is that we become very involved when we think there is a threat to the United States, either a security, economic or politic thing, and then, when things are going relatively well, we forget about the Western Hemisphere.

This is another chapter of that long history of disinterest when our hemisphere is relatively tranquil.

A second consequence is I think the President has assumed a tremendous responsibility. He has just left all the opponents of fast track off the hook. If fast track does not pass in 1997, there will be one person who will assume responsibility for that, and that is the President.

Third, his decision has placed tremendous pressure on this period, from September to November, to achieve success, because if we do not, if we are not able to do this in the first year of his second term, what are the chances of doing it in 1998? What are the chances of doing it in 1999? What are the chances of doing it in the year 2000 in the next Presidential election?

The fact is that these 3 months are the last remaining opportunity, reasonably, to pass fast track until another President is in-

augurated in the year 2001. So those are some of the consequences, I believe, of the decision that has been made.

And that leads me to a short list of questions, beginning with, specifically, how is the administration going to use the time from June to September in order to maximize its dwindling prospects of success after September?

Ambassador BARSHEFSKY. Senator, we do not believe that the prospect of success dwindles after September. One might recall that NAFTA was done toward the end of September and mid November, in 1994. Second, we intend to use the time between now and September building, continuing to build a consensus. First, for the need for first track, and second, to scope in bounds of a bill.

I agree with Senator Gramm. We certainly do not intend to pop a bill in in early September with no one ever having reviewed it, thought about it, considered it or been involved in the process initially.

Let me make a comment about——

Senator GRAHAM. Excuse me for interrupting. But when do you think there will be the opportunity to see the administration's proposal?

Ambassador BARSHEFSKY. We have already been consulting, my staff with committee staff, with respect to bounds, scope, concepts for a bill. I think that process will continue a little bit longer, and then I would hope that we could sit down with a little bit firmer ideas.

Senator GRAHAM. I mean, do you think by the first of July?

Ambassador BARSHEFSKY. I do not want to put a date on it, except to say it will certainly be in advance of September.

Let me make one additional comment with respect to ground work laying between now and September.

Over half the Members of this Congress, have never cast a trade vote. Think about that for a minute. Have never cast a major trade vote.

There are many Members who I have met with who feel ill-equipped to deal effectively with the issue of fast track without understanding more about its background, more about the trade agenda, the goals of the administration, the importance of trade.

There is a very important educative effort that needs to be undertaken with many, many, many members of Congress, particularly those who have never been in a position to cast a major trade. And, of course, this is a major trade vote.

So we will also be using the time between now and September in that educative effort.

Senator GRAHAM. Part of that effort ought to be to try to take advantage of the experience that we have learned in recent trade agreements, specifically NAFTA, and incorporate that experience in both the shaping of the fast-track legislation and beyond.

How do you see that iterative process from learning from what we have done in the recent past being incorporated into your recommendations?

Ambassador BARSHEFSKY. Well, certainly we know, from the NAFTA process, what the critical issues are that tend to divide members or that tend to divide parties, and this is, of course, where we are going to focus a fair amount of attention.

The other thing that we learned from NAFTA is I think the level of misunderstanding as to what NAFTA has accomplished, which in the main has been extraordinarily positive for the country, versus its perception in the country, which is rather negative.

And this suggests that when the President, the Vice President, or those of us in the Cabinet, speaks to trade issues, that we not presume people understand the benefits of more open trade, but that, we make the case each time for the NAFTA and for the benefits that has been brought to the economy.

Senator GRAHAM. Just in closing, I am concerned about putting this off until September. That debate is less likely to occur. There are some legitimate lessons of concern to be learned from NAFTA. The educative process will be truncated, and it is likely, therefore, that the perceptions that you so properly just described will soon to be the reality.

Senator CHAFEE. Thank you, Senator.

I must say, Madam Ambassador, I think you are accurate in that the public not only does not know of the benefits that came from NAFTA, but I think, in many instances, they have an adverse view of NAFTA. It may be bizarre, but apparently, I have a feeling you are accurate in that.

I, myself, spend some time following these things, but had not realized that Mexico was now moving up, surpassing Japan, as you mentioned in your testimony, as our second largest trading partner.

Senator Bob Kerrey is not here. Senator Rockefeller.

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

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Ambassador Barshefsky, you do an excellent, excellent job, and you have heard that from both sides of the aisle, simply because it is true. You have been staggering and successful, tough, persistent, on the mark for American interests and you are tireless. So I hope you remain our trade representative a long time.

I have to say that in terms of fast track, which I supported even as I voted against NAFTA, and I supported it as I voted for GATT, I think it is extremely important to have "or appropriate" language allowed in fast-track legislation. And, in fact, from my point of view, it is not a condition of, but gets close to being a condition of my vote.

Senator MOYNIHAN. Could you repeat that? "Or appropriate?"

Senator ROCKEFELLER. Necessary or appropriate. You see, there is a body which wants to allow necessary changes to law, but leave out the words "or appropriate." But the problem with leaving out the words "or appropriate" is if you do that, you cannot, as we did previously, talk about things like section 337, intellectual property, you cannot talk about appropriate changes to countervailing duty laws, you cannot talk about dumping and as you, yourself mentioned, trade adjustment assistance.

So, to me, the phrase "or appropriate" needs to be in fast track because if it is not, then we will not be able to address those kinds of subjects when we actually go on. I would just like to know your view on that.

Ambassador BARSHEFSKY. I think it is very important that we be in a position, when we bring a trade agreement back to the Congress, to allow members to attach germane matters to that trade bill; that are germane to the trade agreement, germane to our rights and obligations under it, and the necessary or appropriate language has been used for that purpose.

It has become somewhat controversial because of the view that very extraneous issues were put on to the NAFTA. Not trade related in any respect, but other matters.

Given the concern that the authority not be abused, the question now is how to achieve a consensus on the proper bounds of the legislation coming back and then on the question what can be appended to it and still qualify for fast-track treatment.

This is a matter on which we will work closely with the committee because it is a difficult matter, given the various views, including on the committee itself. I do not have any magic solution as yet, but we are hopeful we can arrive at something that could be acceptable.

Senator ROCKEFELLER. I think it is tremendously important, and this is an area where I do not think I would ordinarily say that Congress is very good at disciplining itself. But I think, when you get into trade negotiations and Congress is involved to the extent that we are, I think, as in the past, we would tend to keep it limited to areas that are appropriate to the trade agreement at hand, and yet, deeply substantive, particularly the antidumping, countervailing and all the rest of it.

Ambassador BARSHEFSKY. Right.

Senator ROCKEFELLER. I think that is really important.

Senator Grassley mentioned the meeting in Brazil, and I was concerned that some of the Latin American countries said they wanted their privatized companies to be exempted from countervailing duty laws, even though those firms might be heavily subsidized and hurting us.

Could you comment on that? If I am wrong, please tell me.

Ambassador BARSHEFSKY. This issue never came up in Belo. The ministerial meeting really was devoted to two issues principally, both of which I am pleased to say we prevailed on.

The first was to insure that the recommendation would go forward to the leaders to launch comprehensive negotiations for the FTAA, beginning March 1998, and that recommendation indeed will go forward. And second, that a prepatory committee be established now so that anything else that needed to be done before the launch of negotiations would be completed.

As you know, in the GATT and WTO context, the establishment of a prepatory committee is that final step that precedes negotiations. There was no discussion at all, certainly none of which I was a part in Beloranzanti, that addressed any particular substantive issues, such as the reach of the countervailing duty law or antidumping law or anything of that sort.

I think on the question of privatized entities it has been, as I recall, Commerce Department practice that past subsidies remain countervailable, even to the privatized entity.

Senator ROCKEFELLER. Ambassador, then I think it is important that we, our staffs, check your information and my information on that because that would be important.

And I would also ask the Chairman if I could include my statement in the record.

Senator CHAFEE. Certainly.

[The prepared statement of Senator Rockefeller appears in the appendix.]

Senator CHAFEE. Senator Baucus.

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

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador, I join others in complimenting you. I think you know that.

I want to remind you—and you know this, too—that, at least in my State of Montana, NAFTA is an anathema. People hate it. I voted for it, because I thought it was the right thing to do. But I can tell you it is very, very unpopular in my State.

Montanans think NAFTA caused the import of, say, live cattle from Canada to Montana. They see no benefits to NAFTA. And I, until I am blue in the face, tried to explain a lot of the figures and statistics that you have explained and how it is, on balance, helpful. And even the Montana State University economics department has done a study of NAFTA, which concluded that on balance is probably a slight plus for Montana.

What I am saying is that if you are going to get support for fast track, you need very, very strong Presidential support. Members of the Senate cannot talk against the tide on national issues like this. You have to have an extremely strong widespread, outspoken full court press by the President. Nobody else can do this. It has to be the President. The Vice President cannot do it.

It has to be the President who is willing to undertake a lot of capital in order to be successful here. Otherwise, I think we are, in some sense, just wasting our time.

Ambassador BARSHEFSKY. Senator, may I make one comment on that?

Senator BAUCUS. Yes.

Ambassador BARSHEFSKY. Of course, Montana is one of the States that has had very substantial export growth over the last 4 years. Admittedly, the base is small, but the growth is, nonetheless, very important.

I think what is terribly of vital distress is that when we talk about fast track, we are talking about a global tarde agenda. Our trading partners would like nothing better than for us to debate the NAFTA and primarily our relations with Mexico, at infinitum, while they move ahead, forming preferential trading relationships that exclude us.

We have to be very, very diligent, and we have to be very aggressive and focused.

Senator BAUCUS. Right. Right. But following a little bit on the point Senator Bryan made, I saw your figure in your statement that in the last 4 years Montana trade to Mexico has increased 52 percent. I think that is the figure.

Ambassador BARSHEFSKY. Overall trade. No. No. Overall exports.

Senator BAUCUS. Oh, overall. OK.

Ambassador BARSHEFSKY. Yes. Overall exports.

Senator BAUCUS. At the same time, Montana per capita income, proportion to other States, has declined. We were ranked 38 in the Nation. We are now, I think, around 46 in the Nation per capita income. And there is a very strong sense that hey, all these great big companies are doing all these deals and we are negotiating all these trade agreements, but what is happening to us, us being the average person, the average guy.

I do not think the administration yet has made the case for the average person because the perception is, and I think with some accuracy, that larger, mid-sized larger companies gain with all these trade agreements. But it is not clear, to the average person, that he or she gains.

In fact, they even feel like pawns. Just pawns just being used by companies; whimsical decisions. Not whimsical because they are based on the bottom line to either export or invest overseas or what not.

So you are going to have to do a much better job I think. And the President is going to have do a much better job of persuading average Americans why it is in their interests, not only big business interests.

Could you explain to me what are some of the preferential trade agreements that other countries are getting say at our expense. They do not need fast track because many of them have parliamentary forms of government. But what kinds of agreements?

Could you name some right here for us now that they are getting at our expense because we do not have fast track?

Ambassador BARSHEFSKY. Let me use certainly one concrete example. You have a situation where Chile was procuring telecommunications equipment. Our companies in the U.S. bid. Northern Telecom and Canada bid. Canada and Chile have a free trade arrangement so that goods from Canada enter Chile duty free; zero duty.

Our companies lost $200 million to Northern Telecom because the Chileans need not pay the 11 percent duty on importing from Canada they would from us. So we have immediately spotted Canada a $20 million price preference over our goods. We cannot compete against that.

Senator BAUCUS. Besides Chile, are there other examples with larger countries?

Ambassador BARSHEFSKY. Yes. If we look at the Mercusor region, for example, we see in the case of computers that are Mercosur formed, Brazilian computer tariffs were very high relative to Argentina. We export to both.

Argentina's tariffs were forced up to the Brazilian level in computers, which is a critical export for us, reducing our competitiveness into Argentina relative to the other Mercosur partners.

Senator BAUCUS. I see my time is up. If I might, Mr. Chairman, a very quick question.

I am a little concerned about the delay, too. I think all of us are very concerned. One concern I have is that as China attempts to accede to the WTO, there could be all kinds of amendments offered

by Senators and House members with respect to China; attempted to be put on the fast track.

I do not know if that is a concern of yours or not, because I listed all of this. This kind of fast-track ability you are talking about now is much, much different from earlier fast tracks, and this is all encompassing. You mentioned all the different areas and so forth, which I think makes it a very attractive magnet for all kinds of amendments and all kinds of subjects.

And I am wondering are you, therefore, trying to put this in reconciliation?

Senator MOYNIHAN. Do not even suggest that.

Senator BAUCUS. I hope they do not, too, but I am just trying to put myself in the shoes of the administration right now and trying to figure out how they are going to deal with all of these mischievous amendments that are going to be added to this huge bill that must pass.

Ambassador BARSHEFSKY. Well, we are hopeful that because of the breadth of the trade agenda—if you look at the WTO negotiations alone, to which we are committed, you will recall at the end of the Uruguay Round we insisted that there be a formal schedule for further negotiation.

If you look at just services and agriculture, intellectual property rights, government procurement, you are probably looking at $3 or $4 trillion. If you look at the areas needed for fast track, our view is that to not grant fast track, given the breadth of that agenda, or to load up the bill in such a way to kill the bill, would be plainly, plainly detrimental.

Senator BAUCUS. Let me again suggest that it is not a reconciliation, it be a freestanding bill, because there is enough ill will around here as it is now in the way the administration has dealt with Congress. And if you try to jam it in reconciliation, I think you might as well forget it.

Ambassador BARSHEFSKY. I do not think we have any intention to do that.

Senator CHAFEE. I think we all second that view.

Senator BAUCUS. Aye indeed.

Senator CHAFEE. All right. Thank you very much, Madam Ambassador.

Now, we are going to have the——

Senator GRAHAM. Mr. Chairman?

Senator CHAFEE. Yes. Excuse me.

Senator GRAHAM. Can we submit written questions?

Senator CHAFEE. Yes That would be fine. I know there may be other questions of the Ambassador, but we have four other witnesses, and I think we would like to move along.

I would ask now the other four witnesses to, please, come to the table. We will take them as a group. Mr. Duane Burnham, Mr. Fred Bergsten, Mr. Richard Trumka and Mr. Mark Van Putten. If we could have that four come to the table, and we will take them as one panel.

Everybody please take their seats quickly. Please. And we will start with Mr. Burnham.

Mr. Burnham is chairman and chief executive officer of Abbott Laboratories, and he is chairman of the ECAT, Emergency Com-

mittee for American Trade. And so we welcome you here, Mr. Burnham. Why do you not proceed.

Each witness will have 5 minutes to state his case, and then we will proceed with questions.

Mr. Burnham.

STATEMENT OF DUANE L. BURNHAM, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, AND CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. BURNHAM. Thank you. Good morning. My name is Duane Burnham. I am chairman of the Emergency Committee for American Trade.

Senator CHAFEE. Is your mike on, Mr. Burnham?

Mr. BURNHAM. Pardon?

Senator CHAFEE. Make sure you have got that button fixed.

Mr. BURNHAM. Usually people do not have trouble hearing me. Thank you very much.

Senator CHAFEE. All right. Fine. Go to it.

Mr. BURNHAM. As I said, I am chairman and chief executive officer of Abbott Laboratories, and I am also chairman of the Emergency Committee for American Trade. I am appearing before the committee today to present ECAT's testimony in support of renewal of the President's fast-track negotiating authority.

ECAT, as I am sure you are aware, is an organization of the leaders of major U.S. firms with international operations. ECAT member firms account for a substantial portion of total U.S. exports. Worldwide sales of ECAT members last year were over $1 trillion, and these companies employ nearly four million workers.

Today, we face the challenge of ensuring the continuation of the U.S. global leadership in advancing liberalization of trade and investment into the 21st century.

Senator CHAFEE. To belong to ECAT, do you have to be a certain size? Do you have to be a big company?

Mr. BURNHAM. Generally, those who have chosen to belong to our organization are large, multinational companies.

Senator CHAFEE. Thank you.

Mr. BURNHAM. There is no restriction.

ECAT believes that in order to achieve this objective one of the primary goals of U.S. trade policy should be extension of broad fast-track negotiating authority.

I am pleased to appear before you, Mr. Chairman, and your colleagues on this committee. You have all lead the effort to achieve an open global trading system that has promoted U.S. economic growth, and thereby, a higher living standard.

Fast-track procedures are essential to assure our trading partners that trade agreements will be considered in a timely fashion by the U.S. Congress. Without such assurance, our trading partners, obviously, will not engage in serious comprehensive trade negotiations with us.

We will lose the lead that we have maintained since World War II in encouraging greater liberalization in world markets, a price we cannot afford to pay.

U.S. trade and foreign investment are vital engines of national economic growth. They have become mainstays of our U.S. econ-

omy. They have boosted U.S. productivity, and, as I said, raised U.S. living standards.

As we look to the 21st century, we must ensure that U.S. trade investment continue to expand. This means that the Congress and the President must find a way to work together to enact new fast-track authority. Fast-track authority will enable us to make greater strides in opening world markets into the next century to the benefit of all of us.

Today I will outline why we at ECAT believe fast-track authority is critical to achieving greater liberalization through the World Trade Organization and regional and other initiatives. First, however, I would like to illustrate through our experience at Abbott, the importance of fast-track authority to American corporations and our efforts to increase global competitiveness.

Abbott Laboratories is an Illinois-based manufacturer of health care products. Our worldwide sales in 1996 totaled more than $11 billion. We have over 52,000 employees, working in 130 countries. International trade is critical to our continued growth and to the stability and growth of our work force.

Over the past 10 years, we have experienced over 20 percent compounded growth in exported products. Today, international markets are becoming increasingly important to our business. With prices remaining flat, our growth will come from new customers, new products and new markets.

Last year, for example, we spent over $1.2 billion on research and development. To achieve a reasonable return on this investment, we must be able to sell our products in markets around the world. The U.S. market alone cannot support this investment and innovation.

Just last year Abbott's growth rate in exports exceeded 25 percent and that growth translates into American jobs. Today, we have over 5,000 Illinois-based jobs tied directly to international trade. That is fully one-third of our Illinois work force.

As we look out over the next 5 years, we expect international business to contribute 50 percent of our growth. Emerging Asia, China and Latin America are particularly important to us. We have had two recent successes in Brazil and Korea. In Brazil, for example, recent trade agreements that reduced duties and importation restrictions have allowed us to access this key market for our nutritional products and significantly grow our business there. To realize the full benefit of our investments, we must continue to have favorable trade policy, which enables us to access all significant global markets.

The renewal of the President's fast-track negotiating authority is vital to ensuring that the United States continues to have a role in shaping the global trade agenda into the 21st century.

Under NAFTA, for example, U.S. exports to Mexico are expected to be over $56 billion this year, a 5 percent increase over U.S. exports to Mexico in 1993, when the NAFTA was enacted. NAFTA also helped Mexico stabilize its economy and prevented it from closing its market to U.S. goods and services during the peso crisis.

NAFTA, as we heard earlier, has provided significant benefits to the U.S. economy and any future expansion of the agreement

should be carried out in a way which will further enhance those benefits.

ECAT supports the administration's efforts to pursue liberalization through multilateral sectoral agreements, and believes that fast-track legislation should authorize the negotiation of those agreements. Thank you very much.

Senator CHAFEE. Thank you, Mr. Burnham.

[The prepared statement of Duane L. Burnham appears in the appendix.]

Senator CHAFEE. Mr. Bergsten is the director of the Institute for International Economics here in Washington. Mr. Bergsten, go to it.

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. BERGSTEN. Thank you, Mr. Chairman. I have given you a statement that tries to address many of the questions raised here today. I will simply pose three questions that have come up and try to give answers to them.

First, does trade help or hurt our economy? The problem with our economy is not creating jobs. We are at full employment. We have done very well. The problem is good jobs, and here, I believe, trade makes a major, positive contribution.

You have heard the statistics on how much export jobs pay more than the national average. What you may not realize is that the big export expansion of the past decade or so has come largely in high-wage manufacturing industries.

If you look at the chart attached to my testimony, you will see that a majority of our manufacturing workers in the country as a whole are now employed in plants that export. The export surge has, in fact, almost stopped the decline of employment in the total manufacturing sector.

A continuation of recent trade trends could actually restore net growth in manufacturing jobs in the next few years, and it could even restore manufacturing employment to its previous peak by early in the next century.

In short, one of the basic trends that we have not liked about our economy, the decline of manufacturing jobs, is in the process of being arrested and reversed because of the export surge. That is a enormous benefit. I want to underline it.

In addition, I want to note that we are now at a level of unemployment in this economy that very few people would have imagined possible 5 or so years ago. Everybody thought that if we got below 6 percent unemployment we would have renewed price instability, and we would have to put on the brakes. We have not.

We are below 5 percent unemployment and still going strong. Globalization and trade liberalization get some credit for that, because the increased competitiveness of our economy, caused by the increased openness of our economy, has enhanced price stability and enabled us to run a much lower unemployment rate than we would have even 10 or 20 years ago.

To be sure, there are losers from the globalization and liberalization process. The Institute for International Economics just published a book called, "Has Globalization Gone Too Far?" The an-

swer was no, and it would be a mistake to reverse the process; but we have to do the right things domestically to support it. Education for all Americans, continuous training for our work force, and an adequate safety net are things we would have to do even without globalization, but globalization enables us to get much higher returns from them.

Question No. 2: Is further trade liberalization a good idea? Some people might say, OK, let bygones be bygones, we can't reverse it anyway. But do we really want to do more? Here, my answer is an unequivocal yes, because we face such a hugely asymmetrical international situation.

We have gone to free trade while other countries still have high barriers. When we say, as Ambassador Barshefsky does, let's have reciprocity, what that means is other countries reducing their barriers to our level.

The only way for the United States to get fair trade is to get free trade, and that is why we need to pursue that course very aggressively and very actively in the future.

There are people who disagree with my first answer and say Americans have lost by virtue of trade liberalization in the past. Unless they want to reverse the past, however, and I do not think they do, they could have no objection to further trade deals of the type that would be authorized by fast-track legislation because, as I say, we have already liberalized. We have very little left to do.

The other countries would come down to us; it would be an unambiguous benefit for us. Even if you thought there had been adverse wage distribution effects in the past from liberalization, there is not going to be any more because we have so little left to liberalize.

So it seems to me the case is overwhelming. Yes, liberalizing is clearly in our interests.

Moreover, now is the time to do it. The U.S. economy is strong and vibrant. Our main competitors, Europe and Japan, are wavering and, in fact, weak. We are at full employment with price stability, and we have an administration that was just reelected with a substantial majority.

If we cannot do it now, we are in real trouble. If you seasonally adjust the failure of the administration to move ahead, you have to be worried. So I agree with all that have been said. Move fast track quickly; move it as fast as you can. Even before September.

The third question: What should be negotiated, what should it authorize? My answer is: everything that has been discussed today—Free Trade Area of the Americas, free trade and investment in the Asia Pacific region through APEC, and more global liberalization through the World Trade Organization.

I disagree a bit with Ambassador Barshefsky's response to Senator Grassley when she said, or implied, that we really have not suffered high costs so far from the lack of fast-track authority. She actually gave a few cases herself, suggesting we had. But I would add, from my close work with the Asian countries in APEC, that some Asians hide behind our unwillingness and inability to move and do not reduce many barriers that we need to get reduced. So, we do have costs and losses.

My final point is to agree very much with what I think was implied by Senators Grassley and Gramm. You should authorize permanent fast-track negotiating authority. It is a mistake, in this globalized and interdependent world, for any president to be without it. He clearly needs to come to the Congress to get approval—in advance, in my view—for any specific negotiation; but this should be a permanent part of America's economic and foreign policy arsenal. Thank you very much.

Senator CHAFEE. Thank you, Mr. Bergsten.

[The prepared statement of C. Fred Bergsten appears in the appendix.]

Mr. Trumka, Secretary–Treasurer, AFL–CIO.

STATEMENT OF RICHARD L. TRUMKA, SECRETARY–TREASURER, AFL–CIO

Mr. TRUMKA. Thank you, Mr. Chairman, members of the committee. The AFL–CIO appreciates this opportunity to present its view on the renewal of fast-track negotiating authority.

This hearing is about our future, not our past. The choices we make now will have enormous consequences. Not just for trade within our hemisphere, but also for future multilateral trade and investment policy with Asia, Africa and Eastern Europe.

We must learn from past mistakes and insure that the trade agreements of the future benefit workers here and abroad, encourage environmental responsibility and sustainable development and incorporate the voice and input of all members of civil society.

The international trading system can and should bring broadly shared benefits, but our current trade policy is lopsided. It protects copyrights, but not workers' rights. It takes care of international investors, but not the environment.

We are opening markets abroad in financial services and agriculture, but we are not taking care of displaced workers at home. Let's get our priorities straight before launching yet another round of the wrong kind of trade liberalization.

The AFL–CIO will oppose fast-track legislation that does not require enforceable labor and environmental standards in the core of any new agreement. Limiting fast track in this way will send the clearest possible message, both to our negotiators and to our trading partners, that we are ready and willing to chart a new path in the global economy and that no country should be able to gain a competitive advantage by sacrificing its environment and its work force.

NAFTA proponents told us there was no time to negotiate a social dimension, that any delay would cause an economic crisis in Mexico, but the United States did ratify NAFTA, on schedule, and, of course, Mexico experienced one of the worst economic crises in its history. Now, we are told that if we do not rush to pass fast track, our competitors will get into the Latin American market first, leaving American businesses out in the cold.

As Ambassador Barshefsky said, nothing is stopping American businesses from investing in and trading with Latin America now. All fast track does is allow formal negotiations to proceed more quickly toward defining a set of rules, and, if we cannot get those rules right, then there is no point rushing the negotiations.

Three and a half years since NAFTA's implementation, it is hard to imagine how things could have been worse had we taken a more deliberate and gradual course.

Policymakers in the United States face a clear choice. They can continue to praise NAFTA, insisting bravely, in the face of all data to the contrary, that it has been a marvelous success; that no matter how badly things have turned out for the hundreds of thousands of American workers who have lost their jobs or the millions of Mexicans suffering through a severe economic crisis, that things would have been worse if NAFTA had not passed.

Or it can face the facts and try to learn a useful lesson from the experiences of the last 3½ years. NAFTA also failed to deliver prosperity and stability to Mexico. Rather than enjoying automatic prosperity as a result of trade liberalization, as was predicted, average Mexicans have seen their debts skyrocket and their wages fall since NAFTA took effect, and Canada has seen a significant erosion of its social safety net since the passage of NAFTA.

NAFTA's labor and environmental side agreements have proven totally ineffective. Under the terms of the labor side agreement, even when workers have proven their case, the remedies have been inconsequential and the abuses have continued.

For example, the U.S. National Administrative Office found that Sony Corporation had denied its workers in Nuevo Laredo, the right to form a union and that the Mexican Government had "persistently failed to enforce its own laws in this area." The remedy imposed was for the Labor Ministers of the United States and Mexico to hold a consultation with each other.

The workers fired for attempting to organize an independent union have not been rehired. Sony continues its abusive anti-labor practices, and neither the Government of Mexico nor the company have been assessed any monetary fines.

The same is true with Sprint. The side agreement approach has simply not worked. In fact, the side agreement approach was not designed to work. The United States and Mexican officials in charge of negotiating the side agreement are on record as saying that it is extremely unlikely that sanctions would ever be applied. We have not heard similar boasts with regard to NAFTA's provisions on intellectual property rights or employer's rights.

All in all, it should be clear that NAFTA fulfilled virtually none of the promises made on its behalf when viewed from a worker's eyes and worker's life. It was to lead to a U.S. trade surplus with Mexico, thereby creating hundreds of thousands of U.S. jobs. The reverse has occurred.

It was to make Mexico rich, and a rich Mexico was easily to solve all its problems with regard to environment, drugs, democracy and labor rights.

May I continue, Mr. Chairman?

The CHAIRMAN. Be as brief as possible, but, please, proceed.

Mr. TRUMKA. Thank you, sir.

Instead, Mexico suffered a devastating economic crisis and all of the above problems have worsened.

We must drastically rethink the trade and investment rules we need as we approach the 21st century. We need to protect core labor rights and environmental standards right in the body of any

new trade agreement, and this must be written into fast-track legislation.

That is, the preferential treatment allowed by fast track, a no-amendment vote and a streamlined time table should apply only to agreements that contain enforceable provisions on workers' rights and environmental standards.

It makes more sense to clarify this at the outset of negotiations than to spend years negotiating an agreement with dozen of other countries and then reject it because it lacks necessary protection for workers and the environment. If the United States is serious about incorporating workers' rights and environmental standards into trade agreements, then conditional fast-track legislation will help achieve that goal.

Limiting the applicability of fast-track provisions will strengthen our negotiating position, vis-a-vis our trading partners, especially in Latin America. We have learned from the experience of the past 20 years that simply listing workers' rights along with other negotiating objectives is insufficient.

The AFL–CIO is open to expanding trade through bilateral and multilateral agreements, so long as those agreements reflect the legitimate concerns of workers and communities and not just those of business. Past trade agreements have taken care of employers' rights. Future trade agreements should protect the people who do the work and the environment that we all share.

Mr. Chairman, we stand ready to work with you and members of the committee to structure legislation that will bring shared prosperity to all the workers in the world and in our hemisphere. But if you de-link labor rights and environmental standards from a trade agreement, they die, and we cannot allow them to die if all of us are going to share in the prosperity of trade.

Senator Baucus said most of his people in Montana believe that NAFTA has been bad for them. There is a reason for that. They have seen their wages driven down with the threat of plant closure and moving, they have seen plants actually close and move and they have seen nothing happen in response to any of those actions. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Trumka.

[The prepared statement of Richard L. Trumka appears in the appendix.]

Senator ROCKEFELLER. Mr. Chairman, can I just enter something into the record, simply in response to Ambassador Barshefsky who said that nothing took place in Brazil about privatized companies, and the *Metal Bulletin* of May 19, 1997 says the reverse. Of course, it is a newspaper article. It could be wrong.

But it says that the U.S. delegation did not resist precisely what I said, and that that could have a significant positive impact on Latin American steel exports to the United States. That obviously is important to me, and I just want to make this a part of the record.

The CHAIRMAN. Without objection. So ordered.

Mr. Van Putten.

STATEMENT OF MARK VAN PUTTEN, PRESIDENT, NATIONAL WILDLIFE FEDERATION

Mr. VAN PUTTEN. Thank you, Mr. Chairman, and members of the committee. I have submitted a written statement, which I ask be included in the record of this hearing.

I appreciate the opportunity to appear before you this morning on behalf of the National Wildlife Federation, America's largest environmental organization, with over four million members and supporters. And perhaps more important than the numbers is the quality of our membership and supporters.

They are mainstream and main street Americans who may not understand all of the intricacies of fast-track legislation, but they do understand that environmental health and economic well-being go hand in hand, whether on the local or the global level.

In addition to representing the National Wildlife Federation today, I am testifying on behalf of environmental groups that span the NAFTA divide, groups that supported NAFTA, such as the National Wildlife Federation, the National Audubon Society and the World Wildlife Fund, and organizations that opposed NAFTA, such as the Sierra Club, the Community Nutrition Institute and others.

But we are united today in one simple goal. We are united in the goal that any trade agreements that the United States enters will be engines for sustainable development.

And, as the term sustainable development has come to symbolize economic progress, social equity, as well as environmental health, we believe it is absolutely essential that the United States build on the bipartisan leadership it exhibited in the NAFTA debate in introducing these concerns as being directly trade related, and build on that leadership as we move forward, beginning with fast-track legislation and then with the resulting trade agreements.

I would note this effort to link trade and the environment has been the result of strong bipartisan leadership represented by Presidents Bush and Clinton and Vice President Gore's commitment in Marrakech to make environmental issues central to trade concerns.

In exhibiting this leadership, we must learn from the NAFTA experience, as has been observed earlier this morning. From our perspective, as one of the early supporters of NAFTA; that experience has not been entirely favorable. It has not fulfilled our hopes, and we must learn from that experience.

We believe that the Border Environment Commission's work has proceeded at a slow pace and has not lived up to its promise, and we believe that NAFTA's innovative principle of good laws well enforced has not yet been accepted.

But for us the issue today is not whether or not environmental concerns ought to be reflected in fast-track legislation, but how best to do that.

We believe the United States, with the leadership of this committee, should move forward and not backward in building on the NAFTA experience and provide for further integration of environmental concerns with trade issues.

We have made four specific recommendations in this regard, which have been previously provided to the administration and I submit them for the committee's consideration. First, there ought

to be a general environmental negotiating objective, placing environmental priorities on par with other trade negotiating objectives.

I would note that the current objectives have not been updated since the Earth Summit and any FTAA negotiations should reflect this renewed appreciation of what sustainable development means.

Second, we believe the President's authorization should list specific environmental trade and investment negotiating objectives, and we have some specific suggestions in that regard in my written testimony.

Third, we believe that an essential element of responsible trade negotiations is creating legally binding environmental assessment processes to assure adequate public disclosure and public involvement in decisionmaking about trade agreements.

And fourth, we suggest a broader involvement of the Congress in consideration of the results of these negotiations to include congressional committees with jurisdiction over environmental matters in reviewing the resulting agreements.

As I noted at the beginning of my testimony, Mr. Chairman, the National Wildlife Federation has supported fast-track process in the past. We supported NAFTA. For the 14 years prior to assuming the leadership of NWF, I was one of our regional directors, and I can tell you we put tremendous resources into helping with the passage of NAFTA.

We think it is essential that we build on and not turn back from that experience and deal effectively with the trade related environmental concerns necessary to advance the goal of long-term sustainable development. Thank you very much.

The CHAIRMAN. Thank you, Mr. Van Putten.

[The prepared statement of Mark Van Putten appears in the appendix.]

Mr. Bergsten, you have stated in your testimony that workers and export industries enjoy a wage premium that is significantly higher than other jobs, that free trade is beneficial to the economy as a whole. On the other hand, Mr. Trumka, of organized labor, argues that free trade depresses wages and leads to job loss. How do we reconcile these two points of view?

Mr. BERGSTEN. As I pointed out in my oral statement very briefly, there are clearly individuals who lose from the process of economic change, whether it is driven by technology, by changes in demand for different educational levels or by trade.

We know, from many studies that have been done, that trade is a minor share of that total picture, but it certainly is true that some individuals do lose jobs or have their wages depressed by trade. So there is no quarrel on that.

The questions are twofold. First, what is the net effect, and second, what is the right policy response. In terms of the net effect, there is a big raging debate among economists and people of all strides. There has been enormous amount of study of the extent to which trade may have been responsible for the past increase in the gap between high wage and low wage workers.

The conventional wisdom coming out of those studies, the majority view, is that something like 10 to 20 percent of the increased gap over the last 20 years is due to international factors, trade and migration.

Now, the gap that we are talking about is an increase of about 18 percentage points between the average wage of the highest group and the lowest group, and it is 10 to 20 percent of that increased gap which may be attributable to trade.

Now, to a lot of people that is a lot. To a lot of people that is a small amount. I regard it as demonstrating that on the whole trade has helped, not hurt the outcome. But I also regard it as saying that there are individuals that need to be dealt with. That leads to the second question, which is what is the right policy.

Even those who conclude that trade has had a negative impact on wage distribution in the past, almost to a man or woman, do not call for a reversal of the trade policies. They note that going back to trade restrictions would actually hurt poor people, not help them.

I give an example from one study we did at the institute. We studied the impact of the import quotas on textiles and apparel, and one result of that study was to show that the lowest 20 percent of the American population actually took a hit to the tune of 5 percent of their total income because of the higher prices for clothing caused by the import quotas.

In short, putting on more quotas would not help them. Indeed, liberalization, as now has been agreed, will help them.

The broader point is that the way to help everybody benefit from and not lose from globalization is to enable them and empower them to take advantage of it. That means upgrading skills, improving education levels, providing transitional help through the social safety net because there will inevitably be dislocation difficulties.

And so in the study we did, has globalization gone too far? As I said, the answer was no, if we do the right things domestically to enable our people to participate and enable our people to handle the transition.

A final point. I want to underline something I said in my oral remarks.

Even if you were persuaded that trade in the past had been a bad thing for the economy because it had hurt lower income or other groups, I do not see how you could argue that future trade liberalization should therefore be avoided.

The reason is, as I indicated, we have eliminated virtually all of our barriers. Our average tariff is less than 3 percent. When the Uruguay Round liberalizations are phased in, you will have no more quotas on anything; textiles, apparel, agriculture products, anything.

So we have gotten rid of our import barriers, rightly or wrongly. But unless one wants to reverse that past history, future liberalization, I think, cannot be viewed, in any plausible sense, as having any significant adverse effect, even on the lowest income, least trained American workers.

The CHAIRMAN. Mr. Burnham, how has the lack of fast track really hurt American business?

Mr. BURNHAM. A very good question.

The CHAIRMAN. Could I ask you a second part of that question? If we are going to proceed with fast track, what should be U.S. priorities?

Mr. BURNHAM. The key issue for fast track is it is very difficult to measure static and dynamics, as it is in most policy issues that we have to deal with or that you have to deal with from time to time.

What we can say is that where trade has been expanded in any particular area globally, it has expanded and been positive for the U.S. economy.

As I cited in our own particular case within Abbott, we count on more than half of our growth to come from markets outside the United States. In order to continue to facilitate that, we will need to have open, free fair trade with markets outside the United States. If not, we will be constrained in ways for both employment, and for, as I mentioned during my formal comments, the ability to invest in new technology.

The U.S. market cannot afford to support the amount of technological investment that will be required by industry if markets outside the United States are closed to it. So we need it for advancing the standard of living within the United States, as well as for the ability to continue to create jobs and have growth.

So my view would be it is difficult to measure the effect on American business of the lack of fast-track authority—how it has impacted us as either a company or as industry in general. But long term, if we do not continue to foster the kinds of arrangements that would available to us under fast track, we will not be able to sustain the kind of growth rates that we have seen historically or will require in the future to be able to maintain the living standards that we are accustomed to as an economy.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. First, what a fine panel we have here. I think we have learned a lot from you and learned a lot of things that were new, and we will try to pursue them.

I would like to make a general statement and then ask for specific comments, perhaps particularly from Mr. Trumka, which is to say we are talking about the relationship between engaging environmental issues and labor issues in trade agreements. And it seems to me it may be useful to keep in mind that we have been doing this for a century.

The McKinley Tariff of 1890 prohibited the import of goods made by convict labor. In 1916, the Migratory Bird Treaty negotiated between the United States and the United Kingdom—but actually, it was Canada—dealt with migratory birds flying down from Canada and back and how they were to be treated.

And then, with regard to labor, in 1919, here in Washington, the first meeting took place of the International Labor Organization. It was the first meeting of any League of Nations organization, and the man who made it possible was the then-Assistant Secretary of Navy, Franklin Roosevelt, who cleared out the temporary buildings on the mall so that the ILO would have a place for its secretariat. The conference was held at the Pan American Union.

The International Labor Organization charter was drafted by a commission headed by Samuel Gompers of the AFL–CIO. And, when President Roosevelt became President, the first thing he did almost was to move to join the ILO. In 1934, the year the Recip-

rocal Trade Agreements began, we began a move towards international labor standards.

International labor treaties deal with the problems of labor standards as a source of competitive advantage or disadvantage. The proposition was that if you had a 14-hour day in the mines, if you cut it back, by law, to 10 hours, then the coal would come in from countries that still had 14 hours.

And so, if you all agreed to do it together, you would not have that competitive consequence in trade. Trade has always been the issue. Trade was the issue.

Rather than try to get the World Trade Organization—which, incidentally, occupies the original building of the International Labor Organization in Geneva—instead of getting them involved in what they have little experience in, should we not get the ILO and the international labor treaties, which we have begun to ratify with some regularity, get them on a parallel track that is obviously related.

Doesn't that make some sense? We know the ILO. It has been there since 1919. We have been there since 1934. You have probably been a delegate, Mr. Trumka.

Mr. TRUMKA. Is that a question?

Senator MOYNIHAN. Yes.

Mr. TRUMKA. Yes. I have been a delegate.

Senator MOYNIHAN. There. You see. I did not know that.

Mr. TRUMKA. It is almost laughable that we would take the lead on the ILO. We are the only country that has ratified only 6 out of 172 ILO conventions. So we are not moral leaders with the ILO.

And I agree with Senator Grassley, that we should show the will to lead; that we have to show the moral authority, and we have to show that American leadership does make a difference, and it has to make a difference when it comes to workers' rights. Workers' rights should be just as important when we are dealing with trade as intellectual property rights for a video game.

Everybody knows that if, in fact, you de-link workers' rights and environmental rights from a trade agreement they die. You are right. For 100 years we have been talking about making workers' rights part of trade agreements, and they always get shuffled aside at the last minute.

What we are suggesting is to make them necessary conditions for fast-track authority. We will show that American leadership can make a difference in raising workers' rights around the world, rather than let the comparative exploitability of workers be the variable that decides the pattern of trade and investment.

The AFL–CIO, contrary to some of the statements that were made earlier, has always been in favor of trade. But as currently constituted, U.S. trade policy does not work for average Americans or for people in Mexico.

What we want to do is make sure that we the variable that decides where trade goes in the world, that we get a fair shake and that our rights, workers' rights are protected. Whether you are a union worker or a non-union worker, NAFTA has helped drive your wages down by enhancing the threat of employers moving away and, in fact, actually moving away.

That is what we take issue with. Not the fact of trade. We would love to see trade. But we think that workers' rights should be at least on an equal par with intellectual property or employer's rights, and, to date, they have not been.

Senator MOYNIHAN. I guess the answer to my question is no.

Well, keep it in mind, and keep in mind that we have been ratifying some rather serious and substantive labor conventions in the 1980's. Four important ones. And keep in mind that Pope John Paul is in Poland right now, and he would not be there if it had not been for the international labor conventions that required freedom of association for Solidarity.

There are consequences in the world, and do not disparage something that is part of your legacy.

Mr. TRUMKA. I have not, sir.

Senator MOYNIHAN. Mr. Gompers is watching you.

Mr. TRUMKA. I would advocate that the United States ratify every one of those conventions; that you ratify the right to associate freely. We are one of the few countries in the world that has not ratified that convention.

Senator MOYNIHAN. Think about it. I think we ought. Thank you, Mr. Chairman.

Mr. VAN PUTTEN. Senator, if I could just comment very briefly. I think your recitation of some of the history of environmental agreements is accurate. The act of leadership that we saw in NAFTA, and the reason why we so aggressively supported it, is that it represented a conversion and a realization of the need to address those trade-related environmental issues in the trade context. It is precisely that convergence and that leadership that we are urging the United States to take again through this legislation.

Senator MOYNIHAN. Thank you, sir.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I do not have a statement for you, Mr. Van Putten, but you were speaking, in your opening comment, about disappointment that the environmental provisions of NAFTA and the tri-national panels have not worked to your—or I guess somewhat disappointed in the way they have worked out.

For that aspect of NAFTA, or any other aspect of NAFTA, we have to remember that there is a 10-year phase-in of NAFTA. Now, I know that the 10-year phase-in does not apply to environmental issues, but there is a certain new institution that is pretty unique, the tri-national panels, that it does take it a while to get operative and to show up.

So I think there needs to be some patience with it, like there is patience with the 10-year phase-in of NAFTA before we fully know its impact.

I would like to ask a question first of Mr. Burnham. We have been 3 or 4 years now without fast track. Has the United States sacrificed, in terms of prestige and economic opportunity, by not having it in place? And, if you can quantify that in any way, I would appreciate it, particularly from the economic point of view.

Mr. BURNHAM. I think the answer to the question is yes. There has been opportunity lost to the extent that we have been precluded from moving forward on trade agreements. The Ambassador

was talking about some of the agreements that might have moved forward.

In terms of trying to quantify the economics of it, I think it would be very difficult to quantify precisely the numbers that would be involved in lack of economic progress in the United States because of not having fast-track authority.

When there has been an opening of markets without U.S. participation, you can cite in any individual company's case, as was cited in the case of the Northern Telecom contract, for example, with Chile, where U.S. industry has possible lost contracts.

But I do not think there is a quantification that says here is all of the lost business that the United States has suffered as a result of not having trade arrangements in any part of the world.

It is absolutely clear, on the other hand, when you look at markets where such arrangements have been in place that growth has taken place and jobs have been created.

So the best way to make the case for fast track, it seems to me, is to focus on the benefits that have occurred to the U.S. economy from actual trade arrangements, rather than on the loss of business that we may have suffered or the economy may have suffered as a result of the lack of moving forward on fast track. That would be very hypothetical.

Mr. BERGSTEN. I would like to add two examples, which are qualitative, not quantitative, but maybe still important.

The whole idea of the Miami Summit of the Americas in December 1994 was to pave the way for a free trade area of the Americas, to open up free trade within this hemisphere to give us access to some of the most rapidly growing markets in the world.

One of the results of that was to galvanize the South American countries to start forming or accelerating their formation of the mercosul, the southern common market to a Customs union in order to strengthen their position to negotiate with the free trade areas of the Americas.

But, in the ensuing period, we have not been able to proceed because we had no fast-track authority. The result is a significant possible change in the dynamic of the mercosul.

It is not secret that Brazil, for a century, has wanted to become the leader of South America; rally the rest of that continent around themselves, sometimes in opposition to the United States.

The mercosul is proceeding at full speed. It may proceed at such speed that the industries behind that protected customs union decide they like that protection wall, leave all interests in negotiating a reduction of barriers with us, and therefore, permanently provide discriminatory treatment against the United States.

Ambassador Barshefsky mentioned the loss of U.S. computer sales to both Argentina and Brazil. It would be tragic if that became perpetuated and circulated to other industries, which it easily could.

When Ambassador Barshefsky went to Belo Horizonte to that meeting only a month ago to try to proceed with the free trade areas of the Americas, some of her efforts to accelerate that process—acceptance of U.S. ideas for how to accelerate that process—were rejected on the simple grounds that you, Madam Ambassador, do not have any negotiating authority.

You are not in a position to talk. How can we deal with you? We, meanwhile, are going about our own business. That is a very serious one.

Second, and even bigger market, the Asia Pacific. I happened to have worked with the APEC countries, Mr. Chairman, of the so-called eminent persons group that helped lay out the ideas for moving to free trade in the region.

The chosen vehicle to do that is something called the individual action plans where each country in the APEC is supposed to lay out its plan for moving to free trade and investment in the region by the year 2010. That process began last year. It is supposed to continue this year.

To put it bluntly, nothing has happened. And one important reason nothing has happened is because the United States was not in a position to do anything. Some of the other countries conveniently hid behind our skirts in not being able to do anything to justify inaction on their own parts.

That includes Japan, China, Korea; huge markets with high barriers where we have every interest in getting them to liberalize. So, in these intangible, but very important ways, we are being hurt, our interests are being jeopardized and that will worsen if we do not get back in the game quickly.

Senator GRASSLEY. I will not ask anymore questions, but I would like to make two points, if I could, just in conclusion.

No. 1, following on what Fred just said, when we have parliamentarians come to our office, when we have Ambassadors come to our office or representatives of foreign nations come to our office, and they say, well, what about fast track, you do not have fast track, it is just simply evidence to these leaders—do we really want to lead in foreign trade. Or, I mean, in liberalization of trade.

And the second and unrelated point, but very specific in regard to losses of jobs under NAFTA, I think it was stated 420,000 American jobs have been lost. One hundred and sixty thousand of those people have sought assistance under the trade Adjustment Assistance Act for NAFTA.

Now, if there was really 420,000 jobs lost, it seems to me like we ought to have 420,000 people qualify for trade adjustment assistance because you do not have to prove that the job was lost because of NAFTA. You only have to prove that the job went to Mexico.

If we know that there is 420,000 jobs lost, we ought to know that they went to Mexico or else they are not related to NAFTA whatsoever. Thank you.

The CHAIRMAN. Well, gentlemen, thank you very much for what I think has been a very helpful panel. We look forward to continued consultation with you. As I indicated earlier, this is merely the kick off of what I hope will correct a major omission in government policy.

Thank you very much for taking the time. Yes, sir?

Mr. VAN PUTTEN. Mr. Chairman, would it be permissible to submit some written responses to things that were said, the point that Senator Grassley just made, the answer to those and other questions that have been raised by people on the panel and the Senators?

The CHAIRMAN. We will be happy to keep the record open, if you will submit it by tomorrow, please. That is the rule.

Mr. VAN PUTTEN. Thank you.

The CHAIRMAN. Thank you very much.

[Whereupon, at 12:27 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. CHARLENE BARSHEFSKY

Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear before you today.

TRADE AND DOMESTIC PROSPERITY

Trade, as you know, has a profound effect on the lives of millions of Americans. It is both a pocketbook issue and a strategic issue. Never before have the benefits of trade for Americans been so deep, so diverse, so widespread, and so sustainable. More than 11 million Americans now work in jobs supported by exports; these jobs pay 13%-16% above the national average wage. Those jobs represent the leading edge of the current economic expansion, now in its sixth year, and they cover the spectrum from agriculture to high tech, small businesses to multinationals, blue collar to white collar, and small-town Main Street to Wall Street. Exports have increased dramatically across the country, with 47 of 50 states registering significant export growth over the last 4 years. Exports from California are up 45%, Michigan 68%, Illinois 64%, Ohio, 42%, Texas 40%, Nebraska 54%, North Dakota 76%, Montana 52%. Exports from Florida, Rhode Island, Louisiana, and West Virginia have increased more than 30%. States from New York to Utah also have posted double digit increases.

Export-driven growth is one of the reasons that the American economy today is strong and sound. Over the past four years, we have created nearly 12 million new jobs. Unemployment is at its lowest level in 24 years standing at 4.9% in April. Inflation is down to a low of 2.5% for the period ended April 1997. At the same time, family incomes are up significantly; home ownership has hit a 15-year high; growth of our industrial capacity is at its highest level since 1970; business investment has been stronger than at any time since the 1960s. Our current economic expansion has been investment-led, which establishes a firm footing for an even greater climb.

The best way to continue this prosperity is to give our workers and businesses a full and fair chance to tap into the global economy. If the momentum of the American economy begins to stall, the world economy can help it recharge. America's growth in trade has been faster than its overall economic growth for years. Our exports to the rest of the world increased by more than $49 billion last year alone; an increase of more than 6 percent. Exports are at record levels across the board. Since 1992, manufactured exports increased 42%; high-tech exports were up 45%; agricultural exports were up 40%, and services exports increased by 26%.

Since the beginning of this Administration, exports have accounted for fully one-fourth of the increase in our GDP. Today, exports account for 30% of our GDP, compared to 13% in 1970. Increases in GDP combined with a 70% reduction in the federal budget deficit over the last four years, and the balanced budget agreement recently announced, lay the foundation for continued economic expansion, but only if we continue to use all the tools necessary to compete in and shape the global economy.

While exports are at record levels, our competitors are determined and sophisticated. They too appreciate the importance of export opportunities to their economic prosperity and security. They continue to seek out new export markets and forge alliances with a view to defining the global landscape.

TRADE AND ECONOMIC SECURITY

Since the end of the Cold War, trade and economic development have emerged as fundamental strategic issues. The strength and prosperity of the United States depends increasingly on our ability to create and maintain trade relationships that are beneficial to us and to our trading partners. It is therefore critical that we continue to identify those markets that present growth opportunities, ensure access to those markets, and do so in such a way as to create enduring relationships that foster not only short-term economic prosperity, but also our long-term economic security. Doing so requires continued American leadership.

Ninety six percent of the world's consumers live outside our boundaries, and 85 percent of them reside in developing countries. These are the large growth regions. Last year, the developing world imported over $1 trillion in manufactured goods from the industrialized countries, and that is the tip of the iceberg. Over the next decade, the global economy is expected to grow at two times the rate of the U.S. economy; Asian and Latin American growth is projected to be 3 times that of the U.S. We must work to create fair access to the world's expanding markets.

For 50 years, the United States has led the world in opening global markets. Our persistent leadership has helped bring global tariffs down from an average of 40 percent at the end of World War II to about 5 percent today, leading to a 90-fold increase in world trade. Our trade policy has been driven by two factors: our emphasis on building prosperity at home through the expansion of our export and trade opportunities; and ensuring that we are strategically well positioned in the world to advance our economic and security interests through a growing number of enduring trade arrangements.

We have embraced the unique and difficult responsibility of making the world a more secure place by ensuring the peace and providing a foundation for economic growth. We asked more of our people during World War I, World War II, and the Cold War than any other nation could have possibly delivered. That special responsibility for global security continues today quite visibly. We see it in the dedication of our Armed Forces within and among nations such as Bosnia, Haiti, and Korea; in their regional roles, throughout Europe, the Middle East, and the Asia-Pacific; and literally around the world, in their vigilance against terrorism and weapons of mass destruction.

Our efforts have strengthened the foundation for peace and prosperity. With that foundation strong, we must move forward and lead with policies that achieve economic security. We need to be positioned to play a catalytic role in all key regions of the world, utilizing the full range of our trade and other tools to maintain the centrality of America's role in world trade.

THE IMPORTANCE OF FAST TRACK AUTHORITY

Just as we are the world's military superpower and the world's strongest democracy, we are the world's most competitive and dynamic economy.

To seize the opportunities in the global economy and to fully meet the competition, the President will seek a new grant of authority to implement global, sectoral and regional trade agreements—fast track authority. In consultation with the Senate and House leadership, we have determined that proceeding with fast track legislation in September provides the best opportunity for proper consideration and passage of this legislation by year end. Between now and September, we will work with you towards developing legislation that will allow us to continue our important initiatives.

There is no substitute for our ability to implement comprehensive trade agreements. The absence of fast track authority is the single most important factor limiting our capacity at this time to open markets and expand American exports and trade opportunities in the new global economy. Its absence also undermines America's leadership abroad.

Fast track allows the U.S. to set the pace and timing of many of our most important trade negotiations. More importantly, such authority is a prerequisite to U.S. negotiating credibility and success on major trade fronts. It tells other countries that the Administration and the Congress stand together in negotiating the best possible agreements for the United States. In light of the extraordinary opportunities before us, and the economic security of the nation, retreat is not an option.

IMPROVING AMERICAN TRADE OPPORTUNITIES GLOBALLY, IN SECTORS AND REGIONALLY

Our trade policy has created enormous economic opportunities thus far, but to sustain progress we must remain aggressive and focused. We must also be mindful of the danger posed by continued inaction and the extraordinary potential held by

trade agreements that, in the absence of fast track, may be just beyond our reach. Let me review for you the scope and breadth of the trade agenda ahead of us.

MULTILATERAL EFFORTS

Within the next three and one-half years, major WTO negotiations will occur in a number of areas where the United States is a top global competitor; of particular note, agriculture, services, and the rules for intellectual property rights. This year we have also resumed WTO negotiations on financial services, a sector where U.S. companies excel. These are the very goods and services that the fastest growing economies need most, and in which America does best. American workers, farmers, engineers and manufacturers will increasingly be just within reach of new markets that are measured in billions of dollars, but they will never get a secure hand on them if the United States cannot negotiate from a position of unequivocal strength, as it should.

Negotiations to further open the $526 billion global agriculture market are to be initiated in 1999. 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. 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.

Services negotiations will expand this $1.2 trillion global market—where U.S. firms exported more than $220 billion in 1996 with a surplus of $73 billion. The trade related intellectual property rights (TRIPs! agreement which protects, for example, the interests of fast-growing U.S. copyright industries exporting over $400 billion a year, is to be reviewed as well. We must do everything possible to expand opportunities for such vibrant industries.

In the financial services negotiations, we are committed to achieving a meaningful and comprehensive agreement by the end of the year. Earlier efforts to reach agreement were not successful due to inadequate offers by key countries. To successfully conclude these negotiations this year, our trading partners must significantly improve their commitments based on the GATS principles of market access, national treatment and MEN. With the precedent that has now been established in the telecommunications agreement, unless we see significantly improved offers in the financial services talks, we will continue our MEN exception.

The work this year to improve and expand the coverage of WTO rules on government procurement can facilitate U.S. efforts to improve our access to the lucrative infrastructure projects now planned or under way in the rapidly growing regions of the world. We estimate that Asia alone will provide opportunities for up to $1 trillion in business for such projects over the next decade.

The "built-in agenda" from the Uruguay Round provides further critical opportunities to open foreign markets. In a world trading environment increasingly less characterized by traditional tariff barriers, the built-in agenda is in many respects aimed at clearing away the impediments left by non-tariff barriers—be they deliberate or the unintended consequence of bureaucracy and inefficiency.

The U.S. has pursued a consistent strategy to ensure that the WTO is a forum for continuous negotiation and liberalization. That strategy and U.S. leadership resulted in the commitment to review and opportunity to improve agreements covering such areas as the rules governing technical barriers to trade, sanitary and phytosanitary measures, customs valuation and pre-shipment inspection and import licensing procedures. Continued leadership is essential if we are to dismantle barriers in these and other areas as we confront them, rather than waiting for a "new Round" as some of our trading partners would prefer.

We also have a full agenda of accession negotiations regarding the WTO. As always, we are setting high standards for accession in terms of market access and adherence to the rule of law. Accessions offer an opportunity to help ground new economies in the rules-based trading system and promote sustainable development including environmental protection. 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 insure that China's accession to the WTO will occur only on commercial, rather than political, grounds. The pace of China's accession negotiations depends very much on Beijing's willingness to improve its offers.

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 rule of law. Discussions so far on Russia's accession, while still at an early stage, have been quite positive and we look for more

progress. We also are interested in the prospects for the accession of many of the former Soviet Republics, the Baltic States, Taiwan, Saudi Arabia and others.

Within the Organization for Economic Cooperation and Development, we are in active negotiations over the Multilateral Agreement on Investment to ensure equitable and fair treatment for U.S. investors. In both this forum and the WTO, we are also actively engaged in efforts to address bribery and corruption, competition policy and transparency in government procurement.

Fast track is essential if we are going to capitalize on the additional market access opportunities presented by the full range of WTO-related negotiations, and OECD initiatives. Before the close of the Uruguay Round, the United States insisted on commitments for ongoing market access efforts. The WTO marked the beginning, not end, of a process of achieving greater market openness for U.S. companies. Without fast track authority, serious preparatory work before the scheduled negotiations will be impaired, as will the U.S.' ability to contribute meaningfully to actual negotiations.

SECTORAL EFFORTS

Sectoral initiatives have succeeded to ensure that U.S. industries that are global competitive leaders will enjoy export success commensurate with their competitive position. Such initiatives are designed so that all those that compete in a particular sector compete on the same terms. They can revive and maintain the momentum of Made liberalization in cases where more comprehensive efforts might falter.

Several recent agreements demonstrate the opportunities such market access initiatives provide for American companies, workers and consumers. We should build on these recent successes, and the commitments we have now obtained from key trading partners to maintain the momentum. Fast track authority is essential if we are to capitalize on these opportunities now.

Our most recent successes are the Information Technology Agreement (ITA) and the Agreement on Basic Telecommunications—two far-reaching multilateral agreements reducing trade barriers around the world for our high technology industries.

The information technology market is a $500 billion market, in which the United States is the largest single exporter. The ITA covers more than 93% of global Made in information technology products and includes 42 counkies. Under the agreement, global tariffs will be reduced to zero on all goods associated with the information superhighway—such products as semiconductors, computers, telecommunications equipment and software. These industries support 1.5 million manufacturing jobs and 1.8 million related service jobs. This agreement amounts to a global tax cut of $5 billion annually.

The telecommunications agreement ensures that U.S. companies can compete against and invest in all existing carriers. Before this agreement, only 17 percent of the top 20 telecom markets were open to U.S. companies; now they have access to nearly 100 percent of these markets. Our international long distance industry will gain access to serve markets accounting for over 95% of global revenue in Europe, Asia, Latin American and Africa, gaining the right to use their own facilities and to work directly with their customers everywhere their customers go. The agreement also offers important opportunities for American investors and entrepreneurs who will be able to acquire, establish or hold a significant stake in telecom companies around world. These opportunities span all sectors.

Telecommunications is a $600 billion industry; under the agreement revenues are expected to double or even triple over the next ten years. U.S. companies are the most competitive telecommunications providers in the world; they are in the best position to compete and win under this agreement. We expect the agreement will lead to the creation of approximately one million U.S. jobs in the next ten years—not only in communications companies but also in high-tech equipment makers and in a range of industries such as software, information services, and electronic publishing that benefit from telecom development.

This agreement will also save billions of dollars for American consumers. We estimate that the average cost of international phone calls will drop by 80%—from $1 per minute on average to 20 cents per minute over the next several years. Every American with relatives or friends overseas and every business that operates internationally will benefit from this agreement.

The Information Technology Agreement has set a new standard such that the 18 nations of the Asia-Pacific Economic Cooperation forum (APEC) agreed last month in Montreal to explore other sectors for similar market opening treatment. The APEC Ministers also agreed to follow up the ITA by pursuing an "ITA II" Bade agreement, which would go beyond tariffs to encompass non-tariff trade barriers, increased product scope and broadened country participation. Our Quad partners have

concurred in the goal of negotiating an ITA II. Let me stress here that the original ITA—already a model agreement affecting hundreds of billions of dollars in goods and services worldwide—would have been impossible without residual tariff cutting fast track authority from the Uruguay Round.

With respect to the non-IT sectors, the APEC Ministers established an expedited process for launching new market-opening initiatives. Specifically, the APEC countries will each propose sectors for market access initiatives that will be developed by trade officials this summer and presented by the Trade Ministers for Leaders' consideration in November. These initiatives may encompass goods as well as services, and cover tariff end non-tariff measures.

As we move forward to identify specific initiatives, we are looking broadly at sectors where the U.S. can capitalize further on its global competitive advantage if market access barriers are reduced. We are working closely with U.S. industry to identify such sectors. Among those that may be included for such market access initiatives are environmental products and services, health care products and services and global electronic commerce.

Fast track authority is essential to ensuring that the United States again plays the critical role in opening markets on a sectoral basis as it did in the ITA and telecom agreements. While we retain residual tariff cutting authority in certain areas left over from the Uruguay Round, immediate new opportunities of the type just noted will be lost without a new grant of authority.

REGIONAL EFFORTS

Latin America and the Caribbean were the fastest growing markets for U.S. goods exports in 1996; our exports grew by more than 13 percent, reaching $109 billion. That growth rate is more than twice the rate of U.S. exports to the rest of the world. If these trends continue, Latin America will exceed the EU as a destination for U.S. exports by the middle of next year, and we have only begun to see the potential of this huge emerging economic region. Its potential as a source of growth for U.S. exports can be seen in the case of Chile: a country of less than 14 million people, but to which we exported more last year than we did to nations such as India, Indonesia, or Russia.

Latin America is the second fastest growing region in the world, having transformed itself over the last decade in a manner unnoticed by some, but with profound positive implications for the United States. It is already the developing region with the highest per capita consumption of U.S. imports of any region in the world, and it has only begun to generate its full capacity to absorb imports. The Administration recognizes the enormous opportunity to build on this historic transformation. Mexico, for example, is already on the verge of replacing Japan as our second largest export market; in fact, in October of last year, Mexico did exceed Japan in purchases of U.S. exports. This, in spite of the worst economic downturn in modern Mexican history during late 1994 and most of 1995.

At the recent ministerial meeting of the Free Trade Area of the Americas in Belo Horizonte, Brazil, the Trade Ministers of the participating nations agreed that FTAA negotiations should be launched at the Santiago Summit of the Americas in March 1998. To this end, the Trade Ministers established a formal Preparatory Committee which will take all the necessary steps to prepare for comprehensive negotiations early next year addressing a full range of issues from tariff reductions to agriculture to structural issues such as IPR and government procurement.

A comprehensive Bade agreement with Chile is our first step in the FTAA process. It will be viewed as a bellwether for our plans in the region. Chile is symbolic of both the opportunities in the region and the region's rising strategic significance to our longer-term economic interests. U.S. exports to Chile are up 148 percent since 1990. Chile is a leading reformer in Latin America. Without fast track, the United States will not be positioned to conclude an agreement with Chile, and the longer our promise remains unfulfilled, the more likely that Chile, as many countries in our hemisphere will form alternative alliances in place of the U.S.

The Asia Pacific region, likewise, is a region of rapid progress and vital interests. It is enormous in its scope and has major implications for the future of the United States. It contains the fastest growing economies in the world, largely emerging economies with a total population nearing 3 billion people. Within the Asia Pacific Economic Cooperation (APEC) forum, we estimate that reaching the goal of open markets would increase U.S. goods exports alone by 13 percent annually, or almost $80 billion a year.

As a step towards the ultimate APEC goal of free and open trade, market-opening agreements with key economies and key sectors of the Asian Pacific rim would provide U.S. exporters with a strategic advantage over U.S. competitors in the region.

It would also provide the United States with a strong economic anchor in Asia, a key step in further cementing U.S.-Asian ties and U.S. opportunity.

There may be no aspect of our trade agenda in which the nexus between economic prosperity and economic security is as profound as it is in our regional agenda. We have the unprecedented opportunity to build enduring economic relationships with the countries in our hemisphere, and in Asia, a region also of vital importance to us. Through Bade agreements, we have an opportunity also to enhance our strategic positioning in these critical regions. Globalization will occur with us or without us. U.S. objectives and interests demand action; fast Back will help ensure continued U.S. leadership.

DANGERS OF INACTION

With all we have accomplished in the past four years, the world has continued to change in ways that are critically important to understand. We must recognize the dangers of inaction. In every region of the world, but particularly Asia and Latin America, the two fastest growing regions of the world, our competitors are pursuing strategic trade policies and, in some cases, preferential trade arrangements that will open up markets for their exporters, their products, their workers, their farmers. In short, in this post Cold War global economy countries are creating new exclusive trade alliances to the potential detriment of U.S. prosperity and leadership.

More than 20 such agreements have been concluded without the United States since 1992 alone and the trend continues. Increasingly, the rules are being written without us. Unless we are in a leadership role, our vital economic interests may be compromised. We must maintain strong, consistent influence in these critical regions. Without that presence, nations will look elsewhere for their opportunities and long-term economic alliances. Examples already abound:

In South Asia, the seven members of the South Asian Association for Regional Cooperation (SARC)—India, Pakistan, Bangladesh, Nepal, Bhutan, Sri Lanka, and the Maldives—just announced that they were accelerating their target date for the creation of free trade area, setting a deadline of 2001 . SARC now represents only about 1 percent of world Bade, but it encompasses roughly 20 percent of the world's population. Indifference to its development can only harm our economic security.

The nations of the Andean Community have started meeting with member nations of CARICOM and the Central American Common Market to discuss negotiation of free trade agreements.

Canada, as you know, has already negotiated a trade pact with Chile and has started discussions with MERCOSUR.

The Presidents of Argentina and Brazil have both expressed an interest in a MERCOSUR-ASEAN free Bade agreement, a trade alliance that would incorporate more than 600 million people and two of the most important emerging markets in the world. We simply cannot underestimate the impact of these efforts on our global export competitiveness.

In addition:

- MERCOSUR (Argentina, Brazil, Paraguay, Uruguay) is a developing customs union with a GDP of over $1 Billion and ambitions to expand to all of South America. MERCOSUR is the largest economy in Latin America and has a population of 200 million. It has struck agreements with Chile and Bolivia, and is discussing agreements with a number of Andean countries (Colombia, Venezuela) as well as countries within the Caribbean Basin. The MERCOSUR ambition is in part driven by the decades old vision of a Latin American free trade area, but also by a clear strategic objective regarding commercial expansion and a sponger position in world affairs.
- The EU has begun a process aimed at reaching a free Bade agreement with MERCOSUR. I They have also concluded a framework agreement with Chile that is set up to lead to a free trade agreement.
- China has targeted Mexico, Argentina, Brazil, Chile and Venezuela as "strategic priorities" in Latin America. China wants to enhance commercial ties and ensure that key Latin countries are receptive to its broader global agenda as a rising power, both in the WTO and other fore. The Chinese leadership has undertaken an unprecedented number of trips to Latin America in the last two years, and Latin America is its second fastest growing export market.
- Japan has undertaken high level efforts throughout Asia and Latin America to enhance commercial ties through investment and financial initiatives. The Prime Minister of Japan recently visited Latin America seeking closer commercial ties and a greater Japanese commercial presence in all respects.
- ASEAN—the Southeast Asian free trade area—will include 400 million people and some of the fastest growing economies in the world. It is a region where

China, Japan, Korea and the EU are focusing competitive energies. As noted earlier, Argentina's President Menem recently suggested a MERCOSUR-ASEAN free trade area—an agreement that would encompass over 600 million people.

- Countries within this hemisphere are equally aggressive. Mexico wants to be the commercial hub between North and South America, and also serve as a venue in which to enter North, Central and South America from Asia and Europe. It is jointly pursuing a free trade area with Europe and is reaching out to Asia. President Zedillo and his Cabinet have undertaken numerous missions to Asia and have been well received. It has reached trade agreements with Colombia, Venezuela, and Costa Rica and is negotiating with Honduras, El Salvador and Nicaragua. It has initiated talks with MERCOSUR.
- Chile has a similar strategy. It has concluded agreements with MERCOSUR, Mexico, Colombia, Venezuela and Ecuador. It intends to start similar negotiations with Central America and has an eye toward agreements with Asia. Japan is its largest export market, but Chile sees itself as a bridge from MERCOSUR to Asia and back, and is positioning itself with its MERCOSUR neighbors for that purpose.
- In the Asia-Pacific region, competition comes from many sources, all of which have contributed to a declining share of U.S. exports to the region. Competition within Asia is the most intense. Japan has been ahead of the U.S. in East Asia in terms of corporate presence, and especially in the past decade, in terms of the amount of overseas development assistance (ODA) it is willing to spend to advance its commercial interests. In more recent years, Korean conglomerates have likewise pursued an aggressive strategy to both invest and attain market share in dynamic East Asian economies, ranging from textiles to steel to autos.

The consequences of these developments for American companies and workers are real, not theoretical. A recent example will suffice: In November 1996 Canada reached a comprehensive Made agreement with Chile that will eliminate Chile's 11% across-the-board tariff starting this year. Northern Telecom recently won a nearly $200 million telecommunications equipment contract over U.S. companies in part because a purchase from a U.S. producer meant an additional $20 million in costs (duties) relative to purchasing from Canada.

We cannot stand by idly. U.S. leadership is essential if we are not only to maintain, but enhance our competitive position. We must use every tool in our arsenal, supplemented by fast track authority, to ensure that the rules that emerge from this process of rapid economic integration, reflect our interests and our values.

THE DECISION TO COMPETE

We have an extremely rare opportunity. Never before have so many nations looked to a freer market and believed in it enough to let competition come right to their doorstep. This is a season of open minds on more open markets. Why—when the benefits of expanded trade are so clear and the costs of sidelining ourselves so great—should we retreat? We cannot afford to do so and we must not.

We should begin by recognizing that our economy is the strongest in the world; that expanded trade has played an important role in building that strength; and that no country in the world is better positioned to take advantage of the enormous opportunities presented by a growing global economy. In fact, we are at a unique moment and we need to seize it now. Our competitors cannot beat us, but we can lose if we put ourselves on the sidelines.

As we contemplate the next four years in trade, we face a very clear choice:

We can recognize that the American economy is the model for the world, and continue to open foreign markets and seize the initiative when it comes to international competition. We can recognize the extraordinary opportunities presented by the growing global economy, in which developing nations, which want and need the full range of our manufactured goods, services and agricultural products, are poised to fuel continued global growth.

At the same time, we would face up to problems as we identify them together: working to put in place education, Gaining adjustment policies needed to help those who are not benefitting from the new economy; advancing core labor standards and protecting the environment; being vigilant to the consequences and potential threat of forced technology transfers. But we would be starting from the proposition that we have been basically on the right track' and we should stay fully engaged, using all our tools, taking advantage of opportunities that present themselves as we did when we saw the chance to reach an ITA.

Or, we can convince ourselves, against the evidence, that we are on the wrong Back. We can choose our course guided by a picture of economic decline and dis-

investment that bears no resemblance to what is happening in our country. Our competitors would like nothing better than for us to sideline ourselves, debating NAFTA and our relationship with Mexico for years to come while they move ahead. It would be a serious, self-inflicted wound.

America is poised to seize great opportunities. Our competitors cannot beat us; we can only lose by removing ourselves. We can, in short, lose our momentum, abdicate our position of strength, either permit markets to stay closed, or let others seize the initiative from us and gain preferential treatment. The choice is that clear.

LABOR AND THE ENVIRONMENT

Similarly, we can no longer allow our disagreements over the relationship between Made, labor standards and environmental protection to prevent us from granting the President fast track authority. We simply have to forge a consensus of this subject which eluded us in 1994 and 1995. I have been consulting broadly with members of Congress, business, labor and environmental groups, and will continue to do so. I do not intend to put forward a specific formulation today, but wanted to share several thoughts in this area.

It is important to recognize that a commitment to the protection of core labor standards and their relationship to trade, is not new, nor is it unique to the United States. The international commitment to address this issue goes back as far as the Havana Charter, which was the effort to establish the International Trade Organization after World War II. We were gratified that at the WTO Ministerial in Singapore, the trading nations of the world acknowledged, for the first time in a Ministerial declaration, the importance of core labor standards to trade, although we fought for stronger steps. Advancing worker rights and labor standards is in our national interest and it is consistent with our deepest national values.

Making environmental and trade policy mutually supportive, although a somewhat newer public policy phenomenon on a global scale, similarly enjoys strong support in our country, and internationally. The 1992 Rio Sustainable Development Summit, the 1994 Summit of the Americas, and ongoing work in the WTO all reflect an international commitment to the importance of making these policy areas mutually supportive.

In my view, the challenge is how to maximize progress in three areas which are of major importance to us: expanded market access, advancing worker rights and core labor standards, and promoting environmental protection and sustainable development. We are committed to a strong strategy of pursuing our goals, and maintaining flexibility rather than pretending that one prescription would fit all countries or all cases. Based on my experience over these past four years, I think there is no substitute for brining a consensus at home behind a strategy to advance our objectives on core labor standards and environmental protection. I am also certain that we will not convince other nations to improve their labor standards or environmental protection by denying the President the ability to negotiate trade agreements with them. We will, however, cripple our own export performance and lose jobs at home.

CONCLUSION

Clearly, this should not be a matter of party or politics. Every President since President Ford has had fast track authority for key periods on a bipartisan basis. For over 60 years, in response to the lessons of the Smoot-Hawley tariffs, America has led the effort to open foreign markets and increase U.S. and global prosperity. We cannot take that role for granted

Rather, the Administration and the Congress must work together to seize the immense opportunities presented by the global economy. We must continue to play a central role in shaping that economy. Doing so is vital to our domestic prosperity, our longer term economic security and our broader strategic interests. I look forward to working with you on this trade agenda of the 21st century and the enactment of fast track legislation this year.

PREPARED STATEMENT OF C. FRED BERGSTEN[1]

The American economy can reap enormous benefits from new international trade initiatives that reduce foreign barriers to our exports. Implementation of such a strategy requires Congressional renewal of fast track negotiating authority, which is one of the most beneficial steps the Congress could take this year to help our economy. Provision of such authority is extremely urgent because our competitors around the world are taking advantage of the absence of American activity, because

opportunities for pursuing beneficial trade initiatives abound, and because other countries will not negotiate with us in the absence of fast track. I will briefly elaborate each of these three statements on the view that they should provide the focus for American trade policy in 1997 and because they make a powerful case for prompt Administration initiative and early Congressional action.

TRADE AND THE AMERICAN ECONOMY

The main problem facing the American economy is the slow growth of average living standards over the past generation. Our economy has created 50 million jobs over the past 27 years and we are essentially at "full employment." But the median family income remains virtually unchanged from the 1970s. The average real wage has been flat for almost twenty years. Our cardinal economic problem is to create better jobs with higher wages and benefits.

Trade provides an important part of the solution to that problem. Export jobs pay 10-15 percent more than the average wage. Productivity in export firms is 20 percent above the norm. Exporting firms expand their employment about 20 percent faster than others and are 10 percent less likely to fail. Small and medium-sized firms account for 70 percent of these results.[2]

The rapid export expansion of the past decade has come largely in high-wage manufacturing industries. Since 1992, a majority of our manufacturing workers have been employed in plants that export. The export surge has almost stopped the decline of unemployment in the manufacturing sector (see chart 1). A continuation of recent trade trends could restore net growth in manufacturing jobs within the next few years. It could even restore their previous (1979) peak in the first decades of the next century.

Increased globalization thus provides substantial benefits for American workers and the American economy. Indeed, the competitive pressures generated by globalization are an important element in our ability to maintain price stability and thus to push unemployment far below levels considered "safe" by most economists only a few years ago. Moreover, the increase in imports that comes with globalization is often extremely helpful to our poorest people; the long-standing quotas on apparel, for example, have been robbing the lowest quintile of our population of fully five percent of their total incomes.[3]

To be sure, we must undertake a series of domestic steps to empower our people to take full advantage of the opportunities provided by globalization.[4] The most important are better education for all Americans and continuous training for our work force.[5] In addition, we must provide an adequate safety net to cushion the transition for those whose lives are disrupted by rapid economic and technological change—which is accelerated, though not primarily caused, by globalization. But these efforts would be needed even if we had no trade, and globalization enables our society to exploit their benefits to the maximum possible extent. There is no reason to settle for more modest returns on our investment in education, training and the safety net when global integration offers such handsome benefits.

THE CRUCIAL IMPORTANCE OF TRADE NEGOTIATIONS

Even if we do everything right at home, such benefits are available only if we continue to succeed in breaking down barriers to our exports abroad. The United States now has an enormous opportunity to do so because we face a hugely asymmetrical international situation. On the one hand, we have already eliminated virtually all impediments to foreign access to our own market.[6] On the other hand, most other major economies—particularly the large and rapidly growing markets of Asia and Latin America—continue to impose substantial restrictions on our (and others') sales to them. "Reciprocal" liberalization in the future thus essentially means that other countries reduce their barriers to, or at least toward, our low level. The best way for the United States to achieve truly fair trade is thus to negotiate free trade with our most important trading partners.[7] The only way we can achieve a level playing field is to induce them to emulate our past liberalization.

This is the right time to make such an effort. The American economy is strong and vibrant. (From a domestic political standpoint, now is therefore the ideal time to address and pass new trade legislation.) Our chief competitors, in both Europe and Japan, are suffering from prolonged economic sluggishness and loss of self-confidence. It would be tragic if we failed to seize these opportunities to further improve America's global economic position and thus our domestic economy.

The Reagan, Bush and Clinton Administrations have pursued American interests effectively and courageously by negotiating an ascending series of liberalization arrangements. The initial free trade treaties were with Israel and Canada in the mid-

dle 1980s. Mexico was added via NAFTA in the early 1990s.[8] Global progress was made simultaneously in the Uruguay Round.

The greatest potential lies ahead, however. Building on President Bush's proposed Enterprise for the Americas Initiative, President Clinton agreed at Miami in December 1994 to create a Free Trade Area of the Americas (FTAA). In Indonesia a month earlier, he agreed at the second annual APEC summit to achieve "free and open trade and investment in the Asia Pacific region" by 2010 (for the advanced countries that account for about 90 percent of APEC trade, by 2020 for the rest). Building on another Bush initiative, the Administration agreed at the end of the Uruguay Round to pursue further global liberalization in agriculture, services and several other key sectors over the coming years in the World Trade Organization.[9]

Other countries are clearly ready to liberalize further and it would be irrational for the United States to fail to join them. The APEC trade ministers met in Montreal in April and, building on APEC's crucial role in achieving the Information Technology Agreement (ITA) last year, agreed to pursue an ITA II, an accord on financial services in the WTO by the end of 1997, and a series of new sectoral initiatives. New Zealand has accepted the Administration's invitation to pursue a bilateral free trade agreement with the United States—which could catalyze similar agreements throughout the region, perhaps starting with Australia and Singapore, and APEC-wide liberalization as a whole. Chile, the Central Americans and the Caribbean countries are anxious to engage in trade-liberalizing pacts with the United States.

Most importantly, the members of the World Trade Organization agreed to pursue a series of major new global negotiations in the concluding act of the Uruguay Round and reaffirmed that program at their initial Ministerial Conference in Singapore last December. This "built-in agenda" includes such items of central interest to the United States as agriculture, services, and investment and competition policy. The European Union's chief trade negotiator and a number of important countries are advocating the early launch of a new "Millennium Round" in the WTO to address the whole range of outstanding trade policy issues.

The Administration can pursue most of these initiatives only with the provision of fast track negotiating authority by the Congress. Without fast track, the United States will be unable to reach agreements with other countries because they would fear that Congress might impose crippling amendments and thus essentially reopen the negotiations. Even Chile, whose President Frei recently addressed the Congress eloquently on these issues, will not deal with the United States in the absence of such authority (but has made agreements with Canada, Mercosur and others which carry tangible disadvantages for the American economy). APEC's initial effort to launch its liberalization program got off to a slow start last year in part because the United States was unable to move and other countries were unwilling to do so in our absence.

The exceptions prove the rule. The United States was able to lead two major successful trade negotiations over the past year, the Information Technology Agreement and a deal on basic telecommunications services in the WTO. Each eliminates barriers on over $500 billion of trade in two of the world's most dynamic sectors. Both are hugely in the interest of the United States and were strongly promoted by American companies. But they were possible only because the Administration did not need new negotiating authority for them.

THE URGENCY OF ACTION

It is extremely urgent for the Congress and the Administration to work out new fast track authority. World trade and investment patterns are moving and shifting at breakneck speed. Other countries and groupings are rapidly filling the void left by the American inaction (with the two exceptions cited above) of the past two years. We run a serious risk of being left behind if we do not quickly re-engage. Examples abound:

- Tired of waiting for the United States, Chile has struck bilateral free trade deals with Mercosur and Canada (including a total phaseout of antidumping rules and legitimization of continued capital controls). The United States is already losing sizable sales because Chile's new preferential arrangements discriminate against our exports.
- Mercosur, already the third largest trading bloc in the world, is consolidating virtually all of its neighbors into a South American Free Trade Agreement and will continue to do so as long as the absence of negotiating authority blocks us from engaging its members in serious negotiation to achieve an FTAA. It would be an enormous historical irony if the US initiative to launch an FTAA had the effect of enabling Brazil to assemble a South American grouping that was per-

mitted, through our own failure to follow up, to build such vested interests in Mercosur itself that the South American countries lost all interest in pursuing the original idea of hemisphere-wide integration.[10]

- The subregional arrangements in Asia, notably the ASEAN Free Trade Area, have accelerated their own liberalization timetable and will thus increasingly discriminate against us unless we are able to energize APEC to bring down barriers across the entire Asia Pacific region.
- Prolonged American absence from implementation of APEC's liberalization goals could revive interest in an Asia-only arrangement along the lines of Malaysian Prime Minister Mahathir's proposed East Asia Economic Caucus (EAEC).
- The European Union is doing deals throughout the world, including with Mercosur and East Asia, which are only consultative at this point but could become much more substantive if the United States continues to dither.

Hence we delay at our peril. The time has long passed when the world would simply wait for the United States to act. The Asians, Europeans and Latin Americans have all become major autonomous players in the world economy. They will move on without us if we are not ready.

At the same time, American leadership is essential to push the global trading system in the most constructive directions. We simply must get back in the game if we are to protect our own interests, and to exploit the opportunities to achieve the enormous future benefits described above.

SOME SPECIFIC PROPOSALS

I believe that the Congress should in fact authorize permanent fast track negotiating authority when it considers the issue later this year[11]. For the reasons already cited, it is simply too costly for any President to be without such authority for any prolonged period of time. The United States is in a state of continual negotiation on trade and related issues, with a wide variety of countries, and should be fully equipped for the effort at all times.

At the same time, the Congress must of course be in on the takeoff as well as the landing for all significant trade negotiations. Hence I recommend that the President be given general authority to negotiate but that he be required to seek prior Congressional approval to enter into any major new initiative.

The previous fast track authority required the President to notify the Congress of his intention to launch any such effort and empowered this Committee, and the House Ways and Means Committee, to disapprove any such Presidential proposal. This Committee almost did so in 1986 in the case of the United States-Canada Free Trade Area. No Congressional action was taken with respect to the subsequent launch of NAFTA, however, which undoubtedly added to the difficulty of achieving its approval after the agreement was completed. The Congress as a whole should vote in advance to approve any major negotiation, within the time periods after submission of Presidential proposals required in the past, thereby making it a full partner in initiating the entire process and justifying the grant of permanent authority to follow fast track procedures in approving agreements after they are negotiated.

The new legislation should provide the President with broad authority to pursue all of the opportunities cited above: a Free Trade Area of the Americas, "free and open trade and investment" by 2010/2020 in the Asia Pacific region via APEC, and the built-in agenda (or a new "Millennium Round" to achieve global free trade) in the WTO. Expiration dates should be set for each authority to provide effective deadlines for the respective negotiations.

Objections will immediately be raised that it would be premature to envisage such far-reaching negotiations at this time. Even supporters of the ideas proposed here might argue that there will not be enough time to do so with the legislation to be submitted only in September and a goal of completing action on it by the end of the year. The problem of course is that minimal negotiating authority will lead to minimal negotiations, perhaps limited to Chile and a few other bilateral agreements. This would condemn the United States to continued failure to follow through on its own initiatives, in Latin American and Asia as well as globally, and thereby to cede leadership to others to an increasing degree—despite the strength of our economy and competitive position. Now is the time for the United States to move ahead boldly rather than to waver and procrastinate.

In practice, none of these three major sets of negotiations are likely to proceed very soon. The internationally agreed dates are all some distance in the future: 2005 to work out the FTAA, 2010 or 2020 to reach APEC's goal, 1999 to start the next set of wide-ranging talks in the WTO. The United States could expedite them by reaching earlier agreements with Chile (en route to an FTAA) and with New Zea-

land (en route to APEC) and should have the authority to push these processes (and the WTO) as fast as the international traffic will bear but there will be plenty of time for the Congress to consider each negotiation in detail before approving US participation in it.

The proposed approach would also help deal with the currently vexatious problem of how the fast track legislation should address the question of the country's negotiating objectives. I believe it is a mistake to generalize; different negotiations with different sets of countries at different times may call for very different US aims. The Clinton Administration, for example, despite its insistence on including labor standards and environmental concerns in any new trade legislation, publicly announced in late 1994 that it would not raise those issues in APEC and has not done so.

The new general negotiating authority should leave such issues open, ruling them neither in nor out. Specific US objectives could then be devised for each specific negotiation starting with those proposed here, worked out with the Congress in that context, and pursued accordingly.

If it turns out to be necessary to address the substance of those issues in the upcoming legislation, a three-part set of objectives could be adopted for both labor and environmental concerns under which the Administration would be instructed to make every effort to:

- achieve multilateral agreements on the basic standards in question, in the ILO for labor and ala Montreal Protocol (on CFC emissions) for the environment;
- improve enforcement of those multilateral standards through their own institutions, as in the ILO's recent program on child labor in Bangladesh; and
- authorize the use of trade remedies to enforce those multilaterally agreed accords, as was successfully threatened when Korea initially failed to comply with the Montreal Protocol, subject to the trade procedures of the WTO itself.

One other key issue is whether "nontrade" elements of the legislation that approves trade negotiations, under fast track authority, should also be handled under fast track procedures, i.e., without amendment and under firm time limits. This issue arose with the Uruguay Round legislation in 1994 because of its "pay-go" budget provisions and related policy questions.

It would be preferable to waive the "pay-go" provisions for trade legislation. Reductions of trade barriers clearly add to our economic activity and thus strengthen rather than weaken the Federal budget position.[12] If the basic requirement must be retained, it would be desirable to permit amendments to the specific budgetary provisions of the legislation as long as they yielded the same net impact on the federal deficit. However, it would still be essential to retain the timing deadlines or the whole process would founder.

CONCLUSION

The fast track process has proved its worth for over twenty years. Under its procedures, the United States maintained its leadership of the world trading system by negotiating successful conclusions to the Tokyo Round and the Uruguay Round in the GATT. We achieved free trade in North America through successive agreements with Canada and Mexico.

The future prospects are even brighter, for the reasons outlined above. Sharp reductions, and eventual elimination, of barriers to our exports in the world's most dynamic markets in Asia and Latin America are within our grasp. Enormous gains to the American economy and American workers would result. Fast track authority is necessary if we are to seize these opportunities. There are few steps that the Congress could take this year that would be as helpful to the American economy.

In view of all this, I urge the Administration to effectively carry forward the commitments made repeatedly by President Clinton to make fast track one of his highest priorities in 1997 and to recognize that it must compromise on the labor and environmental issues in order to do so. I urge the Congress to then provide the new negotiating authority as soon as possible. It is imperative to move forward on the bipartisan basis that has, with so much benefit to the country, characterized American trade policy for the past 60 years.

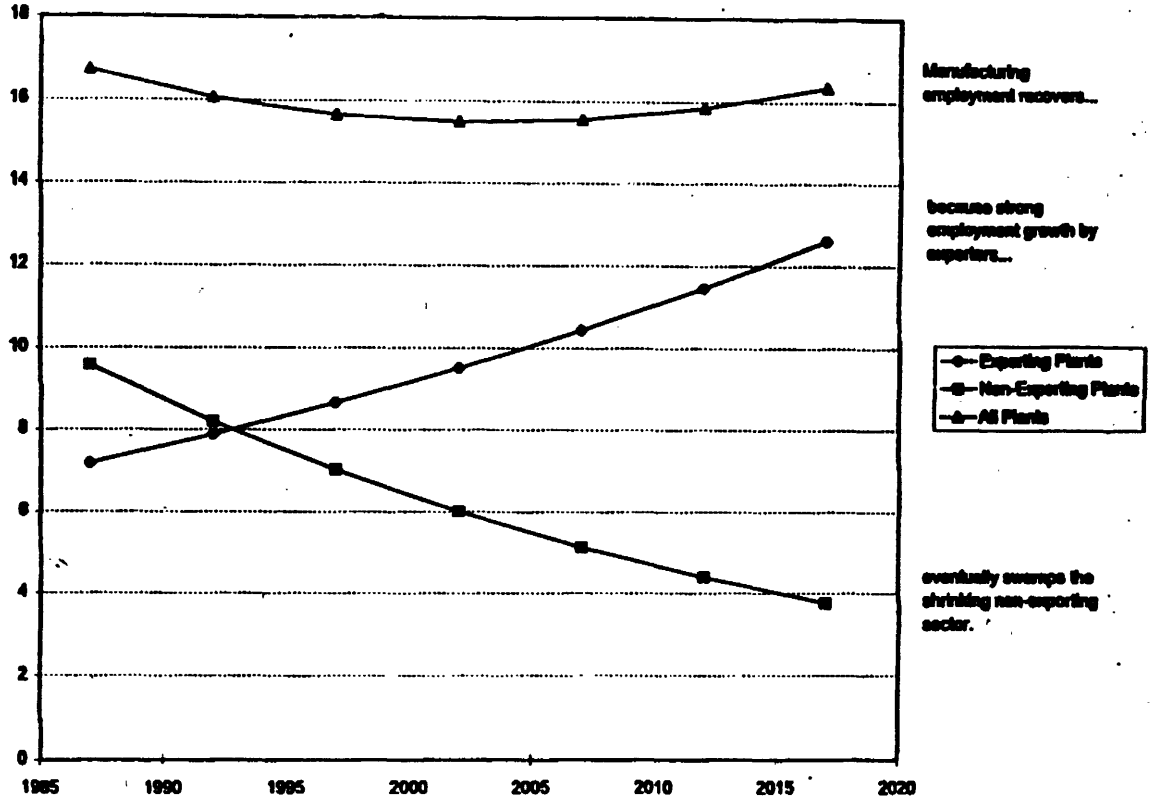
ENDNOTES

[1] Also Chairman, Competitiveness Policy Council and Chairman, APEC Eminent Persons Group throughout its existence 1993-95. The views expressed in this statement are those of the author and do not necessarily reflect the views of individual members of the Institute's Board of Directors or Advisory Committee.

[2] These and other data are derived in J. David Richardson and Karin Rindal, Why Exports Matter: More!, Washington: Institute for International Economics and The Manufacturing Institute, 1996.

[3] William R. Cline, The Future of World Trade in Textiles and Apparel, Washington: Institute for International Economics, second edition, July 1990.
[4] See Dani Rodrik, Has Globalization Gone Too Far?, Washington: Institute for International Economics, March 1997.
[5] See the several reports of the Competitiveness Policy Council to the President and Congress, especially Building a Competitive America (March 1992) and A Competitive Strategy for America (March 1993).
[6] American's remaining barriers, after full implementation of the Uruguay Round agreements, carry a net economic cost of only about $10 billion in an economy of more than $7 trillion. See Gary C. Hufbauer and Kimberly Ann Elliott, Measuring the Costs of Protection in the United States, Washington: Institute for International Economics, January 1994.
[7] As proposed in my "Globalizing Free Trade," Foreign Affairs, May/June 1996.
[8] Some critics have argued that recent American trade liberalization initiatives have been a failure because of the sharp deterioration of our trade balance with Mexico. That deterioration was caused by the Mexican macroeconomic and financial crisis, however, which had little to do with NAFTA. In fact, NAFTA shielded the United States from an even greater impact from the Mexican crisis by deterring Mexico from responding (as in the past) by erecting new widespread new import controls and by exempting the United States from those new controls which it did impose.
[9] Details are in Jeffrey J. Schott, editor, The World Trading System: Challenges Ahead, Washington: Institute for International Economics, 1996.
[10] For the history to date see Richard Feinberg, Summitry in the Americas: A Progress Report, Washington: Institute for International Economics, April 1997.
[11] See I.M. Destler, American Trade Politics, Washington: Institute for International Economics and Twentieth Century Fund, 1995, p. 263. For more details, see Destler, Fast Track Authority for Trade Negotiations, Washington: Institute for International Economics, forthcoming September 1997.
[12] See William R. Cline, Impact of the Uruguay Round on US Fiscal Policy, Washington: Institute for International Economics, March 1994.

Total Jobs and Job Growth for Exporting and Non-Exporting Plants
1987-1992, with 5-Year Projection Through 2017
(in millions of workers)



PREPARED STATEMENT OF DUANE L. BURNHAM

I. INTRODUCTION

My name is Duane Burnham, and I am Chairman of the Emergency Committee for American Trade (ECAT) and Chairman and Chief Executive Officer of Abbott Laboratories. I am pleased to appear before the Senate Finance Committee to present ECAT's testimony in support of renewal of the President's fast-track negotiating authority. ECAT represents the heads of major U.S. international business enterprises representing all major sectors of the U.S. economy. The annual sales of ECAT member companies total over $1 trillion, and the companies employ approximately 4 million persons.

ECAT was founded 30 years ago by the Chief Executive Officers of leading U.S. companies who were concerned about ensuring the growth of the U.S. economy through expanding U.S. international trade and investment. ECAT's mission remains as vital today as it was at its founding.

Today we face the challenge of ensuring the continuation of U.S. global leadership in advancing liberalization of trade and investment into the twenty-first century. ECAT believes that in order to achieve this objective, one of the primary goals of U.S. trade policy should be extension of broad fast-track negotiating authority. This is a pragmatic goal which can be achieved through the combined effort of the Congress, the Administration, and the U.S. private sector.

The following paragraphs set out ECAT's views on this issue and its importance in maintaining U.S. global leadership in promoting the expansion of trade and investment.

II. EXTENSION OF FAST-TRACK AUTHORITY

Importance of Extension of U.S. Fast-Track Negotiating Authority

The renewal of the President's fast-track negotiating authority is vital to ensuring that the United States continues to have a role in shaping the global trade agenda into the twenty-first century through the World Trade Organization (WTO), regional and other trade arrangements, and bilateral agreements.

The fast-track procedures have been and continue to be an essential mechanism that assures our trading partners that those provisions of trade agreements negotiated by the United States requiring statutory action will be considered in a timely fashion by the Congress. Without such assurance, our trading partners will not engage in serious comprehensive trade negotiations with us. We will lose the lead that we have maintained since World War II in encouraging greater liberalization in world markets, leading to ever-expanding U.S. trade and investment which have become mainstays of the U.S. economy.

This is a price we cannot afford to pay. U.S. trade and foreign investment are vital engines of national economic growth. They have boosted U.S. productivity and raised U.S. living standards. As we look to the twenty-first century, we must ensure that U.S. trade and investment continue to expand. This means that the Congress and the President must find a way to work together to enact new fast-track authority that will enable us to make greater strides in opening world markets into the next century to the benefit of all Americans.

A. WTO Agenda

As a result of the establishment of a "built-in agenda" for the World Trade Organization (WTO) and mandatory biannual WTO Ministerials, there is now a process in place which will move the global trade agenda forward with or without U.S. participation. In the absence of negotiating authority which allows the United States to have a full role in this process, we will lose influence and be left behind.

During its first two years of operation, the United States has maintained a lead position within the World Trade Organization and helped sustain the WTO liberalization process. We must continue the momentum by achieving a new financial services agreement which provides broad market access, and securing the WTO accession of major trading partners, such as Russia and China, under commercially acceptable protocols of accession.

While there are some parts of the WTO process that do not require the United States to have new negotiating authority, there are other initiatives that do require such authority. For example, if we are to use the model of the Information Technology Agreement (ITA) to build consensus for similar market liberalization on a sectoral or broader basis, the United States needs fast-track negotiating authority to deal with non-tariff as well as tariff measures. In addition, the WTO built-in agenda calls for the restart of negotiations on agriculture and services in 1999. The

absence of fast-track negotiating authority would severely limit U.S. participation in such negotiations.

Fast-track authority is, therefore, essential to allow the United States to continue to fully participate in and enjoy the benefits of the WTO system. The only tool the United States has left which allows it to participate in this process is the limited residual tariff negotiating authority granted under the Uruguay Round implementing legislation. This authority is clearly insufficient to allow U.S. participation in the WTO negotiations on agriculture or services, or in any other multilateral negotiation which is on non-tariff barriers. It also would not authorize negotiations which cover tariffs in sectors not included in the Uruguay Round reciprocal market access discussions.

B. Regional Arrangemcnts

The United States also needs fast-track authority to maintain its leadership in shaping the agenda of regional arrangements, such as NAFTA, FTAA, and APEC. U.S. agricultural and industrial exports have already begun to suffer competitive disadvantage as a result of the proliferation of competing regional and bilateral arrangements in Latin America and the Asia- Pacific region. The President must be granted fast-track authority in order to shape such initiatives in a way that promotes U.S. exports and investment.

NAFTA

NAFTA has had a net positive effect on the U.S. economy. U.S. exports to Mexico are expected to be over $56 billion this year, a five percent increase over U.S. exports to Mexico in 1993, when the NAFTA was enacted. And this growth is spread across the United States, according to a recent study by the Massachusetts Institute for Social and Economic Research which found that 41 out of 50 U.S. states experienced export growth to Mexico in 1996. NAFTA also helped Mexico stabilize its economy and prevented it from closing its market to U.S. goods and services during the peso crisis.

While NAFTA has provided significant benefits to the U.S. economy, any future expansion of the agreement should be carried out in a way which will further enhance those benefits. In that light, it is important to consider the developments within Mercosur and the broadening of Chile's trade arrangements which have occurred since NAFTA entered into force.

At the time NAFTA was negotiated, the Mercosur Agreement had not been implemented and had not emerged as a major factor in Latin American trade. Since NAFTA's entry into force, Mercosur's implementation has begun and its membership has been expanded to include Chile and Bolivia as associate members. Mercosur is also currently negotiating with the Andean Pact. While the Mercosur Agreement is not as comprehensive as NAFTA, once fully implemented in 2006, it will become a customs union with tariff-free trade among its member states and a common external tariff. Mercosur members are also considering the adoption of a unified competition code and a common anti-dumping policy, and the possibility of extending the agreement to cover services.

As a result of Mercosur's rapid expansion under Brazil's leadership, it is now setting the pace for integration in Latin America. This is of concern because rather than leading to comprehensive liberalization, noted international economists have argued that regional arrangements such as Mercosur, which maintain high external tariff walls, lead to significant trade diversion. In the absence of U.S. efforts to promote broader, more comprehensive hemispheric integration, which promotes liberalization of goods, services, and investment, and includes other elements such as strong intellectual property rights provisions, Mercosur will become the dominant model for this process.

While there are trade and investment restrictions in the Chilean market that need to be addressed, there are important economic and political benefits to be gained through closer trade and investment ties with Chile. Chile is one of the fastest-growing Latin American markets for capital goods and services, particularly in the environment, transportation, and telecommunications sectors, where major projects are underway or in the planning stage. More importantly, Chile is a major gateway to other Latin American markets, serving as both a transshipment point and a center from which to service other Latin American markets.

Chile is also an important entryway into other Latin American markets in terms of investment, with Chilean companies rapidly acquiring other Latin American companies. For example, in 1992, Procter & Gamble entered into a joint venture in Chile to market disposable diapers and feminine protection products in Chile, Argentina, Paraguay, Uruguay, and Bolivia. More recently, Chase Capital Partners

and a group of other investors joined forces with Infisa of Chile to participate in financial services companies throughout Latin America.

With regard to Chile, there is no question that the inability to proceed with its accession to NAFTA, despite its democratic government, relatively open trade regime, and willingness to adhere to NAFTA standards, has undermined the credibility of the U.S. commitment to NAFTA expansion. It has also undermined the competitiveness of U.S. business. While the United States has stalled Chile's accession to NAFTA, Chile has entered into a separate bilateral agreement with Canada and has become an associate member of Mercosur.

These bilateral and regional arrangements outside of NAFTA are putting the U.S. exports at a serious disadvantage and weakening NAFTA. For example, under the comprehensive trade agreement which Canada negotiated with Chile last year, Chile's 11 percent across-the-board tariff will be eliminated, providing an 11 percent price advantage to Canadian exports. Recently, Canadian Northern Telecom beat U.S. firms bidding on a contract to supply $200 million in telecommunication equipment to the Chilean market, in part because using a U.S. firm would have meant paying an additional $20 million in duties.

U.S. agricultural commodities also face serious discrimination in Chile. For example, U.S. phosphate, urea, and citric acid exports to Chile are at a serious price disadvantage due to Chile's 11 percent across-the-board tariff, which does not apply to competing exports from Mexico, Venezuela, or Colombia. Chile also imposes significant discriminatory non-tariff barriers on agricultural imports. Poultry imports, off-season fruit, and wheat are subject to highly restrictive sanitary and phyto-sanitary measures.

The question now for the Administration is how to secure the benefits of a closer trade relationship with Chile in a way which best promotes U.S. economic interests and greater hemispheric integration. To the extent that Chile's accession to NAFTA furthers hemispheric integration, it should be pursued, and it should be authorized under fast-track legislation. Chile's accession to NAFTA, however, should not become an end in itself which is not tied to efforts to move forward with a FTAA.

Any NAFTA accession agreements that are negotiated with Chile should be focused on achieving trade and investment liberalizations that can strengthen the U.S. economy. Labor and environment issues on which there is no broad consensus between the Americas should not be allowed to hamper the achievement of broader NAFTA membership. These are, of course, important issues which should be addressed in appropriate international fora.

Free Trade Area of the Americas (FTAA)

The lack of fast-track authority is also undermining the credibility of the U.S. commitment to the achievement of a FTAA. During the recently held FTAA Ministerial meetings in Belo Horizonte, Brazil, trade ministers from 34 hemispheric nations agreed that negotiations to establish a FTAA should begin at the next Summit of the Americas to be held in March of next year in Santiago, Chile. The United States will not be viewed as a serious participant in such negotiations in the absence of fast-track authority. Moreover, the deadline for concluding negotiations is 2005, and, as the ministers have previously agreed, there is an expectation that substantial progress will be made before the year 2000. It will be difficult if not impossible to meet these deadlines if fast-track authority is not extended this year.

The lack of progress toward an FTAA is harming the competitiveness of U.S. business in Latin America. Latin America has a rate of economic growth only exceeded by the Asia-Pacific region, and it is estimated that by the year 2010, U.S. exports to Latin America will exceed total U.S. exports to Europe and Japan combined. In addition, U.S. trade surpluses with Latin America help offset large deficits elsewhere in the world. The competitiveness of U.S. products in South America is endangered, however, by the expansion of the Mercosur Arrangement throughout the region. U.S. agricultural and industrial exporters are being seriously disadvantaged in Latin American markets as a result of the preferential tariff treatment and other trade advantages granted to their Latin American competitors under Mercosur.

While U.S. exports are facing an increasing disadvantage in competing with Mercosur members in their own markets, our Canadian, European, and Asian competitors are trying to forge their own relationships with Mercosur. Mercosur is already engaged in negotiations with the EU. In addition, the Prime Ministers of Japan and China, as well as the President of South Korea, have made state visits to Latin America within the last few months trying to forge closer economic ties with the region. Similarly, the Caribbean and Central American nations are now seeking their own agreements with Canada, Mexico, and the EU. Most recently, Canada's Trade Minister announced that Canada intended to move ahead with its relationships in Latin America and that it would not wait for the United States to

secure passage of fast-track negotiating authority. As a result, the United States is at risk of falling behind in Latin American markets, while our Latin American, European, and Asian competitors move ahead in forging closer trade and investment ties.

The Administration has recognized the importance of securing fast-track authority in order to move the FTAA process forward this year. ECAT believes that any fast-track legislation should include authority to negotiate an FTAA.

Asia-Pacific Economic Cooperation (APEC) Forum

APEC continues to play an important role in the U.S. efforts to forge closer trade and investment ties with the Asia-Pacific region and should be included as an important U.S. objective in the extension of U.S. fast-track authority. Achieving greater market access and investment liberalization in this region is essential to ensuring the global competitiveness of U.S. companies into the twenty-first century because the Asia-Pacific markets hold the greatest potential for U.S. goods and services, with economic growth rates that are three times higher than those of established industrial nations. Asian nations now account for more than one- quarter of the world's GDP and, by the year 2000, will constitute the largest market in the world. More U.S. goods and services are sold to Asia-Pacific countries than to any other region of the world, with U.S. merchandise exports to APEC countries accounting for roughly 63 percent of total U.S. exports.

ECAT supports the APEC process as a vital part of expanding U.S. trade and investment ties with the Asia-Pacific region and believes that we should continue to push for APEC liberalization commitments that are bound. We also support U.S. efforts to use the APEC process to pursue agreements resulting in sectoral liberalization, such as the recently concluded Information Technology Agreement.

ECAT is of the view that in order for trade and investment liberalization to be achieved in APEC by 2010 for the United States and other developed nations, it is essential that the President be granted fast-track negotiating authority to enable the United States to develop negotiating objectives and initiate negotiations sufficiently in advance of this deadline to allow for appropriate phase-in periods.

The TransAtlantic Marketplace and the TransAtlantic Business Dialogue (TABD)

In an effort to strengthen the relationship between the United States and the European Union, President Clinton and EU leaders announced a new TransAtlantic Agenda at the Madrid Summit in 1995. The agenda establishes a framework for cooperation on economic, political, and security issues. The TransAtlantic agenda includes a commitment to establish a TransAtlantic marketplace through a progressive elimination of barriers to capital flows and trade in goods and services.

The TABD process has been productive. Over 60 percent of the TABD recommendations are currently being worked on by the United States and the European Union. The TABD process has produced concrete results and demonstrated the effectiveness of private sector participation in producing greater TransAtlantic and global liberalization. For example, in the area of market access, it was the TABD process which provided the original impetus for the ITA that was reached at the Singapore Ministerial. The TABD work to encourage the negotiation of Mutual Recognition Agreements (MRAs) is also yielding concrete results. The United States announced at the recent U.S.-EU Summit that the outstanding issues on a package of MRAs had been resolved and that an overall agreement would be reached very soon. The MRA package covers trade in telecommunications equipment, information technology products, medical devices, pharmaceuticals, and sports craft. The package covers more than $40 billion in annual U.S.-EU trade and should provide a major boost to U.S. exports to the EU.

ECAT fully supports the continued efforts of the TABD to promote greater liberalization in the TransAtlantic and global marketplace. We believe that fast-track authority should allow for U.S. participation in any future sectoral or other multilateral liberalization negotiations that may arise out of the TABD process.

C. SECTORAL AGREEMENTS

ECAT also supports the Administration's efforts to pursue liberalization through multilateral sectoral agreements. The Administration skillfully used the APEC process and the WTO to achieve the ITA, which amounts to a global tax cut of $5 billion, and is expected to benefit approximately 3 million U.S. manufacturing and related service jobs.

The United States is now urging its major trading partners within the Quad group and APEC to pursue similar liberalization initiatives in other sectors such as environmental goods and services, paper and forest products, and medical devices.

The United States has only limited residual tariff negotiating authority to pursue future sectoral agreements. The United States has no authority to pursue the elimination of non-tariff measures in any future sectoral agreements. Therefore, fast-track authority is also critical to enable the negotiation of future sectoral liberalization agreements.

D. SCOPE AND DURATION OF FAST-TRACK NEGOTIATING AUTHORITY

ECAT hopes that this year the Congress can complete consideration of fast-track renewal legislation.

ECAT believes that fast-track negotiating authority should be broad in scope and should place the greatest focus on those issues which have the best prospects for producing international consensus. We believe the inclusion in fast-track legislation of non-trade-related labor or environment objectives, standards, or conditions on which there is little or no international consensus, would impede the achievement of progress in trade and investment liberalization.

Fast-track legislation should establish objectives whether broad or specific to enable the negotiation of the APEC agreement, a FTAA in Latin America, and WTO agreements on agriculture and services, and allow for the possibility of other agreements that may be achieved on a multilateral, regional, or bilateral basis. On services negotiations, in particular, fast track should allow for the strengthening of the framework and basic obligations under the General Agreement on Trade in Services.

The negotiation of improved intellectual property protection should also be pursued in the extension of fast-track authority. Fast-track authority should include sufficient flexibility to allow for the consideration of a Multilateral Agreement on Investment in the event that the OECD negotiations produce an agreement which provides broad investment protection and promotes elimination of foreign barriers to investment.

ECAT also believes that fast-track authority should be extended for a multi-year period on a schedule that avoids a debate over further extension in an election year.

III. CONCLUSION

With these global, regional, and sectoral objectives in mind, I and the other members of ECAT commit to working with this Committee and others in Congress to secure the enactment of broad, multi-year fast-track authority before the end of this session of Congress. I appreciate the opportunity to present our testimony to the Committee.

PREPARED STATEMENT OF HON. JOHN H. CHAFEE

Good morning, Mr. Chairman and Madam Ambassador. I appreciate your holding this hearing on this very important topic.

Fast track authority is essential if the United States is to continue to expand market opportunities within this hemisphere and around the world. Fast track authority, in which Congress voluntarily agrees to restrict its voting prerogatives and allow only an up-or-down vote on trade agreement implementing legislation, has been in place since the mid-1970s, and has helped shepard critical trade agreements into being. Without fast track, trade agreements will be difficult for our negotiators to achieve, and even more difficult for Congress to implement. One need only look at the failure of the O.E.C.D. Shipbuilding Agreement legislation in the last Congress to understand how critical fast track is. Yet we have not had this authority since mid-1994.

Last February, his State of the Union speech, President Clinton said:

> "Now we must act to expand our exports, especially to Asia and Latin America, two of the fastest-growing regions on Earth, or be left behind as these emerging economies forge new ties with other nations. That is why we need the authority now to conclude new trade agreements that open markets to our goods and services even as we preserve our values . . . "

I applaud the President for his words. But I must say that since then, we have seen very little in the way of leadership from the White House to back up that stirring statement. I appreciate the fact that Ambassador Barshefsky has been spending hundreds of hours consulting with members of the Senate and the House. But we need to get this process started if we have any hope of achieving fast track this year. That means we need to see the Administration actually put forth a bill.

Madam Ambassador, let's see the Administration put a working proposal out there. Let's look at whatever competing proposals in Congress there may be. Let's

get the discussions going. *In other words, let's ret to work! And let's do it sooner rather than later.*

A word of caution to you, Madam Ambassador: beware of the moving goalposts. I remember comments I made to your predecessor Mickey Kantor in March of 1993, during an Environment Committee hearing on the NAFTA. I told him:

> "Thus, most of [the complaining] senators are, and always have been, flat-out opposed to the NAFTA. Some will grab any handy rationale—including becoming born-again environmentalists—to defeat it, or at least slow it down until it dies a painful, lingering death. Mr. Ambassador, no matter what [modifications] you make, you will not satisfy most of these senators . . . There are more of them than there are of you, and they can keep you working night and day with more and more demands. I advise you to save your strength and instead to simply do what you think is right and do it quickly, no matter what criticism from that quarter is hurled your way."

I give you that same advice today, Madam Ambassador. In closing, let me say what a terrible event it would be if the permanent loss of fast track authority in US trade law were the legacy of this Administration. That cannot, indeed *must* not, happen. I urge the Administration to move forward now.

PREPARED STATEMENT OF HON. ALFONSE M. D'AMATO

Thank you Mr. Chairman for holding this very important and much needed hearing on trade. Fast Track Authority is a very hot topic these days, and trade is an issue which is extremely important to the well-being and growth of the U.S. economy. However, I am concerned that any future trade agreements that the Administration enters into, whether it be in the area of high-tech, intellectual property rights or financial services, be the strongest and best agreement possible to ensure free, fair and open trade.

I realize that the Administration is pulled in many directions when it comes to negotiating trade agreements, but I hope that the USTR never forgets the basic mission that it has been charged with—to negotiate the most fair and open trade agreements it can. U.S. jobs and the economy depend on it.

However, Mr. Chairman, Congress also has a duty to work with the Administration and our trading partners to see that trade agreements and U.S. trade laws are lived up to and enforced with the greatest vigor. Truly free trade is only successful in an environment that allows cross-border trade unfettered and without unfair barriers to trade.

Market access, Mr. Chairman, is also of paramount importance to me. American companies must have the opportunity to bring their products to market. Without truly free access to consumers, U.S. goods and services will never get a fair opportunity to compete. One clear example of market barriers is the on-going case in photographic film which has demonstrated Japan's attempts to circumvent their international trade obligations.

One of my greatest concerns with expanding fast track negotiating authority and possibly NAFTA, is that some of the most troublesome barriers to free trade have not been adequately addressed. One specific example, as it relates to Canada, is the wool-apparel tariff preference level. Using this loophole in the NAFTA rule of origin requirements is letting Canada flood the U.S. market with wool apparel made from foreign, non-NAFTA fabric from countries like China, Turkey and Korea. And these foreign fabric products are getting the same special, low NAFTA duties as if they were true NAFTA products. Thousands of U.S. jobs have been lost as a result. It seems to me that the Administration has an obligation, when it comes to fast track authority, to assure Congress that only strong agreements absent any loopholes will be negotiated.

The United States has fought hard to open markets throughout the world to U. S. Products. Unfortunately, there remains much to be done when it comes to expanding market access for American goods and services. One additional area of particular concern to me is cross-border, Canadian-U.S. dairy trade. The Canadians have made it impossible for the United States to gain market access for our dairy products by erecting huge tariff barriers to our products. These practices have priced U.S. goods out of reach to Canadian consumers.

Canada implemented a system of quotas known as tariff rate quotas (TRQs) on dairy, poultry and eggs following the passage of GATT. These TRQs permit small amounts of imports to enter at low rates of duty, but imports above those limits are subject to prohibitively high duties ranging from 100 to 350%. I am very concerned, Mr. Chairman, that these enormously high duties will keep U.S. dairy products out of Canada and adversely impact New York's more than 9,000 dairy farmers.

I look forward to the Administration's submission of Fast Track negotiating authority legislation to this Committee.

PREPARED STATEMENT OF HON. ORRIN G. HATCH

Mr. Chairman, I welcome our distinguished panel of witnesses. The cross-section of views among them represents well the complicated fast-track issue. However, I am especially pleased that there is a strong consensus for some form of fast- track authority. It is the form of this authority that lies at the base of this hearing, I believe.

FAST-TRACK ENCOURAGES EXECUTIVE-LEGISLATIVE COOPERATION

I support fast-track in principle. In my mind, I cannot separate the President's constitutional authority to negotiate, from Congress' authority to implement. The authors of the Constitution intended the two political branches of government to cooperate. And trade is no exception.

As we know, Congress has long allowed Presidents to negotiate tariff agreements and implement them by decree, or proclamation. Where legislative changes are required, Congress has rightfully reserved implementing authority.

While this sounds like a neat executive-legislative package, parliamentary regimes, which are most of the world's governments, as well as other negotiation partners, have not always seen this arrangement as being quite so tidy. In parliamentary governments, for example, where the prime minister is usually the majority party leader in the legislature, obtaining parliamentary consent to a negotiated document is usually easier; in fact, it's rarely even controversial.

Fast-track, among other virtues, bridges this gap to a certain extent. Congress provides a set of negotiation objectives, requires continuing consultation, and allows the President to advise his negotiation partners that the agreement returned to Congress for ratification will enjoy privileged treatment. Most importantly, no amendments will lie, but the entire treaty is placed at risk unless the President builds in congressional concurrence along the path to ultimate agreement.

It is the consultation features and the express delineation of negotiation objectives that make the process work. This is because executives could be tempted to include in a fast-track negotiated agreement some legislative changes that Congress would not easily agree to.

FAST-TRACK ALLOWS AMERICAN TRADE LEADERSHIP

Mr. Chairman, what I fear is the growing list of negotiations in which the U.S. is not playing a major role. We can't influence something to which we are not a party. And, without fast-track authority, that appears to be happening. I refer to the recent telecommunications agreement where our leadership caused consent among 70 nations, many with initially conflictful negotiation objectives. Without U.S. leadership, a weak agreement would have resulted that would have cost this U.S. sector many lost market opportunities.

But there are other trade negotiations to which we are not a party because of the uncertainties that U.S. negotiators, without fast-track authority, can sustain what they agree to. Let me cite three examples.

- The EU is likely to conclude a trade agreement with Mexico.
- ASEAN nations are putting in place a free trade area.
- Chile, which we have left hanging over NAFTA accession for the past three years, has completed separate agreements with our NAFTA partners, Canada and Mexico.

We should not doubt the economic—and political—costs of exclusion from trade agreements

Without American leadership in pushing trade liberalization forward, the U.S. loses obvious diplomatic and political leverage in global affairs. But we need to be mindful of the technology and economic setbacks:

- We risk being seen as an unreliable supplier of something that this country provides more of than anyone else: technology eminence. Without foreign markets, this genius will move abroad.
- 95 percent of the world's consumers are outside of the U.S., making us the world's largest exporter.
- Our combined trade in exports and imports account for 24 percent of the entire U.S. economy, or $1.8 trillion in economic activity. Export-related jobs, by the

way, pay a 20 percent wage premium, adding to the overall well-being of our skilled workforce.

Fast-track delegates a valued right: it must therefore have conditions

Mr. Chairman, the commerce clause of the Constitution imparts a valued right that the authors entrusted to the Congress. We want our President to negotiate with maximum effectiveness. But we want to safeguard the people's interest in the role that both the House and the Senate play in foreign trade and foreign affairs.

For my part, I insist on specific negotiation objectives, and I continue to support the consideration by Congress of all agreement provisions that are *both necessary and appropriate* to implement agreements.

However, I depart from the growing trend to raise a point of order in the Senate on the unclear grounds that something may be unnecessary and inappropriate. This, in my mind, is too much like a practice in the House, and simply is not necessary in the Senate. And, I add, it signals at the outset a reluctance to grant fast-track authority for use in a way that will cause the U.S. to have the influence that it needs at the negotiation table.

But, on balance, I do support the exclusion of such ancillary issues as labor and environment as they condition trade agreements. None can deny the importance of these two matters, especially at the global level. And, as we know, countries with low environmental standards and inhumane labor practices can create favorable product price margins that hurt our market developments.

However, these are matters to be covered in separate agreements for which purpose many major international bodies and conventions already exist.

Mr. Chairman, I appreciate the opportunity to explore these matters further with our panels.

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV

I support the proposal to grant "Fast Track" trade authority to the President, and I look forward to working with the Chairman and other colleagues to pass the necessary legislation.

It is also important that we communicate and emphasize to the people of our states what Fast Track is, and what it isn't. Giving the President Fast Track negotiating authority is that and only that—we give him a more powerful tool to seek new trade agreements in order to benefit our country, along with the promise of an expedited process in Congress to approve or disapprove the results. It does not guarantee that final approval whatsoever.

In my case, I will continue to review each and every trade agreement on a case-by-case basis, with West Virginians interests as my first and foremost priority. For example, I voted to give the President Fast Track authority to negotiate the NAFTA, and then voted against the Agreement itself. I also voted to extend Fast Track to finish the Uruguay Round, and voted for that agreement.

Part of the reason I supported the Uruguay Round was because the implementing legislation contained provisions that might be considered "appropriate" though not necessary—but were necessary to ensure this Senator's vote. That category of "appropriate" issues ended up included important changes to Section 337 dealing with intellectual property protection for U.S. interests, and key steps we took to strengthen our antidumping and subsidy codes. In the NAFTA, the expansions in Trade Adjustment Assistance depended on the reference to the "appropriate" language in the fast-track bill.

Fast Track legislation puts a great responsibility on the Finance Committee, and that's a responsibility I know we all take seriously. Other Committees might have specific issues in their jurisdiction, but this Committee plays the principal role in monitoring trade negotiations and implementing agreements. Rather than wrangle over ways to limit the President's negotiating authority, I urge everyone on the Finance Committee to participate vigorously in the mandatory consultations that will be part of the Fast-Track process. We should maintain the tradition of working directly with the Administration on implementing legislation. And again, we reserve the opportunity to reject any trade agreement that fails the tests we choose to impose.

It appears to me that a Fast Track bill that can pass Congress will have to strike a middle ground on labor and environmental issues. Any language that draws overly strict prohibitions on what the Administration can negotiate, or sets too many conditions in future trade agreements, will make it nearly impossible to pass in this Congress where viewpoints on these issues vary widely.

I believe there is a legitimate argument to be made for discussing issues of importance to workers in trade negotiations and as part of the overall discussion of global economic and trade policy. Americans have a pretty universal disdain for abusive labor conditions, as they hear about physical and psychological abuse of workers; making them run laps around factories for even the most minor of infractions; small children, sometimes as young as six years old, stitching together soccer balls or carpets; workers forced to stand for 10 or 12 hours without a break; and the equivalent of slave labor. Because this activity is morally offensive and deliberately competes for jobs where standards are higher, we should consider these issues in future discussions of global trade and economic policy.

Why should working conditions and living standards be off the table in trade negotiations? And why should improving the lot of workers only be considered a separate goal of our economic and trade policy? Why can't it be a central part of our efforts to develop effective economic policy and measures?

As to the environment, as a world leader in this area and in general, the United States has an enormous stake in the world's environmental condition. The American people continue to emphasize their concern about their own environment, and the safety they want when drinking water, breathing air, etc. Balancing these goals with the costs of further progress is difficult and should be done carefully and with the use of sound research and science. But trade is a key way for America to prevent the export of pollution—as we see companies close down their shops in the United States and move across the border into Mexico so they can simply dodge our environmental standards, pollute someplace else, and sell the same products back to the States. In some cases, the pollution, in the air and in the water, actually comes right back into our border states.

American companies have made a big investment in meeting environmental standards. The same way we shouldn't keep raising the bar here in ways that make our firms uncompetitive and cost American workers their jobs, we shouldn't enter into trade agreements that makes our firms uncompetitive and costs American workers their jobs.

In other words, there are valid reasons for this Committee to allow the Administration to raise labor and environmental issues with our trading partners and competitors. Trying to keep them under the rug is more about denial of their implications for us and the rest of the world. We shouldn't fear talking about issues and exploring solutions in this or any other area affecting us and others.

We can all see that it will take a great deal of convincing to muster the votes to pass Fast Track legislation. If that's the key goal, then negotiating objectives and restrictions should be kept as neutral as possible. The idea that the Administration can raise any and all issues of importance to American companies and workers, including labor and the environment, without any pre-conditions or prohibitions, is a proposition, I think, that American business, labor, and Members of Congress from all perspectives, should feel comfortable with.

President Clinton has delivered on his pledge to make economic policy an integral part of foreign policy. He has proven that active and forceful leadership on trade can deliver benefits to our industries, workers, and families. I believe this Committee should encourage and further equip his Administration to pursue new opportunities and results through trade, and that we should produce the bipartisan and broad support needed to enact Fast-Track legislation. But in return, we should expect a meaningful role through consultation as trade negotiations occur. Americans have every reason to expect us to only support trade agreements that benefit them along with other regions.

Steel, alloys could hold up free trade deal

AMERICA

FROM CARA KNOX
IN BELO HORIZONTE BRAZIL

Trade in steel ferro-alloys and agricultural products looks set to be among the main sticking points on the formation of a Free Trade Area for the Americas FTAA according to participants in a preliminary meeting on the FTAA held in Belo Horizonte Brazil last week On the positive side, Brazilian foreign minister Luiz Felipe Lampreia announced that US commerce secretary William Daley had undertaken to review US dumping charges against Brazilian steel products and ferro-alloys

Proposals to base the FTAA on World Trade Organisation WTO principles found favour on all sides However steel industry observers noted that the old problems over subsidisation and dumping, particularly between the USA and Latin America, are still complicating the drawing-up of final proposals

The FTAA is due to be formally launched in Santiago de Chile in 1998 It aims to create a barrier-free trade area among 34 American countries including the USA, Canada the Caribbean and Latin America — but will exclude Cuba A consensus reached at the vice ministerial level on the first day of the Belo Horizonte meeting recommended that the original timetable should be adopted for setting up the FTAA, despite pressure from the USA to accelerate it This means, according to Brazil's foreign department ambassador Jose Artur Denot Medeiro that negotiations for the setting up of the FTAA will start in 1998 and be completed by 2005 and that regulations concerning the free trade zone will start to be introduced only that year, unless there are agreements in sector-specific areas before then

> Old problems over subsidisation and dumping are complicating the drawing-up of final proposals

Participants in the Belo Horizonte meeting were unanimous in their call for the removal by 2005 of all non-tariff barriers including import quotas, special taxes and "safeguard" measures. Dagoberto Godoy, president of Brazil's Rio Grande do Sul industries federation, accused the USA of showing "paranoia" in its use of these non-tariff barriers.

Rudolf Buhler, technical director of the Brazilian Steel Institute (IBS), said considerable progress was made in discussions on subsidies, anti-dumping and countervailing duties, and it was agreed to adopt WTO standards in this area, outlawing practices incompatible with WTO rules. "The FTAA needs to be based on explicit, known rules," he said.

However, he acknowledged that the interpretation of the rules remains a problem for instance, the subsidies received by Latin American steelmakers before their privatisation are still viewed by the USA as actionable under US trade law. He added "The concept of 'best information available' [in dumping investigations] has also been open to abuse and used in a discriminatory fashion." Buhler said "best information available needs to be interpreted in the same way by all parties".

Nevertheless, the US delegation at the meeting did not resist a proposal by Latin American countries to eliminate countervailing duties against privatised companies. The proposal calls for the suspension, and future non-application, of these duties on products from companies that have been de-nationalised in a transparent privatisation process on free market terms. If implemented, this proposal could have a significant positive impact on Latin American steel exports to the USA.

No agreement has been reached on how to solve trade disputes between FTAA member countries. Buhler said, though a number of proposals have been made and they need further discussion.

Metal Bulletin Monday 5 May 1997

PREPARED STATEMENT OF RICHARD L. TRUMKA

Mr. Chairman, members of the Committee, the AFL–CIO appreciates this opportunity to present its views on the renewal of fast-track negotiating authority. This hearing is about our future, not our past. We are at a crucial moment in our nation's history, and the choices we make now will have enormous consequences, not just for trade within our hemisphere, but also for future multilateral trade and investment policy with Asia, Africa, and Eastern Europe.

We must not allow ourselves to give in to a false urgency and rush into another trade agreement that simply replicates the failed policies of the past. Instead, we must proceed with all the best information available. We must learn from past mistakes and ensure that the trade agreements of the future benefit workers here and abroad, encourage environmentally responsible and sustainable development, and incorporate the voice and input of all members of civil society.

The international trading system can and should confer broadly shared benefits. It should give the right incentives and send the right messages to corporations and to governments. Our current policies, in contrast, benefit a small corporate elite both in the United States and in our trading partners. These policies channel international competition into socially destructive areas, encouraging governments to cheapen labor and sell out the environment in order to attract investment and discouraging governments from effectively enforcing existing standards.

Our current trade policy is lopsided: it protects copyrights, but not workers' rights. It takes care of international investors, but not the environment. We are opening markets abroad in financial services and agriculture, but we are not taking care of displaced workers at home. Let's get our priorities straight before launching yet another round of the wrong kind of trade liberalization.

The AFL–CIO will oppose fast-track legislation that does not require enforceable labor and environmental standards in the core of any new agreement. Limiting fast track in this way will send the clearest possible message, both to our own negotiators and to our trading partners, that we are ready and willing to chart a new path in the global economy and that no country should be able to gain a competitive advantage by sacrificing its environment and its work force.

The proponents of the North American Free Trade Agreement (NAFTA) argued that locking in trade liberalization and market-oriented reforms in Mexico was an urgent necessity, and that there was therefore no time to negotiate stronger labor and environmental provisions. If the United States did not sign NAFTA immediately, it was argued, investors would lose confidence in Mexico, the peso would collapse, and U.S. exports would fall precipitously, costing American jobs. *Business Week* (11/22/93, p. 32) warned grimly that "the consequences for the world [of a NAFTA defeat] could be dire." These consequences would include a plunge in the peso and the Mexican stock market, as well as a dramatic jump in interest rates.

Finally, we were told, if we did not ratify NAFTA quickly, European and Asian investors would cut their own deal, leaving American businesses out in the cold. In fact, the United States did ratify NAFTA—on schedule—and yet virtually every element of this scenario still occurred. The peso and the stock market did plunge, investors did flee, and U.S. exports did fall. NAFTA did not guarantee the United States an exclusively favorable trade arrangement with Mexico. Instead, Europe and Asia maintained more favorable trade balances with Mexico in the wake of the peso crisis than did the United States. These same arguments are nonetheless being recycled now in the discussions about fast track, Chile's accession to NAFTA, and the Free Trade Area of the Americas.

Three and a half years since NAFTA's implementation, it is hard to imagine how things could have been worse, had we taken a more deliberate and gradual course. We could have sought an economic and social integration agreement that recognized the vast economic disparities between our countries and protected the interests of workers, communities, and the environment, as well as those of capital. This is the course the AFL–CIO would like to see this country embark upon as we consider future trade agreements.

Policymakers in the United States face a clear choice. They can continue to praise NAFTA, insisting bravely in the face of all data to the contrary, that it has been a marvelous success, that no matter how badly things have turned out for the hundreds of thousands of American workers who have lost their jobs or for the millions of Mexicans suffering through a severe economic crisis, that things would have been worse if NAFTA had not passed. Or they can face the facts and try to learn a useful lesson from the experiences of the last three and a half years.

NAFTA has harmed workers in all three North American countries. Since NAFTA took effect, the U.S. trade deficit with Mexico and Canada has more than quadrupled—from $9 billion in 1993 to $39 billion in 1996, costing American workers

420,000 jobs. And many more have seen their wages bid down and their job security jeopardized, as employers have taken advantage of the increased mobility given them by NAFTA to use hardball tactics at the bargaining table.

Americans clearly understand that NAFTA has miserably failed to live up to its promises. A recent BankBoston poll shows that a majority of Americans (by a factor of two to one) believe that trade agreements are more likely to cost jobs than to create them. Seventy-three percent of those polled believe labor and environmental issues should be negotiated as part of trade agreements, as opposed to only 21% who believe those issues should be treated separately. A Wall Street Journal poll found that 43% of those polled believed NAFTA has had a negative impact on the United States, while only 28% believed NAFTA's impact has been positive.

NAFTA has also failed to deliver prosperity and stability to Mexico. Instead, it exacerbated the Mexican economic crisis, limiting the government's ability to address the crisis, and deepening income polarization and social divisions. Since January 1, 1994, when NAFTA took effect, Mexico has undergone an economic depression, widespread guerrilla uprisings, political turmoil, increased environmental damage, and growing poverty. Rather than enjoying automatic prosperity as a result of trade liberalization, as NAFTA's proponents had predicted, average Mexicans have seen their debts skyrocket and their wages fall since NAFTA took effect. In dollar terms, according to the Bureau of Labor Statistics, the average hourly compensation for a Mexican production worker in manufacturing has fallen 36% since 1993, from $2.40 to $1.51. Canada has seen significant erosion of its social safety net since the passage of NAFTA.

NAFTA's labor and environmental side agreements have proven ineffective. Under the terms of the labor side agreement, even when the workers have proven their case satisfactorily, the remedies have been inconsequential and the abuses have continued.

For example, the U.S. National Administrative Office found that Sony Corporation had denied its workers in Nuevo Laredo the right to form a union, and that the Mexican government had "persistently failed to enforce its own laws" in this area. The remedy imposed was for the Labor Ministers of the United States and Mexico to hold a consultation with each other, and for a series of discussions and seminars to take place on the problem of union registration. The workers fired for attempting to organize an independent union have not been rehired; Sony continues its abusive, anti-labor practices; and neither the government of Mexico nor the company has been assessed any monetary fines. The side-agreement approach has not worked.

In fact, the side agreement approach was designed not to work. The U.S. and Mexican officials in charge of negotiating the side agreements are on record as saying that it is extremely unlikely that sanctions would ever be applied. The Mexican Commerce Secretary, Herminio Blanco, told a group of Mexican businessmen not to worry about the side agreements, because the process was so long and tortuous that it was "very improbable that the stage of sanctions could be reached." Ira Shapiro, then General Counsel for the U.S. Trade Representative, told an audience of business people at an American Enterprise Institute Conference (October 5, 1993) that "we made it difficult to get to sanctions." We have not heard similar boasts with regard to NAFTA's provisions on intellectual property rights.

NAFTA's provisions on trucking standards are inadequate to ensure highway safety or safe working conditions for American or Mexican truck-drivers. Present border infrastructure and personnel are not able to enforce current regulations, let alone handle the increased flow of traffic projected once NAFTA's trucking provisions are fully implemented.

All in all, it should be clear that NAFTA fulfilled virtually none of the promises made on its behalf. It was to lead to a U.S. trade surplus with Mexico, thereby creating hundreds of thousands of U.S. jobs. The reverse occurred. It was to make Mexico rich, and a rich Mexico was to easily solve all its problems with regard to environment, drugs, democracy, and labor rights. Instead, Mexico suffered one of the worst economic crises in its history, and all of the above problems have worsened, not improved. Even as recovery begins, it is clear that only the export sector is growing, leaving most Mexicans economically vulnerable and in deep debt.

Instead of extending NAFTA to Chile and the rest of this hemisphere, we must drastically rethink the trade and investment rules we need as we approach the 21st century. We need to protect core labor rights and environmental standards right in the body of any new trade agreement, and this must be written right into fast-track legislation. That is, the preferential treatment allowed by fast track—a no-amendment vote and a streamlined timetable—should apply only to agreements that contain enforceable provisions on labor and the environment. It makes more sense to clarify this at the outset of the negotiations, than to spend years negotiating an

agreement with dozens of other countries and then reject it because it lacks necessary protections for workers and the environment.

If the United States is serious about incorporating labor and environmental standards into trade agreements, then conditional fast-track legislation will help achieve that goal. Limiting the applicability of fast track provisions will strengthen our negotiating position vis-a-vis our trading partners, especially in Latin America. We have learned from the experiences of the past twenty years that simply listing worker rights along with other negotiating objectives is not sufficient.

We also need to put substantial resources into worker training and adjustment assistance if we are concerned about smoothing transitions for workers displaced by trade liberalization. The NAFTA Transitional Adjustment Assistance Program is poorly designed and underfunded. Only about 5% of the workers certified under NTAA actually receive training, and only about 3% receive monetary assistance through the program. It is impossible for many workers to locate and qualify for appropriate training programs within the overly rigid timelines of the NTAA program, and thus they are ineligible for the monetary assistance as well.

The AFL–CIO is open to expanding trade through bilateral or multilateral agreements, so long as those agreements reflect the legitimate concerns of workers and communities, and not just those of business. Past trade agreements have taken care of employers' rights. Future trade agreements should protect the people who do the work and the environment we all share. Mr. Chairman, we stand ready to work with you and members of the Committee to structure legislation that will bring shared prosperity to all the workers of our hemisphere.

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Belo Horizonte, Brazil

May 15, 1997

LABOR AND SOCIAL ORGANIZATIONS DENOUNCE FTAA PROCESS IN BRAZIL

While the trade ministers of the western hemisphere have been struggling over contentious issues such as market access, the protection of intellectual property rights, and the pace of negotiations toward a Free Trade Area of the Americas, labor unions and non-governmental organizations from the hemisphere have come together to express a common critique of the negotiation process and to begin the challenging work of developing a viable alternative to the current FTAA model.

On May 12 and 13, the union confederations of the hemisphere held a Labor Forum attended by several hundred people in Belo Horizonte to coincide with the annual meeting of the trade ministers of the Americas, which is taking place on May 15 and 16. While this is the third such meeting for the labor groups (following similar gatherings in Denver in 1995, and Cartagena, Colombia, in 1996), this was the first time that a wide spectrum of other social organizations also participated, as well as the first time that such a large number of union representatives were able to attend. The Inter-American Regional Organization of Workers (known by its Spanish acronym, ORIT), which represents most of the largest labor federations in the hemisphere, organized the meeting. Union representatives from 18 countries, including the United States, Canada, Mexico, Colombia, Argentina, Bolivia, Venezuela, Honduras, and the Dominican Republic attended the meeting, which was hosted by the three Brazilian labor organizations (the CUT, the CGT, and the Forca Sindical). Non-governmental organizations from Brazil, Chile, Mexico, Canada, and the United States participated in the Forum. These included representatives of environmental, agricultural, development, human rights, religious, women's, indigenous peoples', small business, and labor rights organizations.

The union organizations signed a joint declaration demanding official recognition of the Labor Forum and the establishment of a Working Group on Labor Rights within the FTAA process. They also laid out demands for the FTAA to include a social dimension, including protection for labor rights and environmental standards. The statement explicitly recognizes the difficulties inherent in integrating economies of vastly different sizes and of contrasting social and political systems. It calls for a gradual negotiation process.

Brazilian Foreign Affairs Minister Luiz Felipe Lampreia came to the Labor Forum on the afternoon of May 13 to accept the document and promised to convey its message to the other trade ministers in his capacity as President of the meeting.

The labor and social groups also signed a pathbreaking joint declaration in recognition of their common interests in changing the direction of current trade and investment policy. Stan Gacek, Assistant Director of International Affairs for the AFL-CIO, lauded the profound and unprecedented cooperation between the trade unions and the other social movements present. "The joint declaration of the need for a social dimension in the FTAA demonstrates to this hemisphere and to the entire world that all of civil society in the Americas, and not only the trade unions, are demanding an effective system of labor, environmental, and social rights as an absolute condition to any trade expansion in the hemisphere," remarked Gacek.

These diverse groups came together to demand a seat at the table -- now reserved exclusively for trade negotiators and the business sector. While the Labor Forum has become an increasingly vibrant and important occasion for international exchange of ideas and progress toward a consensus among labor and social organizations, it remains outside the negotiation process, with no guarantee from year to year that it will be able to meet or that its input will be heard.

In contrast, the business community has held annual Business Forums every year since the Miami Summit of the Americas in 1994. The trade ministers have officially recognized the Business Forum and have incorporated its input into their reports. Fortune 500 executives have regularly addressed the ministers. In fact, parts of the business meeting take place in the same location as the ministers' meeting.

"The privileged existence of the Business Forum -- and the marginalization of labor and other voices from civil society -- is a symbol of everything that is wrong with U.S. trade policy," says Thea Lee, Assistant Director of Public Policy at the AFL-CIO, who attended the Labor Forum. "Our current trade agreements reflect almost exclusively the interests and the input of the business community. This is evident from the content of the North American Free Trade Agreement and from the set of working groups already established to begin negotiations over the FTAA. If labor and other members of civil society are completely excluded from the negotiation process, the resulting FTAA will be NAFTA all over again on a larger scale. We will have no choice but to oppose it, and our country will live through another divisive national debate."

Lee reiterated the position taken by the AFL-CIO Executive Council in February 1997, that the labor federation will oppose any fast-track legislation (giving the President authority to negotiate trade agreements that Congress will not be allowed to amend) that does not require enforceable labor and environmental standards as an integral part of any new trade agreement.

The social organizations attending the Labor Forum have also vowed to put resources into educating and mobilizing people in their respective countries around this

issue. "The official participants in this trade ministerial may have the power, but we have the people," says Sarah Anderson of the Alliance for Responsible Trade, a broad-based U.S. coalition. "Social groups representing millions of people across the hemisphere are ready to fight any trade agreements that do not ensure adequate protections for workers and communities."

The U.S. trade delegation has taken a leading position in support of the Labor Forum and the inclusion of a social clause, but they have encountered strong opposition from many of the other governments in the hemisphere. "We certainly appreciate the leadership shown by the U.S. delegation on the labor issues," says Thea Lee, "but there is clearly a lot of work to be done -- on our part and on theirs -- to build the necessary consensus in the hemisphere to move forward in this area."

While the trade negotiators are progressing slowly, the consensus among labor and social organizations from Canada to Argentina reflects the real commonality of interests among workers and communities in this hemisphere.

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DECLARATION OF THE WORKERS OF THE AMERICAS

DEMOCRACY, DEVELOPMENT, AND SOCIAL JUSTICE IN THE AMERICAS

The representatives of the Trade Union Confederations of the Americas, affiliated and fraternal organizations of the Inter-American Regional Organization of Workers (ORIT) and the International Trade Secretariats (ITS) met in Belo Horizonte, Brazil, on May 12 and 13, 1997. We express once again our concern with the FTAA process and offer recommendations to our governments and societies that this process reflect the principles of democracy, broad-based development, and social justice.

For many years the trade union movement has been monitoring the disastrous consequences for workers and the peoples of the Americas of a market-driven integration process. This process is causing the loss of jobs, reduction of wages and social services, and the erosion of fundamental principles of democracy.

In Denver we drew attention to the need for effective involvement of different social sectors in the negotiation of the FTAA. We deplore the anti-democratic attitude of governments, such as those of Mexico, Costa Rica, Colombia and Peru, that oppose the creation of a Labor Forum. This opposition ignores workers' contributions to the creation of wealth. The exclusion of labor from this process is unacceptable, especially in light of the official recognition of the Business Forum.

The FTAA, as currently implemented, is an unjust and anti-democratic process, that we will oppose. It will be the largest commercial agreement in the continent, involving countries of disparate size and of contrasting social and political conditions. It will not lead to broad-based and economic development.

Free Trade, a Model of Exclusion

The integration of the Americas must take into account social imbalances between and within countries. We do not believe that free market forces will automatically generate long term economic growth and employment in Latin America, unemployment has increased along with the process of unilateral and accelerated trade liberalization. The number of excluded people and those who survive only by turning to the informal sector has increased while wealth has become concentrated. The ongonig liberalization process has contributed to the decline of the family farm and an increase in food dependence. The growth in rural migration has led to increased poverty, unemployment and violence in urban areas. United Nations' data show that in 1960, the wealthiest 20% of countries owned the equivalent of 30 times what the poorest 20% of countries owned. The difference has doubled. Today it is 61 times. We live in a world in which 15% of the world's population owns 80% of the world GDP.

It is imperative that economic and social policies are coordinated at the international level to overcome inequalitites, create jobs, improve the quality of life and guarantee sustainable economic growth. We must counter the growing strength of international oligopolies which act globally without any governmental control. In addition, the

integration process should respect the right of each country to seek food self-sufficiency. Food is not just a commodity, but a basic human right. Agrarian reform is an instrument of social justice, development and generation of employment that should be adopted in the majority of countries of the continent.

For workers, international trade is not an end in itself. It must benefit all peoples. We oppose free trade without social safeguards, without appropriate guarantees for conditions of labor and social rights and without protection of the environment. Comparative advantage must not be founded on the violation of basic human rights. Workers will not continue to pay for the consequences of intensified international competition resulting from free trade.

Challenge for the Americas

As workers we have accumulated experience on the effects of trade liberalization. We observe a generalized trend to attack our rights, and pressure for greater flexibility and growing precariousness of the labor market. The progress promised to us in the struggle against poverty and disease, and for education, nutrition and employment has not been achieved. Latin America faces a great social challenge, and we believe that FTAA does not recognize this.

During the last 12 years, the United States and Canada have also experienced significant trade liberalization. Meanwhile, real wages have decreased, job instability has increased, inequality and poverty have grown, and there has been an alarming reduction in employment in the manufacturing sector.

Our hemisphere is characterized by enormous inequalities between and within countries. The United States has a GDP equal to 75% of the total goods and services produced in the hemisphere. Its capacity to mobilize technological and capital resources is far greater than that of countries in the southern part of the Americas. Therefore, trade agreements must include a balanced and sustainable strategy for social integration. The problem of foreign debt needs to be addressed as part of this strategy. The debt still has a harmful effect on the economies of most FTAA countries because it greatly reduces governments' capacity to intervene in key areas of development such as housing, health, education and the environment.

The labor movements of the hemisphere are offering concrete proposals to confront the challenges of sub-regional agreements like NAFTA, MERCOSUR, CARICOM, the Andean Pact, and SICA. Our goal is integration that preserves the gains we have made, promotes social development, and strengthens workers' rights as an integral part of these agreements.

Concrete Proposal Regarding the Negotiation of the FTAA

For these reasons, we oppose the current commercial model of the FTAA. The process needs to be democratic, transparent, and open to much broader participation. It must recognize the immense economic and social disparities in the region.

- Once again, we demand the official recognition of the Labor Forum and the establishment of a Working Group on Labor Rights. But this is not sufficient.

- New bi-lateral and multi-lateral trade agreements must incorporate a social dimension.

- There must be recognition of core labor standards and the creation of mechanisms for effective compliance with these by the countries in the FTAA, including:

Freedom of association

Right to organize and bargain collectively

Restrictions on child labor and forced labor

Banning of employment discrimination on the basis of sex, race, or religion

- We demand the creation of environmental protection mechanisms to regulate the action of large corporations and conglomerates which threaten the quality of life. In addition, social justice demands that agrarian reform be implemented in order to improve the quality of life of the rural population.

- We demand a gradual negotiation process, allowing each country to adopt appropriate transitional policies. Progressive negotiations will allow better identification of opportunities and threats faced by different economic sectors.

- We demand access to information, the establishment of mechanisms facilitating collective bargaining, and democratic control over the actions of transnational corporations operating in the region, since these are the principal beneficiaries of economic integration.

- We demand the adoption of a Charter of Social and Labor Rights by the countries of the Americas.

To conclude, the ORIT-ICFTU, the International Trade Secretariats, and fraternal organizations declare our firm determination to fight for democratiziation of the FTAA process.

We workers produce all goods and services. Without our participation, the negotiation and implementation of continental integration and of our countries' involvement in international commerce are problematic.

Belo Horizonte, 13th May, 1997

Addendum to Richard Trumka's testimony at the Senate Finance hearing on Fast Track Reauthorization
June 3, 1997

1. Senator Grassley questioned whether 420,000 workers could really have lost their jobs due to NAFTA, since many fewer workers (127,337 as of May 27, 1997) have been certified under the NAFTA-TAA program. There are several reasons for the apparent gap between these two figures.

First, the 420,000 figure refers to the number of jobs and job opportunities represented by the growth in the trade deficit with both Mexico and Canada. (The deficit grew by $30 billion from 1993 to 1996. Applying the Commerce Department multiplier of 14,000 jobs per billion dollars of net exports gives 420,000 jobs. Recall that this is the same methodology used by Gary Hufbauer and Jeff Schott to predict that NAFTA would *create* 170,000 jobs.) As such, it includes both jobs lost due to increased imports *and* potential jobs lost as new investment goes to Mexico (or Canada) instead of to the United States. We would not expect 420,000 displaced workers to apply for NTAA benefits in this case. But the fact that U.S. imports from Mexico and Canada have grown so much faster than our exports (accounting for a quadrupling of our North American trade deficit in just three years) does mean fewer jobs for American workers, on the order of 420,000. (Another way of understanding the 420,000 figure is to say that if the North American trade deficit had not grown, that is, if imports from Mexico and Canada were $30 billion lower *or* if exports to Mexico and Canada were $30 billion higher, then the United States would have created about 420,000 more jobs, other things equal.)

Second, the NTAA program has not been well publicized, and its benefits are not considered as good as those available under Trade Adjustment Assistance, the general program. For that reason, many eligible workers do not apply, while others apply but are not certified (about 225,000 workers in 48 states are covered by the petititions received by the Labor Department to date). A study by the North American Integration & Development Center (at UCLA) found that many small, non-unionized firms are not aware of NTAA and that it therefore undercounts eligible workers.

2. In his testimony, Fred Bergsten, president of the Institute for International Economics, stated that trade and migration have increased wage inequality by 10-20%. A forthcoming study (by William Cline) from Mr. Bergsten's own institute, however, estimates the combined impact of trade and migration on wage inequality to be 65% (out of the 18% increase in wage inequality cited by Mr. Bergsten). Furthermore, even this figure may underestimate the overall impact of trade policy on wages because it does not take into account the weakening of labor's bargaining power from trade agreements like NAFTA. Please see attached article, "Trade and Inequality," by Thea Lee for a more detailed argument.

3. In response to Senator Moynihan's question about whether the International Labor Organization is the proper place for worker rights issues, we welcome cooperation with the ILO in monitoring worker rights and establishing appropriate standards. However, the ILO does not have the capacity to enforce worker rights, and therefore it cannot be a substitute for including enforceable worker rights in trade agreements, with appropriate dispute settlement mechanisms.

From: Restoring Broadly Shared Prosperity: A Conference Volum
Edited by Ray Marshall. Washington, DC: EPI, 1997.

Trade and Inequality

by Thea Lee
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There is a certain schizophrenia in public discourse about globalization. On the one hand, free trade and investment flows are touted as policies bringing remarkable benefits: efficiency, faster growth, more jobs, and good jobs. On the other hand, it is also common to read that "we" must tighten our belts and sacrifice, now that the United States is part of the global economy. Many people outside of Washington policy circles are understandably confused over whether they personally can expect to reap gains from freer trade or whether they will be called on to sacrifice their jobs or income for the sake of "the global economy."

While many of the advocates for continued or accelerated globalization appear untroubled by the contradiction inherent in these two positions, ordinary people tend to fixate on the implied threat and the negative message in the belt-tightening exhortation. This may be because it resonates with their own experience, or because it is more concrete than the vague allusions to widespread benefits. In either case, the feel-good rhetoric has not succeeded in erasing the image of the global economy as a job-devouring, wage-eroding threat to the living standards of the ordinary person. Politicians such as Pat Buchanan and Ross Perot have capitalized on this perception, sometimes with surprisingly strong outcomes.

Hurting Some and Helping Others

While many economists and journalists express frustration with what they perceive as ignorance or shortsightedness on the part of the public, this popular distrust of globalization or "free trade" is rooted in real and concrete economic facts. Trade liberalization does not benefit all members of society equally: in fact, it makes some people worse off, even in absolute terms, while making others better off. This is true even in those cases when trade liberalization can be said unequivocally to make the country (or the sum of individual incomes in the country) richer. Capital outflows, particularly direct investment in low-wage countries, can exacerbate the polarizing impact of trade, particularly when companies use the credible threat of shifting production to low-wage countries as a bargaining lever.

This basic finding is not new. It is as old as trade theory itself,[1] although it was formalized mathematically in 1941 by Wolfgang Stolper and Paul Samuelson. The modern theory predicts that less-skilled labor in a country like the United States, which is relatively abundant in skilled labor and capital, will be made worse off as trade barriers are lowered: the price of labor-intensive goods will fall, as cheap imports gain better access to the domestic market, and thus the wage of less-skilled (often described as non-college-educated) workers will fall.[2] Since non-college-educated workers make up almost three-quarters of the U.S. workforce, this is a powerful and politically relevant prediction.

It is important to note that this prediction holds even when the dollar value of imports is equal to the value of exports (that is, trade is balanced) and when the domestic economy is at full employment. It occurs because trade liberalization causes production to shift between sectors — out of those where the domestic advantage is weakest and into those for which the domestic climate, factor endowments, and technology are best suited. Any efficiency benefits from trade are directly proportional to the intersectoral disruptions that are caused.

However, in the real world, trade is not always balanced, the economy is not always at full employment, and markets — both for goods and for labor — are not always perfectly competitive. Thus, there are several other channels through which trade and investment can affect the distribution of wages: large and chronic trade deficits, which reduce the demand for labor, particularly in the manufacturing sector; outsourcing of the labor-intensive portions of the production process; the erosion of

monopoly profits in domestic industries, which can in turn be passed on in the form of lower wages; spillover effects of displaced manufacturing workers on service sector wages; and weakening of the bargaining power of less skilled labor *vis-a-vis* owners of capital. These effects overlap, as do the impacts of technological change and declining unionization.

Traditionally, economists have readily admitted that there are "winners and losers" from freer trade (as is the case with virtually all economic policy changes). But they finesse all distributional implications with a neat sleight of hand: if the net social gains from trade liberalization were to be redistributed from winners to losers, then it would be possible for every individual to be better off with lower trade barriers.[3] The problem with this formulation is twofold. First, the redistribution does not occur. Second, the focus on net societal gains has left too little attention for the issues related to distribution: Who gains and who loses? Is the impact of trade regressive or progressive? How large are the losses relative to the gains?

The Social Context

This paper offers an organizing framework for examining these issues. It reviews the evidence and puts the research into a larger social context. It concludes that trade has indeed contributed to the dramatic decline in wages and loss of jobs for non-college-educated American workers, and that the employment impact, both gross and net, has been large relative to the social benefits of trade liberalization. It argues that the size of trade's effect on wages and jobs should be judged relative to the net social gains from trade, not according to whether trade is the only or largest measurable factor.

Furthermore, current trade and investment flows are exacerbating existing inequalities — between production and nonproduction workers, between college- and non-college-educated workers, and between high- and low-paid workers. These conclusions hold true, based on measured changes in trade volumes, import prices, and capital flows.

Since some of the impact of changes in trade policy stems from institutional changes rather than actual trade or investment flows, the measures described here necessarily represent a lower-bound estimate of trade's impact on wages. For example, when Xerox recently extracted wage concessions from its workers in New York by threatening to move production to

Mexico, that threat was made more credible by North American Free Trade Agreement investment protections and tariff provisions.[4] This particular wage impact of trade policy is not captured by any of the models measuring trade and investment flows, since the downward pressure on wages occurs with no cross-border movement of goods or capital.

The paper concludes by exploring alternative trade policies that could potentially preserve (or reduce only slightly) the net gains from trade while mitigating the negative impacts on less-educated workers.

Basic Framework

If we accept that not every individual is made better off through increased trade, then how do we compare various policy options (with more or less trade liberalization) to each other? In fact, this question is harder for economists to address than one might think. Economic theory long ago declared itself incapable of comparing the satisfaction one person receives from a dollar of income to the satisfaction of another person from the same dollar. That is, economists cannot rank the social welfare of two different situations that are identical except that a dollar has been transferred from one person to another.[5] Strictly speaking, then, economists do not possess the theoretical tools to declare unequivocally that free trade, which will tend to reduce the incomes of some workers while raising the incomes of others, is a better policy than protectionism. This judgment can be made only by assuming explicitly that the loss of a dollar in income to a garment worker is exactly offset by the gain of one dollar or one dollar and one cent to a manager.[6] Even when politicians and economists tout the export-led creation of high-wage jobs, they do not usually argue that the same individuals who lose their jobs to imports will succeed in getting the export jobs.

It would certainly be possible to link trade policies more directly to redistributive schemes. A redistributive plan that truly compensated trade's "losers," however, would be costly and is not feasible in the current austere political context. A program like Trade Adjustment Assistance, which is a transitional program rather than a compensatory one, now serves only a small fraction of eligible workers and is perennially under attack. Meanwhile, the entire social safety net of welfare, unemployment compensation, and food stamps, is shrinking as congressional budget-cutters search for social programs to cut. Free-trade economists have been much

more forceful in their advocacy of rapid and unencumbered trade liberalization than in pressing for serious income redistribution domestically.[7]

David Richardson (1995, 52) describes trade's uncompensated losers as a "philosophical" problem, but essentially dismisses the issue by noting that, "lots of otherwise desirable trends leave some people with lower relative income." But there are several reasons why it is important to pay attention to the distributional consequences of trade policy. First, the magnitude of the gross losses and gains are large relative to the net gains (see Blecker 1997). In other words, losers lose a lot and winners win a lot, while the net gains to society are relatively small. Second, the redistribution of income resulting from trade liberalization is regressive: the relatively rich gain at the expense of the middle class and poor. Whether or not this polarization of incomes is a problem depends on one's point of view. But in the present context of dramatically widening gaps between the incomes of the rich and the rest of society, most people would agree that further increases in inequality strain the social fabric. It is also possible that the losers outnumber the winners, even if the dollar value of total gains exceeds the dollar value of the losses.[8] Finally, trade liberalization can lead to permanent and sizable disruptions in people's lives. Our current measurement techniques do not capture the true social costs of these disruptions (see Merva and Fowles 1992, for example, for discussion of the social costs of unemployment and poverty).

Richardson (1995, 52) compares the inequality generated by trade to education. Education, he argues, "makes those who participate in it better off compared to those who choose not to, and may lead the former to fill jobs that would otherwise be available for the latter, imposing absolute losses, too." Leaving aside whether most workers can choose to participate in trade-induced downsizing or not, Richardson has to work hard to make the argument that many people suffer absolute income losses as a result of other people's education. Education is much more likely to affect relative income rankings (by sorting job applicants) than it is to reduce incomes absolutely. Certainly, other people's educational attainment does not disrupt lives in the way that a factory closing does. Furthermore, government funding of education (including primary and secondary schools) is likely to close income inequalities, not widen them.

The impact of trade policy on people's incomes and lives is more aptly compared to building a highway through a residential neighborhood. Some commuters will clearly benefit and jobs will be created, while

some residents will lose their homes, and the property values and quality of life of others will be diminished by traffic and pollution. Generally, the government compensates those whose homes are razed, and, even so, building a highway occasions lengthy and heated political battles. Why then is it so surprising that trade policy is not warmly embraced by those it affects adversely? And why have economists been so unsympathetic to the disruptions caused and losses imposed by trade liberalization?

How Big Are the Gains From Trade, and Who Gets Them?

Rising trade volumes and growing wage inequality have brought renewed attention to this question of winners and losers. Economists have produced a number of theoretical and empirical studies. At first glance, these studies appear to offer starkly conflicting results, with the authors loosely falling into two camps: those who believe trade matters (as a contributing factor to growing wage inequality) and those who believe it does not. In fact, there is more agreement than disagreement within the ranks of economists, and over time the common ground has expanded. A consensus is emerging that trade has contributed between 10% and 30% to the growth in wage inequality over the last 15 years, with some estimates higher than 50%. The strongest disagreement is not over the empirical findings *per se*, but rather over the appropriate adjectives with which to characterize the findings. Economists' assessments range from "no impact" or "very small" to "moderate" and "substantial." (See Belman and Lee 1996, Burtless 1995, and Cline 1997 for a detailed description and assessment of the debate.)

One of the reasons why the literature on trade and wages has been so confusing and, at times, contradictory has been that it has focused on ranking contributing factors to growing wage inequality (or falling non-college wages). My view is that it is not particularly important to know whether it is trade or technology that accounts for a larger proportion of wage decline. Clearly (as many economists have pointed out), trade, technology, declining unionization, and changes in educational quality have all played roles and have interacted with each other along the way.[9] A more interesting project is to assess the role of each as fully as possible, and to propose policy solutions that address the problem of declining wages. As Leamer (1995, 2) has pointed out, identifying technology as the sole or main suspect leads to "a very passive response." Burtless (1995, 815) is one of the

few economists who has admitted that recent work suggests that "benefits of trade protection to the unskilled could be sizable."

The Right Yardstick

The relevant comparison is not between trade and technology; rather, we should compare the impact of trade to the net social benefits it brings. One textbook (Krugman and Obstfeld 1991, 215) puts the cost of existing trade barriers in 1984 at 0.26% of gross domestic product. That figure would probably be lower today, since trade barriers have fallen substantially since 1984. Free trade agreements with Canada, Mexico, and Israel, as well as the most recent round of the General Agreement on Tariffs and Trade, have cut both tariff and nontariff barriers. Thus, the gains from eliminating all remaining trade barriers is less than a quarter of a percent of GDP. Recognizing that this measure of the potential gains from additional trade liberalization looks "disappointingly small," as one economist put it at a Brookings conference a few years ago, some economists have evoked higher but as yet unquantified "dynamic" benefits of trade to bolster their arguments about the urgency of the free trade agenda. These phantom benefits have not been demonstrated empirically and so far exist mainly in the imagination of economists.

Even the conventional gains from trade (sometimes called the "static" gains) are often assumed rather than shown empirically. During the debate on NAFTA, for example, the computable general equilibrium models used to measure the impact of the agreement generally *assumed* that there would be sizable efficiency gains. Press reports then trumpeted this figure as a "finding" of the model.

It is important to note that there can be dynamic *costs* to free trade (or dynamic benefits to trade protection) that are not measured by conventional models. It could, for example, be socially efficient for temporary trade protection to allow an industry to retain key workers and maintain capital equipment during a period of disequilibrium in currency markets. In another scenario, well-designed trade protection could provide enough confidence in the size of the domestic market to spur needed investments, leading to faster productivity growth and gains for consumers. (See Scott and Lee 1996 for a longer discussion of this issue.)

The public can perhaps be excused for its skepticism over the gains from trade, given the slowdown in productivity and output growth since

the early 1970s — a period that roughly coincides with trade liberalization and rapid growth in the volume of global trade and investment flows. Many other relevant policy and social changes also occurred during that period, but economists who want to make the case for either trade or technology as contributors to wage inequality should also be prepared to explain why the gains from trade and technology are not reflected in more rapid aggregate growth.

Replacing the Revenue Generated by Tariffs

Finally, economists' obsession with the inefficiency of trade barriers misses a crucial point. Economists compare an economy with tariffs to one without any such barriers and conclude that the barrier-free economy allocates its resources more efficiently. This comparison ignores the fact that tariffs (and "auction quotas") generate government revenue. The proper comparison, therefore, should be between an economy with tariffs and one with an alternative revenue-generating mechanism, such as a sales or income tax. Of course, any such tax will also "distort" economic activity and create some inefficiency in a pure market model. It is that distortion that should be compared to the distortion imposed by tariffs. The tradeoff could also be expressed in terms of the public debate by explicitly identifying which social services would be cut, which taxes raised, or how much the budget deficit would have to increase in order to compensate for the lost tariff revenue in any trade-liberalizing measure.

During the debate over the GATT, the last-minute requirement imposed by the Congressional Budget Office that Congress find $13 billion worth of revenues to replace the projected loss of tariff revenues almost brought the legislation to an impasse. Free trade advocates railed against this requirement. If the gains from trade, however, were as enormous as was often implied, it should not have been so excruciatingly difficult to cover the lost revenues.

In fact, our society has come to view all the redistributions of income caused by trade liberalization as somehow natural and right: losers must simply grit their teeth and gracefully accept their losses for the overall good of society, while the winners hold onto their gains and express outrage at any attempt to tax away any portion thereof. But the losers are getting restless, and this particular "understanding" may have reached its limit.

A Framework for International Trade and Investment

A review of the empirical literature suggests that the negative income effects of trade are large (on the order of 4% or 5% of wages for non-college-educated workers), while the net social gains are small, probably less than 1% of GDP. The theoretical case in favor of free trade is weak in the presence of uncompensated income effects that are large relative to net social gains. I conclude that the political and economic case in favor of unfettered free trade has not been made. It does not follow from this consideration of the evidence that we should stop trading or rush to erect trade barriers; but it strongly suggests that we should slow down the "free trade juggernaut," the ongoing project to eliminate all remaining trade barriers as quickly as possible. The trade debate should also open up to include more options than free trade versus no trade.

Most of the mainstream economists and analysts who have weighed in on this debate — even those who find that trade has had a large or significant impact on inequality — have concluded that no trade protection is warranted in response. This includes Wood, Leamer, Collins, Sachs, Shatz, Feenstra, and Kapstein. This unanimity on policy prescription is not always a direct and logical outcome of research, but rather reflects norms within the economics profession.

In another context, Paul Krugman (1996, 49) has written that, "if a policy change promises to raise average income by a tenth of a percentage point, but will widen the wedge between the interests of the elite and those of the rest, it should be opposed. If a law reduces average income a bit but enhances the power of ordinary workers, it should be supported." Economists like Krugman should be urged to hold changes in trade policy up to the same scrutiny as other policy changes. If our current trade policies are shifting jobs out of the manufacturing sector, undermining the bargaining power of workers, and imposing a large burden on less-educated and less-affluent workers, then we should question whether we must continue those policies indefinitely.

Similarly, it is important to view recent changes in international trade and investment policies in a broad social context, not as marginal adjustments to already low tariff rates. Clearly, businesses see policies like NAFTA and the pending Multilateral Agreement on Investment (now being negotiated in the Organization of Economic Cooperation and Development and the World Trade Organization) as crucial to their abilities to reorganize production across national boundaries. While such reorga-

nization may in many cases be motivated by the desire to achieve market access, it often is aimed at taking advantage of cheap labor.

In any case, businesses have not hesitated to use the existence of mobility-enhancing trade rules to whipsaw workers at the bargaining table. As early as 1992, 40% of corporate executives polled by the *Wall Street Journal* (September 24, 1992, p. R7) admitted that it was likely or somewhat likely that their company would shift some production to Mexico within a few years. Twenty-four percent of the executives polled said their companies were likely to "use NAFTA as a bargaining chip to keep wages down in the U.S."

Since the implementation of NAFTA in January 1994, these expectations have been fulfilled. In a report prepared for the NAFTA Labor Secretariat's Commission on Labor Cooperation, Cornell University researcher Kate Bronfenbrenner documents numerous examples of employers using the possibility of relocating production to Mexico under NAFTA as a threat during wage negotiations or union-organizing campaigns. Some employers posted a large map of North America with arrows pointing from the current plant location to Mexico. Others provided statistics to workers detailing "the average wage of a Mexican auto worker, the average wage of their U.S. counterparts, and how much the company stood to gain from moving to Mexico." ITT Automotive in Michigan parked tractor trailers loaded with production equipment labeled "Mexico Transfer Job" in front of a plant where a union campaign was under way. Clearly, labor-management relations and the balance of bargaining power between workers and employers are affected by trade flows and trade rules. This effect comes on top of the two more easily quantifiable effects studied more intensively by economists: the relative wage impact that results from sectoral shifts in production (comparative advantage effects of shrinking imports and expanding exports) and the downward drag on labor markets from chronic trade deficits.

One of the obstacles to clear thinking on this issue is that mainstream economists tend to see trade policy as bipolar: trade or no trade, tariffs or no tariffs. In fact, the present trade debate in Washington is more about rules and the framework of international trade and investment than it is about tariff levels. Current trade policies "protect" some national parties and expose others to new and sometimes destructive forms of competition. Business interests are imbedded in most aspects of current trade law, while labor and environmental concerns are relegated, at

best, to relatively toothless side agreements (as in NAFTA).

We must continue to press for a link between freer trade and minimum labor and environmental standards. In other words, in order to enjoy continued access to overseas markets, governments should be expected to enforce some internationally agreed-upon standards. This would mean negotiating a core set of standards and then allowing governments to impose sanctions against goods produced in violation of these standards. Currently, GATT allows countries to impose sanctions against goods produced with forced labor, but does not address other labor rights or environmental standards. NAFTA contains stringent protections against violations of intellectual property rights, but has much weaker provisions on labor and the environment.

Most proposals for incorporating labor standards into trade agreements focus on the following: freedom of association, right to collective bargaining, restrictions on child and prison labor, prohibition against racial or sexual discrimination, minimum standards on workplace health and safety, and a "decent" minimum wage.[10] International environmental standards are somewhat more difficult to identify, but might include a right to know about public environmental threats, the right to a safe workplace and living environment, and possibly a long-term plan to phase out the use of certain toxic chemicals.

The modest U.S. proposal to establish a working party on trade-linked worker rights in the World Trade Organization met with fierce opposition and only lukewarm advocacy in the first WTO ministerial meeting in Singapore in December 1996. In the absence of progress in the multilateral arena, critics of current U.S. trade policy are pressing for change in several crucial areas. One would be for the United States to use its own trade laws (Section 301, the Generalized System of Preferences, and the Caribbean Basin Initiative, for example) more aggressively to enforce stronger trade-linked protection of worker rights. Another campaign under way would encourage corporate codes of conduct with outside monitors. This could also lead to a labeling initiative rewarding companies that respect core labor rights and produce goods in an environmentally responsible manner.

In addition to pressing hard for incorporating labor and environmental standards into trade agreements, the U.S. government should also take steps to reduce the trade deficit. As the research reviewed here shows, much of the negative impact of trade on wages comes from the large and

chronic imbalance of imports over exports that the United States has experienced in recent years. We should consider the use of targeted, temporary trade restrictions (tariffs or auction quotas), which are allowed under the GATT Balance of Payments exception clause. See Scott (1996) for a more detailed proposal.

The rhetoric of "free trade" somewhere along the way got mixed in with pro-business investment rules and intellectual property rights protection. All other issues are labeled "social" or "non-trade" and put firmly on the back burner. If the imperative for free trade can be kept in perspective relative to social concerns like equality and democracy, maybe we can have a more open and intelligent debate over the kind of trade policy we want and need relative to the kind of society and economy in which we would like to live.

1. As Blecker (1997) points out, David Ricardo predicted that free trade would redistribute income from England's landlords to its workers and capitalists, an outcome Ricardo welcomed.

2. A more refined model, the Specific Factors model, predicts that any immobile factor of production (such as capital or labor uniquely suited to a particular industry) will gain from lower trade barriers if it is in an export sector and lose if it is in an import-competing sector. This model can provide some insight in understanding political battles over trade policy.

3. Krugman and Obstfeld (1991, 57): "It is always possible to redistribute income in such a way that everyone gains from trade."

4. See also Bronfenbrenner (1997, forthcoming) for a fuller discussion of tactics used by employers to convey to their employees directly or indirectly the threat of plant relocation.

5. In part, this was to avoid the otherwise obvious conclusion that society would benefit from egalitarian redistribution of income — i.e., that taking a dollar away from a millionaire would reduce his or her "utility" less than giving a dollar to a starving person would increase his or her "utility."

6. See Blecker (1997) for an excellent discussion of this issue.

7. Two recent books begin to reverse this trend. *Has Globalization Gone Too Far?*, by Dani Rodrik, focuses explicitly on the distributive consequences of trade liberalization and reviews domestic policies to offset these effects. A forthcoming book by William Cline, tentatively titled *Trade and Wage Inequality*, concludes that "a commitment to open trade needs to go hand in hand with a commitment to a whole array of domestic policies that help ensure the society evolves in an equitable rather than inequitable direction."

8. This depends on the degree of connection between labor markets for trade-affected workers and the rest of the economy. It will also be affected by the extent to which individual consumers, rather than retailers and distributors, reap the gains from lower import prices when tariffs fall.

9. Barry Bluestone (1994a) has suggested a murder metaphor in this whodunit: as in Agatha Christie's *Murder on the Orient Express*, each of the suspects took turns stabbing the victim with a knife: they are all guilty!

10. See Rothstein (1996) for a discussion of how an international standard for judging minimum wages might be developed.

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TESTIMONY OF MARK VAN PUTTEN
PRESIDENT, NATIONAL WILDLIFE FEDERATION
ON EXTENSION OF "FAST-TRACK"
NEGOTIATING AUTHORITY
BEFORE
THE COMMITTEE ON FINANCE
UNITED STATES SENATE

JUNE 3, 1997

National Wildlife Federation joins with groups including the Sierra Club, National Audubon Society, Community Nutrition Institute, and Center for International Environmental Law in seeking the common sense and balance that have been missing in the trade and environment debate. NAFTA made a start toward the kind of trade agreement that would promote environmental protection and sustainable development, but it is flawed in many respects. Instead of providing a forum for improving on the halting first steps of NAFTA, the fast track debate is moving in the reverse direction of leaving out environmental aspects altogether.

We are seeking US leadership to accomplish trade agreements that are engines for sustainable development, as was defined at the 1992 Earth Summit in Rio: to promote economic progress, social equity and environmental health. The precedents that are established in the fast track authority debated in the US will affect trade agreements all over the world for decades.

There should be no question in front of this Committee of moving backward, or of succumbing to partisan and extremist voices. Instead we should move forward by asking not whether environmental issues are related to trade agreements but how to include them, and by evaluating what form economic integration should take to be environmentally sustainable.

The testimony that follows is intended to provide recommendations to help fashion a common sense fast track bill that supports the use of trade rules to promote sustainable development:

I. General and Specific Environmental Negotiating Objectives.
II. Environmental Impact Assessments.
III. Amplifying Congressional Oversight and Public Participation.

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JUNE 3, 1997

Good afternoon, Mr. Chairman. I thank you for the opportunity to testify before the Senate Finance Committee on this important subject. I am Mark Van Putten, President of the National Wildlife Federation, speaking today also on behalf of four other environmental organizations: the Sierra Club, National Audubon Society, Community Nutrition Institute, and the Center for International Environmental Law.

National Wildlife Federation's broad constituency of over 4 million members and supporters includes sportsmen and women and a cross-section of the American public. Our motto is "people and nature--our future is in the balance." This applies equally to trade agreements as to other aspects of the American economic landscape. But as we analyze the trade debate today, we do not see much of the balance we seek. For example, while NAFTA made a start toward the kind of trade agreement that would promote environmental protection and sustainable development, it is flawed in many respects. But instead of providing a forum for improving on the halting first steps of NAFTA, the fast track debate is moving in the reverse direction of leaving out environmental aspects altogether.

We are seeking US leadership to accomplish the opposite: to assure that the trade agreements our nation enters from now on will be engines for sustainable development, as was defined at the 1992 Earth Summit in Rio, including provisions to promote economic progress, social equity and environmental health. The precedents that are established in the fast track authority you will be debating this year will affect trade agreements all over the world for decades. The same concepts under discussion here with regard to the Free Trade Area of the Americas will be echoed in other arenas such as the Asia Pacific Economic Cooperation forum (APEC), the Organization for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO). You must take seriously the future impacts of your actions today.

Mr. Chairman, as you may know, the National Wildlife Federation supported the 1991 two-year reauthorization of fast track. We did so because then-President Bush and USTR Ambassador Carla Hills, as well as influential leaders in Congress, agreed to address trade-related environmental concerns in the upcoming trade negotiations. At that time there was strong bi-partisan support for this consensus. These concerns were addressed in specific references to the environment found in the NAFTA text, as well as in NAFTA's supplemental agreements. While the NAFTA package did not earn the support of the entire environmental community, NWF and the other environmental organizations which supported the passage of NAFTA hoped that these environmental components marked the first steps toward synthesizing environmental interests in trade policy.

By 1993, we were optimistic that the United States had embarked on a new direction in US trade policy by including environmental issues among the US trade concerns. Vice President Al Gore's statement that "environmental protection is not a maybe; it is a must" at the Marrakech, Morocco signing of the Uruguay Round Agreement signaled a more balanced approach to international trade policy.

Regrettably, since then US trade policy has not fulfilled these high aspirations. The role of environmental protection in trade agreements has not only failed to progress as part of the US trade agenda, but has come under attack by a small number of reactionary voices who want to turn back the clock. Unfortunately, the political commitment to US leadership, from both the Administration and the Congress, has diminished in the face of these attacks. The failure of the World Trade Organization's Committee on Trade and the Environment to make any meaningful progress on the important issues before it is one striking result of the loss of US leadership.

Four years after NAFTA went into effect, little has been done to clean up the US-Mexico border region, or to ensure that strong and effective environmental laws are in place as required in NAFTA's environmental side agreements. Even the necessary study of the reciprocal impacts of trade and environmental concerns in the region has been neglected. And now with the Ethyl[1] case, many of our colleagues find their worst nightmare predictions coming true: one US corporation, dissatisfied with a Canadian environmental regulatory decision, is seeking to obtain compensation for the alleged "expropriation" of its property, through NAFTA's dispute resolution mechanism. This case poses a threat to environmental regulation in all three countries, and the provision at issue is replicated in the recently revealed Multilateral Agreement on Investment under negotiation at the OECD. So no wonder a large segment of the public and a lot of environmental organizations are opposed to expanding the existing NAFTA arrangements.[2]

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[1] Ethyl Corporation v. Government of Canada, UNCTRAL . Filed April 14th, 1997. See also Michelle Sforza, Preamble Center for Public Policy, and Mark Vallianatos, Friends of the Earth, "Ethyl Corporation vs. Government of Canada: Chemical Firm Uses Trade Pact to Contest Environmental Law," Washington, DC, 1997.

[2] Two other recent cases further illustrate the disturbing trend our colleagues fear is the result of the current flawed trade rules. The United States Trade Representative has used provisions of the General Agreement on Tariffs and Trade to successfully challenge in the WTO a European ban on beef

It is imperative that decision-makers now look closely at the experience since 1992, to see how we can improve on the original NAFTA model when negotiating the new larger framework of the Free Trade Area of the Americas. I should emphasize that the groups I am representing here today are not just seeking to protect existing environmental laws but to amend trade rules so they actively promote sustainable development.

There should be no question in front of this Committee of moving backward, or of succumbing to partisan and extremist voices who pretend to believe that environmental and economic issues can be separated. Instead we should move forward by asking not whether environmental issues are related to trade agreements but how to include them, and by evaluating what form economic integration should take to be environmentally sustainable.

The testimony that follows is intended to provide recommendations to help fashion a common sense fast track bill that supports the use of trade rules to promote sustainable development. Environmental organizations can be an important element of the constituency for such an approach. But we will only support fast track if it moves the US trade policy in the direction of dealing effectively with trade-related environmental concerns, and with the longer term goal of supporting sustainable development.

Trade and the Environment: In the Interest of the United States.

The trade and environment linkage is squarely on the international agenda in half a dozen significant fora around the world, for good or ill. The results of these negotiations will help determine the economic and environmental health of our nation and the planet in the next century. US leadership is necessary to assure that the rules of the game are environmentally responsible as well as economically fair.

One such forum is the Summit of the Americas, which met in Miami in December 1994, where the Presidents and Heads of State of 34 countries of the American Hemisphere set in motion a process to create a Free Trade Area of the Americas (FTAA) stretching from Alaska to Patagonia by the year 2005. Under a signed *Declaration of Principles* and a

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treated with growth hormones known to cause cancer. If the initial WTO ruling stands, countries will be compelled to lower even food safety standards that have a scientific basis and were established through democratic means. The WTO now claims enormous, discretionary power to affect domestic health standards. According to WTO spokesman Hans-Peter Werner, "...it's up to the [trade dispute] panels to interpret what, legally, is the right of governments." See Mark Abley, "World Trade Organization: The Whole World In Its Hand," Toronto Gazette, April 19, 1997.

Pressure is growing in the World Trade Organization to constrain the consumers' right-to-know about the environmental impacts of goods and services they buy. Under the guise of promoting truth in environmental marketing information," a US industry coalition representing 13 major trade associations wants to disable the use of eco-seals. Conferred by independent, third-party organizations, eco-seals are labeling symbols which offer a voluntary, market-based approach to ensure shoppers that food, wood products, household cleaners and other products were made under environmentally responsible conditions. If the industry coalition gets its way, the WTO, not independent, third-party organizations will define environmentally sound production for the global market.

Plan of Action by all 34 countries, free trade and increased economic integration are defined as key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment. We consider the Declaration to be an important step towards sustainability, but we are concerned that the separate post-Miami follow up processes which have been set up -- for sustainable development on the one hand, and the creation of an FTAA on the other -- is counterproductive.

In March 1998 the Second Summit of the Americas will take place in Chile. Now is the opportunity for the US -- if President Clinton is granted fast track with environmental components -- to assure that trade agreements promote environmental protection in the US as well as in the other countries of the hemisphere, by requiring that parties to these agreements commit to enforce their environmental laws and take steps to adopt appropriate higher environmental standards. An FTAA process that brings together both pieces of the Miami Summit agenda, with the same deadlines for all the Miami initiatives, and with clearly defined objectives and commitments, would provide an appropriate forum to make progress on economic integration that achieves sustainable development in the region.

Fast Track: Building a better model.

The following are some key building blocks for a fast track proposal that would achieve a better balance between commercial and environmental interests:

Environmental Negotiating Objective.

The first requirement is a general environmental negotiating objective that places environmental priorities on a par with other overall negotiating objectives for our nation. Negotiating objectives now on the books date from 1988, years prior to the commitments to environmentally responsible trade policies made by both President Clinton and President Bush, and prior to the commitments made by the US and other countries attending the 1992 Earth Summit in Rio de Janeiro to make international trade and environmental policies mutually supportive. The time has come to state a formal "green" trade negotiating objective which signals that pro-environment trade policies are indeed a "must".

Specific negotiating objectives.

In addition, the President's authorization should list specific environmental trade and investment negotiating objectives that include measures to: (i) safeguard legitimate US and international environmental, health, and safety laws and regulations; (ii) ensure that investment and trade agreements require international businesses to comply with high environmental standards no matter where they operate; (iii) ensure that our trading partners adopt and enforce strong environmental protections consistent with their sovereign rights to establish appropriate domestic development policies; and (iv) ensure

that dispute resolution mechanisms are accessible to the public and utilize environmental expertise.

Environmental Impact Assessments.

The third element of responsible trade negotiations is creation of a legally-binding environmental assessment process, through amendment of the Omnibus Trade Act[3], to ensure that environmental impact assessments (EIS) are prepared for all future trade and investment agreements. We appreciate that the Clinton Administration prepared environmental reports on the NAFTA and Uruguay Round, documents which helped inform public understanding about the environmental impacts of those agreements. But preparation of such assessment needs to be made mandatory under US law. An amendment of the Trade Act should ensure: (i) the EIS will be prepared early enough in the negotiation process to guarantee timely public disclosure; (ii) adequate opportunity is provided for public comment; and (iii) negotiators take account of the analysis produced. A final EIS would be submitted to Congress along with the relevant trade or investment agreement implementing bill.

These assessments are most important for involving the public at various stages in the development of trade and investment agreements with other nations. They can be instrumental in gathering a broad constituency for environmentally sustainable economic integration. The obverse is surely true as well: a public that is kept in the dark, and has no voice in shaping the agreement, will be more suspicious and possibly hostile. Congress and the Administration have in the environmental review process a tool for involving the public in a positive way in the creation of these agreements.

Amplifying Congressional Oversight and Public Participation.

We also recommend the addition of congressional committees with environmental responsibility to the list of those committees having jurisdiction over trade and investment bills subject to fast track. Fast Track's rapid voting schedule and bar to amendments sharply constrain the opportunity enjoyed by Congress and the public to debate new trade and investment agreements. To increase congressional and public oversight, fast track legislation must ensure that all congressional committees whose interests will be affected by fast tracks bills are given an opportunity to review the proposed legislation. In addition, Congress should also be granted a longer time period than in the past to consider both trade agreement implementing bills and the final environmental impact assessments.

Fast track provisions such as these need to be brought forward in the context of renewed commitment by the Administration to leadership on a broad range of trade and environmental issues. In the months ahead the US will take critical positions in related negotiations on: (i) the current OECD draft of a Multilateral Agreement on Investment;

[3] USC 2901 a. Public Law 100-418, "Omnibus Trade and Competitiveness Act of 1988." August 23, 1988.

(ii) the terms of NAFTA expansion; (iii) the scope of debate within the WTO's Committee on Trade and Environment as well as the US response to challenges brought in the WTO against US environmental laws; (iv) the appropriate relationship between the WTO and a series of multilateral environmental agreements, especially those currently under negotiation; and (v) the willingness of the US to continue making appropriate use of trade sanctions in response to flagrant violations of international environmental norms.

Conclusion

We jointly call on Congress to pave the way for renewed US leadership on trade and the environment by securing a fast track that unambiguously places environment where President Clinton and Vice President Gore have said it belongs -- at the core of the US trade and investment agenda.

Mr. Chairman, as we noted at the beginning of this testimony, the National Wildlife Federation has supported the fast track process in the past. We seek a process that deals effectively with trade-related environmental concerns and advances the goal of long term sustainable development. If Congress moves forward on a fast-track bill that approaches environment and sustainability in that fashion, we will be supportive. If not, we will reluctantly be forced to oppose it.

COMMUNICATIONS

STATEMENT OF THE AMERICAN STEEL COMPANY, ET AL.

WRITTEN STATEMENT IN FAVOR OF MEASURES TO ADDRESS A MAJOR PROBLEM FOR U.S. TRADE REMEDIES, THE ADMINISTRATION OF JUSTICE AND EXPANDED FREE TRADE:

THE NAFTA CHAPTER 19 BINATIONAL PANEL DISPUTE SETTLEMENT SYSTEM

Submitted on behalf of:

AK Steel Co.
American Beekeepers Association
American Honey Producers Association
American Textile Manufacturers Institute
AMT - The Association for Manufacturing Technology
Bethlehem Steel Corp.
California Forestry Association
Coalition for Fair Atlantic Salmon Trade
Coalition for Fair Lumber Imports
Cold-Finished Steel Bar Institute
Copper and Brass Fabricators Council
Ferroalloy Association
Footwear Industries of America
Fresh Garlic Producers Association
Independent Forest Products Association
Inland Steel Industries, Inc.
Intermountain Forest Industries Association
Leather Industries of America
LTV Steel Co.
Municipal Castings Fair Trade Council
National Association of Wheat Growers
National Cotton Council of America
National Steel Corp.
Northeastern Lumber Manufacturers Association
Southeastern Lumber Manufacturers Association
Southern Forest Products Association
Southern Tier Cement Committee
USX Corp.
Valmont Industries
Western Wood Products Association

I. INTRODUCTION

Chapter 19 of the North American Free Trade Agreement ("NAFTA") extended to Mexico the novel and unprecedented system for resolving antidumping duty ("AD") and countervailing duty ("CVD") appeals that was introduced by the U.S.-Canada Free Trade Agreement ("CFTA") in 1989. Under this system, AD and CVD determinations made by NAFTA-countries' government agencies are appealable to ad hoc panels of private individuals from both countries affected, rather than impartial courts. The international panels do not interpret agreed NAFTA AD or CVD rules; rather, they review agency determinations solely for consistency with national law.

This system departs radically from traditional international dispute settlement principles whereby international bodies resolve disputes over the interpretation of internationally agreed texts. Unlike any other international dispute mechanism in which the United States participates, the Chapter 19 system entails direct interpretation of U.S. law and implementation under national law of decisions rendered by non-judges and indeed by non-citizens. In practice, this system has led to the implementation of decisions that contravene U.S. laws.

The Chapter 19 system should be reformed or eliminated from the NAFTA. It certainly should not be extended to additional U.S. trade agreements. Indeed, doing so would compound its problems. Language should be included in fast-track legislation to prevent this from occurring. (Proposed legislative text is attached to this statement.) Statutory containment of Chapter 19 would not only prevent the compounding of a major policy mistake but also improve the prospects for fast track negotiating authority and expanded free trade.

II. SUMMARY

Established as an interim measure only for U.S.-Canada trade, the Chapter 19 system is fundamentally flawed and undemocratic. It places far-reaching decision-making power in the hands of private individuals who do not have judicial experience and who are not accountable for their performance. Under this system, international panels -- with foreign nationals frequently in the majority -- are allowed to interpret and implement U.S. law, and their decisions have the force of law. Constitutional safeguards to assure judicial impartiality are lost when such panels replace U.S. courts. Justice Department officials warned Congress in 1988 that, for this very reason, the proposed system was unconstitutional.

In addition, the system's ad hoc and fragmented nature dooms it to failure as a replacement for domestic courts. Especially if the system were extended to additional countries, industries attempting to exercise their rights against unfair trade from different points of origin would end up facing a multiplicity of panel and court proceedings likely to yield divergent rulings on identical issues. Neither industry nor the government agencies involved could afford to prosecute so many litigations. The result would be incoherent bodies of law, an unpredictable environment for litigants and businesses, and even the possibility of most-favored-nation problems resulting from unequal application of AD and CVD laws. In short, the system would become unworkable (and congressionally-mandated U.S. trade remedies unusable).

The Chapter 19 system has already failed in some of its most critical disputes. As Congress has noted, panels reviewing U.S. Government determinations have repeatedly disregarded the requirement that they behave like a U.S. court and apply U.S. law, and they have impaired implementation of U.S. trade remedies. Panel decisions have created an environment in which U.S. industry can have little faith in U.S. trade remedy policies as applied to imports from Canada and Mexico, much less to imports from an even broader array of countries.

The Chapter 19 system need not, and should not, be extended to other countries since the WTO dispute settlement system satisfies U.S. importers' and exporters' need for international dispute resolution. Unlike the Chapter 19 system, the WTO system is based on traditional international dispute settlement principles, *i.e.*, international bodies interpreting international rules. The unprecedented impairment of sovereign legal functions entailed by Chapter 19 -- with foreign nationals interpreting and implementing domestic law -- is unworkable in the United States and, in the long term, in any other country.

Congress should direct the Administration to negotiate the reform or elimination of Chapter 19 from the NAFTA. In addition, any legislation renewing fast-track procedures should expressly prohibit agreements that extend the Chapter 19 system to trade with additional countries and make negotiating authority and fast track procedures inapplicable to implementation bills for such agreements.

Precluding extension of Chapter 19 is needed to limit the deterioration of U.S. trade remedies and the administration of justice. In addition, doing so would enhance prospects for fast track and expanded free trade by removing a widespread concern about them. Consequently, containment of Chapter 19 would lead to broader support for fast track negotiating authority and expanding free trade.

III. BACKGROUND ON THE CHAPTER 19 SYSTEM

A primary Canadian goal in negotiating the CFTA was exempting Canadian exports from the United States' AD and CVD laws. The United States maintained a contrary and more cautious position: the agreement should establish disciplines on unfair trade practices rather than permitting them to go unsanctioned.

U.S. and Canadian officials reached a last-minute compromise on this issue as the negotiations drew to a close in the Fall of 1988. The CFTA provided that after the agreement came into effect the United States and Canada would pursue negotiations on subsidy disciplines and a "substitute system" of AD and CVD rules. CFTA at Art. 1907. Pending achievement of the "substitute system," and for a maximum of seven years, the countries would operate under the Chapter 19 system of AD/CVD review by panels. Id. at Art. 1906.

Chapter 19 was revolutionary and extremely controversial. First, judicial review of disputes involving customs duties by impartial courts created under Article III of the Constitu-

tion has a long history in the United States.[1/] Replacing impartial courts with binational panels raised the specter of unfair decisions and the circumvention of U.S. law.

Second, during Congress's consideration of the CFTA, U.S. Justice Department officials advised that the system would be unconstitutional if panel decisions were implemented automatically, as is now the case. United States-Canada Free Trade Agreement: Hearings Before the Senate Judiciary Committee, 100th Cong. 76-87 (1988) ("Senate Judiciary Comm. Hearing"). Several Members of Congress expressed serious reservations about the constitutionality and workability of Chapter 19, including Senators Grassley and Heflin. See id. at 89-98; S. Rep. No. 100-509, at 70-71 (1988).

The Chapter 19 system was ultimately accepted as part of the CFTA based on executive branch commitments to Congress that: 1) panels reviewing U.S. agency determinations would be bound by U.S. law and its governing standard of review, just as the U.S. Court of International Trade is so bound; 2) there would be strict and fully enforced conflict-of-interest rules; and 3) the system would be in place only a short while and only with Canada. According to one of the primary U.S. negotiators on this issue, the system could only work for Canada. It was:

> not, and [was] not intended to be, a model for future agreements between the United States and its other trading partners. Its workability stems from the similarity in the U.S. and Canadian legal systems. With that shared legal tradition as a basis, the panel procedure is simply an interim solution to a complex issue in an historic agreement with our largest trading partner.

United States-Canada Free Trade Agreement: Hearings Before the House Judiciary Committee, 100th Cong. 73 (1988) (Testimony of M. Jean Anderson).

Although the Chapter 19 system was accepted, negotiations with Canada to create disciplines on unfair trade practices, including subsidies, failed. Nonetheless, with little additional discussion, and contrary to executive branch commitments to industry, the system was made a permanent part of the NAFTA in 1994.

IV. CHAPTER 19's DESIGN IS FLAWED IN SEVERAL RESPECTS AND HAS SERIOUS CONSTITUTIONAL PROBLEMS

Under the Chapter 19 system, panels are formed on a case-by-case basis to review the consistency with national law of AD and CVD determinations issued, in the United States, by the Commerce Department ("DOC") and the U.S. International Trade Commission ("ITC").

1/ Reported cases include, for example, United States v. Tappan, 24 U.S. (11 Wheat.) 418 (1826) and Elliot v. Swartwout, 35 U.S. (10 Pet.) 137 (1836).

The panels contain five members -- three from one country involved in the case and two from the other -- who are private-sector trade experts, usually lawyers.2/

The System is Undemocratic and Unaccountable

On its face, the system is, at minimum, anomalous. A group of private individuals, each with his or her own clients and interests, is empowered to direct the actions of government officials and dictate the outcome of cases involving billions of dollars in trade. These panelists do not have judicial training. Nor are they insulated, as judges must be, from outside pressures and conflicts. Once a case is over, the panelists simply return to their occupations -- many of them practicing before the very agencies whose decisions they recently were reviewing. They are not accountable in any way for their decisions as panelists.

This process is contrary to traditional principles of representative governance. Indeed, as indicated above, Justice Department officials advised Congress that the Chapter 19 system contravenes a constitutional provision intended to establish accountability among U.S. decision-makers (the "Appointments Clause").3/ Congress cannot "sanction" or "correct" erroneous decisions because the "judges" are not part of a standing judiciary.

2/ NAFTA Chapt. 19, Annex 1901.2.

3/ U.S. Const. art. II, § 2, cl. 2. Ironically, the Appointments Clause emerged, in part, from the Founders' experience with the British colonial government's selection of Royal officials, a preponderance of which were customs officials. The Founders included as a grievance in the Declaration of Independence that the King "has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance." The reference is to customs officials. Barrow, Trade and Empire 256 (1967).

The constitutionality of the Chapter 19 system has been discussed in numerous articles. See, e.g., Ethan Boyer, Article III, the Foreign Relations Power, and the Binational Panel System of NAFTA, 13 Int'l Tax & Bus. Law. 101 (1996); Barbara Bucholtz, Sawing Off the Third Branch: Precluding Judicial Review of Anti-Dumping and Countervailing Duty Assessments Under Free Trade Agreements, 19 Md. J. Int'l L. & Trade 175 (1995); Robert Burke & Brian Walsh, NAFTA Binational Panel Review: Should It Be Eliminated or Substantially Changed?, 20 Brookings J. Int'l L. 529 (1995); Patricia Kelmar, Binational Panels of the Canada-United States Free Trade Agreement in Action: The Constitutional Challenge Continues, 27 Geo. Wash. J. Int'l L. & Econ. 173 (1993); Alan B. Morrison, Appointments Clause Problems in the Dispute Resolution Provisions of the United States-Canada Free Trade Agreement, 49 Wash. & Lee L. Rev. 1299 (1992); Jim Chen, Appointments With Disaster: The Unconstitutionality of Binational Arbitral Review Under the United States-Canada Free Trade Agreement, 49 Wash. & Lee L. Rev. 1455 (1992); Christopher Murphy, Canada-U.S. Free Trade Resolution Dispute Mechanism Panel Procedures: Will They Hold, 4 Transnat'l Law. 585 (1991).

The System Violates Principles of Impartial Judicial Review

Article III of the Constitution establishes safeguards to assure an impartial federal judiciary, *e.g.*, life appointment and freedom from salary diminution. As noted above, review of trade cases by Article III judges has a long tradition in the United States, and dispensing with Article III protections for reviews of AD/CVD determinations is unwarranted. In fact, and as further explained below, conflicts of interest on the part of panelists were a major problem in the Chapter 19 review involving Canadian softwood lumber. Even holding constitutional infirmities aside, the conflict-of-interest prone Chapter 19 setup creates a serious perception problem damaging to the credibility of the international trading system.

The System's Premise is False and Objectionable

The Chapter 19 system is premised on the outrageous assumption that domestic courts are incapable of resolving these cases in a fair and impartial manner. There is no evidence to support this proposition. In any event, this type of extraordinary device is not viewed as necessary in other litigation contexts in which foreign interests frequently participate, such as appeals of agency determinations in the communications arena. There is no basis to single-out trade remedies as requiring this mechanism.

The System's Ad Hoc, Fragmented Nature Renders it Unworkable

The Chapter 19 system contemplates that a separate panel proceeding is to resolve each AD/CVD appeal on a country-by-country basis. In practice, this cannot work, especially if Chapter 19 is extended to many different countries. An industry seeking a remedy against unfair trade from several countries -- as is often the case -- would end up facing proceedings before panels for each of the countries from which unfairly traded merchandise is imported and, potentially, another proceeding at the Court of International Trade. The resulting decisions could relate literally to identical issues.

Neither the affected industry nor the U.S. agencies involved could afford to engage in this multiplicity of litigations. Even if this were manageable procedurally, the panels would inevitably come to different interpretations of U.S. law on the same underlying facts and issues. Such an atomized judicial mechanism cannot retain (and indeed has never gained) credibility. The inevitable result is an unworkable system, leading to the effective neutralization of U.S. trade laws.

This potential has been recognized by several members of the judiciary, who express strong reservations regarding the extension of Chapter 19 to trading partners with dissimilar legal systems and cultures. See, e.g., The Honorable Charles B. Renfrew, Remarks before the Legal Center for Inter-American Trade and Commerce and the Law School Student Council at the Monterrey Institute of Technology and Advanced Studies (Nov. 15-18, 1995). Most recently, Chief Judge Gregory Carman of the U.S. Court of International Trade expressed the concern that the expansion of Chapter 19 would result in "more confusion as new parties are added; that result can be in the interest of no one." The Honorable Gregory W. Carman,

Remarks before the Annual Dinner of the Customs and International Trade Bar Association (Apr. 16, 1997).

V. IN PRACTICE, CHAPTER 19 HAS RESULTED IN BAD DECISIONS WITHOUT REMEDY

Before it came into effect, Senator Grassley expressed deep concern about the novel experiment in replacing the U.S. judiciary with panels and whether it could, in practice, earn the respect of private parties. Senate Judiciary Comm. Hearing at 89-90, 94, 96. Unfortunately, Senator Grassley's concerns have been vindicated. Based on the panels' track record, private parties cannot have faith that the trade laws will be administered fairly or correctly as regards imports from Canada and Mexico.

Were they to adhere to the standard of review mandated by the NAFTA and U.S. law, panels would reach exactly the same results as the Court of International Trade and be very deferential to DOC and ITC trade determinations. In particular, they would sustain the agency's findings unless they have no "reasonable" factual basis or are grounded on a legal interpretation that is "effectively precluded by the statute." PPG Indus., Inc. v. United States, 928 F.2d 1568, 1573 (Fed. Cir. 1991).

As recognized by Congress, the reality has often been to the contrary.[4/] Panel decisions involving Canadian pork and swine imports were so flawed that the U.S. Government sought review by appellate Chapter 19 panels ("extraordinary challenge committees" or "ECCs"). The swine ECC virtually conceded that the lower panel erred but declined to take corrective action. Live Swine from Canada, No. ECC-93-1904-01-USA, slip op. at 6 (Apr. 8, 1993) ("the Committee felt the Panel may have erred").

The Chapter 19 system also failed conspicuously in the last case involving subsidized Canadian softwood lumber, where:

- Both the lower panel decision and the ECC decision were decided by bare majorities divided by nationality. Certain Softwood Lumber Products from Canada, No. USA-92-1902-190401, slip op. (Dec. 17, 1993); Certain Softwood Lumber Products from Canada, No. ECC-1904-01-USA, slip op at 37 (Aug. 3, 1994) ("Lumber ECC").

- Two of the three Canadian members of the lower panel and their law firms had previously represented Canadian lumber interests and governments but did not disclose all of their conflicts. See Lumber ECC at 71-86, Annex 1 (Wilkey opinion).

4/ See North American Free Trade Agreement Implementation Act, Joint Senate Report, S. Rep. No. 103-189, at 42 (1993) ("[t]he Committee believes . . . that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review . . . ."); see also North American Free Trade Agreement Implementation Act, House Ways & Means Committee Report, H.R. Rep. No. 103-361, at 75 (1993).

- The panels disregarded extensive case law and explicit Congressional committee reports which specified the proper interpretation of the CVD law on litigated issues. See Brief of the United States, No. ECC-1904-01-USA, at 69, 79-80 (May 3, 1994).

- An ECC member expressly chose to ignore the review standard for panels that is established by the NAFTA and the applicable U.S. statute. See Lumber ECC at 28 (Hart opinion) (indicating that panels need not apply the review standard of the Court of International Trade).

The dissenter in the lumber ECC decision was former Federal Appeals Court Judge (and former Ambassador) Malcolm Wilkey. According to Judge Wilkey, the underlying panel majority opinion "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." Lumber ECC at 37 (Wilkey opinion). Moreover, Judge Wilkey concluded that the lumber case violated all of the safeguards on which Congress based its conclusion that the Chapter 19 system is consistent with constitutional due process protections. Id. at 69-71, citing H.R. Rep. No. 100-816, Pt. 4, at 5 (1988).

VI. RECENTLY CONCLUDED TRADE AGREEMENTS DEMONSTRATE THAT CHAPTER 19 IS UNNECESSARY

The infirmities in Chapter 19's design and its failures in practice demonstrate that the U.S. Government should not extend the Chapter 19 system to other countries. Even setting aside these problems with Chapter 19, however, it should not be part of future U.S. free trade relationships because it is not needed.

First, the new WTO system fulfills any legitimate need for international AD/CVD dispute settlement. Unlike the Chapter 19 system, WTO dispute settlement operates under standard principles of international dispute settlement: WTO panels resolve disputes over the meaning of the WTO agreements, deciding whether the importing country has complied with its international obligations. This process, coupled with access to domestic courts, should satisfy any concerns about securing unbiased review of AD/CVD determinations. There is simply no need for the intrusive system under which panels hand down controlling dictates on the application of domestic U.S. law.

Even if Chapter 19's theoretical benefit to U.S. exporters showed real signs of materializing, that benefit would be vastly outweighed by the systemic problems described above and the undermining of U.S. trade remedy policies that would inevitably result. Moreover, the benefit to U.S. exporters would be marginal indeed since, with respect to ensuring that foreign governments' AD/CVD determinations comply with national law, the WTO agreements include provisions on effective judicial review. These provisions present an opportunity to achieve by more legitimate means the goals Chapter 19 was allegedly designed to promote.

Finally, our current NAFTA partners and prospective new partner have indicated that Chapter 19 is unnecessary in future trade agreements. Mexico omitted Chapter 19 from trade agreements with several Latin American countries. Canada and Chile omitted the system from the trade agreement that they signed late last year as a precursor to NAFTA expansion, choosing expressly to rely instead on WTO dispute settlement.[5/] Furthermore, the Association of American Chambers of Commerce in Latin America, citing many of the concerns identified in this statement, has warned that at least U.S. business interests in Chile are likely to oppose inclusion of Chapter 19 in any agreement with that country.[6/]

Given these developments, there is no credible argument that Chapter 19 is needed to secure expanded free trade. Indeed, as discussed below, efforts to extend Chapter 19 are impeding the cause of expanded free trade.

VII. STATUTORY CONTAINMENT OF CHAPTER 19 IS NEEDED

Since Chapter 19 is harmful and unnecessary, measures are needed, at minimum, to ensure that it is not extended to additional trading partners. The most straightforward means of enacting such measures would be through the fast-track bill itself. The statute should direct the executive branch not to further alienate federal jurisdiction and authority to decide cases under U.S. law through international agreements and should withhold trade agreements negotiating authority and fast-track procedures from any such agreements.

Ensuring that the problem of Chapter 19 will not be compounded through the trade agreements program will significantly benefit the prospects for fast track and expanded free trade. It will remove impediments (*e.g.*, concerns about diminished sovereignty, constitutional problems) for those inclined to be supportive. At the same time, it is highly unlikely that any Member of Congress or any constituency will withhold his or her support from fast track, an expanded NAFTA or the FTAA if Chapter 19 is excluded from the resulting agreements.

5/ Canada and Chile did not alter their CVD policies, but did reportedly agree to phase out AD remedies for bilateral trade. Weakening AD policies is not an option for the United States given the many U.S. industries that have suffered grievous injury -- sometimes elimination -- at the hands of dumped merchandise. In any case, the Canada-Chile agreement demonstrates that Chapter 19 is unnecessary in any new agreements.

6/ Letter from Vincent M. McCord, Vice President of the Association of American Chambers of Commerce in Latin America and Executive Vice President of the American Chamber of Commerce in Chile, to Donna R. Koehnke, Secretary of the International Trade Commission (July 19, 1995).

DRAFT SECTION OF FAST TRACK BILL

1. *Notwithstanding any other provision of law, the U.S. Government shall not enter into any treaty or other international agreement that, in whole or in part, would have the purpose or effect of transferring any jurisdiction or authority to decide cases under U.S. law away from the federal judiciary.*

2. *The trade agreements negotiating authority of ___ [formerly Sec. 1102 of the 1988 Act] shall not apply to the negotiation of any trade agreement that would have the purpose or effect of transferring any jurisdiction or authority to decide cases under U.S. law away from the federal judiciary, and the procedures of Section 151 of the Trade Act of 1974 [fast track], or any similar successor provisions, shall not apply to implementing legislation submitted with respect to any such trade agreement.*

VIII. CONCLUSION

The U.S. Government should negotiate elimination of the Chapter 19 dispute settlement system as it exists with Canada and Mexico; under no circumstances should it be extended to new participants under the NAFTA or the FTAA. Congress should:

- ensure that fast-track legislation prevents extension of Chapter 19 to additional countries;

- hold hearings on the Chapter 19 system to investigate (1) whether the system is unconstitutional; (2) whether the system is necessary in light of WTO rules and the WTO dispute settlement system; (3) the suitability of the system as a permanent replacement for judicial review of trade cases; and (4) the past administration of the system; and

- direct the Administration to negotiate the elimination or reform of the Chapter 19 system from the NAFTA.

STATEMENT BY
THE HON. DR. RICHARD L. BERNAL
AMBASSADOR FROM JAMAICA TO THE UNITED STATES

PUTTING THE US/CARIBBEAN TRADE PARTNERSHIP ON A FAST TRACK

SUBMITTED TO THE SENATE FINANCE COMMITTEE IN CONNECTION WITH ITS JUNE 3 HEARING ON FAST TRACK

JUNE 1997

Thank you for providing me an opportunity to submit a statement on the impact of fast track on the US/Caribbean trade partnership. As the Committee moves forward with its review of this critically important legislative initiative -- which will have a far-reaching impact on trade relations throughout Latin America and the Caribbean -- I believe it is important to provide you with a Jamaican perspective.

I. The Importance of Fast Track: A Commitment to Free Trade

In December, 1994, the 34 Democratic nations of the Hemisphere came together in Miami to hammer out an agreement to establish a Free Trade Area of the Americas (FTAA) by the year 2005. Last month, the trade ministers of those nations met in Belo Horizonte to agree that negotiations to launch a trade agreement should begin early next year. As the Hemisphere marches to put this vision into practice, many are looking to the US Congress to pave the way for viable negotiations by quickly passing fast track trade negotiating authority.

Fast track renewal is an important ingredient in the establishment of an FTAA by the year 2005. The difficulties with which both the NAFTA and GATT implementing bills were passed make it exceptionally clear that future free trade agreements in the Hemisphere can be supported by the American people if the goals and objectives of these agreements are well understood in advance. The fast track consultation procedure will help ensure that the goals of the FTAA be communicated to and understood by the US population, much as similar procedures will communicate the goals to the Jamaican citizenry. But experience has shown that, without fast track procedures, it may be exceedingly difficult to pass free trade implementing bills in a form or a time frame that will help establish the FTAA over the next decade.

From our overseas vantage point, fast track authority creates a vital mechanism through which the United States can develop a clear, comprehensive, and consistent trade policy. It establishes a formal series of communications and consultations between the Executive and Legislative

Branches and the US private sector, enabling various elements of US society to develop a common trade negotiating posture. It also defines a transparent process through which the results of arduous trade negotiations -- the implementing legislation -- can be submitted and enacted into law by Congress in an expeditious manner. In many respects, fast track spells out a process with maximum opportunity for domestic US input and minimum opportunity for domestic political surprises.

This transparency and consistency is of critical importance during trade negotiations. In undertaking trade negotiations, we are less likely to make concessions or agree on sensitive points if we feel that our agreements will be undone by eleventh hour modifications by the US Congress. Similarly, without the assurance of Congressional pre-approval of the consultation process we are less assured that the results of trade negotiations -- which can have domestic political ramifications in our own country as well -- will ever be realized.

II. The US Trade Agenda and the US/Caribbean Basin Partnership

For the countries of the Caribbean, the US trade agenda, and the disposition of fast track trade authority, remains especially important. Many Caribbean countries view the United States and their single largest market and as the largest source of their imported supplies. Moreover, many of the smaller economies of the Caribbean are extremely fragile, depending on a single crop or service to earn much of their crucial foreign exchange. These economies can be extremely susceptible to external shocks or the corrupting influences of narco-traffickers, and are often not flexible enough to undertake the kinds of reforms necessary for survival in the modern international economy. Sustained and tangible expressions of US support for these countries -- through continued engagement on the trade front -- are vital to help them defend themselves against external disruption and internal resistance to change.

Although many see the US/Caribbean relationship as altruistic or one-sided, it is truly a mutually beneficial relationship. Statistics on regional trade and investment flows underscore this point.

- Presently, the US/Caribbean commercial relationship supports more than 300,000 jobs in the United States and countless more throughout the Caribbean. During the past decade, the US/Caribbean Basin relationship has created more than 18,000 jobs a year in the United States.

- The Caribbean Basin is in aggregate now the tenth largest export market for the United States, surpassing countries such as France.

- The Caribbean Basin is one of the few regions in the world where US exporters maintain trade surpluses. In 1996, the 11th consecutive year for which the United States recorded a trade surplus with the Caribbean Basin, that surplus surpassed $1.4 billion.

- In 1996, US exports to the region passed $ 15.9 billion, resulting in a 170 percent increase in US exports during the past 11 years. Virtually every state in the union has benefited from this relationship.

- In 1996, US imports from the region reached $ 14.5 billion, completing an 11-year growth rate of nearly 120 percent.

- It is estimated that between 60 to 70 cents of each dollar spent in the Caribbean Basin is spent back in the United States compared with only 10 cents of each dollar spent in Asia.

- When US trading partners are ranked by the US share of their markets, CBI countries claim 12 of the top 20 spots. Jamaica, which in 1995 purchased 75 percent of its imports in the United States, is ranked second and is only surpassed by Canada.

The basis of this healthy and balanced trade relationship is a complementarity between the CBI economies and the US economy. While the US economy is highly industrialized, the CBI countries tend to emphasize more agriculture, raw materials, tourism, and, increasingly, labour-intensive manufacture. These economic patterns are natural catalysts for the trade based-economic growth.

For example, apparel has become Jamaica's leading manufactured export and has grown very rapidly. It has grown because of a complementarity involving the combination of US capital goods and raw materials being produced with Jamaican labour for US companies. The result is the creation of jobs in the textile and shipping sectors both here and in Jamaica. In addition, this integrated transnational process of production draws upon the strength of both economies to manufacture a final product that can be competitive in the US and global market. This equation again adds up to jobs, especially through the preservation of jobs and corporate entities in the Unites States which could not survive by producing goods entirely in the United States.

III. NAFTA'S IMPACT ON THE US/CARIBBEAN PARTNERSHIP

A. The CBI/NAFTA Imbalance

Clearly, the biggest issue facing the Caribbean Basin is the lack of parity of US market access with Mexico. The CBI has provided a good foundation, particularly in the era when aid from the United States is declining. It has been a good strategy of trade, and not aid, which has proved more beneficial in the long run. But the CBI has several built-in limitations.

One problem is that, while it liberalizes 90 percent of the trade categories, the CBI does not liberalize 90 percent of the actual trade flows, primarily because the very goods -- such as apparel and footwear -- in which the CBI has a comparative advantage are the goods that tend to be restricted

by US import laws. The paralyzing effect of these exclusions becomes more noticeable as CBI economies begin to produce products that are not covered by the CBI. In 1996, the annual International Trade Commission survey on the CBI reported that average duties paid for CBI imports rose from 1.9 percent in 1984 to 12.3 percent in 1994. If left unchecked, the current CBI formula will have a declining impact on Caribbean economic development.

In contrast, NAFTA eliminates the duty and quota treatment for these same articles, either immediately or over a phase-out period. Under NAFTA, import duties were immediately removed on the overwhelming majority -- approximately 80 percent -- of Mexican apparel exports to the United States. The remaining 20 percent benefits from an accelerated implementation of free trade, with annual duty cuts and quota liberalization set to be completed by the year 2000. To be fair, NAFTA also phases out the duties on the products for which the CBI countries already enjoy duty free treatment.

But the result is far from even. Mexico gains parity with the Caribbean countries for CBI-covered products, establishing a level playing field for those items on which Mexican and Caribbean exporters face no duty. But on the products excluded from the CBI, such as textile and apparel products, Mexico gains access to the US market, exceeding that granted to the Caribbean countries. This tilts the playing field in Mexico's favor, and gives Mexican exporters a distinct advantage over Caribbean exporters. When combined with Mexico's access to cheap energy, lower transport costs, greater economies of scale, and low wage rates, this advantage becomes quite substantial.

B. NAFTA's Impact on the Caribbean Basin

Broadly speaking, NAFTA's implementation -- and advantages over the CBI -- poses clear risks for the US/CBI partnership. The elimination of quotas and the phase-out of tariffs on Mexican products removes the advantage enjoyed by CBI exports to the US market, diverting trade flows from CBI countries to Mexico. Since the NAFTA was implemented, there has already been a measurable diversion of trade from the CBI to Mexico. Before NAFTA was implemented, the growth rate of US apparel imports from Mexico and the CBI region were on par. Three years after the NAFTA was implemented, Mexican apparel import growth rates have consistently outpaced Caribbean growth rates by at least a 2 to 1 margin. As this trend continues, Caribbean market share in the United States will be consumed by Mexican suppliers.

Another consequence of NAFTA's implementation has been the diversion of new investment. One of the primary indicators has been the fact that in the last 3 years there has been a pause in investment in the region, as investors first waited to evaluate the NAFTA provisions and then established new operating facilities in Mexico, instead of in the Caribbean. This trend, which is now being fully realized, was anticipated by the US International Trade Commission, which reported in 1992 that "NAFTA will introduce incentives that will tend to favor apparel investment shifts away from the CBERA countries to Mexico".

As existing investors begin to source their products out of Mexico, others are rushing to transfer or close existing productive capacity -- particularly in the "foot-loose" apparel industries which can easily be relocated -- to take advantage of Mexico's market access. In many Caribbean Basin countries, NAFTA directly reverses past successes of the CBI program, effectively turning back the clock of Caribbean development. Employment is hit particularly hard by this trend, as manufacturers close factories and lay off employees. According to estimates by the Caribbean Textiles and Apparel Institute, more than 150 apparel plants closed in the Caribbean, resulting in the loss of 123,000 jobs during 1995 and 1996. This trend is particularly damaging to women, who often look to the textile and apparel sector for their livelihood.

An erosion of export access to the United States will eventually translate directly into a contraction of economic activity in the CBI region. Such a contraction would lower regional incomes, and, ultimately, the demand for imports from the United States. In such a scenario, US exports of goods and services to the CBI would decline while regional instability -- fostered by a decrease in economic opportunities -- would rise. Judging from past patterns, the resulting unemployment in the United States would be met with an increase in immigration from displaced Caribbean workers and a rise in narcotics trafficking.

C. Caribbean Enhancement As An Immediate Remedy

While the long term solution is to determine how to fully integrate Caribbean countries -- and the specific needs of their smaller economies -- into the NAFTA or a Free Trade Area of the Americas (FTAA), a short term solution calls for the leveling of the playing field between Mexico and the Caribbean countries. In Bridgetown earlier this month, President Clinton renewed and unequivocally reconfirmed his strong commitment to seek enactment of a Caribbean Basin Trade Enhancement package during 1997. As Congress and the Administration move ahead on this proposal to re-impose balance between Mexican and Caribbean access to the US market, they should ensure that the legislation on which they act encompasses several key principles:

First, the legislation must cover all products currently excluded from the CBI. As the Caribbean economies liberalize, it becomes increasingly difficult to erect artificial barriers between product categories. Improving market access for only certain textile and apparel products would have a limited effect, and would retain the anomalies that encourage unbalanced economic growth. Enacting a comprehensive bill, however, is both economically more feasible and symbolically more consistent with the notion of free and open trade.

Second, the legislation must serve as a gateway to the Free Trade Area for the Americas. One of the implicit goals of parity is to provide Caribbean Basin countries an opportunity to complete the trade liberalization and economic reform steps necessary for accession to the FTAA. While some countries -- such as Jamaica -- are now ready to negotiate either a free trade

agreement with the United States or accession to a NAFTA, others may need a longer period. The Caribbean trade enhancement proposal should provide that transitional period, without locking CBI countries into a perpetual state where their trade posture is being slowly eroded.

Third, any Caribbean trade enhancement proposal must be of a sufficiently long duration to provide credibility and certainty, and to help re-establish confidence lost in past years. It is now clear that this legislation will require Caribbean countries to undertake certain obligations and implement specific measures in order to access the full benefits. Such reciprocity makes sense, but only if the reciprocal commitments are maintained in force indefinitely.

Fourth, on a related note, the legislation must not impose entrance requirements that are insurmountable. The 24 nations of the Caribbean Basin represent diverse economies that are at different stages of liberalization. Ideally, the legislation will not establish a new set of criteria by which countries can become eligible for the benefits, but rather link the enhanced benefits to more rigorous application of the existing CBI program criteria. In this way, countries can fully pursue trade liberalization without being harmed by a break in market access or the sudden resurgence of an unbalanced playing field.

IV. SUSTAINING US/CARIBBEAN TRADE LINKS FOR THE LONGER TERM

Moving past the immediate concerns of Caribbean Basin trade enhancement, the concept of fast track becomes more central to the longer term debates of NAFTA expansion of the development of the FTAA.

A. NAFTA Accession and the Caribbean

NAFTA accession, which takes on added importance with the on-going delay in enactment of provisions to relieve the US/Caribbean relationship from the effects of NAFTA. It also provides an important long term framework for the CBI, especially since the CBI exists now as the product of a legislated action by Congress, and not as the product of a reciprocal trade negotiation.

Although there are quite a few countries in the region that are close to meeting the requirements of joining NAFTA, there is a perception that only a handful of big emerging markets -- such as Brazil and Argentina -- should be considered for NAFTA accession once Chile has joined. It may, however, make sense to look to smaller Caribbean economies for the next stage of NAFTA expansion. First, most Caribbean economies would be complementary, not competitive, with the US economy. Second, because Caribbean economies are small, they are unlikely to disrupt the US economy. Third, there may be no better way of securing the long-term economic development of the Caribbean then by forging a close link based on reciprocity with the United States. Finally, the Caribbean is the logical place to start since many Caribbean

economies have already implemented the kind of trade liberalization and economic reforms that would be called for under NAFTA accession.

Regardless of the accession queue, it is vitally important for the US Government to establish a transparent process in which there are clear eligibility criteria. Without clear guidelines, countries are focusing on political jockeying to compete to see who should come in next, rather than focusing on meeting specific criteria that is a more appropriate measure of readiness.

B. The FTAA And The Caribbean

At the same time, Caribbean countries are engaged with their hemispheric neighbors in discussions on erecting a Free Trade Area of the Americas (FTAA). Although a hemispheric free trade agreement will provide a long-term framework under which a solid security relationship can flourish, the process of achieving that goal may prove exceptionally disruptive for many Caribbean countries.

FTAA participants will have the unprecedented task of erecting an FTAA that encompasses in a single trade agreement countries which differ widely in size, levels of development, extent of industrialization, and degree of liberalization. At the same time, for the FTAA to be worthwhile, it must strive toward a uniform series of standards and disciplines that are consistent with international and hemispheric trading practices. To ensure full and equitable participation, especially of the smaller economies in the Caribbean, the FTAA path must reflect several important principles.

First, there must be an orderly accession process. This can be achieved if the process is politically transparent. Orderly accession requires the establishment and enunciation of a clearly defined set of eligibility criteria, procedures for applying for membership, and a timetable for expansion. The absence of these factors creates a situation in which various arbitrary, non-economic criteria may disproportionately influence the selection and sequence of admission of new members.

Second, the path will have to accommodate considerable flexibility since it will probably not be possible for all countries to move at the same pace and arrive at a single destination. In fact, there is some concern about how quickly the smaller, less developed countries of the Caribbean region or Latin America could undertake the full range of commitments that will be expected under the FTAA. A suitable transitional arrangement must be designed for these countries and involve asymmetrically phased assumption of obligations and disciplines. An appropriate adjustment period not only will take account of the level of development, extent of liberalization, and undiversified structure of these economies, but it also would permit time for completion of the structural adjustment process of the wider Latin American region. For example, Caribbean Basin countries could be provided fuller access to the NAFTA markets, with phased in reciprocity, to transition them to the disciplines of the NAFTA. A suitable transitional arrangement would enable these economies to

complete their processes of economic reform and structural adjustment, which will put them in a position to move towards reciprocity. A premature attempt by these countries to provide full reciprocity immediately could be detrimental to these processes of adjustment, and could inhibit export expansion.

Third, the FTAA will need to contain provisions for associate or partial membership to permit countries, or sectors within those countries, to undertake FTAA commitments in a way that do not infringe upon existing obligations. This would provide an opportunity, for countries that, despite a commitment to the FTAA, are not ready for full membership or are precluded by existing commitments to sub-regional trade arrangements with trade groups outside the hemisphere. Looking back at example of the Caribbean, CARICOM members of the preferential Lome Convention are obliged to provide no-less favorable conditions to the EU than that provided to any developed country. If Caribbean countries were to provide reciprocity to the United States and Canada by virtue of an FTAA agreement, or even NAFTA membership, then these countries would be obliged to provide reciprocity to the EU under the terms of Lome. Associate membership would facilitate liberalization in a limited number of areas and obviate the enforcement of across the board reciprocity by the European Union.

Finally, the FTAA process must pay close attention to the needs of the smaller economies. While constituting a majority of the Western Hemisphere, the smaller economies are not likely to be a major determinant on what constitutes the FTAA, the path to the FTAA and the schedule for negotiations and the commencement of the FTAA. Yet without their participation, the FTAA loses its character as a truly hemispheric exercise. At a minimum, the Ministers must integrate the special needs of small developing countries in all their work, rather than confine these concerns to the Working Group on Smaller economies.

V. CONCLUSION

The fast track debate figures prominently in US/Caribbean trade relations, and its fate can be seen as both a real and symbolic barometer of US support for a strong and engaged trade agenda. If the Administration and Congress can reach a consensus on the goals and objectives of fast track, and therefore develop a common rationale of continued trade expansion, they can signal to the world that the United States remains fully engaged in the international trading community over the next decade. Failure to reach such a consensus not only sends the wrong signal on trade, but also stands as a real barrier to continued US/Caribbean trade. Although fast track may not be a necessary legal requirement of expansion of the Caribbean Basin Initiative, an inability to pass fast track creates a dangerous precedent that could paralyze the bipartisan coalition needed for CBI enhancement legislation as well.

Countless studies have shown that strong regional economic links are crucial, not only in creating economic opportunities throughout the United States and the Caribbean Basin, but also in supporting stable and mutual

beneficial security relationships. In the dozen years since it has been implemented, the CBI has provided a key framework of economic development for the Caribbean, and has stimulated sound US/Caribbean commercial relations.

However, with the many challenges facing the Caribbean today, it is imperative that the US and Caribbean Basin governments jointly work to sustain a healthy relationship and keep the vision of the CBI relevant. In crafting the Bridgetown Partnership, US and Caribbean policy makers have taken a first step to address concerns in a number of sensitive economic and security areas. A critical premise of this work is the understanding that both the United States and the Caribbean partners will move ahead to foster and implement additional trade liberalization. Through such mechanisms as fast track and Caribbean Basin enhancement, the United States and Caribbean can build the framework for such tasks.

US/CBI Trade Statistics (1985 - 1996)
(Millions of US Dollars)

Year	US Imports	US Exports	Annual Export Trade Growth	Balance
1985	6687	5942	--	-745
1986	6065	6362	7.1%	297
1987	6039	6906	8.6%	867
1988	6061	7690	11.4%	1629
1989	6637	8290	7.8%	1653
1990	7525	9569	15.4%	2044
1991	8372	10013	4.6%	1641
1992	9627	11263	12.5%	1636
1993	10378	12428	10.3%	2050
1994	11495	13441	8.1%	1946
1995	12673	15306	13.8%	2633
1996	14469	15870	3.8%	1401
	Average Annual US Export Growth:		***9.4%***	

Note: 1996 marked the 11th straight year of US trade surpluses

Source: US Department of Commerce
US International Trade Commission

Updated: April 2, 1997

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON FINANCE

JUNE 3, 1997 HEARING ON
FAST TRACK TRADE NEGOTIATING AUTHORITY

WRITTEN STATEMENT TO ADDRESS THE
ADVERSE CONSEQUENCES ASSOCIATED WITH

THE POTENTIAL EXPANSION OF THE
NAFTA CHAPTER 19 BINATIONAL PANEL TYPE
DISPUTE SETTLEMENT SYSTEM

Submitted on behalf of the

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

DATED: JUNE 20, 1997

INTRODUCTION

By means of the following statement, the Customs and International Trade Bar Association ("CITBA") adds its voice to the growing chorus of private citizens, legislators and organizations which oppose the authorization of fast-track negotiations of international trade agreements which include provisions for bi-national panel review in antidumping and countervailing duty cases.

Since 1987, when Congress was considering legislation which ultimately became the U.S.-Canada Free Trade Agreement, CITBA has championed a strong position to the effect that the preclusion of jurisdiction in the United States Court of International Trade and in its appellate courts to review antidumping and countervailing duty decisions of federal agencies violates rights guaranteed under the United States Constitution. We recognize that this may not be the appropriate time or forum to revisit the constitutional issues relative to previously enacted legislation. Nevertheless, we do believe that the points raised below should be taken into account so that fast-track negotiating authority cannot be used to extend this denial of jurisdiction in the courts of the United States to any new international trade agreements to which the United States may become a party in the future.

STATEMENT OF THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION IN OPPOSITION TO AUTHORIZING FAST-TRACK NEGOTIATION OF INTERNATIONAL TRADE AGREEMENTS WHICH INCLUDE BI-NATIONAL PANEL REVIEW IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

CITBA, the nation-wide organization of customs and international trade lawyers, opposes an extension of fast-track negotiating authority for any free trade agreement which would include the use of bi-national panels to review administrative decisions in countervailing duty and antidumping duty cases to determine their lawfulness for purposes of U.S. law.

While CITBA has never opposed and does not now oppose any free trade area agreement, CITBA has consistently opposed bi-national panels for review of U.S. countervailing duty and antidumping duty determinations. CITBA now reiterates its opposition and, in addition, opposes extending the bi-national panel system beyond the current NAFTA signatories.

CITBA has approximately 450 customs and international trade attorneys as members. CITBA members practice before all of the courts and agencies involved in U.S. customs and international trade proceedings and litigation, including the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit (CAFC), the United States Supreme Court, and the administrative agencies which make countervailing duty and antidumping duty determinations, the United States Department of Commerce and the United States International Trade Commission. Many of our members have also appeared before the bi-national panels constituted under Chapter 19 of the United States-Canada Free Trade Agreement (US-CFTA), as well as similar panels constituted under NAFTA. Moreover, members of the association also have served as panel members in these proceedings.

CITBA's continuing opposition to bi-national panel review is premised on the following considerations:

1. Bi-national panel review permits and directs the imposition, assessment, and collection of United States government taxes (i.e., imposition and collection of United States

countervailing duties and antidumping duties) without the benefit of Article III judicial review. In our view, such a system is both unconstitutional and unwise as a policy matter because (a) the cases are not disputes of an international character and (b) the panels replace the governmental institution which is intended and is best suited to adjudicate the lawfulness of agency actions for purposes of U.S. law -- Article III courts -- with an institution less well suited to perform exactly the same function.

2. Members of the bi-national panels are predominantly a constantly changing ad-hoc array of practicing international trade lawyers (whether United States, Canadian or Mexican citizens) with continuing professional responsibilities to their clients and law practices, who have not been appointed or confirmed by the United States Senate and have not taken the Constitutionally-required oath to preserve, protect and defend the Constitution of the United States. In addition to being unconstitutional, establishment of this pool of decision-makers is unwise as a policy matter because it creates the appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

3. Bi-national panel review creates a dual, if not multiple, system of review which produces two or more separate legal interpretations of the same trade laws, sometimes in the same case. It is constitutionally suspect since it may result in unequal protection of the laws and certainly undermines the constitutional requirement of uniform import duties. Moreover, the multiplicity of decisions is unwise as a policy matter because of the confusion and burdens it inevitably creates.

BACKGROUND

Countervailing duties are imposed by the United States to offset the effects of foreign governmental subsidies conferred on products imported into the United States. 19 U.S.C. § 1671, et seq. Antidumping duties are duties imposed by the United States when foreign goods enter the United States at less than their "normal value." 19 U.S.C. § 1673, et seq. "Normal value" (formerly known as "fair value") is generally the higher of (a) the home-market price of the product or (b) the manufacturing costs of the merchandise, plus overhead, expenses, and profits. Before countervailing or antidumping duties are imposed, the United States International Trade Commission must determine that a United States industry is materially injured or threatened with material injury, or, if such industry does not exit, whether the establishment of an industry in the United States is materially retarded by reason of the subsidized or dumped imports. Because of the method of calculating the countervailing duty or antidumping duty, many such duty determinations have tended to be among the highest of all United States taxes when calculated on an ad valorem basis.

Currently, except in cases involving imports from Mexico or Canada, antidumping and countervailing duty determinations by the Department of Commerce and International Trade Commission are reviewable at the request of importers, exporters, and United States manufacturers and their labor unions in the United States Court of International Trade, an Article III court established by Congress. Decisions of the Court of International Trade are then reviewable by the CAFC, and ultimately by the United States Supreme Court. By virtue first of the US-CFTA and then NAFTA, administrative determinations in antidumping and countervailing duty cases affecting Canadian -- and now also Mexican -- products imported into the United States are subject to review by bi-national panels consisting of experts in the international trade fields from the exporting and importing countries involved. 19 U.S.C. § 1516a(g). These panels have tended to be composed of international trade lawyers who also have clients in other antidumping duty and countervailing duty cases. Antidumping duty cases and countervailing duty cases from Mexico and Canada may be reviewed in United States Courts but only if all sides first waive

bi-national panel review. Since 1989, the effective date of the US-CFTA, such a waiver has never occurred.

Bi-national panels were first proposed as a substitute for judicial review of countervailing and antidumping duty disputes in the US-CFTA. They were apparently a last-minute compromise among the parties to overcome their differences as to whether countervailing and antidumping duty measures should even exist between countries who were members of a free trade area. Rather than resolving the fundamental problem, the negotiators decided to study the issue for five to seven years and, in the interim, review countervailing duty and antidumping duty decisions in bi-national panels. The concept of bi-national panels had not been previously discussed publicly, and when it first appeared as part of the final text of the negotiated agreement, CITBA immediately objected.

CITBA's opposition to the bi-national panel provisions of the US-CFTA were set out in its statements of December 3, 1987 and March 3, 1988. By letter dated July 8, 1992, CITBA also objected to the inclusion of the bi-national panel procedure in the NAFTA. On April 25, 1995, CITBA reaffirmed its opposition to such panels. CITBA's December 3, 1987 and March 3, 1988[1] statements in opposition to bi-national panel reviews of countervailing duty and antidumping duty determinations are matters of public record. While we here briefly review and reemphasize these outlined main points, we also readopt and reaffirm all the points we made in our prior submissions without repeating them here.

I.

LACK OF REVIEW BY ARTICLE III FEDERAL COURTS.

A. Elimination Of Article III Judicial Review Of Countervailing Duty And Antidumping Duty Determinations Is Unconstitutional.

1. In General. As stated above, antidumping and countervailing duty cases arise under statutes of the United States to remedy injury to United States industry from dumped and subsidized imports by imposing a supplemental import duty, payable to the United States, on the imported merchandise.

Prior to the adoption of the Constitution in 1787, the continued existence of the United States had become increasingly problematical because the central government under the Articles of Confederation had no compulsory mechanism by which to raise revenue to fund its operations. The various states had repeatedly rejected requests by Congress to give Congress the power to levy import duties. When New York again rejected such a request in 1786, the Constitutional Convention was called, with George Washington acting as its president, to organize the nation's form of government.[2]

Since the main purpose of the convention was to provide the central government with the authority to raise revenue by import duties (see Constitution, Article I, Section 8), each of the major plans first proposed at the convention provided that new federal courts be established (under the Articles of Confederation there were no federal courts at all) to review these customs cases. Thus, for example, the "Virginia Plan," proposed by Governor Randolph of Virginia, provided:

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[1] See Hearing Before S. Finance Committee on the U.S.-Canada Free-Trade Agreement, S. Rep. No. 100/1081, at 160-185 (1988).

[2] See generally Max Farrand, The Framing of the Constitution of the United States, 4-6, 45-46 (1913, reprinted 1988); Carl van Doren, The Great Rehearsal 45 (1986).

> 9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature...that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all...cases...which respect the collection of the National Revenue...

Farrand, I Records of the Federal Convention of 1787 21-22 (New Haven, 1911, 1936, 1986) ("Records"). Competing plans submitted by New Jersey, Hamilton and Pinckney also each provided for similar new federal judicial review over tax matters. See id. at 136, 223-224, 230, 232, 237, 243, 244, 293 & 305. As the Convention granted more powers to Congress, the functions of the Federal Courts encompassed more subjects and the Judicial power that we know today in Article III became generalized so that, in James Wilson's words (referring to Congress' control over duties and trade), "the Judicial should be commensurate to the legislative and executive authority." Id. at 237, n. 18. (See also George Washington's letter of transmittal at II Records 666.) True to expectations, the first Congress as its first substantive act passed the tariff act, 1 Stat. 24.

Since that time disputes between importer-taxpayers and the government over import duties have been subject to judicial review in Courts of the United States organized under Article III of the Constitution to determine whether the duty assessed is in accordance with law. Such taxes are always levied pursuant to a law of the United States passed in accordance with the Constitution, which grants Congress the power to levy duties upon imports. Thus, they fall squarely within federal question jurisdiction provided by Article III, Section 2. This has always been the position of the United States Government and CITBA believes that removal of such review is unconstitutional.

2. Case Law Does Not Support Bi-National Panel Review. In light of these constitutional provisions, it is noteworthy that the decision of the U.S. Supreme Court most often cited in support of the constitutionality of bi-national panels, Cary v. Curtis 44 U.S. (3 How.) 236, 11 L. Ed. 576 (1846), does not in fact provide such support. In Cary, the Court, in a 4-3 decision, interpreted a statute to extinguish one of the available procedures for obtaining judicial review of customs duty assessments: that was the common law action in assumpsit, which was the most commonly used procedure at the time, but not the only one.[1] The Court ruled that the statute as interpreted was constitutional. However, in a passage that subsequently seems to have been often overlooked, the Court majority emphasized that it did not intend to condone the constitutionality of entirely eliminating Article III judicial review in import duty cases: "[n]either have Congress nor this court furnished the slightest ground [for the assertion that under the statute, as interpreted by the Court] the party is debarred from all access to the courts of justice, and left entirely at the mercy of an executive officer." 44 U.S. (3 How.) at 250. Rather, the Court appears to have felt that other procedures for obtaining judicial review remained available. Thus, as the Supreme Court

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[1] In any event, within 36 days after Cary, Congress passed an amendment which overruled the Court's interpretation of the statute and restored the right to obtain judicial review in federal court by action in assumpsit to determine the legality of customs duty assessments. Besides the action in assumpsit, judicial review in nineteenth century customs cases was sometimes obtained by other common law forms of action, such as the writ of trover, e.g., Tracy v. Swartwout, 35 U.S. (10 Pet.) 80 (1836), and sometimes by the importer's refusing to pay the bond given to secure duty and forcing the government to sue to obtain payment on the bond. E.g., United States v. Kid, 8 U.S. (4 Cranch) 1 (1807).

later noted, Cary v. Curtis "specifically declined to rule whether all right of action might be taken away from a protestant, even going so far as to suggest several judicial remedies that might have been available." Glidden Co. v. Zdanok, 370 U.S. 530, 549 n.21 (1962) (citing 44 U.S. (3 How.) at 250).

Accordingly, CITBA reiterates its position that withdrawing Article III judicial review from United States federal tax determinations is unconstitutional.

B. Policy Issues.

1. Review Of Agency Decisions Under U.S. Law Is Not An "International" Dispute. Since bi-national panels are essentially international tribunals, support for such panels may be based in part on the perception -- a false perception, however -- that review of antidumping and countervailing duty determinations pursuant to U.S. statute is an "international dispute" which requires some special form of "international" or "bi-national" settlement. On the contrary, it is important to emphasize that the antidumping statute and the countervailing duty statute reviewed by bi-national panels are tax-levy laws of the United States. Moreover, the bi-national panels review the agency decisions to determine whether they conform to the requirements of U.S. law -- not whether they satisfy an international standard set forth in the US-CFTA, NAFTA, or other international trade agreement.

Equally important, reviews of agency decisions under the antidumping and countervailing duty statutes are not transformed into international or bi-national cases by virtue of the parties to the cases. As noted earlier, the statutes impose supplemental duties on products imported into the United States. The importer is the party responsible for paying these duties. Thus, even from the perspective of the importing interests, antidumping and countervailing duty cases present a conflict between the U.S. government and U.S. taxpayers -- usually corporations. Of course, the cases also present a conflict between U.S. citizens and the U.S. government where the agency decisions are challenged by the domestic industry or labor union petitioner. In contrast, no duties and no penalties are assessed against foreign corporations or citizens, much less against foreign governments.

The non-international nature of the case is not altered by the fact that many of the importers are frequently, but not always, corporate subsidiaries of foreign companies. These corporations are organized under the laws of the states of the United States and, hence, are United States companies subject to the laws of the United States. To argue that collection of import duties from U.S.-incorporated subsidiaries creates an "international dispute" produces two classes of corporations in this country: those which are subsidiaries of foreign corporations and thereby subject to some form of "international dispute" and those which are not. On the contrary, like all citizens of the United States, corporations organized under the laws of the states and doing business here are provided remedy for unlawful imposition of Customs duties in the Court of International Trade and its appellate tribunals, the CAFC and United States Supreme Court.

Even to the extent some of the respondents to the administrative proceedings under the antidumping and countervailing duty laws may be foreign citizens or corporations, the use of bi-national panels to review the administrative decisions in antidumping and countervailing duty cases -- as a substitute for domestic courts -- is not justified under traditional principles of international law. Traditionally, most international tribunals deal with government-to-government claims, and an international claim arising from a decision by an administrative agency affecting a foreign citizen or corporation could not even be raised until completion of normal judicial review of the administrative decision in domestic courts. The Restatement, Third, of the Foreign

Relations Law of the United States, § 902, comment k, explains that: "Under international law, before a [country] can make a formal claim on behalf of a private person, ... that person must ordinarily exhaust domestic remedies available in the responding [country]"; accord, e.g., James L. Brierly, The Law of Nations 281-82 (6th ed. 1963); Ian Brownlie, Principles of Public International Law 494-504 (4th ed. 1990)). In other words, before resort to an international tribunal is appropriate, the national courts are given the initial opportunity to review the contested government action (in the case of antidumping or countervailing duties, the administrative determinations resulting in their imposition and assessment) and, if necessary, to correct it for purposes of local law. Thus, for example, it could be appropriate for a foreign government to refer an antidumping duty or countervailing duty case to the World Trade Organization if the foreign government believes that the United States law or practice, as affirmed in an authoritative adjudication by the Article III judiciary, does not meet international norms such as those in the WTO-GATT Subsidies And Countervailing Duty Code or the WTO-GATT Antidumping Code. In contrast, the use of NAFTA-type bi-national panels instead of domestic judicial review introduces an entirely different structure that does not correspond to traditional principles of international law regarding the treatment of foreign citizens. Indeed, the use of NAFTA-type bi-national panels might internationalize a dispute unnecessarily, when the contested issue could readily have been resolved at the domestic level through judicial review; this is particularly true because, as noted earlier, the aggrieved party will not normally be a foreign party at all, but either a domestic industry or labor union petitioner or a U.S. citizen taxpayer. Accordingly, international tribunals such as the WTO in antidumping and countervailing duty cases should only be considered where judicial review in Article III courts has been fully conducted but, for one reason or another, does not satisfactorily resolve the matter; international tribunals such as NAFTA-type bi-national panels which substitute for domestic courts should not be used.

2. Article III Courts Are The Government Institution Best Suited To Review The Lawfulness Of Agency Action. The premise of the bi-national panels is that, somehow, the Court of International Trade and its appellate tribunals, the CAFC and the United States Supreme Court, do not dispense justice fairly in these situations. The Customs and International Trade Bar Association informed Congress that any such allegations were groundless in 1987-1988. The judges of the Court of International Trade, being Article III federal judges, are, without doubt, the most expert and unbiased arbiters who can be found in these matters. Article III courts, moreover, remain the governmental institution which is intended, and is best suited, to be primarily responsible for adjudicating the lawfulness of agency actions in the United States.

This fundamental importance of judicial review by Article III judges in the American system of government has been articulately expressed in a leading treatise on judicial review in administrative law:

> [T]here is in our society a profound, tradition-taught reliance on the courts as the ultimate guardian and assurance of the limits set upon executive power by the constitutions and legislatures.
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> ...
>
> The guarantee of legality by an organ independent of the executive is one of the profoundest, most pervasive premises of our system. ... It is clear that the country looks, and looks with good reason, ... to the courts for its ultimate protection against executive abuse.
>
> ...

> ... [The] availability of [judicial review] is a constant reminder to the administrator and a constant source of assurance and security to the citizen.[4]

As the workings of the bi-national panels have shown, they are not a substitute for a system of jurisprudence worked out in this country over two centuries. At best, bi-national panels arguably might be able to perform the judicial function almost as well as the courts. At worst, the bi-national panels have been accused of being biased and having little or no regard for the law of the United States as interpreted by United States courts, even though it is exactly that law which they are supposed to be applying.

It is true that the judges of the Court of International Trade are reviewing the agency decisions in these matters for purposes of United States law, not international law. That is what was intended by the Constitution and Congress, since the issue is whether the decisions by the responsible administrative agency resulting in the assessment of a supplemental import duty is supported by substantial evidence and is otherwise lawful and in accordance with the will of Congress as set forth in the U.S. statutes. These are clearly judicial functions in common law countries, and they should always be carried out for the United States by federal judges as required by the Constitution.

As explained earlier, however, bi-national panels under NAFTA are supposed to review whether the administrative decisions are consistent with U.S. law, and they are supposed to apply exactly the same standard of review as the Court of International Trade and its appellate tribunals. In short, the panels are supposed to undertake the same judicial function as Article III courts, without having the same qualifications and characteristics. This has always appeared to be a poor policy and the passage of time has failed to demonstrate otherwise. See, e.g., Judge Wilkey's dissent in Certain Softwood Lumber Products from Canada, Extraordinary Challenge Committee Proceeding, ECC-94-1904-01USA (Aug. 3, 1994).

II

PROBLEMS RELATING TO PANEL MEMBERSHIP.

A. Constitutional Issues.

1. The Protections Of Independence And Impartiality In Article III. By securing review by Article III courts in litigation between taxpayers and the government in tax matters, the Constitution guarantees the taxpayer (and the government) a fair, impartial, and independent hearing of the matter. Article III, Section I provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuation in office.

Required for such hearing was a federal court with judges appointed for life and with no diminution of salary. These provisions were intended to make the judiciary as apolitical and unbiased as possible. The provisions were intended to allow the judges to hold the scales aright between the government, of which they are part, and the citizenry, of which they are also part. Writing in The Federalist No. 79, Hamilton stated the reason briefly and

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[4] Louis L. Jaffe, Judicial Control of Administrative Action 321, 324 & 325 (1965).

correctly: "[i]n general course of human nature, a power over a man's subsistence amounts to a power over his will." Outright bribery and blackmail were not what was contemplated. The very existence of easy governmental procedures (diminution of salary or executive dismissal from office, both foreclosed by the constitution) to punish the judge was recognized as a subtle power over his will to judge rightly and fairly. Nothing about human nature has changed from the drafting of the constitution to the present day.

Congress apparently thought that members of the private trade bar from the United States, Canada or Mexico would be able to lay aside all bias, prejudice, and hope for further employment to serve on bi-national panels and render fair and unbiased decisions which could not be appealed to any court. However, we believe that the appearance of a conflict in such situations is a recurring concern. Thus, we believe, as did the framers of the constitution, that persons who are not given as their sole duty in life the activity of being a judge, will not be able on all occasions to act impartially. This is especially so in cases where panel members return to their usual livelihoods of advising clients on international trade. Subconscious bias, at least, will always be a question.

Article III makes it impossible for active federal judges to sit on any bi-national panel. Federal judges are available only in federal courts. They do not give advisory opinions nor do they undertake to adjudicate matters which are not federal cases and controversies. Congress cannot impose such duties upon them, nor can they accept them. Thus, the bi-national panels are condemned to use private parties in rendering their unappealable decisions. At times these private arbiters may be retired federal judges. Such a situation may be a plus, but it does not make a system which is operating outside the constitution into one which is operating within it.

2. The Appointment And Oath Issue. As we have discussed, the Framers, in the Constitution, guarantee the independence and impartiality of judges by insulating judges from political and economic pressures by virtue of lifetime employment and guarantee of no deduction of pay. At the same time, the Framers insured that those interpreting and enforcing United States laws would be in compliance with both the Constitution and the directive of Congress. This was accomplished in four ways. First, the Constitution provides that all federal officers be nominated by the President and confirmed by the Senate. Second, the Supremacy clause mandates that the Constitution and the laws of Congress be the Supreme law of the land, overriding conflicting state law. Third, the oath clause requires that all federal and state legislators, judges, and executive officers take an oath to be bound by the Constitution. Finally, the impeachments clause grants to Congress the right to accuse and try any federal officer who commits high crimes and misdemeanors, including failure to comply with his or her oath.

In the context of the imposition and collection of duties, these constitutional safeguards are clear: An officer nominated by the President and confirmed by the Senate is responsible for determining the rate or amount of duty to be applied in a certain case. Likewise, anyone reviewing such a determination, specifically a judicial officer, is also subject to such an appointment process. Moreover, under the Constitution, both the administrative or executive officer and the judicial officer must take an oath to preserve the Constitution and if such task shall fall to a state official, the oath is equally applicable, and the Constitution and the laws of Congress are supreme. Finally, if the executive or judicial officer shall commit some crime or misdemeanor, he or she may be impeached and tried.

Thus, under the constitutional scheme both administrators and judges deciding such cases are subject to severe sanctions should they stray from the Constitution or the laws of Congress.

However, under the bi-national panel system there are no such constraints. Indeed, perversely, in some cases, the system is designed to materially thwart these Constitutional protections. First, neither the United States nor the foreign (Mexican or Canadian) panelists are nominated by the President or confirmed by the Senate. These panelists, of course, determine the liability of U.S.-citizen taxpayers for taxes payable to the United States government. Second, the foreign panel members never take an oath to support the Constitution or the laws which were enacted by Congress. This is particularly odd in the context of bi-national panels where such panels' only function is to interpret United States import duty laws. Indeed, many panel members may not in good conscience make such an oath because they have already taken an inconsistent oath to support some other form of government. Finally, of course, while the panelists may be subject to some form of sanction, they are not subject to the constitutional sanction of impeachment. Thus, we feel, that these constitutional defects should preclude bi-national panel review.

B. Policy Issues.

The principal policy objections to the membership of bi-national panels are closely linked to the foregoing constitutional issues. Fundamentally, bi-national panels cannot achieve the independence and impartiality of Article III federal judges. At best, they may hope to come close, but as a practical matter the system has been seriously criticized. First, by virtue of using citizens of different countries, the panels increase the appearance of politicization and nationalistic bias. Second, by virtue of using practicing trade attorneys, the panels increase the appearance of either client-related or issue-related conflict of interests. In other words, one source of possible conflict, as was alleged in the Softwood Lumber case, is that panel members or their law firms have often represented companies in the industry involved in the case. And even if the panel member has no genuine client conflict, a second possible conflict is that particular practitioners may favor a particular substantive interpretation of the law because it would help a client in a future case. These factors create an appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

Notably, a frequent response to the conflict-of-interest criticism is that, if taken to its logical extreme, it would eliminate large numbers of the international trade bar from membership in panels and, consequently, eliminate the main pool of expertise. In fact, this response illustrates that the panel attempt is fundamentally flawed because the goals of impartiality and expertise are too difficult to achieve simultaneously, forcing one or the other goal to be compromised.

The problem was well stated during the colonial period, when customs and international trade lawyers served on the colonial Vice-Admiralty courts which decided customs and international trade issues:

> this Gentlemen is a constant practicing attorney, in all the King's Courts here, so that when anything comes before him in the Court of Vice-Admiralty, where his clients are concerned, he is under a strong temptation, to be in their favor, to His Majesty's dishonor, and to the great discouragement of His Majesty's Officers of the customs, and should he not so act he must lose a great

number of fat clients, who are of much more value to him than his post of Judge of the Vice-Admiralty.[5]

In contrast to these problems with bi-national panels, it is beyond question that Article III judges possess independence and impartiality and, when appointed to the Court of International Trade and CAFC, are able to develop specialization and expertise in the countervailing duty and antidumping duty laws.

III

THE PROBLEM OF DIVERGENT CASE LAW.

By having a system that relies on bi-national panel review for imports from some countries and CIT judicial review for imports from other countries, it is inevitable that inconsistent results and divergent lines of jurisprudence will result. While the panels are supposed to be guided by domestic law standards of review and rules of interpretation, one of the repeated criticisms of the panels is that they misapply U.S. law. See, e.g., Judge Wilkey's dissent in Softwood Lumber, supra. Furthermore, if a panel is presented with an issue of first impression, there is no assurance that the panel would decide the issue in the same way as an Article III court.

An added problem is the differing role of precedent. As courts in a common law system, the Supreme Court, the CAFC and Court of International Trade apply the doctrine of stare decisis, and the courts' legal conclusions are also binding on the agencies. Panel decisions, in contrast, do not have direct legal effect beyond the immediate case. At best, they may constitute a persuasive commentary. Although panel decisions are often cited in subsequent panel deliberations, they are not authoritative or legally binding in the way judicial decisions are. The situation is even more complicated under the NAFTA with the addition of Mexico, for Mexico has a civil law system in which the doctrine of stare decisis does not exist at all.

These difficulties are compounded when a petition is filed against multiple countries, some of which are entitled to bi-national panel review and some of which are not. In addition to the legal issues, there is no assurance that panels would reach the same decision as courts under the relatively subjective "substantial evidence" test. Thus, it is entirely possible that the same factual conclusions might be sustained with respect to one country and overturned with respect to another country.

As a constitutional matter, the multiple system of review raises two issues. First, it is arguable that the system of review violates the equal protection of the laws. Second, the likelihood of divergent interpretations of the same statute undermines the requirement in Article I, section 8, that import duties must be uniform throughout the United States. As a practical matter, the multiple system of review can be extremely burdensome and confusing. Where a petition is filed against several countries, the petitioner and the agencies would be forced into the expense of simultaneously defending review proceedings before a different panel for each country involved in the case.

CONCLUSION

CITBA believed that the provisions for bi-national panel review in antidumping duty and countervailing duty cases under the

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[5] Governor Jonathan Belcher of Massachusetts and New Hampshire to the Admiralty, 31 January 1742 (as quoted in M. H. Smith The Writs of Assistance Case, 58-59 (1978)).

U.S.-Canada Free-Trade Agreement and the North American Free Trade Agreement were unconstitutional and unwise. We believe that the serious deficiencies in bi-national review should compel Congress to withhold fast-track negotiating authority for any new free trade agreement, with Chile or any other country, which would include the bi-national panel review system.

Respectfully submitted,

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June 20, 1997

Statement of

U.S. Integrated Carbon Steel Producers

on

Fast Track Trade Negotiating Authority
June 3, 1997

Submitted to the Committee on Finance

June 20, 1997

This statement sets out the views of the six major integrated U.S. producers of carbon steel products -- Bethlehem Steel Corp., U.S. Steel Group a Unit of USX Corp., LTV Steel Co., Inland Steel Industries, Inc., National Steel Corp. and AK Steel Co. -- on a key issue connected to extension of fast-track rules: official U.S. negotiating objectives relating to dumping, subsidies, and the associated trade remedies.

Largely upstaged by the current debate over the use of the fast-track mechanism to address relatively new issues (e.g., labor and the environment) is the equally pressing question of what our official negotiating objectives will be on those issues which have been covered in prior rounds of negotiations. One such issue is the treatment of our antidumping and countervailing duty (AD/CVD) laws. These laws are essential not only to ensure fair competition in the U.S. market but also to help open foreign markets to U.S. goods and services.

Although international rules in this area were recently and comprehensively renegotiated in the Uruguay Round, our trading partners have already launched a multi-front attack on the U.S. trade laws and the WTO agreements which these laws implement. In the WTO, as well as in FTAA and APEC discussions, foreign countries continue to seek further erosion of our trade remedies as if the Uruguay Round had never occurred. It is neither necessary nor appropriate to revisit at this time the antidumping and countervailing duty laws in international negotiations; nevertheless, strong negotiating goals are needed in this area to make clear to our trading parties that Congress will not approve trade agreements that undermine U.S. trade laws.

In the past, official U.S. negotiating goals have always stressed the importance of strengthening subsidy discipline and improving anti-subsidy and antidumping remedies. For example, the most recent fast-track legislation contained "principal trade negotiating objectives" specifically addressing these matters:

> *The principal negotiating objectives of the United States with respect to unfair trade practices are . . . to improve the provisions of the GATT and nontariff measure agreements in order to define, deter, discourage the persistent use of, and otherwise discipline unfair trade practices having adverse trade effects, including forms of subsidy and dumping and other practices not adequately*

*covered such as resource input subsidies, diversionary dumping, dumped or subsidized inputs, and export targeting practices *1/

Other trade enactments, such as the NAFTA and CFTA Implementation Acts, have gone even further.2/

In 1995, the Trade Subcommittee of the House Committee on Ways and Means, however, released draft fast-track legislation with negotiating goals that did not properly reflect the priority of disciplines on, and remedies against, unfair trade practices such as dumping and subsidies. In fact, the relevant provisions in the draft could be used as a basis for weakening U.S. trade remedies. Only one of the negotiating objectives set out in the draft addressed, and then only very indirectly, antidumping and countervailing duties and the unfair trade practices to which these remedies respond:

(b) Principal trade negotiating objectives

(1) Specific Barriers.-- The principal negotiating objectives of the United States regarding specific trade barriers and other trade distortions are to expand competitive market opportunities for United States exports and to obtain more open and fair conditions of trade by reducing or eliminating specific tariff and nontariff trade barriers.

This language not only fails to affirm the importance of disciplines on (and remedies against) dumping and subsidies, but is so vague that it could even be read to suggest that such remedies actually represent a trade barrier that the United States should be working to eliminate.

Statutory trade policy negotiating goals provide broad instructions to executive branch negotiators -- identifying priorities and implicitly suggesting where there may be latitude to accommodate other countries' interests. The intent of the provisions in earlier bills, discussed above, has been to direct U.S. negotiators to pursue stronger trade remedies as a priority objective and to alert foreign governments that agreements weakening U.S. trade laws would not be approved at the implementing stage by Congress. These provisions were adopted in recognition of the critical role these trade laws play in opening world markets and in providing for a more fair market structure in the United States. A shift to ambiguous negotiating goals in this area would seriously undermine the ability of U.S. negotiators to preserve these trade remedies. Accordingly, at a minimum, language similar to that contained in prior enactments is essential in any new fast-track bill and should be included at the earliest possible stage in the legislative process.

1/ 19 U.S.C.A. § 2901(b)(8)(Supp. 1996).

2/ See, e.g., 19 U.S.C.A. § 3436 ("In the case of any trade agreement which may be entered into by the President with a NAFTA country, the negotiating objectives of the United States with respect to subsidies shall include . . . increased discipline on domestic subsidies . . . increased discipline on export subsidies . . . and . . . maintenance of effective remedies against subsidized imports, including, where appropriate, countervailing duties.").

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