EXECUTIVE COMMITTEE MEETING TO CONSIDER BIPARTISAN TRADE PROMOTION AUTHORITY ACT OF 2001; AND FAVORABLY REPORTING THE FOLLOWING NOMINATIONS: RICHARD CLARIDA TO BE ASSISTANT SECRETARY OF TREASURY FOR ECONOMIC P BIPARTISAN TRADE PROMOTION AUTHORITY ACT OF 2001. OLICY; KENNETH LAWSON TO BE ASSISTANT SECRETARY OF TREASURY FOR ENFORCEMENT; B. JOHN WILLIAMS, JR., TO BE CHIEF COUNSEL/ASSISTANT GENERAL COUNSEL FOR THE INTERNAL REVENUE SERVICE; JANET HALE TO BE ASSISTANT SECRETARY OF MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOAN E. OHL TO BE COMMISSIONER OF CHILDREN, YOUTH AND FAMILY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JAMES B. LOCKHART, III, TO BE DEPUTY COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION; AND HAROLD DAUB TO BE A MEMBER OF THE SOCIAL SECURITY ADVISORY BOARD

TUESDAY, DECEMBER 18, 2001

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to notice, at 9:45 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Rockefeller, Conrad, Graham, Bingaman, Kerry, Lincoln, Grassley, Hatch, Snowe, Kyl,

and Thomas.

Also present: John Angell, Staff Director; Michael Evans, Deputy Staff Director; Kolan Davis, Republican Staff Director and Chief Counsel; Carla Martin, Chief Clerk.

Also present: Greg Mastel, Chief, International Trade Counsel/Chief Economist; and Peter Davidson, General Counsel, U.S. Trade Representative.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The Chairman. The committee will come to order.

We are resuming the mark-up of the bill to give the President fast track or trade promotion authority. At last week's meeting, we voted to report the bill, subject to further amendments. We are now going to open the bill to consider such amendments.

But, before we do so, for the information of members, after we complete work on the trade bill, we will ask members to remain, briefly, so that we can retain a quorum to report nominations. We need 7 members to vote and take action on amendments, but we need 11 members to report out the nominations. I very much hope we can get 11 members here. But, if we cannot, we will have to take them up later.

Senator Grassley. Would the Republican staff, since we have Senator Baucus cooperating so well to get these administration appointments through, ensure that we have Republican members show up to make sure that we do have a quorum to do that?

The Chairman. Thank you very much, Senator.

The bill is open to further amendments.

Senator Kerry. Well, Mr. Chairman, I have a couple

of amendments. I am not sure who I am persuading, looking over there at the empty chairs. But, since I am not going to ask for a vote on this first amendment, let me just speak about it for a second.

Previous legislation with respect to trade, Mr. Chairman, including the 1994 Uruguay Round, called for a working group on trade and labor. The purpose of that was really to try to formalize, within the workings of the ongoing trade negotiations, a consideration of the critical issues that are increasingly on the table.

We are all struggling with a way to try to find, how do you maintain the consensus on trade and how do we do this without giving short shrift to the increasing demand and recognition of the need to try to reconcile some of the demands with respect to labor standards, labor practices in the rest of the world.

Now, I have supported fast track and I have supported the prior trade agreements. But I think, increasingly, those of us who have supported it have to acknowledge there is an increasing tension.

So the question is, how do you guarantee there is an adequate voice, and how do you institutionalize the process?

Regrettably, at the Doha meetings, there was a reaffirmation of interest in working with the ILO, which

has sort of always been on the table, which we know exists, but which has really not provided the kind of reconciliation of those issues that I think we would like to see.

So I would like to see what was the practice in the past embraced in this round. That is, to formally embrace the concept of a working group on trade and labor within this next round of negotiations.

Now, there is an amendment. As I say, I am not going to ask for a vote here. I will offer it on the floor, and obviously I will seek a vote on the floor, unless the Chairman wants to accept it. He and I have discussed it a little bit.

The Chairman. Senator, I think you have a good idea. It is very much my view that the two should be working together in tandem and that trade agreements should not trump multilateral environmental agreements.

As you know, currently in Section 131 of the Uruguay Round Agreements Act, that is, an act passed by Congress, there is language there to seek the establishment of such a group. It is true that at Doha that seems to be slipping, which is regrettable. It is deeply regrettable.

The section of the Uruguay Round Agreements Act provides--and I think it is important for us to us to

know what the law at that time was, and I believe still is--"The President shall seek the establishment in the WTO of a working party to examine the relationship with internationally recognized worker rights, as defined in Section 5074 of the Trade Act of 1974, and to the articles, objectives, and related instruments of GATT 1947, and the WTO, respectively."

I do not see anything in there on environment, which is unfortunate. But that working group precedent with respect to labor issues is important.

Senator, I am very sympathetic with what you are trying to do here. Regrettably, we are in a parliamentary position where it is difficult to, at this time, accept amendments.

But, at the same time, I very much want to work with you. Even before we get to the floor, I will instruct the staff to include a discussion of this matter in the committee report to highlight the importance of this issue to keep the ball moving.

I very much agree with the Senator. Many times I have said, and have made many public statements, that this is the key question that we have to work out, that is, the potential tension between multilateral environmental agreements and trade agreements. Trade agreements, in my view, should not trump multilateral

environmental agreements.

Senator Kerry. Well, I thank the Chair. I see the Ranking Member wanted to speak.

Senator Grassley. Yes. I probably do not have quite as cooperative of an answer as the Chairman did. But I do want to take advantage of this opportunity to say that I think that this bill has a more comprehensive set of objectives on workers' rights than any U.S. trade law dealing with international trade negotiations. The bill has not ignored the issue of labor rights.

The fact that it was elevated to a principal negotiating objective is very significant, particularly, following upon what Senator Moynihan always pushed for when we had bills like this up in the past: the greater cooperation between the WTO and the International Labor Organization. In this specific bill, the President is being directed to seek that greater cooperation.

So I guess, to answer Senator Kerry, I do not believe that the amendment is necessary. The President is already required, under Section 131 of the Uruguay Round, to seek the establishment of a WTO working party on workers' rights.

Now, we tried and did not succeed, as the Chairman said, at Doha. Remember, the consensus approach to how we do things at the WTO, regardless of how jealous we are

about a certain position, there has to be some accommodation. We had the vast majority of our trading partners refusing to accept that proposal by Ambassador Zoellick.

Now, right or not, developing nations feel that we are pushing our agenda on workers' rights as a means to increase the cost of a product and rob them of comparative advantage.

I appreciate the importance of the issue. I guess I am always going to be open to considering Senator Kerry's view on it. Particularly, I would not be opposed to very strong report language. But I do not think it is necessary to reiterate the requirement in the legislation.

Senator Kerry. I do not want to prolong this. Let me just say to the Senator, I appreciate his comments. But it is one thing to state it as a goal, which is a real slide-off, and another to actively work or to create some entity that works towards its achievement.

At Doha, it is our report that it was not even raised. So, when you suggest that there was some effort to get it, I suggest to you the record is very clear. It was not even raised. What the administration did in Doha----

Senator Grassley. Senator Kerry, we could ask the

administration for a clarification on that. But it was my understanding that our ambassador did raise it.

Senator Kerry. What he did, was agree to reaffirm their interest in the work of the ILO. They literally used the language "reaffirmation of interest."

That is the strongest we got out of that, in terms of the work of the ILO. Most people have come to the conclusion over a period of time that that has not been satisfactory, which is precisely why, at this point, we ought to do more.

Now, I do not know what the resistance is to it. I mean, I am a pro-trader. So are you. But we have got to acknowledge that, increasingly, the capacity to be effective in the trade relationships--

I mean, look at the newspapers today on the issue of steel. The administration is being forced into a position to consider whether or not they are going to have to slap quotas and tariffs on steel because of the problem of, particularly, Asian steel coming in very significantly now and the differential in the production capacities of countries.

So, as we try to bolster the efforts of not quite so market-free and democratic countries to embrace trade rules and to open their countries to the trade process, we are all strengthened by making certain that the

populations of these countries rise with the tide, that they are all lifted up, that there are benefits to everybody.

One of the single most significant drawbacks on advancing the cause of trade has been the sense that globalization and technology have not brought a broad sharing of their benefits with enough people with populations, particularly the less-developed countries.

So I think this is simply an effort to try to create and institutionalized process. It does not tie you to a result. It does not mean that your trade agreement has to be linked. It simply says you are going to create a working group to formally engage in trying to recognize how you can make progress in those areas.

If we do not make progress in those areas, I respectfully suggest to my colleagues, we are going to have a tougher and tougher time here maintaining the consensus for trade.

We are already seeing the greater difficulties in the House, greater difficulties in the Senate with respect to fast track. Part of that is a reflection of the lack of having institutionalized how we deal with the environment and how we deal with labor.

So I say to my friend, I do not know why there is this sort of almost automatic kind of ideological

resistance to the word "labor" being encompassed in a bona fide effort to try to advance the interests of trade.

Mr. Davidson. Mr. Chairman, Senator Kerry, if I could just respond for a moment.

The Chairman. Go ahead, Mr. Davidson.

Mr. Davidson. Thank you, Mr. Chairman.

I think we share your concern as well. I think building a broad coalition for trade in the United States requires that we start talking about the issues that you are talking about.

So, since the President announced his framework in May, which has many of the principles that ended up being in the bipartisan bill dealing with environment and labor issues, we found that to be very important.

My understanding of what the United States and Ambassador Zoellick tried to do in Doha was to work with the EU, Australia, and New Zealand, in particular, to strengthen language dealing with labor issues.

That group was unsuccessful, largely because of opposition from developing countries who remain very skeptical of our motivations in putting forward some of these proposals.

So, I think that we are committed to continue to work with you and work on the issue. It was just very

difficult in an atmosphere, as Senator Grassley has said, where you have a good portion of the world opposing any effort in that direction.

Senator Kerry. I recognize that. But would it not, therefore, advance the cause of the administration, and, indeed, raise the entire profile of the issue for the U.S. Congress to go on record suggesting that we simply want it to be a target?

A working group is, in fact, the express desire of the Congress. It does not tie the administration's hands. It certainly does not provide any long-term deficit in our capacity to proceed forward, but it merely codifies what, in effect, you are saying you are trying to achieve at Doha.

It really is no loss. It is a formalization of the statement of goal, Mr. Chairman. I would hope that, before we get to the floor, we could make further progress on this. I am not asking for a vote on it today. But I really see it as in the interests of all of us who have been supporting free trade.

The Chairman. Senator, I agree with you. To establish a greater American public consensus on trade, it is very important that these working groups--that is, labor and trade, environment and trade--are pursued very aggressively to get a result. It is very important.

Trade changes with each passing year. New issues are involved. Years ago, it was just tariffs, then quotas, now it is labor and environmental issues as the world becomes more complicated.

I do very much agree that it would help develop a greater consensus for trade in this country and help us reach trade agreements as a consequence, in part, to the degree to which we aggressively pursue these working groups.

Senator Kerry. Well, I thank the Chair very, very much.

Let me move to the amendment that I would like to ask for a vote on, Mr. Chairman. In NAFTA, Mr. Chairman, there is a provision known as Chapter 11, which is unlike, as we know it, the bankruptcy law.

But it provides companies or investors a forum by which complaints can be heard regarding the impact of another country's laws on their investments or profit-making ability.

If a law in a country has an impact on an investor, or a State's law has an impact on an investor, and that law somehow is construed by that company as denying them the ability to do business, they have some course of action.

Now, under traditional constitutional takings law, a

U.S. company does not have the same rights as a foreign company now has in our country to seek redress.

Mr. Chairman, I know you are very well familiar with this issue. You and Senator Grassley have tried to improve on the Thomas bill on the so-called investor-State dispute by providing objectives that ensure U.S. investors are not accorded lesser rights. The term you use is "we will not have lesser rights."

The problem with the term "lesser rights," is that it still affords the opportunity for a company to come in and essentially claim greater rights. I do not believe that foreign companies ought to be afforded greater rights than a United States company has under the U.S. constitution.

I might add, the procedures are completely secret. A company appoints an arbitrator. The sued State appoints an arbitrator. Then together, in secret, they get together to decide who the third arbitrator will be. They can meet in secret, effectively, without access of the State.

For instance, the State of California, which is now being sued because of the impact of NPTE, which they are now taking off the market, has no rights or access to find out what is going on in this. I mean, that just does not make sense. That is completely contrary to the

American judicial system.

So we are, in effect, granting greater rights in a State-investor suit to a foreign company or investors than we do to American companies and American investors.

What I seek to do is merely codify in this the constitutional standard, as stated by the Supreme Court. In the Concrete Pipe case decided by the court in 1993, the court said, "Our cases have long established that mere diminution of the value of property, however serious, is insufficient to demonstrate a taking."

In its most recent takings case, Tolazzallo vs. Rhode Island, the Supreme Court reaffirmed the use of the denial of all economically beneficial use as the standard for determining when a taking occurs.

So I restate the Supreme Court holdings. I do not rule out the possibility that a foreign investor can bring an expropriation case. I simply want the same standard applied to American companies so that we are all operating on a fair playing field.

The Chairman. Is there any comment or discussion?

[No response]

The Chairman. Senator, I appreciate your concern here. The basic goal here, clearly, is balance between foreign investors and U.S. and domestic investors. That is the goal here.

There are a number of provisions in the mark designed to achieve that balance between the interest of U.S. investors abroad and public interest, and not diminishing authority of U.S. regulatory agencies.

The bill, as you know, expressly directs the President to take this balance into account in negotiating on investment. As you well know, Chapter 11, which was insisted upon in NAFTA by the United States to protect United States investors, say, in Mexico and/or Canada. So the point of Chapter 11 is balance, so that neither side gets an advantage.

The mark also instructs the President to seek an appellate mechanism to review arbitration decisions and investment settlement disputes. This will help ensure consistency in interpretation of terms and concepts that commonly appear in different investment agreements.

The mark also instructs the President to seek mechanisms to deter the filing of frivolous claims. That should address the concerns some have that investors have abused NAFTA Chapter 11 and similar provisions by filing outlandish claims. Frankly, I am quite confident that the mark advances the ball in the proper direction.

I might say, in my judgment, the provisions of the amendment you filed, frankly, go too far. It is going to tend to create a situation that hurts American investors

overseas.

I know the goal is to protect U.S. investors in the United States compared with foreign investors int he United States. But, also, the provision in the bill which requires the concurrence of the home government, the host government, is at least mischievous, to say the last.

Say an American investor may want to invest overseas, and the State Department says no because that upsets some balance over there. I think that the provisions in the bill go a long way to address the concern that you are addressing, the very legitimate concern. I appreciate you bringing it up. But I also think that the provisions in the bill go too far, and even interpreting U.S. Supreme Court law in takings.

Generally, U.S. Supreme Court law on takings says that there is a takings when the regulatory action substantially diminishes the economic value of the property.

The provisions in your amendment go further than that, further than the basic provisions of current Supreme Court law. This has been an issue in American jurisprudence for over 200 years. The line is always a little bit blurred as to what, in fact, does constitute a taking and requiring compensation and what does not.

But the formulation and the amendment goes further than the current Supreme Court rulings on what does constitute a compensible taking. It also tends to make it more difficult, as I mentioned, to protect U.S. investors in other countries. For that reason, I just think it is inadvisable for us to adopt this amendment.

The provisions in the mark-up, I think, do a pretty good job. The amendment, I think, is going to cause a lot more problems and I urge us not to accept it.

Senator Grassley. Mr. Chairman, I would associate myself with your remarks and put a longer statement in the record in opposition to the amendment.

I would simply say that I think that your mark using the fair and equitable treatment is a proper standard. I would go one step further, in that I do not think that a trade agreement is the best place to address this issue.

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

The Chairman. Is there further discussion?

Senator Bingaman. Mr. Chairman, maybe I could ask Senator Kerry a question. As I understand, just reading this description, we do not have any legislative language in this committee, right? We are just working off this one-page sheet?

The Chairman. At the moment.

Senator Bingaman. All right. But the amendment would require approval by the investor's home government that the investor may file a claim for compensation against the country in which the investment is made.

Is there anything in current law that requires such approval by the government? U.S. companies that invest overseas or U.S. investors that invest overseas certainly do not require our government's approval.

The Chairman. Mr. Mastel, could you answer that question?

Mr. Mastel. Under Chapter 11 of the NAFTA, there is no requirement for the home government to sanction the investor's suit. So the investor can take an action on his own behalf without his home government actually approving it.

Senator Bingaman. And that is true, not just in NAFTA, but in general in our trade agreements.

Mr. Mastel. That is true. In the bilateral investment treaties, that is generally true as well. They are normally called an investor versus State issue. In other words, investors take their own actions against the host government.

The Chairman. Is there any further discussion?

Senator Kerry. I would just reiterate, Mr. Chairman. Let me just say, first of all, I completely

respect the fact that what you and Senator Grassley have done is better than what we have in the Thomas bill. I think you have tried to make progress on it.

But the fact remains that, in your language where you accord, specifically, I think, "no lesser right," the problem is, you could have a case where an expropriation standard is applied in which the rights are actually greater than those that are provided by the constitution.

So, you could have an interpretation of taking that goes to profit or to some lesser degree that the court has declared is, in effect, a taking. You do so in a process to which we have no transparency and effectively no redress. So I think that, in effect, you maintain this imbalance.

Now, you talked about the sort of mischief that it might cause. I think there was a case in Mexico on the $16 million that were paid to a foreign investor when an ecologically sensitive zone it had established prevented the operation of a hazardous waste treatment facility. The Canadian government lost a case when the country limited exports of PCBs.

But in both cases, the foreign governments' ability to adopt laws intended to protect its citizens was limited by an outside corporate interest. So you have to weigh the balance here of what degree of sovereignty you

are giving up versus your ability to adopt and enforce your own environmental laws. That is really what is at stake here.

Now, I respectfully suggest that we ought to enforce them, meeting the standards of our constitution and protecting our corporations and our investors according to those standards.

You may, in fact, have some instance of a case where some investor who is a United States investor abroad might be affected to some degree, but you are still doing it to the highest standards of our constitution and within the interests of our effort to enforce our environmental laws.

So I think it is a better balance. I think it is a clearer way of sending a message to our corporations of what the playing field is that they are, in fact, on. It leaves it to a much less quixotic, less secretive, less outside influenced process than we have today.

The Chairman. Any more discussion?

[No response]

The Chairman. Does the Senator want a vote on his amendment?

Senator Kerry. I would like a vote on the amendment.

The Chairman. All those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, no.

[A chorus of nays]

Senator Kerry. It sounds to me like the ayes have it, Mr. Chairman.

The Chairman. All those in favor, raise their hands.

[A showing of hands]

Senator Kerry. No, Mr. Chairman. That is fine. The nays have it.

The Chairman. All right. The nays have it. The amendment is not agreed to.

Senator Kerry. Do not be too fair. [Laughter].

The Chairman. You do the best you can around here.

We need 11 members to report out the nominations. There are 10 Senators present. Senator Kyl is out in the hall. As soon as we get him, I would like to vote. I know Senator Conrad has amendments.

What I would like to do, is ask the Senator if he could defer to reporting out the nominees now, because we need 11, and then come back because we need only 7 for the amendments.

Senator Conrad. Yes.

The Chairman. I thank the Senator.

I move that the committee go into executive session

to consider favorably reporting en bloc the following nominations: Mr. Richard Clarida to be Assistant Secretary for Economic Policy; Mr. Kenneth Lawson to be Assistant Secretary of Treasury for Enforcement; Mr. B. John Williams, Jr., to be Chief Counsel/Assistant General Counsel for the Internal Revenue Service; Ms. Janet Hale to be Assistant Secretary of Management and Budget, Department of Health and Human Services; Ms. Joan E. Ohl to be Commissioner of Children, Youth and Family Administration, Department of Health and Human Services; Mr. James B. Lockhart, III, to be Deputy Commissioner of the Social Security Administration; and Mr. Harold Daub to be a Member of the Social Security Advisory Board.

We have held hearings on all of these nominees. It is my judgment that they are well qualified.

Is there any discussion?

Senator Grassley. I would second the motion that you made.

The Chairman. All right.

Senator Grassley. I do not have any discussion. I move that the committee report the nominations.

The Chairman. Is there a second?

Senator Hatch. I will second.

The Chairman. All those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, no.

[No response]

The Chairman. The ayes have it. The nominees are unanimously ordered favorably reported. I thank the Senators for their indulgence.

Senator Conrad?

Senator Conrad. Thank you, Mr. Chairman and members of the committee.

I would call up my consultation amendment number one. I know that members are approaching this with an open mind and a willingness to listen to rational, reasoned argument, and are ready to be persuaded this morning.

Mr. Chairman, fast track is supposed to be a two-way process, not a one-way grant of authority. Each Senator is giving up their right to amend. That is a right that is given to us by the constitution. It is not only a right, it is a responsibility. It is what gives us the fundamental right of any Senator to protect the people that sent us here.

In return for giving up the power to amend, Congress is supposed to play a larger role at the front end of the process by having meaningful consultations with the administration.

Meaningful consultations. In the 15 years I have been here, I have not seen meaningful consultations by

any administration with the Congress.

This is not a partisan issue. I do not think anyone on the committee thinks the consultation in the Jordan Free Trade Agreement was adequate. Certainly, our Republican friends objected. There was not adequate consultation on our side, either. Things have not gotten any better with this administration.

I do not know of anyone who got a call from Doha, or before Doha, before the administration defied clear congressional intent and put our dumping and countervailing duties on the table, almost before they got off the plane.

With this track record, I believe we would be making a big mistake to give the administration a blank check without having a process to exercise our constitutionally-mandated responsibilities as Senators with respect to regulating foreign commerce.

The amendment I am offering requires the administration to pay attention when the Finance Committee or Ways and Means Committee raises a serious concern.

Specifically, the amendment requires the USTR to consult with the committees in the 10-day period before an agreement is initialed. If either committee, either Finance or Ways and Means, decides that specific

provisions are damaging to U.S. interests and requests that the provisions be changed, the President would be required either to make the requested changes or report back to Congress on why the changes could not be made, and what actions the administration will take to mitigate any negative effects on the country.

Mr. Chairman and members of the committee, I do not believe this is an onerous requirement. It simply says that when either committee decides a trade agreement being negotiated is flawed, our negotiators must put forward their best effort to correct the flaw before the negotiations are completed. That, to me, is meaningful consultation. I do not believe it is micro management.

Only if an issue is so serious that a majority of the Finance or Ways and Means Committees--committees that have historically been willing to give broad latitude to our negotiators--request a change in the proposed agreement will this amendment have an effect.

So, Mr. Chairman, that is the rationale, the reasons, for this amendment. I would be happy to discuss it.

The Chairman. Any discussion?

Senator Grassley. Mr. Chairman?

The Chairman. Senator Grassley?

Senator Grassley. I have had the pleasure of working with Senator Conrad on something he brought to

this committee's attention, and now is part of your mark. He brought it to the attention of this committee years ago, and we hopefully will get it in here, that there cannot be any secret side deals.

In other words, I am saying something you and I worked together on, and I am going to say why I am not for this amendment you have drafted.

But Senator Conrad brought this to our attention. If he had not, I do not know whether we would have ever had any concrete example of somebody reaching an agreement in secret that we didn't know about when we adopted the Canadian-American Free Trade Agreement that gave Canada some advantages that, probably if the agricultural community of the United States had known about, would have fought the agreement, or it probably would have been changed before we got to vote on it.

That is part of this bill. It is very important that every single thing, not just what is on paper, that you just cannot have anything that is not before this committee before we approve it that we know fully about. His language is in this bill because of his hard work, and is evidence of that mistake not being repeated.

Now, I guess I think that we have very strong consultation provisions in this bill. Obviously not strong enough to satisfy Senator Conrad, but stronger

than we have ever had before. I just think that, if we do not get the consultation that we ought to have--and it is more important on trade agreements than anything else because they cannot be amended--it is our fault. I wish that I could point to a specific instance to offer to Senator Conrad that consultation has not meant much.

I am not sure of this, but I think I would give my remembrance of some changes that were made in the Israeli-American Free Trade Agreement just prior to the final signing of it. I think I can remember specifically something that Senator Chafee brought up.

That is just a recollection. I do not want to sell this to him that that is a perfect example that I can give you some examples of something changed, because I do not want to go back and research it and find out if I am absolutely correct. But I think so.

So, consequently, I think it is a case then, Senator Conrad, the extent to which we, individually or as a committee, exert our prerogatives that are intended under the bill to have very forthright presentation of committee support or committee opposition to specific negotiations that are going on even prior to the final agreement, but more important than that, on an ongoing basis, during the months of negotiation that go on.

The Chairman. Thank you, Senator.

I agree that Senator Conrad has brought up a very important point. I think I speak for all members of this committee in saying that we are not entirely happy with the degree to which any administration, at least in our memory, have consulted with Congress on trade negotiations.

We are giving up an extraordinary constitutional responsibility by delegating the fast track procedure to the President. We cannot amend any agreements that might come before us. Extended debate is not available in the Senate. It is an extraordinary grant of power.

We also face a difficult situation because, on the one hand, we want to be fully informed with all negotiations. On the other hand, the more they are public, the more difficult it is for any administration to successfully negotiate an agreement. Often there are tactical points to consider that any negotiator has, and sometimes you do not want to show all of your cards and put them all on the table when you start to negotiate. So, this is not an easy problem to solve.

We, in the bill, have attempted to solve this, though, with various mechanisms. One, is creating a consultative Congressional group to oversee what the USTR is doing, that is, what it is negotiating. As you know, it would constitute the members of the Finance Committee

and the Ways and Means Committee.

We also, in the bill, have directed USTR to come up with regulations that would provide for how that mechanism would work, how frequently they would come up, when they would not consult with us, what powers each would have with respect to the other, et cetera.

Clearly, as the USTR develops those regulations, this committee will be exercising its oversight responsibility to assure the best we can that those provisions make sense, that we are better involved than we have been in the past.

I might say, we also have reverse fast track, a new provision in this bill, which means that both Houses can stop the trade negotiation from proceeding. The Senate parliamentarian has even told us that one body, that is, the Senate on its own, if it wants to change its rules, can, by itself, change the fast track rules and pass a resolution by any member that would go to the Finance Committee, under expedited procedure, to the floor. That, too, is a mechanism, a tool, for Congress to have some check on, some involvement in the negotiations.

So, I hear the Senator's concern. I do not know that the 10-day rule is going to really work. I think an administration that wanted to get around that could. I do think the provisions we have will go a long way toward

helping to solve the problem that we all have.

Senator Conrad. Mr. Chairman, if I might.

The Chairman. Senator?

Senator Conrad. First of all, I want to thank the Chairman and Ranking Member for their comments. I appreciate what has been done.

I have offered this amendment before, or measures like this, because, very frankly, we have had a bitter experience. We had a very bitter experience. We had an agreement that was negotiated and it was represented to us it would do certain things, and it did not.

The Canadian Free Trade Agreement was an absolute unmitigated disaster for the durham and wheat producers of my State. It was represented to the Congress that it would make little or no difference in terms of the flows of barley and durham wheat into this country.

That was the testimony by the USTR, by USDA, to the committees of jurisdiction, not only this committee, but the Agriculture Committee as well. Not once, but many times they told us that was the case. They were wrong.

They were not wrong just by a little bit, they were wrong by a lot. They went from zero percent of the durham market to 20 percent. Tens of millions of bushels of barley have come into this country, not because they are more competitive, not because they are more

efficient. If that was the case, we would be suffering, we would be hurt, but we would not have a complaint.

We have a complaint. It was because of a loophole in those agreements that allowed a flood tide of unfairly traded grain to come into this country.

I would say to Senator Grassley, in a way, he made my point. The example he gave of a meaningful difference being made in an agreement was something done 15 years ago. I think we would be hard pressed to find where we have made changes, where changes have been made as a result of the kind of consultation that goes on.

It reminds me of kind of the old windshield review by the property tax assessor back home who is supposed to come by and assess your property. They drive by and then write down an assessment. I mean, that is kind of what is happening with this consultation. It is kind of a windshield consultation.

Senator Grassley. I think you make my point, to some extent. If we want to do our job right as a committee, we can make an impact. The consultation is greater in this one than it would have been 15 years ago.

Senator Conrad. Well, I am not sure of that. Frankly, one of the things that has been taken out that we have had in previous agreements, was that either committee could stop what was being done.

That has been taken out of this mark that we have before us. In the past, the Finance Committee, on its own, could block an ill-conceived trade negotiating proposal and force the President to revise his proposal. That is not in here. Ways and Means could do the same thing. That is not in here. It has been weakened.

The Chairman. Senator, I see Senator Lincoln leaving. Senator, if you want to vote on your amendment, we need seven Senators to take action.

Senator Conrad. Yes. I would like to move it to an amendment and have a chance to vote.

The Chairman. All those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, no.

[A chorus of nays]

The Chairman. Unless it is challenged, the nays have it. The amendment is not agreed to.

Senator Conrad. Well, I knew the result before I offered the amendment. [Laughter].

Senator Conrad. I do have one other amendment to offer.

The Chairman. Very quickly. I see Senator Lincoln and Senator Hatch need to leave.

Senator Conrad. Well, I can do this very quickly. It is a question of a corrections mechanism, Mr.

Chairman.

The Chairman. All right.

Senator Conrad. And that we have, as a negotiating objective, that they find a way to correct mistakes that are made in these trade agreements. We have found again in the bitter experience we have had in North Dakota, when a mistake is made, there is no way to fix it. They say, you can do 301. Good luck.

I think it ought to be a negotiating objective that you fix things that are a mistake, that have a material and adverse impact. That is the thrust of the amendment. There is a negotiating objective to have a corrections mechanism constructed.

The Chairman. Is there discussion?

[No response]

The Chairman. I appreciate the Senator's intent here. I might say, in respect to the last amendment, that this mark makes clear that the United States should rigorously enforce its trade remedy laws. Also, I would instruct the staff to address in the report the importance that Congress attaches to the aggressive use of Section 301.

Senator, we have our safeguards law, as you well know. I think that, if we were to adopt this amendment, frankly, it would cause more problems than it would

solve. I must urge the Senator either to withdraw his amendment, or other Senators to vote against it.

Senator Conrad. I am going to press this amendment because I think it is critically important.

The Chairman. All those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, no.

[A chorus of nays]

The Chairman. The nays have it. The amendment is not agreed to.

Are there any other amendments?

Senator Conrad. That was a closer vote, was it not? [Laughter].

The Chairman. That was closer. You are making progress, Senator.

The committee previously voted to report the bill subject to the consideration of further amendments. All such amendments have been disposed of.

Accordingly, the mark-up of the fast track bill is concluded. In accordance with last week's vote, the bill is ordered to be reported.

I ask that staff would have authority to draft necessary technical conforming changes to the bill.

I would like to take a moment to thank Senators for coming to attend.

Senator Conrad. Could we have a conversation before we leave, Mr. Chairman, on a separate matter?

The Chairman. Absolutely.

I also thank the staff for the extraordinary efforts they have undertaken to help. They have rearranged their schedules to prepare us for this mark-up.

Senator Grassley. Mr. Chairman, if I could, I would like to thank you once again. You set a date to have this bill brought up. You did it when you said you would. We have completed it. I want to thank you for just doing what is right.

The Chairman. I appreciate that, Senator.

Senator?

Senator Conrad. Mr. Chairman, if I could just briefly have the attention of the Chairman and the Ranking Member on a very important matter to our States, and I think to the country, and that is the question of 301 action that is designed to deal with what I have been describing here earlier today.

That is, the unfair trading practices of our Canadian neighbor and what they have done to flood this market with durham and with other wheat and barley. Again, not because they are more competitive, not because they are more efficient, but because of loopholes in the Canadian Free Trade Agreement.

We have unfair practices being pursued by the Canadians that are just as clear as they can be. They are selling into this market below their cost. They are using the lack of transparency of the Canadian system and taking advantage of the transparency of ours. It is just as clear as a bell. It is costing us hundreds of millions of dollars. It has cost my State $100 million a year, according to the State university.

Mr. Chairman, as you know, next month the USTR must make a decision on a pending 301 case. This decision will send a powerful signal to U.S. agriculture about whether this administration will stand up for U.S. farmers and put a stop to this unfair trade.

In my view, the only action USTR can take that would put an end to the economic damage inflicted by the Canadian Wheat Board, that operates in secrecy, that operates as a monopoly, that operates without transparency, would be for the USTR to impose a tariff rate quota on Canadian wheat and barley until longer term disciplines on state trading enterprises, like the Wheat Board, can be negotiated.

Now, Mr. Chairman, I know this is of special interest to you as well. I would be interested in your reaction as to what the proper course should be for the USTR. This is going to be a critical decision, and it is going

to be made soon. If this administration ducks, there is going to be enormous economic damage done to an entire geographic section of the country.

It is not just North Dakota. It is very northern tier State, such as Montana, Idaho. It is also those who are not northern tier. Certainly, Minnesota and Wisconsin have been adversely affected, and Michigan. But there are other States, as well, such as South Dakota and Nebraska.

We had a meeting with representatives of the White House just two weeks ago on this matter and there were representatives from many parts of the northern tier there.

So, with that, Mr. Chairman, I would ask for your analysis of this pending 301.

The Chairman. Well, Senator, I appreciate that. My analysis is pretty simple: the USTR, Ambassador Zoellick, should decide to bring the 301 action at the nearest appropriate time. It is clear that Canada has taken advantage of the United States.

I think it is proper for the action to be brought in the first place. It is now in the hands of our trade ambassador, Mr. Zoellick. The American people are waiting for Mr. Zoellick to take an action that protects American interests against the unfair actions by our

friends to the north, particularly with respect to the Wheat Board.

I very much thank you, Senator, for bringing this up. As a border State, I know, along with you, Senator, that time, and time, and time again, we are the good guys and we want to be fair and honest, but I think we are taken advantage of. I think that it is time for the United States to stand up and not let that happen any more.

Mr. Davidson. Mr. Chairman, could I address that question?

The Chairman. Yes.

Mr. Davidson. Senator, we also have concerns about how the Canadian Wheat Board operates, and we have for some time. The ITC is going to be releasing its public report that has been in the works for several months now assessing the Canadian Wheat Board and practices of the Canadians.

Addressing some of the transparency issues, it is my understanding that your staff has been briefed on the classified version of that report so you can see some of the issues that are presented there. We are looking at them very closely to see what our alternatives are. As you mentioned, we will be making a decision, briefly.

Senator Conrad. Can I just comment on that point, if I could, Mr. Davidson, Mr. Chairman?

The Chairman. Sure.

Senator Conrad. Can I just say to you, it is very hard to assess the full damage that the Canadian Wheat Board is doing, because they operate in secret and they will not allow us to fully audit their records.

We have tried repeatedly. We have had legislation after legislative enactment asking for a full audit to be done. They will not permit it. I know why they will not permit it, because they do not want us to find what they are doing.

Based on things that have occurred, people being present at meetings where the Canadian Wheat Board made presentations in other countries, where they just walked in and said, we will beat the U.S. price, whatever it is, by several cents a bushel, because they know what our price is every moment of every day on the board. We do not know their prices because they operate in secret. They operate as a monopoly and they operate without any transparency whatsoever.

So when the ITC comes along to assess, I just hope that we all understand it is an impossible situation to fully assess because we do not have the information, because the Canadians are denying it to us.

Mr. Davidson. Yes. Senator, that is a frustration that we share with you as well, in being able to get at

the actual information of how it operates.

What our goal is, is to find the most appropriate forum to make the case and to make sure that it sticks, ultimately. The Canadian Wheat Board, we believe, is a state trading enterprise.

We believe that that is something we should go after in an appropriate legislative forum, as well as a legal forum. So we are making every effort we can to get the information that you mention.

It is difficult to do that because the Canadians are not sharing information. We are assessing the report and we will make a determination about which legal remedy, if any, we should pursue. The Canadians, I think, have not been willing to share information because they do not believe that the Wheat Board is actionable. So, we need to convince them that it is in their interest to share information with us as well.

We have been making efforts to do that, but I have to say, we have not had great success thus far. We will continue to work in that regard, and work with you and your staff as well, as we have been working with Congressman Pomeroy on the House side, to try to get some information out of the Wheat Board.

Senator Conrad. Well, I thank you for your interest. I can tell you that there is enormous

frustration among the people that I represent. At several points, we have been on the brink of violence. I do not use that lightly.

The frustration level when people see truck, after truck, after truck crossing that border, when people go to the elevator and they are 21st in line, and every truck in front of them is a Canadian truck delivering unfairly traded Canadian grain, and people are already in danger of losing their livelihood, this does not sit well.

When people know they are not being beaten by fair competition, they are being beaten by somebody operating in secret, dumping at below their cost in our market, that leads to real anger. It has dramatically changed the attitude toward trade agreements in my State. Dramatically.

If we really care about future agreements, then we have got to care about the integrity of the ones we have already entered into. I can say this, there is virtually no respect in my State for the Canadian Free Trade Agreement. There is no respect for the integrity of it, because there is no integrity to it.

I thank the Chair.

The Chairman. Seeing no other Senators, and I assume Senator Grassley does not want to engage in

further questions----

Senator Conrad. I have got some other amendments, Mr. Chairman. [Laughter].

The Chairman. Senator, I thank you for those comments. I very much appreciate it. It is very important, frankly, that the USTR does, in fact, get more vigilant and more aggressive on these issues than it seems thus far to be. I think it is very much in the United States' interests for the USTR to be more aggressive.

Mr. Davidson. In the spirit of the TPA bill, we will consult with you fully on this issue. We already have been doing that, I believe, and we will continue to do it as we approach our decision date.

The Chairman. Good.

Mr. Davidson. So, thank you, Mr. Chairman.

The Chairman. Thank you.

The meeting is adjourned.

[Whereupon, at 10:45 a.m. the meeting was concluded.]

Senator Grassley Opening Statement
TPA Mark-Up Continuation
December 17, 2001

I would like to welcome everyone to the Finance Committee today to complete our mark-up of the Bipartisan Trade Promotion Authority Act of 2001.

In the interest of time I will keep my remarks short.

First, I would like to commend Senator Baucus for his leadership in continuing this mark-up today. Trade Promotion Authority should be a top priority for this Committee and I am pleased that we are making progress here in the Senate.

Second, I want to emphasize the bipartisan nature of this bill. While it may not be perfect, it is the result of our coming together to do the right thing for the American people. And for that, the Members of this Committee should be proud.

Finally, I want to say that our work on Trade Promotion Authority is not over. In fact, we have just begun.

As we have seen, opponents of this legislation will use every tool at their disposal to stop Trade Promotion Authority from moving forward. There is nothing wrong with that. That is their prerogative.

But, I want to be clear today that I too will do whatever it takes to get this bill moving and moving fast. Trade Promotion Authority is too important to our economy to keep bottled up in the Senate. The sooner it passes, the sooner we can get the U.S., and world, economy growing again.

I would like to draw your attention to an editorial that appeared in Monday's Washington Post and ask that it be included in the record. The editorial makes it clear that moving TPA should be a top Senate priority. I will continue to work toward that goal and push for early consideration of the bill on the Senate floor, whether it be this year, or early in the next legislative session.

Thank you.

The Washington Post

AN INDEPENDENT NEWSPAPER

Prisoners of the Senate

THE SENATE HAS been tied up in recent days debating a terrible farm bill that would waste billions on rich farmers who don't need it. Even if the bill were actually helpful, there would be no need to pass it now; the existing farm law does not expire yet. Meanwhile the Senate has been dragging its feet on more important subjects.

One matter that has been bottled up is the terrorism insurance bill, which is far more urgent than the farm subsidies; without the bill, it may be impossible to insure large buildings when existing coverage expires on Dec. 31, leaving businesses exposed to risks that they have no way of managing. A second prisoner is trade promotion authority for the president. Last Wednesday Sen. Max Baucus (D-Mont.) delivered on a promise to report a bill out of the Finance Committee. But other Democrats have invoked a parliamentary trick to hold more committee hearings.

Both Republicans and Democrats must share some blame for the Senate's skewed priorities, but the Democrats are in control. On insurance, the Democrats are objecting to Republican proposals to ban punitive damages in the event of terrorist attacks, which seems a reasonable proposal. On trade, they are throwing up procedural delays; Tom Daschle, the Senate majority leader, says there is no prospect of bringing trade promotion authority to the floor before next year—even though he found time to bring the egregious farm bill up for discussion.

Mr. Daschle has been hailed as the Democratic Party's brightest star, and his ability to block administration proposals is cited as proof of his abilities. We would prefer to see the majority leader demonstrate his mastery by minimizing gridlock and by not bowing to the lobbies that sometimes hijack Democratic policies. The Democratic position on terrorism insurance smacks of the trial bar, which never saw a disaster that didn't justify a lawsuit. The foot-dragging on trade hints at the influence of the labor unions. The real test of Mr. Daschle's leadership is whether he can rise above these lobbies.

RECORD STATEMENT FOR TPA MARKUP
Senator Olympia J. Snowe

Mr. Chairman, in the past, I have opposed trade agreements and fast-track authority because I never felt they struck the proper balance between free and *fair* trade, and I've been concerned that both Republican *and* Democrat administrations approached the enforcement of U.S. trade laws not with vigor, but with benign neglect. Today, however, I *will* be supporting fast-track legislation precisely because it *does* strike the appropriate balance, and because of *this* administration's commitment to aggressively enforce our trade laws so that American workers aren't undermined by unfair trade practices.

The bottom line is that enforcement is an *inseparable* component of free and fair trade. If you don't believe me, just look at the record. In the past, when free trade and fair trade have been treated as mutually exclusive, import-sensitive industries in Maine and America were *decimated* by foreign competitors. Why? Because foreign businesses enjoyed the benefits of a lack of reciprocity in trade agreements...foreign industry subsidies...dumping in the U.S. market...and non-tariff trade barriers. That's why, as a member of the House in 1986, I lamented that we were running up " the white flag of surrender in the international marketplace."

The "white flag" is perhaps best represented by the shoe industry, which is one that has borne the brunt of our trade policies. In 1986, for example, it experienced an 82 percent import penetration with over 750 million pairs of shoes entering this country annually. Japan, on the other hand, allowed only one million pair of shoes to be imported and Brazil had a 100 percent tariff effectively barring imports. The industry filed a trade relief petition under Section 201, and a five year temporary quota was recommended by the International Trade Commission, but the Administration rejected it. In short, we abandoned our workers, our industry and our trade policy in the pursuit of free trade.

The timber industry is another example of the failure of our government's willingness to enforce are own trade laws. In 1986, 80 percent of the timber sold in the Northeast came from Canada, largely because of the Canadian government's practice of selling their timber to Canadian companies for ten percent of the free market cost – a 90 percent subsidy. Astonishingly, our trade laws did not consider this practice a subsidy; the industry lost a countervailing duty case.

The potato industry has also suffered under the auspices of free trade. Canadian imports drove prices down for U.S. farmers to $1 for a 165-pound barrel of potatoes that cost$9.00 to produce. Canadian farmers were able to drive the price down because they benefitted from 27 distinct subsidy programs. An anti-dumping case brought by the

industry that took three years and cost $250,000, was denied.

And the surrender of our rights under our own trade laws has had *serious* consequences in the lives of *real people*. In Maine alone, we lost nearly 12,000 manufacturing jobs since NAFTA's inception – including 3,000 textile jobs, 3,636 leather products jobs, 880 apparel jobs, 1,858 paper and allied products jobs, and 4,600 footwear jobs – and more than 5,600 manufacturing jobs *last year alone*. We *failed* those people because we abdicated our responsibility to take a balanced, comprehensive and *integrated* approach to trade.

And while we cannot bring back these or other jobs that were lost due to the miscues of the past, we *can* learn from those miscues and apply the lessons to our present and future actions. We *can* change our approach at the negotiating table. We *can* enforce existing trade laws. And we *can* extend and expand our assistance to workers negatively affected by trade, as we've done with the Trade Adjustment Assistance bill we recently reported out.

We need to be *honest* and admit that job displacement has been a bi-product of global trade, and that is why I have an amendment today to link the floor consideration of TAA and TPA. And I will work on the floor to ensure that the two bills are considered jointly because we simply *can't* address one without the other.

Because we don't live in some kind of utopian world, and free trade certainly isn't going to create one. In the real world, we have to acknowledge that there are many nations that don't care about labor or environmental standards. They don't care about predatory practices designed to kill off industries in other nations. And that creates a tilted playing field where it's harder for us to compete.

But this shouldn't be a matter of clean air versus jobs or success in the global marketplace. It's not an either-or proposition. I agree with the Chairman's assessment that this bill makes significant progress on the issues of labor and the environment, and believe it is both a necessary and important distinction that separates this proposal from prior approaches to fast track.

The bill before us today not only sets as an overall objective the need to convince our trading partners <u>not</u> to weaken their labor or environmental laws as an inducement to trade, but it also requires the enforcement of existing labor and environmental laws as a principal negoitation objective. In addition, it takes a significant step by placing labor and environmental issues on par with other trade issues in dispute settlement proceedings, showing our committment to ensuring that these two issues remain at the core of our trade negotiations, not as secondary issues to be considered.

The legislation also recognizes the need to take steps to protect the import sensitive textile and apparel industry. It calls for reducing tariffs on textiles and apparels in other countries to the same or lower levels than in the U.S., reducing or eliminating subsidies to provide for greater market opportunities for U.S. textiles and apparels, and ensure that WTO member countries immediately fulfill their obligations to provide similar market access for U.S. textiles and apparels as the U.S. does for theirs.

And this mark includes new negotiating objectives to address the issue of foreign subsidies and market distortions that lead to dumping, and demands improved adherence by the WTO to trade agreement standards in resolving disputes. As a result, many industries stand to benefit from the adoption of this legislation, including the forest and paper, agriculture, semiconductor, precision manufacturing, and electronic industries of my home state. According to Maine Governor Angus King the fast track approach is, "On balance..beneficial to Maine. There might be some short term problems, but in the long run, we have to participate in the world economy."

From 1989 to 1999, total exports by Maine companies increased by 137 percent from $914 million to $2.167 billion, with the largest industry sector for trade being semiconductors. The computer and electronics trade, which includes semiconductors, accounted for 33 percent of Maine's exports in 1999, followed by paper and allied products at 17 percent.

The Maine industries that benefit from exports have also seen job gains in the state. From 1994 to 1995, the electrical and electronics industry had a job gain of 2.3 percent and the agriculture, forestry and fishing industry saw a 19 percent increase in jobs.

Turning to agriculture, Maine's potato industry employees over 22,000 people on the farms in addition to 1,646 people in frozen fruit and vegetable processing. According to the U.S. Potato Board, in 1998 the value of potato exports was $750 million, over half of which was frozen processed potatoes. This is equivalent to over 45 million hundred weight. Maine also has a small but growing export market for its nationally-known seed potatoes. The Maine Wild Blueberry industry, which also contributes jobs to the frozen fruit and processing industry, exports 17 to 18 percent of its crop, with its exports valued between $12 billion and $15 billion.

And two *other* Maine industries – the import-sensitive salmon aquaculture industry that was the target of dumping by Chile, and the rubber footwear industry that's been severely impacted by past trade agreements – stand to benefit from commitments I've received from the administration to stand firm on anti-dumping laws and to negotiate aggressively on their behalf in future agreements. I would ask that two letters I have received, one from Commerce Secretary Evans on enforcement of our trade laws and one

from Secretary Evans and the US Trade Representative, Robert Zoellick, on the rubber footwear industry, be made a part of the record.

The positive impact of salmon aquaculture in Maine is not insignificant, even for a fledgling industry. It generated 2,500 jobs and $68 million last year and infused between $110-$140 million into Washington and Hancock counties where two-thirds of industry's jobs are based. Fortunately, the ITC managed to stave-off disaster for our salmon industry by clamping down on Chile's dumping practices and imposing appropriate tariffs, but since then Chile has asked that anti-dumping laws be placed on the negotiating table. In response, the administration has rejected that request and they've assured me that they are "dedicated to maintaining...U.S. anti-dumping and countervailing duty laws."

In the same manner, our nation's rubber footwear industry has been devastated by past trade agreements, with 22,000 jobs being lost over the past 25 years. Today, only 4,000 such jobs remain nationwide, including 1,000 in Maine. And the recently-passed Andean Trade Preferences Act (ATPA) – which places four nations on a tariff phase-out schedule that is only *half* as long as the 15-year schedule contained in NAFTA – only further threatens this industry. Fortunately, once again, the administration has given me its word that they will "continue (their) efforts to minimize any adverse impact on domestic rubber footwear production as (they) move forward to conclude an agreement.

Mr. Chairman, these measures and commitments represent a significant strengthening of our resolve and our ability to utilize existing remedies to protect American industries and workers. This comes not a moment too soon, as the success of our economy relies more than ever on fair and freer trade – U.S. exports accounted for one-quarter of U.S. economic growth over the past decade...nearly one in six manufactured products coming off the assembly line goes to a foreign customer...and exports support 1 of every 5 manufacturing jobs.

Given these facts, we have no choice but to reject the approach of the Luddites who ignored reality and simply tried to stop industrialization at the turn of the last century. Rather, at the same time we fix the problems of the past, we should be expanding opportunities for U.S. businesses in the future, now that trade has become the "industrial revolution" of the 21st century.

Given this revolution, there is understandable concern that the U.S. has been party to only 3 free trade agreements while there are more than 130 worldwide. Since 1995, the WTO has been notified of 90 such agreements while the U.S. only reached one in the trade arena, the Jordan Free Trade Agreement. In contrast, the European Union (EU) has been particularly aggressive, having entered into 27 free trade agreements since 1990 and they are actively negotiating another 15. Perhaps not surprisingly, the Business Roundtable reports that 33 percent of total world exports are covered by EU free trade agreements

compared to 11 percent for U.S. agreements.

Why should these facts raise concerns? Because every agreement made without us is a threat to American jobs. Nowhere is this better exemplified than in Chile which signed a free trade agreement with Canada, Argentina and several other nations in 1997. Since that time, the U.S. has lost one-quarter of Chile's import market, while nations entering into trade agreements more than captured our lost share. According to the National Association of Manufacturers (NAM), this resulted in the loss of more than $800 million in U.S. exports and 100,000 job opportunities.

Furthermore, prior to these trade agreements, U.S. paper products - an industry which provides 13,000 jobs in Maine - accounted for 30 percent of that product imported into Chile. After the trade agreements were signed and other countries faced no tariff, U.S. paper products accounted for only 11 percent of the market. And the same thing is happening to the U.S. potato industry which faces an 8 percent tariff while the 1997 agreements phase-out the tariffs on Canadian and Argentine potatoes. As the U.S. Potato Board noted in a September letter, "..in Chile the absence of a trade agreement puts us at a disadvantage to Canada and Argentina who do have agreements."

We need to look to the future of our industries and open doors of opportunity in the global marketplace. In order to do so responsibly, we need to learn every *economic* lesson possible from the past, and this package provides for not only a study I requested of the economic impact of the past five trade agreements, but also an additional evaluation of any new agreements before TPA is extended.

And we need to make sure that *everyone* who can benefit from these agreements can get their foot in the door. Small businesses, for example, account for 30 percent of all U.S. goods exported, so I am pleased this bill includes my proposals placing small businesses in our principle negotiating objectives. Small businesses also face the biggest hurdles to engaging in international trade, even as it provides them with best opportunity for growth, so we must ensure their views and needs are addressed in any agreement reached, and I want to thank the Chairman and Ranking Member for taking my amendment to create an Assistant U.S. Trade Representative for Small Business and my proposal requiring the USTR to call for a small business advocate at the WTO in order to ensure that small businesses have advocates at the table during all negotiations.

Finally, the package now includes consultation rights for the House and Senate Committees with oversight of the fishing industry. As the past Chair and current Ranking Member of the Commerce Subcommittee on Oceans and Fisheries, I can tell you that the actions of other countries with regard to fishing plays a crucial role in ensuring our industry has a level playing field on which to compete. Last year this country exported $10 billion worth of edible and nonedible fish products, and in Maine the industry - which

is our 5th leading exporter - generates 22,000 jobs.

Mr. Chairman, the bottom line is that this package coupled with the assurances I've received from the administration create the *balanced* and *comprehensive* approach to trade that has been lacking in the past. By addressing the issue of enforcement as well as those forces that create market distortions we level the playing field, and therefore, I believe this extension of fast-track authority is both warranted and necessary. Thank you, Mr. Chairman.

DEC 12 2001

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

The Honorable Olympia Snowe
United States Senate
Washington, DC 20510

Dear Senator Snowe:

The President recognizes the competitive challenges facing our rubber footwear industry, and has asked us to work closely with you and other Members of Congress to level the playing field for our industry. In addition, we want to offer you the following assurances with respect to the rubber footwear industry.

First, the Administration recognizes the unusual circumstances of the rubber footwear industry. According to the industry association, the import share of U.S. rubber footwear sales is now above 95 percent, while domestic employment fell to 3,100 persons in 2000. These facts alone distinguish rubber footwear from other products included in market access negotiations.

Second, the Administration has taken into account in our current free trade negotiations with Chile the special sensitivity of the rubber footwear industry to imports. We have worked closely with our rubber footwear manufacturers to identify their most sensitive products. We will continue our efforts to minimize any adverse impact on domestic rubber footwear production as we move forward to conclude an agreement. We will also keep in mind the unusual sensitivity of the rubber footwear industry in our other trade negotiations with the countries of Latin America as well as in WTO multilateral negotiations.

Finally, we also want to emphasize the Administration's commitment to enforcing our trade remedy laws for all industries, including the footwear industry. As we have underscored in testimony before Congress, there is nothing more dispiriting to American industry and American workers than to see the benefits of trade undermined by unfair trade practices. We intend to ensure that our footwear industry has full access to our trade remedy laws consistent with our international rights and obligations.

Please be assured that President Bush, the Department of Commerce and USTR take the concerns and perspectives of our footwear industry very seriously. We look forward to working with you in the months ahead.

Warm regards,

Donald L. Evans

Robert B. Zoellick

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 11 2001

The Honorable Olympia Snowe
United States Senate
Washington, DC 20510

Dear Senator Snowe:

I want to emphasize the Administration's commitment to enforcing our trade remedy laws vigorously for all industries, including the salmon industry. As I have underscored in previous testimony before Congress, there is nothing more dispiriting to American industry and American workers than to see the benefits of trade undermined by unfair trade practices.

Let me assure you that we are dedicated to maintaining the effectiveness of the U.S. anti-dumping and countervailing duty laws, and that we will vigorously pursue these remedies when unfair trade practices are used to put American industry at a competitive disadvantage. As an indication of that commitment, we ensured that the World Trade Organization negotiations initiated in Doha expressly recognized the need to preserve the effectiveness of these instruments as a legitimate means to counter unfair trade practices.

Please be assured that President Bush and I take the concerns and perspectives of our salmon industry very seriously. I look forward to working with you in the months ahead. If you have any further questions, please feel free to contact me, Under Secretary Grant Aldonas, or Brenda Becker, my Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Warm Regards,

Donald L. Evans

Markup of The Bipartisan Trade Promotion Authority Act of 2001
In the Nature of a Substitute for H.R. 3005
December 18, 2001, 9:30 AM

Comments of Consuming Industries Trade Action Coalition ("CITAC") for the Record

These comments are submitted by the Consuming Industries Trade Action Coalition ("CITAC"). CITAC is composed of American business firms and trade associations that supports U.S. trade policies for the benefit of all Americans. Congress has paid insufficient attention to the fact that many Americans rely on imports for their livelihoods and that U.S. consuming industries employ most of the workers in this country. These consuming interests need the support of their government to assure ~~the~~ir competitive position, no less than narrower interest groups seeking protection.

The Committee markup of Trade Promotion Authority ("TPA") legislation (referred to below as the "Bipartisan Bill") broadly furthers the objectives of open trade, which helps American workers in all industries. We commend the Committee for its overwhelming vote in favor this legislation to open markets abroad and keep the U.S. market accessible to imports, on which millions of American jobs and our prosperity depend.

Nevertheless, certain aspects of the TPA legislation dealing with trade remedies do not broaden the benefits of open trade for American workers. In particular, the Bipartisan TPA inappropriately predicates approval of trade agreements under TPA procedures on the filing of an Administration report indicating strategies for "correcting" certain WTO decisions. As indicated below, this formulation proceeds from a false premise and is contrary to the national interest. Therefore, we urge that this provision be deleted from the Bipartisan Bill. CITAC focuses its comments on the trade remedy provisions of the Committee bill because these issues are not adequately understood by the public and are unfortunately subject to special-interest abuse.

1. Recent WTO Decisions Adverse to U.S. Government Positions Are not Appropriate for Congressional "Findings"

A number of recent WTO decisions have found fault with U.S. practices in the trade remedy area (antidumping, countervailing duties and Safeguards). Certain special interests have attacked these WTO decisions. They claim that the WTO decisions on trade remedy issues "created" obligations that the United States never agreed to. The Committee-approved bill contains a series of "Findings" that these WTO decisions did not correctly interpret the WTO agreements. The Bipartisan Bill conditions approval of trade agreements under TPA procedures on the Administration filing a report by the end of 2002 indicating its strategy for "

correcting" the instances where WTO decisions have added to obligations or diminished rights of the United States, as described in the "Findings" of Section 1(3). No bill implementing WTO agreements would be eligible for "fast track" consideration if such a report is not filed. 1/

CITAC respectfully disagrees with this formulation because it proceeds from a false premise and is contrary to the national interest. The WTO decisions referred to in Section 1(3) of the Bipartisan Bill may be controversial in some respects, but they did not create "new" obligations or "diminish" U.S. rights. They interpreted these agreements rather than rewriting them, despite protestations of special interests to the contrary. While some may disagree with these decisions, CITAC believes it is inappropriate, without public notice or debate, to make congressional "Findings" that these decisions violate the very WTO agreements they were meant to uphold.

CITAC believes that the decisions at issue are clearly defensible. This is not to say that CITAC agrees with every decision of the WTO. But requiring a report committed to "correcting" decisions that may well not be incorrect is not the proper way to structure trade negotiations. The responsible method to deal with these issues is through established channels of negotiation. If the United States is to negotiate changes in the relevant agreements or their interpretation by the Dispute Settlement Body, it will have to be done with our trading partners, who will no doubt demand reciprocal concessions in those areas where changes beneficial to the U.S. government are agreed to. Before this process gets too far advanced, Congress should promote healthy debate and allow for public comment so that the President and his team can make a clear determination on the priorities to be advanced in the upcoming negotiations.

Congressional "findings" condemning these WTO decisions without notice or debate is not the best way to serve this important public purpose.

2. Review of WTO Decisions Casts Considerable Doubt on the "Findings" in the Bipartisan Bill

Section 1(3) of the Bipartisan Bill passed by the Committee takes issue with five categories of WTO decisions, making a "Finding" with respect to each that the Panel or Appellate Body created obligations "different" from those agreed to by the United States.

The "Findings" in the Bipartisan Bill implicitly take issue with the

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1/ The House-passed bill did not contain any comparable provision referencing the WTO cases or the need to "correct" these decisions.

motives of the Panel and the Appellate Body. In essence, the "Findings" ascribe to the Panels and Appellate Body an intention to "add to obligations and diminish rights" of the United States. Such a "Finding" is unsupported and should not form the basis for any conclusion under this legislation.

The WTO dispute settlement cases in this area (antidumping, countervailing duties and Safeguards) require a rigorous adherence to standards of evidence. This adherence benefits not only the other members of the WTO, but American consuming industries as well. Accordingly, those American businesses that rely on a steady flow of imported raw materials to remain competitive are vitally interested in the findings of the WTO. This is not a "we vs. they" exercise: it affects the economic welfare of U.S. citizens. We urge the Committee and the full Senate to keep the importance of procedural fairness in mind as they consider this legislation.

The five "findings" take issue with the following WTO decisions:

(1) "Insufficient deference" to the expertise and fact-finding of the Department of Commerce and the International Trade Commission.

In the WTO Antidumping Agreement, Article 17.6 provides that dispute settlement panels and the Appellate Body must give a measure of deference to national authorities regarding their factual findings and their interpretations of the Antidumping Agreement. The United States has been found deficient in this respect in several cases, such as Hot-Rolled Steel from Japan. However, the " Finding" does not cite the cases with which the Committee takes issue; therefore, it is difficult to determine the basis for this "Finding." We urge the Committee to conduct hearings on these issues so that their merits may be fully explored, before the Administration is put to the task of attempting to negotiate changes to the outcome of such cases.

(2) Imposing an obligation concerning causation in Safeguard cases that is "different" from the Safeguards Agreement.

The Bipartisan Bill also takes issue with the WTO's findings in three recent safeguards cases that the U.S. International Trade Commission did not find the requisite causal link between increasing imports and serious injury or threat necessary to justify a safeguard measure. These Safeguard cases are: *Wheat Gluten, Lamb Meat* and *Line Pipe*. The last of these is currently on appeal to the Appellate Body.

The issue of causation under the Safeguards Agreement requires analysis of several provisions, as the WTO found in at least four cases, three of

which involved the United States (Argentine Footwear was the fourth case). The Agreement plainly requires the national authorities to determine what other causes of serious injury exist and must not attribute the injury due to these other causes to imports. The above-referenced cases required the national authorities to adhere strictly to this requirement, for the benefit of exporting WTO members. However, as noted above, U.S. consuming industries and individual consumers also benefit from strict adherence to these requirements.

A "Finding" that the WTO created new obligations in these decisions is clearly suspect, based on our analysis of these decisions. The ITC, in the U.S. cases before the WTO, did not make an effort to determine the weight of causes other than increasing imports and the WTO was justified in ruling that such an inquiry is required under the Safeguards Agreement. The "Finding" in the Bipartisan Bill is therefore inadequate. Before a "Finding" from Congress can be justified, this issue should be aired in public debate.

(3) Imposing an obligation concerning exclusion from safeguard measures of products from parties to a free trade agreement (NAFTA) that is "different" from obligations in the Safeguards Agreement.

Again, this "Finding" mischaracterizes the applicable WTO decision. The *Wheat Gluten* WTO case found that the ITC did not analyze whether imports from countries other than Canada and Mexico were themselves causing or threatening serious injury. [2]/ The WTO did not find that exclusion of countries under free trade agreements was always inappropriate. The decision simply requires that exclusions from the safeguard measures also be excluded from the injury findings. There are no unambiguously "new" obligations created by this case.

(4) Imposing obligations regarding the use of "facts available" in antidumping investigations that is "different" from the obligations in the Antidumping Agreement.

This "Finding" appears to refer to the antidumping case of hot-rolled steel from Japan. The Department of Commerce rejected information from a Japanese respondent on the grounds that it was submitted after the due date of a questionnaire response. The WTO ruled that late-filed information must be considered by the national authorities under Article 6.8 of the Antidumping Agreement, if, under all the circumstances, it is "reasonable" to accept it. The failure of the Department of Commerce, in this case, to accept the information (dealing with a detail of the dumping analysis) resulted in a dramatic inflation of

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[2]/ After the WTO decision, the ITC made such a finding.

the antidumping duty margin in that case, penalizing not only the Japanese respondent but its U.S. customers.

It should be noted that the U.S. Court of International Trade reached a similar result (although on different reasoning). *See Nippon Steel Corp. v. United States*, 146 F. Supp. 2d 835, 839-41 (2001). It seems that a manifest injustice was avoided by the WTO and by the Court of International Trade. In this case, there is no basis for a legislative "Finding" that the WTO "created" new obligations for the United States.

(5) "Insufficient deference" to Department of Commerce methodology on privatization in countervailing duty cases

This "Finding" plainly refers to *the Lead and Bismuth Steel from the United Kingdom* case, in which the WTO Panel and Appellate Body ruled the U.S. Department of Commerce "change of ownership" methodology contrary to the WTO Agreement on Subsidies and Countervailing Measures. The Committee's "Finding" is not supported.

The issue of change of ownership is currently pending in follow-up cases at the WTO and in the Court of International Trade. It is sufficient to note for present purposes that the Commerce Department methodology that automatically "passes through" previous subsidies regardless of an intervening change of ownership at fair market value has also been rejected by the U.S. Court of Appeals for the Federal Circuit as a matter of U.S. law. *Delverde v. United States*, 202 F.3d 1360 (2000), *rehearing and rehearing en banc denied*, June 20, 2000. There is nothing in the WTO Subsidies Agreement that calls for deference to the Department's methodology, which ignores the fundamental question of whether a government "financial contribution" confers a "benefit." *See Delverde and the WTO's British Steel Decision Foreshadow More Conflict Where the WTO Subsidies Agreement, Privatization, and United States Countervailing Duty Law Intersect*, 17 Am. U. Int'l L. Rev. 79 (2001).

While the Department of Commerce opposes the WTO decision and the decision of the Court of Appeals, they are both decisions are based on conventional and reasonable readings of the relevant law. The Committee's "Finding": that " insufficient deference" was given to the Commerce methodology is clearly misplaced. Certainly, if true, it is a charge that should equally be leveled against the Court of Appeals for the Federal Circuit in its interpretation of U.S. domestic law.

3. Conclusions

CITAC urges the Committee to consider that any criticism of the WTO

decisions should be based on public notice and debate, not on legislative "Findings" of uncertain origin and dubious logic.

Moreover, such decisions are not necessarily against the interests of the United States, due to their benefit to consuming industries that employ most workers in this country. CITAC strongly supports Trade Promotion Authority and commends the Committee for its approval of such authority for the President. We also support building the consensus for trade by providing for meaningful remedies for truly unfair trade practices in accordance with WTO disciplines.

CITAC appreciates the opportunity to comment on the Bipartisan Bill and would welcome the opportunity for further dialogue on these important issues.