

SENATOR ARLEN SPECTER
TESTIMONY BEFORE THE SENATOR COMMITTEE ON FINANCE
February 14, 2008

Chairman Baucus, Ranking Member Grassley, and Members of the Committee:

There is a growing recognition, among both the American people and the members of this Senate, of the threat posed by greenhouse gas emissions to our planet's climate. I share that concern. Indeed, last year Sen. Bingaman and I introduced an economy-wide cap-and-trade measure designed to reduce our nation's greenhouse gas emissions. I believe it is essential that Congress act now to begin addressing this vital issue.

Whenever we deal with an issue of this magnitude, we must always beware of the potential for unintended consequences. With regard to climate change, that potential is profound. If new climate change legislation places U.S. manufacturers at a competitive disadvantage compared to producers in countries like China and India that have less rigorous standards, then such legislation may actually *worsen* our climate change problem – and could have devastating consequences for the U.S. economy and our manufacturing sector.

The Bingaman-Specter bill (Low Carbon Economy Act, S. 1766) and subsequently the Lieberman-Warner bill (America's Climate Security Act, S. 2191) have provisions designed to address competitiveness concerns. Given the novelty and complexity of this problem – not to mention the legal and policy implications involved – these provisions were simply intended as a first step to elucidate the problem and provide a framework in which that problem could potentially be addressed. I believe the provisions have served

that goal, but, as was indicated at the time, clearly much more needs to be done in this area.

As Senator Boxer and you Mr. Chairman indicated at the mark-up of the Lieberman-Warner legislation in the Environment and Public Works Committee, this is clearly an issue that demands further consideration and that will require further work to ensure that U.S. businesses and workers in import-sensitive industries are not put at a competitive disadvantage. I cannot emphasize enough how important this issue is – both substantively and for our ability to meaningfully address the climate change issue. At the end of the day, I do not believe there will be (nor should there be) support in Congress or the country for climate change legislation that does not effectively address the competitiveness challenge and environmental risks of exporting U.S. jobs.

Those who suggest some "protectionist" motive to competitiveness provisions could not be further off the mark. This is about fairness and about whether unilateral, domestic climate provisions can actually work absent binding international agreements. Unless we are all willing to sincerely engage other nations to address and solve this problem, our efforts in addressing global warming may go for naught.

Since the introduction of our legislation, Senator Bingaman and I have had the opportunity to consult in greater depth with the representatives of numerous industries – including those most in danger if climate change legislation were to unfairly penalize U.S. workers and industries by granting more favorable treatment to imports with less stringent environmental controls. I have also had the chance to look further at some of

the legal and policy issues involved – including the rules at the World Trade Organization (WTO) governing environmental issues.

I have come to several conclusions that I would like to share with the Committee.

First, while this is a developing and unsettled area, there are very good arguments to be advanced that the United States can apply measures at the border to ensure that imports are treated the same as domestic products in terms of the burdens and costs of climate change legislation.

- The first question is whether Article III of the General Agreements on Tariffs and Trade (GATT) – which requires "national" (i.e., non-discriminatory) treatment of imports – is violated by legislation that puts equal burdens on imports and domestic products. I believe the answer to that question is clearly "no."
- The second question is whether – even if Article III were violated – the exceptions provision of the GATT (Article XX) would nonetheless permit the neutral application of climate change measures at the border. I believe the clear answer to that question is "yes."

Second, to the extent there may be uncertainty in how international rules will be applied, it only makes sense to interpret them in the manner that will allow for the most equitable treatment between imports and domestic products – and that will thereby provide for the greatest level of environmental protection.

Third, to make U.S. climate change legislation effective and to garner public support, it is vital that the same burdens be borne both by imports and domestic products. If it is concluded that this cannot be done (whether for legal or other reasons), it may be impossible to make current climate change proposals work as intended and to actually have the effect of lowering global greenhouse gas concentrations. Therefore, the work being done by this Committee to consider and educate Congress about the trade and legal implications of climate legislation is vital if we are to make progress in this area going forward.

Mr. Chairman, I believe that an effective competitiveness provision can be crafted building on the start provided in existing proposals. The touchstone will be to ensure that imports are treated no better or worse than domestic products, and that the additional regulatory costs created by this legislation favor neither foreign or domestic production. That means we must consider the applicability and equity of timetables, baselines and costs to both domestic and imported products. While there will be complexities in ensuring this result, it is the best and only approach to ensure that climate change legislation is effective and that U.S. manufacturing can survive in import-sensitive industries.

I look forward to working with Committee members as these proposals move forward to ensure that we achieve an acceptable outcome in this area – one that is fair, equitable and neutral in terms of products from different origins. The stakes are enormous, but we have at hand the tools to address the problem.