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(Volume 1 of 5)

104th Congress
1995-1996

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U.S. CUSTOMS SERVICE REORGANIZATION AND MODERNIZATION EFFORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JANUARY 30, 1995

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U.S. CUSTOMS SERVICE REORGANIZATION AND MODERNIZATION EFFORTS

MONDAY, JANUARY 30, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to call, at 12:58 p.m., in room B–318, Rayburn House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
January 11, 1995
No. TR-1

CONTACT: (202) 225-1721

CHAIRMAN CRANE ANNOUNCES HEARING ON U.S. CUSTOMS SERVICE REORGANIZATION AND MODERNIZATION EFFORTS

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means today announced that the Subcommittee will hold a hearing on the U.S. Customs Service reorganization plan and the implementation of the Customs Modernization Act. The hearing will take place on Monday, January 30, 1995, in room B-318 of the Rayburn House Office Building, beginning at 1:00 p.m.

Oral testimony at this hearing will be heard from both invited and public witnesses. Invited witnesses will include Commissioner George Weise, U.S. Customs Service, and representatives from the General Accounting Office. Also, any individual or organization may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

On September 30, 1994, Customs announced a major reorganization plan. The Committee on Ways and Means, through its oversight efforts in recent years and passage of the Customs Modernization Act, directed this change. Customs originally stated four goals for its reorganization effort: to make the organization more effective; to improve agency management; to secure more stable sources of funding (i.e., user fees); and to comply with the goals of the National Performance Review. The plan recommends: concentrating service delivery at existing port facilities; reducing headquarters staff and restructuring the headquarters organization; eliminating all regional and district offices and establishing Customs Management Centers to manage field operations; and establishing Strategic Trade Centers to target trade enforcement efforts.

The Customs Modernization Act (known as the Mod Act) was enacted as part of the North American Free Trade Agreement implementing legislation on December 8, 1993. The primary purpose of the Act was to provide Customs with the legal authority to automate and modernize its commercial processing procedures while providing for improvements in Customs enforcement. The legislation resulted from an extensive legislative and oversight review of Customs commercial operations conducted by the Committee. It included provisions to streamline and automate all aspects of import processing, authority to establish the National Customs Automation Program, and improvements in compliance with customs laws. Improvements in uniformity and due process rights for importers were also included. Originally introduced by Mr. Crane and Congressman Sam Gibbons (D-FL), the Mod Act was a bipartisan Committee initiative.

Customs is now working out the detailed regulatory and operational steps required to implement the massive organizational change and to implement the Mod Act.

In announcing the first hearing under his Chairmanship, Crane said: "I commend Commissioner Weise for his leadership in reorganizing and modernizing Customs operations. This effort is also the direct result of the Committee's work and the legal framework created by the Customs Modernization Act, of which I was a prime sponsor. The significant changes at Customs promise to improve services for the trade community and benefit the American taxpayers. They are critically important, because of the expected increase in trade volumes and business activity from recently completed trade agreements.

"Customs management has truly come full circle. In contrast to past efforts, I am gratified that Customs has demonstrated a more objective and scientific approach to this reorganization, and consulted widely with the trade community about its modernization plans. However, Customs faces the challenge of coordinating all its many ambitious initiatives. Because the private sector and the taxpayers have a large stake in these plans, we must make every effort to ensure a successful outcome. The Subcommittee plans to follow these plans closely as they unfold, beginning with this hearing."

FOCUS OF THE HEARING:

The focus of the hearing will be to highlight Customs' reorganization and modernization efforts, and review what steps need to be taken to ensure successful implementation.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Thursday, January 19, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE MINUTE RULE WILL BE STRICTLY ENFORCED.** The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Friday, January 27, 1995. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Monday, February 13, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be reformed and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

*****

Chairman CRANE. Those of you folks that cannot be accommodated with chairs, all I can suggest is find standing room. And we apologize, but the committee room over in Longworth is occupied by another subcommittee hearing, and they are part of the Contract, and inasmuch as we are not part of the Contract, we got relegated to B–311—or 318.

First, I want to welcome to this first hearing of the Trade Subcommittee in the 104th Congress our distinguished Commissioner and good friend, George Weise. And today we will highlight Customs' reorganization and modernization efforts and review what steps need to be taken to ensure successful implementation.

It is fitting that our first hearing concerns the Customs Service, for the agency's history is closely intertwined with that of the Ways and Means Committee. Over 200 years ago, both the committee and Customs were created by the First Congress back in 1789. At that time, Customs revenues were the sole source of income for our fledgling Nation. Tragically, that ceased to be after awhile.

Today, the importance of Customs in our ever-expanding global trade cannot be underestimated. We rely on Customs to guard our borders, fight the war on drugs, and enforce over 400 laws and regulations. In 1994 alone, Customs processed nearly 40 million import entries and more than 50 million passengers and collected over $22 billion in revenue. Oh, that our budget were still there. With the passage of NAFTA and GATT, that workload will only grow.

Given the importance of its mission, Customs' reorganization and modernization plan should be of great interest to the taxpayers, as well as consumers and businesses throughout the Nation. The effort to modernize and streamline is a direct result of the committee's work over the past several years and the legal framework created by the Customs Modernization Act. I was proud to have been its prime sponsor, along with my good friend, Sam Gibbons. The Mod Act is a model of bipartisanship and it is very gratifying to see it is now bearing fruit.

Customs management has truly come full circle. Not too long ago, the agency was suffering under antiquated systems and poor management. Under Commissioner Carol Hallett, many improvements began to be made. Now, under Commissioner Weise's leadership and with the passage of the Mod Act, Customs is well positioned to move into the next century. But we should not underestimate the challenges that lie ahead in coordinating these many ambitious initiatives. As they say, the Devil is always in the details.

What Customs is proposing is nothing short of a complete change in the culture of the organization, from gotcha-style enforcement to informed compliance, from bureaucracy to consumer or customer service, rather, from archaic paper to modern electronic technology. It will take a sustained and well planned effort to pull it all off.

Because the private sector and the taxpayers have such a large stake in these plans, we must take every effort to ensure a successful outcome. That is why the subcommittee will follow these plans closely as they unfold, beginning with this hearing.

Today, along with the Commissioner, we have brought together representatives from the GAO and the Treasury Employees Union, both of whom played a major role in the modernization and reorga-

nization effort. Also, appearing today are representatives of the trade community, those most directly affected by these endeavors.

Commissioner Weise, congratulations on a job well done. Welcome back to the subcommittee.

And I will now yield, before we hear your testimony, to my distinguished colleague, Charlie Rangel.

Mr. RANGEL. Let me join the Chairman in his welcome to our old friend, Commissioner Weise. Certainly the U.S. Customs Service over the years has had a terrific history and has done a great job for the United States. Walking a tightrope in facilitating trade and at the same time interdicting drugs in this country, has been difficult in the past. As we move on throughout history, changing times means reorganization.

So I look forward to your plans for the future of the U.S. Customs Service and working with you, Mr. Chairman, and the other members of this committee. I might add, you should feel proud that your agency is not included in the Contract With America.

[The prepared statement follows:]

OPENING STATEMENT
CONGRESSMAN CHARLES B. RANGEL
RANKING MINORITY MEMBER
SUBCOMMITTEE ON TRADE
HEARING ON CUSTOMS REORGANIZATION
JANUARY 30, 1995

Mr. Chairman, I would like to join you in welcoming Commissioner Weise and our other witnesses today to review the proposed reorganization plan of the Customs Service and the implementation of the Customs Modernization Act.

As we all know, the Customs Service and its approximately 18,000 employees perform a variety of tasks that are essential to the economic health and well-being of this country. Its diverse mission includes collecting duties, taxes, and fees on imports; enforcing laws intended to prevent unfair trade practices; and protecting public health by interdicting narcotics and other hazardous goods before they enter the country. Customs is also the initial source of information for trade statistics on imports used in monitoring and formulating trade policy, which is the primary responsibility of this Subcommittee.

While the Customs Service has a long and proud history, and has carried out its mission with distinction over the years, it has become evident in recent years that major changes in the way Customs manages its affairs are needed. Rather than deny that such changes are needed, I am pleased to say that the Customs Service, under the leadership of Commissioner Weise, has accepted the challenge of remaking itself to meet the demands of the 21st Century.

I would like, therefore, to congratulate Commissioner Weise and the Service on the way they have gone about the task of reorganization. They have reached out to their employees, their customers, the public at large, the Congress, and other Executive branch agencies in formulating a reorganization plan that makes sense for the Service and for the country as a whole. In my view, the proposed reorganization plan is a sound one. While we may discover during the course of our review that some fine-tuning is appropriate, the plan as a whole deserves the support of this Subcommittee.

Mr. Chairman, I look forward to reviewing the essential elements of this plan with Commissioner Weise and the other witnesses, and to working with you and Commissioner Weise to ensure that the American people have the best Customs Service possible.

Chairman CRANE. Are there any other members that would like to welcome Commissioner Weise?

Well, then I think we will proceed. And if I may, George, suggest, because you indicated to me that your testimony might go on for 1 hour, if you could summarize it in approximately 5 minutes and the rest will be a part of the record.

I now yield to you, Honorable George.

STATEMENT OF HON. GEORGE J. WEISE, COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. WEISE. Well, thank you very much, Mr. Chairman, and I will do my best to keep to the 5-minute rule.

May I first say, it is a real pleasure to have my first appearance as a Commissioner of Customs back before my old subcommittee also be the first hearing of this subcommittee, newly conformed. It is really a great honor to be here. I have spent an awful lot of moments with all of you over many years, and it is a real pleasure to have the opportunity to work as we always have closely between the Customs Service and this subcommittee and the full committee.

As a matter of fact, before I get into any of the details about the reorganization, I think I must commend not only this subcommittee but the entire Ways and Means Committee. For more than 4 years now, the committee has been pushing the U.S. Customs Service in the direction that I think that you will see we are resulting in, in this "People, Processes, & Partnerships Report," that all of you have before you.

[The report follows:]

People, Processes, & Partnerships

A REPORT ON THE
CUSTOMS SERVICE FOR
THE 21ST CENTURY

COMMISSIONER
US CUSTOMS SERVICE

SEPTEMBER, 1994

REORGANIZATION MESSAGE FROM THE COMMISSIONER



It has been nearly 30 years since the U.S. Customs Service has experienced significant changes to its present structure and management approaches. With the cooperation of Congress in lifting the statutory restrictions on Customs reorganizations, we now have the unique and much needed opportunity to modernize and streamline our operations and structure. Also the Administration's National Performance Review (NPR) provides the additional encouragement to initiate bold reforms to improve our ability to meet our mission objectives and to best serve the nation. The time is right for making our commitment to a fundamental "restructuring" of the U.S. Customs Service.

This Report is the Customs "blueprint" for comprehensive change. The hallmark of this change is centered on the way we organize, manage, operate, lead our agency, and deal with our customers. Stated another way, it is about People, Processes, and Partnerships. The report also sets a vision to achieve 100% compliance, to become the most facilitative Customs Service in the world, to form partnerships with our customers, and to become the nation's supplier of international trade information. Our vision and our new focus on People, Processes, and Partnerships will enable Customs to meet the challenges of the 21st century as a more efficient, effective, and adaptable public sector organization.

There are many basic changes proposed in the Report. Two of the changes are so important that they deserve special mention. Probably the most important feature of the plan is the emphasis Customs will place upon the needs of its customers and stakeholders. All of our organizational changes are being proposed with this concept in mind. Another very critical concept is that there will be no reduction of existing services or personnel resources at the Ports of Entry. In fact, we anticipate improved services and performance by establishing customer service standards.

Powerful improvements are envisioned in the plans. They will make the kind of differences we have been waiting for. I firmly believe that we have developed plans that incorporate the hopes expressed by Congress, our customers and stakeholders and most importantly our dedicated employees.

Whether fighting the drug war, or protecting American industry from illegal trade practices, Customs and its people have made vast contributions to almost every aspect of American life over the history of the nation. This reorganization is intended to ensure the continuation of that proud tradition and to ensure even greater contributions in the future. Our collective understanding, support and active participation are essential in enabling Customs to achieve its vision and full potential for service to the nation.

George J. Weise

Commissioner, U.S. Customs Service

INTRODUCTION & OVERVIEW

INTRODUCTION

True leadership creates an environment which enables employees to make their best contribution to the goals of the organization. In the autumn of 1993, the Commissioner of Customs created such an environment for a diverse group of twenty career Customs employees, providing them with a simple but broad mandate: To design an organizational structure for the Customs Service that would prepare it to meet the challenges of the nation at our borders in the 21st century. In October of 1993, the study team assembled to begin its work. Following are statements of the goals and methodology used to conduct the study, and the findings and recommendations of the study team.

TEAM GOALS

- To develop an organizational structure that will enable Customs to meet the challenges of the 21st century and to become a more efficient, effective, and adaptable organization with high employee involvement.
- To define our core business processes and to develop a portfolio of management tools to provide for continuous improvement, including business process re-engineering (BPR), business process improvement (BPI), process mapping, benchmarking, and workout.
- To take advantage of the opportunities provided by the Vice President's National Performance Review (NPR), and to implement the NPR in substance and spirit.
- To explore ways to fund the Customs Service by user fees in order to provide our customers with the level, quality, and certainty of service they require.

METHODOLOGY

The following are the essential elements of the methodology used in conducting the study.

- The study team conducted a review of management literature from which it developed a conceptual framework. This review was supported by seminars on process management techniques, conducted by the Brookings Institution, which included participation by 50 top executives from the Customs Service.
- Partnerships were established with the Federal Quality Institute (FQI) and the National Academy of Public Administration (NAPA) which assembled panels of executives from both the private and public sectors who are experts in organizational change.

These executives represented such organizations as Ford, AT&T, Corning, Xerox, the Air Force, the National Security Agency, and the Internal Revenue Service. These panels provided guidance on project initiation, change implementation, reorganization in the federal environment, and improvement of support services.

- The study team conducted group interviews and town meetings, at Headquarters and in the field, with Customs employees, other government agencies, and industry members to gather their views on relationships with Customs.

- A summary of major concerns was drawn from these interviews and this summary was used to develop criteria to design various organizational alternatives.

- Visioning sessions were conducted and facilitated by Brookings and NAPA on various issues related to future needs of Customs such as the development of an Automated Export System (AES).

- Close coordination with and observation of the activities of the Treasury Reinvention Team and the Vice President's NPR were maintained throughout the study.

- The core operational and support processes of the Customs Service were identified and a theory of organization was designed to facilitate the core processes.

FINDINGS

One executive familiar with the Customs Service stated "Customs is not a sick organization; you're a healthy organization trying to perform even better." We agree; however, the review revealed compelling reasons to make major changes to Customs organization and operations. The recent enactment of the Customs Modernization and Informed Compliance Act ("Mod Act"), and the North American Free Trade Agreement (NAFTA), and the conclusion of the Uruguay Round of the General Agreement on Tariff and Trade (GATT) talks will substantially change the Customs operating environment, and provide opportunities and challenges for Customs. Travel, trade, and tourism to the United States are increasing substantially each year, translating into large increases in Customs workload, at a time when our budget and staffing are more likely to be reduced than increased. Factors prompting Customs to streamline its organization and modernize its management include the concerns captured from our group interviews, opportunities provided by new communications and computer technologies, an altered attitude regarding interdiction as a solution to the narcotics problem, and the fact that the Customs organization has not been restructured in 30 years.

RECOMMENDATIONS

Numerous recommendations for change to the Customs organization are made throughout the report. Approval and implementation of these recommendations would result in the following:

- A streamlined organization with fewer management layers, with more emphasis on the operational field level (especially the ports), and a Customs-wide orientation on processes at Headquarters and the field.

- A new approach to managing Customs through processes that would include the identification of our core business and major support processes, process improvement using a portfolio of management tools, and the institution of a system to measure our performance against quantitative goals and customer satisfaction.

- A more inclusive approach to dealing with our employees, other agencies, and customers in industry by forming a partnership with the National Treasury Employees Union (NTEU), including customers in other agencies and industry in our process management and goal setting, and developing standards for providing internal support services.

- A proactive approach to dealing with the major trade issues facing the nation with the establishment of Strategic Trade Centers (STC's) staffed by cross-functional teams of analysts, auditors, trade specialists, and agents, whose objective will be identifying the major trade enforcement issues and developing strategies to prevent trade fraud rather than merely treating the symptoms of problems after they appear.

- An increased emphasis on information technology that would build on and enhance Customs Automated Commercial System (ACS).

- A reinvestment of resources in front line operational programs achieved by retraining our employees and reallocating resources to high priority operational activities.

FINAL COMMENTS

Perhaps no agency in government is as rich in history, tradition, and accomplishment as Customs. From the American Revolution to its present-day reinvention, Customs has protected this nation's borders and collected the revenue that finances the government. The study team is privileged to propose an organizational structure and management approach to guide the agency into its third century of service.

These concepts, implemented in partnership with our employees and customers, will serve to carry Customs into the next century. We would like to thank the Customs employees (both current and retired) trade and industry representatives, and staff from Brookings, FQI and NAPA for their assistance. We also worked closely with the Treasury Department in refining this report and received valuable input from their Commercial Operations Advisory Committee (COAC). A special thanks to Gary Taylor of American President Companies, who suggested the theme: People, Processes and Partnerships. The participation of all of these individuals and groups reflects our emphasis on People, Processes and Partnerships, which is the hallmark of this report.

CHAPTER ONE

EXECUTIVE SUMMARY

BACKGROUND AND INTRODUCTION

In October 1993, the Commissioner of Customs, George J. Weise, established the Customs Reorganization Study Team and endowed it with a broad and simple charter: Develop an organizational structure that will enable the Customs Service and its employees to make their maximum contribution to the nation. In response to that charter, a report was produced which recommends management approaches and an organizational structure that will enable Customs to meet the challenges of the 21st Century as a more efficient, effective, and adaptable organization with high employee involvement.

Being fully aware that demands for service from its customers will continue to increase, and that increases in resources will not keep pace, the study team sought to find ways to move staff from support functions to operational functions. This emphasis on cost avoidance, rather than increases in appropriations, is especially well suited to the national need for deficit reduction balanced with customer service. To that end, the concept of reinvestment is accentuated.

The reinvestment strategy directs available resources toward the resolution of global trade issues, providing increased attention to ensuring voluntary compliance with trade laws through enhanced informed compliance efforts, improving the use of information technology by building on and enhancing Customs' Automated Commercial System, and providing the employee training necessary to enable us to implement process management and customer focused approaches to our mission.

FINDINGS AND RECOMMENDATIONS

We have concluded that the number and scope of mission challenges facing the Customs Service, combined with the numerous concerns expressed by employees about the current management environment, make a compelling case for significantly changing the Customs management structure. In order to achieve the new vision we have for the Customs Service, to increase its service to the nation and to meet the challenges of the future, we need to transform our culture to one focusing on People, Processes and Partnerships. By this we mean a culture which is characterized by:

- managing essential core processes, a change that will require integrating the many disciplines within the Customs Service into more coordinated efforts to achieve Customs mission goals;
- serving the legitimate needs of our many customers as the focus of our process management efforts, and forming partnerships with them as a means of meeting their needs and improving our mission performance; and,
- building a workforce for the 21st century, working cooperatively to develop strategies to tap the potential of our people so that, working together, they can meet the mission challenges facing the Customs Service.

To this end, Customs will define its core processes and move to a management approach centered around these processes, identify our customers and their needs,

develop methods for defining customers' needs as process goals, improve our workforce through empowerment of our employees and an elevated Human Resources Management program, realign the organizational structure to reduce layers and support the core processes, and reinvest our resources into priority mission areas. These proposals, and the findings that led to them, are described as follows:

- Numerous factors in the Customs operating environment translate into a clear call to action to develop new management and organizational approaches. The challenge is to meet the demands of a mission which is rapidly growing more complex in nature and broader in scope. This mission is complicated by rapid world economic and political changes; the influx of illegal immigrants; trade deficits; the epidemic of drug abuse; looming budget shortfalls; the increase in international trade, travel, and tourism; the rapid advances in information technology; and the demands imposed by new legislation and international trade agreements such as NAFTA and GATT. Addressing these challenges is further complicated by conditions within the Customs management environment such as non-uniform application of policies; ambiguities in program priorities; a lack of accountability for mission accomplishment; deficiencies in administrative services; breakdowns in important operational programs; and an organization characterized by layers and internal barriers. (See Chapter 2)

- In response to the call to action, Customs seeks to define a vision for itself which builds upon its mission and establishes the broad goals of achieving enhanced compliance with the laws it enforces. The goal is to become the most facilitative Customs Service in the world; to form partnerships with our customers to meet our mission goals; and to become the nation's supplier of international trade information. The foundation for this vision will be the creation of the best working environment in the government, one which allows our employees to make their maximum contributions to the agency and the nation. (See Chapter 3)

- Achieving our vision depends on our ability to transform our culture to one based on People, Processes, and Partnerships. We must form partnerships with our people and our customers, and transition from previously adversarial relationships to positive ones. This involves strengthening our partnership with NTEU; involving employees, managers, and customers in management by process; organizing around processes; building partnerships with customers in trade, domestic industry, and other agencies; training employees in techniques for managing by process; changing performance appraisals to reward improved customer service and achieving agency objectives; introducing effective measurement techniques; and using outside consulting resources to assist us in the transformation. (See Chapter 4)

- Customs should formally move to and implement a system of management by process. This approach establishes a framework for seeking major improvements in organizational performance through a focus on improving service to customers. Process management will emphasize the integration of our diverse functions into a coordinated strategy for improving service delivery to customers. We will emphasize horizontal integration, breaking down barriers that often develop among functional organizational components. The measurement of customer satisfaction will be a core element of our new management culture. Responsibility for leading the overall agency effort rests with the Commissioner, but responsibility for developing and implementing strategies for improving core processes will rest with the senior executives who are designated as process owners. (See Chapter 5)

- In recognition of the concerns and recommendations of the NPR, and in response to the problems and issues raised by our workforce and customers, Customs should establish partnerships with our customers to enhance organizational effectiveness. Process owners will be responsible for identifying the full range of customers, determining customer needs, developing measurable customer service goals and standards, developing strategies to achieve

the goals, and maintaining systems for obtaining continuous customer feedback. (See Chapter 6)

- Achieving dramatic improvement in process operations and customer service will require significant attention to improving our human resources environment. The characteristics of this new environment will stress our partnership with NTEU; establish cross-functional teams as the routine way of staffing process operations; provide extensive training in process management techniques and customer service concepts; ensure performance appraisals encourage teamwork and reflect contributions to process goals; and ensure that all employees and managers are treated with dignity, trust and respect. (See Chapter 7)

- Customs should implement organizational changes to facilitate pursuit of our vision. The new structure emphasizes customer service, execution of processes, and the bringing of employees together along processing lines, while minimizing management overhead. The new organization:

  - maintains the current number of ports to ensure continued service delivery;

  - replaces regions and districts with 20 Customs Management Centers (CMC's) to provide training, evaluation and oversight of ports and port processes;

  - creates five Strategic Trade Centers to enhance our capability to address such major trade initiatives as textile transshipment, antidumping, value, and intellectual property rights issues;

  - collocates Special Agents in Charge (SAC's) with the CMC's to foster the development of integrated strategies for improving service to our customers;

  - restructures Customs Headquarters to provide a Customs-wide focus, to reduce the number of issues requiring resolution by the Office of the Commissioner, to facilitate management by process, and to provide the framework for pursuing a significant reduction in Headquarters staffing. (See Chapter 8)

- The changes and vision in this report will require a long-term commitment of resources, energy, and management attention. The transition is being carefully planned. On April 4, 1994, the Transition Management Team was established and tasked with achieving cultural conversion, implementing process management, and providing our employees with the necessary training. Throughout this effort, we will continue to listen to the concerns of our workforce and customers, and establish incentives for change to the new culture. (See Chapter 9)

CONCLUSION

The full report follows, containing detailed findings and recommendations. These recommendations represent a synthesis of the concerns and ideas expressed by employees and customers, and reflect, as well, the opportunities made available by the changes in the trade environment, the sweeping reforms envisioned in the NPR and the exciting management approaches being successfully applied in the private sector. We firmly believe that this synthesis accurately reflects a desire for change and improvement on the part of our stakeholders and employees, and that the resulting recommendations will create a better Customs Service for the 21st century.

CHAPTER TWO

THE CALL TO ACTION, A COMPELLING CASE FOR CHANGE

INTRODUCTION

During the course of this study, team members met with several thousand employees, members of the trade community, and advisors to the study team from business and academia. A frequent question from all groups was "Why change?" Change is disruptive. It can be destructive. It causes anxiety. Some, particularly Customs managers, argue for the status quo. If you must change, they have said, change deliberately and incrementally. We are a successful organization. This is not an agency in crisis; it is not broken.

Others, particularly those in industry who have embarked on dramatic change, including reorganization and reengineering, argue just as forcefully that change, and dramatic change, is needed now. They believe that organizations that do not make change and learning a way of life are destined for obsolescence. Many believe that any organization not able to adapt to today's rapidly changing environment is an organization in crisis.

We recognize that change is difficult. A consultant from FQI advised that bringing about change in an organization that views itself as successful is particularly difficult. For good reasons Customs does view itself as successful; however, we also believe that change is imperative.

In this chapter we discuss the general environment in which Customs exists, and then the "push" (i.e., the problem areas and negative factors) and "pull" (i.e., the potential opportunities) factors leading Customs to change.

GENERAL ENVIRONMENT OF CHANGE

Never in history has mankind experienced such a climate of change. In the recent past, the world has witnessed:

- the collapse of the Soviet Union;
- the fall of the Berlin Wall;
- the liberation of Eastern Europe;
- the establishment of the European Union;
- the emergence of Japan and other powerful economies throughout the Pacific rim;
- the skyrocketing of population growth;
- unprecedented world emigration patterns; and,
- the exponential growth of new knowledge and data, and the means to communicate it.

As the world's greatest economic power, and largest importer and exporter, the U.S. is intimately involved with and affected by all of these changes. The rate of change at our borders is increasing as well, as evidenced by:

- substantial increases in international trade, travel, and tourism;
- a major trade agreement encompassing all of North America;

- the erosion of the leadership position of many of our leading industries and companies from automobiles to high technology;
- an increasing emphasis on unparalleled trade and budget deficits;
- epidemics of drug abuse, violent crime and new illicit enterprises such as money laundering; and,
- new, large influxes of legal and illegal immigrants.

Customs is significantly impacted by these changes. Each has a tie to our nation's borders and hence to Customs itself. In addition, even more specific factors compel Customs to improve its operations and service to its customers.

FACTORS "PUSHING" CUSTOMS TO CHANGE

Customs prides itself in being a high performance, responsive and agile organization. Nevertheless, our people and a variety of external observers of Customs suggest areas for management improvement. Further, over the years, there have been a variety of examples in which Customs performance has been lacking, has not met customer expectations or has failed. The study team identified the following problems and deficiencies:

- a periodic and high visibility breakdown in important operational programs, e.g., antidumping, international trade statistics, and enforcement of value laws;
- a lack of uniformity in Customs application of laws, policies, and procedures;
- an antiquated organization characterized by layers and internal barriers that has not been updated in 30 years;
- a consensus among our people that mission goals are not clearly defined, and that there are too many priorities;
- a persistent occurrence of intra-agency squabbling and destructive internal competition;
- a history of adversarial relationships with other agencies and customers;
- a pattern of non-compliance with the Chief Financial Officers (CFO) Act, and weak internal controls despite proliferating internal control requirements;
- a workforce that too often feels that management does not welcome suggestions for improved operations and is burdened by a lack of understanding of how their work is contributing to mission accomplishment;
- a widespread concern that we do not effectively allocate our workforce to meet workload requirements;
- a training program that is seen as ineffective in helping employees develop technical and supervisory competencies; and,
- a chronic failure to meet the needs of internal customers for administrative support services.

While disappointing, there is nothing surprising here. The Congress, the General Accounting Office, the Department of the Treasury, the Treasury Inspector General, and a number of internal studies have repeatedly identified these and other deficiencies. These problems and issues were confirmed in our group interviews and emphasized in our visioning sessions with employees, the trade and other agencies. In many areas, remedial actions are under way to correct these problems. But, in many cases, the existing structure and our approach to management is ineffective. In these cases, more comprehensive solutions are required.

FACTORS "PULLING" CUSTOMS TO CHANGE

While a focus on problems is sobering, a focus on opportunity is uplifting. Customs is blessed with a number of opportunities to serve its customers and the nation, and a variety of new tools to do it with:

- the NPR provides the opportunity for re-engineering our critical support services in budget, personnel, and procurement;
- GATT and NAFTA represent challenging new opportunities for Customs to meet increasing trade demands for increased service;
- the Customs Modernization Act relieves the agency of anachronistic requirements dating back two centuries, mandates reports on importer compliance with the trade laws, and provides a new framework for service under the "Informed Compliance" provisions;
- an increasingly competitive international trade environment requires Customs to be constantly alert to more sophisticated fraudulent import practices jeopardizing the health, safety, environment, security, and economy of the nation;
- new advances in information and communication technology provide an opportunity to revolutionize our systems; and,
- new business management techniques and measurement systems, such as process management, re-engineering and benchmarking, can improve customer service and can be applied to the public sector.

These are exciting times to be in the federal sector, and there are few agencies in government with greater opportunities to serve the nation.

RESOURCES

U.S. Customs is not the world's largest customs service; however, we face a larger volume of trade than any other customs administration. The size of our workload is compounded by its complexity, as the U.S. trades in almost every commodity in the tariff schedules and with almost every nation on earth. The geographic scope of U.S. trade and the breadth of commodities covered result in a myriad of multilateral and bilateral trade agreements that further compound the difficulty of U.S. Customs responsibilities. The U.S. role as the world's most sophisticated economy places additional burdens on U.S. Customs to protect our environment and the health, safety and security of our citizens. This is not to argue for increases in Customs staffing. Customs believes it can meet these challenges, providing it has the latitude to reduce overhead and reinvest its resources in front-line operations at the ports of entry, and in state-of-the-art systems and information technology to increase its efficiency and effectiveness.

CONCLUSION

Crisis or opportunity? Or both? Does it matter? It is clear that if we do not address the problems and take advantage of the opportunities and challenges on a large scale we will become an obsolete, hollow and impoverished organization. If we accept the challenge and embark on a bold journey of change, we have every opportunity to make our next century of service as meaningful as the first 200 years.

CHAPTER THREE

A CUSTOMS VISION

INTRODUCTION

In the private sector, the entrepreneur has great latitude in selecting the type of business and market in which he wishes to operate. In government, every agency's mission, which effectively defines the agency's "business" and the market in which it will operate, is determined by Congress through legislative mandate. An agency with a broad mission, including many and diverse responsibilities, is naturally more prone to organizational confusion than an agency with a more narrowly defined mission. Nevertheless, such an agency is empowered with opportunities for providing a broader range of public services.

THE CUSTOMS MISSION

Customs is one of those agencies with a more expansive mission and the agency has experienced both the advantages and disadvantages that accompany the broader scope. Customs current five year plan reemphasizes our mission:

As the Nation's principal border agency, the mission of the United States Customs Service is to ensure that all goods entering and exiting the United States do so in accordance with all United States laws and regulations. This mission includes:

- *Enforcing U.S. laws intended to prevent illegal trade practices;*
- *Protecting the American public and environment from the introduction of prohibited hazardous and noxious products;*
- *Assessing and collecting revenues in the form of duties, taxes and fees on imported merchandise;*
- *Regulating the movement of persons, carriers, merchandise and commodities between the United States and other nations while facilitating the movement of all legitimate cargo, carriers, travelers, and mail;*
- *Interdicting narcotics and other contraband; and,*
- *Enforcing certain provisions of the export control laws of the United States.*

For 200 years, Customs officers have used a similar statement of mission in protecting our borders. The challenge today is to derive from that broad charter a vision to guide and inspire our employees. This is neither an easy nor a one-time task.

DERIVING THE VISION

Customs derives its vision from the law, the mission, the priorities of the Administration and the Congress, and the needs of our customers. We use a variety of techniques and sources, e.g., interviews with customers and stakeholders, the media, our strategic planning process, and review of Congressional and Executive Branch proceedings. Developing the vision depends on the dynamic, ongoing, and sometimes messy process wherein Customs matches its mission and capabilities against the needs of the nation and our customers. As a result of this process, the following vision has been proposed for the Customs Service.

- **To achieve compliance with Customs and other agency laws at the border at a rate approaching 100% by the end of the century.**

  Achieving this goal will protect industries from predatory trade practices, ensure the health, safety, and security of our citizens, protect the environment, and provide accurate and timely statistics on international trade. Our predominant method of operation will be to work effectively with the business community and other federal agencies to enable people and commerce to voluntarily comply with requirements for legal entry into the United States. However, at the same time, we will direct special investigative efforts toward thwarting attempts to smuggle substances into the country that threaten public health and safety. Process management (as defined in Chapter 5), partnerships with our customers, informed compliance, investigations and intelligence, automation, and compliance measurement will be the tools used to achieve this goal.

- **To become the most facilitative Customs Service in the world.**

  The U.S. is the world's largest trader and a worldwide champion of free trade. U.S. Customs should serve as a role model for border agencies throughout the world by maintaining the highest compliance and enforcement rates, while using the latest electronic technology to clear passengers and cargo more expeditiously than any other customs service in the world. In most cases, this will mean clearance before arrival in the U.S. As other more restrictive and deliberately protectionist Customs administrations follow our lead, U.S. exports will receive fairer treatment. Partnerships with our customers, advanced information, automation, and compliance measurement will be the tools used to achieve this goal.

- **To form partnerships with our customers in industry and government to meet our compliance, enforcement, and facilitation goals.**

  Establishing partnerships means recognizing all of our customers, accepting them as extensions of our agency, determining and understanding their needs, devising strategies responsive to their needs, and measuring our performance in addressing their needs. We commit to improving our nation's effectiveness in combatting international drug trafficking and money laundering by pledging to cooperate with any organization, public or private, international or domestic, that is committed to the fight. Process management, on-going customer feedback mechanisms, shared data systems, data exchanges, and task force arrangements will be the tools and techniques we will use to determine customer needs, meet customer requirements, and serve as the basis for partnership.

- **To become the nation's supplier of international trade information.**

  Success in business and government is achieved by those with access to the most accurate and timely information. The Customs Service has a powerful base of technological achievement which we can build upon to provide this edge for the business and governmental interests of the United States that intersect at our borders. Our goal will be the creation of ITIS which will make the Customs Service the nation's provider of reliable, timely and comprehensive import/export statistics, and other information related to trade and travel.

CONCLUSION

The vision proposed in this report forms the basis for the development of strategies, goals and objectives that will effectively serve the Customs Service through the end of this century and beyond. In order to move toward this vision, Customs will attempt to create the best working environment in government, one which will allow our employees to make their maximum contribution to the goals of our agency and the government. We value our people and the diversity they bring. We are committed to identifying their concerns and implementing strategies to address their needs. We have established a partnership with NTEU. We will clarify the roles of all employees and organizational units, and emphasize cross-functional teams as tools and techniques to achieve our vision.

CHAPTER FOUR

TRANSFORMING TO A CULTURE BASED ON PEOPLE, PROCESSES, & PARTNERSHIPS

INTRODUCTION

It is quite possible that the Customs Service, in its 200 years, has never examined its culture. Our definition of culture would include not only our values and what we hold important, but also the ways in which we interact with each other, with our customers, and with other agencies. The way we treat our employees, and how we manage and lead are also important cultural "markers." In this chapter we take on the task of describing the current state of culture in Customs, our desired future state, and strategies for moving toward a culture that centers on people, processes, and partnerships.

CURRENT STATE

A trillion dollars worth of goods and almost one billion people cross U.S. borders every year. Customs is responsible for all of them. We are an action agency, not particularly given to introspection. But 200 years of service has endowed our organization with a definite character, one with both positive and negative aspects. Among these are:

- **Loyalty** - Customs people are committed to the nation, to the agency, to their discipline, to each other. "Customs takes care of its own."
- **Pride** - Customs people are proud to serve the nation and their agency. They are proud of their tradition of service and achievements.
- **Service** - There is a "can do" attitude in Customs. From implementing the Canadian Free Trade Act to interdicting drugs on the southern border, and from supporting the Andean drug war to enforcing Bosnian sanctions, nobody does it better than Customs.
- **Creativity** - When a national need arises Customs frequently finds a way to contribute to the solution at the borders. This has been demonstrated in areas ranging from international money laundering to intellectual property rights, from chlorofluorocarbons to flammable pajamas.
- **Expertise** - Customs has acquired a tradition of expert knowledge about commodities, trade practices, and border issues.

Some elements of the Customs culture are not so positive. The agency's loyalty to discipline, function, and occupational series sometimes becomes excessive, leading to divisive internal competition. In the past Customs has engaged in destructive and high visibility turf battles with other agencies. Our management style would be characterized as one of control, our relationship with our union as adversarial. In recent years Customs has developed something of a customer focus, but there is a long history of antagonistic relations with the trade community. No concerted effort to develop an agency wide customer focus has been undertaken. While Customs has aggressively and successfully automated and applied other technology, we manage subjectively, and intuitively. Only in the past few years have we initiated efforts to institute strategic planning and to develop measurements of statistical compliance with the trade laws.

DESIRED FUTURE STATE

A culture evolves and emerges in an organization over a period of time; in our case a very long time. It is a product of our mission, our traditions, and our people. A culture is neither created out of whole cloth nor produced in a vacuum. It cannot be transferred from one organization to another. It cannot be transformed overnight, nor should it be. There should be a gradual and deliberate transformation in our culture to build upon the positive and replace the negative. The desired future state of the culture of Customs is to:

- build upon the positive aspects of the Customs culture including loyalty, pride, service, creativity, and expertise; and,
- transform our management approach to one of People, Processes and Partnerships.

What do we mean when we say we should replace the negative aspects of our culture with a management approach based on People, Processes and Partnerships? We envision a future state in which Customs:

- manages the agency by process, i.e., concentrates management attention on its core business processes, develops goals for the processes based on customers' needs, aligns employees with the processes and provides the necessary support, develops and uses a system of metrics to evaluate process outcomes and efficiency, and, based on employee input and customer feedback, determines the need for process improvement and utilizes the appropriate management tools for the improvement effort;
- involves its people in process improvement efforts, trains them in techniques for process improvement, and creates an environment in which our employees can make their maximum contribution to the goals of our customers and the agency, free from bias and harassment of any kind; and,
- interacts with our customers as partners with the objective of working cooperatively with them to improve the processes, to meet customer needs and to improve mission performance.

This future state is attainable and realistic. Customs has already laid the groundwork for this direction by its strategic planning initiatives, improved customer relations, and introduction of a compliance measurement program.

STRATEGIES FOR ACHIEVING THE DESIRED FUTURE STATE

Creating a culture of People, Processes and Partnerships will be a long-term transformation requiring thought, conviction, and hard work. The following strategies will help with this transformation:

- a commitment from senior management, including the Commissioner, Assistant Commissioners and key field managers, to embrace this culture in both their speech and their actions;
- train all managers, beginning at the top, on the values they must incorporate in this culture; and,
- revise our appraisal process to reinforce the precepts of this culture.

CONCLUSION

Much time and commitment will be required to achieve the cultural transformation we have described. On the other hand, success in moving toward such an environment provides the potential to make Customs one of the most effective and successful organizations in government, and to provide the finest and most satisfying work environment for its employees.

CHAPTER FIVE

FOCUSING ON CUSTOMS PROCESSES

INTRODUCTION

Corporations and federal agencies are increasingly focusing on identifying and analyzing their operational processes to achieve gains in efficiency and effectiveness. An understanding of core processes is critical to organizations working to achieve their visions, to satisfy their customers, to create meaningful work for their people, and to maintain their vitality. This chapter presents the theory of processes, introduces the process management concept to the Customs environment, and identifies our core business and support processes.

WHAT IS A PROCESS?

As defined by Hammer and Champy in their book Re-engineering the Corporation, a business process is "a collection of activities that takes one or more kinds of input and creates an output that is of value to the customer." A process typically cuts across several functional boundaries. The elements of a process include the inputs to the process, the suppliers of those inputs, the outputs from the process, the customers of the process, and the outcomes in terms of value added for the process customers.

The focus on the customer is a critical element of the new theory of business processes. By aiming to produce value for the customer, the organization changes its focus from the traditional focus up the organization to a focus across the organization toward the customer, creating a more open and flexible management environment.

A process orientation focuses on outcomes, not tasks. It directs attention to how individual disciplines or components within an organization contribute toward the achievement of organizational goals and customer satisfaction. This provides an impetus for breaking down barriers that often develop among the various functional organizational components, thereby helping to achieve organizational unity.

CUSTOMS AND MANAGING BY PROCESS

Should Customs move to a system of managing by process? What will that mean to the agency, its customers, our managers, and our employees? How will it differ from how we operate today? Is this just another management fad or "flavor of the month," like quality circles or the "one minute manager"? What are the advantages to working in processes? Let's address these issues.

In one sense Customs already works in processes. Consider our system for processing at international airports. The system is composed of the following elements:

- suppliers in the form of carriers and port authorities;
- inputs, e.g., passengers and conveyances;
- processes, e.g., inspection and collection of duty;

- outputs resulting in cleared passengers, collections, and other agency referrals;

- customers that include the passenger, the carrier, other agencies, and the public; and,

- outcomes, or the goals of the process, which in this case would be facilitative processing for the traveller in compliance with all U.S. laws.

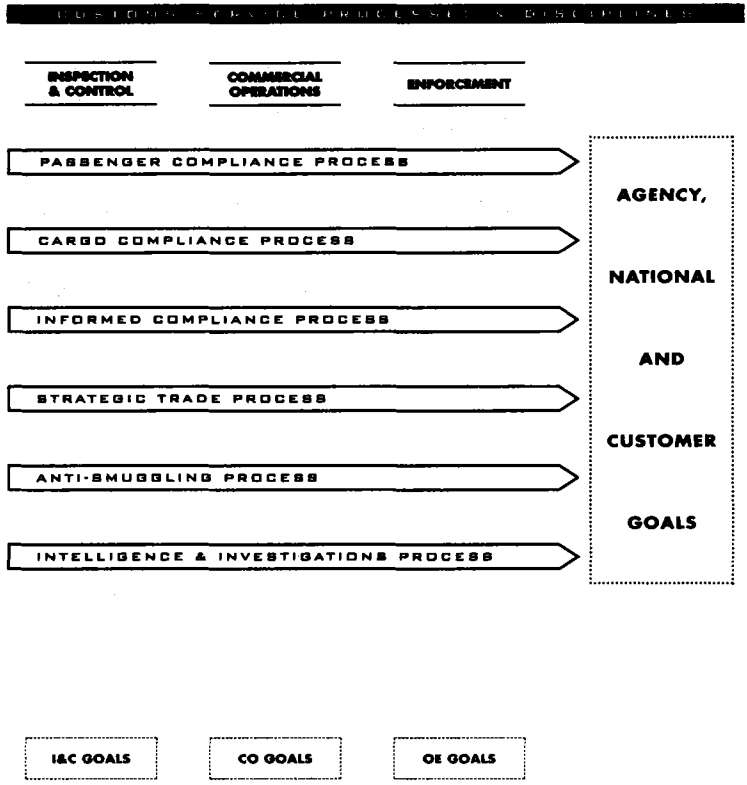
Passenger processing works well largely because it is handled by one discipline, i.e., Inspection and Control. Other processes and sub-processes, such as cargo processing or fines, penalties and forfeitures, do not work as well because they involve almost every discipline in Customs and require "hand-offs" from one function to another. Frequently, one office attempts to optimize its output at the expense of the overall goals of the agency. Process management, with its horizontal orientation across the agency, will help ensure that all disciplines within the organization understand and value the work of their counterparts, and that we all strive to contribute to overall agency goals. The chart on the next page illustrates this contrast between the core processes and the vertical orientation of our major organizational units.

Applying the theory of process management would represent several significant changes in how we manage.

- First, our management efforts will be driven by a focus on achieving ambitious goals derived from discussions with our customers. In the past, we have not committed ourselves to goals such as achieving compliance with Customs and other agency laws at a rate approaching 100 percent.

- Second, we will establish partnerships with our customers, incorporating their needs into our goals. We will make customer feedback central to how we manage and assess our performance. We have never attempted to achieve the close relationship that we now intend to establish, and we have never before incorporated customer feedback into our system of performance measurement.

- Third, to achieve the ambitious goals we will set for ourselves, we will emphasize cross-functional teams to establish comprehensive and integrated strategies. In the past we have focused on managing programs devised within our functional disciplines, which has resulted both in our people not feeling part of a common team and in a lack of focus on the outcomes of our efforts.


INSPECTION & CONTROL
COMMERCIAL OPERATIONS
ENFORCEMENT
PASSENGER COMPLIANCE PROCESS
CARGO COMPLIANCE PROCESS
INFORMED COMPLIANCE PROCESS
STRATEGIC TRADE PROCESS
ANTI-SMUGGLING PROCESS
INTELLIGENCE & INVESTIGATIONS PROCESS
AGENCY, NATIONAL AND CUSTOMER GOALS
I&C GOALS
CO GOALS
OE GOALS

Several steps will be needed to achieve the successful conversion to managing by process. The following elements will need to be incorporated into Customs management systems:

STEP	ACTIVITY
1	Identify all core business processes and major support processes.
2	Establish Executive Improvement Team (EIT), chaired by Commissioner, to provide policy leadership.
3	Designate Process Owners to develop and implement plans to achieve major improvement goals.
4	Form Process Improvement Teams (PIT) to propose detailed improvements in processes and sub-processes.
5	Use a portfolio of management tools, including flow charting each process, to begin the systematic improvement of the processes.
6	Establish a system of measures for each process to evaluate organizational performance and customer needs.
7	Develop methods for surveying customer satisfaction, both internally and externally.
8	Gear training toward helping employees understand processes and the tools for improving them.
9	Reconcile the 5 Year Plan with the processes and design it as a guide for improving the processes.
10	Better integrate the delivery of information technology (IT) with the improvement of our processes

CUSTOMS CORE BUSINESS AND SUPPORT PROCESSES

An effective organization must have a shared understanding of its core processes. This comes from analysis and debate within the organization and through discussions with its customers. Deliberations within the study team led to the identification of six core mission related processes which are depicted in the chart entitled "Customs Core Processes." The chart includes the suppliers, inputs, work activities, outputs, customers, and outcomes that are the essential elements of a process view of our work.

Focus group interviews identified our support processes as problem areas. They were viewed as unresponsive, inefficient, control oriented, inordinately complicated, and lacking in customer service. To better understand the magnitude of these concerns, each of the key support processes was mapped by cross functional teams which included operational personnel. Improvements in many of these support processes are under way, and further dramatic improvements are anticipated through reengineering and NPR implementation. In the implementation process we will redesign, automate, and re-engineer the support processes to the satisfaction of our internal customers. Some of the key mission support processes are presented in the chart entitled "Customs Service Key Support Processes."

Both the core business and mission support processes represent a first cut at defining Customs core processes. Customs, like other organizations, may go through a series of refinements in its definition of its processes as it gains more experience and insights into the interrelationships of its processes. This is all part of a continuing process of organizational learning.

CONCLUSION

Managing by process is fundamental to realizing our vision and addressing many of the concerns of our workforce and customers. Process management provides the framework for focusing on organizational goals developed in partnership with our customers, and for integrating the efforts of our various disciplines into a coordinated strategy for achieving our goals. Process management provides the means to clarify agency mission goals and priorities, and to clarify roles and responsibilities within the organization for accomplishing the goals. Finally, process management also fosters a culture of teamwork. We will establish mission goals based on customer needs and develop measures for assessing our performance in achieving those goals. By so doing, we will provide a system that enables both our customers and our people to understand what level of performance we expect to achieve. This same system will allow our customers and our employees to join in analyzing ways to improve our performance.

CUSTOMS SERVICE CORE PROCESSES

SUPPLIERS	INPUTS	WORK ACTIVITIES	OUTPUTS	CUSTOMERS	OUTCOMES
BORDER ENFORCEMENT					
▪ Carriers ▪ Port Authorities	▪ Passengers ▪ Conveyances	▪ Inspections ▪ Targeting/Analysis	▪ Cleared Passengers ▪ Arrests, Narcotics, & Currency ▪ Other Agency Violations	▪ Taxpayers ▪ Passengers ▪ Carriers ▪ Other agencies	▪ Voluntary Compliance with Customs & Other Agency Laws at the Border
CARGO COMPLIANCE					
▪ Carriers ▪ Port Authorities ▪ Brokers	▪ Cargo ▪ Conveyances ▪ Documentation ▪ Compliance Measurement	▪ Examinations ▪ Targeting/Analysis	▪ Cargo Release ▪ Revenue ▪ Narcotics ▪ Currency ▪ Contraband	▪ Taxpayers ▪ Brokers/Carriers ▪ Importers ▪ Domestic Industry ▪ Other Agencies	▪ Voluntary Compliance with Customs & Other Agency Laws at the Border
INFORMED COMPLIANCE					
▪ Importers ▪ Brokers ▪ Carriers ▪ Other Agencies	▪ Trade Request ▪ Compliance Measurement ▪ Trend Analysis	▪ Pre-Importation Review Program ▪ Seminars ▪ Audits ▪ Electronic Processing	▪ An Informed Trade Community ▪ Pre-Classified Cargo	▪ Taxpayers ▪ Importers/Brokers ▪ Domestic Industry ▪ Other Agencies ▪ Drawback Claimants ▪ Carriers	▪ Informed Compliance ▪ CFO Compliance ▪ Expedited Processing ▪ Resolved Trade Issues ▪ Improved Data Quality
STRATEGIC TRADE					
▪ Brokers ▪ Importers ▪ Carriers	▪ Referrals ▪ Audit Plan ▪ ACS Data	▪ Trend Analysis ▪ Jump Teams ▪ Audits	▪ Audit Findings ▪ Jump Team Reports ▪ Analytical Reports	▪ Taxpayers ▪ Domestic Industry ▪ USTR ▪ Commerce ▪ Other Agencies	▪ Deterrence to Trade Violators ▪ Compliance with Trade Laws ▪ Resolved Trade Issues
ANTI-SMUGGLING					
▪ Carriers ▪ Port Authorities	▪ Passengers ▪ Conveyances ▪ Imported & Exported Goods	▪ Interdiction ▪ Inspection ▪ Targeting ▪ Investigations	▪ Arrests ▪ Seizures	▪ Taxpayers ▪ Other Agencies	▪ Prevention of Smuggling ▪ Border Protection
INVESTIGATIONS & INTELLIGENCE					
▪ Customs Units ▪ Other Agencies ▪ Informants	▪ Requests ▪ Referrals ▪ Violators	▪ Investigation ▪ Intelligence	▪ Intell Reports ▪ Arrests ▪ Indictments ▪ Convictions	▪ Taxpayers ▪ Customs ▪ Other Agencies ▪ US Attorney ▪ Courts	▪ Deterrence to Criminal Activity ▪ Increased Compliance

CUSTOMS SERVICE KEY SUPPORT PROCESSES

SUPPLIERS	INPUTS	WORK ACTIVITIES	OUTPUTS	CUSTOMERS	OUTCOMES
BUDGET FORMULATION EXECUTION					
▪ Process Managers ▪ Administration	▪ Funding Requests ▪ Program Initiatives ▪ Appropriations ▪ User Fees ▪ Reimbursements	▪ Formulation ▪ Allocation ▪ Analysis/ Monitoring	▪ Budget Requests ▪ External Relations ▪ Financial Plans ▪ Decision Packages ▪ Services	▪ Administration ▪ Congress ▪ General Public ▪ Operations Managers ▪ Commissioner	▪ Appropriations ▪ Funding Authority ▪ Program Resources ▪ Funding Flexility ▪ Redirected Resources
HUMAN RESOURCES					
▪ Vendors ▪ OPM ▪ Federal Law Enforcement Training Center	▪ Requests ▪ Referrals ▪ Applications ▪ Appraisals ▪ EEO	▪ Hiring ▪ Promotion ▪ Payroll ▪ Training	▪ Filled Positions ▪ Pay and Benefits ▪ Retirements ▪ Trained Customs Officers	▪ Supervisors/ Managers ▪ Applicants/ Employees	▪ Quality Employees ▪ Proper Benefits & Retirement Execution ▪ Educated Workforce ▪ Culturally Diverse Workforce
FINANCIAL MANAGEMENT					
▪ Vendors ▪ Employees	▪ Revenue Collections ▪ Invoices ▪ Travel Requests ▪ Financial Plans	▪ Planning ▪ Accounting ▪ Reporting ▪ Paying	▪ Travel Payments ▪ Paid Invoices ▪ Revenue Deposits ▪ Internal Controls ▪ Reports	▪ Employees ▪ Other Agencies ▪ Administration	▪ Accurate Accounts ▪ CFO Compliance ▪ Satisfied Customers
PROCUREMENT					
▪ Customs Units ▪ Vendors ▪ Contractors	▪ Requests ▪ Proposals	▪ Small Purchase ▪ Pre-award ▪ Post Award	▪ Contracts ▪ Purchase Orders ▪ Interagency Agreements ▪ Modifications	▪ Customs ▪ GAO ▪ Congress ▪ Treasury ▪ Other Agencies	▪ Goods and Services Provided at a Reasonable Price and Time Within Rules and Regulations
LOGISTICS					
▪ Customs Units ▪ GSA	▪ Requests ▪ Requirements	▪ Space and Facilities Management	▪ Leases ▪ Construction ▪ Free Space	▪ Customs ▪ Public ▪ Brokers/Importers ▪ Other Agencies	▪ Space and Facilities Provided Timely at Reasonable Cost
INFORMATION MANAGEMENT					
▪ Vendors	▪ Requests ▪ Requirements ▪ Standards	▪ Software Development ▪ Equipment Installation ▪ User Support	▪ Software ▪ Installed Equipment ▪ Response to User Requests for Help	▪ Employees ▪ Management ▪ Other Agencies	▪ Satisfied Users of Functional Systems

CHAPTER SIX

ESTABLISHING PARTNERSHIPS WITH OUR CUSTOMERS TO ENHANCE ORGANIZATIONAL EFFECTIVENESS

INTRODUCTION

Focusing the organization's attention on satisfying the customer is an essential element of process management. While customer service is a prevalent operating philosophy in business, the concept is newer in the government, where it is supported by the Government Performance and Results Act and the National Performance Review. While recognizing that there are fundamental differences between the private and public sectors, the NPR also recognizes that a focus on satisfying the customer can be instrumental in increasing the responsiveness of the bureaucracy to taxpayer concerns that government costs too much and provides too little.

In previous studies of the Customs organization and at the outset of this study, the initial focus was on developing ways to make Customs more efficient. As a result of group interviews and visioning sessions, however, more emphasis was placed on ways to better meet the needs of our customers. Ideas such as closing low volume ports, centralizing FP&F or consolidating classification and value functions were replaced with proposals to maintain or increase customer service levels through technology or automation. We ultimately determined that focusing on customer service produces true efficiency by directing our resources where they can best meet customer and mission needs.

This chapter explains how we will establish partnerships with customers in order to satisfy their requirements.

CURRENT STATE

Customs has given considerable attention to its external customers in the past. The broker and importer communities give Customs high marks for the Automated Commercial System (ACS) as a means of transacting the business necessary for filing Customs entries. Our customer group interviews reaffirm the sense that Customs has made great strides in improving relationships with the trade community during the early 1990's, and they recognize Customs as one of the most responsive federal agencies with which they deal. Passage of the Modernization Act, with its informed compliance tenet, has accented Customs need to interact even more closely with its customers so that they can attain higher levels of compliance with import requirements, through educational initiatives.

Nevertheless, the concept of customer service has been a continuing source of controversy within Customs. This controversy has been embodied in the continuing debate over achieving the right balance between enforcing the law and facilitating the flow of conveyances, merchandise, and people into the country. Further, the agency has tended to focus on one customer at a time to the exclusion of other customers. At various times, priority has been given to the concerns of brokers, importers, and domestic industry. But Customs has never incorporated customer service goals into its goal setting and performance measurement processes.

As a result, our customers made numerous recommendations for improved performance, which are depicted in the following table.

Implement trade enforcement programs that more effectively combat serious non-compliance and fraud issues.
Improve uniformity of policy application.
Increase the predictability of regulations, rulings, interpretation, and enforcement.
Provide advanced information on policy changes.
Release cargo efficiently and expeditiously.
Increase responsiveness to questions about status of shipments and protests.
Provide more consistent and reliable responses to information requests.
Improve training of the Customs workforce.
Adopt more of a customer service attitude.
Make the Fines, Penalties and Forfeiture process more consistent and responsive to customer needs.
Ensure access to people for quick problem resolution.
Emphasize greater interaction and communication with customers.
Increase effectiveness of automated systems.
Increase coordination efforts with other agencies.

Internally, employees expressed concerns about ineffective administrative support and did not feel that they are recognized as customers of our administrative support processes. Instead, they complained of being burdened with supporting the systems that were intended to support them. And they share the concerns of the external customers about the adequacy of the Customs training programs, coordination with other agencies, and a lack of uniformity in operations. The result is that our past efforts have not proven satisfactory to either external customers or Customs personnel.

DESIRED STATE

It is clear that achieving our vision of forging more effective partnerships to accomplish our mission will require a more sophisticated approach to managing customer relationships than we have exercised to this point. Understanding our customers and their needs is the key to re-engineering our existing processes to make them more effective and efficient.

Our vision of how we will relate with our customers in the future calls for recognizing all of our customers, accepting them as extensions of our agency, determining and understanding their needs, and devising strategies responsive to their needs which are consistent with our ability to deliver.

Like other organizations, we will face numerous challenges to achieving our vision because we are often faced with conflicting customer interests. Importers want all imports to clear Customs without examination, while domestic interests might desire 100 percent examination. Our goal for dealing with such instances of competing customer interests will be to minimize customer dissatisfaction with our operations. The way to realize this goal is by continually measuring the efficiency and effectiveness of our business processes.

Clearly stated and tangible customer service standards or outcomes for all processes need to be established for both our internal and external customers. This involves setting targets for improvement and committing the efforts of the organization to their achievement, especially in the area of informed compliance. This also requires a commitment by the agency leadership both to external customers and to agency employees. Only in this way can we ensure that Customs is incorporating outside perspectives into its judgments about the value of its processes in accomplishing the agency's mission. It is important to be clear that, in our attempts to satisfy all of our customers, our first priority is to protect the health, safety and security of the public.

Some examples of customer service standards for core processes are depicted in the table on the next page. These standards are for illustrative purposes only. Actual standards need to be developed based on customer needs, mission requirements and process outcomes. Further, we have much work to do to develop reliable baseline performance data.

EXAMPLES OF CUSTOMER SERVICE STANDARDS FOR CORE PROCESSES	
Passenger Compliance	Increase compliance with all laws from 96% to 99%
	Increase the percentage of passengers cleared with in 15 minutes from 82% to 90%
Cargo Compliance	Increase compliance with all laws from 85% to 95%
	Improve targeting efficiency so that examinations producing discrepancies increase from 9% to 25%
Investigations & Intelligence	Increase the percentage of inspectors who said they were satisfied with overall coordination with Special Agents from 85% to 95%
	Increase the number of respondents who are satisfied with the relevance and timeliness of intelligence analyses from 60% to 80%
Personnel	Increase customer satisfaction with the speed, accuracy and efficiency of personnel services from 75% to 90%
Logistics	Reduce space acquisition cycle time from 9 months to 4 months
	Increase compliance with CFO Act by accounting for 100% of capitalized equipment as verified by the annual inventory
Information Management	Raise the percentage of employees who are satisfied with the delivery of automated equipment, availability of training, and responsiveness to programming needs from 80% to 90%

The development of performance standards to satisfy customer requirements will be the responsibility of process owners. Systematic discussions with customers are a key to determining their needs and providing the basis for deciding what strategies to undertake and what performance measures to establish.

We held such discussions for five mission-related activities and five administrative processes. Called process visioning, these sessions involved customers and Customs managers in the assessment of the future environment and a definition of performance objectives, such as cost, time, quality, and service responsiveness levels. For illustrative purposes, the performance criteria developed during the cargo compliance session are summarized in the following table.

ILLUSTRATIVE PERFORMANCE OBJECTIVES FOR CARGO COMPLIANCE	
1	Broadly define compliance in terms of industries or companies, rather than on a transaction basis.
2	Provide incentives for compliance in terms of reduced cost and time for compliance.
3	The cargo compliance process should be electronically driven.
4	Resolve issues in the penalty process faster and in an impartial manner.
5	Industry enforcement goals should be clarified.
6	Improve responsiveness to customers with easy access, one point of contact, and one documented answer.
7	Promote the value of partnership toward the goal of compliance through an emphasis on information and analysis.
8	Ensure equitable treatment of large and small players.
9	Provide the flexibility to recognize geographic distinctions where they are a factor, national emphasis where they are not, and move away, wherever possible, from the border/point of entry emphasis of the past.
10	Differentiate more between industry sectors in the compliance process with Customs personnel becoming industry risk assessment specialists.

The results of all visioning sessions will be made available to the Executive Improvement Team and to designated process owners to serve as a starting point in identifying customer needs and developing appropriate performance measures.

STRATEGIES FOR ACHIEVING THE DESIRED STATE

FQI has provided the study team with concepts to enable Customs to develop a more rational and systematic approach to identifying our customers, determining their needs, incorporating those needs into our performance goals and strategies, and measuring the effectiveness of our strategies in satisfying those needs.

The following strategies will achieve the desired future state.

- Train key managers in customer service concepts.

- Charge process owners with incorporating customer service goals into operating plans to support the Five Year Plan. Process owners will identify the full range of customers, determine customer needs, develop measurable customer service goals, and develop strategies to achieve the goals.

- Use the performance evaluation phase of the annual planning cycle to assess process owners' performance in attaining customer service goals.

- Make achievement of customer service goals an integral part of institutional efforts to assess organizational and individual performance.

- Provide for regular contact with customers to obtain their assessment of our performance, and to engage in a continuing dialogue about how Customs, in cooperation with its customers, can continue to improve its service delivery.

- Ensure that Customs has the necessary expertise in survey evaluation and statistical methodologies to support its efforts to develop customer service information.

CONCLUSION

Establishing partnerships to address customer needs will have many benefits for Customs. It will represent a welcome change from the often antagonistic relationships of the past. Developing partnerships with our sister agencies will help to improve our mission performance and to meet a persistent desire of the private sector for more coordinated federal enforcement policies and procedures. Partnerships with the private sector will provide us with a better basis for clarifying our goals and priorities for our people, and developing integrated Customs-wide strategies to satisfy customer needs. Through the use of agreed upon measures of performance, we will be in a better position to assess the benefits of various programs and make better resource allocation decisions. We will also have a better basis for clarifying roles and responsibilities for goal achievement. Thus, the application of customer service concepts not only addresses the concerns of our partners, but many of the concerns of our people.

CHAPTER SEVEN

BUILDING A WORKFORCE FOR THE 21ST CENTURY

INTRODUCTION

Developing an agency culture based on people, processes, and partnerships is a formidable challenge. The essential element in achieving such a culture is, of course, human resources. We cannot hope to achieve our vision or desired culture without the understanding and commitment of our employees. However, a human resources plan cannot be developed in a vacuum, rather it must be derived from our vision for the agency, from the processes which represent the work of the agency to achieve that vision, and from the requirements of our customers.

In this chapter we outline the current state of our human resources program in Customs, describe the desired future state, and develop recommendations and strategies for realizing the desired state.

CURRENT STATE

In this difficult economic environment, a secure federal job is a good job. A career in the Customs Service is a rare opportunity to serve the nation. Few federal employees have the opportunity to serve their nation so well as Customs employees. Almost every great challenge facing the country in recent decades has involved Customs. From narcotics trafficking to money laundering, from trade deficits to budget deficits, from predatory trade practices to competitiveness, from protection of traditional manufacturing to high technology industries, from the safeguarding of health, safety, and environment to national security, Customs has been at the forefront in contributing to solutions of the great problems of our times. Our employees have performed superbly whatever the need, crisis, or challenge.

Customs people have been proud to serve. As in the military, "It is not just a job, it's a career." Along with the satisfaction of serving have come secure jobs, fair pay, benefits, retirement programs, advancement opportunities, and the respect and admiration of the people we serve. In many parts of the country and in many small communities, Customs jobs are the best and the best paying. In recognition of these benefits most employees make Customs a career. Few leave Customs and many of those who do, seek to return.

At the same time, as noted in our group interviews with employees, our human resource environment has severe deficiencies. On the negative side, our agency human resource environment could be characterized as follows:

- an adversarial relationship with our employee union;
- a control-oriented management style;
- an Office of Human Resources perceived as non-responsive to employee needs;
- training programs that do not meet employee developmental needs, do not prepare them to improve their performance and are not delivered in a time frame that allows employees to immediately apply what they have learned (i.e., we do not have "just in time" training);

- an organization that too often fails to encourage employees to apply their training on the job;
- an organizational structure with too many layers between top management and front line employees, hindering effective communications; and,
- a loyalty to function and discipline that frequently results in destructive internal competition.

DESIRED STATE

It is the first obligation of leadership to provide an environment in which employees can make their best contribution to the goals of the organization, free from fear, harassment, and bias. The desired state of the Customs human resource program is to achieve such an environment, to maintain the many positive aspects of our working conditions, and to remove the obstacles and negative aspects in our work situation. In summary, our desired future human resources state would include:

- a positive relationship with our elected and appointed employee representatives;
- a more collegial approach to dealing with employees, and a movement toward a management style characterized by supporting and coaching;
- an Office of Human Resources that serves employees as internal customers and supports management in achieving operational goals through strategic human resources planning;
- a streamlined organization without unnecessary layers;
- a better understanding by all disciplines and employees of the goals of the organization, and the role that each discipline and organizational element plays in the achievement of those goals; and,
- an organization in which all employees are provided with quality training designed to improve their performance and delivered "just in time".

STRATEGIES FOR ACHIEVING THE DESIRED STATE

The following elements are strategies for achieving the desired future state:

- elevate the Office of Human Resources within the structure of the new organization to integrate all human resource processes;
- emphasize cross functional teams as a routine approach to Customs operations;
- ensure that training programs are geared toward improving the capacity of employees to contribute to process improvement and customer needs;
- take advantage of the opportunities in personnel management provided by the NPR to reduce costly requirements to comply with extensive federal personnel regulations, and to establish more flexible performance management and reward systems;
- refine the human resources management support process and apply the management tools to improve the process, including re-engineering, to take advantage of the NPR;
- utilize training in process management techniques to explain the value and role of all disciplines within the Customs Service;
- make greater use of the expertise available from our customers in designing and delivering effective training programs;
- involve and train all employees and managers in the techniques of process improvement and customer service;
- develop/modify performance appraisal systems for senior executives, managers and employees to reflect contributions to processes and work in the cross functional team environment;

- provide Customs managers, supervisors and NTEU officers with the training necessary to implement the desired employee-supportive management style; and,

- initiate a system of employee feedback on managerial and supervisory performance to assess our progress in moving toward a management style that supports the development of our people.

NTEU PARTNERSHIP

On June 13, 1994, the U.S. Customs Service and the National Treasury Employees Union entered into a far-reaching labor-management partnership with the aim of building the Customs Service into a successful and efficient organization responsive to the pressing needs of our Nation, and attentive to the concerns of its employees.

Through Partnership Councils and employee empowerment we will strive for those goals that are crucial to the Customs mission, and by obtaining them we will gain a renewed sense of job satisfaction and achievement, while at the same time setting a new and greater standard for others to reach.

CONCLUSION

FQI advised our study team that employee satisfaction begets customer satisfaction. We cannot achieve our vision without acceptance by our people, and without systems that encourage innovation, invite risk taking, and promote efficiencies. We believe that our proposals for changing the Customs Service respond to the concerns expressed by our people. The heightened attention we will give to human resources planning will lead to better linkages with mission planning, resulting in clarifying the roles and responsibilities of our people in mission accomplishment, and encouraging teamwork. Through our partnership with NTEU, we signal an intent to involve our people in both the identification and solution of management problems. Through a renewed commitment to training, we will ensure that our people have both the technical training and the understanding of process improvement techniques to contribute fully to the reinvention of the Customs Service.

CHAPTER EIGHT

ORGANIZATIONAL STRUCTURE

INTRODUCTION

The old axiom that "form follows function" is a fundamental principal of organizational architecture. In designing the organizational structure for Customs, the study team established goals to define the core business processes of Customs and to develop, from the bottom up, an organizational structure that would facilitate achievement of the goals of those core processes. In this chapter we review the current state of Customs organization and present the proposed new structure based on the core processes.

CURRENT ORGANIZATIONAL STRUCTURE

The current structure of the Customs Service has been in place, with only minor changes, since the mid-1960's. This structure is a result of the 1965 "Stover Report" which called for consolidation of the 47 "Collection Districts" into 25 districts, with oversight by a new layer of six (6) regions and a realigned Headquarters with four (4) major offices. The objective was to create an organization with "unity of command" at all levels and responsiveness to the users of Customs services. Although the Stover proposals were not fully implemented (the numbers of districts and regions created exceeded the original plan) the resulting organization has served us for almost 30 years. Through this organization, or in some cases in spite of it, Customs employees made their contributions to the nation by collecting billions of dollars in revenue, seizing tons of narcotics, preventing predatory trade practices, and protecting our borders from a variety of threats to the nation's health, safety, security, and environment.

The current structure includes:

- a Headquarters consisting of 1,800 full-time permanent personnel;
- seven (7) regions;
- 42 districts;
- 27 Special Agent in Charge (SAC) offices;
- 301 ports of entry; and,
- 105 Resident Agent in Charge (RAC) and Resident Agent (RA) offices.

It is the general consensus of Customs personnel and customers that the current structure is now outdated and obsolete, and in some ways actually dysfunctional. The current structure has been characterized as:

- layered and hierarchical;
- lacking the cooperation and coordination among functional units needed to achieve mission goals;
- based on a command and control style of management; and,
- obsolete as a result of new management techniques and computerized communications technology.

A number of changes within Customs and our operating environment have necessitated a review of our organizational structure. The tremendous growth in our workload, the size of the organization, the growth in administrative and overhead positions, changes in technology, new requirements placed on the agency, changes in trade and travel patterns, and unnecessary layers and barriers in the organization growing over time are all factors requiring an organizational restructuring.

DESIRED ORGANIZATIONAL STRUCTURE

Creating an organizational structure that addresses our current problems, facilitates a move to process oriented management, and which allows adaptation to an environment of continuous change requires a bold new design. To this end, the study team built the proposed new structure from the ground up, with a foundation based on the ports. Since the ports are already dedicated to process execution and customer service, streamlining efforts were directed at the remaining parts of the structure, namely, at the districts, regions and Headquarters. As a result, the ports will be empowered with some of the functions and authority now held in the district and regional offices. A graphic view of this transfer of responsibility is shown on the Customer Service Locations chart. The new organization was designed with a customer focus. The result, described as follows, is a simplified, three level organizational structure that emphasizes service delivery at the field level and minimizes management overhead.

Field Operations Level - The key component at this level is the port, with investigative, intelligence and interdiction support provided by the SAC's, RAC's and Air Branches. As noted above, changes at this level will be minimal, and directed toward bolstering the existing resources as follows:

- The number of ports will remain unchanged. Any service currently provided at a port will continue under the reorganization. The intent of the reorganization is to enhance service delivery at each port through business process improvement (BPI) techniques undertaken by systematic consultation with our customers. Customs will maintain or increase port staffing levels as a result of this reorganization.

- The number of RAC's will be increased from 105 to 112 by converting seven (7) SAC's to RAC status. This name change will not affect current staffing levels or the level of investigative effort undertaken at the affected locations;

- The number of air branches will be increased from 9 to 11 by consolidating two C3I centers into a single C3I Branch and converting the Surveillance Support Center into a Branch.

Field Management Level - This level represents a major change from the current organization to produce a streamlined management layer devoted to supporting the employees and processes at the field operations level. These components and the changes from the current organization are discussed below:

- Twenty Customs Management Centers (CMC's) will be created as a single management level between the 301 ports and Headquarters. The 20 CMC's will report to the Assistant Commissioner (Field Operations) in Customs Headquarters. They will oversee execution of the core business processes at the ports within their respective geographic areas shown on the "Customs Management Area" map, and will coordinate with counterpart SAC offices in executing the anti-smuggling core process. Their most important function will be to ensure that Customs delivers high quality uniform service at the ports within each area, but they will not be a formal level of appeal for external matters. Employees at the CMC's will work with Headquarters process owners to develop workable policies for the field, and with port directors to achieve national goals while meeting the challenges posed by the diverse locations where Customs delivers its services. In addition, CMC's will

provide administrative support to ports, and will play a critical role in overseeing national policies intended to improve and develop our most important resource: Our people.

The 20 CMC areas indicated in this report should be understood to be the maximum number for effective and efficient administration. If Customs were required to sub-divide any of the indicated areas, the resulting units would have too small a workload and Customs workforce to be operated effectively. In addition, the opportunities for overhead reduction which are crucial to implementing other streamlining proposals would not be possible. Also, any expansion of that number would disrupt the integration of the functions of CMC's and SAC's.

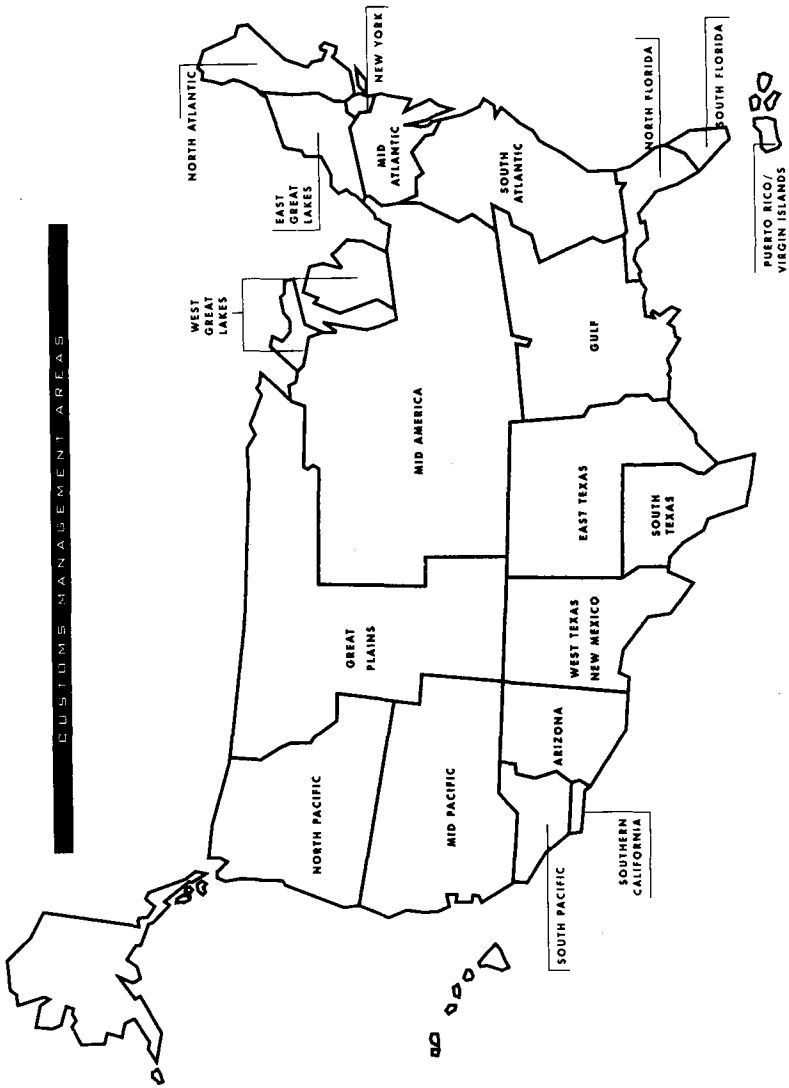
- Five Strategic Trade Centers (STC's), each with a defined area of responsibility, will be created to enhance Customs capacity to address major trade issues such as textile transshipment, value, anti-dumping, and intellectual property rights enforcement. The approach will emphasize cross -functional teams composed of auditors, agents, trade specialists, and analysts. The scope of STC operations will be national and international, with each center taking the lead in analyzing threats and developing strategies for addressing trade issues.

  To assure a global focus and to avoid duplication, the STC's will have assigned areas, for instance NAFTA, textile transshipment, and IPR. Thus they would serve as a national resource for all CMC's and SAC's. Based on their research and analyses, STC's might conclude that significant problems do, in fact, exist. They would then recommend new and creative actions and strategies to deal with the problem. The actions may be jump teams, special operations, joint task forces, creation of special cross functional teams, referrals for criminal investigation, referrals for audit, interaction with other nations' customs services, etc. The efforts of the five centers will be coordinated by an Assistant Commissioner.

- Regions will be abolished and districts as a management layer will be eliminated. Affected staffs will be retrained and reinvested in field operations and strategic initiatives. District offices are located within ports-of-entry and share resources with the ports. All resources and services related to port-of-entry operations will remain. Entries will be filed exactly where they are today, cargo will be cleared exactly where it is today, and passengers and conveyances will be processed at the same locations as today. Employees who perform these services will continue to carry out their responsibilities at the same locations as today.

- The current 27 SAC's will be reduced to 20 and collocated with the 20 CMC's to facilitate coordinated implementation of Customs-wide strategies to achieve process and mission goals. We recognize that there may be some modification necessary in order to respond to unforeseen operational circumstances. The SAC's will provide oversight for the RAC processes, and oversight of investigative personnel in the CMC areas shown on the map.

- The existing C3I centers will be consolidated into a single C3I Branch; the Surveillance Support Center will become the Surveillance Support Branch, and the Air Operations Centers will be reduced/consolidated into a single Air Operations Center at CNAC with responsibility for national coordination of the air program and oversight of the 11 air branches.


CUSTOMS MANAGEMENT AREAS
NORTH ATLANTIC
NEW YORK
EAST GREAT LAKES
MID ATLANTIC
SOUTH ATLANTIC
NORTH FLORIDA
SOUTH FLORIDA
PUERTO RICO/ VIRGIN ISLANDS
WEST GREAT LAKES
MID AMERICA
GULF
EAST TEXAS
SOUTH TEXAS
GREAT PLAINS
WEST TEXAS NEW MEXICO
ARIZONA
NORTH PACIFIC
MID PACIFIC
SOUTHERN CALIFORNIA
SOUTH PACIFIC

Headquarters - There will be major changes to focus Headquarters on its role as the responsible level for development and oversight of nationally consistent policies that are effective in achieving mission goals derived from recognition of customer needs. To ensure that Headquarters remains focused on broad policy issues, major cuts in Headquarters staffing are planned. The major components of the overall organizational structure, including the Headquarters, field management, and field operations levels, are shown on the chart entitled "New Organizational Structure". The new Headquarters structure is described below.

- Establish Assistant Commissioners with a renewed focus on core business processes. The reorganization addresses two problems with the current Headquarters organization which have burdened the Office of the Commissioner and contributed to operating problems. First, the functional focus of operating offices has served to distract top management from assessing progress toward mission goals. Second, the reliance on the regions to oversee field operations has not ensured consistent policy implementation.

  Under the reorganization, Assistant Commissioner level offices will be responsible for policy development and national oversight of field implementation of strategies to improve our core business processes to accomplish mission goals.

  - Office of Field Operations will be responsible for the cargo and passenger core processes, oversight of the CMC's, ports and labs; and shared responsibility for the anti-smuggling and the informed compliance processes;

  - Office of Investigations will be responsible for the investigations and intelligence core process, shared responsibility (with the Office of Field Operations) for the anti-smuggling core process, and oversight of the SAC's, RAC's, air center, and air branches;

  - Office of Strategic Trade (OST) will be responsible for the strategic trade process and will share responsibility for the informed compliance process. OST will take the lead in developing the strategies for assessing the level of trade compliance. Compliance will routinely be assessed through random examinations conducted at the ports. However, OST will also avail itself of the analytical resources resident in the Strategic Trade Centers to address major trade issues, such as transshipment and intellectual property rights, which cannot be effectively addressed through transaction reviews at the ports.

  OST will also provide policy leadership for achieving improved informed compliance, and combined with Regulatory Audit and the National Import Specialist Division will provide the core knowledge required to fully inform importers, brokers and others of Customs requirements. Publication of Customs compliance data will also be a key component in enabling the trade to initiate their own efforts to achieve compliance.

  - Office of International Affairs will retain its current responsibilities of managing international activities and programs, and for the conduct of U.S. Customs bilateral relations with other countries. The office oversees the negotiation and implementation of all international agreements and is responsible for all foreign training assistance provided by the U.S. Customs Service.

  - Office of Internal Affairs will retain its current responsibilities for ensuring compliance with all Servicewide programs and policies relating to security activities and for executing the internal security and integrity programs. The office will assume the responsibility for the management inspection program.

- Office of Congressional and Public Affairs will retain its current responsibilities and advise Customs managers on legislative and congressional matters, assist members of Congress and their staffs by reviewing the salient points of current and proposed Customs programs, and ensure that the interests of the trade and business community are considered when an operational change or new legislation is under consideration. The office will also assist Customs managers in their relationships with the public, other government agencies and the media.

- Office of Regulations and Rulings will exercise its current responsibilities in addition to building upon the informed compliance capabilities being implemented throughout the field by performing more of an appellate role and less of a rulings issuance role, in conjunction with performance of a regulations review and quality assurance oversight objective.

- Realign management of mission support services. Customs administrative services need to be restructured to respond to widespread criticism, and to achieve the goals for improved services sought by the NPR.

  - Office of Finance, headed by the Chief Financial Officer (CFO), will be responsible for administering the broad range of financial management activities delineated under the Chief Financial Officers Act, including accounting, budgeting, procurement, logistics, and internal controls. These responsibilities are set forth as the Budget Formulation/Execution, Financial Management, Logistics and Procurement Support processes. The reorganization will align the CFO's responsibilities with those called for in OMB guidance.

  - Office of Human Resources Management will be responsible for the human resources support process which includes planning in support of the business process improvement efforts, personnel services, training, labor management relations, and worker safety. This office should play a leading role in working with NTEU in the development of strategies to implement the partnership agreement signed on June 13, 1994. The Assistant Commissioner will also work closely with the Special Assistant for Equal Employment Opportunity in integrating EEO goals into Customs human resources policies.

  - Office of Information and Technical Services is responsible for the information management support processes which will combine current organizationally segregated information technology, communications, and research and development functions, resulting in better coordinated strategies for meeting mission related needs.

- Enhance the strategic management capacity of the Office of the Commissioner. In the current state, the Office of the Commissioner has been heavily burdened because it is the only office in a position to manage objectives and programs that cross functional and geographic boundaries to produce nationally consistent, mission related outcomes. As an additional means to strengthen the overall management and leadership of the Office of the Commissioner, the Deputy Commissioner will assume the new and enhanced role as the Chief Operating Officer (COO). In addition to supporting the Commissioner, the COO will manage and coordinate the day-to-day policy considerations necessary to integrate and improve Customs core and support processes.

- Additional Headquarters changes of vesting responsibility for mission policy development and implementation at the Assistant Commissioner level, focusing on business process and improvement, and establishing an Executive Improvement Team (EIT) to oversee process improvement efforts

represent major enhancements in the capacity of the Office of the Commissioner to focus on strategic issues confronting the Customs Service. Nevertheless, the Commissioner will face major challenges in leading the cultural change efforts while directing mission operations.

An Office of Planning and Evaluation will be established to provide staff support to the EIT in implementing the strategic planning process and in leading the cultural change. This office will provide the statistical and survey research methodologies needed to develop baseline measurements of Customs compliance and to develop better measures of Customs performance, utilizing customer and employee surveys.

- Reduce Headquarters staff from 1800 to 1200 permanent full-time positions. This statement is an ambitious goal, which is largely dependent upon the progress of NPR recommendations. In addition, this goal rests on the premise that Headquarters should be focused on policy formulation and oversight, and not be deeply involved in day-to-day operational issues which are the responsibility of port managers. It is also anticipated that the evolution to process management will result in more streamlined processes, culminating in changes to a number of continuing programs that now require Headquarters staffing. We anticipate greater reliance on field personnel working with a limited cadre of Headquarters staff in the continuing analyses of our processes and sub-processes to ensure the development of strategies that meet mission requirements, satisfy customer needs, and are workable at the field level. The ability to achieve the maximum opportunities for reducing Headquarters in many of the management support areas is dependent upon the progress of NPR implementation. Through this vision of Headquarters operations, we intend to be responsive to the concerns of our people over ever increasing Headquarters reporting requirements and to the expectations throughout the business community and public sector that we improve efficiency. Further, our effort to streamline Headquarters staffing is an essential part of our strategy to reinvest resources to mission areas demanding increased attention. The EIT will charge process owners with developing plans to achieve mission goals with streamlined staffing at Headquarters as well as throughout the agency.

The ultimate development of detailed organizational and staffing plans are to be the responsibility of the process owners. Accordingly, they will be charged with meeting guidelines for ensuring that we achieve our Headquarters staffing reduction goal. For example, the guidance calls for developing plans which:

- create no organizational sub-structures beyond two organizational levels below the Assistant Commissioner,
- consolidate existing elements of less than 15 employees,
- create organizational sub-structures with a supervisor to employee ratio of 1:15 or greater; and,
- create no new administrative type positions or staffs.

CONCLUSION

This proposed structure creates a streamlined, three-tiered organization that emphasizes customer service, facilitates execution of processes, brings our employees together along mission and process lines, and minimizes management overhead. Collocation of the CMC's and SAC's will facilitate cooperation and teamwork. Maintaining our existing port structure, with additional resources reinvested from the reduced management layers, will continue or increase the level of service we provide to customers. In the next chapter we discuss ways to reinvest the resources that will be made available under this new organization.

NEW ORGANIZATION STRUCTURE

CUSTOMER SERVICE LOCATIONS

CUSTOMER SERVICE LOCATIONS	PRESENT STATE			AFTER REORGANIZATION		
SERVICE	DISTRICT	REGION	HEADQUARTERS	PORT	CMC	HEADQUARTERS
Entry/Entry Summary Processing	•			•		
Bond Processing/Approval	•			•		
Broker Licensing/Compliance	•		•	•		•
Line Release Accept/Approve	•			•		
Binding Ruling	•		•	•		•
Pre-Class & PIRP	•			•		
Drawback	•	•		•		
Protest Decision/Appeal	•	•	•	•		•
FP&F Appeal	•	•	•	•		•
Technical Appeal	•	•	•	•		•
WHSE/FTZ Information/Audit	•			•		
Landing Rights	•	•	•	•		•
Overflight Exemptions	•			•		
Airport Security Program	•			•		
Operational Information/Assistance	•	•	•	•		
Uniformity Assistance	•	•	•	•	•	•
Process Execution	•			•		
Process Oversight	•	•	•		•	•
Policy Development	•	•	•			•
Administrative Support	•	•	•		•	•

CHAPTER NINE

TRANSITION & IMPLEMENTATION STRATEGY

Implementation of the strategies developed in this report will be a long and difficult process. Changing the culture of the Customs Service, defining and improving our processes, identifying customers and their needs, retraining our workforce, realigning our organizational structure, introducing a new management strategy, and reinvesting staff and other resources are all major undertakings with deep impact on the Customs workforce. Making these changes will require a long-term commitment of resources, energy and management attention.

This report sets a new direction for the Customs Service to take. Implementation planning and follow through will be accomplished by a long-term transition team or teams. In this chapter we discuss the transition from this report to implementation. There are three major components to the transition:

- cultural conversion
- process management
- organizational change

CULTURAL CONVERSION

Understanding the reasons for change is considered to be of equal importance with the actual organizational changes themselves. Gaining the understanding and acceptance of managers, employees, and our customers and stakeholders will be given the highest priority during the early stages of the cultural conversion and transition. This understanding will come in several ways. We will communicate directly with our managers and employees about the cultural conversion we envision, and the intended benefits to the organization. This will take place in concert with initial extensive training over a six month period and built into all Customs training courses in the long term. There are two strategies for implementing this training.

- Training Partnerships - Customs has entered into a training partnership with the Brookings Institution and the Federal Quality Institute to provide the direction necessary to lead the agency through our cultural transformation. This partnership has developed and has begun training our Executive Management Team, Regional Commissioners, SES personnel, SES candidates, District Directors, Special Agents In Charge, and senior NTEU officials. This training incorporates a blend of theory and specific applications of how that theory relates to the Customs Service. This curriculum addresses, for example, the following issues:
  - process management
  - process improvement and process re-engineering
  - performance standards and measurements
  - cross-functional teams
  - Customs core and support processes
  - customer focus
  - leadership/coach versus command/control
  - NTEU partnership

- Cascading Training - Equally important to the success of the cultural conversion is ensuring the entire Customs workforce understands how and why the organization is changing. Through the use of a variety of means, everyone will be introduced to the cultural and organizational changes. The importance of this training cannot be overstated.

Training alone will not bring about a cultural conversion. A number of other efforts will be required over the long term to achieve the major cultural change that we envision. This will require the continuing demonstration by the leadership of the organization that we are committed to improving the organization. This commitment can and must be demonstrated in a variety of ways, such as:

- selecting process owners from our most talented executives and supporting their efforts to develop and implement radically improved processes;
- establishing performance measurement encompassing customer satisfaction, effectiveness, and efficiency measures as central to organizational decision making;
- ensuring that our reward system recognizes teamwork, customer satisfaction, and the accomplishment of mission goals;
- involving external customers in our planning and performance assessment processes; and,
- listening to the concerns of our employees and involving them in designing solutions.

IMPLEMENTING PROCESS MANAGEMENT

Another essential component of the transition will be the implementation of the new process management approach. This is the foundation upon which Customs will manage in the future. It will begin with a top down approach through the appointment of two key entities:

- Executive Improvement Team (EIT) - The EIT will be formed with senior managers named by the Commissioner and will operate under the chairmanship of the Commissioner. Among the EIT's first tasks will be to name owners for the core and support processes, to define these processes, and to initiate significant improvement projects. Over the long term, the EIT will serve as the top level review for process improvement efforts.
- Process Owners - Ownership of Customs core and key support processes is essential to the successful implementation of the recommendations in this report. The first order of business for the EIT will be to name "Process Owners" for the key processes. The Process Owners will assume responsibility for the process from end to end. They will be responsible for formulating ambitious, measurable goals; identifying the full range of process customers and their needs, building upon preliminary process maps developed during the reorganization study; deciding difficult staffing and organizational issues; developing performance measures; and guiding implementation across the organization. Since the focus in process improvement efforts is to address customer needs, the process owner will be responsible for maintaining effective working relationships with all customers, enlisting their involvement in improvement efforts, and soliciting their feedback on the effectiveness of our strategies. Process Owners will determine the need for improvements to their processes and the appropriate tools to be applied. With approval from the EIT, Process Owners will establish Process Improvement Teams (PIT's), staffed with field personnel with operational expertise in the process, to carry out the improvement effort.

CHANGING THE ORGANIZATIONAL STRUCTURE

The third essential element of the transition period will be the process of changing to the new organizational structure. Revising organization codes, creating functional statements and position descriptions, obtaining management and Treasury Department approvals, and a number of other detailed tasks must be undertaken to officially create the organization structure described in this report. The most important part of this effort will be planning for and carrying out the movement of employees from targeted Headquarters, region and district positions to jobs in ports, CMC's, SAC's, RAC's, and the STC's. A dedicated team will be established to work with senior managers and process owners in performing these important tasks.

SCHEDULE

The chart on the next page lays out milestones and a schedule for the transition period. It is expected that this schedule will be modified by the transition team as they develop more detailed plans. This schedule focuses on the initial activities immediately following the release of this report in an effort to emphasize the need for a quick start to what will be a lengthy implementation process.

CONCLUSION

This report, "People, Processes and Partnerships - A Report on the Customs Service for the 21st Century," presents an ambitious plan to transform the culture of the Customs Service and the way we organize, manage, operate, lead our agency, and deal with our customers. It was developed with the support, cooperation and participation of our employees, managers, customers, and private industry; and can only be implemented with their continued support. Even full implementation of all of the concepts of this report will mark only a beginning in the transformation of the Customs Service into a learning organization. We look forward to the challenges of the next century and the partnership with our employees and customers.

PROPOSED TRANSITION MILESTONES & SCHEDULE

ACTIONS	3 93	6 93	9 93	12 93	3 94	6 94	9 94
Report to Commissioner	•						
Commissioner's approval of report	• • • • • • • •						
Treasury approval	• • • • • • • • • • • •						
Form Transition Management Team & develop strategies	•						
OMB review			•				
Notify Congress			•				
Announce reorganization			•				
Congressional briefings at request			at request •				
Field briefings	• •						
Name Assistant Commissioners			•				
Establish formal partnership w/NTEU		•					
Form Executive Improvement Team			•				
Designate Process Owners			• • • • • • • • • • • • • • • • • • • •				
Complete human resource plan			•				
Cultural transformation training		• •					
Prototype Strategic Trade Centers				•			
Establish Planning & Evaluation Staff			•				
Assistant Commissioners develop structure, staffing, costs & savings info for headquarters offices				•			
Identify staffing, costs & savings info for field structure				•			
Ensure process outcome measures reflect 5 year plan goals				•			
Prototype CMC's				•			
Reinvent performance measurement & recognition systems					•		
Establish CMC's and STC's					• • • • •		
Abolish Regions and Districts						•	

• action • • • ongoing action

And I know as someone who has been in a staff role, that often the staff doesn't get all of the publicity about what they have been doing, but they are working behind the scenes. But I can tell you that Chris Smith, who has been working both for this subcommittee and for the Oversight Subcommittee, has taken a tremendous personal interest in all of this and has moved us in a tremendously constructive fashion.

I am proud of the direction the Customs Service is taking. I would like to just spend a very few moments, I won't even read my abbreviated statement since you decided to put the entire statement in the record. I would just like to talk for a few moments about a few of the concepts of what is going on, what we are talking about in the U.S. Customs Service.

We are very excited about being an agency that is not really standing still. We are moving forward and we have been moving almost from the time 4 years ago when this subcommittee began to do very close scrutiny of the operations of the Customs Service. But in the 18 or 19 months since I have been Commissioner, I have been very delighted to have a tremendous support of the U.S. Customs Service.

I think they had gotten out of their mode of denial, in terms of changes that needed to be made in the Customs Service. And as I came on as the Commissioner of Customs, they had already reached the point where they knew that change was necessary. And we began to work in earnest.

And I must say I apologize for such a crowded room, because I have to admit that much of this first row is taken up with U.S. Customs people. This is pretty much my entire executive management team. And obviously in the interest of time, I can't spend a lot of time introducing them, but I do want to let you know that the people of the Customs Service really are what makes it the agency that it is.

And I believe it started out from the basis of being one of the best of all agencies in Federal Government, and I think we are well on our way to making it even better. And a lot of that is because of the fine people that are behind me.

The one I will recognize just behind me to my left, is my Deputy Commissioner, Mike Lane, who took a reorganization study group, 20 people, and put together the outlines, working with the business community, working with people in academia, working with our customers that we interact with, and working with other Federal agencies that we work in partnership with, to come up with the recommendations that are set forth in this report, "People, Processes, & Partnerships."

There is a lot that is going on in the U.S. Customs Service right now. We are trying very hard to avail ourselves of the opportunities that were created by the legislation that you and Mr. Gibbons cosponsored that allowed to us modernize. The Customs Modernization Act was enacted into law as part of the NAFTA bill.

That has tremendous potential to allow us to move in the direction of modern technique, the paperless entry, of allowing our Customs Service to interact with our customers in a way that facilitates the movement of merchandise that is legitimate, but at the same time allowing us to improve our effectiveness of enforcement.

As we are going about that, we are also completely redesigning our automated commercial system. All of our automated systems now are more than a decade old. It is very important that we work with the automated system, with the Customs Modernization Act, the provisions that allow us to move forward, but coupled with that, there is like three prongs to a triangle. Basically it is the reorganization, the restructuring not only of our organization, not only the blocks on the organizational chart, and we will talk a little bit about that, but also a kind of refocusing on the way we do our jobs.

When we talk about "People, Processes, & Partnerships," the processes were so important. We took a step back as this reorganization team took a look at the work of the Customs Service, and they began to try to identify what are the core missions of the Customs Service, what is it that we are responsible for doing.

And when you look at that, you look at the merchandise processing of allowing cargo to come into the country, also we are very responsible for cargo leaving the country, we were very responsible, as Congressman Rangel has pointed out, for ensuring that we have the integrity of our borders to ensure that narcotics and any contraband does not enter this country, if so, we interdict it before it gets there.

We began to look at the way we did our business in the past and we found tremendous inefficiencies, what we call stovepipes in our organization. From top to bottom, we had separate organizational units. One, the inspectional force, the uniformed officers that you see as you travel, as you enter the country, they were separate from our Office of Commercial Operations, which was separate from our Office of Investigations which does a lot of our law enforcement work.

What you see in this new structure is bringing these stovepipes—taking down the stovepipes, focusing on improving our processes and the way we do our jobs, and doing it in a more efficient and effective way. That is the heart and soul, I think, of what we are talking about here.

The structure is important, and as we improve the structure, for example, when I talk about integrating, we no longer have a separate Office of Inspection and Control in Commercial Operations. We have integrated them together in an Office of Field Operations.

But just in a nutshell, some of the things that we are going to be able to accomplish through the restructuring that we are talking about here, we are going to reduce the size of our headquarters operation by at least one-third, from 1,800 people to 1,200 or fewer. We are eliminating two layers of management that exist now, our regional offices and our district offices.

There are currently 7 regional offices, 45 district or area offices. And we are replacing those two intermediate layers with one layer, and it is a very streamlined layer and it is a layer that we call Customs Management Centers. There will only be 20 of those.

So in lieu of the 52 offices that had been before, there will be 20 Customs Management Centers. But a Customs Management Center will be completely different than anything approaching what a regional or district office had been before. These are designed to be extremely small, lean operations, that are there not to interact

with the public, but there to provide the administrative support to our ports of entry. I think that is one of the most fundamental points of this reorganization.

We made a decision that we are going to maintain every single one of our 301 ports of entry around this country. We are not only going to maintain them, but we are going to build our organization on that foundation. It is at the ports of entry where we deliver our service to the customers. That is where entries are filed, that is where merchandise processing goes on.

And what we are going to be able to do through the streamlining that I have already talked about, is take between 800 and 1,400 people that are currently at various levels of management and administrative support functions, and translate those into frontline positions that can in effect carry out our work responsibility more effectively.

The other exciting new development in our reorganization that I think would be of great interest to this subcommittee is we have created an Office of Strategic Trade. We have never had an Office of Strategic Trade in the U.S. Customs Service. We had historically done our work transaction by transaction by transaction, without interdisciplinary cooperative teams, basically various disciplines passing off from one another, trying to do our best to enforce the trade laws in the way that you have enacted them.

I will be honest with you, we have had our successes, but for the most part, we have not done as good a job in enforcing trade laws as we should able to do. This Office of Strategic Trade will give us the opportunity to take a more strategic focus in the way we carry out that very important responsibility.

The Office of Strategic Trade will be made up of a cross section of investigators, of agents, of intelligence analysts, of inspectors and import specialists, people who will come together not to look at transaction by transaction, but take a step back and look at some very difficult trade problems that have been ongoing for many, many years.

We all know how important the responsibility of the Customs Service is in enforcing our intellectual property rights laws, in ensuring that products that enter this country are not contravening intellectual property rights of domestic owners. That is one we can do better at.

Textile transshipment is a tremendous problem. Many don't agree that we need a textile quota system, but we do have one, and it is our responsibility to enforce them as effectively as we possibly can. We have many instances of products being transshipped through intermediate countries to avoid being counted against the quota of the country that produced the goods. These are the types of problems that we are going to be able to be much more successful in addressing in a meaningful and a fundamental way.

We are going about a very significant change in the Customs Service, Mr. Chairman. We are doing more, as I said before, than just changing the blocks on the organizational chart. We are trying very hard to understand that we as a government agency do have customers and that we have a responsibility to our customers and to the American people to serve our customers better.

I heard a statistic recently, and I would just like to conclude with this comment, Mr. Chairman, that 30 years ago, the American people were asked a question, "Do you think that the government serves you, serves you well, and if given the choice, would do the right thing for you?"

Thirty years ago, nearly 80 percent of the American people answered that question in the affirmative. When asked that very same question today, only 17 percent of the American people have any confidence that their government will do what is right for them. That is what is driving us, Mr. Chairman, to make a difference, to make a change, to respond to our customers.

And we have to appreciate that we have customers, even though we are different than a company that sells products, we have customers with competing interests, we have customers who bring merchandise in and want it to be facilitated and moved quickly, while at the same time we have domestic industries who are customers who depend on us to ensure that the merchandise that comes in, comes in in full compliance with the law.

Often that creates mutually conflicting goals and objectives. But working with our customers, we feel we can't satisfy everyone, but we can let them know that we recognize what their needs are and do our best to accomplish those competing interests.

Mr. Chairman, those are some of my—just off the top of my head comments on my reorganization. I am obviously very enthusiastic and very excited about the direction that we are taking the Customs Service. I feel we have been responsive to the direction of the Ways and Means Committee and the Congress who have been pushing us for quite a long time to get into the 20th century so that we can at least be prepared to tackle the next century, which is almost upon us. I think with your support and help, we are going to achieve that.

I would now be happy to answer any questions you and the members might have.

[The prepared statement and attachments follow:]

TESTIMONY
COMMISSIONER OF CUSTOMS
GEORGE J. WEISE
BEFORE THE
SUBCOMMITTEE ON TRADE
HOUSE COMMITTEE ON WAYS AND MEANS
JANUARY 30, 1995

Mr. Chairman and distinguished Members of the Committee. I am excited to be here this morning to brief the Committee on our plans to build the United States Customs Service of the future. This opportunity to discuss the future of Customs may not have been possible without the encouragement and oversight of this Committee and the excellent work of President Clinton and Vice President Gore in prompting the agenda to create a government that works better and costs less. I also want to thank former Secretary of the Treasury Bentsen for his invaluable support and guidance throughout the period in which we sought to improve Customs and enhance the services it provides to the nation. We look forward to continuing our efforts under the leadership of Secretary Rubin.

I personally want to express my appreciation to the Committee for its guidance and leadership in enabling and encouraging the type of self assessment which will enable Customs to achieve its vision and full potential for service to the Nation.

Mr. Chairman, before I address our blueprint for comprehensive change at Customs, I believe it is important to reflect upon the great achievements by the dedicated and hard working Customs employees. During the reorganization study an executive from the trade community stated "Customs is not a sick organization; you're a healthy organization trying to perform even better". This statement is absolutely on target. Under the guidance of the Secretary of the Treasury and the White House, Customs was able to make 1994 a banner year of tremendous achievements which are leading the way for the type of change we envision through our reorganization plan. Our more significant achievements include:

- being presented by American Airlines with its **American Eagle Award** for the effective partnership that has been developed between our organizations, enhancing both our law enforcement compliance responsibilities and our customer service obligations. This award is very special in that Customs is the first federal agency to receive this prestigious honor.

- receiving several Hammer Awards from the Vice President for exceptional initiatives that carry out the spirit and substance of the National Performance Review.

- continuing to function as the second largest revenue producer in the Federal Government, collecting nearly $23 billion.

- continuing to lead all federal agencies in narcotics seized. In FY 1994 Customs made nearly 20,000 narcotic seizures involving over 204,000 pounds of cocaine, over 2,500 pounds of heroin, and nearly 600,000 pounds of marijuana.

- making great strides in furthering cooperative law enforcement efforts, including completion of a Memorandum of Understanding (MOU) with the Department of Commerce on strengthening our export enforcement goals, and completing a comprehensive MOU with the Drug Enforcement Administration (DEA) on Title 21 cross-designation which will further enhance our joint anti-narcotics strategies.

- implementing the North American Free Trade Agreement (NAFTA) with the publication of uniform regulations, and the training of over 2,000 Customs employees and over 5,000 members of the trade community, and completing implementation of NAFTA compliance measurement approaches.

- establishing an Office of Strategic Trade to consolidate and improve our prevention, detection and deterrance responses to trade compliance issues.

- introducing a trade compliance and measurement methodology across the Customs field structure. This methodology will permit us to assess compliance with the trade laws, estimate any revenue gap between what we collect and what we should collect; and provide the information base to work with industry toward the goal of informed compliance, and to better select the targets for law enforcement actions.

- consolidation of the Offices of Commercial Operations and Inspection and Control as a means of eliminating barriers and to improve cross functional collaboration to pursue mission goals and improve customer service.

- completing another successful year in the enforcement of intellectual property rights violations as one of the critical initiatives in our trade enforcement strategy, with seizures totalling more than $44 million.

- establishment of an Office of Finance and appointment of an Assistant Commissioner and Chief Financial Officer (CFO) to give priority attention to responding to the many identified financial management problems within Customs and making the attainment of a clean financial opinion an organizational priority. We have performed a major self assessment of our financial management operations and systems and developed a comprehensive plan to guide our improvement efforts.

- making significant strides in implementing the provisions of the Modernization Act, which provides the basis for Customs to revamp outdated and inefficient operating procedures, and to simplify and streamline regulations.

- signing an agreement with the National Treasury Employees Union (NTEU), to set the framework for a cooperative working relationship. Our mutual aim is to build the Customs Service into a successful and efficient organization which is responsive to the pressing needs of our Nation, and attentive to the concerns of its employees.

Conducting The Study

Sixteen months ago a 20 person inter-disciplinary reorganization study team, which included representatives from the NTEU and a representative from the INS, was assembled to determine if and how the Customs Service should change. The team was headed by Deputy Commissioner Mike Lane, and I gave them a simple but broad mandate: to design an organizational structure for the Customs Service that would prepare it to meet the challenges of the Nation at our borders in the 21st century.

This team set out to find ways both to improve the performance of the Customs Service, and to meet the future demands of a rapidly evolving world trade environment. They reviewed the latest in management literature to develop a conceptual framework, and reinforced it with seminars on process management techniques by the Brookings Institution. They established partnerships with the Federal Quality Institute (FQI), the Brookings Institution and the National Academy of Public Administration (NAPA) to obtain the expertise residing in these highly regarded institutions. In addition, they met with top executives from several private and public organizations, such as Corning Glass, AT&T, Xerox, General Electric, and Ford, all leaders in re-engineering American industry.

The team received extensive support and information from people across the Customs Service, Treasury Department, the Customs Operations Advisory Committee, the trade community, other federal agencies, and congressional committees to develop perspectives on how Customs operations and management could be improved. Sessions

with our "customers" were conducted on various issues related to future needs of Customs such as the development of an Automated Export System (AES). And finally, the Team maintained close coordination with the Vice President's National Performance Review and Secretary Bentsen. The results of the team's efforts and the tremendous support within and outside of the Administration are both bold and far reaching.

While many of the resulting proposals are directed at Customs organizational structure, the real heart of the effort involves fundamentally changing the management culture of the Customs Service. Also critical to our culture change were the goals of the National Performance Review and the clear direction from Secretary Bentsen for all Treasury agencies to focus on more efficient operations and improved service for consumers. These concepts are all embodied in the slogan "People, Processes, and Partnerships". By this we mean an organization characterized by:

- greater attention to our **people**, working to build a work force to better tap its potential so that it can meet the mission challenges facing Customs;

- managing essential core **processes**, a change that will require integrating the many disciplines within the Customs Service into more coordinated efforts to achieve mission goals; and

- forming **partnerships** with our many customers as a means of improving our mission performance.

Customs has existed as an agency for over 205 years. During that time it has developed a rich and sometimes complicated culture. Changing an institution that has developed over more than two centuries is no easy task. We are well aware that changing the culture of the Customs Service will require a long-term effort, but this is one of the most important and lasting changes which we can hope to make.

In my testimony today I will review with you our

- findings about why change is necessary;
- plans to restructure the agency and produce more efficient operations;
- efforts to institute a more customer-oriented approach to service delivery;
- approaches to pursuing the objective of informed compliance called for in the Customs Modernization and Informed Compliance Act, while maintaining effective law enforcement strategies;
- efforts to manage Customs operations in a more unified way; and
- the progress in implementing the Customs Modernization Legislation.

But all plans must start with a purpose, a unifying vision. Our vision is of a Customs Service that is a customer focused, not inwardly focused, organization; a Customs Service that is flexible and responsive, not one that is bound up in its own rules and regulations; a Customs Service that thinks strategically, not an agency enmeshed in individual transactions; a nimble Customs Service that works quickly and efficiently, not a sluggish giant; and a Customs Service that is striving for 100% compliance with the law, not just imposing penalties for individual transactions that may not comply with regulations. The future Customs Service will be responsive to the needs of its customers; it will be responsive to the expectations of Congress; and it will be responsive to the American people whom we have sworn to protect and serve.

We are talking about a Customs Service that works better and gives the American taxpayers value for their hard-earned dollars. This is the Customs Service we are building today.

A Call To Action: Factors Prompting Change

Our strategic vision arose from the 6 month study we made of our

organization, a study made possible by congressional authorization. By the time we were through, skeptics within the trade community, who felt that we could not do a credible self examination, gave us credit for doing just that.

The perspectives we received from this extensive effort were sobering. As I became Commissioner, after years spent serving the House Ways and Means Committee in its extensive legislative and oversight efforts, I was well aware of the challenges Customs faced in improving its internal management. However, this entire experience was a wake up call to agency leadership for a leaner and more effective government.

These challenges only became more stark as I reviewed again the demands posed by our mission of safeguarding the borders and ensuring that all goods and people entering and exiting the United States do so in accordance with the hundreds of United States laws and regulations that we enforce. We are confronted with

- substantial increases in international trade, travel and tourism, with entries and collections rising by more than 10 percent per year;

- recent passage of GATT and NAFTA resulting in industry demands for increased service because of substantial increases in U.S. trade;

- passage of the Customs Modernization Act, which relieves the agency of obsolete operating requirements, but also provides a new framework for service under the "informed compliance" provisions; and

- the demand for reducing the size and increasing the efficiency of government.

Our self examination revealed that we were not as well positioned to meet these challenges as we would like to be. Fortunately, the oversight exercised from the House Ways and Means Committee over the years has moved us in a positive direction to address our managerial weaknesses. Nevertheless, we still identified a long list of problems such as:

- a trade enforcement environment focused on policing individual transactions without providing the basis for a credible assessment of overall trade compliance;

- a lack of uniformity in Customs application of laws, policies, and procedures;

- an organization characterized by layers and internal barriers that has not been updated in 30 years;

- persistent occurrences of intra-agency squabbling and destructive internal competition;

- a history of adversarial relationships with other agencies and customers within the trade community; and

- the inability to fully comply with the Chief Financial Officers Act and continued weak internal controls despite proliferating internal control requirements.

The Promise of Our Vision:
More Effective and Efficient Service Delivery

Our analysis of these conditions resulted in a broad set of recommendations. These recommendations provide specific benefits to the American public and fall within 4 broad categories:

- Restructured Operations
- Enhanced Customer Service
- Informed Compliance
- More Integrated, Coordinated Operations

I will briefly discuss each in turn.

Restructured Operations - Our mission of protecting the Nation's borders is complicated by the sheer volume of trade and people crossing the borders, and the complexity associated with the broad scope of U.S. trading activity. The volume of trade and border crossings continues to grow substantially each year. Further, we face the task of attempting to thwart the constantly changing drug smuggling schemes of the international narcotics cartels.

Under the Administration's reinvention principles and our own reorganization proposals, we believe we can meet these challenges without continually requesting additional resources if we have the latitude to reduce overhead and reinvest resources into front-line operations at the ports of entry, and in state-of-the-art information systems and technology. Consequently, our reorganization calls for

- a major effort to reduce Headquarters staffing by approximately 600 positions, or by one third of its size. Since I have become Commissioner, we have already achieved a reduction in our Headquarters staffing of 132 full-time positions and 27 other than full-time positions or approximately 25% of our goal;

- reducing management layers from 4 to 3 by eliminating 7 regions and 42 districts and replacing them with 20 management centers;

- reinvesting personnel from Headquarters, regions, and districts into operational positions which will enhance our ability to be responsive to our customers for the type and quality of service they demand and deserve;

- reinvesting other resource savings realized through our restructuring efforts and systems improvements toward the resolution of global trade issues, providing increased attention to ensuring voluntary compliance with trade laws through enhanced informed compliance efforts, improving the use of information technology by building on and enhancing Customs Automated Commercial System, and providing the employee training necessary to implement process management and customer focused approaches to our mission;

- flattening the organization by moving from the current supervisor to employee ratio of 1:6 toward a goal of 1:15; and

- developing the cost accounting systems necessary for improved analysis of the cost of operations.

Enhanced Customer Service - Our commitment to business process improvement techniques is grounded in an understanding that we can achieve improved mission performance through more effective working relationships with our customers, which include Customs brokers, importers, domestic business interests, and other federal agencies. Customer service does not mean pleasing all of our customers every time. That is impossible because our customers often have very conflicting interests. Instead, we want to maintain an ongoing dialogue with our diverse customer base to gain perspectives on how we are performing. We can and

do learn from those perspectives; they will enable us to fine tune or re-tune our operations and law enforcement strategies when appropriate. They will enable us to be the more flexible and responsive organization we envision.

We are already doing rather well in that regard. We believe we have a strong reservoir of support within the trade community for our reorganization efforts and our outreach efforts which are designed to educate and involve the trade community in all aspects of Mod Act implementation. Last year, we invested almost 550 hours in Mod Act meetings with various trade groups and the general public.

We are proud that the National Customs Brokers and Forwarders Association of America, Inc., after having participated in numerous Mod Act implementation meetings with representatives from a broad cross-section of Customs constituents, was able to state in a letter to this Subcommittee:

> "We also want the Committee to know that the Customs representatives have been listening and action has been taken in accord with many of the recommendations of the private sector. While everyone cannot be completely happy with any results reached, no group should feel that they have been ignored."

But we have only begun this transformation, and our reorganization will maintain and strengthen customer service through:

- strengthening our 301 ports of entry where the actual mission services are delivered to our customers;

- creating an Office of Strategic Trade to enhance our ability to address and attack the major trade issues facing the Nation and its key industries;

- instituting a new management approach based on defining core business processes and the development of a portfolio of management tools to continuously measure and improve enforcement, compliance, and customer service;

- developing customer service standards; and

- enhancing performance measurement to ensure that we are improving our ability to deliver services uniformly at our 301 ports.

As an example of how we plan to work with our customers, let me use one of our current efforts to define the way we will handle the overall processing of imports within the future environment made possible by the Customs Modernization Act. Headed by our first business process owner, a high level team has defined what we call the Trade Compliance Process as beginning before importation and ending with the archiving of import entry data.

Early on, the team recognized that the internal processing that we are currently performing within Customs is of little concern to the business community or other federal agencies who rely on Customs to nforce their laws. Of interest is whether we can expedite the processing of imports while providing a reliable means of assessing compliance with applicable law. Therefore, in keeping with our intent to establish effective partnerships, we are conducting extensive interviews around the country with representatives from the trade community to ensure that their needs are identified and perspectives incorporated into the detailed proposals we are developing. We are also coordinating with other federal agencies to develop approaches to meeting their information needs in support of enforcement objectives while imposing the minimum reporting burden possible on the importing community.

Informed Compliance - The issue of informed compliance is the driving principle for success to effectively and efficiently deliver on the promise of enhanced customer service. The Customs Modernization Act calls for Customs to pursue a policy of seeking informed compliance with the trade laws, imposing greater responsibilities on the importing community for record keeping and for filing accurate entries. We are proceeding toward this objective on two coordinated fronts.

First, we are implementing an extensive compliance measurement system using statistical sampling methodologies. Such a system will provide credible indicators of compliance with applicable laws by tariff classification and for other important activity areas. Armed with this information, we can direct our efforts to improve compliance levels for those areas deemed to represent the greatest risk in terms of threat to our key industries, to the public health and safety, or in terms of loss of revenue. This provides tangible benefits to compliant businesses because they will receive the minimal scrutiny required to test their continuing compliance. This compliance data is fundamental to how we plan to achieve the Mod Act goal of informed compliance.

An example from some of our recent Compliance Measurement efforts may help illustrate how we can work with industry toward the goal of informed compliance. During recent textile compliance measurement tests, inspectors and import specialists in one of our Districts detected an alarming rate of non-compliance. Our analysis attributed the problems to 1) lack of importer and broker knowledge of classification principles; 2) inadequate invoices and general failure to follow invoicing regulations; 3) shipping errors on the part of the exporter (quality discrepancies); and 4) broker carelessness in preparing Customs documentation. Extensive education and meetings have been conducted with the top two violators. General compliance has been improved due to the Customs proactive response to the compliance measurement test results.

Secondly, the central thrust of our plans for the Trade Compliance Process is built on the ability of the compliance measurement methodology to help us move toward informed compliance. Our view of the future calls for shifting our resource allocation away from the current heavy emphasis on the verification of entries through inspection and review of importation paperwork toward greater emphasis on working with major importers so that we can rely on their internal control processes. In this way, we will minimize the costly and time-consuming inspection of individual transactions.
Thirdly, our base of strategic trade information will enable us to better select and target violators of the trade laws for law enforcement actions where voluntary compliance methods do not work.

More Integrated, Coordinated Operations - This last category is really a means to achieve the service delivery objectives described above. But it is so fundamental to our efforts to address past criticisms of Customs that I want to discuss it. Our reorganization will improve our abilities to function as one united Customs Service in a variety of ways. These include

- a reliance on business process improvement techniques to develop new processes that cut across disciplines to deliver effective and efficient service to customers;

- an organizational structure that emphasizes cross-functional collaboration to pursue mission goals;

- building a partnership with the National Treasury Employees Union (NTEU) to create an environment conducive to employee growth and enhanced mission performance;

- a restructured Headquarters to strengthen our focus on strategic planning, financial management, and human

resources management; and

- creation of an Executive Improvement Team of 11 senior Customs executives and the President of the NTEU to provide the strategic leadership for the entire cultural change and reorganization effort.

Let me again use the Trade Compliance Process redesign effort as an example of how we are doing business differently now. I think it is significant to note that as the process owner and his team began their work, they found more than 35 task-specific headquarters groups addressing such trade-related issues as the Modernization Act, NAFTA, fines and penalties, trade enforcement, revenue, rulings, and many more. These groups were separately chartered and working away, often oblivious to the implications of the work of other groups with related interests. Now, under the process owner, Customs has a comprehensive coordinating mechanism for ensuring the integration of these diverse efforts. The sheer dimensions of Customs operations make for an imposing coordination challenge. Nevertheless, that effort is now underway and should produce a comprehensive proposal for the Trade Compliance Process of the future by October 1995.

We recognize, however, that irrespective of new methods for insuring compliance, we must also maintain an effective enforcement and deterrent mechanism for those occasions on which trade or other border related laws are broken. The reorganization would allow us to put more personnel and resources at the border. In addition to being there to help those who wish to comply with our trade laws, those personnel and resources will be there to help catch those who choose to break the law. Of course, this heightened law enforcement presence also will be extended to our anti-smuggling duties at the border.

Mod Act

Before I close my statement, I think some additional comments relative to our efforts to implement the Mod Act may be useful. First, it is important to assess implementation progress within the framework that the Act establishes a partnership between Customs and the trade. It also recognizes that importing is a very complex business and that importers need help in interpreting and complying with the law rather than Customs previous practice of pursuing importers for their failure to comply with ill-defined requirements.

Between the December 1993 enactment and mid-December 1994, Customs has devoted much of its focus on meetings with trade groups and the general public. These opportunities were twofold: first to provide educational opportunities for a complex Act, and second to seek inputs and ideas for the design of the very procedures and regulations which need to be developed for full implementation. Although progress is slower than we would like, we believe the regulatory process is proceeding reasonably well. We have achieved implementation in several areas. These successes were not dependent on new systems development or regulations. They include:

- New liberalized drawback provisions
- New protest appeals procedures
- New 592 duty demands procedures
- New seizure/detention requirements
- New regulatory audit procedures
- New rulings revocation/modification procedures

From all accounts our efforts at involving the trade community in our implementation efforts have been beneficial for us and the trade seems pleased with them. It has enabled Customs to identify implementation priorities and capabilities from the perspectives of both interests. Some of the provisions that the trade have identified as more critical are remote location filing, reconciliation, record keeping, and penalties in the context of reasonable care and informed compliance. Recognizing these trade critical priorities, Customs will continue to place its emphasis and resources on their expedited implementation.

To provide the trade community at large with an opportunity to respond to modernization-related meeting invitations, concept papers, and draft regulatory documents, Customs makes it a standard practice to post such documents on its electronic bulletin board. To further expand the distribution and minimize trade costs in obtaining these documents, Customs also makes them available to ACS users through its Administrative Message System. We currently are reaching over 2,000 interest groups on a regular basis through these electronic systems.

In areas where new legal changes must be blended with major policy changes, Customs has and will continue to provide the trade community with concept papers for review and comment prior to regulation drafting. From March to December 1994 six comprehensive strategy papers for implementation have been provided to the trade for review and comment. These include:

- Importer Activity Summary Statement (IASS)
- Reconciliation
- Revitalization of record keeping requirements
- Records that must be maintained and produced
- Remote filing
- Reinventing the penalty and liquidated damages program

It must be remembered that Customs is attempting to simultaneously reorganize, implement the Mod Act, make changes necessary to fully comply with the Chief Financial Officers Act, the Government Performance and Results Act (GPRA), redesign our automated commercial system and fully implement the NAFTA and GATT
legislation. To say the least, this is a challenging task! Our overall theme is "Do it once and do it right". In the past Congress has criticized Customs for not involving the trade in developing new procedures and for acting hastily without coherent, sufficient, and comprehensive planning. Indeed, the Mod Act contains specific provisions which mandate periodic reports to Congress to insure that we are complying with these mandates.

Perhaps the best way to understand our management approach to dealing with all these changes is to envision a triangle -

- one side being the Mod Act legislation that gave us the legal flexibility, in partnership with the trade, to redesign our procedures to deal with "modern realities".
- one side being the reorganization effort that focuses on the various "processes" and the people rather than just the organizational structure. These redesigned processes are defined in close "partnership" with the trade, the NTEU and our personnel.
- the final side is our automated redesign effort (the Automated Commercial Environment (ACE) project).

First we must define user needs and then we must redesign processes. To accomplish these tasks requires extensive input from the trade, the Mod Act group, and the ACE project. Key members of each group are on the management committees of the reorganization group to insure complete project integration.

Clearly, we cannot write regulations or do computer programming until we decide specifically what it is that Customs needs to do. That sense of mission has been better defined through the reorganization effort. Unfortunately, we could not begin the reorganization process until a statutory prohibition was removed. Various assessment teams are now conducting their evaluations with final recommendations due this summer. At that point the ACE team can finalize their programming schedules. We expect to have the detailed programming estimates available by the end of calendar 1995.

During Mod Act negotiations we estimated that it could take us up to 3 years from passage to complete all the programming. Since we are now going well beyond the changes mandated by the Mod Act,

our current estimate is that it will take up to 5 years (end of FY 99) to have all the redesigned programming implemented.

The Mod Act is an important tool for the modernization of the Customs Service and along with our reorganization initiatives we are positioning ourselves to achieve quantum leaps towards this important modernization effort.

Conclusion

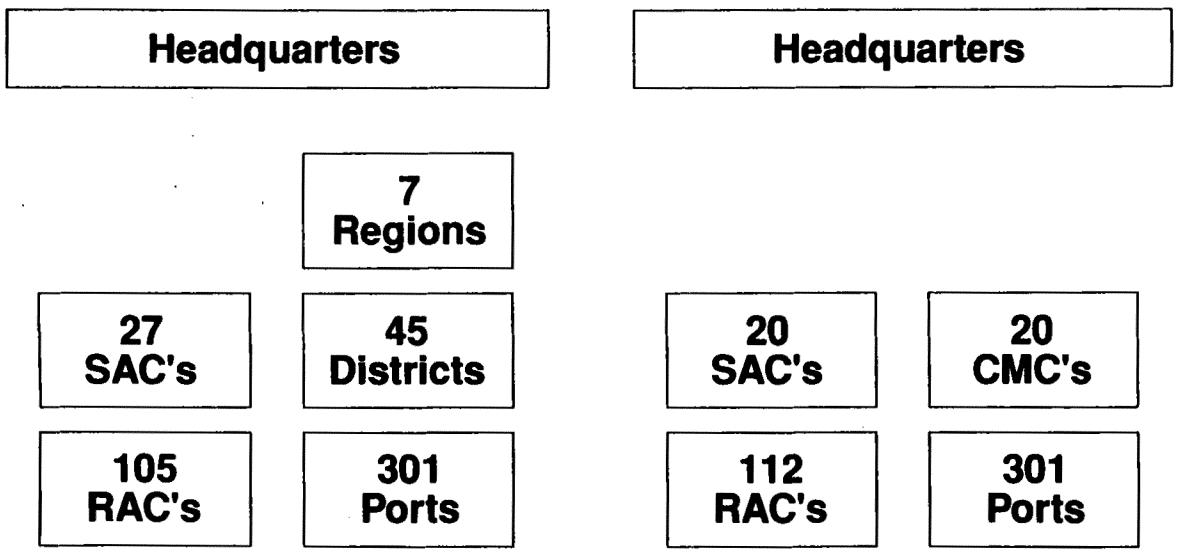
I know that the Customs service is proceeding in the right direction. I also know that achieving the vision we have for the Customs of tomorrow will not come easily. We face many difficult challenges. But I am guided by a simple goal to leave the Customs Service--**the best agency in government**-- an even better agency when I leave. That is the legacy I wish to pass on to the citizens of the United States, and I welcome this Committee's continued support to us in making this goal a reality.

Mr. Chairman, we would be happy to answer any questions you may have.

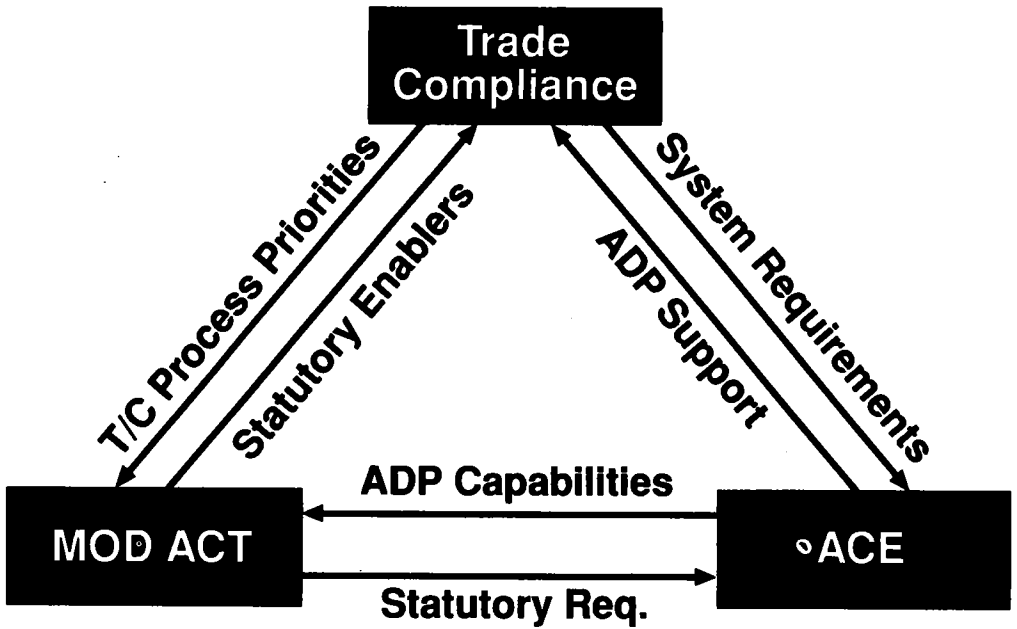
A Vision of a New Customs Service

FROM	TO
Inward Focus	Customer Focus
Rules & Regulations Bound	Flexible & Responsive
Transaction Focused	Strategically Focused
Sluggish & Bureaucratic	Quick and Efficient
Revenue Driven	Information Driven
Making Seizures & Arrests	Seeking Informed Compliance
Functional Stovepipes	Integrated Operations

Reducing Layers of Management



Integration/Coordination of Customs Modernization



Chairman CRANE. Thank you, Mr. Commissioner. When will the key elements of your reorganization be operational?

Mr. WEISE. It is happening in several phases. And first of all, Mr. Chairman, before we can implement any of our field restructuring, under a law that I am somewhat familiar with because I helped craft it when I was on that side of the dais, there is a requirement that the Customs Service notify the Ways and Means Committee and the Senate Finance Committee at least 180 days before implementing any field restructuring that changes the number of people in various offices.

That law was created as a very reasonable response to the House and Senate appropriating committees, which for several years actually prohibited the Customs Service from even studying reorganization. So we made that notification to the Ways and Means and Finance Committees on September 30. It means that none of the field restructuring can occur before March 30.

I will assure you, however, Mr. Chairman, that we don't intend to do any of our field restructuring until October 1. We built in another 180-day cushion, so that if there are problems, that we can address those. But we are beginning to put in place our headquarters restructuring.

As I said earlier, we built this organization from the ground up, from the 301 ports of entry. That is the foundation. But we are trying to implement it from the top down. We have already put in place all of my new key managers. We have put together an executive improvement team. We have put together a process owner for the cargo process, which is already—who has already begun to put together a team and traveled around the country, meeting with the trade community and trying to streamline and improve the way we do our business in the cargo area.

But it will be October 1 when you will see the elimination of regions and districts and the substitution of the Customs Management Centers. The Strategic Trade Centers will become fully operational on October 1. But right now, we are prototyping in New Orleans and in San Diego two Customs Management Centers and we are prototyping a Strategic Trade Center in Washington, just to get some experience before we become fully operational.

Chairman CRANE. So you might anticipate then when we have these hearings next year, that it will be completed?

Mr. WEISE. I think that the structure will be fully in place and we will be well on our way. Much of what we need to be doing, Mr. Chairman, involves culture change, and I think we are going to be still in the midst of changing our culture as we go forward 1 year from now.

But I think you will find, just like if you compare us today with 1 year ago, you will see tremendous progress toward making that culture change, and you will see customer service standards which will be put in place in consultation with our customers, standards that we hope to be held accountable for.

Chairman CRANE. There is a perception that ports located near a Customs Management Center will have an advantage over ports that aren't in close proximity to one.

Could you comment on that?

Mr. WEISE. Mr. Chairman, I am so glad you asked that question. I meant to raise it in my opening statement. In the interest of brevity, I didn't. One of the biggest frustrations I faced in trying to put this reorganization into place is the misunderstanding about what a Customs Management Center is and what it does.

What we have is a situation, as all of us know from experience in past attempts at reorganization in the Customs Service, an instinct that an office that currently exists must be maintained at all costs. One of the reasons that we structured our Customs management in the way that we did is we knew that there would be pressure that be brought to bear politically for any office which had heretofore been either a district office or a regional office, to say I don't want to just be a port of entry now, I want to be whatever there is in between.

And that is the problem I have had as I traveled around the country meeting with the trade community, trying to get people to understand what a Customs Management Center is and how it doesn't serve them as a customer. A Customs Management Center initially will have 20 or fewer people. We are going to try to make it closer to 10 or 15 as we improve our administrative process.

A Customs Management Center is there, as I said before, to serve two very important functions. The one function they serve is to provide administrative support, payroll, personnel, equal employment opportunity issues, those kinds of things. That is what the bulk of the work of the Customs Management Center will be.

Second, the Customs Management Center will have a responsibility to ensure, as we move to process reengineering and process improvement, that they will be trying to ensure that our ports of entry, which is where we deliver our product, are carrying out our processes in an appropriate and uniform way. So they will have some interaction with our ports of entry to ensure that we are serving our customers well.

They will be responsible for being a coach and a guide to our ports of entry, to help them ensure that they are serving our customers and carrying out the responsibilities appropriately. But if problems occur, if something goes wrong in the port, a Customs Management Center director is not the person to fix the problem.

We are trying to empower at the lowest possible level, at our ports of entry, the port directors to be able to resolve those problems. If they can't be resolved in a port level, then we will resolve them in a headquarters level. So having a Customs Management Center proximate to your port of entry will have no bearing on our ability to be able to serve our customers.

No entry will be filed at a Customs Management Center, no protest will be brought to a Customs Management Center. A Customs Management Center is an internal, inwardly focused organization. And what I am having as a problem, Mr. Chairman, is that some of the locations that have received Customs Management Centers, because we placed them where they are most proximate to the most Customs employees because of their administrative support role, the cities that have received them have been touting them, you know, saying come do business here because I am a Customs Management Center.

That creates real problems in other cities that didn't get them, saying I have got to have one of those because my competitor has one of those. I think one of the most constructive things that could come out of these hearings, Mr. Chairman, is getting as clearly as we possibly can on the record that anybody who touts a Customs Management Center as being able to serve a customer better, is being dishonest. And anybody who feels that they can't be served as well because they are not proximate to a Customs Management Center, is ill informed.

And I am going to do everything in my power to continue to work with the trade community to get that message across as loudly and clearly as we possibly can. But that is kind of our Achilles' heel thus far, in moving to this reorganization.

Almost universally, people have looked at our reorganization and said this is the right approach. And it just gets down to the problem that people say, as long as I can have one of those Customs Management Centers, I am with you 100 percent, move forward, young man. That is the problem we have to overcome.

We have 20. If I had to do it over again, maybe we would even try to have fewer. As we improve our process, as we streamline our ability to serve our administrative functions to our internal customers, I hopefully can reduce the size and number of Customs Management Centers in the future, and hopefully after we have had some experience with their operation, we will gain some credibility that they really don't have any bearing on the way we serve our customers.

Chairman CRANE. Well, I thank you very much. And I don't want to monopolize unduly. I have some additional questions that I will submit to you in writing.

And at this point, I yield to Mr. Thomas.

Mr. THOMAS. Thank you very much.

When the Chairman asked if anyone wanted to give opening welcomes to you, George, I refrained because I knew I was in the new regime, I get to talk to you right away.

Mr. WEISE. My feelings weren't hurt.

Mr. THOMAS. In a positive way, can I see a show of hands of everyone who is with the Customs Service here today.

OK. Who turned the lights out?

No, it is an exciting time, and it is good that you are here, sharing this finally begun-to-be-realized change. And I haven't been here all that long, but I have sat through a number of people who talked about the obstacles to making this the kind of service that you indicated it was and it should be.

The question that I have is just a focusing one so that you can explain to me the thinking that you went through. Obviously you are anticipating a NAFTA and a GATT which changes, I guess—flow through ports and you have hung onto the 301 ports. You talked about your strategic trade, which I think is a good idea, so you can anticipate these larger areas.

But if you call that strategic, I need you to talk to me a couple of minutes about tactical, if you will. How are you structuring yourself for mobile response teams? If you keep the 301, and clearly you already had a significant difference in activities at the 301, do you

anticipate—I mean, I guess it was partly for PR reasons you kept the 301. If it wasn't, I need to know that.

And if there is not a rationale for moving or changing, why not? How do you anticipate shifting loads where you weren't prescient enough to anticipate them? What kind of flexibility do we have?

Mr. WEISE. OK. Let me answer that in a couple of different ways. First of all, the decision that was made to keep 301, believe it or not, was actually recommended to me by the reorganization group that we put together to study it.

When I first took this position, as I was traveling around talking about the need for reorganization, one of the things that I talked about is one of the examples as to why we need to reorganize. I used as an example that the workload criteria that we have in place to create a new port of entry, were it applied to our existing port structure, nearly 40 percent of the ports of entry would not be eligible.

Mr. THOMAS. Hence my question.

Mr. WEISE. So I expected there to be a recommendation to consolidate. But what happened is we started reaching out to some of the outside groups for advice. And the Brookings Institution, the Federal Quality Institute, the National Association of Public Academy, they started talking to us and they said, wait a minute, you know, you are supposed to be talking about serving customers better. Closing down and removing yourself, your complete presence, from a location, is that really customer focused?

Why don't you take a harder look at your structure and your layers and your management and see if you can't establish a mechanism that would allow you to keep those ports of entry in place, while at the same time coming up with savings that would allow us to serve customers better?

Frankly, that was the recommendation that came out of the group. I was prepared to take on the fight. And it would have been a difficult fight, as illustrated by just this Customs Management Center issue, and I am not moving people out. So that was the reason that we maintained our 301 ports of entry.

There still is considerable pressure coming out of the Treasury Department that perhaps we ought to do this in two steps, let's get this in place, let's take a look at the way we are able to do our business through these 301 ports of entry. And we are constantly getting pressure to add new ports of entry, so we may need to rationalize the ports of entry in the future.

What we are hoping to do, as we improve our progression, the way we carry out our functions, for example, some of the tools that you gave us through the Customs Modernization Act, to allow us to do remote entry filing, for example, as we get into national entry processing, it doesn't become as relevant that we need to have so many people in each place. Because you can have merchandise that comes through San Francisco, and have the entry made in Houston, if that happens to be where your corporate office is, where your expertise is.

As we improve those processes, we are going to be able to rationalize the location of our people more effectively. As we are reducing layers, we are already going to be able to reinvest our resources into these new offices of strategic trade, into other areas, particu-

larly in the frontlines. I am hoping we will have more people and we will be doing—the other important thing is we are going to be doing work measurement.

As we can see where the demands for our people are the greatest, we are going to do the best to make sure that is where we allocate those resources.

And the final thing I want to say, we tried to work this all—we call this People, Processes, & Partnerships, and we tried to be very somewhat, you know, what is the word, very structured in the way we put forth our process. But as we went to that, we saw that you can't do everything as process.

One of the important things that we learned as we talked to a lot of folks from the outside world, is that we need to be good at problem solving. And that is one of the things, to deal with some of the problems you raised, putting together, we have got problem solving teams that come together.

An example is the narcotics smuggling on the southwest border. We have had a tremendous pressure recently put on the southwest border because of the effective deterrent that the Immigration and Naturalization Service through their border patrol has done, by putting their Operation Hold the Line in place, where they have put their border patrol all across that border, discouraging illegal immigration between ports of entry.

What that has done is put a tremendous pressure on the ports of entry for narcotics smuggling. And it has resulted in a particular type of narcotics smuggling which is very troublesome. It is called port running. Individuals with narcotics visible in their trunk, they don't even try to put in secret compartments, their trunks are loaded with narcotics, they come to the inspection station, the inspector says, please open your trunk. As soon as he says that, they put the accelerator to the floor, they run over anybody or anything who happens to be in the way, causing great threat to human life, as well as to the local cities along that border.

We put together problem solving teams to go in there and try to address that problem. We've come up with, I think, some tremendous approaches, both structurally, by putting some barriers in and working with local communities. But we need to do more of that. Problem solving teams that are flexible and fluid can go to where the problems are, and we are well on our way to solving that particular problem and moving them into another area.

Mr. THOMAS. Thank you very much, Mr. Chairman.

I just want to say, George, that you should never be apologetic for being enthusiastic about an area which, when you do it right, nobody pays any attention to you, and when you do it wrong, you are on the front page. Our goal is to make sure that we are never on the front page.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Not that it really matters, but does New York City get a Customs Management Center?

Mr. WEISE. It just so happens that New York is one of the largest locations where there are a great number of Customs employees, which made it necessary to put a Customs Management Center there. But if you would like me to move it, I would be happy to consider it.

Mr. RANGEL. Since you have already done it, you might as well let it stay there. What in fact, if any, have these changes made on the morale, the pay or the titles of the employees?

Mr. WEISE. Mr. Rangel, any time one embarks upon a restructuring as dramatic as the one we are going through, there is going to be anxiety. And I can't hide the fact that there is tremendous anxiety within the organization, people wondering and fearing what does this mean to me. The only thing I can say is that we take very seriously the fact that this report is entitled "People, Processes, & Partnerships." And that first P is without accident, the people of the Customs Service.

I made a commitment that we are going to do everything humanly possible to take care of the people in the Customs Service. And by that, I mean help them to be absorbed into our new organization as painlessly as possible from the old organization. And by that, I mean we are going to try our best to keep people in the very same cities in which they are currently operating, to the extent we can as close to the same job as they possibly can.

If they would like to go to where their function moved, if their function for example moved out of their location, we are going to try do everything we can to retrain them and help them relocate. It is expensive to relocate people, but we are going to try our best to do that.

One of the things that I am most proud of, and you will be hearing later this morning from Bob Tobias, the president of the National Treasury Employees Union, I recognized when we embarked upon this initiative that it was going to have—cause some anxiety to our people. And I sat down with Mr. Tobias and talked about the ideas.

As a matter of fact, before we could even begin this, we had to sit down with the appropriating committees and get them to remove that provision of law that was in their appropriation bill every year, frankly, with NTEU's support, not allowing us to even study our reorganization. We have been working together.

We had two representatives of the National Treasury Employees Union as part of the original reorganization team. They have endorsed this plan. I think it is in the best interests of all of our employees, but there still is anxiety. So we have done everything in our power to try to communicate as effectively as we can.

We are constantly communicating through E-mail messages. We have a broadcast network within the Customs Service now where I can go on and have questions come in from around the country. I have done that on a number of occasions. We have traveled around, town hall meetings and meeting with our people. We are trying our best to help them appreciate and understand.

And unlike most other reorganizations that have taken place that I am aware of, where people are being pushed out the door, thus far all the way through OMB now, we have been successful in getting them to appreciate and understand that this is a reinvestment strategy, that the people and the positions that are freed up through the savings that we create, through reduction of headquarters, elimination of regions and districts, doesn't mean that is that many people that you can take off your rolls.

Because the Customs Service is—pressures are mounting. The volume of trade is increasing. The responsibilities are getting more complex. We just implemented the NAFTA and the Uruguay round is being implemented now. The responsibilities are greater.

So far, we have been given the endorsement that we can reinvest these resources back into more effective, efficient utilization of these people within our agency. Now, budgets are tight, you know, we have to be fiscally responsible. We may need to absorb some cuts in the future, but thus far, there hasn't been a connection of people cutting to this reorganization. We still have to absorb our reductions just like any other Federal agency, but thus far we have kept it as we are not cutting people because of this. So that has been a success.

Mr. RANGEL. Are you getting the full support and cooperation of the U.S. Treasury Department?

Mr. WEISE. Yes, I am, sir.

Mr. RANGEL. And what obstacles, other than the ones that you mentioned about people who are not getting the centers, what major obstacles are you facing in the reorganization and how can the committee help?

Mr. WEISE. Well, I am pleased to report, Mr. Rangel, that that is the first, second, third, and maybe fourth, fifth obstacle. If I can overcome the CMC issue, I think people believe in what we are doing. I have been very delighted that the Vice President, National Performance Review, has spoken highly about the direction that we are taking the Customs Service. Matter of fact, they have used the Customs Service as an example for other agencies to hold up to, to see what direction they can move.

We have gotten, I have seen copies of statements that you have received from some of the institutions that helped us, Brookings and the Federal Quality Institute and others. Our customers, I think, are pleased about the direction we are moving.

I guess the biggest frustration that I have seen expressed from our customers is that the provisions of the Customs Modernization Act have not been implemented quite as quickly as they or perhaps I would have liked.

But if I could just address that point for a moment, Chris and Frank remember this well, that one of the concerns when we were putting the Customs Modernization Act together over the years, was that the trade community felt there was a long history of the Customs Service moving too quickly to implement before they really understood exactly what it was they were implementing. They didn't lay the foundation. And as a consequence of that, we ran into all kinds of problems with the trade community saying, you know, we weren't ready, your computers weren't compatible, our programs had to be rewritten, and they keep surprising us with these things.

So built into that law, that provision I think Chris had a lot to do in drafting, was a provision that required us to really reach out to the trade community to ensure that we laid the appropriate foundation. If we erred in this process, we are erring on that side, of making sure that we pull all these things together.

We can't move too quickly to implement the provisions of the Mod Act and the automated system redesign when we are still re-

designing our fundamental processes. The three have to come together. And it has slowed us down a little bit, and I think there is some concern about that, but for the most part, I think you will find that our customers believe in what we are doing, they understand that at the end of this road we are going to do it once and do it right and we are all going to be better served as a consequence of that.

All I can say is I need you to talk to others, when you hear people talking about needing a Customs Management Center, to let them know that we are moving in the right direction and those Customs Management Centers are silly little things that don't have any impact on customers.

Mr. RANGEL. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Zimmer.

Mr. Hancock.

Mr. HANCOCK. My comments will be real brief.

I would like to point out that a lot of people think of Customs primarily as merchandise importing and exporting. About 3 years ago at a hearing down in Branson, Mo., one of the main things they talked about down there was tourism. And they talked about some of the problems that they were having at the ports of entry with the Customs Service processing people back into the United States. It seemed like traveling from the United States to foreign countries was easier for them than when they were coming back.

I hope as part of this reorganization that your group will recognize that tourism is big, big, profitable business to the United States. These foreigners are coming in with their money, and we want them to stay here long enough to leave their money. We want to treat these people as guests of the United States and make them welcome, rather than creating any difficulty as they are processed in.

I appreciate any work you can do in that area.

Mr. WEISE. Mr. Hancock, I am pleased to respond to that. I think we are moving in the right direction. Years ago, when a traveler came back into the United States, particularly an airport, you had to stand in two lines. You first had to stand in the Immigration and Naturalization Service line to make sure that your passport and your credentials were all well and in order. Then you stood in a second line for the Customs Service, to make sure any merchandise you brought back was properly declared, et cetera.

We have reengineered the passenger processing system over the last several years, and we are still working on it. But what we decided a long time ago, is that it wasn't very efficient, effective, and it certainly wasn't very consumer friendly, to have people standing in two lines. It didn't help tourism in any way.

So what we decided to do quite some time ago is in effect cede the primary inspection lanes to the Immigration and Naturalization Service. If you feel, and they do feel, they still have to interrogate every single person that enters this country, you do that. We are going to find some creative new ways to do our job.

And we started working with the airlines and the carriers, and we came up with something that is called the advance passenger

information system, which allows us through passport readers, which we provide to the airlines at our cost, to have—before the passenger even gets on the plane, the passport is read, information is provided.

We have people who are doing analysis of all the passengers on the airline, and we come up with selected targets of people who maybe need to have a little more scrutiny than the rest of the people. We also came up with a concept, what we call roving, where we have roving inspectors.

As people are getting their luggage, some uniformed officers, some nonuniformed officers, are walking around, some with passive canine dogs that are drug detecting dogs. So the point is that you only have to stand in that line once. We have found that as we now are examining many, many, many fewer passengers than we ever talked to before, our enforcement results have dramatically improved. So we are working smarter, we are working much more effectively, and we are trying our best to serve our customers.

Mr. HANCOCK. Thank you.

Chairman CRANE. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Commissioner, I appreciate your testimony. Pittsburgh and Philadelphia, as I understand it, are going to be a part of the south region CMC. And some of the people in the Philadelphia port, in spite of your very eloquent explanation of CMCs not being invasive of the function of the ports, there are still some concerns about that.

I was wondering if I could submit some questions to you for the record that you might be able to respond to, that would alleviate their fears, as I am sure they would be alleviated if they heard your explanation here today.

Mr. WEISE. I would be happy to respond to those for the record.

I would also like to report to you I did go to Philadelphia, I met with a wide cross section of the business community. We have continued those discussions. We had some of the people come down to Washington. I think that they are slowly, grudgingly, becoming more conversant in what this means to them.

And one of the things that they want to see is clear evidence that we are going to follow through on those frontlines. And they are looking to see, are we going to be filling those vacancies in Philadelphia. And we have a vacancy in our district director, which will be a port director position. We are working to get a top quality person there.

And I think that the people there have been extremely responsible in working with us in a constructive fashion to try to really deal with this problem. Their biggest fear is twofold. One, that others are going to advertise, you know, like I said before. Second fear that they raise, and it is a common fear that I have heard in other cities that didn't become Customs Management Centers, their fear is that someone is going to come in after me to be the Commissioner of Customs that is going to take this structure of Customs Management Centers and make them something completely different than what we are talking about now.

That is a more difficult one to address, because it is something that is out of my control. My response to that is, why don't we work

together to really put these in place and make this system work through the ports of entry, and make it so well entrenched and working so well to be customer friendly, that nobody could possibly without political suicide try to undo it in the future.

But I appreciate those questions. I will be more than happy to respond on the record, and we are going to continue the dialog with the people in Philadelphia and Pittsburgh and all the areas that have to be served through Baltimore.

Mr. COYNE. Very good. Thank you.

[The responses to Mr. Coyne's questions appear in the responses supplied by Customs beginning on page 82.]

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Commissioner, good to see you here. Thanks very much for appearing.

When you reorganize, there are two impacts. One is internal, the other is external. You have really described the internal. What you are going to do is you are going to save money, you are going to cut administration, you are going to fan out and have a flat organization, you are going to keep the centers and—I mean the 301 ports of entry, and try and do a better job.

The other—the other is really what does it do for the customer? And you talked about the Customs Modernization Act and some people felt that you haven't been doing that or implementing that fast enough. And also in your testimony you talk about customer-responsive and state-of-the-art improvements. You know, look out a year or two.

What does this do for the people that you affect, not just the internal organization? What does it mean? Why is it good?

Mr. WEISE. You are going to be hearing from some of them today. Hopefully they will elaborate on this. But, Mr. Houghton, I think we are going to be able to deliver in the next year or two, particularly if you give us the second year, too, that within 2 years I think you are going to see such dramatic change in the way we serve our customers.

Several things are going to be going down. One is we are going to be sitting down with our customers early in the process and setting customer service standards. We have done this in the air passenger area, and I should have raised this with Mr. Hancock's question, where we have committed to several things.

We have got five standards which we now display in all of our large airports. We commit, for example, that within 5 minutes after you get your luggage, you will be cleared and out of the processing area. We also commit that if you have a problem, there will be somebody there, we call a passenger service representative, who will listen to your problem immediately, and within 3 days, you will get a response if you have got a problem that can't be rectified on the scene. We are trying to do the same thing in the commercial arena.

What is a reasonable expectation of time for us to complete our work and what are reasonable measurements of what our success is, both in serving our customers and our passengers, but also not losing sight of the fact that we need to be measuring our results in the enforcement arena.

And one of the things that I think is the most significant, dramatic change that has happened to the Customs Service in many, many years, is in the commercial arena. For the first time we are going to be able to tell you and tell this committee and tell this Congress what is the overall compliance rate in virtually any product or commodity that you want to ask me about.

In the past, Customs Service worked on hunch and intuition. We think that automobile imports are highly compliant. But these other products, we got problems with. We never could tell exactly how compliant they were. We have been pushed in the right direction, again by this committee and by the General Accounting Office, to say that is not good enough. We need to know.

So we are—we have done a pilot program over the course of the past year, of about 20 major commodities, where we have, through stratified sampling, done complete examinations after the fact where we have been able to put on those 20 products what the compliance rates are. As we do that now, we are putting in now for every product in the harmonized system for this base year.

What that will allow us to do, as we look at the range of compliance in various products, from a high of maybe in the nineties to the low in the forties, we are going to be able to do several things. One, in the spirit of informed compliance, try to identify what is the source of the problem.

Is it misinformation, is it something that we can help educate that importer to understand what he is doing wrong so that he can help to help us bring that up? It also would allow us in terms of allocation of our resources, so we will spend less time examining the very highly compliant products and more time examining the low compliance.

And above all that, as we are now reengineering the whole process of commercial merchandise, the way we do our business, we are getting away from transaction by transaction by transaction. And as we work with the trade community to basically—we are going to create something akin to a gold card account.

An importer whose major business, who does a lot of business with us, who will allow us to examine his products for classification purposes, to examine his books and his processes and basically give us assurance that this is a legitimate businessman, that person is going to see very little problems with his merchandise. He is going to be facilitated through Customs very smoothly, very quickly, very efficiently.

Every now and then, we are going to need to do some testing just to make sure that they stay aboveboard. But as we put in place a system like that, you are going to see more and more customers trying to say, I want a gold card, too, how do I go about getting a gold card? Well, you sit down and you work with us so that we have a better appreciation of what you are importing and what your processes are, what your books are. That is going to be much more customer focused.

And within a year or two, you are going to see that fully operational and I would almost guarantee that you are going to see not only customers who import more satisfied, but I think our compliance rate will be measurably better than they have ever been before.

Mr. HOUGHTON. Thanks, Mr. Chairman.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Crane.

You have honored Mr. Crane and myself by mentioning that we were cosponsors of the Customs Modernization Act for a long time, and you complained about some Members of Congress preventing you from even studying the problem. But I want to say while you are here and while so many other people are here, that without your fine work as Staff Director and without the fine work of the Customs Service and without the fine work of this staff that is behind me, it couldn't have been done.

I know, Mr. Commissioner, full well, your personal input in all of this, and I want to thank you and congratulate you.

Mr. WEISE. Thank you.

Mr. GIBBONS. On the Customs Management Centers that you are setting up, I hope you will let Members of Congress and others know that as you create or are forced to create more of these, you are going to be forced also to close some of them. Try to get the Members of Congress in from the areas that are going to be closed in the same room with those from the areas that are going to be opened, so they can discuss between themselves the merits of opening and closing. Maybe that would be helpful. But I am sure there is already pressure on you in creating more of these centers.

Does the law allow you to create these centers, more of them?

Mr. WEISE. There is no legal impediment, Mr. Chairman, to creating—you know, this is a restructuring. The legal requirement is that we notify the Ways and Means and Finance Committees of what our intended reorganization is. It doesn't require legislative approval. It is kind of what we call, you know, the layover period, to allow Congress to react and respond.

Mr. GIBBONS. Well, make sure that when you are creating more of these centers, you let us know what is going on. Not only as a committee, but individually, and maybe we can arrange some of those meetings between those who want more centers and those who have to give up centers in this regard.

Mr. WEISE. I appreciate that offer of assistance, and I would also say that one of the most frustrating aspects of this, as I dealt with business communities that are pushing to have these, it gets to the point where when I explain to them what they—not only that they are completely administrative, but I also explain to them that in order to create one in your city, I have to take people off the frontlines to man the positions of that Customs Management Center.

In effect, every individual that is in a Customs Management Center is an individual that could otherwise be an inspector, an import specialist, someone that has got hands-on experience moving the merchandise. And some of the locations where I have been visiting are willing to accept that it doesn't matter. It is more to this, it is symbols and it is, you know, the fear that the marketing tools will be used to take business somewhere else, that they are willing to sacrifice frontline positions in order to have one.

So that is one of the things that I think is perhaps built up out of a lack of credibility on the part of the Customs Service. I don't think they believe me when I tell them what they really do. They

feel that they are more than what I describe them to be. I guess they perhaps feel that we have a secret plan that we are not disclosing that really would make them operational when they are not intended to be operational.

And it is frustrating and it is—the thing that is so frustrating to me is that the overall thrust of this is to serve customers better, and the more I have to take resources away from serving customers better to put them in administrative centers, it is counterproductive to our mission to serve them better. And in the long run, it is like, you know, a parent, where I think I know what is best for the children, but they won't listen to it, they know what is best. So that is one of the frustrations I experience.

But I think we are getting there. I think we are making significant headway. I think the more we discuss this openly, the more people appreciate and understand exactly what they are and what they are not. We are beginning to get some buy-in from it.

Mr. GIBBONS. I want to look into the future now, as best we can. As I remember the past, in the 20 years or so that I have been on this committee, our imports have increased more than tenfold in dollar volume. I can't tell you what the weight volume or the item volume is, but at least tenfold as far as dollar volume is concerned.

And the employment of your agency has nowhere kept pace with that kind of increase in volume. As we look forward to the future, we are spending a lot of time talking about downsizing government. But I don't think that any of us ever consider what the volume of imports is going to be into this country 10 years from now, or 20 years from now, as compared to the last 10 or 20 years. As I see it, foreign trade is really beginning to take off now, and there are going to be huge increases in volume of imports.

Can Customs handle this with a downsized budget?

Mr. WEISE. Well, Mr. Gibbons, this is one of the fundamental reasons that we have embarked upon this initiative. It is extremely difficult for us to keep pace with all of the factors that you enumerate. And that is one of the reasons that we feel that we have to reexamine ourselves. And not only the number of people, I think too often too many agencies in the past have always attempted to resolve problems simply by throwing people at the problem. And that isn't always the best solution. It certainly is a solution.

But an example, you know, when the American people started demanding greater access to their money, the answer the banking industry provided was not giving them more tellers, but it was coming up with an automated technique, the ATM machine, something that not that many years ago weren't that prevalent. But now, practically none of us could get by without our ATM machine. So we are trying to improve our processes in that same way of use technology, use improved systems to be able to go further and do more.

We are also trying to act fiscally responsible by saying we don't—we are not looking for more resources, but let us reinvest through this reorganization the 800, the 1,400 positions that we can free up, let us reinvest those in a productive, positive way, and we can then go back to you, the Congress, and say that we are acting fiscally responsible in this environment of tremendous growth of trade, we are not asking for more resources, just let us keep the

ones we have to reinvest more productively. Not just keep them the way they are doing the same things they used to do, we have committed, we are going to improve our process, improve our allocation of these resources, and improve our service to our customers.

Those ought to go hand-in-glove. We are not just saying write us a blank check. We are trying to act very fiscally responsible, as well as responsible in doing our mission.

I think if we are successful through this budget process, I will be appearing before the appropriating committees in the next several weeks, and that is where I fear the greatest pressure is going to be coming to downsizing, not just reorganizing, if we can withstand that, if we can hold the resources that we have, I think we can get tremendously more out of it and be prepared to meet those challenges of growth and trade in the future.

Mr. GIBBONS. Let me ask you, with the proposed balanced budget amendment and the other things that are on the road, it looks to me that we are going to have to reduce Federal expenditures very considerably over what they are now.

How much of a cut can your agency take?

Mr. WEISE. Can I not answer that one? I have to do some analysis of that. It would be very difficult, obviously, Mr. Chairman—excuse me, Mr. Gibbons. The old school.

Mr. GIBBONS. I sometimes have trouble with that myself.

Chairman CRANE. So do I, Sam.

Mr. WEISE. But I would rather not state on the record what cuts I could absorb. I would rather continue to fight to preserve the resources that I have.

Mr. GIBBONS. Well, the reason why I throw that out, I didn't expect you to give me an answer here today, but, you know, I don't see where the cuts are coming from. We are not going to cut Social Security, we are going to increase military spending, we can't control the interest on the debt which is substantial and growing all the time, we are not going to close down any Federal prisons or fire any prison guards. If we do away with the FAA, we have got to finance the replacement somehow by additional user fees or something. We don't ever want to call them taxes.

And it looks like to me agencies such as yours are going to have to take horrendous budget cuts, maybe at least 40, 50 percent in some cases. And I don't—somebody—nobody started thinking about that, that I can see.

Mr. WEISE. Well, Mr. Gibbons, I don't want to appear as if I am not willing to sacrifice. Clearly I think it is important, this administration and this Congress have both talked about the importance of reducing the fiscal deficit.

Certainly we have a responsibility in government as well as outside of government to do our part, and I am not—I have never asked for a complete exemption, that we should never be cut. We certainly have to get more out of the resources that we have and certainly be prepared to be reduced in size.

But one of the things that I have often believed even before I took this position, it could potentially be shortsighted to cut revenue to revenue-generating agencies. We are the second largest revenue-collecting agency, collected about $22 billion in the last year.

I know that maybe pales by comparison to what the Internal Revenue Service collects.

We will continue to try to improve our processes so that we can get the most out of the least, a government that works better and costs less. But at some point, you start cutting, you know, out of the fat and into the muscle and the bone, it will have an impact. And we are not only a revenue-generating agency, but a very important law enforcement agency that has an important responsibility to keep drugs and weapons and other contraband out of this country.

We will continue at whatever resource level we are given to do the best job we possibly can, but it goes without saying, that if you get all the improvements you can out of your processes and out of your people, at some point, there is going to be a point of diminishing returns in terms of what we can provide. But I don't think we have come near reaching that level yet.

I think we are trying to do a very effective job. We are in a difficult transition period right now trying to maintain doing the good job that the Customs Service has been known for doing over its 200-year history, while, at the same time, doing some dramatic changing in the way we are doing our business. I think we are moving in the right direction.

There are some unsettled times right now. But I think we are going to see a more efficient, more effective agency in the course of the next 12 to 18 months.

Mr. GIBBONS. I am sure if it can done, Mr. Weise, you can do it. You have done a fine job here, you have done a fine job in heading that agency. I just wanted to commend you.

Thank you.

Mr. WEISE. Thank you very much.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

And, Mr. Commissioner, welcome. I, too, wanted to thank you and your team for the good job you are doing with the modernization thus far, and to say to you that I intend to work with you in any way I can, to be of assistance as we move forward.

I don't have any questions about the modernization or the reorganization. I had some questions that I will submit for the record that perhaps you could answer, regarding an issue that is very important to me and my constituents, which has to do with textile transshipments.

I would like to ask one question, though. New laws and agreements allow us now to charge a nation's quota if that nation violates our transshipment laws, by as much as three times the amount of the violation, if we give them a full year's notice. And we know that criminal cases like this take an awful long time and often they result in no prosecution.

The question that I would have then is whether you would think that it might make sense in view of the fact that we will be dealing with fewer resources, and so forth, that you would turn over these investigations at some point to the USTR or to the Department of Commerce and let them deal with it through a quota-reduction system, as opposed to dealing with this through the Department of

Justice where we have not been as successful as we might have been?

Mr. WEISE. Well, let me say that in the spirit of true partnership, "People, Processes, & Partnerships," we are spending a great deal of time with our counterparts in the Commerce Department and the USTR dealing with this very issue. And the committee, the CITA Commission, the Committee for the Implementation of Textile Agreements, we recognize as a potential problem where there is a competing interest of pursuing a criminal case to its fullest extent, vis-a-vis reporting against the charge-backs, which is very important, obviously, from a domestic policy standpoint.

We have, I think in the near term, have improved that significantly over the way it used to be in terms of sharing information and trying to cooperate as closely as we can. But what you are suggesting is basically fundamentally moving away from the criminal side and that gets a little complicated, as I understand it, because once you get a U.S. attorney involved, it isn't just the Customs Service decision as to whether that will be pursued.

But I guess the best way I can answer that is that an issue we have been discussing, we are discussing, we should continue discussing to see if we can't come up with a method that basically serves the best public purpose of what we are all trying to achieve and that is to discourage this practice as effectively as we can.

And sometimes the criminal prosecution, as we have had some successes with our Operation Q-Tip, has a strong deterrent effect in the future, perhaps exceeding the actual charge-back that may discourage others and may get others to act more responsively, of checking before they deal business—do business with a certain individual. I think that what you may want is an approach that is a mixture of both. It is not all one or the other, but we need to continue to work on that.

Mr. PAYNE. Well, I agree, and I think what we need to do is whatever is most effective.

Mr. WEISE. I agree with that.

Mr. PAYNE. Thank you.

Chairman CRANE. Well, again, George, we congratulate you and wish you well and look forward to working with you in the future. Go about your business now and do something constructive, and thank you very much for testifying.

Mr. WEISE. Thank you very much, Mr. Chairman.

I will take half the audience with me now.

[Questions for the record to Customs and their responses follow:]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

The Honorable Philip M. Crane
Chairman
Committee on Ways and Means
Subcommittee on Trade
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The attached package of questions and answers are in response to the Subcommittee hearing on January 30, 1995, on Customs Reorganization and the Implementation of the Modernization and Informed Compliance Act.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Jose D. Padilla
Assistant Commissioner
Congressional & Public Affairs

Enclosure

Ways and Means Committee
Subcommittee on Trade
Hearing on Customs Reorganization and Modernization Efforts
January 30, 1995
Questions for the Record

1. **QUESTION: When can we expect that the major elements of the reorganization effort will be operational? What are the timelines and milestones for those elements?**

   ANSWER: I have attached our key milestones and timelines for implementation of the Customs reorganization as well as implementation of the Customs Modernization Legislation. These documents include the priority actions that we have already achieved. While much of the organizational realignment changes will be completed by the end of this fiscal year, the magnitude of the type culture change we envision will take many years to fully and effectively implement.

2. **QUESTION: How do you plan to limit disruption to the trade community as you implement changes to your operations?**

   ANSWER: Since our new CMCs will be internally focused, the trade will not be affected. In most cases, the Customs contacts in our headquarters and field offices will remain the same. While we are implementing changes to improve our performance, we also plan to work closely with our customers using a variety of tools, standards and measurement techniques to assure service is not only maintained, but improved.

3. **QUESTION: Will the reorganization result in quantifiable cost savings and/or improvements? If so, identify them.**

Answer: The goals of the Customs reorganization emphasize improved customer service. To carry out a strategy of improving customer service in a tight budgetary environment. Customs developed a reorganization proposal to allow Customs to respond to increased workload, customer service needs and operational requirements.

It is important to note that Customs did not undertake the reorganization study as a savings or cutback measure. Our reorganization study proposes that resources saved from the Headquarters restructuring and the elimination of district and regional offices be reinvested to allow Customs to meet increasing workload demands. It will be difficult to quantify the savings that result from process improvements and our organizational restructuring because a significant portion will be reinvested in our front line operations or will be used to absorb other mandated reductions or increased costs.

In order to meet the requirements of legislation such as the Government Performance and Results Act and the Chief Financial Officers Act, Customs began to develop a number of performance measures that will provide a good indication of the effectiveness of our resource investments. We believe that as we implement the phases of our reorganization proposal, we will be able to improve our performance as indicated by these measures, or at the very least, maintain our customer service standards without requesting additional resources.

a. What are the staff savings from closing district offices? Regional offices? What are the cost savings from closing district offices? Regional offices?

ANSWER: See answer to preceding question.

b. Will there be any additional costs? If so, identify them and explain how Customs is planning to pay for them.

ANSWER: We expect that the reorganization will generate additional costs associated with retraining, relocation, employee counseling and placement services, space, and information technology as we implement various phases of our proposal. We intend to absorb these costs without asking Congress for additional funding.

We are trying to minimize the costs associated with the reorganization. By establishing the Customs Management Centers (CMCs) and the Strategic Trade Centers (STCs) in places where we currently have staff the costs of relocation, space, and equipment redistribution will be kept as low as possible.

Customs would be happy to provide Congress with an accounting of our costs. However, a number of undecided variables would significantly affect our ability to provide reliable estimates at this time. When the final plan has been approved, we will be able to provide better estimates.

4. **QUESTION: How should we measure the success of the reorganization effort? What kinds of performance indicators or measures would accurately do this? How will you use them to monitor the process? Have you established baseline measures for each indicator?**

ANSWER: Customs is developing three categories of measures for each of our core processes (e.g. cargo processing, passenger processing):

Effectiveness -- For cargo and passenger processing, we are defining our effectiveness as "compliance": the portion of imports (or passengers) that comply with the laws that Customs is responsible for enforcing. This is a good measure of effectiveness because it captures what we are trying to achieve with our "informed compliance" efforts -- and gets us away form thinking of our effectiveness only in terms of seizures or penalties. In the past year we conducted compliance measurements of selected imported commodities in all major ports; and passengers in a small number of airports and land border crossings.

Customer Service -- Last year Customs established customer service standards for cargo processing and air passenger processing in response to the President's Executive Order. These standards dictate how long Customs will take to process such things as binding rulings, detention notices, and transactions involving quota and AD/CVD. They also cover the responsiveness of the Automated Commercial system and the speed in clearing commercial air travelers and imports. Customs is developing the systems to measure how well we adhere to these standards. Further, we are providing Customs personnel with the tools to gather and assess the perceptions of air and land passengers and members of the trade community regarding our performance.

Efficiency -- Customs is also measuring the general productivity of the cargo and passenger process. We will measure efficiency not only in terms of cost per entry and cost per passenger, but also in terms of the productivity of exams.

With this basic framework of measurement, Customs is trying to measure how well we achieve our mission; how well we serve our immediate customers in the trade community and the traveling public; and how efficiently we expend public funds.

5. **QUESTION: Customs reorganized its special agent force several years ago, eliminated regions, and imposed direct headquarters-line supervision.**

a. How will the new reorganization plan affect the special agent force?

ANSWER: The new reorganization will have little if any direct effect on the special agent force. Customs, as noted, had already streamlined the supervisory structure for special agents.

b. Who will the investigative Customs agents report to?

ANSWER: The current chain of command remains unchanged. Each Special Agent in Charge (SAC) to reports directly to the Headquarters, Director of Operations, Office of Investigations. Prior to the reorganization, which took place in 1993, each SAC reported to the Assistant Regional Commissioner for Enforcement (ARCE) for that geographical area who in turn reported to one of the seven Regional Commissioners.

c. How will the Customs Service ensure there is sufficient supervision over local SAC offices?

ANSWER: The Director of Operations, Office of Investigations, has Assistant Directors each responsible for the oversight of specific programmatic and operational issues relative to each SAC office.

d. Are SAC offices still subject to management inspections?

ANSWER: Yes, they are conducted by an element of the Office of Internal Affairs.

6. **QUESTION: Will any ports lose their rights of entry under reorganization?**

ANSWER: No, we plan to maintain all ports of entry where services are delivered to our customers. Moreover, we plan to strengthen our service to the importing community by enhancing performance measurement to ensure that we are improving our ability to deliver services uniformly at all ports of entry.

7. **QUESTION: Provide a detailed description of how functions now handled by the district and regional offices will be handles as a result of the reorganization.**

a. How will the legal functions such as Regional Counsel be handled as a result of the reorganization? Will the regional counsel be placed in the CMCs or be centralized?

ANSWER: The Chief Counsel's office will not centralize all legal activity. It will continue to have field offices at selected CMCs.

b. Who will assume the legal and operational roles of the District Directors and Regional Commissioners?

ANSWER: In most cases, the operational and legal roles of the District Directors and Regional Commissioners will be assumed by the Port Directors. Since the CMCs will be internally focused operational oversight and administrative support offices, technical appeals, protests, petitions for relief and FP&F matters which are not resolved at the ports will be handled by Customs Headquarters.

c. How will customer complaints that previously were handled by the districts and regions be addressed under the reorganization structure?

ANSWER: Responding to customer complaints will continue to be primarily the responsibility of the ports. Complaints that are not satisfactorily resolved at the port level will be addressed to our Headquarters process owners for resolution. However, the resolution of these inquiries will be channeled back through the port structure for response to the customer. CMCs will not be involved in responding to customer complaints since their primary focus is internal to Customs. If complaints are received at the CMCs they will be forwarded to either the ports or the Headquarters process owners, where appropriate.

d. How can 20 Customs Management Centers absorb the functions of 42 districts and 7 regions?

ANSWER: Many of the functions that had been performed by the districts and regions are no longer needed. Therefore, CMCs will not be absorbing the functions of the districts and regions. The work of the CMCs differ from that of the districts and regions. The role of CMCs is one of facilitating change and providing guidance on core business processes at the ports within their respective geographic areas as well as providing administrative support and guidance to the ports. By eliminating one layer of management and empowering the ports to deal with the trade and the public, we are providing for the execution of day-to-day Customs business closer to the point of transaction. Customs service provided to the trade and the public will continue at the same locations where it is conducted today.

8. **QUESTION: Will the abolition of districts and regions have an adverse effect on the business of any ports currently serviced by Customs? How can you reassure those ports that they will not be adversely affected?**

ANSWER: There will be no adverse effect on business because the shift from the district/region environment to the CMC is internally focused and transparent to the business community. To the contrary, personnel resources that were tied to managerial and administrative functions will be transferred to positions that provide service directly to the public, principally at the port level. The CMCs were created for the sole purpose of providing support to the ports and will have no operational interaction with the trade community. The CMCs will have the mission of collaborating with Headquarters and the ports to improve the uniformity, effectiveness and efficiency of the Service.

9. **QUESTION: How will the supervision and control of the Customs brokers be delineated?**

a. Will brokers be permitted by CMC geographic lines as they were under Districts?

ANSWER: Broker licenses are required by statute. Licenses are national in scope while permits are issued by district. However, district directors, by statute, are the Customs officials responsible for monitoring brokers, issuing broker penalties, and initiating and adjudicating suspension and revocation proceedings.

Since October 1, 1987, a broker is required by statute to employ a licensed individual in each district for which he has been issued a permit. The statute also provides for waiver of that requirement if the broker regularly employs a licensed individual in the Region who can exercise responsible supervision and control over Customs business in the district. When the statutory provision became effective, Customs vigorously enforced it. Brokers who could not meet the requirement were put out of business in that location. As a result, brokers have, since 1987, organized their business to comply with those requirements.

As a result, NCBFAA has proposed that Customs maintain the status quo for licensing and permits under the reorganization. Customs has agreed to maintain the status quo, but only appropriate transitions can be arranged. Broker Regions and Districts which mirror the existing regions and districts would be created until the new scheme can be implemented. The port directors at the former districts/ports would continue to perform the duties of the district director with regard to provisions of 19 USC 1641.

b. Will brokers who operate in multiple CMCs have separate permits? Or will the permits cover the existing territorial boundaries?

ANSWER: A joint task force, made up of Customs and broker representatives, which recently has been created to deal with all broker issues arising from the Mod Act and Reorganization, will pursue a solution to this issue as one of its first items of business. It will be necessary to seek a statutory amendment to 19 USC 1641 as it relates to licensing and permits once agreement has been reached.

c. If permitting is expanded to CMCs geographic areas, how would Customs ensure adequate supervision and control was being administered?

ANSWER: In keeping with the spirit of the Mod Act, the trade will participate fully in the development of a new license and permit scheme for brokers. As a result of Mod Act programs and the increased availability of advanced technology, brokers and importers are rethinking the way that they do business. Customs will do its best to accommodate the desires of the trade while maintaining adequate supervision and control over the conduct of Customs business. We cannot say for certain at this time what the final outcome will be but we believe that there will be a heavier reliance on technology to achieve responsible supervision and control.

10. **QUESTION: Provide a detailed status report on the management inspection process conducted by the Office of Organizational Effectiveness or its successor office.**

a. Summarize the findings of the most recent inspections.

ANSWER: The most recent management inspections were conducted at the Detroit and Tampa, District and Special Agent-in-Charge (SAC) offices. Customs conducts comprehensive inspections to ascertain the overall health of an organization. Inspections evaluate the manager's compliance with published standards identified in national papers and policy guidelines, coupled with an assessment of general management practices, to determine the effectiveness and efficiency of the office. A summary of the above inspections follows:

Detroit District Director - December 1994

The District Director provides Customs operational and administrative services adequately. Perceived shortages in staff compel the District to be satisfied with routine processing of commercial traffic. Content with a small number of complaints, they are not striving for efficiencies and increased effectiveness through continued inward analysis.

Compliance Measurement of automobiles and parts was well executed both internally and externally (trade). The Port Huron operation is exemplary in all areas. EEO efforts are commendable and should eventually prove effective. Trade Enforcement initiatives are properly emphasized. Performance in the FP&F and Seized Property program areas is steadily improving. Oversight of ACS error reports and collections processes, alignment of the I&C work force to actual work and validated threats, and full enforcement coverage of all modes of transportation, are the most serious issues facing the District.

District policy is sometimes constrained by historical precedent and practice, rather than being directed toward progressive strategies to deal with a large workload. The sheer volume of transactions, number of processing locations and diversity of release methodologies yields an organization that is slow to react, unable to measure productivity nor pursue opportunities for improvement.

Supervisory oversight of basic processes, and analysis of resource distribution and utilization, require renewed attention. Threat assessments and analysis efforts could rarely be articulated within Inspection & Control or

Commercial Operations to support strategy decisions. Intra-office communication is steadily improving under the new Assistant District Directors. Trade relations are good. NTEU partnership is working well. The Trade Enforcement Strategy (TES) effort is good as shown by an excellent relationship with the Office of Investigations. Other agency relations are very good due to the external focus of the District Director.

The District Director acknowledged the deficient areas and agreed to corrective actions that will be reviewed during the follow-up inspection.

Detroit Special Agent-in-Charge (SAC) - December 1994

The SAC is effectively accomplishing the Customs mission. Detroit is a well managed office that supports the national enforcement priorities. The inspection revealed no serious management issues.

Current threat assessments are used as a tool to allocate resources. The SAC uses resources effectively in support of national goals, consistent with the threat assessments. While the office has been productive in all priority programs, with prosecution of high quality violators, a downward trend is emerging, beginning with FY'93. Sixty-seven percent of the formal staff hours and 90% of the arrests, during the last two years, were in financial and narcotics smuggling.

Case management is good. Most narcotic smuggling investigations targeted the disruption and dismantling of organizations engaged in long-term conspiracies. Most of the financial cases are productive and narcotics related. The fraud program has recently produced cases for criminal prosecution. The Trade Enforcement Strategy was developed and carried out jointly with the District Director. The export program is viable having generated several cases for criminal prosecution.

The general management climate within the office is positive. Relations with internal and external enforcement counterparts are excellent. Administrative areas are in good shape with few minor exceptions.

Attention to quality source development, regular supervisory case reviews, controlled storage of evidence, improper access to the imprest fund safe, and several formal management controls are cited as areas for improvement.

The Special Agent-in-Charge acknowledged the deficient areas and agreed to corrective actions that will be reviewed during the follow-up inspection.

Tampa District Director - August 1994

The Tampa District Director is doing well in most operational and administrative areas. Trade Enforcement Strategy efforts are quite successful. However, the general outbound enforcement and narcotics enforcement posture is weak, particularly concerning cargo examination, criteria development and intelligence analysis. The Commercial Operations effort could also benefit from ranking duties and improved focus. The North Florida Special Agent-in-Charge (Tampa) is negatively affecting the seized property program by mishandling of documentation, delays in turning over seizures, etc. FP&F, Equal Employment Opportunity, and Labor Management Relations are properly managed.

Relations with the trade community are greatly improved. This is attributable to the efforts of the District management staff to meet with the trade and otherwise open lines of communication.

Burdensome reporting, documentation, and information flow requirements hamper the efficiency of operational and management efforts. Further, a delegation of authority to and span of control commensurate with the management/supervisory chain will empower these employees and enable them to achieve their maximum potential.

The District Director acknowledged the deficient areas and agreed to corrective actions that will be reviewed during the follow-up inspection.

North Florida Special Agent-in-Charge (SAC) - August 1994

The Special Agent-in-Charge (Tampa) is managing the office well and effectively supporting of the national enforcement priorities.

Threat assessments are current. Resources are effectively used to support national goals, but need adjustments to align them more closely with the threat. While enforcement statistics are generally good, a downward trend is emerging, beginning with FY'92. Narcotic smuggling accounts for 60% of the staff hours.

Case management is good; still, some locations need improvement in case file maintenance. The office has several highly complex narcotic smuggling cases, conducted under the purview of the Organized Crime Drug Enforcement Task Force (OCDETF), that produced significant arrests and seizures from major violator organizations. Most of the financial investigations have generated narcotics-related results. The Trade Enforcement Strategy is fully implemented and generates criminal fraud cases in each TES

category. Generally, the Resident Agent-in-Charge (RAC) offices are well managed, except two locations that need attention. Source development in narcotics smuggling is excellent; the SAC needs to expand initiatives in other investigative areas.

The general management climate within the office is positive except at two locations. Relationships with internal and external counterparts approach excellence, but communication with the District FP&F staff needs attention. Administrative areas are in generally good shape with few exceptions.

Case management, records maintenance, operational and administrative issues at two RAC locations, and unliquidated budget issues are cited as areas for improvement.

The Special Agent-in-Charge acknowledged the deficient areas and agreed to corrective actions that will be reviewed during the follow-up inspection.

b. Explain how the inspection process will be affected by the reorganization.

ANSWER: As the implementation for the reorganization begins to affect field operations, the focus of the management inspections will be temporarily shifted from all field offices to the Office of Investigations (OI) field offices, which are least affected by the transition. It is expected that the new organizations will be subject to a management inspection once they are established, become fully functional, and are ready for review as determined by the executive staff. The frequency and scheduling for these inspections will be done in close coordination with the process owners, CMC and STC directors.

c. Will CMCs be subject to the inspection process? If not, why?

ANSWER: All organizations/entities are subject to management inspections. It is envisioned that oversight for the CMC's will be exercised from Headquarters and that CMC's will require periodic office inspections similar to what occurs now under our inspection cycle. It is expected that CMC's will become subject to an office inspection once the transition phase is completed, and when it is determined by the executive staff that the CMC's are fully functional and ready for review.

11. **QUESTION: How will the reorganization affect the Customs in-bond program, that middle American cities such as Chicago and Houston have come to rely on so heavily?**

ANSWER: The reorganization does not affect the Customs in-bond program.

a. Summarize the internal control weaknesses or other problems reported in recent IG and GAO audits concerning the in-bond program.

ANSWER: Recent audits conducted by the General Accounting Office (GAO), the Treasury's Office of the Inspector General (OIG), and Customs Office of Organizational Effectiveness (OOE), have cited three major deficiencies within the current in-bond program. The most current report on these issues is dated June 15, 1994 (GAO/AMID-94-119). Customs concurs that these findings have validity. The audits were conducted to determine Customs compliance with the provisions of the Chief Financial Officers (CFO) Act of 1990. Implicit in all of the reviews was Customs lack of an adequate statistical database to identify the universe of in-bond freight movements and the extent of the cited deficiencies.

The first deficiency cited was Customs inability to adequately track in-bond movements. In-bond records were not always opened and/or closed properly, resulting in cargo not being tracked and generated reports which yield inappropriate pre-penalty actions. As a consequence, both the trade community and Customs have been burdened with unnecessary additional processing and expense.

The second deficiency cited was the potential for loss of revenue. The auditors illustrated that Customs is unable to assess either the proper penalty amounts or determine the correct revenue that should have been collected during any specific time period. Because proper classification and accurate value of cargo is not required prior to in-bond movement authorization, Customs lacks the ability to correctly assess penalty action for in-bond violations.

The third deficiency cited was Customs inability to perform an electronic risk assessment prior to in-bond movement authorization. It was recommended that Customs process in-bond information through electronic selectivity filters prior to cargo arrival at the first port in the U.S.

b. Will the in-bond program be allowed to continue in its existing form?

ANSWER: Yes. Currently proposed changes to the in-bond system involve tightening internal controls and do not

affect the importing community or the current processing of in-bond movements.

c. How does Customs plan on both preserving the benefits of this program, and addressing the audit findings?

ANSWER: The in-bond of imported freight is so popular with the importing community, but causes revenue and drug enforcement concerns as it is currently administered. Customs will attempt to address these concerns by added emphasis on compliance measurement techniques, informed compliance, and random post audits. These techniques should close any potential revenue gaps by penalizing violators in a meaningful fashion.

d. What changes are planned, and when will they become effective?

ANSWER: The only changes planned would be within Customs and not effect the importing community. Even these internal changes (Compliance Measurement, Informed Compliance, and Random Post Audit), would require programming changes, testing at several designated ports, and fine-tuning. It is expected that it would take several years to implement fully at all servicing ports.

e. Summarize comments received to date from the private sector on these proposed changes.

ANSWER: Most of the comments had to do with the perception that in-bond would be eliminated, and that there is nothing wrong with in-bond movements except for Customs inability to track them.

There were several comments regarding Customs inability to perform an adequate electronic risk assessment prior to in-bond authorization.

Several comments believed that importers would be forced to use a representative other than that of their own choice, which would force importers' to divulge privileged commercial information to anyone other than their own chosen representative. This comment reflects a misunderstanding of Customs proposal.

Other comments suggest changes to our examination policy, and that making changes to any system would be unsettling.

f. Will any additional information or requirements be placed on the importer or its agent who processes the in-bond entry?

ANSWER: At this time, there is no additional information nor any change in procedures that would affect the trade

community.

g. If there are additional requirements placed on the importing community, explain how these additional requirements will not pose an undue burden or create congestion at first ports of arrival?

ANSWER: The Customs Service has not published any new rulings or regulations on this issue because we are committed to working closely with the trade community. There are no additional requirements placed on the importing community.

h. What are the consequences of leaving the in-bond program unchanged?

ANSWER: The June 1994 Financial Audit of U.S. Customs, issued by the General Accounting Office (GAO/AMID-94-119), describes ways in which some parties might circumvent Customs enforcement techniques by utilizing transportation in-bond procedures for moving cargo from one United States port to another. GAO has found that such movements, particularly those supposedly transiting the country for ultimate export, pose a serious revenue threat which Customs fails to address under existing procedures. This cited flaw was identified as providing unique opportunities for unscrupulous persons to introduce contraband and to evade quota restrictions, tariffs, and dumping duties. Once the new proposal has met with approval within Customs, GAO will be given an opportunity to decide if this proposal satisfies their revenue protection criteria.

12. **QUESTION: What functions will the new CMCs perform?**

ANSWER: Their most important function will be to ensure that Customs delivers high quality uniform service at the ports by monitoring core processes and devising ways to improve them. The CMCs will also provide mission support services for the ports in that geographic area.

a. Will the CMCs conduct any business with Custom's customers?

ANSWER: Because the CMCs are internally focused, they will seldom deal with Customs traditional customers in the way the regions and districts now do. However, the CMCs will be involved with measuring customer satisfaction, and that will necessitate some contact with external customers. What the CMCs will definitely not do is to act as an appellate office to review decisions made at the port level.

b. What specific role will the CMCs play in ensuring consistent oversight and policy implementation at the ports?

ANSWER: The CMCs will specifically be responsible for ensuring uniformity and the quality of services provided by the ports. They will use a variety of techniques to do so, including customer satisfaction surveys, Business Process Improvement, statistical analysis and measurement techniques.

c. Will Customs Management Centers ever be involved in operational dealings relative to actual Customs entries? If so, explain how. If not, what will the appellate process be for differences of opinion between local field personnel and the importing community? Where will the disputes be solved?

ANSWER: The CMCs will be internally focused operational oversight and administrative support offices. Therefore, technical appeals, protests, petitions for relief, and FP&F matters that are not resolved at the ports will be handled by Customs Headquarters. These new appeal procedures will be set out in amended regulations.

d. Will any headquarter personnel be co-located at CMCs? If so, how many and what will they do?

ANSWER: There will be no Headquarters personnel co-located at CMCs. All personnel located at the CMC will report directly to the CMC Director, but in some cases, will have functional oversight from Headquarters offices in areas such as LAN administration and Equal Employment Opportunity.

13. **QUESTION: There is the perception that ports located near a CMC will have an advantage over ports not in close proximity to a CMC. Please comment on this.**

ANSWER: Ports located in close proximity to a CMC will not have an advantage over other ports. CMCs will not provide service to the trade community. Their focus is internal, not external. In fact, these offices will be invisible to the trade community. All trade activity, which has traditionally been performed at the ports of entry, will continue to be performed at the ports as usual without any consideration being given to their proximity to CMCs.

14. Question: How is the implementation of the pilot program proceeding? What is the proposed implementation timetable for the remaining CMC's and STC's?

a. What obstacles did you face in setting up the prototype STC in Washington, D.C.and the prototype CMCs in San Diego and New Orleans?

Answer: We have been prototyping various strategic trade activities for several months in Washington. This has included extensive outreach programs with customers in affected industries, and other trade agencies. Also, extensive work has been accomplished in implementing and improving our Compliance Measurement systems, and in refining our vast array of analytical and targeting systems. Finally, a number of prototype "interventions" have been designed and conducted. These have covered a variety of sensitive products, source countries, and methodologies.

We are currently developing the national procedures and processes needed to effectively coordinate and execute these interventions. Based on the experience gained, we will refine our methods, train our employees, and will fully implement the five STC's by October 1, 1995.

Two CMC pilot ports - New Orleans and San Diego - have been up and running since mid-January of this year. Though the structure of the two prototypes are quite different their mission is the same in that they are committed to providing service to the internal customer - Customs Ports. Three weeks into the test has revealed the need for very minor adjustment that were necessary for internal Customs management issues; otherwise, the CMC pilot is operating smoothly with no noticeable impact on the trade community.

The remaining 18 CMC locations are scheduled for implementation on October 1, 1995.

15. QUESTION: Who within Customs will be responsible for overseeing or supervising the CMCs?

ANSWER: The CMC Directors will report directly and be supervised by the Assistant Commissioner, Field Operations.

16. **QUESTION: Provide a detailed explanation of all current or planned enhancements to the existing system components as set forth in Section 631 of the Mod Act (19 U.S.C. 1411), including the cost, sequencing and expected operational date for each.**

a. Will you apply the planning, testing, evaluation and consultation provisions of the Mod Act (19 U.S.C. 1413) to these enhancements? If not, explain why.

b. Provide implementation time lines and milestones for each component.

c. Does Customs consider remote location filing to be an enhancement to the current system. If so, provide the legal basis for that interpretation.

ANSWER: We do not plan to make any changes to the current Automated Commercial System (ACS). Only maintenance will be done on ACS, changes required to support operational workload, and other changes required to support our reorganization effort. In addition, we will make changes to ACS that may be required by legislation (for example, GATT). As outlined in the SIMPlan for the Automated Commercial Environment, major system changes will be undertaken in the ACS redesign.

We do plan to test prototypes of remote location filing without making major changes to ACS. The purpose of the prototypes would be to gain operational and system experience on remote location filing that we could incorporate a successful system into the ACS redesign. We do not consider remote location filing an enhancement to the existing system, and do not plan to fully implement remote location filing until design of a successor system to ACS is complete. The prototypes for remote will apply the planning testing, evaluation, and consultation provisions of the Mod Act. The current plan is to offer an initial prototype in June of 1995 with a limited number of participants and ports. It will last for a period of six months and then be evaluated. Depending on the outcome and evaluation of the first prototype, we plan to offer a second prototype in June of 1996. At that time, we would expect to add more participants and ports.

17. **QUESTION: Provide a detailed explanation of the planned system components, including remove location filing, as set forth in Section 631 of the Mod Act (19 U.S.C. 1411), including the cost sequencing, and expected operational date for each.**

ANSWER: The Customs Service has not yet completed the detailed planning for future system components. The ACE SIMPlan describes the overall plan for the new system and the development approach being followed. Details regarding implementation of specific components will not be available until the design phase of the project is underway in late 1995.

a. Provide a detailed explanation of how Customs will meet the planning, testing, evaluation and consultation provisions of the Mod Act (19 U.S.C. 1413) for each of the planned system components.

ANSWER: ACE implementation will comply with the planning, testing, evaluation, and consultation provisions of the Mod Act. Customs planning for the conduct of two prototypes of remote location filing is an example of how it will comply with 19 U.S.C. 1413. Through publication in the Customs Bulletin, Customs intends to announce its test plans and solicit comments regarding its objectives, eligibility criteria, basis for participant selection, and plans for establishment of an evaluation committee made up of Customs, trade and other agency representatives.

Prior to initiating its remote location filing tests, as well as future tests of planned components, Customs intends to submit copies of its final implementation plans to the "Committees." Subsequent to these tests, Customs plans to submit the results of each test and an evaluation report. Finally, in the spirit of the Mod Act, Customs does intend to continue to emphasize trade community consultation.

b. Provide implementation time lines and milestones for each component.

ANSWER: Complete time lines and milestones for programming, testing and implementation will not be available until the fall of 1996. ACE must first complete its analysis of user design requirements during the fall of 1995. The date for overall implementation of ACE is October 1998.

18. **QUESTION: Provide a detailed explanation of any current or planned systems initiatives not addressed under the two previous questions.**

Answer: The ACE SIMPlan describes all components that are currently planned for the new system. These components will be defined in more detail during the requirements definition and design phases of the project.

a. Will you apply the planning, testing, evaluation, and consultation provisions of the Mod Act (19 U.S.C. 1413) or similar requirements to these enhancements? If not, explain why.

ANSWER: Customs will apply the provisions of 19 U.S.C. 1413 to all components of ACE.

19. **QUESTION: When will the overall systems plan, as required by the Mod Act (19 U.S.C. 1413) be submitted to the Committee?**

ANSWER: A copy of the ACE SIMPlan was provided to Subcommittee staff at a pre-hearing meeting on January 13, 1995. The SIMPlan is also incorporated into the Mod Act/NCAP report which is on its way to the Subcommittee via Treasury.

20. **QUESTION: Will you ensure that the basics of the system are working (including the system for selecting high risk cargo) before initiating the more advanced features (including remote location filing)? How?**

ANSWER: As defined in the SIMPlan, ACE is being developed so that all components will work in an integrated fashion. The ACE team, under the overall direction of the Trade Compliance Process Owner, is working with the Selectivity Redesign project and the Mod Act Task Force, among others, to ensure that this integration is built in from the outset. The Information Engineering methodology being used for the ACE project stresses the identification of dependencies between system components so that these components are designed and implemented in the proper order. At this stage, it is not clear that there is a dependency between selectivity and remote filing.

a. Will the selectivity redesign be completed before remote location filing is implemented?

ANSWER: As the Selectivity Redesign project has been in place for over two years and planning for remote filing only began recently, the new selectivity approach is much further along than remote filing. The compliance measurement portion of Selectivity Redesign has already been implemented with a national measurement of all commodities (at the four digit HTS level) in progress for FY 1995. Customs has also completed several "simulations" of new statistical selectivity approaches and numerous targeting prototypes are in operation. A comprehensive targeting prototype, combining the best features of some of the more promising prototypes, is planned for August 1995. Two remote filing prototypes are also planned, but they will not be as comprehensive as the selectivity prototypes. Based on the relative progress of the two efforts, we expect selectivity redesign to be ready for implementation prior to remote filing.

21. **QUESTION: In the past, Customs efforts to ensure compliance with trade laws have been viewed as ineffective.**

a. What is Customs doing to correct this?
b. What improvements have been made to the system for targeting high risk cargo (cargo selectivity)? When will they be fully operational?
c. What changes have been made to measure compliance with the trade laws?
d. What is the level of compliance today?

ANSWER: After several years of effort, Customs has recently revitalized its compliance measurement methodologies, and established an organization to develop and administer the Commercial Compliance Program. This program, which embodies both standardized procedures and automated systems to facilitate data collection, fosters uniform and refined measurement of the levels of compliance obtained from hundreds of thousands of examinations and inspections. The new program is focused on the entirety of U.S. trade agreements, devoting even greater attention to such high visibility agreements as NAFTA. The program's underlying methodologies have been reviewed and approved by various external governmental reviews at each step in its development.

In Fiscal Year 1994, these methods allowed Customs to provide a statistically valid compliance report on over 20 key industries or commodities: that is, industries possessing historical significance to Customs. These measurements have provided invaluable feedback, allowing us to make refinements for nationwide implementation in Fiscal Year 1995. The FY 1994 report to the Committee which reflects the results in the participating Customs districts will be transmitted shortly.

In Fiscal Year 1995, our compliance measurement program will provide comprehensive information on National Compliance rates for each of over 1200 commodity groupings in the Harmonized Tariff Schedules. Also, each district will implement this comprehensive program and provide information for each location. Additionally, there will be national data to support follow-on analysis, as well as information for resource planning and deployment.

During the first quarter of Fiscal Year 1995, the national compliance rate was 83.5% overall. This preliminary overall rate ia a cause for concern because it is much lower than we would like it to be. Further, this non-compliance has revenue implications. On the positive side, early findings highlight that compliance performance in critical areas such as Quota and Intellectual Property Rights is high and reflective of less need in the future for monitoring. Revenue projections have yet to be completed, but will be available shortly.

22. **QUESTION: Provide a copy of the most recent annual national trade and customs law violation estimates and a copy of the most recent trade enforcement strategy (19 U.S.C. 2083).**

ANSWER: A copy of each is attached. The Trade Enforcement Strategy is embodied within the Customs Five Year Plan and the Customs Annual Plan.

a. How frequently are these documents updated? When will the next editions be submitted to the Committee?

ANSWER: The Annual National Trade and Customs Law Violation Estimates Report as well as the Trade Enforcement Strategy are updated annually. The next National Trade and Customs Law Violation Estimates report will be issued at the start of the next fiscal year, while the Trade Enforcement Strategy will be updated in April 1995.

b. How are these documents used by Customs?

ANSWER: The Trade Enforcement Strategy sets forth the Customs framework to achieve the goal to maximize trade compliance through a balanced program of informed compliance, targeted enforcement actions, and the facilitation of complying cargo. The Annual Plan translates these broad goals into concrete actions which will improve our trade enforcement.

c. Has the current violation estimates requirement been replaced or superseded by the new compliance measurement system?

ANSWER: With regard to the National Trade and Customs Law Violation Estimates Report, we find very little value for Customs enforcement purposes. Our new compliance measurement system will provide the statistically valid analysis to provide meaningful reports for our enforcement purposes as well as the interest of Congressional Committees now receiving the National Trade and Customs Law Violation Estimates Report.

Customs is confident that our revitalized compliance measurement methodologies will allow the opportunity to evaluate the continued use of and need for the National Trade and Customs Law Violation Estimates Report. Our Compliance measurement system embodies both standardized procedures and automated systems to facilitate data collection, fosters uniform and refined measurement of the levels of compliance obtained from hundreds of thousands of examinations and inspections. The new program is focused on the entirety of U.S. Trade Agreements, devoting even greater attention to such high visibility agreements as NAFTA.

In FY-1994, the program's operation has allowed Customs to provide a statistically valid compliance report on over 20 key industries or commodities. The report, outlining FY-1994 results in these industries among participating Customs districts, will be made available to the Committee in the near future.

In FY-1995, this program will provide comprehensive information on National Compliance Rates for each of over 1,200 commodity groupings listed in the Harmonized Tariff Schedule. Additionally, each district will implement this comprehensive program and provide information relevant to the location, nationwide data to support follow-on analysis, as well as information to assist Customs resource planning and deployment.

23. **QUESTION: In the past, Customs rushed systems ahead before they were ready, so that they did not work as the users of the systems intended. How will Customs correct that problem this time around?**

ANSWER: Customs is redesigning the Automated Commercial System (ACS) under the Automated Commercial Environment (ACE) development project. The ACE Strategic Information Management Plan (SIMPlan), which was submitted to the subcommittee as part of the report on the Mod Act/National Customs Automation Program, sets forth the approach and schedule for ACE. As documented in the SIMPlan, we are taking a very deliberate and structured approach to developing ACE. A business process improvement effort, headed by a senior executive Process Owner, is defining the operational requirements for ACE, in close coordination with the ACE development team. A Trade Support Network (TSN) and Field Support Network (FSN), representing trade community and Customs field users, respectively, have been established to ensure end-user needs are addressed throughout the project. All requirements are being documented and modelled using an established development methodology support by a CASE tool. No aspect of the system will move forward until it has been approved by the Process Owner and thoroughly tested by end-users.

24. **QUESTION: How will the computer system changes improve Customs ability to meet the goals of "informed compliance: under the Modernization Act?**

ANSWER: The implementation of the Mod Act "informed compliance" concept will be dictated by the Trade Compliance process improvement effort under the direction of the Process Owner. Moving to an informed compliance approach is one of the goals and strategies for the Trade Compliance effort. An important supporting concept is that of an "account based" approach. Although our computer system will continue to process each trade transaction, our focus will now be on the accounts that submit these transactions, rather than each individual transaction. Using our redesigned selectivity system to analyze these transactions, we will monitor the compliance of the accounts. Identified compliance problems will be routed to our new "account servicing" process to perform the necessary informed compliance activities that will bring the account up to the desired level of compliance. By having a readily available account history, we will have a better context for judging how to act on individual problem transactions. Our computer system will track the informed compliance activities and the continuing level of compliance to determine the effectiveness of these activities and the performance of the account.

25. **QUESTION: How will Customs ensure that its system modernization effort will be based on business and customer needs?**

ANSWER: ACE will be developed based on the direction provided by the Trade Compliance process improvement effort. As part of this effort, Process Improvement Teams (PIT) are meeting with both internal and external customers to determine their needs. These needs are being used to design the new trade compliance processes which, in turn, serve as the requirements for ACE. In addition, the ACE team is working with its Trade Support Network (TSN) and Field Support Network (FSN) on a continuing basis to ensure that the detailed system functions operate in a matter that meet their needs.

26. **QUESTION: In the past, coordination of automation planning was a problem. Yet there are still many different groups within Customs that plan automation.**

a. Describe each group, task force, committee, office or other entity that is responsible for planning any current or proposed automated system.

ANSWER: The Office of Information and Technology (OIT) Program Management Staff currently oversees formal information systems planning activities for the OIT. This function will be transferred to the IRM Division being established as part of OITs reengineered approach to providing service to its customers and will increase emphasis on the planning program. Planning for current or proposed automated systems is initiated at the application working group level. Initiatives are elevated to the ADP Steering Committee when warranted to ensure a coordinated approach and that system development is in synch with agency priorities.

b. What is the role of the ADP Steering Committee?

ANSWER: Development of Customs ADP capabilities and the overall strategies and policies that guide the management of these resources are under the direction of the ADP Steering Committee. This committee is chaired by the Deputy Commissioner and had broad representation of Customs executives and technical personnel. The ADP Steering Committee meets regularly to coordinate Customs ADP support with mission and program priorities, and consider major automation procurement and planning initiatives for the short and longer-term future.
Established priorities and input received from ADP Steering Committee exchanges are used in all long range planning activities conducted by the Office of Information and Technology and are integrated with the U. S. Customs Service Five Year Plan and Office of Information and Technology strategic planning documents.

c. What is the role of the Executive Improvement Team?

ANSWER: A Reorganization Study Team was established on October 1, 1993, to evaluate Customs existing organizational structure and identify possible areas where operational efficiencies could be achieved through restructuring. The Executive Improvement Team currently functions to ensure that the intent of process improvement findings from the Reorganization Study Team are carried out in the implementation of newly established organization structures. The Executive Improvement Team approved the new structure for the Office of Information and Technology which will facilitate the delivery of information resource processing services to the users of Customs automated systems.

d. How are these activities coordinated? Do you have one office or person that is responsible for coordinating all automation planning?

ANSWER: The Assistant Commissioner for Information and Technology has the ultimate responsibility within the U.S. Customs Service for coordinating Customs IRM program planning and related activities.

27. **QUESTION: Provide a status report on the implementation of the Automated Export System (AES).**

a. What is the cost of the system, and when will it be operational?

b. Please explain how you plan to address confidentiality and timeliness concerns in your implementation of the AES.

ANSWER: Status: Development work is underway to re-engineer the export process to improve trade statistics, customer service, management of Harbor Maintenance Fees, and targeting and enforcement of export laws. AES will also provide an information gateway for all U.S. Government agencies involved in export, providing one-stop shopping for information and license validation.

To ensure user participation in the design and implementation of AES, 79 public or industry group meetings have been held to date and many more are already scheduled for 1995. A Trade Resource Group, a Customs Field Resource Group, and a Government Resource Group are regularly convened to provide input to the design of AES.
A phased approach for AES development and implementation is being pursued. The phasing involves both database content and mode of transportation. The proposed AES Phase I, July 1995, will focus on the sea environment. Air and air couriers will be implemented beginning in March 1996. Land borders (truck and rail) will follow in December 1996. An Implementation Plan is currently being reviewed by the Trade Resource Group and our partnership agencies. Once that review is completed, site selections for Phase I will be announced.

Cost: Development and implementation costs are expected to be: $1.5 million in FY 1995, $3.8 million in FY 1996 (forward funding in FY 1995 under consideration), with recurring costs estimated at $1.7 million per year for maintenance, licenses, enhancements and port software.

Confidentiality: The exporter will be responsible for the commodity data and updates; the carrier will be responsible for the transportation data and updates. However, the data can be transmitted by a freight forwarder, service bureau, broker, or port authority acting as an agent for the exporter or carrier. AES will not share data between the carrier and exporter.

All access to data will be on a "need to know" basis. Census laws on disclosure remain in effect and we will continue to be guided by the Privacy Act laws (PL96-275, June 17, 1980). We are researching
the legality of establishing a disclosure code for AES participants.

Data will continue to be downloaded to Port Authorities. The Journal of Commerce will continue to get shipping data on tape. The data will, of course, first be run against the confidentiality database currently used and established privacy data will be taken out.

28. **QUESTION: Provide a status report on implementation of "informed compliance" requirements in the Mod Act, including a brief summary of proposed regulations.**

a. Describe how the concept of informed compliance as implemented by Customs differs with the concept of strict liability.

ANSWER: To date, Customs efforts directed at implementation of informed compliance have been primarily focussed on (1) educating the trade as to the background and significance of the various provisions of the Mod Act, and (2) establishing a reliable compliance measurement capability. When fully implemented, this compliance measurement capability will enable Customs to focus its efforts on improving compliance levels in areas that represent the greatest threat in terms of risk to our key industries, the public health and safety, or in terms of loss of revenue.

To increase public awareness and invite public participation in the formulation of concepts, systems, and regulations, Customs posts copies of pertinent documents on the Customs Electronic Bulletin Board and in the ACS Administrative Message System. In terms of proposed regulations, Customs plans to publish in the Federal Register regulatory documents addressing the following Mod Act related topics before or during the Spring of 1995:

- Drawback
- Recordkeeping
- Laboratory procedures
- Liquidation - extension/suspension
- Warehouse Withdrawals; Aircraft Fuel; and Pipeline transport

During the same time frame, Customs expects to publish final regulations pertaining to "tests" and "couriers," an official notice identifying "entry records," and a draft of reasonable care guidelines. Finally, in the Summer of 1995, Customs plans to publish a comprehensive document containing a variety of "informed compliance" information.

In Customs view, the concept of "informed compliance" differs significantly from the concept of "strict liability." Under the concept of "strict liability," the importer would be automatically liable if there were a violation of law. For example, under 19 U.S.C. 1595a(c), if merchandise is introduced contrary to law, the importer would be liable even if the importer had no involvement with the violation. Concerning "informed compliance," it is essential that an importer and Customs share responsibility in assuring that reasonable care is used in discharging those activities for which the importer has responsibility. If an importer acts with reasonable care, there is a presumption that the importer is not liable under 19 U.S.C. 1592 if the importer made a false statement or omission when entering the merchandise.

29. **QUESTION: In a 1994 report on the audit of Customs financial statements, the GAO determined that the federal government lost money because Customs permitted the issuance of surety bonds in insufficient amounts to adequately protect against importer defaults. Briefly, what steps have you taken to remedy that situation?**

ANSWER: Although the problem is not totally resolved, and will not be totally resolved until we can implement new systems that allow for account based processing on a national basis, Customs has implemented a number of improvements to correct identified deficiencies. These corrective measures include:

- Increase in minimum bond amount for Activity 1, Continuous Bonds, from $10,000 to $50,000
- Revision to the guidelines used for setting bond amounts (Customs directive 0993510-04, effective July 23, 1991).
- Implementation of the Automated Commercial System (ACS) bond liability module in February, 1992, to monitor selected entry and bond activities and provide significantly improved assurance of bond adequacy.

During June 1993, Customs completed a major debt collection initiative aimed at reducing the number and age of delinquent debt. Much of the revenue reported in the subject audit report as lost from bond insufficiency is attributable to entries and bonds filed prior to implementation of the above cited improvements.

30. **QUESTION: The GAO report also references a "Surety Bond Task Force." Has that task force issued a report? If so, may we have a copy?**

ANSWER: The Surety Bond Task Force was disbanded without submitting a formal report. Due to the complexity of the issues and the divergent viewpoints of the interested parties, a more comprehensive review by an independent consultant was necessary. Work is underway to obtain this review, and we currently expect the contract to be in place and work started by early April. If desired, we will be glad to provide a copy of the results to the committee when available.

31. **QUESTION: If bond insufficiency creates losses to the taxpayers, why doesn't Customs just adjust upward the bond levels, especially since the cost of bonds for importers is negligible?**

ANSWER: As stated in the response to question 29, Customs has raised the minimum bond amount from $10,000 to $50,000. Other actions will be studied and taken as appropriate.

32. **QUESTION: This whole surety bond systems seems to me to be an efficient and low cost way to protect the nation's revenue and to lower the administrative costs to the Customs Service. Have you considered other ways to creatively use such bonds such as in the collection of the Harbor Maintenance Fees?**

ANSWER: We do not believe that, as currently prescribed, Harbor Maintenance Fee collection would be significantly improved by a bond requirement. Since HMF is a voluntary program whereby a fee is paid based on value reported by the payor, there is currently no basis for determining bond requirements until after payment is made. However, with the planned implementation of the export HMF portion of the new Automated Export System (AES), information will be available to determine a basis for bonding. The need for such bonds can then be considered based on collection results.

33. **QUESTION: We have reports that Customs is considering eliminating the bond requirements for certain large importers. If that were done, the costs of such bonds for small and medium-sized importers might skyrocket. Bond companies might withdraw from the system and we would have no protection of the taxpayers' revenue. Has anyone at Customs thought this through? Why would Customs want to take in-house a function that is currently performed by the private sector at no costs to the government?**

ANSWER: As stated in the answer to question 30, we anticipate that a contract will be awarded and work started by early April on an independent evaluation of all the benefits and shortcomings of the current bond procedures. Certainly, the impact, if any, on small to medium sized importers will be evaluated. Customs is attempting to simplify and streamline the processes without compromising the ability to collect monies due, and without unduly raising these monies. No changes will be made until all aspects of the process have been fully evaluated.

34. **QUESTION: What is Customs doing to prevent importer multiple duty deposit defaults through the Automated Clearing House?**

ANSWER: Customs has taken a number of steps to prevent multiple duty deposit defaults through the Automated Clearing House (ACH). These include:

- The ACH Coordinator at the NFC is monitoring ACH defaults daily. If a payor has multiple defaults, the ACH coordinator works with the ABI Client Representatives to suspend the payor's ACH privileges;
- If an ACH payment defaults, a debit voucher is established and payment is requested from the payor. Guaranteed payment is due within 48 hours. If the payment is not received in this time, the payor is placed on sanction;
- Revised and improved policies and procedures are being developed to ensure that Customs loss exposure is minimized.

Additionally, Customs is working on methods to provide default information to the affected sureties as quickly as possible to allow the surety to work with the debtor to prevent future defaults and to resolve the existing defaults. We will be glad to provide more information on this project once the work is completed.

35. **QUESTION: Provide a detailed status report on progress Customs is making in the implementation of the GATT Uruguay Round of trade agreements?**

ANSWER: The U.S. Customs Service, working with the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Department of Agriculture, was able to implement in a timely fashion (i.e., January 1, 1995), the U.S. tariff reductions commitments and other market access commitments (e.g., the conversion of absolute quotas on agricultural products to tariff-rate quotas (a process known as "tariffication") that were negotiated as part of the GATT Uruguay Round trade agreements.

In addition, the following regulatory projects are currently underway at the U.S. Customs Service relating to the implementation of certain provisions in the Uruguay Round Agreements Act:

1. Regulations to implement new deadlines (which are the result of the GATT Uruguay Round trade agreements) for the liquidation of entries in antidumping and countervailing duty administrative reviews.

2. Regulations to implement certain changes (which are the result of the GATT Uruguay Round trade agreements) to the U.S. intellectual property laws enforced and administered by U.S. Customs.

3. Regulations to implement certain new rules of origin for textile and apparel products.

Under the direction of the USTR, the U.S. Customs Service has been leading an interagency task force to prepare for the U.S. participation on a work program for the worldwide harmonization of non-preferential rules of origin that are envisaged by the GATT Uruguay Round Agreement on Rules of Origin.

Finally, training was held for U.S. Customs Service personnel to acquaint them with how the GATT Uruguay Round trade agreements and the Uruguay Round Agreements Act will affect the responsibilities of the Customs Service.

It should be noted that the Customs Service has also been implementing certain provisions in the Uruguay Round Agreements Act that are not the result of the GATT Uruguay Round trade agreements. Those provisions include ones relating to retroactive refunds on certain merchandise resulting from the renewal of the General System of Preferences program and to increases in the merchandise processing fees.

36. **QUESTION: Now that the Uruguay Round is complete, international discussions on a harmonized rule of origin are set to begin. What approach should be used? Should the "tariff shift" approach used in NAFTA be the baseline? Summarize private sector comments received on the regulations which extended this approach to all U.S. imports.**

ANSWER: International discussions on rules of origin have commenced. The first meeting of the Technical Committee of Origin was held in Brussels in early March. While the meeting was essentially organizational, the Technical Committee began preliminary discussions of the first phase of the work program which is to provide definitions for goods that are considered wholly obtained in a single country. As to what approach should be used, the Agreement on Rules of Origin, which is part of the Uruguay Round Agreement, clearly specifies that the tariff shift approach is the primary basis for determining whether a substantial transformation is present. It is only where the exclusive use of the tariff shift approach is not adequate to describe a substantial transformation that resort can be had to other so-called supplementary rules. This is consistent with the U.S. view that a change in tariff approach is the most transparent, easiest to administer, predictable, and clear basis to proceed for substantial transformation rather than a so-called process based approach or a value added approach. It remains to be seen whether other nations agree that the tariff shift approach should be utilized fully. Others have expressed the view that a value content approach is going to be needed. We strongly hope to avoid that result because of the complexities both for the trade and ourselves of such a rule.

Generally, the response to the tariff shift approach used in the proposal to apply the NAFTA marking rules to all country of origin determinations has been positive. It must be noted that these are still proposed rules except with respect to NAFTA trade. Thus far they have been used only for NAFTA purposes. Customs received 124 written comments. Of these, 27 were in opposition because they believed that the tariff classification approach was being proposed as a replacement for substantial transformation. This is incorrect, and Customs will clarify this matter in a Federal Register notice to be published shortly.

Overall most of the objections were to the specific product rules. Approximately 87 commenters disagreed with a specified tariff shift rule (e.g., the tariff shift rule for vegetable oil). In many of these instances, the commenter suggested an alternative tariff shift rule. Customs notice in the Federal Register will invite further comments to changes proposed to the original rules in response to the comments. Public comment is invited because any change to a specific rule in response to a comment may be opposed by another interested party who agreed with the original proposal. Customs believes it is appropriate to publish these changes and solicit comments on all substantive changes in these rules before making a decision on the final rule.

37. **QUESTION: Please provide a status report on your development of regulations governing rules of origin for textile and apparel imports called for in the Uruguay Round.**

ANSWER: A preliminary draft has been completed and is being readied for publication in the Federal Register. Copies of the preliminary draft have been circulated to the Committee for the Implementation of Textile Agreements, the Department of the Treasury, and to the Office of the Special Trade Representative. It is expected that the proposed rules of origin will appear in the Federal Register during the first half of March. The public will be given thirty days to submit their comments on the proposed rules to Customs.

38. **QUESTION: In your reorganization report (People, Processes, and Partnerships) released in September 1994, the Customs Service set forth its vision for the 21st century, emphasized partnerships with its customers and employees, and stressed management by process. Could you briefly describe again the core business processes (e.g., cargo compliance, strategic trade process, anti-smuggling) you have identified and how you will go about improving the management of these processes?**

ANSWER: First, since the issuance of the Reorganization Report we have redefined our core business processes. This was done through further study and analysis by the Executive Improvement Team (EIT), who are responsible for overseeing the strategic direction for implementing our organization and cultural changes. Our new core business processes are 1) Passengers, 2) Cargo In, 3) Cargo Out, and 4) Mission Support.

We will improve these processes in a number of ways. We will designate Process Owners to develop and implement plans to achieve major improvement goals. We are training Customs personnel on business process improvement applications to better plan, control and improve the processes to deliver quality services that meet customer needs. We are currently working on the development of a system of measures for the processes in order to evaluate organizational performance and customer needs. Customer satisfaction both internally and externally will be measured through surveys and other constructive means. We will be reconciling our Five Year and Annual Plans with the processes so that it will be a guide for continuously improving the processes. And last but not least, we will better integrate the delivery of information technology with the improvement of our processes.

Our first major process redesign effort on cargo-in, is an example of how we will apply the concepts discussed above to improve service. A cross functional management team is setting process goals, developing measures, and meeting with customers to define their needs, all part of an effort to redesign the cargo-in process. Our new automated Commercial system will be designed to support the redesigned cargo-in process.

39. **QUESTION: How will personnel be allocated between carrying out the core processes and the support processes (e.g., budget, human resources, financial)?**

ANSWER: Customs fully intends to live by the NPR direction that more resources should be devoted to the core operations of the agency with fewer devoted to functions, programs and tasks that are of little, if any, benefit or value to our external customers. Customs will identify these potential non-value added areas, through business process improvement techniques and reinvest those resources to field operations which directly serve our customers.

40. **QUESTION: How was your reorganization plan affected by Vice President Gore's National Performance Review? What role, if any, did the Customs Reorganization Study Team that prepared your reorganization report play in the national performance review at Customs?**

ANSWER: The Vice President's NPR played a significant role in our reorganization plan. When I appointed the reorganization study team, I gave them four goals, one of which was to take full advantage of the principles outlined in the NPR. I think you will find that we have totally endorsed and incorporated both the substance and spirit of the NPR in our reorganization recommendations.

As part of the reorganization effort, we included a full-time group to analyze and advise the Reorganization Study Team on those cross-cutting issues that could be taken advantage of in our overall plan. This NPR sub-team maintained close coordination with the Treasury Re-Invention Team and the NPR. As I have stated in my testimony, the Vice President and the NPR Staff have recognized our reorganization plan as a model for demonstrating positive and concrete action in support of the NPR.

41. **QUESTION: Under the reorganization plan, 600 people will be transferred from headquarters in Washington to field operations. What functions are being downsized or eliminated at headquarters to make this transfer possible? What flexibility is built into the reorganization so that Customs will have the ability to transfer people from one function to another in the future as the need arises?**

ANSWER: First, it is important to understand what the 600 position reduction in Headquarters means. It does not mean all 600 employees will be reassigned from Headquarters to the field. Rather, it will be a combination of employees moving to field positions and when possible the reallocation of vacant positions for use in the field or for such costs as investments in automated system enhancements, or absorbed cost of living adjustments.

Since I became Commissioner we have been able to achieve a reduction in our Headquarters staffing by nearly 160 positions, approximately 25% of our goal. Much of this savings, however, had to be used in absorbing unfunded pay increases.

We have established a Workforce Reinvestment Program to facilitate voluntary movement of employees from Headquarters to field opportunities. This effort, coupled with our Headquarters restructuring initiative to reduce administrative overhead (including the NPR targets in mission support areas), reduce supervisory layers, and streamline our core processes at Headquarters to become more focused on policy rather than operations, will be the means for achieving the remainder of our Headquarters reductions. In most instances these further reductions will occur through attrition over the next several years.

Our flexibility for realigning resources will come as a result of implementing process management. It provides the framework for focusing on organizational goals developed in partnership with our customers, and for integrating the efforts of our various disciplines into a coordinated strategy for achieving our goals. Process management will further provide us the means to clarify agency mission goals and priorities, and to clarify roles and responsibilities within the organization for accomplishing the goals. Armed with this ability, Customs will be able to better allocate its resources to meet changing goals and priorities.

42. **QUESTION: Customs is responsible for enforcing U. S. trade laws and collecting import duties. (In Fiscal Year 1994, Customs collected nearly $23 Billion in duties, an all-time high.) Nonetheless. one of the criticisms made about Customs in the past is that it has not done a good enough job in enforcing our trade laws, particularly antidumping and countervailing duty orders. Under the reorganization plan, Customs will create five Strategic Trade Centers (STCs). Please describe the purpose of these centers and other steps being taken to improve enforcement of trade laws.**

ANSWER: The specific purpose of these Strategic Trade Centers will be to assure that any major violations of our trade laws are promptly and effectively dealt with. These centers will be responsible for the identification, research and analysis of unfair trade practice issues, and the development of comprehensive national programs to address them.

43. **QUESTION: One of Customs goals is to become the Nation's supplier of international trade information. How will the reorganization plan improve your ability to perform the service?**

ANSWER: In the development of the new Automated Commercial Environment (ACE), Customs is taking steps to update its import data collection and processing capabilities to meet its core business process requirements. Customs is also working to develop an improved export system via the Automated Export System. Customs office of INTRADEX is working to determine the national and international requirements for trade information. By leading the NPR Information Technology initiative (IT06) to design an international trade data system, INTRADEX is moving toward integrating the myriad of data collection and processes now occurring in the federal government. By its improved system capabilities and its leadership in designing a plan for fully integrating government international trade processes, Customs will be in a position to truly become the nation's supplier of international trade information.

44. **QUESTION: According to recent news reports, Customs will have to dismantle an experimental x-ray system in Tacoma. Please review your experience with this system and do you expect it to be used by Customs in the future?**

ANSWER: Although test results of the Tacoma high energy x-ray system appear favorable, there are serious concerns about the suitability for field deployment for this system. This is a very expensive, technologically complex system with high operational and maintenance costs. The high energy x-ray system requires up to 15 acres of land and is installed in a permanent structure. As such, Customs would have difficulty locating that design in most ports of entry. Additionally, the system is completely immobile. We would not be able to relocate it as threat levels change and traffickers diversify their transportation patterns.

45. **QUESTION: The reorganization plan calls for a transformation of the Customs' culture to a management approach based on people, processes, and partnerships. How long do you anticipate it will take to effectuate this internal culture transformation?**

ANSWER: The culture changes to Customs are far more complex than moving organizational boxes. In fact, it is the culture reforms we envision that will drastically change the way we do our business. Whether it is our change to managing the organization through processes, developing our customer orientation, empowering employees or managing our partnership with the NTEU, this sort of change will require considerable time, sustained effort, and training for all our employees. Some of these changes are already in progress while others are just in the planning stages. It could easily take 5-10 years to see the full implementation and benefits of these culture changes.

46. **QUESTION: It has been estimated that, as a result of passage of the Mod Act, 50 percent of the existing regulations concerning commercial processing will need to be rewritten. I understand that 22 regulatory packages have been identified and 3 have been completed. How long do you anticipate it will take to rewrite the regulations needed to implement the Mod Act and what process is being followed to ensure this is achieved?**

ANSWER: Customs currently estimates that between 70 and 90 percent of its regulations will have to be amended to reflect changes enabled or required under provisions of the Mod Act. This estimate takes into account the very simple changes that will be required to eliminate references to Districts and District Directors to the complex changes resulting from new entry, drawback, penalty, and recordkeeping requirements and procedures.

Rather than initiating extensive rewrites of the Customs Regulations, Customs has taken an unprecedented step of first establishing Process Improvement Teams (PITs) and tasking them with defining how commercial processing can and should be streamlined. Following management approval of new processes defined by PITs, regulations will be drafted.

Recognizing the enormity of the regulatory task before it and the fact that between 10 and 18 months generally elapse between commencement of the drafting of a regulatory package and the date it becomes effective as a final rule, Customs estimates that completion of all regulations stemming from the Mod Act will take 3 to 4 years. To ensure that the Customs Regulations are brought into conformity with the Mod Act, Customs intends to monitor its progress using a section-by-section check list of Mod Act provisions.

47. **QUESTION: Please describe the process being followed for implementing the National Customs Automation Program. When will implementation be completed?**

ANSWER: For Customs to implement the National Customs Automation Program (NCAP), it must blend numerous ingredients. These ingredients include its reorganization plans, its NCAP needs and those of its "customers," legislative requirements contained in the Mod Act and in other legislation, and its existing automated resources. The process involves ensuring that Customs complies with all pertinent legislative requirements and meets the needs of its customers and employees without compromising its strategic intent to protect the public against violations which threaten the National economy, health and safety.

To ensure that NCAP evolves based on an appropriate "blend" of ingredients, Customs has established a "Trade Compliance Process Owner." Process Improvement Teams (PITs), working for the "Trade Compliance Owner," have been tasked with defining issues and developing detailed recommendations for servicing accounts; managing revenue; verifying compliance/non-compliance, detecting trade violations and interdicting cargo; instituting a balanced informed/enforced compliance approach; increasing the reliability targeting and analysis of trade law violations; and ensuring collection of timely and accurate international trade statistics.

The Trade Compliance PITs are interviewing internal and external customers, identify needs and will make their recommendations by the Summer of 1995. Following approval of PIT recommendations by Customs management, detailed automated analysis will be initiated by the Automated Commercial Environment (ACE) Team and the Office of Regulations and Rulings will commence work on supporting regulatory packages. Subsequently, redesigned processes will be developed, field tested, and evaluated prior to national implementation. Although some NCAP features will be available earlier, complete ACE implementation of NCAP is not expected to occur prior to the Fall of 1998.

48. **QUESTION: What will be your major challenges in implementing the Customs Reorganization Plan? What complaints have you heard about the proposed plan since it was released last September and how have you addressed those complaints?**

ANSWER: As I stated in my testimony, the most immediate and challenging obstacle to our reorganization plan has been a misconception about the role of our new Customs Management Centers (CMC's). Perhaps the most controversial aspects of our proposal have centered on the location of these centers and their function in the new Customs organization. I have and continue to meet with concerned representative of the trade community and trade associations to discuss their concerns. I find that after such discussions they are more receptive to our proposals.

With regard to internal concerns from our employees on the "what about me" issues, I continue to keep them apprised about reorganization progress through E-Mail messages and satellite broadcasts. In addition, we have set up career centers in Headquarters and in the seven regional cities. These centers post reinvestment job opportunities, coordinate referrals, respond to employee questions, and provide career counseling.

49. **QUESTION: How will Customs' efforts to combat international drug trafficking be affected? and will the reorganization plan improve your ability to combat drug trafficking?**

ANSWER: Efforts to combat drug trafficking by the Customs Service will be greatly enhanced by the reorganization. The ability to be more flexible with new initiatives and innovative programs will create a more efficient, productive and highly skilled workforce.

The Customs Service recently initiated a new initiative, Operation Hard Line, which places additional manpower (agents and inspectors) at our front lines to combat drug smuggling and violence along our southern border. Upgrading inspection lanes with jersey barriers and bollards will help channel traffic in a more controlled manner, thus allowing for an efficient and thorough inspection of cargo and conveyance, while greatly reducing the risk of violence by port runners.

50. **QUESTION: According to press reports, one concern that has been raised by some New York Brokers is that it will be difficult to maintain uniformity of service throughout the country. Lack of uniformity of service may lead to "port shopping" (brokers and importers seeking ports of entry where they believe they will receive more favorable treatment). How does the proposed reorganization plan seek to ensure uniformity of service?**

ANSWER: The function of the CMCs is to ensure the high quality uniform services are provided at the ports and to work with the ports to constantly improve the delivery of those services. The CMCs will monitor core processes at the ports to ensure that uniform service is provided through the use of a variety of process management tools, which include Business Process Improvement, statistical analysis, measurement techniques and customer surveys. In addition, the process owners at headquarters will work closely with both the CMCs and the ports to ensure that all issues concerning uniformity are closely monitored and adequately addressed to support the service needs of the importing community.

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51. **QUESTION: According to recent reports, Customs has recently lifted a hiring freeze that has been in effect since early 1993. How much below current authorized staffing levels is the Customs Service, where are the shortages being felt the most, and how long will it take to bring the Service back up to authorized levels?**

ANSWER: Our decision is to maintain a level of field positions as well as operations and service in spite of all the required absorptions such as the pay raise and the administration's requirements for downsizing.

Therefore, we have followed a policy of using savings from reductions in Headquarters and support positions, gained through attrition, to pay the increased cost of operations.

Our staffing policy has maintained a freeze on Headquarters (regional and national) positions and allowed the filling of front line and field positions. Between April, 1993 and January, 1995, we have reduced Headquarters by 153 full-time positions and 20 part-time positions.

Since Customs was under a hiring freeze through most of 1994, our on-board strength in the field decreased. However, we are in the process of filling nearly 700 positions, which includes an additional 186 FTE for NAFTA and textile enforcement and 190 for inspectional services as well as other critical positions that were lost through attrition.

We will continue to follow a policy of reducing Headquarters and support positions, while investing staff resources in the field.

52. **QUESTION: Recently, Customs lifted a hiring freeze that had been in place since February, 1993. In his FY 1995 budget, the President requested $18 million in order to hire 186 additional Customs personnel. These personnel were to focus specifically on the enforcement of textile trade laws. During debate on last year's appropriations bill, Chairman of the Appropriations Subcommittee on the Treasury, Postal Service and General Government, Steny Hoyer, noted that simply re-assigning existing personnel would not meet the obligations in the bill. Please provide the Subcommittee with an update on Customs' progress in hiring these 186 additional Customs inspectors.**

ANSWER: Since employees skilled in NAFTA and textile enforcement activities cannot be hired directly off the streets, the Customs Service has taken steps to reassign experienced staff into a portion of these positions. This is especially true for the criminal investigators and a portion of the import specialists. The balance of the positions are being actively recruited and will be filled by mid-summer.

53. **QUESTION: Section 333 of the Uruguay Round Agreements Act authorized the Secretary of the Treasury to publish a list of any foreign nations or foreign concerns that aid and abet the transhipment of textile and apparel products. This section was intended to provide importers with the information they need to comply with the reasonable care standard established in the Customs Modernization Act. To date, what activities have Customs and Treasury undertaken to implement this part of the Uruguay Round Agreements Act?**

ANSWER: Currently, Customs and Treasury are meeting with the Committee for the Implementation of Textile Agreements (CITA) in an effort to identify those countries through which transshipment to the United States has occurred. Once identified, Treasury, Customs and CITA will be assessing the degree of cooperation these countries have provided in preventing transshipment.

Additionally, Customs is manually reviewing its files to identify individual producers, manufacturers, suppliers, exporters or other persons located outside the United States against whom the Customs Service has issued penalties under section 592. Customs must undertake this process manually because our automated systems are currently unable to distinguish 592 penalties issued for transshipment offenses from 592 penalties issued for other violations of law. To more easily extract this information in the future, we have proposed enhancements to our automated systems.

54. **QUESTION: What assurances can you give that a successor Customs Commissioner will not be tempted to change the responsibilities of the Customs Management Center (CMC) to include operational responsibilities, and can anything more be done now to make such a change in policy less likely?**

ANSWER: It would be very difficult for me to give the sort of assurances being asked. What I do believe is that successor Customs Commissioners would find that our concept of the CMCs is sound. First, our customers want efficient and fair services with the least amount of intrusion possible. Putting operational responsibilities in the CMCs would in effect be adding an additional layer of review and control, which would lessen the importance of our proposals to eliminate existing Regions and Districts. Our plan is to keep the CMCs very lean and the more we have to take resources away from serving the customer and place them in these internal administrative operations, the more counterproductive this is to our mission to serve them better.

Probably, the most effective way to demonstrate our intent and guarantee on the CMC concept is to have it implemented as quickly as possible and to involve our customers in a full partnership to develop the processes and measures to ensure that the CMC's operate as designed. Changing our culture and implementing business process management will also assure the long-term commitment for staying the course. In addition, our compliance measurement will give us objective performance data for policy makers. Further, we a developing performance indicators on processing time and customer satisfaction. To the extent that we are successful at getting these management processes in place, we cannot see why future Commissioners will want to make major changes not will our customers sit back and let it happen. Finally, I believe that our two proto-type CMC's will also convince the trade that the CMC concept can and will work.

It will be through experiencing our new framework, for the way in which the Ports and CMC's are involved in delivering our services, that will make believers of the trade community. I think we are making significant headway in making our case and the more we discuss this openly with the trade the more buy-in we are getting.

55. **QUESTION: What assurances can you give that CMCs will not be given National Entry Processing responsibilities that could give a competitive advantage to CMC ports?**

ANSWER: The CMCs are simply administrative centers dealing with internal support functions. They will not have any operational functions. The implementation of National Entry Processing (NEP) will not be affected by CMCs. The importer will choose where they want to file their entries using NEP. That decision will be based on the companies choice of how they wish to conduct business. A CMC presence or absence should have no affect on that decision since they will have no dealings with the CMC.

We anticipate that the major NEP ports will be cities that are major commercial centers but that many importers will also choose not to use NEP and simply process at their local port. But that choice will rest with our "customer", not Customs unless staffing makes approval of their request impossible. (Explanation - If everyone in the country chose to make their entries in Providence, where we have 2 import specialists, we would have to insist on diverting some of the "people work" to other ports but the filer could still electronically file the entries from their location of choice.)

56. **QUESTION: On numerous occasions, you have stated that the new CMC's will have only an inward management focus and will not be involved in day-to-day port operational activities. The Committee understands that, because CMC's are not intended to affect port operations, your selection criteria for determining CMC's did not include significant measures of operational port performance (i.e., duties collected, entries presented, existing outport facilities).**

In light of your decision to omit this criteria, would you support legislation similar to current law (19 U.S.C. 2075) which would prohibit Customs from giving to the CMC site any additional responsibilities beyond those outlined by you, including operational responsibilities, without prior Congressional notification and a waiting period similar to that included in this law?

ANSWER: There may be benefits to legislating the responsibilities of the CMC's in that it could minimize or remove the concerns of the trade community regarding the perceived competitive advantage by being named a CMC city. However, legislating the CMC responsibilities could be too restrictive as we continue to work with our customers in further defining and improving our processes. In addition, as we gain more experience with our new approach to management and begin to make improvements to our processes as well as our automated support systems, we believe that we will be able to reduce the number of CMC's which could result in further improvements in service to our customers. We are confident that once we are able to implement our CMC approach, we can demonstrate to the trade community that there will be no loss of status, positions, or service.

57. **QUESTION: What steps are you taking to ensure those ports which have not been selected as CMC sites will not be competitively disadvantaged by the selection of their neighboring selected ports?**

ANSWER: As I have previously stated in my testimony this issue is perhaps the most controversial aspect of our reorganization. We have had representatives from the trade community requesting a CMC without the slightest understanding of their intended purpose. Locations designated as CMC's are falsely claiming competitive advantage. Cities not designated as CMC's incorrectly perceive a loss of status, positions, or service.

We are not building our new organization around complaints or problems. Rather, we are building it around uniform development and execution of our processes and customer service standards. In our new field structure we will guarantee continued effort to achieve uniformity of service and operations among ports. This guarantee is based on uniform processes, uniformly executed at the ports. We have and will continue to include our customers in the development of these processes and in the development of our customer service standards for each of these processes.

I will continue to personally meet with the trade to discuss their concerns and to actively engage them in helping us to ensure that Customs holds the line on its service commitments.

58. **QUESTION: If the CMC site (e.g. Baltimore) is to have budgetary authority over the ports within its jurisdiction (e.g. Philadelphia) which is also a competitor, what assurances can you give that the budgetary authority vested in the CMC will not be abused to give the CMC port a competitive advantage?**

ANSWER: CMC Directors will have the authority to address resource needs as identified by the Port Directors or headquarters process owners. All budgets will be governed by the operation policies and oversight of the Commissioner and the Assistant Commissioner for Field Operations in conjunction with the CMC Directors.

59. **QUESTION: The Customs Service pays an average of $55,000 for each permanent change of station (PCS). Customs intends to decrease the Headquarters staff by 600 employees. To date, 100 employees have left by attrition, i.e. early out retirements. Customs also intends to eliminate the seven regions. The Northeast Region headquartered in Boston has 77 employees. No RIFs are expected. Last fiscal year, the Service budgeted $20 million for PCS.**

1. What will be the total number of employees relocated as a result of the reorganization?

ANSWER: I have made the commitment, to employees whose jobs are being restructured, that we will work with them to move them to other positions as slots become vacant, either through attrition or through restructuring. In many cases, this will involve some retraining or relocation. In almost all cases, we will require some time to implement these changes. Because of the unknowns associated with these shifts, we are unable to currently estimate any savings associated with the reorganization.

2. How much will this cost?

ANSWER: We anticipate that the reorganization will generate additional costs associated with retraining, relocation, employee counseling and placement services, space and information technology as we implement various phases of our proposal. However, since neither the plans nor the time schedule has been finalized, we are unable to estimate exact costs.

We are trying to minimize the costs associated with the reorganization. By establishing the Customs Management Centers (CMCs) and the Strategic Trade Centers (STCs) in places where we currently have staff, the costs of relocation, space and equipment redistribution will be kept as low as possible.

Customs would be happy to provide Congress with an accounting of our costs. However, a number of undecided variables would significantly affect our ability to provide strong estimates. When the final plan has been approved, we will be able to provide better estimates.

3. Will the costs of reorganization PCS's be beyond the existing PCS budget?

ANSWER: As stated above, it is too early to estimate PCS costs associated with the reorganization.

4. Where will the money come from? Customs budget? If so, from what program?

ANSWER: Customs will be able to pay for the reorganization costs with savings realized by not filling vacated support positions in regional and national headquarters. The reductions in overhead positions, along with delayering and consolidating space should provide sufficient resources to cover the costs associated with the reorganization.

5. How much money has been spent on the reorganization effort so far?

ANSWER: Over an eighteen month period, Customs spent $750,000 on expenses associated with the reorganization study. These expenses included payment for the services of various consultants, including the Federal Quality Institute, Brookings Institution and the National Association of Public Administrators. There was also a small amount of funding for TDY and travel costs for those working group representatives who were detailed to the study from outside of the Washington metropolitan area.

6. How much money will be spent as a result of reorganization, i.e. planning and implementation?

ANSWER: It is too early to estimate the total costs of the reorganization.

60. **QUESTION: The Plan establishes twenty Customs Management Centers (CMCs) whose functions will be inwardly focused. They are supposed to be staffed with 10 - 30 employees each. One function mentioned in the plan is Human resources. No staffing model for CMCs has been made available. Ironically, the number of positions within the newly created CMCs will be enough to absorb the number of people slated for removal from Headquarters. According to page 38 of the Plan, the CMC's will have only three major functions.**

1. What functions will be performed at CMCs?

ANSWER: The CMCs functions are to ensure that high quality uniform services are provided at the ports, to work with the ports to constantly improve the delivery of those services and to provide mission support to the ports.

2. Who performs these functions now?

ANSWER: Currently, the program uniformity responsibilities are shared by a number of offices, but mostly by the regions and Headquarters functional offices. The function of working with the ports to constantly improve service delivery and quality was not specifically identified as a primary goal under the current region-district organization. Mission support functions currently are provided by various units which are organized and operated in accordance with local conditions, divergent Headquarters, regional and district policies, and system - dictated considerations.

3. Since the Office of Human Resources (OHR) is now centralized at Headquarters, how will establishing 20 OHR's streamline the process?

ANSWER: The reorganization plan does not call for the decentralization of OHR into the (20) CMC sites. While it is possible that some simple/routine personnel related functions will continue to be performed outside of OHR, the Customs Service will continue to maintain a centralized personnel operation.

4. How can a CMC perform the tasks set forth on page 22 of the plan with only 10 employees?

ANSWER: The role of the CMCs is to facilitate change and provide guidance on core business processes at the ports within their respective geographic areas as well as to provide administrative support and guidance to the ports. By empowering the ports to deal with the trade and the public, we have provided for the execution of day-to-day Customs business closer to the point of transaction.

The CMC staff will serve as coaches and facilitators who will draw on the expertise and the manpower at the ports and

Headquarters to ensure that Customs services are provided uniformly throughout the Service.

5. How will the CMCs be staffed? Reassignment? Merit promotion? Bargaining Unit?

ANSWER: The staffing of CMCs will be accomplished through a variety of sources. The Customs Service has just entered into an agreement with the National Treasury Employees Union, "Partnership for Workforce Reinvestment". Under the provisions of this document, there are formal posting, referral, and selection criteria which must be followed when filling bargaining unit positions. This document also specifies when the Customs Service could proceed with merit promotion and external selection procedures. With respect to non-bargaining procedures, positions may be filled by reassigning employees into these new positions with or without a formal posting, or through formal recruitment procedures.

6. Have the CMCs been created as a "dumping ground" for relocated HQ personnel?

ANSWER: Absolutely not. As previously explained, the CMCs have a clearly defined purpose, which is to provide training, evaluation and oversight of ports and port processes. As our Port Directors and their staffs take on new and broader responsibilities, the role of the CMCs will be critical. In addition, based on the number of impacted employees in our regional and district offices, we would expect that most of the staffing for the CMCs will come from our regional and district staffs, not headquarters employees. In addition, our primary goal is to reinvest impacted employees (field and headquarter employees) in front line positions at the ports, not at CMCs.

7. If the CMCs will have only three major functions, why do we need twenty of them?

ANSWER: The CMCs most critical function will be to ensure that Customs delivers high quality, uniform service at the Ports by monitoring key processes with the intent of constantly improving them. In addition, the CMCs will be responsible for providing administrative support for the ports. The CMC's focus on facilitating change and improving processes will be accomplished through use of a variety of process management tools, which includes business process improvement (BPI), statistical analysis, measurement techniques and customer surveys.

61. **QUESTION: We currently have seven Regions. Customs intends to eliminate all of them. The attached sheet shows the current staff of the Northeast Region (Region One). It appears that many of the departments perform functions that cannot be performed at the Port level, i.e. Regulatory Audit, Regional Counsel (review of supplemental petitions), Labor Relations, EEO, etc. Of particular concern is budget authority.**

1. What are the functions of each department at the Regions?

ANSWER: Page 38 of the Customs Reorganization Report, People, Processes, and Partnerships provides the present location of primary functions and their dispersion after implementation of the reorganization (copy attached). This chart includes the Region functions.

2. Where will each of these functions be performed upon reorganization?

ANSWER: See attached chart.

3. If they are performed at the CMC, will we be increasing the number of Regions from seven to twenty and losing the inward focus which characterized the CMC?

ANSWER: The attached chart clearly reflects, the only functions to be performed by the CMC are uniformity assistance, process oversight and administrative support. The role of the CMC does not include any of the operational functions that are being performed by the regions. The only similarity to a region may be in the areas of administrative support.

4. If they are performed at Headquarters, will they be able to accommodate the increased workload with decreased staffing?

ANSWER: Current plans do not call for functions currently performed at the Regions and Districts to be moved to Headquarters. Rather, they will be performed at the Ports. The attached chart reflects this concept. Headquarters will not be operational, but rather, focused on the core business processes and developing national goals and objectives, priorities, and measures of accomplishment to ensure efficient and effective operations and service to our customers.

5. Who will control budgets for the Ports? Will we now have twenty budgets instead of seven? Or will we have 300+ budgets with a "budget officer" at each port? Or will we have one budget from Headquarters?

ANSWER: Through the reorganization we have established line authority from the ports to the Assistant Commissioner for Field Operations. It is the responsibility of the Assistant Commissioner to appropriately align resources to meet current national goals and priorities. Allocation of such resources will be through the CMC's to the Ports. The present plan is for each CMC to oversee and, to a lesser extent, administer the budget for those ports located within the jurisdiction of the CMC. Large ports will be allocated a budget for execution purposes. The port director will be responsible for managing all resources assigned to his/her port. For smaller ports, a consolidated budget will be administered to support their needs.

62. **QUESTION: Customs currently has 42 District offices. Each District is responsible for the Ports of Entry in its area. Following the new "employee empowerment management style, Customs intends to push many responsibilities down to the Port level, thus eliminating "District Management." Each of the 300 Port Directors will have the responsibility for running his/her Port. It will be the CMC Director's responsibility to ensure uniformity among the Ports in his/her area. Uniformity was one of the primary concerns of Customs' external customers.**

1. Will twenty CMC's be able to maintain uniformity among all 300+ Ports of Entry?

ANSWER: We believe that the 20 CMC's can guarantee uniformity of service and operations among the ports. This guarantee will be made possible through a number of means. As we further develop our core business processes with our customers, appoint Process Owners, include the customers in developing our customer service standards for each process, and continuously seek feedback from our customers, we can improve and assure uniformity of service. In addition, as we enhance our organizational performance measures, this too will increase our ability to deliver uniform services.

2. Will external customers enjoy an increase in uniformity if the 300+ Ports are running their own respective operations?

ANSWER: This is the expected outcome that we plan to guarantee. Our commitment to business process improvement techniques is grounded in an understanding that we can achieve improved mission performance through more effective working relationships with our customers. The Ports are where the policies, programs and processes are implemented. The CMC's support Headquarters in the design, redesign, and improvement of national policies, programs, and processes. The CMC's lead the process and customer measurement and process improvement efforts and ensure the uniform application of laws and policies between Ports of Entry within its geographic area. CMC's will not be involved in the day-to-day Port activities.

Chairman CRANE. The next panel is J. William Gadsby, Director, Government Business Operations of the U.S. General Accounting Office; accompanied by Hazel Edwards, the Director of Information Resource Management; and Walter Raheb, Senior Evaluator.

Mr. GADSBY. Thank you, Mr. Chairman.

Chairman CRANE. And we will start with Mr. Gadsby's testimony.

STATEMENT OF J. WILLIAM GADSBY, DIRECTOR, GOVERNMENT BUSINESS OPERATIONS ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; HAZEL E. EDWARDS, DIRECTOR, INFORMATION RESOURCE MANAGEMENT, AND WALTER RAHEB, SENIOR EVALUATOR

Mr. GADSBY. Thank you, Mr. Chairman. And I will briefly summarize my statement which has been submitted for the record. Starting in the mideighties, the GAO undertook a series of general management reviews on major Federal departments and agencies. Responding to the interests of the Subcommittee on Oversight of the Ways and Means Committee, which, by the way, had done its own study and assessment of Customs' commercial operations, the GAO assessed Customs' ability to fulfill its important trade enforcement mission as part of that series of management reviews.

The bottom line of our September 1992 report was that Customs could not ensure that it was meeting its responsibility to combat unfair trade practices or to protect the American public from unsafe goods. We attributed Customs' problems to weaknesses in a number of things, including mission planning, organization structure, financial management, human resources management, as well as information management practices. Since 1992, we have continued to do considerable work in the financial management area in conjunction with Customs' efforts to prepare good financial statements.

The internal management problems that we found at Customs in all of our work were very serious. In addition, Customs has been faced with substantial external challenges emanating from increased trade, continuing enforcement responsibilities, as well as pressure from the business community to move goods in and out of the country more efficiently. Together, the internal and external challenges moved Customs to the position where it thought it would be better off in the long run to totally rethink what type of organization it should be and how it should conduct its business.

Out of this comprehensive rethinking process, which the Commissioner highlighted in his statement, came Customs' September 1994 report entitled: "People, Processes, & Partnerships." Customs refers to this as its blueprint for comprehensive change, but I think it should be recognized that this blueprint doesn't contain many of the details needed to redesign either the structure of Customs, or the processes or the automated systems. So in reality, that document is more like a framework or a preliminary design for change. The Commissioner mentioned many of the components of that framework document or blueprint, so I won't go over them in detail.

Mr. Chairman, I would now like to emphasize several points that are at the end of my written statement which give our point of

view about how we feel about Customs' efforts and where it is in this process. We are encouraged by Customs' efforts to change its structure, its processes and its culture. Those efforts have included an extensive self-examination of Customs' operations, a decision to take a comprehensive approach to change rather than to go about it piecemeal, reaching out to include Customs' customers as well as its Federal partners and the union.

Are Customs' efforts on the right track? The answer to that from our perspective is yes.

Are they responsive to the recommendations that were made in our 1992 management report and subsequent reports that we did? Again, we feel that the answer is yes.

Will mistakes be made along the way in progressing with these changes? We are sure that they will, but we should remember that this is a very large and complex undertaking which is largely still in the planning stages. Much work remains to be done to transform that plan into reality. And the other thing I wanted to mention, with all the discussion of the Customs Management Centers, we also must remember whose plan this is. It is Customs' plan. They are building the new Customs, and they are the ones that will be held accountable for it in the end. So I think they need to have the flexibility to put the system they feel is right in place.

Can this subcommittee help? I think the answer is absolutely yes. A continuing dialog, both on the progress Customs is making, and on the results they achieve as they progress, will be very useful to the committee and to Customs as well. And, in my written statement, I lay out a number of topics that I think might be useful for beginning that dialog.

Finally, does Customs' leadership seem committed to making the change and to making it work? Again, I think the answer is yes to that, based on everything we see.

That concludes my summary, Mr. Chairman. We would be glad to answer whatever questions you and the other subcommittee members may have.

[The prepared statement follows:]

STATEMENT OF J. WILLIAM GADSBY
DIRECTOR, GOVERNMENT BUSINESS OPERATIONS ISSUES
GENERAL GOVERNMENT DIVISION
CUSTOMS SERVICE
U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Customs Service's reorganization and its automated systems improvement efforts. Our testimony is based on extensive work we did for our 1992 general management review of Customs,[1] as well as other ongoing and completed work. My testimony will cover three topics: the challenges facing Customs, Customs' proposal to fundamentally restructure itself as outlined in its September 1994 People, Processes, and Partnerships report, and its implementation of the Modernization Act.

THE CHALLENGES FACING CUSTOMS

The American public relies on the Customs Service to guard the nation's borders and enforce the nation's trade laws. Specifically, its mission includes (1) enforcing U.S. law intended to prevent illegal trade practices; (2) protecting the American public and environment from the introduction of prohibited hazardous products; (3) assessing and collecting revenues in the form of duties, taxes, and fees on imported merchandise; (4) regulating the movement of persons, carriers, merchandise, and commodities between the United States and other nations; (5) facilitating the movement of all legitimate cargo, carriers, travelers, and mail; (6) interdicting narcotics and other contraband; and (7) enforcing certain provisions of the export control laws of the United States.

Responding to the interests of this Subcommittee, we assessed Customs' ability to fulfill its important trade enforcement mission. As the House Ways and Means Subcommittee on Oversight reported in 1990[2] and we reported in 1992,[3] Customs could not adequately ensure that it was meeting its responsibilities to combat unfair trade practices or protect the American public from unsafe goods. We found that Customs was discovering only a small percentage of the estimated violations in imported cargo, allowing the vast majority of cargo with violations to pass into U.S. commerce. Customs also lacked an effective strategic management process capable of guiding its operations and establishing accountability for performance. In addition, Customs did not have adequate information to assess its effectiveness in collecting applicable duties or penalizing violators of trade laws. We attributed these problems to weaknesses in mission planning; organizational structure; and financial, human resource, and information management.

Also, since 1992, we have audited the financial statements prepared by Customs in response to the requirements of the Chief Financial Officers Act. This work has revealed serious weaknesses in Customs' financial management practices and its internal control structure.

In addition to the internal problems outlined above, Customs faces major external challenges from increased international trade activity as it plans for the 21st Century. Customs estimates that about $1 trillion of goods and almost 1 billion people cross U.S. borders every year. Between 1984 and 1994, the number of import entries[4] into the United States increased from about 10 million to almost 40 million, making it

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[1]Customs Service: Trade Enforcement Activities Impaired by Management Problems (GAO/GGD-92-123, Sept. 24, 1992).

[2]Abuses and Mismanagement in U.S. Customs Service Commercial Operations, Committee print WMCP: 101-22, Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives, February 8, 1990.

[3]Managing the Customs Service (GAO/HR-93-114, Dec. 1992).

[4]This includes both formal and informal entries.

impractical for Customs to inspect all shipments. The demand on Customs' resources has also been strained by the agency's involvement in the War on Drugs. And recent trade agreements, such as the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT), have increased the number and complexity of trade agreements that Customs must enforce. Against this backdrop of increasing responsibility, U.S. and foreign businesses are also placing greater pressure on Customs to facilitate the movement of goods across U.S. borders.

CUSTOMS' RESPONSE TO THESE CHALLENGES

Rather than individually addressing the problems identified by us and others, Customs undertook an integrated proactive approach designed to rethink what type of organization it should be, and how it should meet the demands of the 21st Century. As an initial step in its transformation, Customs issued its People, Processes, and Partnerships report in September 1994. Described by Customs as a "blueprint for comprehensive change," it proposed in general terms the agency's vision and a three-part transformation process to achieve this vision. The three components are (1) organizational change, (2) business process management, and (3) cultural conversion.

Customs has begun a number of efforts designed to improve the way it is organized. For example, Customs has created a new Assistant Commissioner position to oversee field operations. This Assistant Commissioner is to handle functions previously performed separately by the Office of Inspection and Control and the Office of Commercial Operations. These functions should now be approached in a more integrated, mission-oriented fashion--an approach that responds to a key problem area highlighted in our 1992 management report.

Customs is also proposing 20 Customs Management Centers (CMC) to replace the existing 7 regions and 42 districts. The CMCs would remove a layer of management and provide a better link between the Assistant Commissioner for Field Operations and the 301 ports of entry. Customs officials envision CMCs providing the consistency in oversight and policy implementation that is lacking under the district and regional structure, which was another key problem area highlighted in our 1992 management report. Although Customs is still clarifying the specific roles and functions of CMCs, it is scheduled to begin piloting the concept by the end of this month. Customs started training selected staff for the 2 prototype CMCs on January 10 and expects that the 20 CMCs will be in place by September 1995.

Another important organizational initiative is the planned establishment of five Strategic Trade Centers (STC) under the direction of the Assistant Commissioner for Strategic Trade. These centers would enable Customs to look at trade enforcement issues from a national and international perspective and, working with the Field Operations group, provide a comprehensive response to emerging trade compliance issues. This capability has not previously existed.

Recognizing the need to focus on outcomes, not tasks, Customs has also begun efforts to improve its processes. Customs is defining its core business processes, identifying individuals who will be responsible for these processes, and deciding how they should be implemented. It is also developing performance standards and measures for these core processes. Through these and other efforts, Customs is seeking to break down the barriers among its various functional organizational components.

With respect to financial management, Customs has taken several important steps toward addressing the weaknesses we have disclosed since 1992. However, significant additional efforts will be needed to reduce the risks associated with internal control

problems and to ensure that Customs management and other users of its financial statements and reports have reliable information.

An overarching component of Customs' transformation is its plans to change its culture. Customs has historically been characterized by divisive internal competition, highly visible turf battles with other agencies, a controlling management style, and an adversarial relationship with its employee union. Customs is seeking to transform itself into an organization that develops the skills of its workforce, integrates and better manages its essential business processes, and develops better relationships with its external customers. Customs has begun its cultural transformation by training its senior managers. It plans to build these training concepts into future training courses that will be offered to all staff.

Changing the culture, work processes, and organizational structure are important steps forward. In addition, the Modernization Act provides Customs with the tools it needs to develop its automated systems to better meet the information challenges of the 21st century.

CHALLENGES FOR INFORMATION RESOURCES MANAGEMENT

Historically, Customs' automated capabilities for processing imports and enforcing trade laws were limited. Customs had various systems to process import transactions, but these systems were not fully integrated and could not readily share information. As we noted in our financial statement audits[5] and our 1992 management report, the systems did not effectively enhance Customs' ability to reasonably ensure (1) overall compliance with trade laws and (2) that duties and fees were properly assessed, collected, and reported. In the last few years, Customs has undertaken several projects to address these system deficiencies. For example, projects were initiated to enhance Customs' capability to target import violations and validate, collect, and report revenues.

The Modernization Act, which was part of the NAFTA legislative package, allows Customs to move toward a fully automated environment. Most importantly, the act removes legislative constraints that required brokers and importers to submit paper documents for each import transaction. Now, customers will not only be allowed, but will be encouraged, to electronically submit documentation. In addition, the act allows customers to begin filing import documents from locations different from the cargo's port of entry. Previously, customers had to submit documentation at the port where cargo was entered.

The new environment created by the act provides Customs with the impetus for rethinking and modernizing the way it conducts business. In response, the agency envisions developing a fully integrated system that can identify and track an import transaction anywhere in the process, from the point of initial filing and payment of duty until the transaction is closed. Customs has recently issued a strategy that lays out the steps necessary to design and develop such a system. The act requires the agency to develop a plan for the system, then test and evaluate system components to ensure they meet program goals.

Customs recognizes that it cannot wait for this new system to be fully designed, implemented, and deployed before addressing some of the agency's more immediate concerns. As a result, Customs is continuing with many of its projects to enhance the current systems. For example, it is currently prototyping a system improvement that

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[5]Financial Audit: Examination of Customs' Fiscal Year 1992 Financial Statements (GAO/AIMD-93-3, June 30, 1993) and Financial Audit: Examination of Customs' Fiscal Year 1993 Financial Statements (GAO/AIMD-94-119, June 15, 1994).

should help it automatically select high-risk cargo for inspection to determine whether goods entering the country are properly classified and valued. This is in direct response to a weakness identified in our management report. Customs is also continuing to expand the current system to provide remote filing capabilities. A prototype of this improvement is scheduled for testing by June 1995.

Issues of Continuing Concern

Customs has begun work in a number of areas as part of its initial planning efforts for the modernization. These areas include (1) meeting with customers to coordinate modernization plans and to understand their needs, (2) defining its business processes, and (3) defining performance measures that will be used to assess results. We assessed Customs' efforts in each of these areas by comparing them to the best strategic information management practices used by successful organizations in the public and private sectors, which we described in a May 1994 report.[6] Our comparisons identified a number of opportunities for Customs to keep in mind during its modernization planning and implementation.

First, we found that in successful organizations information system plans are tightly linked to and predicated on satisfying explicit, high-priority customer needs. These customer needs are then used to set mission performance goals for improving service delivery. Customs' coordination with its customers has included conducting public meetings with the trade community to solicit their views on ways to facilitate trade, such as the use of remote filing, and to inform them of its progress in implementing the Modernization Act. Customs' task force, which is responsible for coordinating Customs' response to the act, has also met with trade groups to educate them on requirements of the act.

As yet, Customs has not determined and prioritized specific customer needs relative to the planned changes to the business processes, or broken out the needs of the various groups that will be affected, such as importers, brokers, carriers, passengers, insurers, and other agencies. Such a determination is needed to ensure that Customs' new processes meet customers' specific needs. Also, as Customs refines its understanding of customer needs, it can provide systems modernization information that will allow the trade community to develop compatible systems.

Second, we found that substantially improving performance requires that work processes be analyzed and then streamlined or redesigned. Customs has begun to define the new trade compliance process by first identifying the key components. The next steps are for Customs to describe how each component will operate and then determine how information technology will support the new operations. Customs plans to use these definitions of key components to determine the specific systems and technology requirements needed to support the business.

To ensure that the import system adequately supports import customers and trade enforcement, it is imperative that Customs finish defining its business processes before redesigning the import system or purchasing equipment. For example, Customs' current enhancements to provide remote filing capabilities, including related equipment purchases, should not be considered part of the new import system because Customs has not yet determined the new trade compliance procedures. These new procedures may affect how remote filing is ultimately implemented.

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[6]Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology, Learning From Leading Organizations (GAO/AIMD-94-115, May 1994).

Third, we found that successful organizations rely heavily upon performance measures to assess the implementation of mission goals and objectives, and track progress. One measure of improvement being defined by Customs is trade customer satisfaction. Customs should develop other performance measures such as trade compliance rates, which could be used to determine whether the new processes and systems are making a difference for trade enforcement and import processing.

Finally, we found that successful organizations have clear responsibility for information management decisions and results. Customs has established several decision-making bodies, such as the Executive Improvement Team, as part of its reorganization. Customs also has other previously established entities, such as the ADP Steering Committee, which determines the priorities and resource allocations for systems development efforts. It is unclear which decision-making entity is ultimately responsible for approving systems development. During this time of change, Customs needs to clarify roles and responsibilities to reinforce accountability and facilitate mission success. In other words, somebody needs to be in charge.

CONCLUSIONS

We are encouraged by Customs' efforts to change its organizational structure, core business processes, automated systems, and culture. Clearly, these efforts respond to the recommendations in the 1990 House Ways and Means Oversight Subcommittee Report, our 1992 management report, and other reports we have issued on Customs' systems development and financial management. These efforts have the potential to position the Customs Service to meet its future challenges.

But we must remember that Customs' reorganization and systems modernization efforts are largely still a plan. Much work needs to be done to transform them into reality. Is Customs on the right track? We think so. It has put a lot of effort into an extensive self-examination. It has chosen to take a comprehensive approach to improving its operations. It is consulting with its customers and federal partners along the way. Will mistakes be made? I am sure they will. But our follow-up work suggests that the leadership of Customs is committed to positive change. This Subcommittee's support will help Customs transform this plan into reality.

We encourage Customs to continue discussing both the progress and results of the reorganization effort as well as automated systems development with this Subcommittee. Here are some topics that should be explored:

-- What are the specifics of implementing the "blueprint for change"? In other words, what are the key elements and system components, how will the implementation of these elements and system components be sequenced, and what is the time line for their implementation?

-- What specific role will the CMCs play in ensuring consistent oversight and policy implementation at the ports?

-- How will Customs define the major components of its core business processes and ensure they are defined before automated systems design and building are started?

-- How is Customs achieving and maintaining the partnerships with customers it needs to successfully implement the reorganization?

-- How will Customs minimize disruptions as it implements the reorganization?

-- What indicators or measures does Customs have to determine the success or effectiveness of its reorganization effort?
-- When may Congress and Customs' external customers expect the major elements and automated systems components of the reorganization effort to be operational?

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Mr. Chairman, this concludes our statement. We would be pleased to answer any questions.

(264429)

Chairman CRANE. Thank you, Mr. Gadsby.

Ms. Edwards, do you have testimony?

Ms. EDWARDS. No. Mr. Gadsby has spoken for the GAO.

Chairman CRANE. Mr. Raheb.

Mr. RAHEB. No.

Chairman CRANE. We will start then—well, let me ask one question for openers. And that is, are all of you folks basically encouraged by these reorganization efforts on the part of Customs?

Mr. GADSBY. Again, as we say in our statement, I think they are definitely heading in the right direction—we are encouraged. Tackling a job this big is a real challenge. Customs seems serious, it seems committed, it seems to be proceeding in a systematic manner toward doing this. These are ingredients for success. In my written statement we lay out some cautions relating to the systems development area, and I might ask Hazel to comment on that.

Ms. EDWARDS. We have pointed out that Customs has had a history of not doing a great job in building its systems to meet the business needs. And it has become clear, I think, to the committee over time, that there has been the need for information throughout the processing of imports and that information hasn't been available.

One of the benefits of this process that Customs is going through is that it is now thinking about its business workflows and what systems and information are needed to support the business. Customs is now thinking about the systems in conjunction with the business, and that is a dramatic change from the past and a major area of improvement. We are looking very favorably upon that trend.

Chairman CRANE. That sounds encouraging. Will the GAO continue to monitor the progress of this reorganization and periodically communicate to us?

Mr. GADSBY. We would be more than glad to do that. We have been doing that since we issued our report back in 1992. We met with the committee staff on a number of occasions and we meet with Customs officials periodically just to get an overall briefing on where they are in the process, and so forth. So we have been and will be more than happy to continue that, Mr. Chairman.

Chairman CRANE. We thank you.

Mr. Rangel.

Mr. RANGEL. You indicated that you had some major criticism in the 1992 report and again in the 1993 report. You also pointed out that modernization is addressing those problems. Notwithstanding modernization, since that is not completed, what are the outstanding deficiencies, as you see them, with Customs today?

Mr. GADSBY. Well, I think Customs is working on a broad comprehensive approach to change. The problem areas that we had mentioned in the management study, and the followup work that we did on that, was related to strategic planning, the trade compliance process, financial management, and human resources management. This was a broad, broad look at the agency, and we found a number of serious problems. But I think they have embodied all those——

Mr. RANGEL. Some problems can be taken care of notwithstanding modernization. I am trying to separate these two issues. Take

for example, the issue of accountability for seizure of drugs, you don't have to modernize to strengthen that, do you?

Mr. GADSBY. No. You don't have to modernize to strengthen that. I think that what they are striving for is that the modernization and the integration of the efforts of different parts of Customs, whether it is enforcement or commercial operations which is now under the field operations, will give them a greater capacity to deal not only with trade problems but with drug problems, as well.

Ms. EDWARDS. One of the——

Mr. RANGEL. What is the status now? I just want to know what problems do you have now——

Mr. GADSBY. With drug enforcement, sir?

Mr. RANGEL. Well, specifically. I see that everyone is supporting the direction which the Customs Service is going.

Mr. GADSBY. Correct.

Mr. RANGEL. But I assume that the direction has not resolved all of the criticisms.

Mr. GADSBY. No, that is correct.

Mr. RANGEL. I was just trying to find out what was outstanding that could be corrected without waiting for the final modernization.

Ms. EDWARDS. One of the points that I was going to highlight with regard to enforcement across the board, be it for drug violations or be it other trade enforcement controls, is that there is an absence of information throughout Customs. For example, if a particular port is noticing an influx of illegal goods by a particular importer, that information would not necessarily be immediately available, for example, to other ports within the Customs system. Directly connected to the modernization is having the capacity to pass such information really rapidly about activity related to particular importers.

This is an area where we think the modernization initiatives will really make a difference. It does not say that there are not other outstanding management issues that could be addressed in the near term, but the Modernization Act is going to help Customs further improve its ability to detect drugs and illegal drug traffic by improving the availability of information across Customs.

Mr. RANGEL. I would appreciate getting a list from your organization as to what could be done now, instead of just waiting for the modernization plan to lock into effect, especially in the area of accountability for seizure of drugs.

Mr. GADSBY. We will be glad to do that.

Mr. RANGEL. Thank you.

[The following was subsequently received:]

ATTACHMENT I

Congressman Rangel's Request During January 30, 1995 Hearings Before the House Committee on Ways and Means, Subcommittee on Trade

Request: Instead of waiting for Customs modernization plan, provide a list of what can be done now especially in the area of accountability and seizure of drugs.

We are providing in the attached Tables 1 and 2 a detailed listing of our recommendations to Customs resulting from our fiscal years 1992 and 1993 financial statement audits[1]. We are also providing the status of agency actions to address these recommendations. Information was obtained from discussions with Customs officials and a review of agency documentation. We have not fully assessed the appropriateness or effectiveness of all of the agency's responses. We plan in the near future to evaluate the effectiveness of Customs' corrective actions and would be pleased to periodically brief the Committee on our findings.

Customs has a wide range of initiatives underway that are intended to correct identified weaknesses. It is important that Customs' top and mid-level management provide the continuing support needed to ensure that these important actions are properly implemented and that the related problems do not recur. While some of our recommendations can be implemented now, such as amending policies and procedures, others require a sustained effort to implement, such as redesigning the automated system that processes imports. In the tables, we earmarked those recommendations that require long-term system development efforts.

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[1]Financial Audit: Examination of Customs Fiscal Year 1992 Financial Statements, (GAO/AIMD-93-3, June 30, 1993), Financial Audit: Examination of Customs' Fiscal Year 1993 Financial Statements, (GAO/AIMD-94-119, June 15, 1994.

TABLE 1

STATUS OF FISCAL YEAR 1992 FINANCIAL
AUDIT RECOMMENDATIONS

The results of our efforts to audit Customs' fiscal year 1992 principal financial statements were presented in our report entitled Financial Audit: Examination of Customs Fiscal Year 1992 Financial Statements (GAO/AIMD-93-3, June 30, 1993). Significant matters identified in that report and recommendations to correct internal control problems were detailed in six internal control reports. These reports and our recommendations are listed in this table. The table also includes the status of agency actions. We have not fully assessed the appropriateness or effectiveness of all of the agency's responses.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
Financial Management: Customs' Accountability for Seized Property and Special Operation Advances Was Weak (GAO/AIMD-94-6, November 22, 1993)				
1. The Commissioner of Customs should direct the Assistant Commissioners for the Offices of Enforcement, Inspection and Control, Commercial Operations, and Management (the Chief			X	Customs organized a Seized Property Task Force composed of managers from field and headquarters locations, to study Customs' seized property operations. The task force completed its study and issued a

[1]Customs is undertaking a major redesign of its automated system that processes imports. The new system is targeted for completion by fiscal year 1999. In the long term system action column of the table, we earmarked recommendations that are associated with this redesign and with other systems' enhancements targeted to be accomplished beyond fiscal year 1996 (i.e., Customs Property Tracking System).

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
1. (Continued) Financial Officer), in consultation with each other and other program officials, to enforce existing policies and procedures for: (1) safeguarding seized property; (2) maintaining accurate financial data on seized property inventory; and (3) controlling special operations advances and safeguarding related documents.				report to the Commissioner on July 1, 1994. The report included findings and recommendations on Customs' ability to safeguard and maintain adequate financial data on seized assets. The Customs Seizures and Penalties Division anticipates that corrective actions will be completed for each component of the recommendation during 1995. Customs also formed a task force to address the adequacy of its facilities for storing and safeguarding seized property. This task force surveyed 121 facilities, of which the 24 having the most significant

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
1. (Continued)				security concerns were targeted for actions. As of February 1995, two of these sites were closed, and security was being upgraded at the remaining 22 sites. In addition, Customs conducted its first nationwide physical inventory of seized property in February 1994, and a subsequent one was performed in September 1994. Further, Customs issued procedures for reporting appropriated moneys for undercover operations and biyearly audits of undercover operations. It also modified its procedures to ensure that documents containing sensitive information are secured and copies forwarded are desensitized.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. The Commissioner of Customs should direct the Assistant Commissioner for Enforcement to work with the Office of the U.S. Attorney to develop guidelines on the amount of monetary instruments, particularly cash, to be held as evidence.			X	In a letter dated July 12, 1994, the Commissioner of Customs communicated to the Assistant Commissioner for Enforcement the need to monitor Customs compliance with the Attorney General's Directive 87-1, "Guidelines on the Amount of Monetary Instruments to Be Held as Evidence." During fiscal year 1995, the Commissioner signed a memorandum requiring a system for timely destruction of bulk narcotics. Customs is reviewing field policies and procedures and plans to work with the Department of Justice to implement procedures for the disposal of all but threshold narcotics held for evidence. A standard policy is targeted for implementation in July 1995.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. The Commissioner of Customs should direct the district directors to work with the U.S. Attorneys in their districts to expand the use of videotaped evidence as an alternative to holding large quantities of seized cash and drugs at Customs' facilities.			X	Customs current policy dated June 1990 requires seized currency to be photographed when inventoried. Customs believes evidence documented by still photograph is sufficient. Department of Treasury's Office of Inspector General fiscal year 1994 financial audit is to validate that the procedure is currently being used. Also, the Seized Property Task Force addressed, among other things, the reduction of bulk narcotics being held in Customs facilities. The task force's report proposed revised procedures on the pretrial destruction of narcotics. Specifically, it proposed that the Customs Special Agent in Charge position be the main contact with the appropriate U.S. Attorney.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations to require that at least two seizure custodians be present when accessing seized property in district vaults.			X	On October 4, 1993, the Commissioner of Customs established and implemented a policy requiring that at least two Customs officers be present when accessing seized property in district vaults. However, in connection with the GAO fiscal year 1993 audit performed after the implementation of this policy, GAO noted that in many of the districts that it had visited, individual seizure custodians were still capable of accessing district vaults without being detected. This situation still exists because Customs does not have controls in place to ensure that this policy is being followed.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. The Commissioner of Customs should direct the Chief Financial Officer to improve Customs Property Tracking System information so that all seized property, especially cash and drugs, are timely and accurately reflected in Customs' inventory records and financial reports.	X		X	Customs held a conference from July 11 to 22, 1994 to discuss and develop user specifications for a new seized property inventory system. A development team was created. User requirements are defined and programming has begun. A pilot system is expected to be in place during fiscal year 1995. A new system is targeted for 10/1/97.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
6. The Commissioner of Customs should direct the Chief Financial Officer to require that the independent external auditor's recommendations to improve accounting and control over special operation advances be promptly and fully implemented.			X	Customs' Office of Enforcement issued procedures for controlling special operation advances and safeguarding related documents in March 1993. However, in connection with GAO's fiscal year 1993 audit performed after the implementation of these procedures, it found the accounting and control over special operation advances to still be weak. In fiscal year 1995, as an interim measure, Customs contracted with an accounting firm which developed software to address some of the control weaknesses in undercover operations. For the long term, Customs plans to explore developing a module in its Asset Information Management System to support undercover operations.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
Financial Management: Customs Lacks Adequate Accountability Over Its Property and Weapons (GAO/AIMD-94-1, October 18, 1993)				
1. The Commissioner of Customs should direct the Chief Financial Officer to complete the integration of property and accounting systems as planned.	X		X	Requirements for a standardized property system, which will be used by all Treasury bureaus and integrated with each bureau's core accounting system, have been identified. Also, a property management systems requirements document has been drafted.
2. The Commissioner of Customs should direct the Chief Financial Officer to conduct physical inventories of capitalized property items other than equipment every 3 years as required.			X	Regional and Assistant Commissioners of Customs have been directed to verify the existence of capitalized property items. A real property inventory was taken for fiscal year 1994.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. The Commissioner of Customs should direct the Chief Financial Officer to develop procedures for accurately and adequately documenting equipment values recorded in the Property Information Management System (PIMS) by: (1) requiring appropriate references to source documents in each property file in PIMS; (2) reviewing procurement documents for those items with estimated values and entering corrections; and (3) properly identifying property items not in use or damaged.		(1) X (3) X	(2) X	Procedures requiring appropriate references to source documents in each property file in PIMS and for properly identifying property items not in use or damaged have been implemented. Part 2 of the recommendation is considered to be in progress. A "Methodology for Valuation of Personal Property" has been drafted to establish and implement the methodology to be used to determine the value of personal property items. Specifically, the methodology establishes the procedures to be followed in order to determine the values of personal property items recorded in the property management system for which procurement and other supporting documentation is not available.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the Chief Financial Officer (CFO) to oversee Customs efforts for ensuring that the costs of ongoing automatic data processing software development efforts are properly recorded and are complete and accurate.			X	In a June 27, 1994, memorandum to all Customs Office of Information Management (OIM) employees, the Assistant Commissioner for OIM reported that to comply with the CFO Act, OIM must begin to capture and report all costs related to in-house software development. Using the labor distribution capabilities of the payroll system, Customs developed a project-reporting system designed to capture such costs.
5. The Commissioner of Customs should direct the Associate Commissioner for Law Enforcement to: (1) monitor steps being taken in response to the Inspector General's report, including the design of the new Weapons Inventory Control System, for addressing identified system deficiencies; and (2) develop and implement procedures for effectively performing annual physical		(2) X	(1) X	Customs has formed the Firearms Task Force to monitor corrective actions taken in response to the Treasury's Inspector General report. In addition, the Firearms Information Tracking System (which will replace the old Weapons Inventory Control System--WICS) is continuing through the programming, development, systems acceptance, and production cycles. The anticipated implementation date is May 1995.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. (Continued) inventories of weapons at field locations, properly resolving discrepancies, and appropriately adjusting inventory records.				New procedures for effectively performing annual physical inventories of weapons at field locations, properly resolving discrepancies, and appropriately adjusting inventory records were developed.
Financial Management: Customs' Self-assessment of Its Internal Control and Accounting Systems Is Inadequate (GAO/AIMD-94-8, October 27, 1993)				
1. To ensure accurate reporting to the Secretary of the Treasury on the effectiveness of Customs' internal control and accounting systems, the Commissioner of Customs should direct the Chief Financial Officer to develop guidance for assessing control risk in Customs' operations.		X		Customs implemented a comprehensive Federal Managers' Financial Integrity Act (FMFIA) training course which provides guidance on assessing control risk. All program managers and other personnel conducting FMFIA-type reviews are required to attend this course.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. To ensure accurate reporting to the Secretary of the Treasury on the effectiveness of Customs' internal control and accounting systems, the Commissioner of Customs should direct the Chief Financial Officer to develop adequate tools to perform Federal Managers' Financial Integrity Act (FMFIA) reviews.		X		Customs implemented its FMFIA training course which provides tools to help managers review their programs. The effectiveness of these tools will be evaluated during the Department of the Treasury's Office of Inspector General fiscal year 1994 audit.
3. To ensure accurate reporting to the Secretary of the Treasury on the effectiveness of Customs' internal control and accounting systems, the Commissioner of Customs should direct the Chief Financial Officer to implement a comprehensive FMFIA training program to be attended by all staff involved in performing FMFIA reviews.		X		Customs has implemented a comprehensive FMFIA training program which was attended by more than 260 staff performing FMFIA reviews. This training provides managers with the proper guidance to help them identify and report material weaknesses as required by FMFIA.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. To ensure accurate reporting to the Secretary of the Treasury on the effectiveness of Customs' internal control and accounting systems, the Commissioner of Customs should direct the Chief Financial Officer to review corrective action plans to ensure that they address the underlying cause of the problem.		X		Customs has put together a task team to review corrective action plans as well as the status of corrective actions for all material weaknesses. This task team's effectiveness will be evaluated by the Department of the Treasury's Office of Inspector General during the fiscal year 1994 audit.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. To ensure accurate reporting to the Secretary of the Treasury on the effectiveness of Customs' internal control and accounting systems, the Commissioner of Customs should direct the Chief Financial Officer to promptly test the effectiveness of corrective actions implemented to ensure that the weaknesses are corrected before they are removed from Customs' FMFIA assurance letter.		X		Customs has established a schedule to test or validate the effectiveness of corrective actions. This schedule will be updated each year with the goal of validating all available current and past closed weaknesses.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
6. The Commissioner of Customs should direct the Chief Financial Officer to have the Management Controls Division obtain and systematically review the detailed results of Customs' self assessments for accuracy and completeness.		X		Customs offices were directed to provide copies of all FMFIA-type reviews to the Management Controls Division for review. The Management Controls Division has received samples of completed management control reviews to inspect for accuracy and completeness.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
Financial Management: Customs Did Not Adequately Account for or Control Its Accounts Receivable (GAO/AIMD-94-5, November 8, 1993)				
1. To help strengthen the accuracy of the accounts receivable balance reported in Customs' financial statements, the Commissioner of Customs should direct the Chief Financial Officer to require Customs personnel to review fines and penalties assessments recorded in the Automated Commercial System (ACS) and correct any inaccuracies before transfer to the redesigned system.			X	Customs stated that the procedural changes to ensure timely and accurate updates are to be implemented (the implementation date is unknown).

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. To help strengthen the accuracy of the accounts receivable balance reported in Customs' financial statements, the Commissioner of Customs should direct the Chief Financial Officer to require supervisory personnel to review the work of staff responsible for updating and changing information in ACS to ensure that all assessments are accurately and completely recorded.	X		X	Customs intends to develop "Action Due Reports" and "Management Reports" as part of the new fines, penalties, and forfeitures (FP&F) case processing system. Also, Customs believes the Revenue Management System will ensure the accuracy of updates and modifications and that the Assessment software will ensure accuracy of initial input.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. Customs should develop and maintain an integrated accounting system that can capture accurate and reliable information on all types of assessments (including duties, taxes, fines, and penalties) from assessment through collection of any related amounts.	X		X	Customs is developing an integrated accounting system from several interrelated parts, the Automated Commercial System (ACS) Financial Core projected to be implemented in fiscal year 1995 and the Customs Automated Revenue Accounting project. Customs believes that these two systems, together with the long-term redesign of the ACS system, should produce an integrated system by the beginning of fiscal year 1998.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the Chief Financial Officer to implement procedures to ensure that entry summaries are reviewed and liquidated within 1 year or provide documentation why this time frame cannot be met for specific cases.			X	Customs has stated that its procedures are in final review and expected to be published soon.
5. The Commissioner of Customs should direct the Chief Financial Officer to develop performance indicators to measure the effectiveness of Customs' fines and penalties program.			X	Customs intends to develop a new fines, penalties, and forfeitures (FP&F) case processing system by 9/1/96, which will provide the information necessary to establish performance indicators. Additionally, the Revenue Management software will incorporate statistical analysis software to measure program performance.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
Financial Management: Customs' Accounting for Budgetary Resources Was Inadequate (GAO/AIMD-94-23, December 14, 1993)				
1. The Commissioner of Customs should direct the Chief Financial Officer (CFO) to revise Customs' accounting systems and procedures to properly account for the receipt of goods and services. Specifically, the CFO should: (1) modify the accounting systems for Automated Receiving Report System (ARRS) transactions to automatically liquidate obligations and post-related entries in the proprietary accounts immediately upon receipt of goods and services; (2) develop and implement a mechanism for non-ARRS transactions to acknowledge and transmit receiving data and use such data to post-appropriate	X		X	Customs has halted enhancements to ARRS pending a Treasury review of bureau systems. The purpose of the review is to standardize systems within Treasury's bureaus. While this review is occurring, Customs, for fiscal year 1993, manually identified open obligations and requested responsible field personnel to identify what portion of the obligation had been satisfied by receipt of goods or services. For fiscal year 1995, an automated method for field use is to be used. Until ARRS is enhanced, this recommendation will remain open.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
1. (Continued) budgetary and proprietary accounting entries; and (3) expand the use of the Report on Open Obligations, as a short-term measure, by instructing program office personnel to review the report and notify the National Finance Center when goods and services have been received.				

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. The Commissioner of Customs should direct the CFO to amend the recently approved procedures for processing interagency agreements for the Operations and Maintenance Fund to require that a budgetary receivable be recorded to offset related obligations. Also, these amended procedures should be applied to all interagency agreements to help ensure that they are properly recorded in the future.			X	In July 1994, Customs modified its procedures to include recording a budgetary receivable to offset related obligations. However, until the Treasury Inspector General completes the fiscal year 1994 audit, GAO cannot be certain that the amended procedures were correctly applied to all interagency agreements.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. The Commissioner of Customs should direct the CFO to review all outstanding intragovernmental receivables as of September 30, 1992, in order to confirm that they are valid receivables and adjust the balances to correct any misstatements.			X	During fiscal year 1993, Customs made some entries to correct for misstatements; however, as of September 30, 1993, it could not fully support amounts recorded as due from other agencies under interagency agreements. Until the Treasury's Office of Inspector General completes the fiscal year 1994 audit, GAO cannot be certain that Customs' actions fully corrected the problem.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the CFO to review all interagency agreements in order to identify the unliquidated obligations amount for agreements in which no budgetary receivable has been recognized and then record a budgetary receivable equal to the amount of unliquidated obligations.			X	In July 1994, Customs amended its procedures to require that a budgetary receivable be established for all unliquidated reimbursable obligations pertaining to interagency agreements. GAO will not know the effect until the Treasury's Office of Inspector General completes its fiscal year 1994 audit fieldwork in this area.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. The Commissioner of Customs should direct the CFO to review the documentation and accounts for all interagency agreements in order to identify recorded earned reimbursements which exceed amounts expended and adjust earned reimbursements to equal amounts expended.			X	In July 1994, Customs amended its procedures to require that earned reimbursements be recorded for all interagency agreements and that these amounts agree with the expended amounts of the reimbursable obligations. GAO will not know the effect until the Treasury's Office of Inspector General completes its fiscal year 1994 audit fieldwork in this area.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
Financial Management: Control Weaknesses Limited Customs' Ability to Ensure That Duties Were Properly Assessed (GAO/AIMD-94-38, March 7, 1994)				
1. The Commissioner of Customs should direct the Assistant Commissioner for Inspection and Control to develop and implement, in conjunction with Customs' Chief Financial Officer, a strategy for inspecting cargo from both high- and low-risk carriers to help provide reasonable assurance that all cargo delivered is accurately and completely identified on manifests and entry documents. Carriers undergoing such inspections should be randomly selected to ensure that they are representative of all carriers.			X	In late fiscal year 1994, Customs piloted a program for testing the accuracy of randomly sampled manifests to determine if carriers were accurately reporting all unladen cargo. During fiscal year 1995, Customs is implementing this program for all manifests on a nationwide basis.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. The Commissioner of Customs should obtain reliable data on carriers' use of the Automated Manifest System as a percentage of all manifest submissions so that expanded use of the system can be more accurately monitored.			X	Estimated completion date: 09/95. To address this recommendation in the short term, Customs issued a memorandum to field personnel directing them to enter complete and accurate information on the CF-16, "Workload Summary Report." In addition, Customs plans to do limited testing of the accuracy of the CF-16 reports during its fiscal year 1995 testing of manifest accuracy. Customs is looking to develop new methodologies for capturing reliable data for program management. Currently, Customs is identifying programming requirements to electronically capture both automated and manual vessel bill-of-lading data in the vessel entrance and clearance module of the Automated Commercial System (ACS). This automated programming will be supplemented with a compliance measurement capability to audit the accuracy of the information being input by Customs and the trade.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. The Commissioner of Customs should monitor implementation of the new procedures for accounting for in-bond transfers to ensure that they address the weaknesses that have been identified. In conjunction with this effort, the Commissioner should provide personnel involved in maintaining data on in-bond transfers with clear and detailed guidance and adequate training on complying with the new procedures.			X	The revised automated in-bond module was initiated on October 4, 1993. Customs expects that the planned Automated Broker Interface link with this module will be operational and will allow automated brokers and importers to initiate in-bond movements electronically by Spring 1995. In addition, in February 1994, Customs established an In-bond Task Force to address the problems associated with the in-bond program. This task force has developed a proposal of changes to the current in-bond system and is working with trade representatives, other government agencies, and GAO to finalize recommendations to Customs management. Further, Customs is planning to develop a national standard operating procedure (SOP) and training syllabus, and initiate Service-wide training before implementation of the national In-bond Compliance Measurement Program scheduled for fiscal year 1995.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the Assistant Commissioner for Inspection and Control, in conjunction with the Chief Financial Officer, to require district offices to maintain perpetual inventory records of goods held in bonded warehouses and Foreign Trade Zones (FTZs) that they are responsible for overseeing.			X	Customs plans to perform a compliance measurement test to determine the necessity for perpetual inventory records of goods held in bonded warehouses. Specifically, during fiscal year 1995, Customs intends to conduct a pilot compliance measurement test at five bonded warehouse locations and plans to initiate a national compliance measurement test for bonded warehouses. No tests of FTZs are currently planned because of the difficulty in tracing the goods entered into and withdrawn from FTZs. This difficulty exists because most large FTZs are manufacturing operations that incorporate imported components into larger items that are eventually withdrawn and either entered into U.S. commerce or exported.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. The Commissioner of Customs should direct the Assistant Commissioner for Inspection and Control, in conjunction with the Chief Financial Officer, to enhance the Automated Commercial System (ACS) so that the district offices could use this system to maintain perpetual records of merchandise quantities at each warehouse and FTZ.	X			Action not yet initiated.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
6. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations, in conjunction with the Chief Financial Officer, to develop a means of automatically entering information needed to verify drawback claims into ACS so that liquidators can use the system to automatically verify drawback claims.	X		X	In the interim, Customs is developing a short-term means of automating drawback information using personal computers. This system is intended to link claims with import entries and decrement claimed drawback amounts against entries so that Customs can detect and prevent duplicate and excessive drawbacks. Some of the new capabilities were expected to be available by October 1994. However, most key capabilities will not be available until the end of fiscal year 1995. Also, the new system will not contain historical data on the amounts already claimed against an entry. Plans to address this issue are currently under management review.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
7. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations, in conjunction with the Chief Financial Officer, until this capability is developed and implemented, to require that liquidators use representative sampling procedures for reviewing drawbacks that relate to multiple entry summaries.			X	In October 1994, Customs issued instructions to liquidators on how to use representative sampling. This data will be validated during the fiscal year 1994 financial statement audit being conducted by the Department of Treasury's Office of Inspector General.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
8. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations, in conjunction with the Chief Financial Officer, to enhance ACS so that historical information on drawback claimants such as accelerated claim privileges, excessive claims previously filed, overdue receivables, and regulatory audit results are available to liquidators in a national database.	X		X	In the interim, a claimant history database was added to ACS in October 1994, and was field-tested, and is being implemented. A PC based application also implemented in October 1994, allows Customs to associate the drawback claim with all associated import entries.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
9. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations, in conjunction with the Chief Financial Officer, to require that liquidators review this database to ensure that special privileges such as accelerated drawback payments are granted only to claimants who have consistently complied with Customs claim filing requirements.	X		X	A Claimant database was established. Instructions were issued in October 1994 and liquidators were trained in its use. This requirement is being implemented with the new Claimant database.

GAO REPORTS/ RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
10. The Commissioner of Customs should direct the Assistant Commissioner for Commercial Operations, in conjunction with the Chief Financial Officer, to enhance the bond liability module to monitor the sufficiency of bonds posted for drawback transactions, including the ability to alert liquidators when coverage is exceeded.			X	In order to monitor the sufficiency of bonds posted for drawback transactions, Customs implemented new procedures in October 1994 for use with the dedicated bond liability module. Under the new procedures, Customs will accept only a bond type activity code "1a" for the Drawback Program. A bond type activity code "1,1a" will no longer be accepted. Any bonds with activity code "1,1a" on file with Customs when the new procedures are implemented will be invalid. In addition, the new procedures require that the bond amount for accelerated drawback payments match the claim amount. Also, a revised bond liability module which allows the field to query bond usage is targeted for fiscal year 1996. Moreover, the new PC-based drawback system is to contain information on bond sufficiency.

TABLE 2

STATUS OF FISCAL YEAR 1993 FINANCIAL AUDIT RECOMMENDATIONS

The results of our efforts to audit Customs' fiscal year 1993 principal financial statements were presented in our report entitled Financial Audit: Examination of Customs' Fiscal Year 1993 Financial Statements (GAO/AIMD-94-119, June 15, 1994). The table presented lists the recommendations and the status of agency actions. We have not fully assessed the appropriateness or effectiveness of all of the agency's responses.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
1. The Commissioner of Customs should direct the Assistant Commissioner for Inspection and Control to require personnel at ports of entry to maintain accurate and up-to-date data in the Automated Manifest			X	The Acting Assistant Commissioner of Customs for Inspection and Control distributed a memorandum dated July 5, 1994, that states GAO's recommendation and that the Office of Inspection and Control is in agreement. The memorandum refers readers to a Customs directive entitled "Vessel Automated Manifest System," which details district

[1]Customs is undertaking a major redesign of its automated system that processes imports. The new system is targeted for completion by fiscal year 1999. In the long term system action column of the table, we earmarked recommendations that are associated with this redesign and with other systems' enhancements targeted to be accomplished beyond fiscal year 1996 (i.e., Customs Property Tracking System).

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
1. (Continued) System (AMS) and to routinely investigate all shipments that have not been released by the end of a prescribed period.				responsibilities regarding AMS bills of lading reconciliations. The Acting Assistant Commissioner requested that all Assistant Regional Commissioners reconfirm with the districts under their jurisdiction their responsibilities as noted in the directive. The memorandum also states that if the jurisdictions conclude that it is impractical for them to reconcile the discrepant AMS bills of lading as required under the directive, the Assistant Regional Commissioner should supply an alternative method for completing the task. Also, performance indicators for monitoring automated manifest operations are scheduled to be added to the Office of Management Report by May 1995. GAO will not know the effects of Customs' actions until the Department of Treasury's Office of Inspector General completes its fiscal year 1994 financial statement audit work in this area.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
2. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with the Assistant Commissioner for Enforcement and other appropriate officials, to develop and maintain an appropriately secure accounting system to record all of the essential activity that occurs in undercover operations.			X	As an interim solution, on 9/30/94, Customs implemented a manual paper-based system. Also, the agency established a basis for recording the beginning balances of fiscal year 1995 funds for undercover operations. To support a long term solution, on 9/12/94, Customs purchased an off-the-shelf PC accounting package. The package is being tailored for the agency's use. System implementation is scheduled for June 1995.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
3. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to promptly review all reconciliations of budget clearing accounts and suspense accounts, verify that all discrepancies are fully researched and properly resolved, and identify and propose for write-off any unreconcilable amounts.			X	On June 1, 1994, Customs' Director, National Finance Center (NFC), sent a memorandum to all of Customs' District Directors outlining procedures for analyzing the budget clearing accounts. In addition, the Director, NFC, issued a memorandum dated May 16, 1994, that outlined the proper use of the budget clearing accounts in an effort to reduce the amount of incorrect postings to these accounts. Moreover, a system modification to enhance the process was implemented January 1995. GAO will not know the effects of Customs' actions until the Department of Treasury's Office of Inspector General completes its fiscal year 1994 financial statement audit work in this area.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
4. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials to, where Customs has the authority to do so, eliminate any unnecessary procurement reviews identified in Customs' assessment of such processes.		X		Customs' Office of Procurement held a "workout" session to eliminate unnecessary procurement reviews for solicitations and contracts. The Director, Office of Procurement, issued Procurement Instruction Memorandum No. 94-06, which revises portions of the Treasury Acquisition/Procurement Regulation (TAPR) regarding contracting officer warrant authority, internal review systems, cost or pricing data waivers, and Departmental and legal review of solicitations, contracts, and other types of procurement actions. The changes streamline the process by eliminating layers of review.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
5. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to monitor implementation of the policies and procedures identified in Customs' centralized inventory management plan to ensure that aircraft parts inventory levels do not exceed program needs.		X		Customs has initiated a centralized management plan which calls for the establishment of maximum stock levels based on prior usage, and preparing lists of suspected overstocked items to determine if retention is justified. The plan is administered by a contractor with oversight executed by Customs. To date, the contractor has established interim maximum stock levels and modified the computer system that accounts for inventory to prevent the ordering of materials in excess of program needs. The maximum stock levels will be adjusted quarterly based on actual usage. Additionally, the contractor has prepared initial lists of suspected overstocked items and these are currently being reviewed by Customs.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
6. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to develop procedures to account for annual changes to aircraft materials and parts inventory records.		X		Customs has developed Standard Operating Procedures for its contractor to account for the annual changes in aircraft materials and parts inventory. As a result, edits have been incorporated into the computer system that accounts for inventory, and Customs will require the contractor to reconcile inventory activity on a quarterly basis and submit the results to Customs for review.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
7. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to determine the relative costs and benefits of using the Property Information Management System (PIMS) to maintain accountability only for items with a value over $5,000 and consider delegating record-keeping responsibility for small value items to field personnel. Appropriate centralized controls, such as monitoring levels of repairs and maintenance expense and conducting periodic inventories, should still be maintained. In addition, the distinction between			X	The Assistant Commissioner for Management distributed a memorandum describing proposed changes to Customs' Property Information Management System (PIMS) and asked for comments. The proposal, pending Treasury approval, is scheduled for issue June 1995 and contains the following provisions. All property items with acquisition values of $5,000 or greater and all vehicles, vessels, and aircraft will be managed and recorded in PIMS by the National Logistics Center Fleet and Property Branch (F&PB). Data will be reviewed and validated to ensure that supporting documentation, maintained in a file by F&PB, is available to substantiate the information in PIMS. Property items with acquisition values of less than $5,000 will be managed by field offices at the lowest possible level. A new PIMS module (under development) will be available for field offices to track property valued at under $5,000. Five property types have been identified as mandatory controlled items and must be recorded locally in the PIMS module, and for other property

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
7. (Continued) asset purchases and expense items should occur when the item is requested and the local property officer checks for availability, not by accounting personnel after the invoice is received.				types, the field offices will have the option of using PIMS or developing an alternative accounting method. Also, Customs is proceeding with system enhancements necessary to distinguish between assets purchased and those expensed. System requirements and design were completed as of December 1994.
8. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to complete the study of utilization and distribution of Customs' vehicle fleet and coordinate with the General Services Administration to dispose of excess assets and implement a policy to ensure effective use of vehicles retained.		X		Customs completed the study of the vehicle utilization and distribution. Vehicle-to-employee ratios have been approved by the Commissioner and have been distributed to the Acting Associate Commissioner, the Assistant and Regional Commissioners, and the Chief Counsel in a July 25, 1994, memo from the Commissioner. The Commissioner stressed that the ratios are to be viewed as a maximum, rather than a minimum. In addition, Customs is working with GSA on the disposal of excess vehicles.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
9. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to review, in conjunction with the Director of Human Resources and the Office of Enforcement, administratively uncontrollable overtime charges to ensure that ongoing payments at the maximum rate are justified.			X	Customs' Office of Enforcement distributed a memorandum reminding certifying officials that they should review the eligibility and rate of administratively uncontrollable overtime (AUO) pay for all covered employees at the beginning of each quarter and advise the Office of Enforcement (Administration) in writing, at the beginning of each calendar year, whether all personnel continue to meet the requirements for AUO pay. The memorandum is also a reminder that the Standard Form 52s should be initiated and forwarded to the Office of Human Resources to establish AUO entitlement, make changes to the AUO percentage rate, or terminate the AUO entitlement for an employee. The Office of Enforcement is also maintaining a central file of all changes in AUO percentages and certifications for eligible employees. GAO will not know the effects of Customs' actions until the Department of Treasury's Office of Inspector General completes its fiscal year 1994 financial statement audit work in this area.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
10. The Commissioner of Customs should direct the Chief Financial Officer, in conjunction with other appropriate officials, to review and update documentation supporting personnel pay rates and deductions and institute procedures to ensure that such documentation is maintained on a current basis.			X	As announced in a March 9, 1993 memorandum from the Director, Office of Human Resources, to the Directors, Personnel Operations Divisions, Branch Chiefs, and Executive Services Staff, the Office of Human Resources is conducting a one-time review of every official personnel folder to ensure that the documents and papers retained in the files comply with federal regulations, including ensuring that documentation supporting current personnel pay rates and deductions is maintained. As of February 1995, the process is still on-going.

GAO RECOMMENDATIONS	LONG[1] TERM SYSTEM ACTION	ACTION COMPLETE	ACTION IN PROGRESS	AGENCY STATUS/ COMMENTS
11. The Commissioner of Customs should evaluate the technical proficiency and experience of existing staff under the Chief Financial Officer to determine specific staff needs for effectively addressing Customs' financial management problems.			X	In fiscal year 1994, a task force initiated by Customs' Chief Financial Officer evaluated financial management in Customs and the appropriate organization structure required to effectively meet the agency's financial management responsibilities. Customs approved six new positions for fiscal year 1994 and six positions for fiscal year 1995. As of February 1995, five new employees were hired.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

You talk about systems and you worry about systems. I worry about systems because of the ability to afford modern technology. The Commissioner was talking about state-of-the-art improvements in his testimony. In the analysis that you have done, do you sense that there is sufficient money to put into up-to-date, modern equipment to do the job, which is necessary because you seem to have to expense everything. You don't have a capital budget. Therefore, it is very difficult to get the proper equipment necessary to do the job which I think they all want to do.

Ms. EDWARDS. At this juncture, Mr. Houghton, the issue is not whether Customs has sufficient money to buy equipment because so many of the details of what systems are needed has not been worked out. There has not been a clear definition or assessment of what kind of systems, what kind of hardware, and what kind of telecommunications linkages are necessary. And, until that kind of definition is in place, it really is premature to talk about money to procure equipment.

The point that you are raising with regard to the high expenses for such equipment is certainly valid, and from all indications that we have from Customs, they are positioned to get those resources.

Mr. HOUGHTON. Sure. I guess the thing that I worry about is that having done a little bit of analysis on other departments over the years and seeing the restraints that people have to put money into those things that are necessary really to have state-of-the-art equipment, here is the Customs Service going off in a brandnew reorganization, so they are fanning out and they are reducing their centralized administrative groups, they are putting all of their people out in the field. Is that the right approach?

I mean, are we going to find that maybe there are pieces of equipment, there are processes, there are organizations which are necessary, which they can't afford and, therefore, the program they have for disbursing the agents is a little premature because certain other things have to be done 1 or 2 years down the road?

Ms. EDWARDS. The overall planning that Customs has indicated it should be completing, by the middle of this summer, should identify the broad plan for what is needed for its systems and processes. Perhaps I should reverse those processes first and systems to support those processes.

Mr. HOUGHTON. You don't think—sorry to interrupt. You don't think there is any inconsistency in what they are doing now and the possible demands down the road for moneys which they can only get out of the personnel?

Ms. EDWARDS. At this juncture, I don't think there is inconsistency. They are taking a logical and systematic approach to the planning for their overall environment, and a major component of it certainly will be on the automation side. But before they can get to that, they have to determine from a business workflow side what precise functions are needed.

Mr. HOUGHTON. All right, fine. You got any other comments?

Mr. GADSBY. I would just like to add one thing. If you look back in time to when we did our management study, there was a great

deal of energy being expended by Customs in looking at trade compliance, but it wasn't being done in any systematic manner.

Our report showed that when you looked at the statistics that Customs had, it showed that the agency was finding more discrepant cargo every year so they thought they were doing a great job. But, the reality was that when you statistically looked at the entire universe of cargo that was coming into the country that the rate of noncompliance overall was going up faster than the rate of finding discrepant cargo. So, their approach to just putting more and more energy into it, meant they were working harder but falling behind.

I think in his statement, the Commissioner referred to the term "working smarter." I think this whole effort at process redesign and voluntary compliance and statistically taking a look at where the greatest incidence of noncompliance is and focusing your energy on that, speeding the cargo through for those people who are playing by the rules and giving more scrutiny to those that aren't, is a good, logical strategy and approach to this area of trade compliance. And, we think this whole approach is much better certainly than what we were seeing 2 years ago.

Mr. HOUGHTON. At the same time, if I could just continue, Mr. Chairman, for 1 minute. At the same time, you say in your testimony that Customs is not determined and prioritized to specific customer needs.

Mr. GADSBY. That is related to the systems development.

Mr. HOUGHTON. The planned changes.

Mr. GADSBY. Yes. With respect to the actual automated systems development, that is the case at this point in time.

Mr. HOUGHTON. So you don't see any inconsistency doing very well by the customers and yet not having prioritized some of their needs?

Ms. EDWARDS. I think the important point to keep in mind is that Customs is currently in the process of defining its customer needs. The agency has acknowledged that it will not be finished with that process until around the middle of summer. So, we have responded to a condition that we have found at the present. That is to say, Customs has not further refined those customer needs but is in the process of doing so.

And, what is really important for Customs to keep in mind, and I would offer this to the subcommittee as well, is the thought that Customs must determine those customers' business needs as well as the agency's internal control needs. This should be completed prior to deciding to buy hardware or software, or deciding to acquire software or acquire systems of any magnitude.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Any successful reorganization that is as significant as this one is usually preceded or accompanied by behavioral changes or cultural changes. I think in your testimony you mentioned that an overarching component of this Customs transformation is its plans to change its culture. You go on to talk about Customs historically and how Customs is seeking to transform itself. And you mentioned that Customs has begun its cultural transformation by

training its senior managers and it plans to build these training concepts throughout the organization.

Mr. GADSBY. That is correct.

Mr. PAYNE. Do you feel that what is going on in terms of the cultural change, the way it is being addressed is the way that it should be addressed?

Mr. GADSBY. I think so. We see cultural change at the top of the organization now. I don't think we will see that change as you progress down through the organization for some time. But, the Customs officials seem committed to moving that cultural change down. And I think one of the things that will probably have to take place is a lot of the new business processes will have to get defined and the systems will have to get developed so that the people who are on the line will basically be able to apply new processes to the trade compliance activity. When that happens, I think we will see the culture change take place much more readily at the lower levels in the organization.

Mr. PAYNE. So would you then be able to say about how long this cultural change might take?

Mr. GADSBY. Well, I think there are a lot of things taking place at the same time—as I mentioned, the structural changes, the business process reengineering, and systems development, which is yet to come. I think the cultural change will then begin using all of these new systems and dealing with the customers. It is very hard to predict how long that will take. In its totality, I would think it could take as much as 5 to 10 years.

Mr. PAYNE. And you see the cultural change proceeding with these other changes and not necessarily having to precede these.

Mr. GADSBY. Proceeding with them, yes.

Ms. EDWARDS. Just to share similar changes we are seeing in other agencies that are also going through a modernization, the culture change begins when the organization decides that it is going to reinvent itself, or reengineer. It starts then. It is gradual.

The highest ranking leaders in the organization convey the mission related to that change. Little by little, the culture begins to transfer to the new ideas. And then as the systems are rolled out or as the new processes are put in place, more of the change occurs.

But I think, as Mr. Gadsby points out, it doesn't happen first, and it doesn't happen at the end only. It happens as a gradual process as the new way of doing business becomes reality.

Mr. PAYNE. And in this case, you see it progressing generally as it should?

Ms. EDWARDS. Yes.

Mr. GADSBY. Yes. I think it is very early, though. Still very early.

Mr. PAYNE. Thank you.

Chairman CRANE. We thank you for your testimony, and look forward to working with you and getting periodic updates from you.

Thank you so much.

Our next panel is Robert Tobias, president of the National Treasury Employees Union.

Welcome, Mr. Tobias and will you proceed with your testimony, please.

STATEMENT OF ROBERT M. TOBIAS, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Mr. Chairman.

I want to thank you very much for inviting NTEU here to testify in support of the Customs' reorganization effort. NTEU supports the reorganization because it was developed on a systematic basis.

It started out with a group of Customs managers and bargaining unit employees appointed by NTEU who began looking at the Customs' mission now and in the future. They also looked at what processes and procedures would be needed to accomplish that mission and then and only then, what organizational structure was needed to accomplish the mission.

The organizational structure which was developed cuts layers of management, delegates significant authority to ports of entry and reduces the supervisory-employee ratio. Finally, the reorganization guarantees that employees will have an opportunity to use their knowledge, skills and ability to develop and continuously improve the work processes and work procedures.

All too often, when evaluations of government action are made, they fail to consider whether they are good for the public, the people who pay the bills. This reorganization is good for the public. It will be easier for those corporations and importers who comply with the law to import goods. The Customs Service will be in a better position to identify and deal with the noncompliant corporations and importers. The percentage of public dollars spent on overhead will be reduced, and I believe that through the delegation that is inherent in this reorganization, that better decisions will be made on a day-to-day basis.

So Mr. Chairman, we do indeed support the reorganization effort. We believe it is something that is overdue and we are working very hard with the Commissioner of Customs and the other top managers in the Customs Service to make this reorganization successful.

Because as we all know, sometimes what happens is that those who are in leadership positions make declarations and are unable to make their declarations come true.

I think that will not be the case with the U.S. Customs Service, first, because of the commitment; and second, because I believe that because Customs has worked with NTEU we have an opportunity to drive this change from the bottom up, as well as the Commissioner has the opportunity to work the change from the top down. I believe that this reorganization has a—a real chance for success for the public. I would be pleased to answer any questions you might have.

[The prepared statement follows:]

TESTIMONY OF ROBERT M. TOBIAS
NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman and Members of the Subcommittee, I am Robert M. Tobias, President of the National Treasury Employees Union (NTEU). NTEU represents employees in agencies throughout the federal government and is the exclusive representative for U.S. Customs Service employees nationwide. In the past, NTEU has worked closely with Members and staff of this Subcommittee on issues affecting the Customs Service; it is my hope to continue this practice. It is with great pleasure that I appear today before this Subcommittee in support of the Customs Reorganization Plan.

In my testimony I will address NTEU's involvement in the Customs Reorganization Plan and why we support it. I will also address why we believe that the proposed reorganization, from the employees' perspective, will enable Customs to most effectively accomplish its mission. Finally, I will address a matter not directly related to the reorganization but which is within this Committee's jurisdiction and which affects the efficiency of the Service.

In the past, if Customs had proposed a reorganization, it is difficult to conceive that NTEU would find itself testifying in support of it. This is not to say that substantively the players and their respective positions have changed so drastically in recent times, but rather the process for resolving substantive issues has been drastically altered. In the past, the process for involving NTEU in a reorganization would not have happened in the same manner as it has under Commissioner Weise.

Customs' first order of business for this reorganization was to remove legislative language, which NTEU had supported in the Treasury Postal Appropriations bill, to prevent the study of a Customs reorganization. Instead of creating an adverse situation on the Hill, we were notified by Customs of its intent, prior to its contacting members of Congress. Customs was able to adequately resolve our concerns and the language in the Treasury bill was eliminated. In the autumn of 1993, the Commissioner selected twenty-two employees and gave them the task of recreating an organizational structure for the Customs Service to meet the challenges of the 21st Century. NTEU had two union representatives on this team. After the team completed months of work resulting in a reorganization proposal, NTEU, through its' National President was again given the opportunity to have concerns addressed. This level of involvement and trust has never been present between the Service and NTEU and we believe that as it continues to evolve it can only help to make the Customs Service more effective and efficient.

I'd like to turn my attention now to why NTEU believes that this reorganization makes sense. With the passage of the Modernization and Informed Compliance Act, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, Customs will face a large workload increase at a time when staff and budget are constantly being threatened. This reorganization prepares Customs for its new challenges. To ensure continued service delivery to the community, the current number of ports and personnel will be maintained. Resources and personnel will be allocated at the port level. In fact, service will improve as resources are allocated from support functions to operational functions.

The reorganization will also result in a streamlined organization with fewer management layers. We believe that this will create a more directed focus on mission accomplishment for employees. Internal barriers will be eliminated. Communication between top management and its employees will be enhanced. Employees who are involved in the day to day tasks of making these programs work will be able to share their valuable input with the ultimate decision makers. These employees will become fully invested in the methods and mission of the Customs Service.

The Customs Reorganization Plan, however, is not primarily concerned with shifting and realigning personnel, rather it revolutionizes the way business is conducted at the Customs

Service. Employees will now participate in determining how their work should be performed through business process improvement teams. These teams will analyze and revise core functions to best accomplish the mission of the Service. This will prove to be a great advantage to the Customs Service. Employees are in the best position to provide meaningful insights on the shortcomings and the way to remedy problems in their programs. In the past, employees have only had the opportunity to react to mandates determined by their superiors. This reinforced an antagonistic relationship between management and its employees and devalued the contributions of the Customs work force. We believe employee input can only lead to better quality programs and increased morale and production among employees.

In addition to employee involvement, Customs will also attempt to change the way it focuses employees. In the past each department at Customs had its own goals. Employees in each department sought approval for its tasks up the organization. Under the Reorganization, the focus will shift with each department looking across the organization toward one goal - Customer Satisfaction. Customs, of course, must always retain its priority to protect the health, safety and security of the public. Employees will become focused on outcomes rather than tasks. With each department focused on the same goal, interdepartmental strife should be eliminated and efficiency and effectiveness will be enhanced.

The underpinnings of this reorganization are employee involvement and a shared and directed vision for all employees. Customs recognizes that this will require it to heighten its attention to human resources. Customs is committed to this process because it knows that its employees are its best resource. Employees have the knowledge base and the "know how" to make the Customs Service work at its highest capacity. In addition, in order to successfully implement the changes in the Reorganization it will need the understanding and commitment of its employees.

In order to change the human resource climate, Customs must become aware of its current problems. The Customs Reorganization report highlights some of its current human resource deficiencies to include:

- an adversarial relationship with NTEU;
- a control-oriented management style;
- an Office of Human Resources perceived as nonresponsive to employee needs: training programs that do not meet employee developmental needs, do not prepare them to improve their performance and are not delivered in a time frame that allows employees to immediately apply what they have learned (i.e. we do not have "just in time training").

The fact that Customs now recognizes these deficiencies is the first step toward resolving them. Customs' goal, which we share, is to create an atmosphere where employees can make their best contribution. In their Reorganization Plan they have enumerated the elements for the ideal state of their future human resources to include:

- a positive relationship with elected and appointed employee representatives;
- a more collegial approach to dealing with employees, and a movement toward a management style characterized by supporting and coaching;
- an Office of Human Resources that serves employees as internal customers and supports management in achieving operational goals through strategic human resource planning;

- a streamlined organization without unnecessary layers;
- a better understanding of the organization, and the role that each discipline and organizational element plays in the achievement of those goals; and,
- an organization in which all employees are provided with quality training designed to improve their performance and delivered just in time.

This desired state will obviously take some time to achieve. Some employees will be skeptical. We believe strongly that employees, management and the Customs Service as an entity will benefit as employees become involved in their work life decisions. Employees on the front line are in the best position to know what "nuts and bolts" changes are necessary to make the Service more efficient. The quality of the programs will be enhanced as decisions are made by those people responsible for carrying them out. Employee involvement will lead to more informed and productive determinations for the future of the Customs Service. In addition, employees will feel a greater commitment to their job and a stronger sense of responsibility as to the outcome of their work.

The next decade promises to be exciting and challenging for the Customs Service. We believe that the reorganization proposal before this Subcommittee will allow Customs personnel to make the greatest contribution to the Service. We expect the Customs Service to reach new levels of success as it uses its greatest resource - its employees - to face the challenges of the 21st Century.

I would like to turn my attention to a matter not directly related to the Customs Reorganization but which does affect the efficiency of the Service. This Subcommittee had jurisdiction over the Customs Officer Pay Reform Act (COPRA) which went into effect on January 1, 1994. The Act made significant changes in the compensation system for certain Customs Officers. Among the changes was the following:

> Foreign Language Proficiency Awards
>
> Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers... to the same extent and in the same manner as would be allowable under Subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers.

This provision was enacted because of a growing "customer need" to have Customs officers speak a foreign language at the land borders and various airports. It was the Committee's belief that the provision would provide an incentive for more officers to speak a foreign language and better serve the traveling community.

At this time we have been told that the Treasury Department is refusing to authorize the Customs Service to implement this program. The Department's unwillingness to advance the creation of the program is at odds with Congressional intent and unfair to the dedicated men and women of the Customs Service. We would appreciate any assistance that the Subcommittee could provide to us on this important matter.

Thank you for allowing me the opportunity to share my views. I would be happy to answer any questions.

Chairman CRANE. Thank you, Mr. Tobias.

Given the state of the Federal budget, coupled with the prospect of a significant escalation of trade, as we move into the next century, aren't continued modernizations and automation necessary for Customs and all the people that work in that organization to be able successfully to address the responsibilities coming on?

Mr. TOBIAS. Without question. Without question. There is no question that automation and increased technology is necessary. But I suggest that the introduction of technology alone would not meet the necessary objectives, because technology without a proper construct, without new thought about what the work processes and work procedures ought to be, would be wasted. I think that the Customs Service did in fact introduce some technology in the early eighties, spent a great deal of funds on it, and I don't believe that that technology was maximized in the way that technology will be maximized with these new work processes and procedures.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Thank you.

Good to see you again. I am glad to see that there has been cooperation between the union and the Service. I am not satisfied that we are getting the proper cooperation from the Government of Mexico as it relates to drug interdiction. Other Members have problems, of course, with immigration. Is there anything, that you see, in the modernization that would be dealing with that?

Mr. TOBIAS. I do. The Customs Service struggled a great deal with the concept of work processes and work procedures. It was inconsistent to increase facilitation to make it easier for the good guys to bring in their goods without a proper focus on those who might be the bad guys. And so after a great deal of struggle, part of the entire reorganization effort is to focus cross functionally on dealing with the law enforcement aspect of the Customs' mission.

The term that is being used is problem solving, focusing on drug interdiction efforts and how all aspects of the Customs Service can be mobilized to deal with those kinds of issues. So the reorganization, I believe, will help the Customs Service do a better job, because all of the various aspects of the Customs Service will be able to be focused on the effort, rather than using the stovepipe approach that they have used in the past.

Mr. RANGEL. Are there tools that you are asking for to allow the agents to do a better job? Are they being instructed in Spanish?

Are there things that you feel as a union leader that could be provided to make the Customs agents more effective?

Mr. TOBIAS. Well, one thing that we believe would be helpful is the implementation of the foreign language program in the Customs Service. Congress passed the legislation authorizing the foreign language award program and it needs to be implemented. It is currently pending at the Department of Treasury. And I think that it would be very helpful, particularly at the border, that those Customs inspectors who speak a foreign language, along with their expertise, are used in that capacity and are rewarded for that expertise which is consistent with the legislation Congress passed.

And you know, we find that it is not only at the southwestern border, but it is also in San Francisco and Los Angeles, where a

great deal of Asians come into the country and those Customs inspectors who can speak Japanese or Chinese or Thai are used all the time. And similarly with those who come into New York, there are many Africans who come into the country who don't speak English and the inspectors who can speak to those travelers are used. And so we believe it would be helpful to reward that expertise and encourage more inspectors to develop it.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. What do you think would be the most significant thing the Customs Service could do other than your description of the foreign language requirement and things like that which could improve its service?

Mr. TOBIAS. Well, I think that there isn't one thing. I think there are a broad range of issues and ideas that are in the process of being implemented right now that will significantly increase service while, at the same time, maintain the role of the Customs Service.

There are things under consideration now that would allow those importers who have good records to have their goods examined less frequently than they are today. That would be real helpful to importers and companies coming into the country because they would get their goods through Customs much faster.

In the past, the Customs Service has been very reluctant to encourage those kinds of programs because there was no statistical base for measuring compliance. Customs is putting in place right now a very sound statistical base of compliance by goods imported by company, by importer, so we will know who is compliant and who isn't. Customs will be focusing attention through real hard data as to who is compliant and who isn't. Customs will attempt to, in the first instance, assist the noncompliant to become compliant, and then, in the second instance, if they are still noncompliant, to use enforcement action. I think this procedure will have a dramatic impact on the service that Customs provides.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman.

Mr. Tobias, I am really encouraged by your testimony. As you just heard from the GAO study, there were some concerns and comments about changing the culture of the organization in order for this reorganization to succeed, and I think you have spoken to that very directly. And I don't think this reorganization will succeed in the long run unless you and your membership are very actively and positively involved in it. And what I am hearing is that this is exactly the case.

So I don't have any questions, but I did want to say thank you for your very encouraging testimony and if you had anything else you would like to add, please do so at this time.

Mr. TOBIAS. Well, I appreciate your comments. I believe that the real stimulus for this effort came certainly from the Commissioner of Customs, but also through the encouragement of this administration to encourage agencies to create partnerships with unions.

There was a recognition that in order to, as you suggest, to change cultures at agencies that it cannot be done unilaterally.

Culture change has to be done bilaterally, and union participation will create better job satisfaction through increased involvement in creating a more efficient workplace. In those kinds of situations, the agencies can win from increased efficiency and better service, and employees win from better involvement. The Customs Service has embraced that concept and there is more and more trust being generated where employees will give the agency time to fulfill its promises, as opposed to being totally cynical about the changes that are being announced. I think that creates an atmosphere where change can occur, as opposed to one where change is resisted.

Mr. PAYNE. And I think this is what is going on in the private sector in terms of substantial and successful organizational changes that are being made there.

Mr. TOBIAS. Those that are dubbed high-performing corporations are successful in creating partnerships with the unions that represent their employees.

Mr. PAYNE. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you again, Mr. Tobias, for your testimony and we look forward to working with you, and we are happy that this is a nice, cooperative effort toward meaningful reform.

Mr. TOBIAS. Thank you very much, Mr. Chairman.

Chairman CRANE. Our next panel are David Rose, chairman of the Joint Industry Group; Michael Dugan, president of the National Customs Brokers and Forwarders Association of America; Philip Hughes, chairman of the U.S. Transportation Coalition for an Effective U.S. Customs Service; and David Serko, chairman of the subcommittee on customs regulation and reorganization, the American Association of Exporters and Importers.

And we will proceed in the order, Mr. Rose, Mr. Dugan, Mr. Hughes and Mr. Serko.

STATEMENT OF DAVID W. ROSE, CHAIRMAN, JOINT INDUSTRY GROUP, AND DIRECTOR OF IMPORT AND EXPORT AFFAIRS, INTEL CORP.

Mr. ROSE. I thank you, Mr. Chairman and members of the committee.

I am David Rose, chairman of the Joint Industry Group, a coalition of over 100 manufacturing companies, trade associations and various firms involved in trade and Customs matters. I am also director of import and export affairs for Intel Corp., a major high-tech manufacturer. On behalf of the Joint Industry Group, I am pleased to summarize my written testimony on the U.S. Customs Service reorganization and modernization efforts.

The Joint Industry Group was the preeminent private sector organization involved in the development and the support of the Customs Modernization Act. In this pursuit, we worked with Customs to resolve some 65 areas of major disagreement, a process that stands as a model for government-private sector cooperation. The result was a balanced bill that embraced automation and other trade-related efficiencies as well as an informed, shared approach to Customs compliance.

Last year, the Joint Industry Group joined other private sector representatives in Mod Act implementation sessions with Customs. We commend Commissioner Weise and the Customs Service for continuing an open dialog during the implementation phase.

Yet more than 1 year after the Mod Act passage, we are very disappointed that very few of the more significant changes have taken effect. In the enforcement area, we were encouraged by Customs' quickness to adopt new rules on detention and seizure of goods and publish its regulatory audits and drawback procedures. To its credit, Customs also issued a paper on penalties and liquidated damages that would maximize voluntary compliance through education and cooperation, reserving penalties for serious violations and repeat offenders.

At the same time, Customs' recordkeeping compliance program is off to a shaky start. Many in industry have criticized this voluntary program as bureaucratic, costly and outdated.

For example, Customs published an overly broad list of records that an importer must maintain and produce—or face penalties as high as $100,000—the latter figure, of course, is actually mandated by the Mod Act. We believe that Congress should encourage Customs to make the recordkeeping program susceptible of use by industry and, in doing so, direct Customs to confine its record list only to essential information.

Also disappointing was Customs' misapplication of the reasonable care standard. Last year, Customs initiated three proposals to stem the transshipment of textiles and apparel, an illegal activity that we clearly oppose. Yet each initiative was taken in the name of reasonable care, when what Customs imposed on importers was actually a strict liability standard. We ask the committee to review these actions to determine whether Customs has perhaps erred with respect to the aspect of reasonable care in these decisions.

The meaning of reasonable care has also not been adequately conveyed to field offices as two examples in our written remarks attest. It is time for this message, we believe, to be diffused more effectively beyond the beltway.

In the area of automation and new import procedures, Customs held numerous constructive public meetings last year to address the components of NCAP, the national customs automation program, mandated by the Mod Act. Significant headway was made and the contours of remote filing, reconciliation, and so on, began to take shape.

At the same time, Customs tackled the immense challenge of reorganizing itself. Many Mod Act automation programs were immediately delayed, pending completion of process improvement reports.

Our members view this development with concern, given our desire to see automation programs implemented swiftly. We support process improvements, but urge this committee to exert pressure on Customs to complete its reports quickly and get on with the implementation of the national automation components.

The Joint Industry Group has closely monitored the proposed reorganization of Customs' operations. It is premature to render judgment on a reorganization plan not yet implemented. Suffice it to say that the plan holds great promise while raising some concerns.

A key concern involves the role of the 20 proposed Customs Management Centers or CMCs. While they are ostensibly dedicated to Customs Internal Management Centers, these centers could, in fact, issue decisions which affect the legitimate interests of the trading community. We urge this committee to examine the issue of public access to CMCs before approving the reorganization.

Finally, another concern is the plan to transfer from headquarters to port directors the responsibility for mitigating penalties initiated in the field. In most instances, field officers lack the training, experience and exposure to legal principles required for effective disposition of penalty cases. Before any transfer occurs, field employees must possess the necessary expertise to decide penalty cases.

In conclusion, it is essential that Customs establish a clear roadmap of realistic objectives and milestones to ensure steady progress across many of its worthy ongoing projects and daily responsibilities. This roadmap, we believe, must include an acceleration of the Mod Act implementation process.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Testimony of David Rose
Chairman, Joint Industry Group
on U.S. Customs Service Reorganization
and Modernization Efforts
before the
Subcommittee on Trade
Committee on Ways and Means
January 30, 1995

Thank you Mr. Chairman and members of the committee. I am David Rose, Chairman of the Joint Industry Group, a coalition of over 100 manufacturing companies, trade associations and various other firms involved in trade and customs matters. I am also Director of Import and Export Affairs for Intel Corporation, a major U.S. manufacturer of semiconductors, personal computer, networking and communications products. Accompanying me are Richard Abbey, Chairman of the JIG Import/Export Programs Committee and an attorney with the law firm of Ablondi, Foster, Sobin and Davidow; and William Outman, Chairman of the Joint Industry Group Informed Compliance Committee and an attorney with the law firm of Baker and McKenzie.

On behalf of the Joint Industry Group, I am pleased to present testimony on U.S. Customs Service reorganization and modernization efforts. Our members have a huge stake in the outcome of these efforts and have interacted with the Customs Service in both areas to a significant degree.

PERSPECTIVE

The Joint Industry Group was the preeminent private sector organization involved in the development and support of the Customs Modernization Act . Our efforts began with the drafting of customs modernization legislation that Chairman Crane introduced in May, 1991. This legislation was followed in 1992 by the introduction of Customs' own modernization bill. The two bills were later merged into a single bill known as the Mod Act--a process that entailed resolution of some 65 areas of major disagreement between the Joint Industry Group and Customs. This process was a model for government-private sector cooperation in achieving a common, worthy goal. The Mod Act embraced the Joint Industry Group concept of informed compliance together with Customs' concept of shared responsibility for complying with Customs law and regulations. It also created a framework for automation and other efficiencies that promise dramatic improvements in the trade process for industry and government alike. This is not to say that the Mod Act is perfect from our perspective--the very process of compromise ensures that result. But we are convinced that the flexibility, balance, vision, and industry-government consultation that undergird this legislation are the keys to successful implementation of the Act.

In the past year, the Joint Industry Group has joined a number of other private sector representatives in Mod Act implementation sessions with the Customs Service. While the process has been slower than we anticipated, impeded to a great degree by the simultaneous reorganization effort and the creation of

process improvement teams to re-engineer the way Customs operates under existing statutory authority, we nevertheless commend Commissioner Weise and the Customs Service for continuing this open dialogue during the implementation process. However, we believe the time has come to accelerate this process.

The Joint Industry Group has also closely monitored Customs Service activities related to the proposed reorganization of Customs operations. In doing so, we joined numerous private sector groups in providing advice on how the reorganization should proceed. We stressed the need for operational and resource efficiencies as well as improvements in the penalty function.

It is our view that the reorganization outlined in Customs' report entitled "People, Processes, and Partnerships" is a schematic that holds great promise. The plan blends corporate re-engineering principles, modern management techniques, customer service and technology driven solutions as the basis for creating a more efficient, effective and flexible Customs Service. It is premature to render judgment on a reorganization plan not yet implemented, but we support the objective of eliminating unnecessary administrative layers and assigning more Customs officials to operational responsibilities in the field.

SPECIFIC COMMENTS AND RECOMMENDATIONS

Customs Modernization - In the Customs Modernization Act, the JIG sought and achieved two major objectives: first, Congressional support for clear, publicly announced rules, regulations and procedures of the Customs Service so that

importers could knowledgeably plan and execute their import transactions in full, "informed compliance" with the law; and second, authority for Customs to adopt modern, electronic, business-like systems for the processing of commercial imports and the payment of duties. In its efforts to implement the law, during the past year, Customs sought advice from every segment of the importing community. Concept papers on a host of topics ranging from remote filing to liquidated damages and penalties were disseminated to industry and in many instances revised based on industry comment. Yet, in retrospect, more than a year after the Congress adopted dramatic changes in the Customs law, very few of the most significant changes have been implemented.

• **Enforcement** - In the enforcement area, Customs was simultaneously encouraging and disappointing. The JIG was encouraged by Customs' quickness to adopt and apply the new rules on the detention of merchandise and seizure of merchandise under 19 U.S.C. 1595 a (c), and make public its directive on regulatory audit procedures and its manual on drawback procedures, all positive steps. To its credit, Customs issued a concept paper entitled "Reinventing the Penalty and Liquidated Damages Program". Building on the concepts of "informed compliance" and "shared responsibility", Customs announced its intention to work with importers toward the goal of achieving maximum voluntary compliance through education, information, and cooperation, reserving penalties for the more serious violations and repeat offenders. The JIG welcomes the many innovative approaches to encouraging compliance contained in this concept paper.

On the other hand, a major element of Customs' "informed compliance" program, the record keeping compliance program, has gotten off to a shaky start. The JIG is concerned about two aspects of the program. First, as the Committee will remember, section 509 of the Tariff Act of 1930, as amended (19 U.S.C. § 1509) (the "Act") was amended in anticipation that certain records, currently required by law or regulation for the entry of the merchandise, may at some later date not be required to be submitted in order to facilitate electronic entry and the goal of trade facilitation. Specifically, under section 509(a)(1) of the Act, the Congress mandated that:

> (A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and
>
> (B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g) of this section.

In accordance with section 509(e) of the Act, the Customs Service published for comment in the Customs Bulletin a listing of every record or "entry information" that it believed was required to be maintained and produced under section 509(a)(1)(A) of the Act (the "(a)(1)(A) List").

The JIG believes the Congress should encourage the Customs Service to define narrowly those "records" the failure which to produce on demand may subject the record keeper to a monetary penalty of as much as $100,000 for each

record not produced within a "reasonable time." This is the perfect opportunity to prune "deadwood" records from those that should be included on the (a)(1)(A) List. All forms of self-certification are no longer meaningful and should be eliminated. For example, under the standard of "reasonable care," an importer has an obligation to insure that claims for duty-free entry under an entitlement program, such as the Generalized System of Preference or the recently enacted North American Free Trade Agreement, are meaningful. Since producing a certificate attesting to the obvious adds nothing to the record keeping compliance program and creates an unnecessary assemblage and retention of paper, we urge that the Congress encourage the Customs Service to keep the (a)(1)(A) List to the bare minimum.

Second, the record keeping compliance program, which has been announced in general terms by the Customs Service's Office of Regulatory Audit, requires in our view, redirection. Any record keeping compliance program must be viewed by the Customs Service through the lens of data kept by companies in the ordinary course of business. The Customs Service is of the mistaken view that major multi-national corporations can tie entry data all the way through to the financial statements certified by public accountants. In anticipation that electronic entry will become a reality, the Customs Service should understand more fully how records are maintained and create a compliance program based thereon rather than creating the program and expecting industry to shoehorn into it. The program has been roundly criticized by industry as a bureaucratic, administratively costly government program that was out of touch with the times. As a voluntary program, companies

will not join if the costs of the program outweigh the potential risk of penalties for non-production of requested documents. We understand that the record keeping compliance program is being rethought. The JIG stands ready to work with Customs to achieve a workable program.

Truly disappointing to the JIG was Customs misapplication of the "reasonable care" standard. When the Customs Modernization Act was considered by this Committee, the JIG expressed concern with including the "reasonable care" standard in the statute. "Reasonable care" was not a new standard, and it had long been applied to importers' actions by Customs -- with Court approval -- in determining whether an importer had been negligent in entering merchandise. We feared that inclusion of the standard in the statute would now be used by Customs to justify heavy-handed enforcement. Unfortunately, we were right. In the last year Customs initiated three proposals, based on the "reasonable care" standard, designed to stem transhipment of textiles and apparel transshipment. First, Customs modified its penalty guidelines to treat transhipment as an aggravating factor even though the importer may have been completely blameless. Second, Customs proposed to require importers to certify that they had used reasonable care in determining the country of origin of imported textiles and apparel when, in many cases, it would be impossible for the importer to know the true source of the product. Third, Customs imposed a 180 day "conditional release" period on textile and apparel importers, giving itself six months to demand redelivery of such merchandise and penalize importers who did not comply. Obviously, since

businesses attempt to move merchandise to the customer as quickly as possible, and rarely hold merchandise in inventory for 30 days, Customs' ill-considered action guaranteed that a penalty would be imposed on unwary importers if at any time in the six month period after importation Customs suspected some import irregularity, whether or not the importer was at fault, or Customs could even prove on a timely basis.

The JIG clearly is opposed to the transhipment of textiles and apparel or any illegal activity that harms honest importers and American producers. However, each of these enforcement initiatives was taken in the name of "reasonable care", when what Customs was imposing was a "strict liability" standard of care. We ask the Committee to review these actions to determine whether Customs has misused its authority in attempting to address the serious problem of transhipment.

Nor has the meaning of "reasonable care" in terms of Customs compliance been adequately communicated to field offices. Perhaps, two examples will help illustrate our dilemma. In one recent case, a large West Coast importer, undertaking a semi-annual internal audit, advised the Customs Service that several "pre-filed" entries required cancellation because cargo intended to be loaded by the carrier on a given flight did not make the plane. In twenty other cases, the importer noted that adjustments were necessary to correct entries for inadvertencies in tariff classification, rate of duty or value of the declared entry. In response, the Customs Service advised that "it considered that importer negligent, exhibiting a lack of due care or attention ... to matters relating to entry documents" and indicated it was

giving serious consideration to revocation of the importer's immediate delivery privileges. While more than 1,800 entries were filed during this period, no other adjustments were needed with respect to the 98.91% of entries filed during the same period. In a second case, a major importer was requested to waive the statute of limitations because the local Fines, Penalties and Forfeitures Office was considering the imposition of a penalty with regard to buying agency commissions that had been claimed as non-dutiable. This occurred notwithstanding the fact that the company in question employs almost seventy individuals who handle Customs matters, three of whom are former Import Specialists. In addition, the company has a full-time director of Customs and a senior Customs attorney on its staff responsible for Customs matters, having been in this position since 1978. Further, the company had reviewed and sought guidance on the Buying Agency question with outside Customs counsel.

In both instances, the importers exercised the "reasonable care" expected of them under the statute. Yet, in one case, reconciliation was viewed as an admission as to the inability to comply fully with the requirements of entry, notwithstanding the reconciliation was self-initiated. In the latter, the Customs Service's Field personnel were oblivious to what this Committee mandated would be prudent steps taken by importers to meet the standard of reasonable care. It has been almost fourteen months since the Customs Modernization Act became law. It seems the message needs to get out beyond the Beltway.

- **Automation** - In the area of automation and electronic processing of imports, JIG members proposed a number of the most far reaching automation proposals contained in the Mod Act, including the Import Activity Summary Statement ("IASS") and reconciliation. We were ardent supporters of remote entry filing and the other components of the National Customs Automation Program ("NCAP"). These electronic processing initiatives offer our members the opportunity to improve efficiency and reduce administrative costs, enhancing their competitiveness. Thus, we are eager for the implementation of these programs.

For six months after enactment of the Mod Act, Customs held numerous public meetings with the major organizations representing importers, exporters, carriers, customs brokers and attorneys to gain and share knowledge, experience, and special interests and concerns relating to the NCAP components. A series of concepts papers were prepared and disseminated by Customs, critiqued by the groups, and reworked. The atmosphere of these meetings was constructive and the contours of remote entry filing, reconciliation and the IASS began to take shape. At the same time, Customs tackled the immense challenge of reorganizing itself. Not only did the organizational structure of the Service come under scrutiny, so did the way Customs processes passengers and cargo. The impact on Mod Act implementation was felt immediately as many automation programs were delayed pending reports of newly created Process Improvement Teams.

Our members view this development with concern, given the desire to see automation programs implemented as soon as possible. It became apparent that various functional working groups within Customs were to be working at cross purposes, studying overlapping issues without adequate coordination, and arriving at inconsistent recommendations. For example, this appeared to be the unacceptable situation that existed between the group examining Customs cargo clearance procedures and the group working on the implementation of the NCAP components. Of even greater concern to us is the longstanding, ongoing disagreement within the Customs Service about the nature and amount of invoice information to be required. A well coordinated decision on this issue is critical to development of remote entry filing, reconciliation and IASS. Now, we understand, Process Improvement Teams are addressing this issue and numerous other issues that have hindered development of a seamless, integrated cargo processing system.

The JIG is encouraged by Customs' rational approach, but urges this committee to exert pressure on the Service to complete these studies quickly and get on with implementation of the NCAP components. Although we understand the dynamics, we nevertheless are disappointed with the slow pace of implementation. We have been informed, for example, that the test of a remote entry filing prototype and the test of a reconciliation prototype have been pushed back until late Spring, and that the critical invoice information decision is still many months away. Furthermore, because the proposed regulatory amendments authorizing tests of new automation prototypes have still not been published as a

final rule (which in turn precludes importer application and selection for the tests), there will be additional delay. Given the current level of progress in this area, we are looking at a period of five years or longer before our members will see any benefits, if then. We believe it is imperative for this committee to direct the Customs Service to place a high priority on the implementation of the automation initiatives contained in the Mod Act.

We recognize, however, that even if Customs undertakes these initiatives as its highest priority, implementation is still a long way off. In the interim, we recommend that Customs hasten the shift to an account-based system, utilizing the Pre-importation Review Program ("PIRP") or pre-classification program along with a reasonable record keeping compliance program to identify reliable importers. Each such importer would interact with a primary Customs official for all purposes and thereby reduce, if not eliminate, unnecessary, duplicative communications for both the importer and Customs. An account-based system would appear to be easy and quick to implement, and would return great benefits, at the lowest cost, and in the shortest time possible.

Reorganization

As noted in our introductory comments, the JIG supports the objectives of the reorganization, but we reserve comment on a plan not yet approved by the Congress, nor implemented. The major concern raised by our members is the function of the 20 Customs Management Centers ("CMC"). The Customs Service

has not done an adequate job in clarifying the role of this new organization that appears to exercise many of the same responsibilities of the abolished seven regions, nor has it adequately explained the geographic distribution of the CMCs.

As a general proposition, the JIG believes that companies should have access to Government officials who are responsible for decisions affecting a company's legitimate interests. It is our understanding that the CMCs will have administrative and management responsibilities, that is personnel, budget and oversight, and will attempt to insure uniformity at the ports under its jurisdiction; that no decision making authority will be delegated to the CMCs; and that the public will have no interaction with CMC officials. Although personnel and budget matters are an internal management function, such matters are of vital concern to the public because they affect staffing which impacts on the operation of the port. Similarly, if the CMC in ensuring uniformity is given the authority to decide on the appropriate procedure or correct classification, private interests will be affected and access to the decision maker should be guaranteed. We recommend that the committee explore these issues further before approving the reorganization.

The JIG is concerned that, with reorganization, the transfer to the Port Directors of responsibility for mitigation of penalties initiated in the Field will create a degree of havoc not seen since the early 1970's. In most instances, Fines, Penalties and Forfeitures Officers currently lack the training, experience and exposure to legal principles required for effective disposition of civil penalty cases. Historically, civil penalties have been initiated in the Field at the "maximum" levels

provided by law with apparent disregard for the degree of culpability involved in the offense. Perhaps, this has been traceable to the realization that it didn't really matter because Headquarters would be making the final determination. If the Headquarters Office intends to de-emphasize its importance and transfer responsibility to the Port level, something will have to be done to insure that the Field has the necessary resources to determine in the first instance whether a penalty should be imposed and then make a practical assessment as to the level of culpability and penalty. Obviously, if a more realistic program were adopted in the first instance, mitigation should become of less concern. In any event, Customs should make strenuous efforts to improve the training of special agents, import specialists and any other employees who are involved in the initiation of penalty cases so that proposed penalty cases are carefully and fully developed and criminal referrals and interminably long civil proceedings are avoided. Also the current penalty guidelines for the resolution of penalty and liquidated damages should be dramatically overhauled to encourage the expeditious resolution of cases.

CONCLUSION

It is clear that U. S. Customs is currently juggling many priorities. In addition to the huge workload demands associated with Mod Act and reorganization activities, Customs is proceeding with comprehensive process improvement and trade compliance initiatives which, among many other elements, includes a complete redesign of Customs automation environment, new compliance

measurement procedures, and a complete rethinking of Customs enforcement practices. All of these major initiatives are taking place astride Customs' daily mission of trade facilitation and enforcement. While a tall order, Customs' ambitious agenda seems necessary and inevitable. Customs cannot effectively implement the Mod Act without simultaneously restructuring its organization, automation environment and trade compliance programs so as to meet the demands of modernization. A multidisciplinary and cross-functional approach to these activities is essential to the proper handling of ever-growing trade flows as we approach the 21st century.

It is equally essential that Customs establish realistic objectives and milestones to ensure steady progress across all of its projects and daily responsibilities. Absent a detailed roadmap for success, many of the modernization programs that private sector, Customs and this committee worked so hard to achieve may be assigned a lesser priority, falling victim to Customs' more recent initiatives. The slow pace of Mod Act implementation raises the question of whether this is already happening. To the extent that the answer is yes, U.S. interests--importers and exporters, carriers, customs brokers, and the Customs Service itself--would stand to lose the operational, resource and economic efficiencies envisioned by the parties who supported Customs modernization legislation. Periodic reviews of Customs objectives and performance record in fora such as this hearing are important to ensure that Customs remains a progressive, focused organization.

Thank you, Mr. Chairman. We would be pleased to respond to any questions the Committee may have.

Chairman CRANE. Thank you.
Next, Mr. Dugan.

STATEMENT OF MICHAEL F. DUGAN, PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. DUGAN. Thank you, Mr. Chairman. Thank you for the opportunity for the National Customs Brokers & Forwarders Association to testify.

We commend you for taking committee time so early in the year to take stock of the performance of Customs. The times have mandated the modernization of Customs and the agency has set about the task in an aggressive fashion.

Customs must implement the provisions of the Customs Modernization Act passed almost 15 months ago at the initiative of this committee. It has chosen to reorganize both its structure and its functional process. Customs is not doing this alone or in a vacuum. Our association and others in the private sector have thus far been involved every step of the way.

Customs charts its objectives, but then has elicited comment and approval as plans have evolved. Commissioner George Weise has gone the extra mile to ensure that literally everyone has had the opportunity to share their views.

We are now at the stage where broad outlines have emerged and we are anxious to develop the details. In the interest of providing positive input and feedback about the direction of Customs modernization and reorganization, our organization has the following observations to make.

We support and applaud the goal of reduced bureaucratic layering. Customs must have the broad latitude to make the management decisions necessary to improve and run their own agency.

We are promised that CMCs are administrative entities only and that is why their geographical location is not important to individual ports. If they are to be only administrative, they must not be permitted to acquire more functions and significance in the future. They must be clearly defined right now.

Our association is concerned that the Customs' fines, penalty and forfeiture function must be wielded judiciously and fairly. Its power cannot be permitted to be misappropriated in the future.

Uniformity has become one of the greatest concerns of importers as the agency decentralizes to a port orientation. Application and enforcement of Customs' laws must have a national focus. Our association wants knowledgeable, experienced people running Customs' programs.

Work cannot be brought to a standstill as change occurs. Carefully planned incremental change will avoid these problems. Our association believes that these changes must not create delays in the movement of cargo but aid in the process of selecting cargo for examination.

The movement from a transaction-based processing to account-based processing must not diminish access to knowledgeable Customs officers. We do not want an 800 number manned by uninformed people who merely take down our questions so that they can get back to us.

We readily accept the challenge and the obligations of informed compliance. Recordkeeping compliance is an important part of this concept. We cannot permit the public to drown in paper as the burden shifts to an importer to produce on demand specific documents. The list, the A–1–A list, must be streamlined and the demands of the program must be made reasonable.

The in-bond program must be preserved. In-bond is vital to the international trading status of many communities such as Chicago, Pittsburgh, Houston, and Dallas.

We hope this committee will ensure that Congress' intent is brought into perspective so that the Customs Service and the private sector can together achieve a reasonable solution to the issues raised by the Chief Financial Officers Act.

We want retention of a broker regulatory scheme where brokers must be qualified and properly permitted, held accountable to Customs and our own high standards. Brokers want Customs business defined and applied to activities conducted both inside and outside the United States. It makes little sense to hold documents prepared inside the United States to the highest possible standards and then to permit a come-as-you-are philosophy to apply to counterpart documents prepared in foreign locations.

Our association asks a continued role as a working partner with the Customs Service to see that their agenda is brought to fulfillment. Commissioner Weise has included us so far and except for the issuance of the section 321 regulations, what we believe was without proper discussion, Customs has considered our views throughout the full spectrum of their plan changes. More than anything else, we offer Customs recourse to a reality check that will obviate false starts, missteps, unnecessary friction with the private sector, and finally the necessity of involving the committee in every dispute.

Mr. Chairman, we thank you for giving us the time this afternoon to make our comments.

[The prepared statement follows:]

TESTIMONY OF MICHAEL F. DUGAN
NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA

Mr. Chairman: Thank you for this opportunity for the National Customs Brokers and Forwarders Association of America (NCBFAA) to testify. We commend you for taking committee time so early in the year, in the midst of your work on the Contract with America, to take stock of the performance of Customs. The United States Customs Service is indeed an agency of vital importance to the American public.

These are challenging times for Customs as well. The times have mandated modernization of the Customs Service and the agency has set about the task in aggressive fashion. Customs must implement the provisions of the Customs Modernization Act passed almost fifteen months ago at the initiative of this Committee; it has chosen to reorganize both its structure and its functional processes in what amounts to a complete overhaul of how it conducts its operations; and, it faces the immense burden of day-to-day operation when trade has reached unparalleled proportions as a factor in our economic well-being. And, these steps have been undertaken simultaneously. Customs is not doing this alone, or in a vacuum. NCBFAA and other in the private sector have been thus far involved every step of the way. Customs charted its objectives but then has been assiduous in eliciting public comment and approval as plans evolve. Commissioner George Weise has gone the extra mile to ensure that literally everyone has had the opportunity to share their views and participate in setting the direction for this re-engineering.

We are now at the stage where the broad outlines have emerged and we are anxious to develop the details. Our expectation and commitment for involvement have, if anything, only been piqued. Once engaged, our standards have become increasingly more demanding. Once empowered, we expect to assume an important role in tailoring Customs' changes so that they best serve the public, our clients.

In this vein then, in the interests of providing positive input and feedback about the direction of Customs modernization and reorganization, NCBFAA has the following observations to make:

1) We support and applaud the goal of reduced bureaucratic layering and having Customs services more available at the locus of international trade, the ports. Customs must have broad latitude to make the management decisions necessary to improve and run their own agency. NCBFAA will seek to ensure however that the newly-emerging "CMCs" and strategic trade centers meet these objectives. We are promised that CMCs are administrative entities only and that is why their geographical location is not important to individual ports. Then, if they are to be only "administrative", they must not be permitted to acquire more functions and significance in the future. They must be clearly defined now.

2) NCBFAA is concerned that Customs' fines, penalties and forfeiture function will become the vehicle for too much unbridled power to be located with the director of a small port. Typically, "fines, penalties & forfeiture" is the blunt

instrument of enforcement that must be wielded judiciously and fairly. Its power cannot be permitted to be misappropriated.

3) Uniformity has become the greatest concern of importers as the agency decentralizes to a port-orientation. Customs is well aware of these concerns and the private sector will work assiduously to ensure that, whereas customs service is a local issue, application and enforcement of customs law must have a national focus.

4) NCBFAA wants knowledgeable, experienced people running Customs programs and we don't want upheaval, personnel turmoil, or extended learning curves. In consulting with Customs on reorganization, we will balance this operator's perspective against the reorganization team's more long-term objectives. Work cannot be brought to a standstill as change occurs; carefully planned, incremental change will avoid these problems.

5) NCBFAA believes that these changes must not create delays in the movement of cargo, but aid the process of selecting cargo for examination, thereby facilitating the expedited movement of all cargo through Customs.

6) The movement from "transaction-based" processing to "account-based" processing must not diminish access to knowledgeable Customs officers to obtain information and decisions necessary for the quick release of specific shipments. We do not want an 800 number manned by uninformed people who merely take down our questions so they can "get back to us" or who simply refer us to others. We want open communications channels within Customs operations.

7) We readily accept the challenge and obligations of "informed compliance". Recordkeeping compliance is an important part of this concept. A first attempt at this has gotten off to a false start and is now undergoing major surgery. As Customs moves out from under a sea of paper, we cannot permit the public to drown in paper as the burden shifts to an importer to produce on demand the specific essential documents. The list ("(a)(i)(A)") must be streamlined and the demands of the program made reasonable.

8) The "In-bond" program must be preserved. In-bond is the lifeblood to the international trading status of many communities (such as Houston, Chicago, or Pittsburgh). The most often identified culprit posing a threat to the viability of in-bond has been the recently-passed Chief Financial Officers (CFO) Act; however, overreaching

interpretations and overzealous enforcement will lead to unintended results and the demise of efficient transportation systems of today. We hope this Committee will ensure that Congress' intent is brought into perspective so that Customs and the private sector can together achieve a reasonable solution to issues raised by the CFO Act.

9) We want retention of a broker regulatory scheme where brokers must be qualified and properly permitted, left in an unobtrusive environment to conduct our business, and then be held accountable to Customs and our own high standards. The Commissioner has asked us to help design these regulations and we will.

10) Brokers want "customs business" defined and applied to activities conducted inside and outside the United States so that the public can be assured that their customs business will be conducted professionally. It makes little sense to hold documents prepared inside the U.S. to the highest possible, most exacting standards, and then permit a "come as you are" philosophy to apply to counterpart documents prepared in foreign locales by people ignorant of our laws and beyond our reach.

11) NCBFAA wants a continued role as Customs' working partner in seeing Customs' agenda to fulfillment. Commissioner Weise has included us so far and, except for issuance of the §321 regulations without proper discussion, Customs has considered our views throughout the full spectrum of their planned changes. Now we recommend that a "users" committee be maintained by Customs throughout the balance of this period of change to consult on the details of each element of these plans. More than anything else, we offer Customs recourse to a "reality check" that will obviate false starts, missteps, unnecessary friction with the private sector, and finally the necessity of involving the Committee in every dispute.

We thank you sincerely, Mr. Chairman, for your interest and look forward to working with you in the months ahead.

Chairman CRANE. Thank you for your testimony.
Mr. Serko.

STATEMENT OF DAVID SERKO, CHAIRMAN, SUBCOMMITTEE ON REORGANIZATION AND CUSTOMS MODERNIZATION ACT REGULATIONS, AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Mr. SERKO. Mr. Chairman, I am here representing the American Association of Exporters & Importers. I am chairman of their subcommittee on regulations and reorganization, and as you, I am sure, are aware, the association represents on a national basis, 1,200 importers who import and trade, and exporters who export and trade across the border in all types of commodities, trade sensitive and not.

We most gratefully thank you for the opportunity to be here this afternoon to give you our input on what has been a tremendous effort on the part of the Customs Service, together with the trade community to try to comply with the requirements of the Mod Act, to establish regulations and then deal with the reorganization which the Customs Service concluded was necessary in order to be able to implement all of the activities that would flow from the Mod Act, GATT, NAFTA and all of the changes taking place in world trade.

I will address the Customs' reorganization first, and while we commend the concepts and the objectives of the Customs Service in their reorganization, we have a suggestion: That the same partnership with the trade that Customs undertook in developing the regulations which are currently in the process of being promulgated, the Customs Service enter that same partnership with the trade in implementing the reorganization plan.

There are some concerns that we have, particularly with respect to the appeals process for decisions that will be made at the local ports. We understand that any decision made at a local port is appealable to headquarters, and we laud that decision on the part of the Customs Service.

We would be more comfortable if that particular aspect of their implementation were codified so that it wouldn't change given new administrations and further reorganization. That appeal process is essential to the functioning of importers and exporters in a highly legal and regulated environment.

We have seen only one document that is a rather recent one that talks about the management center concept as it relates to the Gulf Management Customs Center, and that document is dated January 5. In that document, some of the concerns that we have are somewhat raised to a higher level of awareness, because there is discussion in the document that fines and penalties will be imposed by the port directors and will be appealable only on a supplemental petition or a second supplemental petition through a representative of headquarters who will be stationed in a Customs Management Center.

Now, we don't know how that is going to work. And we don't know whether that means somebody from headquarters who is stationed in a Customs Management Center is really a headquarters representative, or is a Customs Management Center representa-

tive, and we have no basis on which to object or to support this kind of proposed outcome. But we do ask that the Customs Service have a dialog with us, the trade community, to discuss the issues that concern us.

There is another issue in the Customs Management Center that is of great concern. That same document talks about uniformity of service being the function of the objective of the Customs Management Center.

Our questions are does the uniformity also relate to classification issues and marking issues and admissibility issues? Who is going to determine the uniformity, and does uniformity of service include those issues?

We don't know, because that hasn't been clarified. We would like it to be clarified. Beyond that, we think that the effort that has been made, and is being made, should lead to benefits for the importing public, for the U.S. consumer and to greater efficiency.

It remains to be seen, but if this committee continues its oversight function over what has been happening, and the Customs Service continues its dialog with the trade, we are very optimistic the ultimate result will be good for everybody.

I thank you, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF DAVID SERKO
AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Introduction

Good afternoon, Chairman Crane and members of the Trade Subcommittee. My name is David Serko. I am a partner at the law firm of Serko and Simon and I am testifying in my role as Chairman of the American Association of Exporters and Importers' (AAEI) Subcommittees on Customs Reorganization and Modernization Act Regulations. AAEI is a national organization of approximately 1200 U.S. firms active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. The Association's members also include customs brokers, freight forwarders, banks, attorneys, and insurance carriers. AAEI members interact daily with the U.S. Customs Service, making AAEI one of the closest observers of Customs operations.

AAEI appreciates the opportunity to discuss Customs reorganization and modernization. The Association has cultivated a long-standing, close-working relationship with the Customs Service with respect to these and other issues that significantly impact the international trade community.

Customs Reorganization

AAEI is pleased with the overall concept and objectives of Customs' reorganization plan. Customs' efforts to make the agency more effective and responsive to its customers, the international trade community, is laudable. Also commendable is the partnership Customs has fostered with industry in developing a plan that will optimally serve the agency and its customers. Based on the Association's many years of interaction and meaningful dialogue with Customs, it has the utmost confidence that the agency will hold true to its stated intentions in the actual implementation of reorganization.

AAEI as well as other trade groups understand that decisions determined at the port level regarding any issue will be appealable to Customs Headquarters. The Association is pleased with this process and suggests that it be codified to ensure that its benefits are preserved over time. Codification of this important appeals mechanism will guarantee consistency and stability through future changes in personnel and administrations.

The current plan calls for the establishment of Strategic Trade Centers (STC) which will focus on enforcement issues such as transshipments, smuggling, intellectual property rights and quota. We fully expect that Customs, in its enforcement operations, will continue to be mindful of its mission to facilitate the flow of merchandise into the stream of commerce. While enforcement measures are a fundamental aspect of the Customs Service, they should not be carried out to the detriment of its other fundamental function, the facilitation of global trade. The current Commissioner as well as the immediate past Commissioner have recognized the importance of Customs' commercial function. We fully anticipate that this climate will not change with the implementation of STCs.

The Association understands that Customs Management Centers (CMC) were established for the sole internal use of Customs to ensure the overall uniformity of the organization. Monitoring uniformity is as much operational as it is an internal administrative task. Hence, it is the importer who is in the best position to detect a lack of uniformity with respect to the implementation of Customs procedures. AAEI therefore suggests that members of the trade community be permitted the option to have access to CMCs for the effective and expedient resolution of uniformity discrepancies.

AAEI strongly endorses the Subcommittee's exercise of its oversight authority. The Association encourages the Subcommittee to continue such utilization to oversee the successful implementation of STCs, CMCs and the overall reorganization plan. Additionally, AAEI would support Customs extending the "partnership with the trade" approach employed with the "Mod Act Task Force" to its reorganization implementation.

Customs Modernization Act Regulations

The Customs Service has been committed to developing a partnership with the trade community to formulate regulations which are amenable to both parties. Over the past year, Customs has met frequently with representatives from various trade groups to discuss proposed concepts and regulations. Customs has been responsive to comments submitted and has modified several of its original proposals to reflect the input of industry. The trade community places high value on this unprecedented process and applauds Commissioner Weise for his dedication in building the partnership.

Although this process which fuels the promulgation of the regulations has been productive, there remain some important substantive issues that need to be resolved. For example, the Customs Modernization Act authorizes the Customs Service to establish a voluntary recordkeeping compliance program. The program, as recently proposed by Customs, is believed by AAEI to be somewhat ambiguous. The draft version of Customs Importer Recordkeeping Compliance Manual exceeds statutory requirements by calling for the production of documents beyond those necessary for entry. The costs of participating in the program, as outlined in the draft manual, would outweigh any potential benefits. Therefore, the manual must be rewritten to provide importers with an incentive to participate in this voluntary program.

With respect to the finalization of Customs regulations on drawback, the Association wishes to emphasize the importance of Customs recognition of the drawback program as a significant export incentive. The regulations should not undermine this program in any way as it permits many U.S. companies to compete on a global scale. Important drawback issues remain unresolved. Considering the value of this program to the enhancement of U.S. exports, AAEI would welcome an invitation from the Subcommittee to present its detailed position at a later hearing.

On behalf of AAEI, I thank you for the opportunity to testify. AAEI is proud to have played a major role in the business outreach program with respect to both Customs reorganization and the Modernization Act Regulations. The Customs Reorganization Team as well as the Customs Mod Act Task Force have participated in AAEI sponsored events including three major public two-day conferences and conventions which drew more than 2,000 attendees. The Association looks forward to a continued industry-Customs partnership and is optimistic that the joint effort will produce mutually beneficial results.

Chairman CRANE. Thank you, Mr. Serko.

STATEMENT OF PHILIP HUGHES, COCHAIRMAN, U.S. TRANSPORTATION COALITION FOR AN EFFECTIVE U.S. CUSTOMS SERVICE, AND INTERNATIONAL CUSTOMS AND BROKERAGE MANAGER, UNITED PARCEL SERVICE

Mr. HUGHES. Thank you, Mr. Chairman, members of the committee, for this opportunity. My name is Philip Hughes. I am the international customs and brokerage manager for United Parcel Service. Today I am pleased to be here for the U.S. Transportation Coalition. Our members include all modes of transportation and their respective associations, the airlines, air couriers, ocean, rail and trucking.

We recognize that these are very challenging times for Customs, being tasked with these two major initiatives. This comes at the same time as the implementation of two major trade agreements, NAFTA and the Uruguay round. We came together as a major proponent of the Mod Act, because we know firsthand the vital importance of trade facilitation to international transportation.

We have worked closely with Customs to make the improved procedures and broad concepts provided for in the Mod Act a reality. It became clear, however, that Customs was having difficulties in implementing even the most simple provisions, such as the raised administrative exemptions. This means that the benefits of the Mod Act have been delayed.

A simple provision which we believe can also be implemented even without regulation is summary manifesting of letters and documents. This would save significant operational costs. It is fair to say that during the legislative process, transportation was a champion of remote entry filing. We would like to see the importing public enjoy the benefits of this major component of the Mod Act and hope that the committee will encourage Customs to place remote entry filing high on their priority list.

One of the only provisions of the Mod Act that has been fully implemented is compliance measurement. This is not a facilitative program, and in fact has had a disruptive effect on trade. While we fully appreciate the importance of the program to achieving informed compliance, the statistical methodology must be automated and refined. We fully agree with the joint industry group on the A–1–A list. We were disappointed with the list published by Customs as being too broad and urge the committee to encourage Customs to prune down the list.

We are also concerned with the proposed Importer's Recordkeeping Compliance Manual. Again, we believe that Customs has gone too far. Like others, we are concerned that the manual reflects a program that is bureaucratic and administratively costly.

The coalition agrees that it is now time for Customs to make changes to its current structure and management approaches. We fully support the overall goal of increasing efficiencies and providing enhanced service levels. We commend Customs' focus on its customers and its decision not to reduce services or personnel at the ports. With the tools of the Mod Act, we believe that Customs can better facilitate trade, while assuring maximum compliance, depending on the reorganization plan that it finally adopts. At this

time, we have only seen the blueprint for the reorganization. Consequently, the coalition's comments are general in nature.

We are concerned, though, about the function and geographic distribution of the proposed Customs Management Centers, or CMCs. While we are told that the CMCs will only have administrative functions and no interface with the public, we believe that the functions of the CMCs should be fully explained to Congress and the importing public.

While personnel and budget matters may appear to relate to internal management, such matters have a direct impact on transportation as they relate to staffing. The geographic size of the CMC area and the location of the CMCs should reflect the import and export volume of the area. We are also concerned about how the reorganization will affect Customs' penalties program.

While the report on the reorganization indicates that this program will be handled at the port level, with direct appeal to Customs headquarters, we question how Customs intends to do this without detailed guidelines as to the disposition of penalty matters.

In reforming the penalties process, we urge Customs to focus on expeditious resolution, rather than the perpetuation of the lengthy mitigation process. We hope that Customs will follow the approach described in its concept paper on penalties, and work with importers toward achieving maximum compliance through education, information and cooperation, reserving penalties for the most severe violators and repeat offenders.

In conclusion, Customs modernization efforts must proceed at a more rapid rate to deliver the benefits of the Mod Act. The reorganization must be formulated in close consultation with Congress and the importing community in order to assure that the new Customs Service meets the needs of trade in the 21st century.

Thank you, Mr. Chairman. I respectfully request that our full written statement be included in the record. I would be pleased to answer any questions.

Chairman CRANE. They will, without objection.

[The prepared statement follows:]

STATEMENT OF PHILIP HUGHES
U.S. TRANSPORTATION COALITION FOR AN EFFECTIVE U.S. CUSTOMS SERVICE

Thank you, Mr. Chairman and members of the committee for this opportunity. My name is Philip Hughes. I am the International Customs and Brokerage Manager for United Parcel Service. In my capacity as co-chairman with Adi Abel of Sea-Land Service, Inc., I am pleased to testify today on behalf of the U.S. Transportation Coalition for an Effective U.S. Customs Service on the proposed reorganization of the Customs Service and the agency's modernization efforts. Our Coalition members include: (1) the Air Courier Conference of America; (2) the Association of American Railroads; (3) the Air Transport Association; (4) the American Trucking Associations; (5) the Pacific Merchant Shipping Association; and (6) the United Shipowners of America.

The union of all modes of transportation -- including air and air courier, ocean, rail and truck -- by the formation of this Coalition is an historic first in transportation history. Today, transportation services represent 3.1 percent of the total non-agricultural employment and 6.4 percent of the total Gross Domestic Product. These figures will undoubtedly continue to grow at a rapid rate given the globalization of companies, the recent implementation of the North American Free Trade Agreement and Uruguay Round legislation and the probability of other free trade agreements, as well as new concepts being developed and refined such as just-in-time manufacturing and retailing.

We came together during consideration of the Customs Modernization Act (the "Mod Act") and worked with this very Committee, the U.S. Customs Service and the Joint Industry Group, because we know first hand the vital importance of trade facilitation to the nation's economy. Since we fully recognize that Customs modernization is the keystone to trade facilitation, we were a major proponent of the Mod Act. The efficiencies effected by customs modernization and simplification are imperative to the delivery of the type of transportation services required by our customers -- American business and the general public. We continue to work with Customs in the implementation phase to develop sound regulatory proposals. In fact, at this time we are working with Customs and other agencies to build an Automated Export System and reengineer Customs in-bond program. We are hopeful that this collaboration will continue to ensure that future customs policies and procedures will afford sufficient flexibility to accommodate transportation flows and our customers' needs.

Our Coalition members also worked in partnership with the Customs Service with regard to the proposed reorganization. The very theme for Customs' report on the reorganization -- "People, Processes & Partnerships" -- came from Mr. Gary Taylor of American President Companies, the founder and former chairman of this Coalition. We commend Commissioner Weise and the Customs Service for their excellent work in this regard. We hope that they will continue the open dialogue utilized for both their reorganization and modernization efforts.

These are certainly very exciting times for the international trade community and the Customs Service -- a governmental agency which dates back to the American Revolution. Yet, it is also a very challenging time for the Customs Service, being tasked with two major initiatives -- (1) customs reform as a result of the Mod Act; and (2) a major reorganization. This comes at the same time as the implementation of two major trade agreements -- NAFTA and the Uruguay Round. As a result, the Service must prioritize its workload to deliver the benefits of both initiatives as well as these recently concluded trade agreements to the public.

The Mod Act

All during last year, we worked closely with Customs to make the improved procedures and broad concepts provided for in the Mod Act a reality. It became clear during the first half of the year, however, that Customs was having difficulties implementing even the most simple provisions. This means that virtually all of the benefits of the Mod Act have been delayed.

The following is an example on point. It took over six months for Customs to promulgate its first regulations package, which included what one would think would be the most simple amendment in the Mod Act -- raising the statutorily mandated administrative exemptions thresholds. The regulations that were finally published were challenged in court by the national association of customs brokers because of Customs' mere explanation of existing procedures for de minimis shipments. Along with Customs, our air courier members successfully defended the regulations in the Court of International Trade and we, Customs and the public are now receiving the intended benefits of the raised administrative exemptions. But this was only after losing millions of dollars as a result of delayed implementation and the expenditure of substantial legal fees for litigation to effect what was only the will of Congress. The brokers have now appealed to the Court of Appeals for the Federal Circuit.

The lesson learned from this example is that Customs' delay needlessly cost our industry and the public millions of dollars and it did not even avert the totally self-serving, frivolous lawsuit brought by the brokers. It is clear to us that not all segments of the international trade community truly want modernization and simplification of customs procedures. Unfortunately, when it comes to improved and simplified customs procedures transportation and their customers have all too often found themselves on the other side of the table from the national brokerage community. While we hope that this will change in 1995, we urge Customs not to cater to groups that seek to impede and complicate the reenginering of the trade process.

Another simple provision, which we believe can be implemented, even without regulation, is summary manifesting of letters and documents. Again, implementation would save the public significant sums of money.

It is fair to say that during the legislative process transportation was a champion of remote entry filing. We fought major battles before the Administration and in the halls of Congress to ensure that the remote entry filing provision was not encumbered by unnecessary requirements, as proposed by the national brokerage association. Many of you may remember the controversy. We obviously would like to see the importing public enjoy the benefits of this major component of the National Customs Automation Program authorized by the Mod Act and hope that this Committee will encourage Customs to place remote entry filing high on their priority list. Again, we urge this Committee to make clear in no uncertain terms that Customs must reject any attempts to frustrate the will of Congress and impose unnecessary financial burdens on American companies by any delay of remote entry filing.

In addition to providing for modernization and automation, the Mod Act introduces a major new concept called -- "Informed Compliance." During the legislative process "Informed Compliance" was described by the Joint Industry Group as "a landmark agreement between the private and public sectors -- the private sector agreeing to accept additional responsibility and accountability for its actions" and "the Customs Service agreeing

to introduce significant new measures to inform exporters and importers of their obligations under the law." "Informed Compliance" is the natural complement to the automation and modernization aspect of the Mod Act.

It has also become clear during the last year that recordkeeping and post-entry audits will be the cornerstone of Customs enforcement in the 21st Century. Accordingly, Customs Fines, Penalties & Forfeitures programs must undergo substantial reform. Recognizing this, Congress provided large penalties for failure to keep certain records or information required for the entry of merchandise.

In order to implement this approach, Customs must first publish a list of records or information required for the entry of merchandise. This is what is referred to as the (a)(1)(A) list. We were disappointed with the list published by the Customs Service because of the breadth of the "records" listed and urge the Committee to encourage Customs to prune the list to those "records" contemplated by Congress. Congress made absolutely clear that the substantial penalties were not intended to apply to the types of documents referred to on the proposed list. We fully agree with the Joint Industry Group that all forms of self-certification are no longer meaningful and therefore should be eliminated.

We are also concerned with the proposed "Importers Recordkeeping Compliance Manual." Again, we believe that Customs has gone too far -- using the recordkeeping compliance program as a springboard for the entire concept of "Informed Compliance." As commented by the American Association of Exporters and Importers, "the manual seems more geared toward testing and assuring overall import competence than the ability to maintain and produce records." Like others, we are concerned that the manual reflects a program that is bureaucratic and administratively costly.

In sum, the Coalition believes that Customs must more expeditiously carry out the legislative mandate to streamline and automate the commercial operations of the Customs Service. This is critical to efficient operations of transportation and the overall competitiveness of American business. In the end, we believe that successful implementation will serve as a model worldwide for customs reform.

The Reorganization

The Coalition agrees that it is now time for Customs to make changes to its current structure and management approaches. We fully support the overall goal of increasing efficiencies and providing enhanced service levels. We commend the Customs Service's new emphasis on the "needs of its customers and stakeholders" and its decision not to reduce existing services or personnel resources at the Ports of Entry. Transportation hopes that Customs will not simply eliminate headcounts but will redistribute personnel to put them on the front lines at the ports to accommodate growth in trade. With the tools given by Congress in the Customs Mod Act, we believe that Customs can better facilitate transportation and ultimately the business community while assuring maximum compliance and enforcement depending on the reorganization plan it finally develops.

At this time, we have only seen the "blueprint" for what is described to be a "comprehensive change." Consequently, the Coalition must reserve its judgment as to Customs' reorganization proposal. That is not to say that we do not have specific concerns regarding the development of the details of the plan.

In particular, we are concerned about the function and geographic distribution of the proposed Customs Management Centers (the "CMC's"). While we are told that the CMC's will only have administrative or management functions and no interface with the public, we believe that the purposes of the CMC's should be further explained to Congress. First, while Customs may consider personnel and budget internal management functions, such matters have a direct impact on transportation as these decisions directly relate to staffing at the port level. Additionally, we are told that the CMC's will have an oversight function to assure uniformity at the ports under its jurisdiction. This would appear to be a review process that would clearly have an impact on the public. The location of these CMC's, therefore, should reflect the import and export capabilities of the area. Customs should explain and document the reasons for these geographic designations to Congress.

We are also concerned about how the reorganization will affect the Fines and Penalties program. While the report on the reorganization indicates that this program will be handled at the port level with direct appeal to Customs Headquarters, we question how Customs intends to do this without detailed guidelines as to the disposition of penalty matters. In reforming the fines and penalties process, we urge Customs to focus on expeditious resolution rather than the perpetuation of the lengthy mitigation process. We hope that Customs will follow the approach described in its concept paper entitled "Reinventing the Penalty and Liquidated Damages Program" and work with importers toward achieving maximum compliance through education, information and cooperation, reserving penalties for the more severe violators and repeat offenders. Because penalties currently originate at the District level, Customs will have to substantially expand its program to deliver services at the port level. This should also be explained to Congress.

Conclusion

The Transportation Coalition stands ready to continue working in partnership with the Customs Service so that the American public may realize the efficiencies and consequent cost savings resultant from the Mod Act. We realize that Commissioner Weise and the Service is faced with an enormous challenge -- trade facilitation of record volumes of trade while assuring protection of the American public and revenue. Yet, Customs modernization efforts must proceed at a more rapid rate. In fact, implementation of the Mod Act will enable Customs to meet this challenge. Additionally, the reorganization must be formulated in close consultation with Congress and the importing community in order to assure that the new "Customs Service" meets the needs of trade in the 21st Century.

Thank you again Mr. Chairman for this opportunity to comment on Customs' reorganization and modernization efforts. We would be pleased to answer any questions that the Committee may have.

Chairman CRANE. For all of you, what is more important in your estimation, to implement the benefits of new automated systems quickly, or to take time to make sure that they work as intended?

Mr. HUGHES. Mr. Chairman, if I may, I think that Customs needs to look at prioritizing, from time to time taking a second look at what is being worked on, what can be implemented quickly with the most benefit and impact, and to continue to work on the major programs that do take time.

Mr. DUGAN. Mr. Chairman, just about a year, maybe a year and a half ago, the Customs Service came out with a new in-bond program. The hope was that it would provide the information needed to properly identify the cargo from where it originated to where it was destined.

We had some very serious problems with that program. In fact, that entire program was scrapped because the Customs Service either did not have the time or the proper information to put together the program that the country really needed for in-bond. So we applaud the current discussion that is going on with the in-bond program, and hope that, when the final program is put together, it will be of benefit for the entire country.

So to answer your question, I would hope that we take the time to properly review each one of these before they are put into place.

Chairman CRANE. Mr. Serko.

Mr. SERKO. I would agree with Mr. Dugan, as to the objective, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Rose, do you have——

Mr. ROSE. Yes. It is clear that Customs is juggling a lot of important priorities. If you take a look at their trade compliance initiatives, as well as the modernization, the reorganization initiatives, put them all together, what is clearly required is an integrated approach. I don't know that you can really truly modernize unless you change your organization to really deal with the requirements of modernization.

So again, an integrated approach is really required. But I think what is important is to establish milestones, objectives, and have a very consistent plan. Otherwise, Customs runs the risk of spreading itself too thin.

Chairman CRANE. Well, we thank you for your testimony and look forward to an ongoing discussion as the implementation occurs, because your input from the private sector is vitally important.

Mr. Payne.

Mr. PAYNE. I have no questions. I too want to thank the witnesses and look forward to continuing to work with you as we go through the reorganization and modernization process.

Chairman CRANE. Well, we thank you again, gentlemen. Look forward to the next meeting and hopefully it is all positive, from everyone's perspective.

This concludes the session of the subcommittee. We adjourn.

[Whereupon, at 3:03 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

TESTIMONY OF
JEAN GODWIN
VICE PRESIDENT, GOVERNMENT RELATIONS
FOR THE
AMERICAN ASSOCIATION OF PORT AUTHORITIES

THE HOUSE WAYS AND MEANS
SUBCOMMITTEE ON TRADE

ON
U.S. CUSTOMS SERVICE REORGANIZATION
AND MODERNIZATION EFFORTS

JANUARY 30, 1995

The American Association of Port Authorities (AAPA), founded in 1912, represents virtually every major U.S. public port agency, as well as the major port agencies in Canada, Latin America and the Caribbean. Our Association members are public entities mandated by law to serve public purposes -- primarily the facilitation of waterborne commerce and the generation of local and regional economic growth. Our written testimony submitted for the record, reflects the views of the AAPA's United States delegation.

We commend the Chairman and the Subcommittee for your continued interest in the operations and efficiencies of the U.S. Customs Service. Since enactment of the Customs Modernization and Informed Compliance Act (Mod Act), Customs has held several public meetings to solicit input from the trade community. We have heard from several Customs officials that they do not intend to rush in developing regulations that are later found to be unworkable. We encourage Customs to keep focused on the process and not any arbitrary internal deadlines. Developing implementing regulations in haste will undoubtedly produce little more than waste.

As for the Customs reorganization, we support the reorganization of Customs staff and we support the automation of Customs procedures. Informed compliance and shared responsibility by the trade should go far in improving Customs operations. However, we are concerned that the decentralization of Customs functions to the port of entry level will eliminate the uniformity in the application of laws and regulations. Application of trade laws must be consistent at all 301 ports of entry. Cargo and passengers must be treated equally at all ports of entry. Anything short of that will create "port shopping" whereby importers and exporters shop for a port of entry in which the rules are relaxed or not enforced at all.

While we understand the functions of the Customs Management Centers (CMC) to be internal support for the operations of the Customs Service, we do believe that competitive advantages are being sought out of the CMC designations. The CMCs cannot become a factor in port competitiveness. We only hope that the CMCs function as intended and do not become political or competitive tools in the future.

The public port industry has spent more than $12.5 billion dollars in the last 45 years to develop landside facilities. The importance of ports to the national, regional and local economy cannot be overstated. The deep-draft commercial ports of our nation handle over 95 percent of cargo moving in international trade. Ports activity links every community in our nation to the world marketplace--enabling us to create export opportunities and to deliver imported goods more inexpensively to consumers across the nation. With the passage of NAFTA and GATT, the important role our ports play in the economic well-being of the nation will only increase.

Port activities create substantial economic and international trade benefits for the nation, as well as for the local port community and regional economy.

- U.S. export trade was responsible for one out of six new U.S. manufacturing jobs, and 25 percent of the growth of all private industry jobs between 1986 and 1990.

- Exports accounted for 90 percent of the Gross Domestic Product growth in 1992.

- Efficient water transportation provides for delivery of less expensive goods for U.S. consumers.

- In 1992, commercial port activities directly associated with the movement of waterborne commerce:
  - generated 1.5 million jobs;
  - contributed $73.7 billion to the Gross Domestic Product;
  - provided personal income of $52 billion;
  - generated federal taxes of $14.5 billion and state and local taxes of $5.5 billion.

- The overall national economic impact of port activities, businesses that make significant use of the port system, and capital expenditures in 1992:
  - generated 15.3 million jobs;
  - contributed $780 billion to the Gross Domestic Product; and
  - generated $209.8 billion in taxes at all levels of government.[1]

- Approximately $15 billion dollars were paid into the general treasury in fiscal year 1994 from Customs duties on imports moving through U.S. ports.

It is very important that the Customs, the Subcommittee and the trade continue to work together. We have all come a long way since the Mod Act debates in the mid-80s. But, there is still far to go. It is our desire that as we move toward a streamlined Customs Service, we do so without forsaking quality of service or uniformity. Thank you.

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[1] Public Port Financing in the United States, U.S. Maritime Administration, July 1994

STATEMENT OF THE

AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)

ON
THE U.S. CUSTOMS SERVICE REORGANIZATION PLAN AND THE IMPLEMENTATION OF THE CUSTOMS MODERNIZATION ACT

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON TRADE

WASHINGTON, D.C.
FEBRUARY 13,1995

I am Maureen Smith, Vice President, International for the American Forest & Paper Association. On behalf of the American Forest & Paper Association, I would like to express our appreciation for the opportunity to present testimony on the subject of the implementation of the Customs Modernization Act ("Mod Act"). The Mod Act gave the Customs Service a mandate to automate and modernize its commercial processing procedures. At this time, we would like to comment on one particular program Customs has proposed as part of its drive to modernize: the Automated Export System, due to be implemented on July 1, 1995.

The American Forest and Paper Association (AF&PA) is the single national trade association of the forest, pulp, paper, paperboard, and wood products industry. AF&PA represents approximately 450 member companies and related trade associations (whose memberships are in the thousands) which grow, harvest and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber; and produce engineered and traditional wood products.

The vital national industry which AF&PA represents accounts for over seven percent of total United States manufacturing output. Employing approximately 1.6 million people, this industry ranks among the top 10 manufacturing employers in 46 states with an annual payroll of approximately $49 billion. Domestic and foreign sales of U.S. forest and paper products exceed $200 billion annually. The U.S. is the world's largest producer of pulp, paper and paperboard; it provides 35 percent of the world's pulp, and satisfies 30 percent of its paper and paperboard needs.

The U.S. forest products industry is globally competitive, with combined exports of approximately $18.2 billion in 1994.

The industry supports the U.S. Customs Service in its roles as a facilitator of U.S. international trade and as an enforcer of the nation's trade regime. Both functions are necessary for the smooth operation of our nation's international commerce.

Customs, as part of its modernization, has teamed with the U.S. Department of Commerce's Bureau of the Census and Bureau of Export Administration, and the Department of State's Office of Defense Trade Controls in an effort to increase export compliance and improve export statistics. The result of this teamwork is the Automated Export System (AES), an electronic reporting system which its creators claim will improve export controls and ease the export process. The system should also ensure proper management of Harbor Maintenance Fees and elimination of inefficient paper export documentation. Conceptually,

the system changes the focus of Customs processing from individual transactions to "accounts". "AES," states the Customs Service, " will serve as the cornerstone for full automation of the export community."

AF&PA appreciates Customs' desire for an improved export control program as well as more accurate export statistics. We support the concept of moving from individual transaction-based processing to account-based processing. We are concerned, though, that AES -- as it is currently proposed -- will act as an impediment to exports, adding costs to and delaying shipments of U.S. goods.

Exports have been and -- barring a complete upheaval in the nature of international competition -- will remain the fastest growing segment of our industry's business. This industry has been ranked among the most competitive in the world. We have historically relied upon our competitive strength to win markets abroad.

The proposed AES program, though, could jeopardize our industry's hard fought gains. AES will complicate the export process, adding communication, coordination and reporting costs to every shipment. We are concerned that this program will have a detrimental effect on the competitive position of exports of U.S. forest products.

AF&PA would like to bring the following points to the Subcommittee's attention:

1. AES allows no flexibility in its reporting. Exporters currently report data to the Customs Service using one of two methods: the Shipper's Export Declaration (SED) or the Automated Export Reporting Program (AERP). Exporters using SEDs -- paper documentation of export transactions -- complete their portion of the SED and present it to the transportation carrier prior to exportation. The carrier must then complete its portion of the SED and present the SED to Customs within four days after the vessel clears the port. Frequent exporters can request authorization to use the AERP from the Department of Commerce. The AERP is an electronic system that allows exporters to report data on a monthly basis.

   AES replaces this flexibility with a rigid reporting scheme. This scheme requires exporters and carriers to submit detailed accounts of each and every export transaction to the Customs Service prior to and after vessel sailing. This lengthens and complicates the exporting process, increasing costs for the exporter. The logistics involved in exporting a product already accounts for a substantial percentage of the product's export price. A reporting program which adds cost to this is unreasonably burdensome.

2. AES requires data be transmitted to Customs in advance of vessel sailing. For many exporters, it is not possible to transmit a number of the data elements which will be required by AES until after cargo is delivered to the carrier. Even after the carrier receives the shipment, significant details can change. The export weight and value can change if the customer changes the order. The date of shipment can change because the carrier does not have enough space on its vessel. Even the consignee's name and address may change. Customs must take this into account.

   Under the current system, exporters who use the AERP are exempted from presenting SEDs to their carrier prior to exportation. While it is true that only approximately 260 companies are currently permitted to participate in AERP, these exporters are responsible for some 20% of total U.S. export shipments. Requiring prefiling of approximate data from these exporters would be a burden. The Customs Service has already mentioned a "Gold Card" program, by which frequent exporters would receive special considerations under AES. The details of this program, though, have not yet been developed.

   The "Gold Card" program, by itself, will not be enough. AES must allow changes to the reported data. Export data is not final until the consignee accepts the cargo. This can be weeks after the exporter delivered the cargo to the carrier. Such problems as overshipments or short-shipments will only be found upon cargo unloading. Exporters

must have a way of adjusting the entered data when the correct data becomes available.

3. The proposed AES program requires the exporter or carrier to supply up to 71 data elements to the Customs Service. In contrast, the present SED requires only 24 data elements. Requiring additional data elements, such as the freight charges for carrier transport, the numbers of the seals affixed to the shipment containers, or the date of cargo unloading, is cumbersome and costly to exporters. The additional data contains little information of significant import and only serves to complicate export logistics.

4. A program that requires all U.S. exporters to file export details prior to vessel sailing so that sensitive exports can be monitored appears to be overkill. Most U.S. exports are raw materials or uncontrolled commodities. In fact, only 3% of U.S. exports are licensed, and those exporters who export non-controlled goods will be unnecessarily disadvantaged. Customs should develop a program that does not place exporters of non-controlled commodities or raw materials under such a heavy reporting burden.

5. AES does not provide enough protection for confidential information. AES requires exporters to provide privileged information that is vital to the exporter's business. Some of this information, such as the consignee's name and address, is already required by the SED system, but not by the AERP system. Other information, such as unique intermediate and ultimate consignee codes, goes beyond what even the SED system requires. In either case, exporters are concerned about the confidentiality of the information. Electronic databases are far more susceptible to penetration by unauthorized sources than manual ones. Exporters are concerned that AES requires more privileged information than either the SED or AERP systems, but gives that information less protection. Our industry is highly competitive and we are concerned that the sensitive information required by the AES could become publicly available.

6. Investing in AES will be very costly. Exporters already made a significant investment in the AERP system and investing in a new program will be an additional drain on resources. We estimate a one-time cost of $150,000 to $250,000 per major exporter to reprogram, then a cost of $100,000 to $300,000 per year to participate in the AES program as it is proposed (at $50.00 per SED).

7. The Customs Service plan to "invoice" for Harbor Maintenance Fees creates redundant work and is burdensome for the exporter. This plan requires every exporter to reconcile against the Customs invoice when Customs itself keeps records of export transactions and Harbor Maintenance Fees. Exporters suggest the quarterly payment by exporters continue and Customs notify the exporter of any discrepancies (if an export shipment is missing a declaration or payment of the Harbor Maintenance Fee). This management by exception would be a far more efficient use of resources for both exporters and the Customs Service.

8. The unique export transaction number used by AES will add costs and create considerable confusion. AES requires a new export identification number be created through the combination of a DUNS number -- to be obtained by each exporter from Dun and Bradstreet -- and the shipper's transaction number. AES will use the resulting "unique export transaction number" to track export shipments. Currently, exporters track exported shipments via the bill of lading, a system that is accepted worldwide. Changing this system by introducing the new "unique export transaction number" -- which will be used only by the U.S. -- will create confusion in the international business community.

9. Cargo delays will be created by miscommunications, confusion, and human error caused by misunderstanding or lack of training. While we support the Customs Service's proposed training of exporters, carriers, vessel operators, forwarders and government personnel on the new AES, we are concerned that the task will require resources not available to the Customs Service. Furthermore, previous Customs Service training efforts in export documentation have been less than a complete success. In fact, a major reason for the switch to AES is the poor quality of the data received from the paper SEDs. The quality of these data, though, reflects the lack of

success of the Customs Service training program that supported the paper SEDs.

10. AES requires dual reporting. AES will not replace the AERP and SED systems immediately. Instead, these systems will continue to operate alongside AES until it can be determined that the data received from AES meets or exceeds the quality of the data received from the AERP and SED systems. According to the Customs Service's own best case scenario, this dual reporting would be required for at least six months. This requirement is a drain on exporters resources and will cause significant confusion.

Customs officials have responded to exporters' criticism of the AES program by stating that AES is an enforcement program first and foremost. Though we do not object to the implementation of an enforcement program that would cut down on exports of illicit goods from the U.S., Customs must make sure that the program does so in an efficient manner producing minimal costs and delays to the general law abiding American exporting community.

We have conveyed our concerns to the Customs Service directly and we will continue to work with them and with Congress to resolve these issues.

Thank you.

STATEMENT OF CARLOS F.J. MOORE
EXECUTIVE VICE PRESIDENT
AMERICAN TEXTILE MANUFACTURERS INSTITUTE

This statement is submitted by the American Textile Manufacturers Institute (ATMI) on behalf of its member companies. ATMI is the national association of the textile mill products industry. Its members collectively account for over 80 percent of textile mill activity in the United States and are engaged in every facet of textile manufacturing and marketing.

ATMI and its members have long had a deep interest in the operations of the United States Customs Service. As the record clearly shows, the textile industry, its valued customers and suppliers have long suffered from an enormous volume of illegal imports which have inflicted economic damage and hardship on our companies and workers. The Customs Service is the primary government body possessing the resources and resolve to act against these illegal imports. For this reason, ATMI was highly supportive of the Customs Modernization and Informed Compliance Act ("the Mod Act") because, in ATMI's opinion, the Mod Act would provide Customs with the tools needed to move more efficiently and effectively against such imports.

Now that the act is law, it is time for the Customs Service to move forward and effect those changes in its methods and operations which are necessary to enable it to achieve the objectives set forth in the Act. ATMI supports the program which Commissioner Weise has thus far announced in furtherance of these objectives. In this regard, ATMI believes that the proposed reorganization of the Customs Service will facilitate closer cooperation and greater dialogue between the Service and its clientele, consisting not only of importers, brokers and shippers, but all members of the business community who are affected in one way or another by imports. In particular, ATMI welcomes Customs' proposal to shift considerable personnel resources from essentially clerical and middle management positions to "front line" responsibilities for surveillance and oversight. To roughly analogize, the desk sergeant is out from behind his desk and out on the beat. This is a wise redeployment of resources.

One of the most beneficial results of this proposed redeployment of assets is the enlargement of Customs' textile "jump teams," whose primary function is to uncover and investigate instances of the illegal transshipment of textile and apparel goods under import control. Again, the record will show that such transshipment, which is in violation of international convention, bilateral trade agreements and United States law, has reached epidemic proportions. The jump teams have done much to control this illicit trade and are to be commended for their efforts and successes. Nevertheless, these practices persist and the work of the jump teams must not only continue but must be enlarged if transshipments are to be eradicated.

ATMI also welcomes Customs' new Strategic Trade Initiative which, through the use of sophisticated data processing techniques and close monitoring of import transactions, will be better able than in the past to detect all types of import fraud, not just transshipments. Integral to the efforts of the newly created Strategic Trade Office within Customs is the conducting of a great number of compliance exams of importers, another initiative which is greatly welcomed. In this context, the establishment of five Strategic Trade Centers at our busiest ports will undoubtedly focus the efforts of Customs personnel more effectively than the many regional offices currently operating. Since the Mod Act encourages importers and brokers to file entries anywhere in the customs territory of the United States and all transactions can be accomplished electronically, there is little reason to maintain Customs' extensive network of regional offices. The resources, human and financial, used to operate these offices can be utilized more efficiently by concentrating them where they are most needed.

The Mod Act requires sweeping and profound changes in nearly every aspect of the Customs Service's operations. These changes and the accompanying reorganization of the Service are long overdue. The tremendous growth in the volume of imports and import transactions alone mean that Customs cannot continue to do business the way it has in the past. The concurrent increase in fraud and illegality means that Customs cannot continue to use old techniques and systems to control this problem. Finally, technological advantages, particularly in the fields of data processing and communication, require that Customs change its methods of operation.

ATMI and its member companies welcome these changes and have great hopes and expectations for the achievements of the "new" Customs Service. ATMI wishes to thank the Congress for passing the Mod Act and the Customs Service for its efforts to enforce the law. We also earnestly petition the Congress to not reduce the level of funding for Customs. Adequate funding will be absolutely essential for the Customs Service to achieve all the worthwhile aims and objectives of the Mod Act.

For the American Textile Manufacturers Institute
Carlos F.J. Moore, Executive Vice President

SUMMARY

The American Textile Manufacturers Institute (ATMI), the national association of the textile industry, supports the aims and objectives of the Customs Modernization and Informed Compliance Act. In particular, ATMI welcomes the increased emphasis on compliance and surveillance embodied in the Act. In furtherance of these and all other of the Act's provisions, ATMI endorses the ambitious reorganization program which Customs has undertaken and requests that the Congress continue to provide Customs with the funding necessary to fulfill its mission.



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Statement of Thomas B. Chapman

Vice President & Executive Director

AOPA Legislative Action

Before the

House Committee on Ways & Means

Subcommittee on Trade

The Honorable Philip M. Crane, Chairman

Concerning U.S. Customs Service
Reorganization and Modernization Efforts

January 30, 1995

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Mr. Chairman, my name is Thomas B. Chapman, and I am Vice President and Executive Director of AOPA Legislative Action.

AOPA Legislative Action enjoys the financial support of 330,000 dues paying members. Together with our affiliated organization, the Aircraft Owners and Pilots Association, we promote the interests of those who contribute to our economy by taking advantage of general aviation aircraft to fulfill their business and personal transportation needs. There are more than 650,000 general aviation pilots nationwide.

We appreciate the opportunity to submit this statement for the record and to highlight an issue which we believe is relevant to your hearing on the reorganization and modernization efforts of the U.S. Customs Service. For more than two years, we have formally advocated changes to procedures currently used by the Customs Service in dealing with general aviation aircraft. Our recommendations have been discussed in detail

with the Customs Service staff. They deal specifically with 1) changes to the Advise Customs, or "ADCUS," notification process; 2) enforcement of Federal Aviation Administration regulations; 3) better definition of arrival notification windows; and 4) implementation of a selective inspection process.

Based upon our discussions with the staff of the Office of Inspection and Control, we believe there is a clear understanding and agreement that a number of changes need to be implemented by Customs. Additionally, we are informed that there is consensus on our ideas among Customs field offices along the northern borders. And we recently learned that, in early 1995, Canada will make a number of changes in its procedures very similar to what we have suggested to the U.S. Customs Services staff.

In brief, our proposals are:

- Implementation of an international 800 service by Customs with which to receive required Advise Customs notices. These lines would feed directly into one of the Customs flight operations centers which are staffed 24 hours per day. Telephone notification directly to a Customs entry airport is often difficult from foreign nations. Many times, a pilot calling to notify the local agent receives a telephone answering machine and must "hope" that the agent checks his or her messages prior to the pilot's arrival.

- A Selective Inspection Program. According to Customs' own data, the majority of enforcement action taken by Customs is in the form of "technical violations." It is honest pilots who notify Customs of their arrival. We believe it is appropriate to implement a selective inspection program similar to that of water operated craft. Such a program could enable Customs agents to concentrate their limited resources on areas which have proved to be problematic. For example, the benefit we see is that aircraft operators could place a telephone call to the Customs 800 Advise Customs number. At that time, after supplying any information necessary for "pre-clearance," they could be notified whether or not they could fly directly on to their final location, knowing that Customs would reserve the right to meet the aircraft at its final destination. The resource savings to Customs could be significant.

- Refer alleged violations of Federal Aviation Administration regulations directly to FAA for action. Currently, Customs will cite an aircraft operator for such items as failure to produce a valid FAA medical certificate. After Customs cites the operator for this violation of FAA regulations, the FAA also takes its

own enforcement actions. Clearly, this is a duplication of effort and wasteful of Customs limited resources.

- o Update the "U.S. Customs Guide for Private Flyers." This useful Customs publication is used by the industry to provide guidance to aircraft operators regarding appropriate ways to deal with Customs. The guide has been an invaluable document for our Association and others which have provided it to their memberships. However, the guide was last published in December 1991 and is now badly outdated.

While there has been internal support for our suggestions at Customs, we do not believe that our suggestions have received the attention and review of senior level decision makers. Further, lack of continuity in staffing of the responsible offices has undermined such efforts. It is our firm belief that implementation of our suggestions will not have a detrimental effect on the mission of Customs, a mission which in general we support. Indeed, Customs may very well increase its effectiveness in other areas of the service.

Again, Mr. Chairman, we appreciate the opportunity to submit this statement for the record. Please feel free to contact us if you have questions.

STATEMENT OF JOE BARTON, M.C.

HEARINGS ON U.S. CUSTOMS SERVICE REORGANIZATION AND MODERNIZATION EFFORTS

SUBCOMMITTEE ON TRADE COMMITTEE ON WAYS AND MEANS

JANUARY, 30, 1995

The majority of the Dallas/Fort Worth International Airport is in my District. Many of you have probably been there--almost everyone in America who travels has been. Over 2300 flights per day go through DFW, making it the world's second busiest airport. It will soon become the world's busiest. With a seventh runway under construction and an eighth in the works, and with so many other airports out of room for significant expansion, DFW is likely to be the busiest airport in the world for many years to come.

When you see an operation like DFW, it is hard to remember that the airport is only twenty-one years old. DFW is the product of the incredible growth of air transportation in the last two decades, and is a result of a successful partnership with the Federal Government to provide the necessary infrastructure and resources to allow that growth.

Part of those resources are Customs services. Customs is a lot older than DFW; about ten times older. For ninety percent of Customs' existence, DFW was a prairie.

Taking a historical perspective, it is easy to see how the Customs Service looked primarily to seaports and borders, and not the prairie. But that is history. The next two hundred years are not going to be like the last.

International cargo movement used to be bimodal, it either went over the ocean by ship or over a land border by truck or rail. Now it is intermodal. We recognized this last year when we passed the Customs Modernization Act. The Members of Congress from North Texas were very supportive of the Customs Modernization Act. Part of our enthusiastic support was due to the Modernization Act's opportunity to make Customs a location-neutral agency, giving businesses in all parts of the country, not just those located at seaports or border crossings, the ability to do business with Customs on an even basis. This was very important to the businesses located in Dallas/Fort Worth, who over the years have had to deal with a Customs Service that dealt primarily with seaports and border crossings. The Modernization Act gave us the opportunity to level the playing field. Representatives of the DFW International Airport worked with both Customs and the Joint Industry Group to help come up with appropriate statutory language to ensure this could happen. Location neutrality was the single most important objective of the Customs Modernization Act to me and the other Members from North Texas.

The Customs Reorganization proposal can create yet another important step towards a location-neutral Customs Service. That will not be accomplished, and in fact will be tremendously hindered, by putting all Customs Management Center personnel in locations that are primarily devoted to seaports or borders. The Reorganization proposal lacks the devotion of management and resources to inland locations, and that the deficiency can be best rectified by putting a Customs Management Center in Dallas/Fort Worth.

This is not the first time a Customs proposal has overlooked Dallas/Fort Worth. A short look at history might be very instructive. Soon after the opening of DFW Airport in 1973, it became readily apparent to the business community in North Texas that the amount of international trade conducted in the Dallas/Fort Worth area would dramatically increase. At that point in time, Dallas/Fort Worth was a port of entry falling under the jurisdiction of the Houston Customs District. The business community and local leaders in the Dallas/Fort Worth area went to work to explain to Customs why DFW should become a separate District. Customs management did not seem to take an inland location seriously, and it took the intervention of the Dallas/Fort Worth area Congressional delegation in 1979 to convince Customs that Dallas/Fort Worth merited being a separate Customs District.

Over the next several years, as we expected, international trade and Customs activities grew at a rapid pace in Dallas/Fort Worth. There was no doubt that our business community had been correct in its assessment of the future. More than Customs inspectors were needed at DFW to serve business.

Customs management was needed at DFW to deal with corporate management involved in international trade. With the right mix of Customs services available though a District office, business was properly served and able to grow. Nevertheless, when Customs headquarters took a look at consolidations in 1984, DFW was on the chopping block. Customs proposed that the District Appraisement Center at DFW be consolidated into the Appraisement Center in Houston, which Customs considered a more "front line" location. Again our business community and local leaders mobilized to present to Customs reasons why the DFW District should retain a full set of Customs services. Again business explained how inland operations differ from seaport operations. This time, it took the intervention of this Subcommittee and its counterpart in the Senate to convince Customs to change its plan and retain DFW as a full service District.

Again, trade flourished in our area. At the District that Customs wished to downsize, collections grew by 45% between 1988 and 1992. In fact, DFW is one of only 11 Districts in the nation to experience an increase in collections every year during that period of time. Incidentally, the number of passengers expected to clear Customs at DFW Airport in 1995 is 1.5 million, more than double the passengers that cleared in 1985, the year for which Customs proposed that services be reduced.

Dallas/Fort Worth business again came back to Congress in 1985 and 1986 to deal with Customs' proposals on its Automated Commercial System and personnel allocation. In both cases, the issues involved proposals that would have increased the burden on inland importers. Again, Congress agreed with the assessment of business on those issues and told Customs to change its plans.

Customs seems to periodically forget that a significant amount of international trade is conducted in Dallas/Fort Worth. Customs thinks more about the other major trading centers in Texas; Houston, Laredo, and El Paso. We looked at the trade statistics and note that the DFW District processed more entries than the Houston District in the past year (Houston's collections are higher because of the duties collected on oil imports), had higher collections than the El Paso District, and had a greater rate of growth over the past five years than did the Laredo District. More importantly, all of these statistics were compiled under the "old" Pre-Customs Modernization Act system. The old system made it more convenient for many importers to do business with Customs at ports where merchandise arrived, rather than at ports to which merchandise is destined. The Modernization Act is going to substantially change this practice. With a location neutral Customs Service, companies should be able to do business with Customs from the locations all over the country that best suit the business needs of the customer. I suspect that the amount of business done at DFW, the nation's seventh largest metropolitan area with the third largest concentration of corporate headquarters will be very significant and continue to grow. It is a mystery to me how any plan to reorganize the Customs Service could fail to take this into account.

Dallas/Fort Worth is going to be an integral part of the international trading system of the United States going into the next century. DFW is certainly one of the most, if not the most NAFTA impacted metropolitan areas. The potential growth of NAFTA to include countries throughout the Americas will only increase the impact. We suspect Customs knows this, having recently selected DFW as the site of the National NAFTA Helpdesk and as its proposed site for the Customs Strategic Trade Center focused on Mexican and Latin American Trade. The message apparently did not get through to the people who drew the map for the Customs Reorganization.

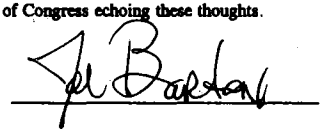
Once again, North Texas business is asking Congress for assistance in dealing with Customs. Business knows the importance of having Customs management in Dallas/Fort Worth focused on inland issues. Along with my testimony I am submitting a statement of the business community in North Texas, signed by companies like Texas Instruments, Bell Helicopter, Pier 1 and JC Penney, which explains why it is good for business to place a Customs Management Center at the nation's largest inland trading center, Dallas/Fort Worth.

Much of the focus from the business community on this problem has been viewed in terms of commercial operations. But adequate enforcement activities by Customs also requires a significant focus on inland activities. The significant enforcement activities performed by the Customs' special agents are no longer centered on border or seaport inspections. Both common sense and my personal discussions with enforcement officials confirm that it is important that the agents be where the action is, whether it be at the borders or at inland ports. The nation's second busiest airport cannot avoid illicit activity. With top enforcement officials here, we have been able to effectively combat the problems. Just last year, investigations led to several large seizures of heroin and cocaine in Dallas, including one of over 4,000 pounds, and the discovery of over 20,000 pounds of cartel transhipments through DFW Airport on to Los Angeles. These are staggering. Nearly 13,000 pounds of ephedrine, a precursor for methamphetamine, was seized at DFW Airport. DEA tells me that this is over 20 times the amount of legally imported ephedrine by all U.S. pharmaceutical firms. We need top line Customs management enforcement decisions made in Dallas/Fort Worth, with the necessary resources to implement them. Without an inland

Customs Management Center and Special Agent in Charge office focusing on inland enforcement issues, Customs enforcement efforts will suffer.

Customs Modernization and Reorganization is long overdue. The Customs Modernization Act was passed because of a joint effort among Congress, Customs, and industry. As a result of the joint effort, we came up with an excellent piece of legislation last session. Customs again needs to listen to the needs of industry and modify the Reorganization proposal to include a Management Center in Dallas/Fort Worth.

I am not alone in this belief. Attached to my written statement you will find a letter to Commissioner Weise signed by me and 10 other Members of Congress echoing these thoughts.



Congress of the United States
House of Representatives
Washington, DC 20515

December 15, 1994

Mr. George Weise
Commissioner of Customs
1301 Constitution Avenue, N.W.
Room 3136
Washington, DC 20229

Dear Commissioner Weise:

We are writing in regard to the Customs Reorganization proposal. In reviewing this proposal with members of the business community in North Texas, we are concerned with the manner in which you have divided the country to establish regional customs management centers.

Overall, we are pleased with the direction you are leading the Customs Service, and you are to be commended for the work you and your staff have put in to make the Customs Service operate more efficiently.

A true benefit that can be realized from a combination of the Reorganization effort and the procedures we authorized last year in enacting the Customs Modernization Act is making Customs a location-neutral agency. This is an objective that has particular importance to our area. The historical sea-coast/border orientation of customs has burdened companies in North Texas in comparison to their counterparts in seaport/border locations. Our support for the Modernization Act was in large part based on achieving this location-neutral objective.

We are quite concerned that the way the country is divided in the Reorganization proposal is reflective of the past system bias away from inland locations. Every single management area contains either a border or a sea-coast. The focus away from inland issues is directly illustrated in Texas. Business in Dallas/Fort Worth and San Antonio, for example, have virtually identical issues in dealing with Customs. In recognition of this, San Antonio was moved from the Laredo Customs District to the Dallas/Fort Worth District a few years ago. The Reorganization proposal, however, puts Dallas/Fort Worth and San Antonio into separate management areas, one reporting to Houston and one reporting to Laredo. Dallas and San Antonio are, of course, two of the ten largest cities in the country, and are both experiencing similar rapid growth. Separating these cities into two different management areas, one that will have a primary focus on personnel at a seaport and one which will have a primary focus on a land border, will not give adequate attention to the needs of the inland business community.

We think it very important that a separate Customs management area be established for inland locations that can focus on inland issues. A number of ports in Texas are obvious choices to be included in this new management area: Dallas/Fort Worth, Austin, San Antonio, Lubbock, Amarillo, as well as the ports in Oklahoma, Arkansas, Kansas and Nebraska. Dallas/Fort Worth, with one of the highest concentration of corporate headquarters in the country, and with the largest volume of customs transactions among

inland cities, is the logical choice for location of the Customs Management Center to manage these inland locations.

We think it very important that you add to the Reorganization proposal a Customs Management Center in Dallas/Fort Worth which has responsibility for and focuses on inland ports and inland issues.

Thank you for your consideration, and we look forward to your response.

Sincerely,

Joe Barton, M.C.

Eddie Bernice Johnson, M.C.

Sam Johnson, M.C.

Martin Frost, M.C.

Lamar Smith, M.C.

Pete Geren, M.C.

Larry Combest, M.C.

Ralph Hall, M.C.

Jim Chapman, M.C.

John Bryant, M.C.

Dick Armey, M.C.

Statement of Roger B. Schagrin on Behalf of the Committee on Pipe and Tube Imports on U.S. Customs Service Reorganization and Modernization Efforts

This testimony to the Ways and Means Subcommittee on Trade is being presented on behalf of the Committee on Pipe and Tube Imports ("CPTI"), a trade association comprised of twenty-four U.S. producers of steel pipe and tube products. A membership list is attached. The members produce a wide range of products that are essential for the U.S. economy, including: standard pipe products for plumbing and heating systems, sprinkler and fence applications; oil country tubular goods for the drilling of oil and gas; line pipe for the transmission of oil and gas; pressure tubing products for refineries, petro-chemical facilities, and electricity-generating facilities; mechanical tubing products for the automotive and many other industries; structural tubing products for farm equipment and construction; and stainless pipe and tube products used in a variety of applications.

Overview of the Industry

The business activities of the CPTI member companies are very much dependent on a strong and effective U.S. Customs Service. The activities of the Customs Service impact members in numerous ways. Many members import raw material products or manufacturing equipment. The members also export roughly 15% of their production and, therefore, rely on the export enhancement activities of the Customs Service. Finally, the pipe and tube industry is one of the most import-sensitive industries in the United States. It has been targeted as a value-added steel product export by many foreign countries and has suffered import penetration levels as high as nearly 60% in the mid-1980s and approximately 35% at the present time. The members of the CPTI have participated in over 75 unfair trade actions since the inception of the committee in 1984. They rely on the Customs Service to enforce antidumping and countervailing dumping duty orders and to prevent circumvention of these orders through fraudulent means. Finally, the members of the committee seek support from the Customs Service to enforce the marking requirements on pipe and tube products initially adopted by Congress in 1984, and most recently amended in the NAFTA Implementation Act in 1993.

Customs Service - Enforcement Issues

To begin our statement, the committee would like to state strongly for the record, its admiration of the Customs Service transformation into a very customer-service oriented agency of the U.S. government. Commissioner Weise and the entire staff of the Customs Service should be applauded for their own re-invention of government that has occurred within the Customs Service in the past several years. A fine example of this excellent service to U.S. industry is the action taken by the Customs Service regarding the enforcement of antidumping orders on standard pipe.

In November, 1992, the U.S. industry producing standard pipe products obtained antidumping duty orders against imports from five countries, Brazil, Korea, Mexico, Taiwan and Venezuela. Shortly after these orders went into effect, the domestic industry learned that producers in some of these countries were circumventing the orders by entering products as oil and gas line pipe for uses as standard pipe. The industry also learned that some of the products being entered did not even meet the technical specification requirements of the American Petroleum Institute (API). The industry alerted the Customs Service to this issue and almost immediately, the Customs Service organized visits for members of the industry and their counsel to the major entry ports in the United States to educate steel import specialists, and Customs agents on the technical matters at issue. Customs then initiated technical inspections of the circumventing merchandise and determined that thousands of tons of products were being misclassified and were subject to the antidumping duties. The industry also filed petitions with the Commerce Department to rectify the circumvention of the orders and while preliminary action has been taken, final action is still pending. The swift and effective actions undertaken

by the Customs Service not only resulted in obtaining the relief that was supposed to be afforded to the domestic industry from unfair trade practices, but resulted in the addition of millions of dollars in rightfully collected antidumping duties to the U.S. Treasury. The industry has also found the Customs Service to be very responsive to investigating information supplied by the industry as to the fraudulent valuation, classification, or marking of imported pipe and tube products.

Customs - Collection of Duties

The Customs Service also plays an important role in both the collection of antidumping and countervailing duty deposits and in the final liquidation of entries subject to unfair trade orders. In this regard, prior to oversight investigations by the Senate Government Operations Committee held in the early 1990s, Customs had significant deficiencies. The Customs Service has since moved aggressively to remedy these deficiencies. They have put into place a new module to track deposits by individual orders. This information is then made available to both Congress and the private sector on an annual basis. However, there continues to be deficiencies in Customs ability to inform Congress and the private sector on the liquidations of duties by orders. Liquidation, which cannot occur until after the Commerce Department has completed administrative reviews and the courts have completed court appeals, can sometimes occur as long as five to ten years after the entries of products. It is probably difficult for the Customs Service to keep track of the paper work and ensure the proper collection or refund of duties including interest due or accrued after such a lengthy time period. Importers, and particularly those with no more overhead than a briefcase, may be particularly difficult to track down if millions of dollars of additional duties and interest are owed to the Treasury.

There is certainly room for significant improvement in the coordinations between the Customs Service and the Commerce Department in terms of the efficient and timely issuance of liquidation instructions and enforcement of liquidation notices. The new provisions of the Uruguay Round Agreements Act will solve a portion of these difficulties, but will not solve all of them. Past problems in this area have almost certainly cost the U.S. Treasury millions of dollars in lost revenues. This system should be reformed and the Customs Service should, in the future, be able to provide the Congress and private sector with information on annual liquidations of imports by order.

Customs - Marking Requirements

Another area of great concern to the domestic pipe and tube industry and one in which the industry has been working with the Customs Service over the years is in the area of the marking requirements on imported pipe and tube products. As background, until passage of the Omnibus Trade Act of 1984, iron or steel pipe and tube products were exempt from the normal country of origin marking requirements of the Customs Law. The 1984 Act amended the law to require that such products be marked legibly and conspicuously by one of four methods: die stamped; cast-in-mold lettering; etched; or engraved. It was the industry's experience that these markings were usually applied to the end of the imported pipe product and that they are usually not very legible. With most pipe products, the first thing that is done to a pipe after a distributor or a service center receives it from either an importer or a domestic producer is to bevel the ends, thread the product in some manner, cut the product into smaller pieces, or perform other finishing processes before shipping it to the ultimate end user. The result of these actions is almost invariably to remove the country of origin marking prior to the product arriving to the end user.

In order to remedy this problem, Congress amended Section 304 in the NAFTA Implementation Act of 1993 and the Senate Finance Committee added in its report "the Committee believes that, with respect to iron or steel pipes and tubes, continuous paint stencilling will best accomplish the requirements of Section 304 of the Tariff Act of 1930 that goods be marked as legibly, indelibly and permanently as the article permits. The Committee believes that this requirement is fully consistent with NAFTA Annex 311. The Committee notes that continuous paint stencilling of technical information on the outside of the pipe is generally required by the ASTM and the API specifications that govern the production of the majority of

these products. It is the Committee's belief that the additional continuous paint stencilling of the country of origin will not burden foreign producers and will contribute to the ability of the ultimate purchaser to know the origin of the product purchased."

The members of the CPTI unanimously support and agree with the Senate Report language and believe that it is in the best interest of American consumers to know the origin of the pipe products which are being used. Therefore, the Customs Service should require continuous paint stencilling of the country of origin whenever the products are produced to ASTM or API specifications that require continuous paint stencilling of technical information.

Conclusion

As the above comments illustrate, the domestic pipe and tube industry, like many U.S. industries, is dependent in many ways on the U.S. Customs Service's ability to efficiently and vigorously enforce its mandates under U.S. Customs laws. Fulfilling these mandates and the other mandates that the Customs Service has in both the commercial area and drug and addiction and immigration areas, requires that the Customs Service best utilize its personnel. It is for this reason that we wholeheartedly support the Customs Service modernization and reorganization program because we believe that Commissioner Weise and the Customs Service are in the best position to determine how best to allocate resources to accomplish the Custom Service's goals. Personnel being under-utilized in certain locations must be shifted to other locations in which their services and expertise can be better utilized. The Customs Service has proven to the private industry it serves, and hopefully to the Congress, that it can reinvent itself and provide a model for other less service-oriented agencies of the government to improve their efficiencies.

The Congress should approve the Customs Service reorganization so that the Customs Service can continue and improve this effort. On behalf of the Committee, I would be happy to address any questions or requests for additional information that the Committee on Ways and Means Subcommittee on Trade, its members or its staff would have concerning this testimony.

List of CPTI Members

Allied Tube & Conduit Corporation

Alpha/Beta Tube Corporation

American Tube and Pipe Company, Inc.

Bellville Tube Corporation

Bitrek Corporation

Capitol Manufacturing Co.

Century Tube Corporation

Chicago Roll Company

Hannibal Industries, Inc.

IPSCO Tubulars Inc.

Laclede Steel Company

LTV Tubular Products Company

Lone Star Steel Company

Maruichi American Corporation

Maverick Tube Corporation

Pittsburgh Tube Company

Quanex Tube Group

Roll-Kraft, Inc.

Sawhill Tubular Division (Armco Inc.)

Searing Industries

Sharon Tube Company

Vest Inc.

Western Tube & Conduit

Wheatland Tube Co.

STATEMENT OF THE CITIES OF DALLAS AND FORT WORTH, THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD, THE NORTH TEXAS COMMISSION, THE GREATER DALLAS CHAMBER OF COMMERCE, AND THE FORT WORTH CHAMBER OF COMMERCE

REQUEST FOR MODIFICATION OF THE CUSTOMS SERVICE REORGANIZATION PROPOSAL

BEFORE THE SUBCOMMITTEE ON TRADE COMMITTEE ON WAYS AND MEANS

MONDAY, JANUARY 30, 1995

The business community in North Texas has been following the progress of the Customs Reorganization proposal since early last year. The business community formally organized into a task force established by the North Texas Commission, the Greater Dallas Chamber of Commerce and the Fort Worth Chamber of Commerce, which together represent over 11,000 businesses in the Dallas/Fort Worth area. The task force includes representatives from Bell Helicopter Textron, Hitachi Semiconductor, J. C. Penney, Pier 1 Imports, Texas Instruments and Dallas/Fort International Airport. This statement reflects the views of the task force and is submitted on behalf of the business community throughout North Texas.

We strongly believe the Customs Reorganization proposal should be modified to include a Customs Management Center in Dallas/Fort Worth which is focused on the commercial processing and enforcement issues important to inland ports. Each of our companies has substantial import operations at a variety of locations, including seaports, border locations, and inland locations. We are keenly aware of the differences in operations at each of these three types of locations.

U.S. Customs has historically had a bias towards seaport and border locations. Some of that bias reflects historical Customs operations, and some of it reflects a statutory scheme that was developed before the significant growth of air freight and inland trade. The result to our businesses has been a greater burden on doing business inland than at a seacoast or border. When Congress passed the Customs Modernization Act last year, it removed the statutory impediments to a location neutral Customs Services. To achieve the location neutral result sought by Congress, a Customs Reorganization must also provide for inland locations.

A review of the map of the proposed Customs Management Areas, however, shows a clear focus on seaport and border locations, and a complete absence of focus on inland locations. Every single Management Area contains either a significant sea or border port. A clear example of Customs' lack of attention to inland locations is the Reorganization Proposal's placement of Dallas/Fort Worth in the Houston Management Area, and San Antonio in the Laredo Management Area. Both Dallas/Fort Worth and San Antonio are inland locations, currently located in the same Customs District, each with very similar issues affecting importers and Customs; yet Customs has proposed to divide them, putting one under the management of a seaport location and the other under the management of a border location.

While each of our companies does business with Customs at a variety of locations, the company personnel responsible for Customs policies and procedures are located at corporate offices in Dallas/Fort Worth. It is these corporate headquarters personnel, located in Dallas/Fort Worth, who are the "customers" for Customs services beyond the port level processing of goods and passengers. Customs tells us that services will not be cut at the port of Dallas/Fort Worth. Customs also admits that it cannot possibly perform all Customs functions at all ports; for example, it will be infeasible for dispute resolution, complex classification and valuation issues, compliance issues, audits, and bindings rulings to be handled at 300 ports. We need to be assured that a full compliment of services will be available in Dallas/Fort Worth for our companies and the others with headquarters or substantial operations in the area - Dallas/Fort Worth has the third highest concentration of Fortune 500 headquarters in the country, and is one of the most significant business centers in the United States.

Under the current Customs proposal, resource allocation for Dallas/Fort Worth, an inland port, will be determined by a Management Center in Houston, a seaport. Despite being the nation's largest inland trading center, we have no assurance that the reorganized Customs Management, at any level, will focus on issues important to us and ensure that personnel and services will remain at the level we deserve. In fact, all personnel decisions throughout the country will be made at locations that are focused on seaport or border operations if the Customs proposal is adopted.

Finally, throughout our discussions with Customs, Customs has been insistent that the maximum number of Management Centers must be twenty. We do not understand the basis for this statement, and have not been provided a clear explanation. Customs tells us that Management Centers will have few personnel, less than twenty in most locations. In a plan that suggests the movement of hundreds of Customs employees, we fail to see how the reallocation of less than twenty people to a low cost area like Dallas/Fort Worth could create a cost issue. We know from our own business experience that locating management

in Dallas/Fort Worth is extraordinarily convenient and cost effective. Customs can certainly benefit from the convenience of overseeing operations in multiple cities from the world's second busiest airport, and we suspect would also benefit by the convenience of dealing with the large number of federal agencies which have regional headquarters in Dallas/Fort Worth, including the Departments of Agriculture and Commerce, FAA, DEA, EPA, GSA, and OPM. In fact, we think that the increased efficiency of dealing with the businesses in Dallas/Fort Worth alone would prove cost effective.

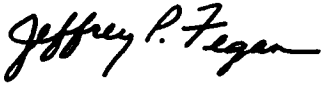
We applaud Commissioner Weise and Customs Service for taking the initiative to change its own structure. For the change to be effective, however, it must incorporate our concerns. A Customs Management Center should be located at Dallas/Fort Worth.



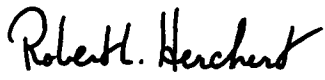
Steve Bartlett
Mayor
City of Dallas



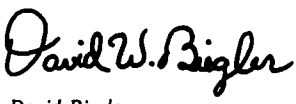
Kay Granger
Mayor
City of Fort Worth



Jeffrey P. Fegan
Executive Director
DFW International Airport Board



Robert L. Herchert
Chairman
North Texas Commission



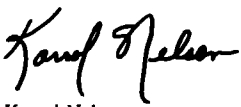
David Biegler
Chairman
Greater Dallas Chamber of Commerce



R. Denny Alexander
Chairman
Fort Worth Chamber of Commerce



Peter Parsinen
Senior Vice President
Programs and Marketing
Bell Helicopter Textron, Inc.



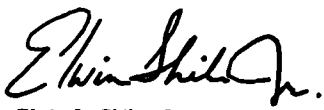
Karrol Nelson
Manager, Sales and Production Management
Hitachi Semiconductor (America), Inc.



Gale Duff-Bloom
Senior Executive Vice President
Director of Personnel and
Company Communications
J. C. Penney Company, Inc.



Clark A. Johnson
Chairman and Chief Executive Officer
Pier 1 Imports, Inc.



Elwin L. Skiles, Jr.
Vice President
Texas Instruments Incorporated

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& DIRECTORS
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Western Overseas Corp.
President
Fermin Cuza
Manel Inc.
First Vice President
Lowell Harriott
Price Waterhouse
Second Vice President
W. Guy Fox
Global Transportation Service
Secretary
Leslie K. Browne Cazas
Arthur Andersen & Co.
Treasurer
Barbara Willey
Applause, Inc.
Executive Secretary
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Directors
Yvonne Avila
Port of Long Beach
Doug Bashrie
Sunkist Growers, Inc.
Albert Fierstine
Worldport LA
Irene L. Fisher
CA Export Finance Office
Dennis Green
Los Angeles Dept. of Airports
Bruce Leeds
Hughes Aircraft Co.
Jim Mooney
Toyota Motor Sales, USA, Inc.
Nick Nicolaidis
U.S. Borax
Barry E. Powell
Grunfeld, Desiderio, Lebowitz & Silverman
Perry Ritenour
City National Bank
Dennis L. Sault
Kawasaki Motors Corp., USA.
Anthony J. Stapleton
Santa Fe Railroad Co.
Carlos Valderrama
Carlsmith Ball
John Wiggins
California Cartage Company
John Windler
IBEAR, U.S.C.

Ex Officio
Albert G. Bergesen, Bergesen Intl.
Sam Orr, Orr Intl. Public Relations
Marjorie M. Shostak,
Stein, Shostak, Shostak & O'Hara

FOREIGN TRADE ASSOCIATION of SOUTHERN CALIFORNIA

Founded 1919
Serving its members and the international trade community for 76 years.

STATEMENT OF THE FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA ON U.S. CUSTOMS SERVICE REORGANIZATION AND MODERNIZATION

This statement is submitted on behalf of the Foreign Trade Association of Southern California (FTA), a non-profit organization with over 400 members representing a cross section of the international trade community in Southern California.

The Foreign Trade Association of Southern California is the oldest and most widely recognized organization in California serving the international trade community. Its membership includes importers, exporters, manufacturers, trade consultants, export managers, international bankers, attorneys, customs brokers and freight forwarders who are leaders in the international business community in Southern California.

The FTA approves the efforts of the Customs Service to make the agency more responsive to the needs of the importing community and to modernize the agency by increasing the use of automation and electronic processing of imports.

We are especially pleased with the efforts of Commissioner Weise in meeting with the trade community and listening to their views and tirelessly working to develop a genuine partnership with the trade community. His frequent trips to the West Coast, to meet with our trade community, are also greatly appreciated.

The membership of the FTA is very concerned, however, with how the Customs Management Centers will function. Although we understand that the Centers are to have administrative and management responsibilities, they will also be responsible for ensuring uniformity at the ports under their jurisdiction.

We strongly believe that the Management Centers will not be able to achieve uniformity among the ports unless the importing public, i.e., importers, customs brokers and their attorneys, have access to personnel at the Management Centers. We believe it is essential that the importers and their representatives have an opportunity to present their side of the matters in issue, along with information which may not be available to Management Center personnel. Such access by the importing public would not only be equitable, but would greatly reduce the volume of appeals which will inevitably arise if Management Center personnel make decisions based upon information supplied only by the Customs personnel at the ports.

The FTA also urges that in allocating Customs manpower, the Southern California area be given its fair share of personnel, and that staffing be at a level enjoyed at other comparable ports, such as New York. It is important for importers and their agents to have access to adequate personnel at the ports, so as to fairly and expeditiously resolve day-to-day issues, without the need to send them to Customs Management Centers or Customs Headquarters for disposition. Without the proper allocation of personnel resources, trade activity through San Diego and Los Angeles could move to other regions or even to Mexico and Canada, hurting the U.S. Economy.

We believe the District system has been very efficient, and has served the public well, and suggest that changes in titles of officers performing the service functions for the smaller ports, similar to the functions now performed by the Districts, would require wide spread amendment of many statutes which utilize the present terminology of Districts and District Directors, known to

those engaged in international trade throughout the world.

We hope that the Customs Service will ensure that whatever Customs Regulations or Law give authority to act at the District level that Customs will identify the new level where such authority will now reside.

Your courtesy in including our statement in the printed record of the hearings held in Washington, D. C. on January 30, 1995, on the Customs Reorganization and Modernization, will be greatly appreciated.

FOREIGN TRADE ASSOCIATION

OF SOUTHERN CALIFORNIA

Fermin Cuza

Fermin Cuza, President

THE SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

Statement for the Record
of the
INTERNATIONAL AIR TRANSPORT ASSOCIATION

"U.S. Customs Service Reorganization and Modernization Efforts"

IATA members are responsible for the majority of the international air commerce, both passenger and freight, carried into and out of the United States and attach great importance to the U.S. market and to the success of the Customs Service's reorganization and implementation of the Modernization Act.

The Customs Service is over 200 years old and has long labored under regulations which go back to the days of the clipper ships. Customs laws and regulations should be modernized so that the Service can perform a useful function in this era of jet aircraft, automation and high-speed electronic information exchanges. The enactment of the Customs Modernization Act has provided Customs with the legal authority to automate and modernize its commercial processing procedures and also provides for improvements in Customs enforcement. The airline industry supported adoption of the Modernization Act.

By its very nature, international air transport requires expedited clearance to facilitate its mission of speed in transport. The Customs Service has, over the last few years, embraced a progressive attitude, recognizing that the status quo was not acceptable and has looked to automation to speed the clearance of persons and freight. Air carriers have and continue to be supporters of U.S. Customs automation programs, for example, many of our member airlines participated in the planning and development of the Automated Manifest System(AMS).

Thus the airline industry supports the improvements adopted by the Customs Service notably: reduction of paperwork, faster clearance, use of electronic manifests and releases, plans for paperless inbond transactions, etc. Also, Customs' commitment to consultation with the public in general, and with the transportation industry in particular, through vehicles like the Automated Commercial Environment (ACE) Development Team's Trade Support Network (TSN) should be highly commended.

If Customs is to continue to make progress, it will be necessary to streamline its internal organization. If the process of clearing persons and merchandise is to be accelerated, it is logical that the Service itself should provide for a more functional line of command.

As in any business it is regularly necessary to review the entire operation to realize optimum productivity; we believe that it is with these goals in mind that Commissioner Weise is restructuring the Customs organization and operation.

We can only heartily support such an approach, with one caveat, that the introduction of these changes and the implementation of the Modernization Act do not lead to new financial burdens on carriers or consumers, either directly through additional fees, or indirectly, by additional costs for compliance with new procedural requirements.

Respectfully submitted,

David M. O'Connor
Regional Director, U.S.
INTERNATIONAL AIR TRANSPORT ASSOCIATION

February 9, 1995

NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES

February 13, 1995

Honorable Phillip M. Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: U.S. Customs Service Reorganization and Modernization Efforts

Dear Chairman Crane:

On behalf of the National Association of Foreign-Trade Zones I would like to submit the following written statement for the printed record of the January 30, 1995 hearing on the U.S. Customs Service reorganization and modernization efforts. The National Association of Foreign-Trade Zones is a non-profit organization composed of public and private entities, individuals, and corporations involved in the U.S. Foreign-Trade Zones program.

Customs Modernization

The participants in the foreign-trade zone industry are pleased to have been among the first members of the trade community to reap the benefits of the Customs Modernization Act. The passage of this Act has provided Customs the ability to implement a long awaited weekly entry filing procedure for foreign-trade zone distribution operations. The procedure has expedited the shipment of merchandise of documentation and reduced paperwork burdens for Customs and industry.

Currently, this procedure is being utilized by five companies in the form of a pilot program. The pilot has been remarkably successful to date and is expected to be expanded to include all zone users in the near future. The NAFTZ has been actively pursuing Customs approval of this procedure for five years and is extremely pleased with the progress to date toward full implementation of the weekly entry policy for all zones and subzones. This pilot is an excellent first step toward improving the facilitation of international trade and demonstrates that periodic and paperless procedures can effectively accomplish the goals of both government and industry.

Customs Reorganization

The U.S. Customs Service is embarking on a comprehensive strategy which has received widespread support on a theoretical level from the importing and exporting community at large. While the trade industry has supported the concept of Customs reorganization, the practical implications of the proposed changes merit careful consideration.

While the Association supports the abolition of the Regional and District levels of Customs management in order to streamline government, we are concerned because the Regions and Districts are currently the primary source of expertise in the zone area. The North Central Region in particular has been the source of many innovative programs to reduce complexity and the paperwork burden. The Foreign-Trade Zones Board Regulations specifically designate the District Director of Customs as the Board's local representative. We want to be certain that the North Central Region's innovative procedures are retained. Furthermore, there must be accessible knowledgeable Customs personnel to assume the District Director's role.

The members of the National Association of Foreign-Trade Zones have expressed a long standing interest in the level of training provided to Customs officials. The Foreign-Trade Zones program is one of many specialized trade programs under the oversight of the U.S. Customs Service which requires detailed knowledge by Customs personnel in order to effectively carry out enforcement operations without impeding the ever important facilitation of international trade. With a higher concentration of authority at the Port level, it will be more important than ever that these officials are provided with detailed and ongoing training resources. When matters do arise which require Customs involvement from the CMC or Headquarters, there must be clear lines of authority established to ensure standardization and preclude gaps which leave the trade industry without a timely source of assistance.

We appreciate the open process by which the Customs modernization and reorganization efforts have been carried out to date. The continuation of a partnership approach to achieving Customs goals can address and alleviate many of the trade industries reservations about an otherwise commendable endeavor by the U.S. Customs Service. The National Association of Foreign-Trade Zones appreciates the opportunity to comment on the U.S. Customs Service reorganization and modernization and looks forward to the continued cooperation between government and industry which has been fostered through these efforts.

Respectfully submitted,

Greg Jones

Greg Jones
President

STATEMENT OF C. DENNIS WRIGHT
VICE PRESIDENT, OPERATIONS
NATIONAL BUSINESS AIRCRAFT ASSOCIATION, INC.

This testimony has been prepared on behalf of more than 3,500 National Business Aircraft Association (NBAA) Member companies which own and operate general aviation aircraft to aid in the conduct of their business, or are in some way involved with business aviation.

An increasing number of NBAA Member companies are traveling outside the U.S.; more than 50,000 international flights are made by business aircraft operators each year. More than 36 percent of Member aircraft are used for international flights. This number is steadily increasing and it is anticipated that in the near future more than 50 percent of our Member fleet (5,000+ aircraft) will be involved in international travel.

NBAA welcomes the major reorganization plan announced by the U.S. Customs Service. We are encouraged by the Subcommittee's acknowledgment that the private sector has a large stake in the reorganization plans. It is our hope that this reorganization is undertaken in a dynamic fashion to make the administrative swamp less dangerous. It is imperative though that the changes reflect the concerns of the entire community that Customs serves. It also is paramount that the new regulations do away with the patchwork that now exists. Why is it, for instance, that a pleasure yacht can clear customs merely by making a phone call while an aircraft transporting a *Fortune 500* CEO may be detained for hours? Why is it that aircraft operators will choose a more treacherous route rather than deal with certain U.S. Customs inspection facilities?

Here is an excerpt from a letter one of our Member Companies sent us regarding this problem: "Two weeks ago I flew to Alaska and decided to take the more hazardous route, Seattle to Ketchikan, instead of going through Canada. A trip via Canada meant facing U.S. Customs on both ends. On my last trip to Puerto Rico I did the same thing, Miami to San Juan, with no stops, to avoid Customs. Everyone I've talked to with Customs experience agrees that U.S. Customs is the worst. In our travels around the world, the comparison between other countries and ours is always the same."

It also is not uncommon for Customs to overstep their appointed jurisdiction. Customs has been known to order aircraft inspections without the authority to do so. They also have performed inspections that involved removal of aircraft access panels, contrary to Federal Aviation Administration (FAA) Federal Aviation Regulations (FARs)! If Customs removes hardware from an aircraft, FAR Part 43 dictates that the aircrew must have a certified mechanic replace it *at the operators cost*, even if it includes only a few screws to replace a panel.

In another instance, a Member Company aircraft was inbound to Texas from Central Mexico. As with most Companies conducting international operations, its flight department has had long and bitter experience with the U.S. Customs Service. In filing the international flight plan, the flight crew placed "Advise Customs" (ADCUS) in the remarks section as is standard procedure. The crew also sent a message to Customs via their handling agent to provide notification of their arrival. As a last resort, the crew even asked another U.S. flightcrew enroute to the same destination to advise Customs of their arrival. It did not help. When the crew asked the air traffic controller if he would call Customs to see if they were expected, the reply was, "Customs said to tell you that you cannot land." It took some doing but the pilot

was able to remind the controller that he had no authority to deny landing. Upon landing, Customs miraculously was able to find documentation of the advance notification.

As you can imagine this type of regulatory action would foster an adversarial relationship with even the most diplomatic of people. U.S. Customs should realize that business aircraft operators are *not* a problem when it comes to enforcement. Companies that operate business aircraft abroad, do so to make the most judicious use of their personnel and are no more suspect than the typical executive flying on a commercial airline.

It is true that some aircraft have posed problems when it comes to drug smuggling, but their profile is vastly different from that of the typical corporate flight. Customs places too little importance on the appropriate identification and clearance of legitimate corporate operators. What's more, the individual assigned to oversee this program has little or no knowledge of aviation before assignment, and rarely stays long enough to develop the requisite understanding; some for as little as eight weeks. This revolving door of program officers "learning the ropes" and then leaving the responsible office or being reassigned is not cost effective and one we hope to see stopped. Aside from not being cost effective, this also has a negative effect on the organizational culture of the Agency. It is difficult, at best, for the individual in the field, who delivers the services every day, to function efficiently without consistent direction from agency headquarters. In the end, you have historically had a national welcoming committee with a police mentality that becomes reactionary when changes are suggested. This is counterproductive for the Country and its commerce and requires the full attention of the U.S. Customs Service.

We have included a copy of a letter sent to Commissioner George Weise of the U.S. Customs Service that will be helpful to highlight some of these issues.

November 8, 1994

Mr. George Weise
Commissioner
US Customs Service
1301 Constitution Avenue NW
Room 3136
Washington, DC 20229

Dear Commissioner Weise:

The Aircraft Owners and Pilots Association (AOPA) representing over 330,000 individual pilots and aircraft owners throughout the United States, and the National Business Aircraft Association (NBAA) representing 3,400 member companies are concerned with the current inspection programs of the US Customs Service.

For more than two years, our associations have been formally advocating changes to procedures currently used by US Customs Service in dealing with general aviation aircraft. Our recommendations, which have been submitted in detail to your staff, deal specifically with changes to the Advise Customs (ADCUS) notification process, enforcement of Federal Aviation Administration (FAA) regulations, better definition of arrival notification windows, and implementation of a selective inspection process.

In our discussions with USCS staff of the Office of Inspection and Control, we believe there is a clear understanding and agreement that a number of changes need to be implemented by Customs. Additionally, we have been informed that there is consensus on our ideas among Customs field offices along the northern borders. And, we have recently learned that in early 1995, Canada will make a number of changes in their procedures very similar to what we have suggested to US Customs Services staff.

In brief, our proposals are:

1. Implementation of an international 800 service by USCS with which to receive required ADCUS notices. These lines would feed directly into one of the USCS flight operations centers which are staffed 24 hours per day. Telephone notification directly to a USCS entry airport is often difficult from foreign nations. Many times, a pilot calling to notify the local agent receives a telephone answering machine and must "hope" that the agent checks his messages prior to the pilots arrival.

2. Selective Inspection program. By USCS own data, the majority of enforcement action taken by Customs is in the form of "technical violations." It is the honest pilot who notifies Customs of his arrival. We believe it is appropriate to implement a selective inspection program similar to that of water operated craft. Such a program could enable Customs agents to concentrate their limited resources on areas which have proved to be problematic. For example, the benefit we see is that aircraft operators could place a telephone call to the USCS 800 ADCUS number, and at that same time, after supplying any information necessary for "pre-clearance", be notified of whether or not they could fly directly on to their final location; knowing that USCS would reserve the right to meet the aircraft at its final destination. The resource savings to USCS could be significant.

3. Refer alleged violations of Federal Aviation Administration regulations directly to FAA for action. Currently, USCS will cite an aircraft operator for such items as failure to produce a valid medical. Following Custom's violation, the FAA takes its own actions. Clearly, this is a duplication of efforts and wasteful of Customs limited resources.

4. The "US Customs Guide for Private Flyers" is used by the industry to provide guidance to aircraft operators as appropriate ways to clear customs. It has been an invaluable document for both AOPA and NBAA who have provided it to their memberships. However, it was last published in December 1991 and is now badly outdated.

While there has been internal support for our suggestions, we do not believe that our suggestions have received the attention and review of senior level decision makers. Further, lack of continuity in staffing of the responsible offices has undermined such efforts. It is our firm belief that implementation of our suggestions will not have a detrimental effect on the mission of USCS, a mission which in general we support. Indeed, they may very well increase effectiveness in other areas of the service.

In order to bring our proposals to fruition, we will be contacting your office in the near future to schedule a meeting with you so that we may determine the status of our proposals for reform in dealing with General Aviation aircraft operators; both corporate and private. We believe this to be in keeping with your stated "... plan to transform the culture of the Customs Service."

Your attention to these issues and our proposals will be most appreciated.

Sincerely,

Phil Boyer
President
Aircraft Owners and Pilots Association

John W. Olcott
President
National Business Aircraft Association

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ROSS & ASSOCIATES

ATTORNEYS AT LAW

Susan Kohn Ross
New York

New York,

February 10, 1995

Congressman Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
Room 1102 Longworth House Office Building
Washington, D.C. 20515

Via Federal Express

Re: Customs Reorganization and Mod Act

Dear Congressman Crane:

These comments are submitted on behalf of Ross & Associates, a law firm which practices exclusively in the area of Customs, international trade and transportation law. Our firm represents a wide spectrum of clients from the very small one person operations to the very large Fortune 500 companies. As such, we have a unique view of the operations of Customs. We, therefore, take the liberty of submitting the following remarks for inclusion in the record of your hearing regarding "U.S. Customs Service Reorganization and Modernization Efforts."

Reorganization:

We are concerned about a number of factors as Customs changes its organizational structure. Customs has announced Customs Management Centers (CMCs) and made clear that these are to serve the agency internally. We would urge that access to the CMCs be available to the trade in general in order to insure uniformity of action by the agency in its various geographic areas.

We understand that as an overall approach Customs is seeking to expand lines of authority to the port level. However, in doing so, we are concerned that there be greater emphasis given to training. We recognize that Customs enforces the laws of a variety of agencies. However, it is often in the area of enforcing it own and other agency laws that Customs line personnel lack proper technical expertise.

We are also concerned in the ruling context. We often see a ruling issued by Customs Headquarters which the field refuses to follow. The field's explanation is that it does not believe that the facts an importer is putting forth are accurate so as to disqualify a second importer from benefitting from a ruling issue to the first importer.

We are also concerned that Customs develop a way to reward its employees for trade facilitation. In an earlier era, much was made of the point system wherein a Customs person, in part, obtained in grade promotions and salary increases from generating enforcement cases. While official use of the point system has been eliminated, it is still an informal measure of performance. We believe that the agency needs to develop a means to measure an employee based upon trade facilitation. With such a measurement, we believe that fewer questionable actions are likely to arise in the new age of informed compliance.

As Customs seeks to streamline its operations, we are also concerned in the Fines, Penalties and Forfeitures (FP&F) area. We are aware that the question of where in line authority to place this group is still under discussion. Our area of concern is that greater emphasis be placed throughout the country to staff FP&F with personnel who have legal training. Too often we have seen decisions made on cases which simply ignore well founded legal authority. We recognize that Customs is an enforcement agency. However, as it moves into the mode of informed compliance, a greater understanding of legalities is necessary.

Finally on the topic of reorganization, we applaud Customs for agreeing with the proposal of Women in International Trade of Los Angeles that there be training for Customs personnel at the Glencoe Academy conducted by private sector representatives. We think a discussion of issues by the private sector as the training is given will greatly aid individual Customs employees to understand the commercial consequences of their actions, thereby facilitating trade and compliance.

The Mod Act:

We begin our comments on this topic by acknowledging that Customs has done an admirable job in seeking to reach out to all elements of the trade for input on how the new regulations should be formulated. We recognize that as the trade, we are only able to comment and suggest. Nonetheless, we think it important that consensus be reached on as much of the new regulations as possible prior to their implementation, thereby enhancing compliance with the law and facilitation of trade.

Having said this, however, we are concerned that the trade groups with which Customs seems to have spent the most time are all Washington D.C. or East Coast based. As a law firm representing clients who do business throughout the country, we are aware that problems and perspectives differ depending on where in the country you deal with the agency.

While we agree that the trade should have input regarding the new regulations, we nonetheless disagree with Customs on a number of issues. For example, it appears that the general importer record keeping program which Customs intends to implement goes far beyond the requirements of the Mod Act.

While not a direct result of the Mod Act, we note that Customs is seeking to materially revamp its in-bond program. While we recognize that the impetus to do so comes from the efforts of the General Accounting Office (GAO), it appears to our clients that GAO's conclusions are faulty due to a lack of understanding of what in-bond is or how the program really works. For example, we hear that GAO claims Customs has no accountability over what first arrives and what is ultimately delivered. From our experience we know that sealed containers (ocean and air) form the backbone of transportation. High security seals exist for the express purpose of insuring that the cargo stowed into the container is the same as that which is delivered. Despite the level of security which has developed, as much to avoid theft as to comply with Customs bonding requirements, we are being presented with a proposal by Customs which would, in effect, do away with in-bonds, a particularly vital form of transportation for inland ports.

Next there is the revamp of the Customs computer. We contend that any change to the existing system should include cross-references so that any one group within Customs can access a database which tells it how many times the same shipment has previously been examined. In addition, the number of examinations of any one shipment should be better coordinated.

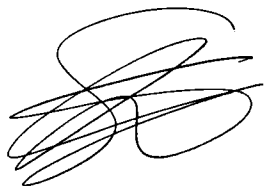
Because we represent companies of all sizes, we also believe that individual importers (and their designated non-broker agents) should be able to access information about them maintained in the Customs computer. We understand there is some discussion about making terminals available at individual ports. We think in this day and age that modem access from individual personal computers (with appropriate security controls) should be the norm.

There are also a number of areas where Customs has been sparse with the proposed regulations. We here think about reconciliation, importer summary statements and liquidation. These subjects are favored by the trade as ways to streamline the operational and financial relationship between individual shippers and Customs. We urge Customs to more fully develop proposed regulations on these topics as soon as possible. We recognize some of the delay is the result of analyzing exactly what should be expected of the new computer system but this process, too, should be available for comment by the trade.

In general, we acknowledge that Customs has done much over the last few years to cement its relationship with the trade. The manner in which it has approached implementation of the Mod Act is a good example of a public-private partnership which works to the benefit of both sides. While we continue to believe that private sector involvement in regulation drafting is an imperative, we also acknowledge that for private industry to appropriately plan for the future, we need to see these regulations formally proposed soon. We urge Customs to act with all deliberate speed. We recognize that there are many interests competing for Customs resources. In the course of finalizing its approach on reorganization and the Mod Act, we want to urge both Customs and the Congress to be sure to seek input from voices from all over the country so that a complete picture can be obtained before making the final decisions.

Thank you for considering our comments. If we can provide any further information, please feel free to contact us.

Very truly yours,



SUSAN KOHN ROSS
SKR:mjw
Corres\922-22.022

Testimony of the

SMALL BUSINESS EXPORTERS ASSOCIATION

This testimony is presented by Hugo Blasdel, Vice President of Blasdel and Company, a software company that assists American companies in exporting. Our clients account for $5 billion in annual exports or roughly one percent of this nation's exports. I serve as chair of the Regulations and Automation Committee of the Small Business Exporters Association.

Our testimony concerns Customs Modernization and Reorganization, not with respect to the changes authorized by Congress, but with respect to Customs' internal initiatives to dramatically change the way they deal with exports. Customs plans an Automated Export System (AES) which will electronically capture and scrutinize every export before it ships. However, exporters and those who help them export are not prepared to provide the great quantities of data in the timeframe proposed nor to correct any problems found by Customs before shipping. Most exporters do fewer than a shipment a day, so they may not be automated at all. Automated exporters have data systems designed to meet existing requirements but massive reprogramming would be required and connections made between systems that have not had to be connected before. Staff will be required to handle the new, and urgent, requests for correction of data prior to export.

Customs says that AES is in response to the National Performance Review Information Technology initiative 06. While it does bear on improving statistics, nothing in IT06 mandates collecting data in advance or suggests that the existing automated system is inadequate. AES will not provide data to the exporter about laws and regulations pertaining to export, or government opportunities to assist exporting. NPR is intended to make government work better, and automation can do that, but not AES as planned. AES will create a new electronic bureaucracy, and the results for the exporter will be greater costs. Even Other Government Agency Referrals (OGARs) for review and eventual response will be automated at the Customs end while the shipment is held. This automation not only misses the letter and spirit of NPR, AES misses any definition of "customer service".

It is a matter of serious public policy concern whether this nation can put such a high premium on the quality of statistics and totality of enforcement that we construct a new barrier to exports. According to the Department of Commerce, each billion dollars in exports results in at least 16,000 jobs. Any added operational overhead or substantial investment by exporters can only have a negative effect by increasing their cost or decreasing profitability. If this new electronically bureaucratic approach discourages only a few percent of new exports and makes only 1% of existing exports unprofitable, or untenable in the highly competitive world market, it will cost more than $5 billion and 80,000 jobs.

While these estimates will certainly be debated, before proceeding with AES we need to know what the effect will be. The increased burden will be disproportionate on small exporters who lack the economies of scale the big exporters can bring to bear. Yet it is the small and medium sized exporter, exploring new opportunities, that holds the possibility for much needed growth. The 80% of companies which could export, but do not, are the ones which show the greatest opportunity, but with this new system there will be even less incentive for them to become exporters.

What are the goals of AES? The Small Business Exporters Association (SBEA) is very much in favor of government modernization and efficiency, and fully supports the efforts to properly control exports and to track them, but believes it is contrary to the public interest to unnecessarily decrease the competitiveness of American products. We believe that while the overall goals of the AES are commendable, the methods chosen and means used are shortsighted, inefficient, and where potentially useful, unachievable. AES goals, as of Version 1.2 on Saturday, December 31, 1994 are to:

- be a repository of, and gateway for, export data for all agencies
- improve the collection of Harbor Maintenance Fees
- improve the timeliness and quality of trade statistics
- support the enforcement mission of Customs and provide a paperless process.

How does SBEA view these goals?

- As a repository, both the Bureau of Export Control and the Office of Defense Trade Controls have indicated no interest in having Customs handle their licensing even though a harmonized process, across all agencies, would benefit exporters.
- The collection of Harbor Maintenance Fee on export shipments is unconstitutional as a tax on exports under Article 8 Section 9 Clause 5 of the U.S. Constitution. Building a system to collect it makes no sense.
- Statistics are compiled on a month to month basis and have been satisfactory when submitted by the 10th of the following month, so given good data timing is hardly a problem. Correcting data after export can be handled without the threat of holding the goods. If making requested corrections is a problem, then the fix for the exporter is to do it right the first time.
- That leaves only the fourth objective, automated enforcement, and the question of whether the expected increase in enforcement, and saving of government paperwork, is worth the cost in exports.

Exporters can choose the Census Automated Export Reporting Program (AERP) which has existed for 25 years. One exporter spends $1,000,000 a year doing just that to save money and eliminate paper, but few exporters can afford to be that efficient. We feel that given support, more exporters would use an electronic method. However, when paper is cost effective, is it reasonable for the government to force automation on an exporter for a few shipments a day?

What will AES do? Unlike the Mod Act which allows for the transfer of considerable responsibility to the importer, subject to audit and penalty, and reducing government expense, the Automated Export System will, in simplified form:

- require all exporter data in advance of shipment rather than later (which is now the practice except for licensed shipments);
- subject export shipment data to intense edit checks, referring any discrepancies for immediate resolution;
- initiate Other Government Agency Referrals (OGARs) on passing those edits that may be indicated; *and finally*
- clear the goods for export only if not held or called for inspection.

A system of automated enforcement targeting makes sense when all the data is already required for tariffs and quotas, not to build a system just to provide the data for targeted enforcement. Customs' outbound mission statement is "to maximize enforcement . . . while maintaining facilitation". The problem may be that Customs does not measure facilitation or know what it is they intend to maintain, so they are free to maximize enforcement at any cost. There are now 7,000,000 exports a year, and 700 seizures for violations. Even if there were ten times that number caught by an AES (7,000 seizures which is most unlikely), then 999 exports would pay the penalty of providing much more data, much sooner than existing automation, to catch the

one bad one. This does not include the number of shipments that must be delayed for inspection unnecessarily before catching that one bad shipment. On imports, only one container in seven was checked in the effort to intercept drugs, so perhaps without AES it could be two in seven, and more drugs intercepted. This checking also shows that "targeting" does not replace real checking. No matter how sophisticated the computer, it can only check for consistency of data, it cannot look inside the container.

How does AES compare to the present system? Collection of export statistics is already automated in the Census AERP and it has met the need for accurate and timely statistics. Companies that qualify with Census can submit a tape, disk, or modem transmission of their Shippers Export Declaration (SED) by the tenth of the month following export. Census reports that 23% of all data is received electronically, validated automatically, and used to produce statistics. Similarly data on U.S. shipments to Canada is 32% of all SEDs and received electronically from Canadian import authorities, so export is more than 50% automated already. One method of further automating is to extend the relationship with Canada to other major trading nations, so perhaps only 20% of exports would require any data submission to Customs.

Our comparison between AES and AERP/paper is not encouraging to the exporter, and particularly bad news for those already using AERP:

- AES requires several times more data than AERP, some from multiple trading partners in the export process such as carriers.
- AES requires clearance in advance of export and gives notification of data to be explained or corrected, rather than asking for and making any needed corrections after the fact of export shipment.
- AES's OGARs are not part of AERP. We have been told informally by both BXA and State that they would not currently be considered useful.
- AES will currently require using the import goods classification system rather than allowing exporters to choose it or the more common (and simple) export classification system as does AERP.
- AES will require massive reprogramming by those who have saved the government millions of dollars by using AERP, penalizing them for their cooperation and making their monthly submission drill a daily, if not hourly occurrence. One exporter estimates reprogramming at $250,000. Those exporters without the economies of scale only pay more per shipment. The U.S. export community includes 5000 frequent exporters, and another 100,000 participating at some level and hopefully increasing.
- AES will not use the international standards for data interchange, EDIFACT until it is "endorsed as the international standard" but the standard has been in Status 2, the highest level of endorsement for years now and is even used by Customs for import processing. If these international data standards are not fully supported, a company like Kodak which is 100% international standard, and other highly competitive American companies, will have to shrink their complete internationally formatted data into a less adequate format merely to satisfy Customs. Blasdel and Company's own software product, TransExport, is oriented to the international standard as the only logical one for international trade. We see no benefit for our customers to edit down the data just to meet a government requirement.
- AES does not accept ordinary modem data transfers as AERP does. It requires using a third party with connect and carrying charges as well as expensive encoding software (translators). It ignores the Internet which could convey the data for a low monthly fee and even provide direct client/server interaction.

- AES will automate the collection of Harbor Maintenance Fees, but AERP could be similarly automated and fees could be collected on the basis of the paper SEDs (if Customs actually collects the paper and verifies the exporter ID on them), provided the fees are not deferred pending their being declared unconstitutional.
- AES will mix statistics with enforcement compromising both objectives. Lawbreakers will be especially careful with their data, perhaps sending test shipments of the same weight and cube to assure safe passage. Those exporters who would do their best to provide correct data would be penalized when that did not work and be pushed to provide data that did work even if not entirely accurate. This principle applies to your personal Census form, which IRS is not allowed to review so as not to bias reporting.
- AERP does all that AES will do for statistics; AES is an enforcement mechanism.

It may make sense to build an electronic system to handle licensed shipments (Customs estimates a savings of 80 person-years), especially since the Other Government Agencies can provide license data electronically with little additional input from exporters. Since license management is a major problem for both Customs and exporters whose shipments are delayed by those person-years of arcane paperwork, it would benefit both Customs and the Trade to automate that system, and then look to what else would facilitate exports.

Who has what interests here? Apparent conflicts of interest have been present in the development of the AES. There is a Trade Resource Group, initiated by Customs with the membership initially controlled by Customs. It began as five carriers, four forwarders, three highly automated major multi-national corporations as exporters (Ford, TI, 3M) and a few others. Small exporters and automation vendors, who collectively represent the entire growth potential for automating the export process, have been excluded.

Carriers have a special interest in AES since they have been fined for not submitting paper declarations about the exports which match the cargo lists. Sealand invested over $100,000 in the failed Charleston pilot project. Forwarders, particularly brokers, have been enthusiastic about the additional opportunities to be of service. Brokers are particularly familiar with Customs while those forwarders whose business and expertise is primarily export would be at a disadvantage. Recently surety companies who would bond the forwarders and exporters to submit correct data and Harbor Maintenance Fees, have offered their support for the system. It looks like such an AES could fund a whole industry, while making American exports just that much more expensive and less competitive on the world market. Entry into exporting becomes that much less likely for any company not already doing it.

While outnumbered on the Trade Advisory Group by a significant margin, exporters have made no secret of their position that the system offers them no significant advantages and many costly drawbacks. SBEA is here to say that if the big exporters have a problem with the cost and difficulty of the proposed system, the small exporter will have even more problems as a result of it, and the new exporter will have one more reason not to export.

What are the alternatives? While SBEA strongly objects to this Automated Export System, we can conceive of an automated system which makes our exports more competitive:

- Encourages good statistics and full compliance by providing all data about goods and trading partners available from any agency, in one easily accessible place.
- A system which will optionally register who we deal with and what we ship and could advise us of any changes in law or regulation that would affect what we do.
- It could provide a way, not require it, for this registration data to feed licensing applications, and be available as preclassification of our goods, and identification of our trading partners when we go to ship.

- Since all questions about goods or partners would optionally be addressed in advance, we would have no surprises.
- Since the government could compute all the measurements it needs from prefiled data, all it would need on export is an ID quantity and price, and the IDs of the Trading Partners, a fraction of the data that even AERP collects, but much richer statistically with the stored data linked to it. We could even provide the Standard Industrial Class data as part of prefiling data that the National Academy of Sciences identified as critically missing (which is not part of AES). Prefiling could also address hazardous goods classification as well as all export control issues.

A wide variety of international trade data, from the U.N. on who imports what from whom, as well as all that Census data, could be available to the exporter along with country specific requirements. By facilitating compliance, increasing it while reducing its cost, and providing proactive updating as well as valuable trade data, the path to data collection would be paved with benefits to be realized rather than costs to be borne.

Given their track record over three years with all emphasis on enforcement, it is unlikely that Customs would truly support such an AES. It would need to be managed by another agency with Customs as one of many clients, perhaps hosting the data processing. The system should be responsive to, but certainly not driven exclusively by, enforcement interests. Participation, via storing data for proactive notification, and submission of export and license data would be voluntary, but mutually beneficial, and certainly not required until a year after a high percentage of exporters switched over to it and then perhaps only for controlled exports. Even there we would advocate an exception for exporters doing less than one hundred licensed shipments a year. These could continue to use a paper process if they chose, with the government doing any needed data entry as a way of encouraging entry into international trade.

In review of this concept, and to assess and remediate the shortcomings of AES, we would ask that:

- An independent review of AES be conducted, perhaps by GAO, with respect to the broad policy interests, statistical needs, and law enforcement practices, of the United States with a special emphasis on exploring less costly more effective means of obtaining the same ends. We also encourage NPR review of this regulator.
- "While maintaining facilitation" be defined in its fullest sense and Customs held generally accountable for measuring and maintaining it.
- While the Customs cost/benefit study considered only the cost to the government, we would ask that the government not save a dollar only to require that each of the 5000 frequent exporters spend several dollars.
- Separate official advisory groups of exporters and trade facilitators (automation vendors, carriers, forwarders, etc.) be created to assure that our exports are not unnecessarily compromised by any conflict of interest.
- Collection of Harbor Maintenance Fees, as a short term problem pending the litigation challenging its constitutionality, and the financial issues associated with it, not be part of the design of an AES.
- Exporters doing less than three shipments a day be exempt from automation. They could continue to use a paper process without penalty.
- All trading partner and product/goods data be prefiled and precleared so that all that needs to be reported are IDs, quantity and price; although reporting all data at one time should continue to be possible for those who choose to.
- In exchange for pre-filing, the government proactively advise the exporter of any change in law or regulation pertaining to prefiled data.
- Fundamentally, that an AES be developed to represent the best that American expertise

in automation can offer to facilitate exporting, rather than automating the worst of the "gotcha" bureaucratic enforcement mentality as a deterrent to exporting.

- AES should exceed the highest expectations of the Mod Act rather than perpetuating in exporting the ills it was designed to cure which afflicted importing.
- Finally, to share the burden of unnecessarily held shipments, we ask that Customs, like IRS on refunds overdue without explanation, be required to pay interest, until the next boat or plane out, on the value of the goods as small recompense to the disservice done the exporter and the foreign customer.

We suggest that the national interest and the balance of payments are served by a voluntary system offering adequate paybacks. The use of automation is a matter of simple business logic in that it pays. Such an investment in exporting will benefit the nation even more than it benefits individual exporters, improving the balance of payments, and providing quality jobs.



H.R. 553, THE CARIBBEAN BASIN TRADE SECURITY ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

FEBRUARY 10, 1995

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104TH CONGRESS
1ST SESSION

H. R. 553

To provide, temporarily, tariff and quota treatment equivalent to that accorded to members of the North American Free Trade Agreement (NAFTA) to Caribbean Basin beneficiary countries.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 1995

Mr. CRANE (for himself, Mr. SHAW, Mr. GIBBONS, and Mr. RANGEL) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To provide, temporarily, tariff and quota treatment equivalent to that accorded to members of the North American Free Trade Agreement (NAFTA) to Caribbean Basin beneficiary countries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Caribbean Basin Trade Security Act".

SEC. 2. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that—

(1) the Caribbean Basin Economic Recovery Act represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin;

(2) the economic security of the countries in the Caribbean Basin is potentially threatened by the diversion of investment to Mexico as a result of the North American Free Trade Agreement;

(3) to preserve the United States commitment to Caribbean Basin beneficiary countries and to help further their economic development, it is necessary to offer temporary benefits equivalent to the trade treatment accorded to products of NAFTA members;

(4) offering NAFTA equivalent benefits to Caribbean Basin beneficiary countries, pending their eventual accession to the NAFTA, will promote the growth of free enterprise and economic opportunity in the region, and thereby enhance the national security interests of the United States; and

(5) increased trade and economic activity between the United States and Caribbean Basin bene-

ficiary countries will create expanding export opportunities for United States businesses and workers.

(b) POLICY.—It is therefore the policy of the United States to offer to the products of Caribbean Basin beneficiary countries tariff and quota treatment equivalent to that accorded to products of NAFTA countries, and to seek the accession of these beneficiary countries to the NAFTA at the earliest possible date, with the goal of achieving full participation in the NAFTA by all beneficiary countries by not later than January 1, 2005.

SEC. 3. DEFINITIONS.

As used in this title:

(1) BENEFICIARY COUNTRY.—The term "beneficiary country" means a beneficiary country as defined in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(3) TRADE REPRESENTATIVE.—The term "Trade Representative" means the United States Trade Representative.

(4) WTO AND WTO MEMBER.—The terms "WTO" and "WTO member" have the meanings

given those terms in section 2 of the Uruguay Round Agreements Act.

TITLE I—RELATIONSHIP OF NAFTA IMPLEMENTATION TO THE OPERATION OF THE CARIBBEAN BASIN INITIATIVE

SEC. 101. TEMPORARY PROVISIONS TO PROVIDE NAFTA PARITY TO BENEFICIARY COUNTRY ECONOMIES.

(a) TEMPORARY PROVISIONS.—Section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)) is amended to read as follows:

"(b) IMPORT-SENSITIVE ARTICLES.—

"(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

"(A) textile and apparel articles which are subject to textile agreements;

"(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

"(C) tuna, prepared or preserved in any manner, in airtight containers;

"(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

"(E) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply; or

"(F) articles to which reduced rates of duty apply under subsection (h).

"(2) NAFTA TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

"(A) EQUIVALENT TARIFF AND QUOTA TREATMENT.—During the transition period—

"(i) the tariff treatment accorded at any time to any textile or apparel article that originates in the territory of a beneficiary country shall be identical to the tariff treatment that is accorded during such time under section 2 of the Annex to a like article that originates in the territory of Mexico and is imported into the United States;

"(ii) duty-free treatment under this title shall apply to any textile or apparel article of a beneficiary country that is imported into the United States and that—

"(I) meets the same requirements (other than assembly in Mexico) as those specified in Appendix 2.4 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the duty free entry of a like article assembled in Mexico, or

"(II) is identified under subparagraph (C) as a handloomed, handmade, or folklore article of such country and is certified as such by the competent authority of such country; and

"(iii) no quantitative restriction or consultation level may be applied to the importation into the United States of any textile or apparel article that—

"(I) originates in the territory of a beneficiary country,

"(II) meets the same requirements (other than assembly in Mexico) as those specified in Appendix 3.1.B.10 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the exemption of a like article assembled in Mexico from United States quantitative restrictions and consultation levels, or

"(III) qualifies for duty-free treatment under clause (ii)(II).

"(B) NAFTA TRANSITION PERIOD TREATMENT OF NONORIGINATING TEXTILE AND APPAREL ARTICLES.—

"(i) PREFERENTIAL TARIFF TREATMENT.—Subject to clause (ii), the United States Trade Representative may place in effect at any time during the transition period with respect to any textile or apparel article that—

"(I) is a product of a beneficiary country, but

"(II) does not qualify as a good that originates in the territory of that country,

tariff treatment that is identical to the preferential tariff treatment that is accorded during such time under Appendix 6.B of the Annex to a like article that is a product of Mexico and imported into the United States.

"(ii) PRIOR CONSULTATION.—The United States Trade Representative may implement the preferential tariff treatment described in clause (i) only after consultation with representatives of the United States textile and apparel industry and other interested parties regarding—

"(I) the specific articles to which such treatment will be extended,

"(II) the annual quantity levels to be applied under such treatment and any adjustment to such levels,

"(III) the allocation of such annual quantities among the beneficiary countries that export the articles concerned to the United States, and

"(IV) any other applicable provision.

"(iii) ADJUSTMENT OF CERTAIN BILATERAL TEXTILE AGREEMENTS.—The United States Trade Representative shall undertake negotiations for purposes of seeking appropriate reductions in the quantities of textile and apparel articles that are permitted to be imported into the United States under bilateral agreements with beneficiary countries in order to reflect the quantities of textile and apparel articles of each respective country that are exempt from quota treatment by reason of paragraph (2)(A)(iii).

"(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A), the United States Trade Representative shall consult with representatives of the beneficiary country for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3 (a), (b), or (c) or Appendix 3.1.B.11 of the Annex.

"(D) BILATERAL EMERGENCY ACTIONS.—The President may take—

"(i) bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any textile or apparel article imported from a beneficiary country if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article that is a product of Mexico; or

"(ii) bilateral emergency quantitative restriction actions of a kind described in section 5 of the Annex with respect to imports of any textile or apparel article described in subparagraph (B)(i) (I) and (II) if the importation of such article into the United States results in conditions that would be cause for the taking of such actions under such section 5 with respect to a like article that is a product of Mexico.

"(3) NAFTA TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

"(A) EQUIVALENT TARIFF TREATMENT.—

"(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that originates in the territory of a beneficiary country shall be identical to the tariff treatment that is accorded during such time under Annex 302.2 of the NAFTA to a like article that originates in the territory of Mexico and is imported into the United States. Such articles shall be subject to the provisions for emergency action under chapter 8 of part two of the NAFTA to the same extent as if such articles were imported from Mexico.

"(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

"(B) RELATIONSHIP TO SUBSECTION (h) DUTY REDUCTIONS.—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i)

in regard to such period) apply with respect to any article under subsection (h) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

"(4) CUSTOMS PROCEDURES.—The provisions of chapter 5 of part two of the NAFTA regarding customs procedures apply to importations under paragraphs (2) and (3) of articles from beneficiary countries.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) The term 'the Annex' means Annex 300–B of the NAFTA.

"(B) The term 'NAFTA' means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

"(C) The term 'textile or apparel article' means any article referred to in paragraph (1)(A) that is a good listed in Appendix 1.1 of the Annex.

"(D) The term 'transition period' means, with respect to a beneficiary country, the period

that begins on the date of the enactment of the Caribbean Basin Trade Security Act and ends on the earlier of—

"(i) the date that is the 6th anniversary of such date of enactment; or

"(ii) the date on which—

"(I) the beneficiary country accedes to the NAFTA, or

"(II) there enters into force with respect to the United States a free trade agreement comparable to the NAFTA that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of the North American Free Trade Agreement Implementation Act.

"(E) An article shall be treated as having originated in the territory of a beneficiary country if the article meets the rules of origin for a good set forth in chapter 4 of part two of the NAFTA or in Appendix 6.A of the Annex. In applying such chapter 4 or Appendix 6.A with respect to a beneficiary country for purposes of this subsection, no countries other than the

United States and beneficiary countries may be treated as being Parties to the NAFTA.".

(b) CONFORMING AMENDMENTS.—The Caribbean Basin Economic Recovery Act is further amended—

(1) by amending section 212(e)(1)(B) to read as follows:

"(B) withdraw, suspend, or limit the application of the duty-free treatment under this subtitle, and the tariff and preferential tariff treatment under section 213(b)(2) and (3), to any article of any country,"; and

(2) by inserting "and except as provided in section 213(b)(2) and (3)," after "Tax Reform Act of 1986," in section 213(a)(1).

SEC. 102. EFFECT OF NAFTA ON SUGAR IMPORTS FROM BENEFICIARY COUNTRIES.

The President shall monitor the effects, if any, that the implementation of the NAFTA has on the access of beneficiary countries under the Caribbean Basin Economic Recovery Act to the United States market for sugars, syrups, and molasses. If the President considers that the implementation of the NAFTA is affecting, or will likely affect, in an adverse manner the access of such countries to the United States market, the President shall promptly—

(1) take such actions, after consulting with interested parties and with the appropriate committees of the House of Representatives and the Senate, or

(2) propose to the Congress such legislative actions,

as may be necessary or appropriate to ameliorate such adverse effect.

SEC. 103. DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM.

Section 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) is amended—

(1) in paragraph (5), by striking "chapter" and inserting "title"; and

(2) by adding at the end the following new paragraph:

"(6) Notwithstanding paragraph (1), the duty-free treatment provided under this title shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if—

"(A) such rum is the growth, product, or manufacture of a beneficiary country or of the Virgin Islands of the United States;

"(B) such rum is imported directly from a beneficiary country or the Virgin Islands of the United States into the territory of Canada, and such li-

queurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

"(C) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.90 or 2208.40 of the HTS; and

"(D) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spiritous beverages.".

TITLE II—RELATED PROVISIONS

SEC. 201. MEETINGS OF TRADE MINISTERS AND USTR.

(a) SCHEDULE OF MEETINGS.—The President shall take the necessary steps to convene a meeting with the trade ministers of the beneficiary countries in order to establish a schedule of regular meetings, to commence as soon as is practicable, of the trade ministers and the Trade Representative, for the purpose set forth in subsection (b).

(b) PURPOSE.—The purpose of the meetings scheduled under subsection (a) is to reach agreement between the United States and beneficiary countries on the likely timing and procedures for initiating negotiations for beneficiary countries to accede to the NAFTA, or to enter into mutually advantageous free trade agreements with the

United States that contain provisions comparable to those in the NAFTA and would make substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)).

SEC. 202. REPORT ON ECONOMIC DEVELOPMENT AND MARKET ORIENTED REFORMS IN THE CARIBBEAN.

(a) IN GENERAL.—The Trade Representative shall make an assessment of the economic development efforts and market oriented reforms in each beneficiary country and the ability of each such country, on the basis of such efforts and reforms, to undertake the obligations of the NAFTA. The Trade Representative shall, not later than July 1, 1996, submit to the President and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on that assessment.

(b) ACCESSION TO NAFTA.—

(1) ABILITY OF COUNTRIES TO IMPLEMENT NAFTA.—The Trade Representative shall include in the report under subsection (a) a discussion of possible timetables and procedures pursuant to which beneficiary countries can complete the economic reforms necessary to enable them to negotiate acces-

sion to the NAFTA. The Trade Representative shall also include an assessment of the potential phase-in periods that may be necessary for those beneficiary countries with less developed economies to implement the obligations of the NAFTA.

(2) FACTORS IN ASSESSING ABILITY TO IMPLEMENT NAFTA.—In assessing the ability of each beneficiary country to undertake the obligations of the NAFTA, the Trade Representative should consider, among other factors—

(A) whether the country has joined the WTO;

(B) the extent to which the country provides equitable access to the markets of that country;

(C) the degree to which the country uses export subsidies or imposes export performance requirements or local content requirements;

(D) macroeconomic reforms in the country such as the abolition of price controls on traded goods and fiscal discipline;

(E) progress the country has made in the protection of intellectual property rights;

(F) progress the country has made in the elimination of barriers to trade in services;

(G) whether the country provides national treatment to foreign direct investment;

(H) the level of tariffs bound by the country under the WTO (if the country is a WTO member);

(I) the extent to which the country has taken other trade liberalization measures; and

(J) the extent which the country works to accommodate market access objectives of the United States.

(c) PARITY REVIEW IN THE EVENT A NEW COUNTRY ACCEDES TO NAFTA.—If—

(1) a country or group of countries accedes to the NAFTA, or

(2) the United States negotiates a comparable free trade agreement with another country or group of countries,

the Trade Representative shall provide to the committees referred to in subsection (a) a separate report on the economic impact of the new trade relationship on beneficiary countries. The report shall include any measures the Trade Representative proposes to minimize the potential for the diversion of investment from beneficiary countries

to the new NAFTA member or free trade agreement partner.

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H.R. 553, THE CARIBBEAN BASIN TRADE SECURITY ACT

FRIDAY, FEBRUARY 10, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to call, at 11 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
January 31, 1995
No. TR-2

CONTACT: (202) 225-1721

CRANE ANNOUNCES HEARING ON H.R. 553, THE "CARIBBEAN BASIN TRADE SECURITY ACT"

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on H.R. 553, the "Caribbean Basin Trade Security Act." **The hearing will take place on Friday, February 10, 1995, in room B-318 of the Rayburn House Office Building, beginning at 11:00 a.m.**

Oral testimony at this hearing will be heard from both invited and public witnesses. Also, any individual or organization may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

H.R. 553 was introduced by Messrs. Crane, Rangel, Shaw and Gibbons to ensure that the Caribbean Basin is not adversely affected by implementation of the North American Free Trade Agreement (NAFTA), and to encourage the accession of these beneficiary countries to NAFTA at the earliest possible date.

H.R. 553 would grant tariff treatment equivalent to that accorded to members of NAFTA to Caribbean Basin beneficiary countries, for a six-year period, pending their accession to NAFTA. This bill would also direct the USTR to meet on a regular basis with trade ministers of countries in the Caribbean to discuss the likely timing and possible procedures for initiating negotiations for beneficiary countries to accede to NAFTA.

First proposed by the Reagan Administration in 1982 and passed by Congress in 1983, the Caribbean Basin Initiative (CBI) program is based on the understanding that it is in the national interest of the United States to encourage the development of strong democratic governments and healthy economies in Caribbean countries through the expansion of trade.

Made permanent in 1990, the CBI program extends duty-free treatment to a wide-range of products imported from beneficiary countries. The program has served as a text-book example of the job-creating effects of promoting increased trade. U.S. exports to the Carribean Basin grew from $5.8 billion in 1983 to $12.3 billion in 1993.

An unintended result of the passage of NAFTA is that some investment is being diverted from the Caribbean to Mexico. To ensure that the value of the CBI program is not eroded over time, the Caribbean Basin Security Act, H.R. 553, was introduced.

In announcing the hearing, Mr. Crane said: "As an ardent supporter of the goals of the CBI, I believe it is important for the Trade Subcommittee to examine the impact that NAFTA is having on investment and development in the Caribbean. If the consequences of NAFTA on the Caribbean are not addressed, the resulting economic instability in the region threatens the future of democratic governments there. I believe it is important that we begin to look at this problem with the goal of achieving full NAFTA accession for CBI countries."

FOCUS OF THE HEARING:

The focus of the hearing will be to evaluate the effects of NAFTA on CBI beneficiaries, review the mechanisms to achieve NAFTA parity and subsequent NAFTA accession, and address whether H.R. 553, as drafted, meets the objectives discussed above.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Friday, February 3, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE MINUTE RULE WILL BE STRICTLY ENFORCED.** The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Thursday, February 9, 1995. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Friday, February 24, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

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Chairman CRANE. Folks, inasmuch as we are going to be interrupted on a routine basis for recorded votes on the floor of the House, I think it is important for us to get started. So I will invite Senator Graham to take his seat, and I think rather than playing tag with regard to our proceedings, that when those bells go off, whoever is in the middle of testimony, he will be able to complete his testimony and then we will recess for 10 minutes for Members to run over and vote and run right back.

Today, the Trade Subcommittee is holding a hearing on H.R. 553, the Caribbean Basin Trade Security Act, which I view as unfinished business from the North American Free Trade Agreement (NAFTA) and Uruguay Round implementing bills. H.R. 553 would grant tariff treatment equivalent to that accorded to members of the NAFTA to Caribbean Basin countries for a period of 6 years pending their accession to NAFTA.

For my colleagues new to the Trade Subcommittee, the Caribbean Basin Initiative (CBI) was written by the Ways and Means Committee in 1983 under the leadership of Sam Gibbons. It is based on the understanding that it is in the national security interest of the United States to encourage the development of strong Democratic governments and healthy economies in neighboring countries in the Caribbean and Central America through the expansion of trade.

On a bipartisan basis, the Congress passed and President Reagan signed the CBI, which extends duty-free treatment to a range of products imported from Caribbean countries. Since the CBI became law, U.S. trade policy has gone in other directions, such as the conclusion of NAFTA and the Uruguay Round, which were enormous accomplishments, but an unfortunate unintended consequence of the NAFTA is that investment is being diverted from the Caribbean to Mexico. The bill before us today, H.R. 553, would ensure that the value of our commitment to CBI countries made by this subcommittee in 1983 is not eroded over time.

In light of the decision at the Summit of the Americas to establish a free trade agreement of the Americas by the year 2050, the United States must articulate a trade policy which is cognizant of the economic development needs of Caribbean countries. The United States must establish a NAFTA parity program which is of tangible benefit to the region.

My purpose in pursuing H.R. 553 is to foster a policy whereby CBI countries receive the guidance and encouragement necessary for them to adopt market option reforms that will prepare them for joining NAFTA.

Finally, I would remind my colleagues that expanding trade with the Caribbean has been a huge success for U.S. business and workers. During the life of the CBI program, U.S. exports to the region grew from $5.8 billion in 1983 to over $12.3 billion in 1993. This represents a 112-percent increase, a rate three times the growth of U.S. exports to the world during the same time period.

In closing, I want to welcome the witnesses and apologize that we have only about 3 hours' work for today's hearing, so I would ask you please to summarize your comments and elaborate for the record, if you wish, and so if you could try to adhere in your sum-

mary to about 5 minutes of testimony, then we will get to Q and A.

With that, I would like to yield to my distinguished ranking minority member, Charlie Rangel, and while it is an exception to our rule, I would like to also yield after Mr. Rangel to Mr. Gibbons, since he is the original author of the CBI parity bill for comment.

Mr. RANGEL. Thank you, Mr. Chairman, and I am deeply appreciative of the fact that you will recognize Mr. Gibbons, who our Members so well remember first sponsored this legislation and visited so many of the islands. It was Mr. Gibbons that had the best legislative hearing I have ever seen.

All he did was go from island to island and saw where the goods were manufactured and every time he saw a city and town, he said who represents that city in the United States because it was abundantly clear our friends in the Caribbean were not only good partners, but they certainly were good buyers of our goods.

So now we move forward here and want to make certain that what we have done with the North American Free Trade Agreement does not adversely affect the agreement we made with our friends in the Caribbean, and we are very anxious to move on this because it was a part of the promise that we made to them. We have concerns about the American workers and our industries over here, but I think that it was Dan Rostenkowski that said friends do not forget friends.

So I would like to yield at this time to my distinguished friend, Sam Gibbons, who has provided leadership in this as well as so many other trade areas.

Mr. GIBBONS. Charlie, I thank you very much. I want to first welcome—and I always want to call him Governor Graham because he was such a distinguished Governor for 6 years—8 years, excuse me, and now U.S. Senator for some years, and he has been the chief proponent in the Senate of the Caribbean Initiative. He has been the sparkplug over there that has kept it moving when we needed a friend.

I also want to comment that we have had an unexpected result from the Caribbean Basin Initiative. The traditional thinking goes if you open your market, particularly if you open your market like we did in the Caribbean, unilaterally, to countries to trade with you, you are going to suffer a trade deficit. But just the opposite has occurred. I think as one of the best illustrations we have had in a long time of the benefits of free trade, while we unilaterally opened our markets to the Caribbean, or practically opened them, the trade balance moved from a negative balance against the United States to a very positive balance, and it has stayed that way over all the years.

The longer we keep our market open, the greater our trade balance grows with the Caribbean. That is remarkable further because our trade balance with the Caribbean started off negatively.

Well, the Caribbean needs our friendship and we need their friendship. We work together well. I am happy to have participated in all of this and have gotten such fine support from you, Mr. Rangel, Mr. Crane, and from the folks in the Caribbean, and from Governor-Senator Graham. Thank you, Mr. Chairman.

[The opening statement of Mr. Ramstad follows:]

OPENING STATEMENT OF HON. JIM RAMSTAD

Mr. Chairman, thank you for calling this hearing today to explore the impact of the North American Free Trade Agreement on our trading partners in the Caribbean Basin.

Clearly, it is important to maintain economic strength in the growing nations of the Caribbean Basin. The original intent of the Caribbean Basin Initiative (CBI) was to respond to the economic crisis in the Caribbean by encouraging industrial development through preferential access to the U.S. market.

Since its inception in 1984, we have witnessed the increasing political and social stability in this vital region. However, legitimate concerns have been raised about the impact of NAFTA on these nations.

It is entirely appropriate and important to consider the impact NAFTA has had on the economic potential of this area.

Mr. Chairman, thanks again for calling this hearing. I look forward to hearing Dr. Rivlin's testimony and to exploring in greater depth this important issue.

Chairman CRANE. Thank you very much and now Senator Graham, would you proceed with your testimony.

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

Senator GRAHAM. Mr. Chairman, members of the subcommittee, I am honored to address you today and to join with my colleagues from Florida, Mr. Gibbons and Mr. Shaw, in expressing my support for the Caribbean Basin Trade Security Act, H.R. 553. I would like to express my thanks to Congressman Crane and to the other Members of the House of Representatives who have added their support to this important legislation.

I am pleased to announce that I will be introducing similar legislation in the Senate in the very near future. With many of you, last December I attended the Summit of the Americas in Miami. At the summit, Vice President Gore pronounced the administration's firm commitment to Caribbean trade.

The Vice President stated, "The United States recognizes that free trade and enhanced investment flows are critical to sustainable development. We are seeking to further strengthen our commercial ties, including the earliest possible passage of the interim trade program * * *.

"President Clinton and I remain as committed to this key program as we were when I unveiled it to you last May in Tegucigalpa. As soon as the new Congress is seated in January, we pledge to press vigorously to win passage of the interim trade program as a stepping stone to full partnership in a free trade relationship." Mr. Chairman, the legislation which you have introduced takes a critical step toward that goal of laying the basis for eventual accession of the CBI countries to NAFTA.

Our Caribbean neighbors, whose economies are inexorably linked with North America, must be among the first to join the NAFTA. Your legislation calls for a 6-year program after which the CBI nations would be allowed the opportunity to negotiate accession to NAFTA or to enter into an independent free trade agreement with the United States. In the last decade, the United States has supported and encouraged the movement by the Caribbean and Central American nations toward democracy and trade and investment liberalization.

Today, democracy rules in all the nations of the Caribbean Basin with the notable exception of Cuba. There is probably no region in the world that has as many flourishing democracies as does the Caribbean Basin. This year alone eight nations in the region are holding free elections. For many nations, political stability is by no means guaranteed, and as we saw in the painful lesson of Haiti, economic and political instability in the Caribbean region can bear enormous cost to the United States.

It is in the vital interest of the United States to see the Caribbean Basin grow economically for several reasons: First, to maintain the political stability of the region; second, to improve the economic conditions, which will deter illegal immigration, which will deter political instability, and which will provide a bulwark against illegal drug trafficking. But at a time when economic growth is more important than ever, members of the Caribbean Basin Initiative have faced an unintended challenge. Excluded from the NAFTA, CBI nations find themselves at a disadvantage to Mexico.

I would refer the members of the subcommittee to the chart to my right, which is based on statistics developed by the U.S. Department of Commerce.

Before NAFTA, the growth rate for apparel imports from the CBI nations and Mexico were at 20 percent per annum. Since NAFTA, Mexico's growth rate has jumped from 20 to 45 percent. CBI nations have dropped from 20 to 10 percent. H.R. 553 addresses this situation by extending NAFTA benefits to CBI countries.

Mr. Chairman, in deference to your request as to brevity, I will ask that the balance of my remarks be submitted for the record and will summarize by saying that I believe that dealing as quickly as possible with this unintended consequence of the NAFTA, a consequence that has the potential of eroding much of the economic gain that has occurred in the Caribbean Basin over the last dozen years, is an urgent matter for the Congress.

I admire the leadership that you have taken. I appreciate the fact that the subcommittee is holding this hearing today and hope that at the earliest possible date, this subcommittee, the House of Representatives, and the Senate will be able to send to the President for his signature legislation that will establish parity between the CBI nations, Mexico, and a framework for the further economic integration of the Caribbean Basin and North America. Thank you.

[The prepared statement follows:]

STATEMENT OF SENATOR
BOB GRAHAM OF FLORIDA

Mr. Chairman, members of the Committee, I am honored to address you today and to join my colleagues from Florida, Mr. Gibbons and Mr. Shaw, in expressing my support for the Caribbean Basin Trade Security Act (H.R. 553). I would like to thank Congressman Crane and Congressman Gibbons for their longtime leadership on this important matter.

I am pleased to announce that I will be introducing a similar bill in the Senate in the near future.

I attended the Summit of the Americas in Miami this past December. At the summit, Vice President Gore pronounced the Administration's firm commitment to Caribbean trade. He said: "The United States recognizes that free trade and enhanced investment flows are critical to sustainable development. We are seeking to further strengthen our commercial ties, including the earliest possible passage of the Interim Trade Program...President Clinton and I remain as committed to this key program as we were when I unveiled it to you last May in Tegucigalpa. As soon as the new Congress is seated in January, we pledge to press vigorously to win passage of the Interim Trade program, as a stepping stone to full partnership in a free trade relationship."

The Crane/Gibbons bill takes a critical step towards that goal by laying the basis for the eventual accession of the CBI countries to NAFTA. Our Caribbean neighbors, whose economies are inextricably linked with North America, must be among the first to join NAFTA.

Crane/Gibbons calls for a six year program, after which the CBI nations would be allowed an opportunity to negotiate accession to the NAFTA or to enter into independent free trade agreements with the United States.

In the last decade, the United States has supported and encouraged movement by the Caribbean and Central American nations toward democracy and trade and investment liberalization. Today democracy rules in all of the nations of the Caribbean Basin, with the notable exception of Cuba. This year alone, eight nations in the region are holding free elections. For many nations political stability is by no means guaranteed, and as we saw in the painful lesson of Haiti, economic and political instability in the Caribbean region can bear enormous costs to America. It is of vital interest to America to see the Caribbean

Basin grow economically for several reasons. First, to maintain political stability in the region. Second, improving economic conditions will deter illegal immigration, which has been draining our resources and stoking the fires of resentment within American communities. Migration is also hurting our Southern neighbors - some of their youngest and brightest citizens are permanently leaving their shores. Third, economic stability in the Caribbean Basin would reduce illegal drug trafficking and allow greater cooperation between nations to enforce anti-drug policies.

But at a time when economic growth is more important than ever, Members of the Caribbean Basin Initiative (CBI) have faced an unintended challenge. Excluded from NAFTA, CBI nations find themselves at a disadvantage to Mexico. According to Department of Commerce statistics, before NAFTA the growth rate for apparel imports from CBI nations and Mexico were at 20%. Since NAFTA, Mexico's growth rate has jumped to 45%, while CBI nations have dropped to 10%. H.R. 553 addresses this situation by extending NAFTA benefits to CBI countries.

The Crane/Gibbons bill was crafted with special sensitivity to American jobs. The bill would extend coverage to all manufactured products which are granted preferential treatment under NAFTA. Currently, most American imports of these products come from Asia, with the Caribbean Basin only supplying a small percentage of these goods. There is little U.S. production of many of these products, meaning that efforts to promote CBI production would displace other imports, not U.S. jobs. In fact, U.S. companies and workers benefit from co-production with the region which allows them to compete against Asian imports while using U.S. components and machinery in production. These are the same competitive benefits that the U.S. sought in enacting the Caribbean Basin Initiative over a dozen years ago. It makes no sense that American companies earlier prompted by CBI to structure similar operations in the Caribbean Basin region should now be penalized.

The new bill provides equal coverage for all textiles and apparel as was provided for Mexico under NAFTA. This is a necessary remedy, as there is evidence that production is leaving the Caribbean Basin for Mexico because of differences in trade treatment, not for economic and efficiency factors.

The benefits of increased trade with the Caribbean Basin, whose

market is our tenth largest, far outweigh the potential costs from the reduction of tariffs. By promoting trade, we can discourage dependence on American aid. In addition, economic growth would give the people of the Caribbean Basin more buying power to purchase American goods.

The passage of a CBI parity bill is most pressing if we are to avoid upsetting the current stability and democracy in the region. I know that the sponsors and cosponsors of H.R. 553 are firmly committed to passing this important legislation with minimal delay. I am encouraged by the strong support we have received from both sides of the aisle for the Crane/Gibbons bill and for my proposed legislation, and I look forward to seeing this endeavor come to fruition. Thank you.

Chairman CRANE. Thank you very much, Senator Graham, and without objection any materials that any of the witnesses have will be submitted for the record.

Mr. Rangel.

Mr. RANGEL. Senator, I only wanted to thank you for the leadership that you have constantly provided in this area. You have certainly proven yourself to be a true friend of the Caribbean. I hope that soon we will be able to allow Cuba to enter into trade as well as become a Democratic society; and we can continue to work together for a world that is based not on ideology, but on freedom, free trade, and improving the quality of life for all in this hemisphere.

So thank you for the leadership that you have consistently provided. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. I do not have any questions at this time. I think the Senator's explanation will answer my questions. Thank you very much.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. I have made my statement and I want to thank Senator Graham for coming again. I will continue to work with you, Senator.

Senator GRAHAM. Thank you.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Senator, nice to see you here. Just one question. Last year, I think we had a $2 billion or $1.8 billion trade surplus, to be exact, with the Caribbean Basin. How, in your judgment, would enactment of this legislation ensure that U.S. exports to the Caribbean remain at high levels?

Senator GRAHAM. In two ways. Immediately, by protecting the strong economic growth that has occurred in many of the CBI nations. The area of job creation, which has flourished the most, has been the apparel industry, which is the very industry that is now the most challenged by the absence of a level playing field as between Mexico and the CBI nations.

But, second, in a longer range, this legislation will lay out a 6-year road map for closer economic ties between the CBI nations and the United States and the other members of NAFTA, which will help to sustain and enhance the economic prosperity of the Caribbean and North America and our very strong cultural and political ties.

Mr. RAMSTAD. Well, thank you very much, Senator. I certainly agree the quicker we extend NAFTA parity to the Caribbean Basin, the better. Not only from an economic standpoint, from a self-serving standpoint, but also from a political standpoint in terms of the stabilization of the region.

Thank you very much, Mr. Chairman.

Senator GRAHAM. Thank you.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. I have no questions.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman. Thank you, Senator, for your testimony and for all the work you have done on this issue.

I come at this with a different perspective because I represent a district that has thousands of apparel workers in the southern part of Virginia. You have mentioned the challenges to the CBI apparel industry.

Certainly, we have challenges ourselves to our own industry and later today we will hear from Tom Mason, who owns one of the companies in my district, talking about those challenges.

One of the challenges, of course, for us, is that we are trying to strike the balance, the proper balance, between the public policy decisions that allow us to assist other nations around the world and the need to support the jobs we have here in our country.

To that extent, I think a good number of the exports that are moving to the CBI nations are due to the 807 and 807(a) programs. These programs allow companies to make and cut fabric here and send the pieces to the Caribbean nations. They in turn make apparel out of that and send it back to this country.

Much of the exporting that goes on is those raw materials, or those cut goods, that are sent to CBI nations. One of the concerns I have about this particular proposal is that there is the possibility that the CBI nations would have an exemption to what we call the yarn forward rule; and, in fact, might not use our fabrics, but could use fabrics from other countries, thereby diminishing the exports we are able to send. The bottom line is that more jobs in our own district would be lost.

I do not know if you have any comments or any thoughts about that provision. I guess it is called the TPL provision, and whether that would be a necessary part of this particular legislation.

Senator GRAHAM. First, as you have stated, Mr. Congressman, this relationship between the Caribbean Basin countries and the United States has been one of mutual benefit in terms of textile and apparel, because the vast amount of the work that is done in the CBI countries is done under a program in which the fabric has to be produced in the United States and cut in the United States. It is then sent to a CBI country for the labor-intensive sewing and then returned to the United States. So there are benefits in both places.

The reality is that the labor-intensive work, if it were not done in our neighboring countries in the Caribbean Basin, would most likely be done in some distant part of the world in which the United States would have none of the economic benefits. That was the basic premise that underlay the Caribbean Basin Initiative when it was adopted a dozen years ago.

The issue before us today is that NAFTA has granted to Mexico some benefits which are greater than those that had been granted to the CBI countries, and is having the unintended effect of drawing investment and jobs from the CBI countries to Mexico. This chart indicates the potential of that relocation.

This bill is predicated on the goal of creating parity as between the CBI countries and Mexico; therefore, provisions which are in this bill for the CBI countries are the provisions that were contained in NAFTA vis-a-vis Mexico. The fundamental issue is: Is it in our national interest to have a tilted playing field of economics, with Mexico having benefits that are greater than the CBI countries, or should we give to the CBI countries, for a 6-year period,

a level playing field, with parity in treatment, and during that period move toward a closer bilateral or multilateral grouping of economic relations between the Caribbean and the United States?

Mr. PAYNE. I think I agree with most everything you have said. I think in this instance, though, with TPLs, there may be a difference between what will go on in NAFTA and what we are proposing for the CBI. That is one of the things I want to ask the administration about.

But I see my time is up. Thank you very much, and I will comment later on some of these numbers. I think your chart is correct, but there are other numbers I would like to point out as well. Thank you Senator.

Senator GRAHAM. Thank you, Mr. Payne.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. I have no questions, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. No questions.

Chairman CRANE. Mr. Camp.

Mr. CAMP. No questions.

Chairman CRANE. Well, I want to thank you, Senator, for your testimony, and I concur wholeheartedly in your conclusion about bringing stability, prosperity, and democracy to the region. That is our 12th largest market, and it is vitally important to our mutual interest to guarantee we get passage as soon as possible. I look forward to working with you on the Senate side to achieve that goal. Thank you.

Senator GRAHAM. Thank you very much, Mr. Chairman, and I want to say I particularly appreciate your affording the opportunity for so many of the representatives of the Caribbean Basin countries to come and talk with you directly about how much this means to their future stability and prosperity at this and their relations with the United States. I think you are providing a very constructive opportunity for learning both in this country and in the Caribbean about how much we share in common.

Chairman CRANE. Thank you, Senator.

Our next panel is—no, wait, Congressman Deutsch is before our panel with the representatives of the administration.

STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DEUTSCH. Thank you, Mr. Chairman. I appreciate the opportunity to just share a few thoughts with you this morning. I have some testimony that I would like to submit for the record.

As you are probably aware, my district is the district closest to the Caribbean. I represent south Florida, extreme south Florida and the Florida Keys. This is an issue which has a direct effect in terms of south Florida in many ways. It has a direct effect on the Nation as well, and I know Senator Graham highlighted some of that, and you have an excellent list of witnesses who, I believe, will be able to highlight it even better than I can. But if I can share a perspective I have from where I sit, what I see, I would like to do that in just a couple of seconds.

Specifically, before NAFTA, this was a trade relationship that was working incredibly well for both countries for all of the goals

that we have: free trade. In fact, really, in a sense, it was a true free trade agreement, in many ways even truer than what NAFTA is, and working well.

The effect from NAFTA is very real, and I have met with companies in south Florida that have seen entire facilities—because the facilities really are the equipment—leave the CBI countries and go to Mexico. Actually entire plants leave. That graph is really the key thing. This is a phenomenon that is not an anecdotal phenomenon. It is a real phenomenon that is happening.

Let me again emphasize that a little bit, though. We have just had the Miami summit, at this point a couple months ago in Miami, where we have seen one of the successes of our generation, of this century, in the democratization of the Western Hemisphere. It is a growing democracy. It is a young democracy throughout the hemisphere, but it is a fragile democracy.

To say differently would not be looking at the political realities. I think all of us understand that free markets, and really economic opportunity and growth, are essential components to the type of governments that we want to see continue to exist in the Caribbean Basin.

Without this legislation, my fear is really that the reality on the ground in these countries is getting less stable. That is a real phenomenon. I have had the opportunity to speak to some American ambassadors that serve in the region and, unfortunately, that is what they are saying; that is what they are seeing; that is what anyone who is visiting the region, talking to the leaders, talking to the businesspeople, talking to the elected officials in those countries are seeing.

We have the threat of the existence, the creation of narcotics governments again, some of the worst types of conditions that we can imagine returning, not just in the Caribbean but, potentially, to Central and South America as well. This is critical legislation for a much bigger picture than just south Florida.

I think we are talking at the level of freedom for this region, for the Western Hemisphere, and even, I would say, for the world. Thank you, Mr. Chairman.

[The prepared statement follows:]

PETER DEUTSCH
20TH DISTRICT, FLORIDA

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SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS

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STATEMENT OF CONGRESSMAN PETER DEUTSCH
BEFORE THE WAYS AND MEANS TRADE SUBCOMMITTEE
FEBRUARY 10, 1995

Thank you Mr. Chairman for allowing me the opportunity to testify on HR 553, the Caribbean Basin Trade Security Act. It is without reservation that I come forward to support this desperately needed legislation which will level the playing field for the nations of the Caribbean Basin. This bill would grant NAFTA-like benefits to the CBI nations allowing them time and the opportunity to negotiate a bilateral free trade agreement with the United States.

Central American and Caribbean trade represents the only area in which the United States has maintained a trade surplus for 8 straight years, and yet, the United States has unintentionally handicapped one of its most loyal and lucrative trading partners through the passage of another trade agreement. As the nations of Central America and the Caribbean predicted, the passage of NAFTA did cause disinvestment in the region in favor of Mexico. While many industries moved to Mexico to take advantage of the duty and quota free access to the United States, some industries chose to stay recognizing they had a trained and stable work force.

Now, in the face of the peso's devaluation, Mexican labor costs are undercutting labor costs in the region to the extent that moving is nearly irresistible. This recent event has exacerbated an already horrible situation. Recognizing the effects of NAFTA on the Caribbean and Central America were unintentional, we are duty bound to remedy this regrettable problem. Implementing parity for the nations of Central America and the Caribbean now comes down to a basic issue of fairness. The United States has been a long time supporter of the Central American and Caribbean region, through programs like the CBI. It is important that we not fail in the last and most crucial step in helping the region to move toward negotiating a full free trade agreement with the U.S.

It is within Congress' ability to correct this situation, and I look forward to working with Congressmen Crane and Gibbons, two steadfast advocates for the region, to make this a reality. In the Senate, Senator Bob Graham (D-FL) is preparing to introduce similar parity legislation. Indeed, the Administration has also expressed on many occasions its support for parity creating the opportunity for a truly bipartisan effort.

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Chairman CRANE. Thank you, Mr. Deutsch. I would like to yield now to our colleague, Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and thank you, Mr. Deutsch, for your testimony. I certainly think you are doing a good job of representing the southern part of Florida.

My own district, as I had just pointed out to Senator Graham, views this a little bit differently, and that is because we have a number of apparel facilities, a number of apparel workers. We have had these jobs for a long time, in our own district in southern Virginia, as we do in other parts of the South, in fact, all over the country, and we have some concerns about this as it relates to our own ability to compete.

What I would like to do is just talk about this chart for just a minute, since I did not have time to do that when the Senator was here. I think that chart is exactly right, but let me talk about some numbers behind that chart.

I think what is happening is, when you compare percentages, Mexico started with a very low base and the CBI countries started with a relatively higher base. In absolute dollars for the period of time that we can look at since NAFTA has passed, and that is the first 11 months of 1994, the apparel imports from the Caribbean nations were $4.1 billion. Mexico had $1.7 billion, so there are 2½ times as many imports, apparel imports, coming into this country now from the Caribbean nations as from Mexico.

It is also important to understand that last year, during the same period of time, the apparel imports from the Caribbean actually grew at a rate of 14 percent. So it is not that the CBI program is not continuing to work. It seems that this is a relationship that is continuing to work, and whether we need, then, to change and make this an even better deal, I think, is certainly questionable, given the fact that the growth rate, as NAFTA was in place, was some 14 percent.

My own concern, I guess, gets back to an industry that is an important industry. It is an industry that employs a disproportionate number of people who do not have high skills, therefore, it is difficult and somewhat expensive if these people lose their jobs in this particular industry and have to find other jobs.

Generally, and certainly in my district, the apparel concerns are in small rural communities where there are no other opportunities for people to find other jobs, and it is very difficult once these individuals lose their jobs.

I would say, too, that the apparel workers in my district, and we have thousands, in fact, tens of thousands of apparel workers, the loss of jobs impacts especially severely on women and minorities in our district.

So as we think about this and as we think about what is the right public policy decision for us as it relates to the Caribbean nations and for parts of our own country, I would hope certainly that we would consider parts of the country like the part that I represent as we try to strike the right balance.

I thank you very much for your testimony, and if you would like to respond to any of this, please do so.

Mr. DEUTSCH. Mr. Chairman, if I can respond. Clearly, your task is a balancing task, and what Mr. Payne mentioned is clearly a fac-

tor. I guess what I am doing is really highlighting some of the balance that I see in terms of the Caribbean countries and the country as a whole, particularly, again, south Florida and Florida. I think the balance was a little unglued by passage of NAFTA, both for the interests that you have and the interests I have as it affects the Caribbean countries.

The reality is, if we do not do this legislation, we should be aware of the consequences. The destabilization in that region of the world is a very real phenomenon. It is not an imaginary phenomenon. I think by the end of today you will hear direct testimony about that. Whether we will do direct aid to those regions of the world to try to help them, which I do not think there is much support for in the Congress, or a systematic policy of this Congress to try to foster competitive industries throughout the world—I mean, if we have learned anything in the United States of America, our economy, the jobs in your district, the jobs in my district, the lifestyle and the standard of living of everyone in this country is tied to a world economy.

If we do not have a strong world economy, this subcommittee and the leadership of you and Mr. Gibbons for a long time have really shown that this subcommittee has really been at the leadership of that. That is the lesson of world history; that we internalize. The country understands that we need to protect our individual concerns, but without this strong world economy, I think we will see severe adverse impacts of the lifestyle of everyone in this country.

Mr. PAYNE. I don't disagree with anything you have said, however, I do not think there is evidence to show that the policies we have in place today are destabilizing the Caribbean——

Mr. DEUTSCH. As I said, I think by the end of today your testimony will point out some of that as well, not through anecdotal, but I think the facts will support what I have said. Thank you, Mr. Chairman.

Chairman CRANE. We thank you for your testimony, Colleague Deutsch, and now I would like to welcome the administration witnesses: Ambassador Charlene Barshefsky, who is the Deputy United States Trade Representative; and she will be accompanied by Ambassador Jennifer Hillman, the chief textile negotiator, United States Trade Representative; and Anne Patterson, the Deputy Assistant Secretary for Central America, the State Department.

You may proceed when you are ready, Ambassador Barshefsky

STATEMENT OF HON. CHARLENE BARSHEFSKY, DEPUTY UNITED STATES TRADE REPRESENTATIVE, ACCOMPANIED BY HON. JENNIFER HILLMAN, CHIEF TEXTILE NEGOTIATOR, UNITED STATES TRADE REPRESENTATIVE; AND ANNE PATTERSON, DEPUTY ASSISTANT SECRETARY FOR CENTRAL AMERICA, STATE DEPARTMENT

Ms. BARSHEFSKY. Thank you very much, Mr. Chairman. It is a pleasure to appear, again, before you today. If I may ask my full statement be submitted for the record, I will simply summarize.

Chairman CRANE. So ordered.

Ms. BARSHEFSKY. The bipartisan support that Congress has given to the Caribbean Basin Initiative since its inception has helped U.S. efforts to promote economic development and democ-

racy in the Caribbean region. We are gratified that this bipartisan tradition is continuing with H.R. 553.

Let me say at the outset that the administration supports the goals and ideals of H.R. 553. We understand the NAFTA has had unintended effects on investment in the Caribbean region and that many of these nations are interested in eventual free trade agreements with the United States.

The administration remains convinced, however, that the best way to achieve our shared goals for Caribbean Basin trade and investment is through a step-by-step approach. We need to encourage the CBI countries to make improvements in their trade-in investment, in intellectual properties regimes— now in preparation for the broad set of obligations that later will be included in a full FTA.

Trade preferences for the CBI should be consistent with the direction of overall U.S. trade policy and exchange of mutual benefits and obligations. Before I outline the administration's position on H.R. 553, let me review briefly the CBI.

In 1984, the CBI provided the President with authority to proclaim duty-free treatment for all products except textiles and apparels subject to agreements, footwear, petroleum, categories of flat goods and gloves, leather apparel, canned tuna, and a minor category of watches to countries meeting the law's conditions.

In 1990, as you know, the CBI was made a permanent program, but products previously excluded remained excluded despite substantial efforts to broaden program benefits. CBI benefits are now granted to 24 nations.

The executive branch, in 1986, created the guaranteed access level, the GAL, quota program for CBI apparel exports. The CBI countries may ship virtually unlimited quantities of apparel and textile products made from U.S. cut and formed fabric. The CBI has benefited the Caribbean Basin and the United States.

Two-way trade between the United States and the region has risen from $15 billion in 1984 at the program's inception to $22 billion in 1993. U.S. imports of products entering under the CBI's provisions have tripled and our imports of apparel from the region have also increased sharply.

Our exports to the region have grown dramatically as well, turning the $2 billion trade deficit into about a $2 billion trade surplus. We want to build on this mutual success. Let me suggest ways in which we might do that.

As you know, following implementation of the NAFTA, the CBI countries became increasingly concerned that certain of their benefits under the CBI would be eroded and investment would be diverted to Mexico, principally in the textile and apparel sector. After analyzing closely the potential effects of NAFTA, the administration developed proposals to address the region's concerns and these proposals became known as the Interim Trade Program, or the ITP, which unfortunately, could not be enacted last year.

This program would have provided CBI countries the same tariff and quota treatment Mexico enjoys under the NAFTA for textiles and apparel products meeting the NAFTA rules of origin. We focused on textiles and apparel because it is the largest product category for the Caribbean, and plainly the most important.

The remaining categories that have traditionally been excluded from the CBI, including petroleum and other products, are already either of low duties or the Caribbean is substantially more competitive than Mexico or under the NAFTA tariff decreases would have taken between 10 and 15 years. In other words, there was little economic benefit there.

With respect to H.R. 553, the single most important objection that the administration has to the bill as currently drafted is that the bill provides benefits without corresponding obligations on the part of the Caribbean nations.

We believe that tariff proclamation authority for the President rather than legislated tariffs should be the way to proceed under this program for five reasons, and let me just mention those and then I will stop.

First of all, we believe it critical that the Caribbean improve its intellectual properties rights regime if it is to diversify its economy and attract higher technology investment. We believe it is also critical that the Caribbean protect U.S. investment that is there and encourage further private investment so as to eliminate the need for preference programs in the future. Tariff proclamation authority would help us accomplish those goals. The provisions of H.R. 553 would not.

Second, the administration believes that it should be negotiating FTAs with countries that are ready; that is, that are willing and able to undertake the very serious obligations of an FTA.

H.R. 553 and the NAFTA implementing law indicate that Congress wants the administration to negotiate only with countries that can effectively implement the agreement. The CBI nations must begin now to do more to get ready for free trade than they have done thus far.

Third, with a 6-year grace period under the bill, there may be a temptation to delay reforms in some CBI nations. The current government may see that as something for their successor to implement while they get the credit for additional preferences. That may well perpetuate benefits with no reforms.

Fourth, a 6-year grace period could also create an unfortunate precedent for future FTA negotiations. Countries of a lesser level of development, and there are many other than in the CBI, could believe they, too, should receive special benefits because of that difference in level of development without undertaking obligations.

Last, once the program has been in effect for 6 years, we are very concerned whether, in fact, program benefits could be withdrawn.

We know the CBI can adjust to the kinds of ITP conditions we had set forth in proposed legislation last year. Indeed, we were making progress with a number of the CBI nations on both bilateral investment treaties and intellectual property rights agreements last year. That progress came to an absolute halt once the ITP program was dropped from the Uruguay round implementing bill.

So, Mr. Chairman, let me say that we support very much the goals you have for the Caribbean region. We want to work with you and members of the subcommittee. There are a number of areas where we do have some suggestions in the bill as proposed and they are outlined in my testimony, but of particular concern is the

administration's view that this program should be balanced in terms of benefits and obligations.

Thank you very much, sir.

Chairman CRANE. Thank you, Madam Ambassador.

[The prepared statement follows:]

ADMINISTRATION STATEMENT
BY AMBASSADOR CHARLENE BARSHEFSKY ON H.R. 553
THE CARIBBEAN BASIN TRADE SECURITY ACT
BEFORE THE TRADE SUBCOMMITTEE

INTRODUCTION

Mr. Chairman, thank you for the opportunity to submit the Administration's comments on H.R. 553, the "Caribbean Basin Trade Security Act of 1995."

The bipartisan support Congress has given to the Caribbean Basin Initiative (CBI) since its inception has greatly assisted U.S. efforts to promote economic development and democracy in the region. The Administration appreciates that the sponsors of H.R. 553 are continuing this bipartisan tradition.

With almost all countries in the Caribbean Basin embracing open markets and free elections, the United States has a unique chance to help these countries achieve long-term prosperity. H.R. 553 can be a very constructive catalyst to this process. This bill recognizes that access to the U.S. market is a powerful stimulant to broadly based economic development.

Before I outline the Administration's position on H.R. 553, let me review briefly the status of the CBI. While you, Chairman Crane, Congressman Gibbons, Congressman Rangel and some of the other Members on this Subcommittee are well acquainted with the CBI, my summary might be particularly useful for new members. Also, we hope this presentation will put into perspective the Administration's subsequent comments on H.R. 553.

STATUS OF CBI LEGISLATION

CBI I and CBI II

The 1984 CBI provided the President the authority to proclaim duty-free treatment for all products except textiles/apparel subject to agreements, footwear, petroleum, categories of flat goods and gloves, leather apparel, canned tuna and a minor category of watches. Countries must meet the conditions, which are sufficiently flexible to provide the President considerable leverage to encourage reforms without forcing specific action. Only one country has ever been suspended from the CBI program, for failure to cooperate on narcotics matters. CBI benefits are now granted to 24 nations.

The Executive Branch in 1986 created the "Guaranteed Access Level" (GALs) quota program for CBI apparel exports. Under the GALs program, a Caribbean Basin country may ship "guaranteed"

levels -- virtually unlimited quantities -- of apparel and other textile products to the United States made from U.S. cut and formed fabric.

The previous Administration, working very closely with this Subcommittee, in 1989 sought legislation providing duty-free treatment for the excluded products. After nearly two years of effort, all of the products that were excluded from duty-free treatment in CBI I continued to be excluded in "CBI II." The 1990 CBI II was made a permanent program, which greatly improved the inducement to invest in the region.

The CBI has benefitted the Caribbean Basin and the United States. U.S. exports to the region jumped from $5.8 billion in 1983 to $12.2 billion in 1993. This increase of 112 percent represents a rate that is three times the growth of U.S. global exports during this period. A U.S. trade deficit with the region of $2.6 billion in 1984 turned into a surplus of about $2 billion last year.

Countries in the Caribbean Basin are very good customers of U.S. products. About half of their imports come from the United States, and some countries purchase over 70 percent of their goods from the United States

The CBI has, of course, also benefitted the Caribbean Basin. U.S. imports of products entering under the CBI's provisions have jumped by more than 100 percent during the past five years, which is twice the rate of growth of total imports from the region.

Textiles and apparel trade between the United States and the CBI region has shown tremendous growth rates. In 1994, we exported $2.5 billion of fabric and apparel to the CBI countries (annualized data). U.S. imports of apparel from the region have grown by an average of 20 percent per year since 1986.

These summary data illustrate why -- just in trade terms -- it is in the U.S. interest to enhance our relationship with countries in the Caribbean Basin. The United States also wants to promote economic prosperity and stable democracies in the region. And, this Administration has tried to do just that.

Interim Trade Program

Following the conclusion of the NAFTA, CBI countries became increasingly concerned that their trade benefits would be substantially eroded and that investment would be diverted out of their nations. Also, U.S. firms that had invested in the Caribbean Basin expressed their concern about their financial ability to remain in the region.

After analyzing closely the potential effects of NAFTA on the CBI, the Administration developed some proposals to address the region's legitimate concerns. Due to circumstances at the time, these proposals could not be presented as part of NAFTA implementing legislation.

These proposals, refined further to become the Interim Trade Program (ITP) in 1994, were prepared for submission in the Administration's Uruguay Round bill in Congress. In the end, however, on the basis of discussions with this Subcommittee and other Members of Congress, the ITP was not included in the Uruguay Round bill.

Key ITP provisions were inspired by Congressman Gibbons' 1993 proposals in H.R. 1403. The ITP would have included reciprocal commitments from beneficiaries within a specified period of time.

The ITP would have provided CBI countries the same tariff and quota treatment Mexico enjoys under the NAFTA for textiles and apparel products meeting the NAFTA's rules of origin. We focussed on textiles and apparel because our analysis showed this to be the sector most vulnerable to competition from the NAFTA and by far the largest, accounting for about $4 billion of U.S. imports from the region. Furthermore, U.S. manufacturers, which operate partnership production arrangements, have substantial investment in the region.

In addition, we wanted to fashion a bill that would pass quickly without controversy and that enjoyed industry support. We believe the ITP was such a bill.

The next largest imported product after textiles/apparel is petroleum, accounting for about $1 billion of U.S. imports from the region. With an average *ad valorem* duty of about 0.5 percent -- essentially duty-free -- and a long NAFTA phase-out period, we did not want possible opposition to CBI preferences for this

product to impede passage of the ITP.

The other excluded products have a history of political sensitivity in Congress. Footwear, in particular, has generated considerable debate, including attempts to repeal an existing provision of the CBI. None of the excluded products, other than textiles/apparel and petroleum, has been a significant Caribbean Basin export to the U.S. market. If textiles/apparel and petroleum were excluded from the calculation, about 99 percent of the value of the remaining CBI products have entered duty-free.

The ITP would have given the President authority to proclaim new trade preferences. The President would have used this grant of authority to push for additional economic reforms in Caribbean Basin countries. **Before granting ITP benefits**, the President would have required CBI countries to provide enhanced market access for U.S. textiles and apparel.

The ITP also would have required each country interested in receiving **new** benefits to agree in a letter to the U.S. Trade Representative to make **future** reforms. Any country not interested in making reforms would have retained CBI benefits.

The reforms the ITP would have encouraged were intended to improve the investment climate in the CBI countries. Within one year, we would have expected to resolve problems involving existing CBI criteria. We also would have sought improvements in the countries' investment and intellectual property rights (IPR) regimes -- including specific standards within one year and investment and IPR agreements within about three and a half years -- using as leverage the prospect of withdrawing benefits from countries which failed to make substantial progress on these reforms. The ITP also would have encouraged countries to join the GATT/WTO and would have explicitly extended worker rights criteria to the new program.

We selected the ITP's conditions to serve a dual function. They were supposed to help the CBI nations help themselves attract investment -- exactly what these countries wanted. They were also designed to enhance protection for U.S. investors and U.S. manufacturers of IPR-related products.

We believe the ITP would have been an excellent approach for both the United States and the Caribbean Basin. In exchange for accepting two chapters of the 22 chapter NAFTA within a little over three years and for providing some market access for U.S. goods, CBI beneficiaries would have received NAFTA benefits or better for almost all products.

We labeled this approach to be an "interim" program because we viewed the ITP as a step toward an eventual free trade agreement (FTA). We knew that many countries in the region wanted in the future to advance their commercial relationship with us beyond the ITP. But, we also recognized that neither the United States nor most other countries were ready for FTA negotiations. The ITP would have been a "building block" in that process.

Mr. Chairman, as you are aware, the ITP was discharged favorably by the Ways and Means Committee last year. Unfortunately, it had to be withdrawn from the final Uruguay Round implementing bill. Despite these setbacks, the President, Vice President and Ambassador Kantor continued to endorse rapid Congressional action on ITP-type legislation in the new Congress.

COMMENTS ON H.R. 553

Objectives

Thanks to this Subcommittee, we now have the opportunity to

try to pass legislation addressing the legitimate concerns of the Caribbean Basin.

I am very pleased to say that the Administration supports the ultimate goal of H.R. 553, which is to bring CBI nations into NAFTA-type trade agreements. This is the goal that hemisphere's leaders at the Summit of the Americas in December adopted for completing the negotiations of the "Free Trade Area of the Americas" by the year 2005. We welcome Congress' support for this outcome of the Summit, which several of you on this Subcommittee attended along with other Congressional colleagues.

The Administration also recognizes that achieving this objective will take time and will not be easy. We realize that during this process, investment in some sectors in the Caribbean Basin could be affected by the NAFTA. Addressing the potential impact of the NAFTA on the Caribbean Basin remains our focus in any new legislation providing trade preferences.

Product Coverage

Textiles/apparel

As I previously stated, the ITP would have covered all textiles/apparel products that meet the NAFTA rules of origin. Of the products still excluded from the CBI, the textile/apparel sector is the one most likely to be affected by the NAFTA.

With some technical changes to ensure that the bill correctly covers originating products and that tariffs are not inadvertently increased, we can support the provisions of Section 101 of H.R. 553 that provide NAFTA-equivalent treatment for such products.

The ITP would **not** have addressed textiles/apparel products that failed to conform to the NAFTA rules of origin. Mexico negotiated tariff preference levels (TPLs), which allow duty-free and quota-free access for goods that do **not** otherwise meet the rules of origin (i.e., typically goods made with foreign fabric).

There is little economic rationale for TPLs for the CBI countries. Mexico negotiated TPLs to grandfather certain of their established trade in non-originating products. To date, Mexico has exported almost **nothing** under its TPLs. The ITP did **not** include TPLs because there was no demonstrated need for them.

However, we can accept the provisions in H.R. 553, "(B) NAFTA transition period treatment of non-originating textile and apparel articles," giving the Administration authority to negotiate TPLs. Under such authority, we would conclude TPLs where a need exists and in conformity with the consultation requirements of that bill. We would like to offer some technical changes.

We believe the textiles and apparel provisions in this bill would initially cover around three-quarters of the $4 billion of CBI exports to us. And, as our experience under the NAFTA shows, there is considerable incentive for these countries to shift production from non-originating goods to products that qualify under the NAFTA rules of origin. Enacting such treatment would provide very generous benefits to the Caribbean Basin and address their legitimate concern about the potential impact of the NAFTA.

Other Excluded Products

The ITP also would not have included NAFTA-treatment for the other products currently excluded from the CBI. Our assessment when we developed the ITP was that the NAFTA would not adversely impact the Caribbean Basin's competitive ability to export these products to the United States.

Also, as I indicated previously, we saw very little in the way of potential economic benefits to be gained by attempting to provide NAFTA benefits for these products. In addition to the relatively small value of U.S. imports from the Caribbean Basin, the duty phase-out under the NAFTA is relatively long -- 15 years for most rubber footwear, 15 years on leather products, 15 years on canned tuna, 10 years on non-rubber footwear, 10 years on petroleum, and 10 years on leather products.

For these reasons, we would not want debate over including these sensitive products to delay or, worse, to sidetrack NAFTA-equivalent treatment for textiles and apparel. Obtaining NAFTA benefits in this sector alone would be viewed by the region as a major achievement.

While we can understand the rationale for covering all products, we believe that deleting subsection "(3), NAFTA transition period treatment of certain other articles originating in beneficiary nations," from H.R. 553 would expedite enactment of this bill.

Means of Achieving Objectives

Mr. Chairman, let me now turn to the means of providing these enhanced trade preferences for the Caribbean Basin, comparing the ITP to H.R. 553.

The ITP would give the President the authority to proclaim benefits. The President would then provide benefits to countries that are prepared to meet NAFTA-type conditions in a few areas. In principle, as long as a country is making progress toward meeting the conditions within a specified period of time, the country would retain its benefits during the transition period.

H.R. 553 would automatically provide benefits, not by proclamation but by law. While the President would have the authority to suspend benefits on the basis of current CBI criteria, no new conditions would be imposed. Benefits would expire in six years or when a country has concluded an FTA with the United States, whichever comes first.

Preference for ITP

Mr. Chairman, let me explain the reasons the Administration strongly prefers the ITP approach.

First, proclamation authority would allow the President to resolve outstanding trade difficulties by holding out a carrot -- new trade benefits -- instead of jabbing with a stick -- withdrawing new trade benefits. While the effect may be the same, the perception is quite different.

And, there are problems that need to be addressed. Indeed, some of these issues have generated Congressional interest. While most of these difficulties are not so substantial that we would want to withdraw CBI benefits, we believe they should be resolved before we provide new benefits.

Second, we believe the ITP would provide security for investors. While the ITP would require CBI nations to undertake NAFTA-type obligations in a few areas and in stages, no country would be compelled to enter a full FTA. Negotiations would occur on an FTA when the United States and the other nation were ready.

This security would particularly help the smaller CBI nations attract investment. For example, what investor would gamble that a small Caribbean nation would be prepared for FTA negotiations compared to a larger Central American country? We might witness investment flowing exclusively to a few CBI nations

that appear to be closest to being ready for FTA negotiations, possibly distorting investment flows. The ITP's obligations would be achievable by even the smaller nations, thus offering similar opportunities.

Third, the Administration believes strongly that we should negotiate FTAs only with "ready" countries -- those willing and able to undertake the serious obligations of an FTA. Enhancing the credibility of U.S. trade policy and maintaining the confidence of the American people in the value of open trade depend on well-conceived and properly executed trade agreements. International trade is in the U.S. economic interest; the American people deserve to see a proven track record of success from our trade agreements.

The Administration is developing criteria to assess when other nations might be "ready" to negotiate and to implement such a complex and comprehensive undertaking as a NAFTA-type agreement. The provisions in section 202 of H.R. 553, "factors in assessing ability to implement NAFTA," are very useful guidelines for the Administration's process.

These provisions also clearly indicate that Congress wants the Administration to negotiate FTAs **only** with countries that could effectively implement the terms of the Agreement. While a number of countries have been making great strides at opening their markets and reforming their economies, it is not clear that any CBI nation is now "ready" for a comprehensive FTA.

Mr. Chairman, the NAFTA implementing law provides additional guidance concerning Congressional goals for FTAs. Recognizing the considerable U.S. resources needed to negotiate and implement an FTA, Congress indicated that it wanted the President to consider those markets which would provide, "the greatest potential to increase United States exports." Congress with good reason is directing us to take into account U.S. commercial interests in setting our FTA priorities.

Fourth, with a six year grace period in H.R. 553, there may be a temptation to delay reforms in some CBI nations. For example, a current government may see this as something for their successor government to implement -- thus allowing them to take the glory of gaining the NAFTA benefits but postponing the NAFTA obligations for his/her successor to handle.

This prospect could lead us to a situation in which benefits are perpetuated with no little or no reforms in the CBI nations, which is not the direction we want to take U.S. trade policy. U.S. firms that invest in the region as a result of duty-free entry into the United States will argue strongly that such preferences must be continued. And, of course, the countries themselves will want to maintain these new trade preferences.

This six-year grace period would also establish an unfortunate precedent for any future FTA negotiations. Other countries would come to expect to receive full NAFTA benefits before beginning to assume NAFTA obligations.

CBI nations can adjust to ITP-type requirements. With just the prospect of the ITP last year, the Administration was making progress in negotiating bilateral investment treaties and IPR agreements in the Caribbean Basin. Jamaica and Trinidad and Tobago, for example, already concluded both of these agreements. Our investment negotiations were well underway in several other CBI countries.

But, when the ITP was deleted from the Uruguay Round bill, our negotiations stalled. And one country informed us that it was dropping provisions implementing the IPR reforms called for in the ITP from its own Uruguay Round legislation as a result.

Finally, we do not know what the U.S. Congress' attitude will be toward implementing new FTAs in the future. For example, H.R. 553 does not include new "fast-track" negotiating authority.

Given this uncertainty, we believe the ITP would be a preferable route.

ADMINISTRATION POSITION

The ITP Approach

Mr. Chairman, the Administration wants to work with you and the other members of this Subcommittee in as constructive a manner as possible. We share the same goals. Let's see how we can achieve them.

If you would like to work on the basis of the ITP -- i.e., providing the President proclamation authority -- we are prepared to submit quickly revisions to H.R. 553. We do not want to delay a bill going forward.

The basic approach of a revised bill would be that in order to receive benefits, CBI nations would demonstrate their interest in the ITP by committing to future actions. CBI nations would be required to implement and to enforce their commitments within specific periods after receiving benefits.

Additional Comments

I would also like to provide this Subcommittee the Administration's views on other sections of H.R. 553. That is, in addition to the change in the implementation process -- from the automatic approach in H.R. 553 to the proclamation procedure in the ITP -- we would like to see the following changes.

Section 2: Findings and Policy

We suggest amending some of the "Findings and Policy" to make them consistent with the approach we are suggesting. For example, in subparagraph (3), the trade benefits being offered would be in the textile/apparel sector. A similar change should be made in subsection (b) on "Policy."

Also, As I have indicated, the Administration supports the goal of creating the "Free Trade of the Americas" by the year 2005. While our preference is for this goal to be achieved by accession to the NAFTA, we would like to leave negotiating flexibility on the approach we ultimately use. For this reason, we suggest inserting the phrase included in Title II of H.R. 553, "or to enter into mutually advantageous free trade agreements," whenever the phrase "accession to the NAFTA," is used.

Title I

Regarding "Title I," I have already addressed the Administration's views on product coverage and providing benefits through proclamation authority. We would like to see these changes reflected in this bill.

The one other section in Title I we propose changing is subsection (4) (D), dealing with the transition period. We agree that the "transitional" trade benefits would end whenever the United States and another country enters a free trade agreement.

What needs to be worked out is the date the benefits would end even if a FTA is not achieved. H.R. 553 proposes that this be "the date that is the 6th anniversary of such date of enactment." The Administration's view is benefits should last at least until the year 2000 -- a date by which the Summit leaders agreed that significant progress would be achieved toward the

objective of concluding the "Free Trade Area of the Americas."

We are concerned about the possible implications of the sugar provisions in section 102, which directs the President to take action if the NAFTA is adversely affecting Caribbean Basin countries. Within the constraints of the existing domestic sugar program and our obligations under the NAFTA and the World Trade Organization (WTO), the President has very little discretion to increase sugar access levels or reallocate market shares. Our WTO obligations prevent the United States from discriminating among countries in allocating overall reductions in access to the U.S. market. We ask that this provision be reviewed in light of U.S. commitments.

Likewise, we ask that section 103, "duty-free treatment for certain beverages made with Caribbean rum," be reviewed to ensure that it does not create a precedent for the treatment of other products in the future.

We have no comments on the rest of Title I, with the exception of some technical corrections.

Title II

Our comments concerning Title II are intended to bring H.R. 553 into conformity with the Administration's overall trade policy. We are also asking Congress to recognize the resource limitations existing in the Executive Branch.

We view section 201 as being unnecessary. We already have meetings with countries in the region. For example, we have established Trade and Investment Councils with every nation in the hemisphere, except Cuba and Haiti. Under these fora, the U.S. Trade Representative and other agencies have held 40 meetings with signatory nations since mid-1990. We, of course, have periodic meetings with ministers outside these fora.

Furthermore, as a result of the Summit of the Americas, we have plans to hold meetings with countries in the hemisphere between now and June. And, in June, we will hold a ministerial session to assess progress toward the goal of constructing the "Free Trade Area of the Americas." This process will resume after the June meeting, leading up to a March 1996 ministerial.

We oppose Section 202 as it is currently proposed for three reasons. First, we question the need for more reports on the Caribbean Basin region. In accordance with the Caribbean Basin Economic Recovery Expansion Act, the Executive Branch is already required to submit four periodic reports on this region. In addition, the Trade Representative includes Caribbean Basin countries in our annual National Trade Estimates Report and in our Annual Report on the U.S. Trade Policy Agenda. The State Department is required by law to prepare annual economic trends reports on each of the Caribbean Basin countries.

These reports consume considerable interagency effort to produce, yet seem to generate little Congressional interest. The Administration is prepared to give any of you these reports, which we believe tells you almost, "Everything you ever wanted to know...," and I know none of you is afraid to ask.

Second, while we understand Congressional interest in obtaining an assessment of "readiness," the outcome might be counterproductive. We know this is not your intention, Mr. Chairman, so please allow me to explain.

Our recent experience highlights the difficulties of making public the Administration's views on countries' "readiness" for FTAs. Under the NAFTA law, the Administration was required to submit two reports, one in May 1994 and the other in July 1994.

These requirements for reports were similar to the section 202 of H.R. 553, except not quite as specific and on a global basis.

Mr. Chairman, I cannot adequately describe the intense anxiety these reports generated in Latin America and the Caribbean and, as a result, throughout the Administration. Ambassador Kantor received numerous letters from, and held a number of meetings with, other trade ministers, whose sole objective was to be listed favorably in these reports. We were told that political relations and investment flows depended on how these reports were worded.

We do not want to go through this experience again for a report which would be very difficult to adequately do.

This brings me to our third objection. H.R. 553 asks the Administration to include in the report a "discussion of possible timetables and procedures to which beneficiary countries can complete the economic reforms necessary..." to become ready for an FTA. For the reasons I have already presented in my statement -- mainly the considerable uncertainty existing in the process of initiating FTA negotiations -- this section cannot be done with any precision.

In addition to those reasons, the economic conditions in countries can change, often quite dramatically. For example, two respected economists, Gary Hufbauer and Jeffrey Schott, recently published a book listing countries' readiness for FTAs based on a range of economic criteria. At least one country highly rated in the book would have been stricken from the list had the book been published only a few months later.

However, we recognize Congress' interest in ensuring progress is made toward meeting the objectives of H.R. 553. With this in mind, we offer an alternative proposal.

We propose providing the Congress a report in five years on U.S. progress in bringing CBI beneficiary countries into the "Free Trade Area of the Americas," including Caribbean Basin countries' willingness to undertake "readiness" criteria. This report would serve as "mid-term review" of the Summit of the Americas trade agenda with respect to the Caribbean Basin. Since the President is already required to report on the CBI in 1999, he would combine the two mandates into one report.

CONCLUSIONS

In conclusion, Mr. Chairman, I would like to compliment you and the other members of this Trade Subcommittee on moving so quickly in this new Congress to propose legislation for the Caribbean Basin. By doing so, you clearly demonstrate the priority this Subcommittee assigns to strengthening further the U.S. relationship with the nations of the Caribbean Basin.

This Administration shares that commitment. We will work closely with you in crafting a bill that achieves our mutually held objectives. We want to construct a bill that helps the Caribbean Basin and is in the best interest of the United States. I hope the ideas presented today will assist in that effort.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. So, do you have suggested amendments that would be in the administration's interests that if they were attached to this bill, the administration could support?

Ms. BARSHEFSKY. Mr. Rangel, we do have a number of ideas and suggestions which we would be very pleased to provide to the subcommittee and if we can work together, I am quite certain we could devise a bill the administration would be very pleased to support, yes.

[The following was subsequently received:]

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506

February 16, 1995

The Honorable Phil Crane
Chairman
SubCommittee on Trade
Ways and Means Committee
U.S. House of Representative
Washington, D.C. 20515

Dear Mr Chairman:

Let me repeat my appreciation for the opportunity to present the Administration's views to you on February 10 during hearings on the "Caribbean Basin Trade Security Act of 1995." At the conclusion of my statement, you requested the Administration's detailed comments on H.R. 553. I am transmitting these comments in the attached paper.

I would like to reiterate that the Administration supports the ultimate goal of H.R. 553, which is to bring Caribbean Basin Initiative (CBI) nations into NAFTA-type trade agreements. This is consistent with the goal that leaders at the Summit of the Americas adopted for completing the negotiations of the "Free Trade Area of the Americas" by the year 2005. We welcome Congress' support for this outcome of the Summit of the Americas.

The Administration recognizes that achieving this objective will take time and will not be easy. We also realize that during this process, investment in some sectors in the Caribbean Basin could be adversely affected by the NAFTA. Attempting to prevent a negative impact of the NAFTA on the Caribbean Basin remains the Administration's focus in any new legislation providing trade preferences.

The Administration is convinced that the best way to achieve our shared goals for Caribbean Basin trade and investment is through a step-by-step approach. We need to encourage the CBI countries to begin making improvements in their trade, investment, and intellectual property regimes now, in preparation for the broad set of obligations that are included in a comprehensive free trade agreement (FTA).

The approach outlined in the Administation's statement before the Trade Subcommittee would be a transitional program; it would be viewed as an interim step toward an eventual FTA. We understand that many countries in the region want in the future to advance their commercial relationship with us beyond CBI-type trade preferences, but we also recognize that most of these countries are not ready for comprehensive FTA negotiations. Our proposal would be a "building block" in that process.

We would propose providing the President the authority to put in place immediately certain trade benefits for CBI countries that make a commitment to the United States to undertake specific improvements in their trade, investment, and intellectual property rights regimes. We would not ask for all the changes up front; rather, we would seek clear commitments to work with us to achieve the improvements within a reasonable period of years.

I have attached a paper setting out in greater detail the key changes to H.R. 553 necessary to implement our proposed approach. In addition, we are suggesting technical revisions which should be addressed regardless of whether the bill is changed to follow our basic approach.

We would welcome the opportunity to work with you on developing a bill that both Congress and the Administration could strongly support.

Sincerely,

Charlene Barshefsky

Proposed Changes to H.R. 553

Background

This memorandum sets forth the key amendments to H.R. 553 needed to change its basic approach to one in which the President is authorized to proclaim NAFTA-equivalent benefits for CBI countries that take steps to meet certain eligibility criteria (such as protecting investment and intellectual property). This approach differs from the current H.R. 553 approach of providing benefits to CBI countries without such commitments, and taking benefits away if the countries have not acceded to the NAFTA or concluded a similar free trade agreement within six years.

In addition to the key revisions to the basic concept, several other technical changes would be necessary to adopt the Administration's approach. The paper also includes other technical proposals on H.R. 553 which should be made even if its basic approach is maintained.

Proposed Amendments

Sec. 2 Findings and Policy

(a) Findings.

page 2, line 15

- Insert "certain" between "to" and "products."

page 2, line 19

- Insert "or a free trade agreement comparable to the NAFTA" after "NAFTA" and before the comma.

page 3, line 6

- Insert "certain" between "to" and "products."

page 3, line 8

- Insert "or a free trade agreement comparable to the NAFTA" after "NAFTA".

page 3, line 9

- Insert "or a in free trade agreement comparable to the NAFTA" after "NAFTA".

Sec. 3. Definitions.

- This section should probably be within Title I, so that the reference in line 12 to "this title" clearly means Title I.

- Insert the following new definition:

"(5) CARIBBEAN BASIN TRADE SECURITY ACT BENEFICIARY COUNTRY.--The term 'Caribbean Basin Trade Security Act beneficiary country' means any beneficiary country with respect to which there is in effect a proclamation by the President designating such beneficiary country a Caribbean Basin Trade Security Act beneficiary country, in accordance with section (4)."

Page 4

- Insert new section 4:

"Sec. 4. Determinations by the President

"The President may determine that a beneficiary country is a Caribbean Basin Trade Security Act beneficiary country if the President finds that such beneficiary country has in effect, or has entered into an agreement with or otherwise made a commitment to the United States to put into effect within a reasonable period of time, measures which--

"(a) are equivalent to measures regarding exporters in Chapter 5 of the NAFTA (Customs Procedures) and which will contribute to the effective implementation and monitoring of the preferential tariff treatment and other benefits provided by this title;

"(b) protect against the false representation of textile and apparel goods as being goods of the beneficiary country in order to circumvent quantitative limitations or other measures applicable to imports into the United States of textile and apparel products from other countries;

"(c) provide, on a nondiscriminatory basis, appropriate market access for textile and apparel products;

"(d) provide adequate protection for intellectual property rights and investment, including where appropriate a bilateral intellectual property rights agreement and a bilateral investment treaty with the United States; and

"(e) meet any other criteria which are deemed by the President to be appropriate for Caribbean Basin Trade Security Act eligibility and to further the

objectives of subsection (c) of section 212 and the policy stated in section (2) of the Caribbean Basin Trade Security Act."

Title I.

Section 101

- Delete "temporary" from the descriptive title of section 101.

subsection (a)

- Replace descriptive title, "temporary provisions", with "TARIFF AND QUANTITATIVE LIMITS PROVISIONS".

paragraph (2)

- Amend as follows:

"(2) NAFTA ~~TRANSITION PERIOD~~ **EQUIVALENT** TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.--

"(A) EQUIVALENT TARIFF AND QUOTA TREATMENT.-- ~~During the transition period~~--

"(i) ~~T~~the tariff treatment accorded at any time to any textile or apparel article that originates in the territory of **a Caribbean Basin Trade Security Act beneficiary country** ~~a beneficiary country~~ shall be identical to the tariff treatment that is accorded during such time under section 2 of the Annex to ~~a like article that~~ **an article described in the same 8-digit subheading of the HTSUS that is an originating good of Mexico** ~~originates in the territory of Mexico~~ and is imported into the United States.~~,~~

"(ii) ~~D~~**d**uty-free treatment under this title shall apply to any textile or apparel article ~~of a beneficiary country~~ that is imported into the United States **from a Caribbean Basin Trade Security Act beneficiary country** and that--

"(I) meets the same requirements ~~(other than assembly in Mexico)~~ as those specified in Appendix 2.4 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the duty free entry of **an article described in the same 8-digit subheading of the HTSUS** ~~a like article~~ assembled in Mexico, **except that in applying**

the requirements of such Appendix 2.4 for purposes of this clause, the term "Caribbean Basin Trade Security Act beneficiary country" shall be substituted for "Mexico", or

"(II) is identified under subparagraph (C) as a handloomed, handmade, or folklore article of such country and is certified as such by the competent authority of such country.~~; and~~

"(iii) ~~N~~no quantitative restriction or consultation level may be applied to the importation into the United States of any textile or apparel article that--

"(I) originates in the territory of **a Caribbean Basin Trade Security Act beneficiary country** ~~a beneficiary country~~, **or**

~~"(II) meets the same requirements (other than assembly in Mexico) as those specified in Appendix 2.4 of the Annex (relating to goods assembled from fabric wholly formed and cut in the United States) for the exemption of a like article assembled in Mexico from United States quantitative restrictions or consultation levels, or~~

"~~(III)~~ **(II)** qualifies for duty-free treatment under clause (ii)**(I) or** (II).

"(B) NAFTA **EQUIVALENT** ~~TRANSITION PERIOD~~ TREATMENT OF NONORIGINATING TEXTILE AND APPAREL ARTICLES.--

"(i) Subject to clause (ii), the **President may proclaim** ~~United States Trade Representative may place in effect at any time during the transition period~~ with respect to any textile or apparel article that--

"(I) is a product of **a Caribbean Basin Trade Security Act beneficiary country** ~~a beneficiary country~~, but

"(II) does not qualify as a good that originates in the territory of **a Caribbean Basin Trade Security Act beneficiary country** ~~that country~~,

"tariff treatment that is identical to the **in-preference-level tariff treatment** ~~preferential tariff treatment that is~~ accorded during such time under Appendix 6.B of the Annex to **an article described in the same 8-digit subheading of the HTSUS** ~~a like article~~ that is a product of Mexico and imported into the United States. **For purposes of this clause, 'in-preference-level tariff treatment' for an article that is a product of Mexico means the rate of duty applied to the article when imported in quantities less than or equal to the quantities specified in Schedule 6.B.1, 6.B.2, or 6.B.3 of the Annex for imports of that article from Mexico into the United States.**

"(ii) **Before any proclamation is issued under clause (i), the President shall determine, after consultation as appropriate with representatives of the United States textile and apparel industry and other interested parties** ~~The United States Trade Representative may implement the preferential tariff treatment described in clause (i) only after consultation with representatives of the United States textile and apparel industry and other interested parties regarding~~--

"(I) the specific articles to which such **tariff** treatment will be extended,

"(II) **the annual quantities of such articles that may be imported at the preferential duty rates described in clause (i)** ~~the annual quantity levels to be applied under such treatment and any adjustment to such levels~~, **and**

"(III) the allocation of such annual quantities among **Caribbean Basin Trade Security Act beneficiary countries** ~~the beneficiary countries that export the articles concerned to the United States, and~~

~~"(IV) any other applicable provision.~~

~~"(iii) ADJUSTMENT OF CERTAIN BILATERAL TEXTILE AGREEMENTS.--The United States Trade Representative shall undertake negotiations for purposes of seeking appropriate reductions in the quantities of textile and apparel articles that are permitted to be imported into the United States under bilateral agreements with beneficiary countries in order to reflect the quantities of~~

~~textile and apparel articles of each respective country that are exempt from quota treatment by reason of paragraph (2)(A)(iii).~~

"(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.--For purposes of subparagraph (A), the United States Trade Representative, **following consultation as appropriate with Caribbean Basin Trade Security Act beneficiary countries, may identify** ~~shall consult with representatives of the beneficiary country for the purpose of identifying~~ particular textile and apparel goods ~~that are mutually agreed upon~~ as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) ~~or~~ **of** Appendix 3.1.B.11 of the Annex.

"(D) BILATERAL EMERGENCY ACTIONS.--

"**(i)** The President may take-- ~~(i) bilateral~~ emergency tariff actions of a kind described in section 4 of the Annex with respect to any textile or apparel article imported from **a Caribbean Basin Trade Security Act beneficiary country** ~~a beneficiary country~~ if the application of tariff treatment under subparagraph (A) to such article results in conditions that would be cause for the taking of such actions under section 4 with respect to a like article **imported from** ~~that is a product of~~ Mexico.~~; or~~

"(ii) The requirement in paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not be deemed to apply to a bilateral emergency action under clause (i).

~~"(ii) bilateral emergency quantitative restriction actions of a kind described in section 5 of the Annex with respect to imports of any textile or apparel article described in subparagraph (B)(i)(I) and (II) if the importation of such article into the United States results in conditions that would be cause for the taking of such actions under section 5 with respect to a like article that is a product of Mexico."~~

paragraph (3) (page 10)

- Delete this paragraph.

paragraph (4) (page 12)

- Delete this paragraph. (Note that the Administration's bi deals with NAFTA Chapter 5 customs procedures in the conditions for finding a country to be a Caribbean Basin Trade Security Act beneficiary country. See above; new section 4).

paragraph (5) (page 12)

- Delete subparagraph (D) (definition of "transition period"

- Insert the following new subparagraph (D):

> "(E) The term 'HTSUS' means the Harmonized Tarif Schedules of the United States."

- On page 13, amend subparagraph (E) as follows:

> "(E) An article shall be ~~treated as having originated~~ **deemed as originating** in the territory of **Caribbean Basin Trade Security Act beneficiary countr** ~~beneficiary country~~ if the article meets the rules of origin for the good set forth in chapter 4 of part tw of the NAFTA, **and, in the case of an article describe in Appendix 6.A of the Annex, the requirements stated in such Appendix 6.A for such article to be treated a if it were an originating good** ~~or in Appendix 6.A of the Annex~~. In applying such chapter 4 or Appendix 6. ~~with respect to beneficiary country~~ for purposes of this subsection, no countries other than the United States and **Caribbean Basin Trade Security Act beneficiary countries** ~~beneficiary countries~~ may be treated as being Parties to the NAFTA."

subsection (b)

- Delete subsection (b) and replace it with the following:

> "(b) TECHNICAL AND CONFORMING AMENDMENTS.--
>
> "(1) Section 212(e) of the Caribbean Basin Economic Recovery Act is amended--
>
> "(A) in paragraph (1), by striking 'paragra (2)' and inserting in lieu thereof 'paragraph (3)';
>
> "(B) by redesignating paragraph (2) as paragraph (3);
>
> "(C) by inserting after paragraph (1) the following:

"'(2)(A) The President may withdraw or suspend the designation of any beneficiary country as a Caribbean Basin Trade Security Act beneficiary country, or withdraw, suspend or limit the application of preferential duty or quota treatment under section 213(b) to any article of a country designated as a Caribbean Basin Trade Security Act beneficiary country if, after such designation, the President determines that as a result of changed circumstances, such country would be barred from designation as a Caribbean Basin Trade Security Act beneficiary country under section 213.

"'(B) Before taking action under subparagraph (A), the President shall--

"'(i) meet the requirements of paragraph (3),

"'(ii) notify the House of Representatives and the Senate at least 60 days before taking such action, and

"'(iii) notify such country of the President's intention to terminate such designation together with the considerations entering into such decision."; and

"(D) in subparagraph (A) of paragraph (3) (as redesignated by subparagraph (B)), by striking 'paragraph (1)' and inserting 'paragraphs (1) or (2)'.

"(2) Section 213(a)(1) of the Caribbean Basin Economic Recovery Act is amended by inserting 'and except as provided in section 213(b)(2),' after 'Tax Reform Act of 1986,'."

"(3) Subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States is amended--

"(A) by redesignating U.S. notes 3 through 6 as U.S. notes 4 through 7, respectively;

"(B) in U.S. note 2--

"(i) by striking paragraph (b), and

"(ii) by striking '(a) Except as provided in paragraph (b)' and inserti 'Except as provided in note 3'; and

(C) by inserting after U.S. note 2 the following:

"'3. An article described in subheading 9802.00. shall not be treated as a foreign article o as subject to duty, if neither the fabricat components, materials or ingredients, after exportation from the United States, nor the article itself, before importation into the United States, enters the commerce of any foreign country other than a beneficiary country enumerated in general note 7(a) to this schedule';

"(D) in subheadings 9802.00.40, 9802.00.50, and 9802.00.60 by striking 'note 3' each place it appears and inserting 'note 4';

"(E) in subheading 9802.00.60, by striking 'note 3(d)' and inserting 'note 4(d)';

"(F) in subheading 9802.00.80, by striking 'note 4' each place it appears and inserting 'note 5';

"(G) in subheading 9802.00.90, by striking '(see U.S. note 4 of this subchapter)'; and

"(H) by inserting in numerical sequence the following new subheading with the superior text for subheading 9802.00.84 having the same degree of indentation as the article description for subheading 9802.00.80:

	"'Articles assembled or processed in countries listed in general note 7(a) to this schedule:
9802.00.84	Articles (except a textile or apparel article, crude petroleum oils of heading 2709, or petroleum oils, other than crude, or any product derived therefrom, provided for in heading 2710) assembled or processed in whole of fabri-cated components that are a product of the United States, or processed

in whole of ingredients (other than water) that are a product of the United States..... Free (see U.S. note 3 of this subchapter)'"

subsection (c)

- Add new subsection (c) as follows:

"(c) The amendments made by this Act shall take effect with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after ___, and shall terminate on December 31, 2000."

Section 102

- The Administration's view is that this section should be deleted.

Title II

- The Administration's view is that this Title should be deleted.

Mr. RANGEL. Do those provisions deal with the question of workers' rights?

Ms. BARSHEFSKY. As you know, under the CBI, as well as under our GSP program, countries must take steps toward internationally recognized worker rights. In the ITP program last year, we repeated the provision for consistency among all these preferential access programs. We would propose that that be included as well, yes.

Mr. RANGEL. How is that monitored?

Ms. BARSHEFSKY. I am sorry, sir, I could not hear you.

Mr. RANGEL. How are the workers' rights monitored by the United States?

Ms. BARSHEFSKY. The workers' rights issues? The United States receives reports quite often from countries. In addition to the extent workers' rights issues arise, U.S. entities can petition USTR under the current GSP law to take a look at workers' rights practices in those countries to assure that ILO-related standards are being met.

Mr. RANGEL. Who would be doing the investigations and writing the reports, and to whom would the reports be given?

Ms. BARSHEFSKY. Typically it is to USTR.

Mr. RANGEL. Thank you.

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. Thank you, Mr. Chairman. There has been a lot of concern pertaining to the Caribbean Basin as a result of what is happening in Mexico right now and tying that in with NAFTA. Are you willing to make any projections at all about the possibilities of job transfers into Mexico from the Caribbean Basin community because of the devaluation of the peso?

Ms. BARSHEFSKY. I am not in a position to make those kinds of estimates. We do appreciate the force of the chart that Senator Graham has used with respect to the quite sharp decrease in the growth of apparel and textile exports from the CBI to the United States in relation to Mexico. Indeed, if we look at total textile imports into the United States last year, we see that CBI imports rose by 10 percent, Mexican imports rose by 35 percent, so that the earlier ratios, to which Mr. Graham alluded in his testimony, have essentially been reversed between the countries. But with respect to jobs specifically, I am not in a position to comment.

Mr. HANCOCK. Thank you.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. Ambassador Barshefsky, you have some interesting points in your testimony, and I do not want to be cast in the role of picking a fight with you or the administration. I think your heart is in the right place and we want to work together. But we should have done this years ago, that is the problem.

We should have done it at the time we put the NAFTA agreement in position. I think we wanted to, but the NAFTA agreement became very controversial. We tried to drop out controversy, so we dropped this out.

We had another opportunity to do it with the Uruguay round and the Uruguay round seemed to get controversial. It did get controversial, and we dropped this out.

This time we need to do it. What we really need is from you, Ambassador Kantor and the President, a clear and unequivocal statement that we are going to do it this year. Then we will sit down and try to work with you and work out what makes the most sense. But that is what I think the Congress needs. We do not have any other big trade disputes that are on the table. We do not have any other big trade legislation, and we need to mutually set a goal that this is the year we will do equity between the NAFTA agreement and the Caribbean area.

These are poor countries that are friends and that need our help. Despite the fact that when we started on this we had a $2 billion trade deficit with this area, and I expected that deficit to get worse because we unilaterally opened our borders to their products, the converse has proved to be the truth. Our trade has gone from a deficit to a surplus and has remained in surplus. It has been a phenomenal fact of life that when you reach out to help someone, you really help yourself.

Now, I realize Mr. Payne has some problems, and he is working with them, but, generally speaking, the United States has profited from our act of unilateral graciousness. What we need from the administration is a clear, unequivocal statement that this is the year we are going to do it. Not attention to something that when it becomes controversial it gets dropped, but to do justice by this area. That is all the observations or even questions I have.

Ms. BARSHEFSKY. Mr. Gibbons, may I make a comment?

Mr. GIBBONS. Sure.

Ms. BARSHEFSKY. The administration wholeheartedly agrees with you that it is time to pass a program which will provide parity for the CBI, certainly on textile and apparel relative to the NAFTA. The Vice President, some months ago, in speaking before our Central American neighbors spoke very eloquently to the need and to strong administration support for a trade preference program. The President, likewise, spoke of this at the Miami summit, the Summit of the Americas, just this past December.

So we look forward to working with you on this. We do believe this is very, very important. It is certainly critical to the region. It is also, we believe, critical to our overall economic interests, and we would be pleased to sit down with Mr. Crane and Mr. Rangel, you, and the members of the subcommittee, Mr. Gibbons, and work out an acceptable bill.

Mr. GIBBONS. Thank you.

Chairman CRANE. Thank you.

Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman, Madam Ambassador, it is good to see you here. I would like to associate myself, Mr. Chairman, with the remarks of the ranking member as far as the need for imminent action on this, with one slight caveat, and I would like you to address this.

We both know, I think we all know there is a fundamental difference between NAFTA and the CBI, and that is the reciprocal nature of NAFTA. Mexico agreed to significant trade reforms, which is one of the reasons we were finally able to pass NAFTA, and I am just wondering, in your judgment, are CBI countries prepared to assume the obligations as well as the benefits of the NAFTA

agreement? Assuming they are, how long do you anticipate that will take?

Ms. BARSHEFSKY. Mr. Ramstad, I do not think that the CBI countries at this point are in a position to accept the level of obligation that is in the NAFTA. Bear in mind, the NAFTA is 22 chapters long, running the gamut from tariffs to customs, to services, to investment, to intellectual property rights and the like. The obligations are very high. Indeed, in most cases, higher than the Uruguay round agreements just negotiated and in some cases significantly higher than the Uruguay round agreements just negotiated.

We do think, though, that the Caribbean is in a very strong position to revise substantially their intellectual property rights regime, to revise substantially their investment regimes, to give greater certainty to U.S. higher technology companies that patents, copyrights, and trademarks will be enforced, to give greater assurance to U.S. investors that expropriation will no longer be a problem. In some countries expropriation remains a significant problem, as well as investment screening. We believe, based on the progress we were beginning to make last year, when the region believed the ITP might come into effect, that placing reasonable conditions on this potential grant of benefits would be an appropriate and desirable step.

In addition, as you may know, both investment and intellectual property rights are bedrocks; what we would consider to be NAFTA readiness. That is, if countries can undertake obligations in these two critical areas, as well as perhaps other obligations, including macroeconomic issues, countries would become readier for NAFTA, potentially earlier on in the process, benefiting those countries as well as the United States.

Mr. RAMSTAD. I am encouraged by your response, Ambassador. I certainly understand that these nations cannot accept the same quid pro quo that Mexico did in terms of NAFTA right away, but certainly your usage of the term, "substantial revisions," substantial reforms, I think, is significant. That is, we must obviously work toward the same end and elevate their standards, and I am encouraged by your response. Thank you very much for your work on this.

Thank you, Mr. Chairman.

Ms. BARSHEFSKY. Thank you.

Chairman CRANE. Thank you.

Mr. Zimmer.

Mr. ZIMMER. Thank you. In a related question to Mr. Ramstad's, how would you say, Ambassador, that H.R. 553 helps the countries in the Caribbean Basin prepare for NAFTA accession?

Ms. BARSHEFSKY. Certainly, to the extent the bill increases the economic dynamism of the region, and, hopefully, it would by ensuring that investment, particularly in textile and apparel that is already there, remains; and ensuring that future investment decisions which might go offshore could be considered equally between Mexico and the Caribbean, certainly that would help. That is to say, greater economic prosperity often allows countries to further open their markets, further reform their economies for yet greater prosperity.

But apart from that effect, which would be an effect, as well, under the administration's bill last year, we believe that the bill

does not do enough to encourage these countries to open their economies, to make the necessary trade reforms that will place them in a position where over time preferential treatment will no longer be necessary.

This administration's trade policy has moved very consistently through the NAFTA, through the Uruguay round, through our bilateral agreements that we have in the textile field which Ambassador Hillman has solely negotiated, as well as in other fields, moved very consistently toward a basis of greater reciprocity in our trading relationships.

Reciprocity is important among developed and developing countries, even where levels of development are very, very different. There is always something countries at a lesser level of development can do to further reform their regimes. We believe the carrot of future benefits in exchange for reform is a very nice twist on what has previously been a stick at many of these countries, threatening to withdraw benefits previously given in the absence of reform.

So, in our view, a bill that is carefully crafted, as we believe the administration's proposal was last year, that would provide benefits while countries agree to make certain reforms, particularly in the areas I have already noted, would be a very desirable formulation.

Mr. ZIMMER. Will you be proposing specific amendments to H.R. 553 to achieve those objectives?

Ms. BARSHEFSKY. Yes, we will be providing the subcommittee with rather detailed comments and specific suggestions. Yes.

Mr. ZIMMER. Thank you. Could you tell me what impact the devaluation of the Mexican peso is likely to have on manufacturers that are considering moving their facilities from the Caribbean Basin to Mexico?

Ms. BARSHEFSKY. I do not know if I have an answer for you. Some aspects of conventional wisdom are that investment opportunity in Mexico now is very attractive because of the devaluation. Others view the situation somewhat differently and would like to be sure that the economy of the region overall is stabilized somewhat. It is very difficult for me to comment on your question in any educated way.

Mr. ZIMMER. How mobile are the manufacturing facilities, for instance, textile manufacturing facilities, amongst the various Caribbean countries and between the Caribbean and Mexico?

Ms. BARSHEFSKY. With your permission, if I may ask our chief textile negotiator, Ambassador Hillman, to respond.

Mr. ZIMMER. Sure.

Ms. HILLMAN. I think, Congressman, the easiest answer is it depends on what the products are. As a general matter, if what is being done is largely a sewing operation, in which people are assembling cut pieces that have come from the United States, that arguably is fairly mobile in the sense that those factories can fairly easily be moved. The fact that we have seen such a large increase in imports from Mexico and a correspondingly lesser level of growth from the CBI countries is indicative that some of that movement has, in fact, occurred in terms of apparel operations moving.

On the other hand, there are a lot of American companies that have had fairly long and good relationships with operations in the CBI countries where they are comfortable with a trained work force that has produced a quality product over some period of years, and, therefore, there is some reluctance to pick up and move into a new situation.

If, on the other hand, you are talking about more capital-intensive things like fabric production, which requires a heavy degree of electricity and available water and a fairly significant capital investment, I think it is much harder and more time consuming and costly to move.

Mr. ZIMMER. Thank you.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman, and thank you, Madam Ambassador. You mentioned in your testimony that perhaps one of the most compelling reasons to enact CBI parity was the chart that is here. I wanted to point out certain facts so that we are all aware of the base from which we are starting.

First of all, last year the imports from the Caribbean nations, apparel imports from the Caribbean nations, increased at a rate of 14 percent, which is a pretty healthy rate of growth, I think most would agree.

Second, in terms of absolute dollars, there was more growth from the Caribbean nations than from Mexico. Not as a percentage, because we were working on a different basis, but in absolute dollars. Interestingly, the CBI growth was greater than the growth from China in the last year as well.

So I think what we are seeing is a situation which may not be working as well as it did several years ago, but certainly it seems to be working pretty well as it currently exists.

Let me, though, turn to a couple of the provisions in this proposal. Last year your ITP proposal did not include the negotiating authority for the tariff preference levels or the TPLs. What was it that led you last year to exclude those provisions and what position does the administration take concerning those in this particular legislation?

Ms. BARSHEFSKY. As you know, Mr. Payne, the TPL issue arises because Mexico had a substantial volume of nonconforming textiles and apparel when the NAFTA rules of origin came into effect. Mexico was quite insistent that TPLs form a part of the arrangement because of the large percentage of its nonconforming trade.

Mexico and the United States negotiated quite handsome TPL levels. The utilization rate on those TPLs has been zero in almost all categories and only minor utilization in wool. Our view last year, therefore, was that TPLs for the Caribbean, which has a very high percentage of conforming trade and a very low percentage of nonconforming trade, based on our Mexican experience, which had a high percentage of nonconforming trades and there was no utilization of the TPLs, suggested that TPLs were not necessary in any respect.

Now, H.R. 553 provides for authority for the administration to negotiate TPLs. We do not see a need for TPLs with respect to the Caribbean. We believe it is in our interest and in the interest of the various coproduction arrangements that exist for U.S. cut and

formed fabric to form the basis for exports that then enter the United States.

We do not object in principle to having authority to negotiate TPLs, but we do not see a need for TPLs.

Mr. PAYNE. Well, one of the concerns I think of the textile industry, because of the importance of the rule of origin in the NAFTA agreement, is that this particular provision may allow an opening for countries, then, to not have to comply with the same rule of origin that is now in effect for Mexico, Canada, and the United States. Consequently, they feel that it is not, as you say, an important nor is it a necessary part of this particular agreement or legislation.

Ms. BARSHEFSKY. May I say, sir, in that regard just so you are aware, both H.R. 553 and the Interim Trade Program that the administration had proposed last year have very strict rules on certificates of origin just as the NAFTA does, because there is always a concern about transshipments, the ability of other nonconforming goods to come in through the Caribbean or through Mexico into the United States.

Those kinds of limitations would, of course, be continued. But, if I may reiterate, and I think we are agreeing with each other, we do not see any need for TPLs for the Caribbean.

Mr. PAYNE. I see my time is up. My overriding concern, of course, is the impact that this particular provision would have on jobs that we have at home, and I will continue to talk about that as this hearing progresses.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you. We are in the middle of a vote right now and Mr. Houghton has run over there so that he can get back here and preside as quickly as possible. But I would like to yield to our ranking minority member, Mr. Rangel, who has another question for you before we all head out.

Mr. RANGEL. Ambassador, I am glad to hear you are prepared to cooperate with this subcommittee. It would seem to me that if we find that there is a drain in the economy of these Caribbean countries going to Mexico, that their fragile economies may not be able to wait until we get the legislation that we would want.

So I would hope that we keep that in consideration and perhaps you might want to bring a bill or something that the chairman can work with; but, it would seem to me that we made a promise with the NAFTA; we made a promise in Miami that we could do this and then move on with something else.

Ms. BARSHEFSKY. Mr. Rangel, there is no question this should be done. We should try to move as expeditiously as possible, and we will work with the subcommittee to do our best to ensure that that happens.

Mr. RANGEL. Thank you.

Chairman CRANE. Madam Ambassador, I know that our colleague, Mr. Houghton, has a question and if you do not mind, we will recess now until Mr. Houghton's return since he has the jump on the rest of us.

Ms. BARSHEFSKY. We would be very pleased to remain.

Chairman CRANE. Thank you very kindly.

Ms. BARSHEFSKY. Thank you.

[Recess.]

Mr. HOUGHTON [presiding]. Thank you very much. I am pinch hitting for Mr. Crane while he is voting. I did have a question I would like to ask of Ambassador Hillman. This is really for information only.

We are talking about parity between the CBI and Mexico, and the textile issue really involves apparel-produced materials. Is it true that some of the apparel that comes in comes in from countries who refuse to buy our fiber?

Ms. HILLMAN. I do not know that I know the answer to that question. In terms of the Caribbean countries, you would be purchasing fiber in order to then spin it into yarn and then weave it into fabric.

Mr. HOUGHTON. What is the origin of the fiber?

Ms. HILLMAN. It would depend—theoretically, if it is a man-made fiber, the United States would be a significant producer of man-made fibers, polyesters and things of that nature, or it could be wool and cotton and we would be significant producers of all of those.

Mr. HOUGHTON. Sure.

Ms. HILLMAN. However, the Caribbean itself is not a significant producer of yarns or fabrics. So it is unlikely that we would be shipping a lot of fiber down into the Caribbean regions, since they, themselves, do not have the capacity to do much in the way of yarn spinning or fabric production.

Mr. HOUGHTON. I understand that. The question is, what is the origin of it? One of the problems, of course, in the textile industry has been that the people who come into our market with fabrics are buying somebody else's fiber to do that and exclude our own fiber. I did not know who supplied it to the CBI.

Ms. HILLMAN. I am not aware of any specific item, any reason why fibers would be excluded other than perhaps tariffs.

Mr. HOUGHTON. Would you find out for me.

Ms. HILLMAN. I would certainly be happy to.

[The following was subsequently received:]

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

MAR 24 1995

The Honorable Amo Houghton
U.S. House of Representatives
Washington, D.C. 20515-3231

Dear Congressman Houghton:

During the hearing on H.R. 553, The "Caribbean Basin Trade Security Act," you asked about any impediments to exporting fibers and textile products generally to the CBI countries. I hope the following information answers your question.

U.S. exports to CBI countries in 1994 were valued at $2.5 billion, of which apparel accounted for slightly more than $2 billion, or 82 percent of the total. The majority of U.S. apparel exports to these countries are cut fabric pieces that are assembled and reexported as finished goods to the United States. U.S. exports of textile components (fibers, yarns and fabrics) to these countries are relatively low because of the general absence of yarn spinning and fabric weaving, finishing and cutting in the region.

In general, the major apparel exporting countries in the CBI region apply tariffs ranging between 5 and 40 percent on textiles and apparel imports. Most of the tariffs on fibers and yarns are at the lower end of this range. During the Uruguay Round, these countries committed to binding their textile and apparel tariffs at no higher than 35 to 45 percent.

You may note that Ambassador Barshefsky stated at the hearing that the Administration's preference was for the Interim Trade Program approach, which contained an up front requirement for enhanced access for U.S. textiles and apparel before duty-free, quota-free treatment was accorded to the CBI countries.

I hope this information is helpful to you.

Sincerely,

Jennifer Hillman

Jennifer A. Hillman
Ambassador
Chief Textile Negotiator

Mr. HOUGHTON. OK, any other questions? Panel dismissed. Thanks very much.

Ms. BARSHEFSKY. Thank you, sir.

Mr. HOUGHTON. OK, let us have the other panel come up.

I would like to welcome you. I thank you very much for being here. I know this is not the most convenient thing for you to do, to fly in, but I want to welcome, obviously, Ambassador Ariza, Dominican Republic, and Ambassador Sol, but also particularly like to thank Minister Mottley and Minister Castillo from Trinidad and Tobago and Guatemala, respectfully, and Anthony Hilton, who is the Parliamentary Secretary of the Government of Jamaica.

So, gentlemen, why don't you begin and, Ambassador Ariza, would you start the testimony.

STATEMENT OF HON. JOSÉ DEL CARMEN ARIZA, AMBASSADOR TO THE UNITED STATES, GOVERNMENT OF THE DOMINICAN REPUBLIC

Mr. ARIZA. Thank you, Mr. Chairman. Members of the subcommittee, honorable ambassadors and members of the diplomatic corps, ladies and gentlemen good morning. I am José del Carmen Ariza, Ambassador to the United States from the Dominican Republic. Mr. Chairman, on behalf of our government, I would like to thank you for the opportunity to appear before this subcommittee.

My country appreciates your wisdom and leadership, Chairman Crane, as well as that of your colleagues, Congressmen Sam Gibbons, Clay Shaw, Charles Rangel, and Congressman Towns in introducing and cosponsoring this measure to address the inadvertent adverse effects of the NAFTA on the CBI region, so clearly reflected in the Senator's chart. We publicly support the passage of NAFTA as a major step to regional and hemispheric free trade and, as one of the major trading partners of the United States in this hemisphere, we are asking for equivalent treatment.

Over the past 12 years, the CBI has been successful in fostering economic development in the countries of the region. In fact, the Dominican Republic is the primary beneficiary of the CBI program. We are the United States fifth most important trading partner in the hemisphere and the largest among the CBI countries.

Last year the Dominican Republic imported almost $2.8 billion in American products generating or maintaining 56,000 U.S. jobs. Bilateral trade has climbed to approximately $6 billion or 26 percent of the region's trade with the United States. Of all the nations comprising Latin America and the Caribbean, the Dominican Republic's trade with the United States is surpassed only by Mexico, Brazil, Venezuela, and Colombia.

The CBI has been instrumental in helping the Dominican Republic make significant progress in achieving many of its long-standing goals to diversify its economy, to develop new industries, create employment, improve working conditions, and maintain its position as a stable functioning democracy.

For example, as a result of CBI preferences, the Dominican Republic has experienced tremendous growth in its free zone operations.

Free zones are the fastest growing sector of the Dominican economy. At present, 476 companies operate in our country's 31 free

trade zones employing 176,311 workers. Most of the businesses are either subsidiaries of U.S. companies or affiliated with U.S. companies in one way or another.

Free zone companies account for approximately one-third of the Dominican Republic's exports and 96 percent of those exports come into the United States.

The major activities in the free zones are textiles and apparel, footwear, metalworking, jewelry, services, electronics, tobacco, pharmaceuticals, and sporting goods. Before the CBI went into effect, there were only 7,176 Dominicans employed in free zones.

Within 4 years of CBI's enactment, the number jumped dramatically to 32,000 in 1986. It had doubled to 68,000 in 1990 and it more than doubled again to 176,000 in 1994. Significantly, 57 percent of these jobs or 101,568 jobs are held by women.

To emphasize what I said earlier, the CBI benefits the United States as well as the "beneficiary" countries. In 1994 U.S. exports to the Dominican Republic helped support jobs for 56,000 U.S. workers. In addition, coproduction arrangements have helped U.S. businesses compete with low-wage production from Far Eastern countries. Almost 50 percent of the companies in the free zones are directly owned by U.S. businesses; 25 percent more are contractors for U.S. companies. Passage of H.R. 553 will help ensure that this favorable trend continues.

The Caribbean Basin Trade Security Act is designed to ensure the value of the CBI program is not eroded because of NAFTA. Although we have a few comments on the technical language, I want to say on behalf of the Government of the Dominican Republic that we strongly support the thrust of the bill and we hope for its prompt approval.

First, we believe the extension of parity treatment to products other than textiles is an important step and we recommend this approach. Second, the provisions related to NAFTA accession or negotiation of specific free trade agreements is a positive step toward fulfilling the Summit of the Americas commitment for a wider hemispheric free trade arrangement.

Third, the provisions in the bill concerning monitoring NAFTA sugar imports are a good step, but in light of the harmful effects to the Dominican economy that cuts in the sugar quota have had over the past 12 years, some technical changes need to be made to protect the Dominican Republics and other CBI countries' traditional levels of access to the U.S. market against further reduction over the long run and hopefully to restore the levels of access contemplated in the original CBI legislation. The Dominican Republics sugar industry will submit a separate statement addressing these technical issues.

Fourth, we believe it might be more convenient to take flexible approaches to the 6-year transition period envisaged section 101. This would accommodate unforeseen delays in the negotiation/accession process so long as good faith efforts were being made.

The recent developments and the recent devaluation of the Mexican peso makes timely action to have the bill passed more necessary for two main reasons: Over the short term, Mexican imports have become and will continue to be more attractive in dollar terms than before for U.S. purchasers. Two, over the long run, investors

are likely to avoid committing new capital anywhere in the region without a boost in confidence. H.R. 553, we believe, will provide that boost.

In conclusion, Mr. Chairman, we want to thank our friends in Congress and the administration for this farsighted measure that will enable us to continue restructuring and development of the Dominican economy to face international competition. We believe the passage of H.R. 553 will help us in achieving these vital objectives. Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Mr. Ambassador, and Madam Ambassador.

STATEMENT OF HON. ANA CRISTINA SOL, AMBASSADOR TO THE UNITED STATES, GOVERNMENT OF EL SALVADOR

Ms. SOL. Thank you for giving me the opportunity to express before the Trade Subcommittee the position of the Central American ambassadors regarding the proposed House Resolution 553.

I would like to begin by thanking you and the Members of Congress that have cosponsored this bill, Senator Graham and Congressman Gibbons, Congressman Shaw, Congressman Crane, and Congressman Rangel for introducing this bill that is for us very important. For Central America it is really urgent to avoid further trade and investment diversions since the implementation of NAFTA.

For the past 10 years, the Caribbean Basin region has benefited from the unilateral preferential tariff treatment from the United States through the CBI program. The United States has also benefited from this program since the demand for goods and services of the United States has grown significantly.

During the same decade, we have witnessed a strong commitment by the CBI nations to consolidate democracy and introduce economic reform and trade and investment liberalization. In Central America, there are notable examples of this. To mention the most recent, just a week ago President Armando Calderon Sol presented to the people of El Salvador the record and to the governments of Central America our new economic plan. This economic plan looks for further liberalization, including tariff reduction.

The Economic Council of Central America has expressed its support for this bill. Our countries continue to support NAFTA, Mr. Chairman. We see it as a first step toward hemispheric free trade, but unfortunately, and we are sure unintendedly, the passage of NAFTA without legislation like H.R. 553 has begun to show the consequences of trade and investment diversions from the CBI region.

For example, as Senator Graham mentioned, the growth rate of CBI textile and apparel exports to the United States has decreased significantly while that of Mexico has increased in almost the same proportion. This proves that strong trade diversion has begun.

Additionally, within the same sector, we are also facing investment diversion. We are observing the loss of potential investors, actual plants closing and relocating, and the loss of badly needed jobs. Here, Mr. Chairman, I would like to add to the comments

made by the administration on the mobility of the apparel industry.

Actually, the mobility of the apparel industry can be subject to an order coming from the United States and a phone call can change that order. It can go from Central America to any other part of the world, and that is how easy it is to move the apparel industry.

As the transition period in NAFTA continues, progressive reduction of tariffs and quotas for products excluded from the CBI and the GSP, such as footwear, leather products, and agricultural products, like sugar, will further reduce the CBI region's competitiveness in the U.S. market.

H.R. 553 has as its fundamental purpose to avoid the trade and investment diversion that was just noted and to allow our countries to have the opportunity to adhere to NAFTA and/or to sign a similar free trade agreement with the United States.

I am here to testify about what we consider to be excellent reasons for supporting this bill. First, NAFTA parity in the terms proposed by this bill will benefit both the U.S. and the CBI industries, the apparel, textile, and other industries, which need to maintain and improve their global competitiveness in relation to imports from other parts of the world, particularly Asia.

This legislation will also augment the purchasing power of the CBI countries, thus allowing them to import more goods from the United States and creating more jobs in the United States.

We should remember that approximately 70 percent of the value of goods produced in Central America return to the United States in the form of imports of raw material and others. Your bill, Mr. Crane, will further allow the CBI nations an orderly transition from unilateral preferential treatment toward reciprocal trade agreements. It will also contribute to prepare us for implementing the necessary institutional reforms to comply with the obligations of comprehensive trade agreements like NAFTA.

Additionally, parity will foster economic development and Democratic reform in the CBI region. Most importantly, by fostering economic development, H.R. 553 will allow us to offer better jobs and more opportunities to our people, thus helping to decrease the flow of illegal immigrants into the United States.

Mr. Chairman, Central America fully supports passage of the Caribbean Basin Trade Security Act. Its enactment will contribute significantly to strengthening social, political and economic development of the region, and it will enhance the commercial and political relations between the CBI countries and the United States of America.

Thank you, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY BY ANA CRISTINA SOL, AMBASSADOR FROM EL SALVADOR TO THE UNITED STATES OF AMERICA, ON BEHALF OF THE AMBASSADORS FROM THE REPUBLICS OF CENTRAL AMERICA, BEFORE THE HOUSE TRADE SUBCOMMITTEE

FEBRUARY 10, 1995

Thank you Mr. Chairman, for giving me this opportunity to express before the Trade Subcommittee our position regarding the proposed House Resolution 553, "The Caribbean Basin Trade Security Act".

I would like to begin by thanking the co-sponsors of this bill, Congressmen Crane, Gibbons, Shaw, and Rangel for introducing a bill that is urgently needed in Central America to avoid further trade and investment diversion since the implementation of NAFTA.

For the past 10 years, the Caribbean Basin Region has benefited from unilateral preferential tariff treatment from the U.S. by the "Caribbean Basin Economic Recovery Act", known as the CBI. The U.S. has also benefited greatly from this program, since demand for U.S. goods and services has grown significantly. [From 1990 to 1993, U.S. has had a favorable balance of trade with Central America, increase of 38%, and U.S. exports to Central America grew by 57%.] Furthermore, no U.S. trade program has stricter conditions for eligibility than CBI for issues such as: intellectual property rights, labor rights, investment protection, and market access opening.

During the same decade, we have witnessed a strong commitment by the CBI nations to consolidate democracy, and to introduce economic reforms and trade and investment liberalization. In Central America, there are notable examples this. To mention the most recent, just last week, President Armando Calderon Sol presented to the people of El Salvador and the Governments of Central America our new Economic Plan, which calls for further tariff reductions. The Economic Council of Central America has expressed its support for the Plan.

In this same spirit, our countries all supported and continue to support NAFTA, as a first step towards Hemispheric free trade. Unfortunately, the passage of NAFTA without legislation like H.R. 553 has begun to show the unintended consequences of trade and investment diversions from the CBI Region.

For example, the growth rate of CBI textile and apparel exports to the U.S. has decreased significantly (from 27% in 1993 to 12% in 1994); while that of Mexican textile and apparel exports has increased in almost the same proportion(from 22% in 1993 to 38% in 1994). This proves that strong trade diversion has begun, greatly affecting our commercial interest in the United States.

Additionally, within the same sector, we are also facing investment diversion. We are observing the loss of potential investors, actual plant closings and relocations, and the loss of badly needed jobs. This reinforces the findings of various studies prepared by international organizations as well as by the U.S International Trade Commission.

As the transition period in NAFTA continues, the progressive reduction of tariffs and quotas for products excluded from the CBI and GSP, such as footwear, leather products, and agricultural products like sugar, will further reduce the CBI region's competitiveness in the U.S. market.

H.R. 553 has as its fundamental purpose to avoid the trade and investment diversions noted above, and to allow our countries to have the opportunity to adhere to NAFTA or to sign a similar free trade agreement with the United States. On this occasion, I am here to testify about what we consider to be excellent reasons for decidedly supporting this bill.

- NAFTA parity, in the terms proposed in this bill, will benefit both the U.S. and CBI apparel, textile, and other industries, which need to maintain and improve their global competitiveness in relation to imports from other parts of the world, particularly Asia. This partnership will surely allow us to compete more efficiently with producers outside of the Hemisphere.

- This legislation will augment the purchasing power of the CBI countries, increasing imports of raw materials, capital goods and finished products from the United States, therefore creating more jobs. We should remember that approximately 70% of the value of goods produced in Central America returns to the United States in the form of imports of raw materials and others.

- Mr. Crane's Bill will allow CBI nations an orderly transition from unilateral preferential treatment towards reciprocal trade agreements, and will contribute to prepare us for implementing the necessary institutional reforms to comply with the obligations of comprehensive trade agreements such as NAFTA.

- Parity will stimulate economic modernization, commercial liberalization and regional integration efforts of the CBI, fostering economic development and democratic reforms.

- And most importantly, by fostering economic development, HR 553 will allow us to offer better jobs and opportunities for our people, thus decreasing the flow of illegal immigrants into the U.S.

Mr. Chairman, Central America fully supports the immediate passage of the "Caribbean Basin Trade Security Act". Its enactment will contribute significantly to strengthening the social, political, and economic development of the region and will greatly enhance the commercial and political relations with the United States of America.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Madam Ambassador. Now Minister Mottley.

STATEMENT OF HON. WENDELL A. MOTTLEY, MINISTER OF FINANCE, GOVERNMENT OF TRINIDAD AND TOBAGO

Mr. MOTTLEY. Thank you, Mr. Chairman, and members of this honorable subcommittee. My name is Wendell Mottley, the Minister of Finance of Trinidad and Tobago. It is most gratifying, Chairman Crane, to have the honor and privilege to testify before this subcommittee on your proposed and very welcomed Caribbean Trade Security Act. I wish to thank you and all of the Members of this House on this very welcome development.

H.R. 553 asserts important congressional commitment to the larger movement toward hemispheric integration by providing full NAFTA parity to the CBI countries. CARICOM countries, including my own, are encouraged by the comprehensive coverage proposed in this bill, particularly since the legislation would place exports like petroleum and textiles on an equal footing with exports from Mexico.

You see, NAFTA accession is important, and H.R. 553 addresses it by making it easy and transparent to understand what is required for NAFTA accession and how to prepare for it. There is great equity and fairness in this approach which demonstrates respect for CBI countries.

H.R. 553 addresses a series of factors which must be measured to evaluate the actual ability of countries to undertake NAFTA obligations. Several Caribbean countries, including Trinidad and Tobago, have signed and implemented bilateral investment treaties and intellectual property rights agreements with the United States, premised on the assumption that these were prerequisites for an equitable free trade agreement.

At this point, it is unclear whether these are, in fact, prerequisites for NAFTA accession since Chile, with whom the NAFTA partners have started negotiation for accession, has neither signed a BIT nor an IPRA. The ambiguity in U.S. policy that exists, I respectfully submit, should be remedied so that each country in the hemisphere can make an informed choice concerning negotiating accession.

For these reasons, I applaud the provisions of this legislation that set out clear criteria because they are helpful in charting our course for accession.

The 6-year transitional time period is a meaningful one. It provides sufficient time for countries with immediate interests in NAFTA accession to seriously prepare for the required negotiations. It provides reasonable incentives for other countries to accelerate economic reforms within a favorable context for assessing the rewards and responsibilities of free trade, and it offers those who do not negotiate NAFTA-type terms and conditions within that time a continuation of CBI II benefits.

The 6-year time period also reflects standard business forecasting and planning cycles and thus sets a reasonable limit on this temporary experiment with parity.

It is important to go behind the particulars of the legislation and understand the underlying motivation for the CBI's ardent desire

for parity now and for full inclusion and participation in the trade architecture that is emerging in the global environment.

The Caribbean countries need parity because of the potential for trade and investment diversion. Although hard figures are only now beginning to be compiled, since NAFTA went into effect there are initial indications that investments will move to Mexico from the Caribbean. On the trade side, the evidence is clearer. Trade is moving from the Caribbean to Mexico because exports from Mexico now enjoy superior access to the U.S. market.

Diverting trade and investment away from the Caribbean would begin to erode the very important gains that the Caribbean has achieved in its economic development and the important trade benefits being reaped by the United States. U.S. exports to the Caribbean have increased 63 percent between 1987 and 1993, from $7 billion to $11.7 billion.

Trinidad and Tobago alone, with its small population of 1.2 million, buys over half a billion dollars' worth of goods and services from the United States. We buy $100 million from each of the States of Texas and Florida. I further note that the commercial operations of U.S. companies in my country have allowed their products to be more competitive in global markets.

I would argue that levels of cross-border investment and levels of trade are the two main variables for the rationality and viability of creating a free trade area. Mr. Chairman, if you go to any of the Caribbean countries, visit the supermarkets or the drugstores, you will find U.S. goods. You will find in our petrochemical and petroleum industry hundreds of millions of dollars of imports from the States of Texas, Louisiana, et cetera.

In our tourism plant you will find toweling, fabric, et cetera, from the eastern United States, and most importantly, prominent U.S. companies are increasingly using the Caribbean as a platform for improving their overall productivity based on our own resources so that they can become more competitive globally.

These are powerful arguments that the Caribbean and the United States are economically integrated. These are facts already. A Caribbean region that is not integrated into the United States economically is an artificial construct. For all these reasons, therefore, Mr. Chairman, we strongly support this bill.

Mr. Chairman, this concludes my oral testimony and I cannot put this case more strongly. I thank you.

[The prepared statement and attachment follow:]

STATEMENT OF THE HONORABLE WENDELL A. MOTTLEY
MINISTER OF FINANCE OF TRINIDAD AND TOBAGO
BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS
OF THE U.S. HOUSE OF REPRESENTATIVES

H.R. 553 - THE CARIBBEAN BASIN TRADE SECURITY ACT

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THIS HONORABLE COMMITTEE. MY NAME IS WENDELL MOTTLEY AND I AM CURRENTLY THE MINISTER OF FINANCE OF TRINIDAD AND TOBAGO.

IT IS MOST GRATIFYING, CHAIRMAN CRANE, TO HAVE THE HONOR AND PRIVILEGE TO TESTIFY BEFORE THIS COMMITTEE ON YOUR PROPOSED CARIBBEAN TRADE SECURITY ACT. I KNOW THAT MY TIME IS LIMITED, BUT I MUST TAKE A MOMENT TO EXPRESS THE SINCERE APPRECIATION, NOT ONLY OF MY GOVERNMENT, BUT OF ALL THE CBI BENEFICIARY COUNTRIES TO YOU AND YOUR COLLEAGUES -- CONGRESSMEN GIBBONS, RANGEL AND SHAW -- FOR SPONSORING THIS TIMELY LEGISLATIVE INITIATIVE, WHICH IS OF SUCH GREAT IMPORTANCE TO THE GROWTH, DEVELOPMENT AND ECONOMIC WELL-BEING OF THE CARIBBEAN REGION. WE APPRECIATE YOUR INTEREST AND CONCERN. IT IS MOST APPROPRIATE THAT H.R. 553 IS TITLED A TRADE SECURITY ACT, BECAUSE THIS TITLE IMPLICITLY RECOGNIZES THAT TRADE EXPANSION IS THE BASIS FOR SECURITY IN THE SMALL ECONOMIES OF THE CARIBBEAN.

H.R. 553 ASSERTS IMPORTANT CONGRESSIONAL COMMITMENT TO THE LARGER MOVEMENT TOWARDS HEMISPHERIC INTEGRATION, BY PROVIDING FULL NAFTA PARITY TO THE CBI COUNTRIES. CARICOM COUNTRIES, INCLUDING MY OWN, ARE ENCOURAGED BY THE COMPREHENSIVE COVERAGE PROPOSED IN THIS BILL, PARTICULARLY SINCE THIS LEGISLATION WOULD PLACE EXPORTS LIKE PETROLEUM AND TEXTILES ON AN EQUAL FOOTING WITH EXPORTS FROM MEXICO. PROVIDING EQUAL TREATMENT FOR CARIBBEAN EXPORTS, REFLECTS THE PRAGMATIC REALISM WITH WHICH WE ALL MUST APPROACH THE CREATION OF THE FREE TRADE AREA OF THE AMERICAS. BEFORE WE GET TO THE FTAA, HOWEVER, CLEAR RULES AND PROCEDURES NEED TO BE ESTABLISHED FOR NAFTA ACCESSION.

H.R. 553 ADDRESSES THIS ISSUE IN SOME DETAIL, MAKING IT EASY AND TRANSPARENT TO UNDERSTAND WHAT IS REQUIRED FOR NAFTA ACCESSION AND HOW TO PREPARE. THERE IS GREAT EQUITY AND FAIRNESS IN THIS APPROACH, WHICH DEMONSTRATES RESPECT FOR CBI COUNTRIES. H.R. 553 LISTS A SERIES OF FACTORS WHICH MUST BE MEASURED TO EVALUATE THE ACTUAL ABILITY OF COUNTRIES TO UNDERTAKE NAFTA OBLIGATIONS. SEVERAL CARIBBEAN COUNTRIES, INCLUDING TRINIDAD AND TOBAGO, HAVE SIGNED AND IMPLEMENTED BILATERAL INVESTMENT TREATIES AND INTELLECTUAL PROPERTY RIGHTS AGREEMENTS WITH THE U.S., PREMISED ON THE ASSUMPTION THAT THESE WERE PREREQUISITES FOR AN EQUITABLE FREE TRADE AGREEMENT. AT THIS POINT, IT IS UNCLEAR WHETHER THESE ARE, IN FACT, PREREQUISITES FOR NAFTA ACCESSION, SINCE CHILE, WITH WHOM THE NAFTA PARTNERS HAVE STARTED NEGOTIATIONS FOR ACCESSION, HAS SIGNED NEITHER A BIT NOR AN IPRA! **THE AMBIGUITY IN U.S. POLICY THAT CURRENTLY EXISTS, MUST BE REMEDIED** SO THAT EACH COUNTRY IN THE HEMISPHERE CAN MAKE AN INFORMED CHOICE

CONCERNING NEGOTIATING ACCESSION. FOR THESE REASONS, I APPLAUD THE PROVISIONS OF THIS LEGISLATION THAT SET OUT CLEAR CRITERIA, BECAUSE THEY ARE HELPFUL IN CHARTING OUR COURSE FOR ACCESSION.

THE SIX-YEAR TRANSITIONAL TIME PERIOD IS A MEANINGFUL ONE. IT PROVIDES SUFFICIENT TIME FOR COUNTRIES WITH IMMEDIATE INTEREST IN NAFTA ACCESSION TO SERIOUSLY PREPARE FOR THE REQUIRED NEGOTIATIONS. IT PROVIDES REASONABLE INCENTIVES FOR OTHER COUNTRIES TO ACCELERATE INTERNAL ECONOMIC REFORMS WITHIN A FAVORABLE CONTEXT FOR ASSESSING THE REWARDS AND RESPONSIBILITIES OF FREE TRADE; AND IT OFFERS THOSE WHO DO NOT NEGOTIATE NAFTA-TYPE TERMS AND CONDITIONS WITHIN THAT TIME A CONTINUATION OF CBI II BENEFITS. THE SIX-YEAR TIME PERIOD ALSO REFLECTS STANDARD BUSINESS FORECASTING AND PLANNING CYCLES AND THUS SETS A REASONABLE LIMIT ON THIS TEMPORARY EXPERIMENT WITH PARITY. THE TIME PERIOD WILL ALSO ALLOW ALL OF US TO COLLECT DATA AND INFORMATION ABOUT TRADE AND INVESTMENT THAT WILL SERVE AS A MORE ACCURATE BASIS FOR MOVING TOWARDS ACCESSION. CURRENTLY, THERE IS A DEARTH OF INFORMATION ON THE ACTUAL TRADE EXPANSION CREATED BY NAFTA AND THE POTENTIAL TRADE EXPANSION IN AN EXPANDED NAFTA.

IN SUM, THE MAJOR PROVISIONS OF H.R. 553 ARE CLEAR AND LOGICAL -- FULL PARITY FOR THE CBI FOR SIX YEARS, CRITERIA AND TIMETABLES FOR NAFTA ACCESSION AND A MEANINGFUL TRANSITION PERIOD -- AND ARGUE FORCEFULLY IN FAVOR OF THIS BILL BASED ON ITS SIMPLICITY AND CLARITY.

BUT IT IS IMPORTANT TO GO BEHIND THIS PARTICULAR LEGISLATION AND UNDERSTAND THE UNDERLYING MOTIVATION FOR THE CBI'S ARDENT DESIRE FOR PARITY NOW AND FOR FULL INCLUSION AND PARTICIPATION IN THE TRADE ARCHITECTURE THAT IS EMERGING IN THE GLOBAL ENVIRONMENT.

THE CARIBBEAN COUNTRIES NEED PARITY BECAUSE OF THE POTENTIAL FOR TRADE AND INVESTMENT DIVERSION. ALTHOUGH HARD FIGURES ARE ONLY NOW BEGINNING TO BE COMPILED, SINCE NAFTA WENT INTO EFFECT, THERE ARE INITIAL INDICATIONS THAT INVESTMENTS WILL MOVE TO MEXICO FROM THE CARIBBEAN. ON THE TRADE SIDE, THE EVIDENCE IS CLEARER -- TRADE IS MOVING FROM THE CARIBBEAN TO MEXICO BECAUSE EXPORTS FROM MEXICO NOW ENJOY SUPERIOR ACCESS TO THE U.S. MARKET OVER PRODUCTS FROM THE CARIBBEAN.

A RECENT WORLD BANK STUDY CONCLUDES THAT SOME CARIBBEAN COUNTRIES ARE FACING UP TO 60% EXPORT DISPLACEMENT DUE TO NAFTA; THIS SAME STUDY CONCLUDES THAT WHILE THERE IS COMPETITION IN PETROLEUM FROM BOTH MEXICO AND CANADA FOR TRINIDAD AND TOBAGO, THIS TRADE IS NOT AFFECTED BY NAFTA. THIS STUDY IS BASED ON A STATIC ECONOMIC MODEL AND DOES NOT TAKE INTO ACCOUNT THE MANY VARIABLES LIKE DEMAND, GROWTH RATES, INVESTMENT FLOWS AND CHANGES IN CAPACITY. IN THE CASE OF TRINIDAD AND TOBAGO, WE KNOW HOW LONG IT TAKES TO IMPLEMENT MAJOR PETROCHEMICAL PROJECTS -- FEASIBILITY AND ENGINEERING STUDIES CAN TAKE YEARS EVEN WHEN MOVING QUICKLY BECAUSE OF THE COMPLEXITY AND CAPITAL INTENSITY OF THE PROJECTS. NAFTA IS IMPORTANT TO US BECAUSE WE NEED TO HAVE PERMANENT LONG TERM TREATY COMMITMENTS THAT PARALLEL THE LONG TERM INVESTMENT HORIZONS THAT ARE NECESSARY TO MONETIZE OUR RESOURCES. IT IS EASY TO UNDERSTAND THAT COMPANIES THAT ARE MAKING INVESTMENT

DECISIONS IN THIS SECTOR WILL BE AFFECTED BY THE GREATER CERTAINTY THAT NAFTA PROVIDES TO CROSS BORDER INVESTORS. EVEN IF THEORETICALLY UNDER THE GATT, THE NAFTA PARTNERS CANNOT IMPOSE HIGHER TARIFF BARRIERS THAN CURRENTLY EXIST ON NON-NAFTA PARTNERS, THE REALITY IS THAT OVER TIME TRADE PREFERENCES WILL STRONGLY INFLUENCE INVESTMENT DECISIONS. AND THIS IS WHY TEMPORARY PARITY MUST PROVIDED WHILE DECISIONS ARE BEING MADE ABOUT NAFTA ACCESSION. THE LOWER TARIFFS, APPLICABLE TO MEXICO'S AND CANADA'S PETROLEUM PRODUCTS' EXPORTS TO THE U.S., DO CREATE AN ADVANTAGE FOR THEM WHICH IS A POTENTIALLY GREAT DANGER TO MY COUNTRY.

DIVERTING TRADE AND INVESTMENT AWAY FROM THE CARIBBEAN WOULD BEGIN TO ERODE THE VERY IMPORTANT GAINS THAT THE CARIBBEAN HAS ACHIEVED IN ITS ECONOMIC DEVELOPMENT AND THE IMPORTANT TRADE BENEFITS BEING REAPED BY THE U.S. U.S. EXPORTS TO THE CARIBBEAN HAVE INCREASED 63% BETWEEN 1987 AND 1993 FROM $7 BILLION TO $11.7 BILLION. TRINIDAD AND TOBAGO ALONE, WITH ITS SMALL POPULATION OF 1.2 MILLION, BUYS OVER A HALF A BILLION DOLLARS WORTH OF GOODS AND SERVICES FROM THE U.S. WE BUY $100 MILLION IN GOODS AND SERVICES FROM EACH OF THE STATES OF TEXAS AND FLORIDA. I FURTHER NOTE THAT THE COMMERCIAL OPERATIONS OF U.S. COMPANIES IN MY COUNTRY HAVE ALLOWED THEIR PRODUCTS TO BE MORE COMPETITIVE IN GLOBAL MARKETS.

LEVELS OF CROSS BORDER INVESTMENT AND LEVELS OF TRADE ARE THE TWO MAIN VARIABLES THAT WOULD ARGUE FOR THE RATIONALITY AND VIABILITY OF CREATING A FREE TRADE AREA. AFTER CANADA AND MEXICO, **THE CARIBBEAN ECONOMIES ARE THE NEXT MOST INTEGRATED IN THE NAFTA ECONOMY.** SIXTY-SIX PERCENT OF CARIBBEAN EXPORTS GO TO THE U.S., CANADA AND MEXICO. THE U.S. IS THE MOST IMPORTANT NAFTA TRADING PARTNER FOR MOST CARIBBEAN COUNTRIES, IMPORTING OVER $5 BILLION COMPARED WITH $262 MILLION FOR CANADA AND $55 MILLION FOR MEXICO. U.S. DIRECT INVESTMENT IN THE CARIBBEAN WAS $4.2 BILLION IN 1989, WHILE FOR MEXICO AND CENTRAL AMERICA COMBINED IT WAS ONLY $2.6 BILLION.

WHAT IS STRIKING AND CRITICAL FOR THE COMMITTEE TO UNDERSTAND, IS THAT TRADE BETWEEN CARIBBEAN COUNTRIES ACCOUNTS FOR A MERE 4% OF THEIR EXPORTS AND INVESTMENT BETWEEN THE COUNTRIES OF OUR REGION IS NEGLIGIBLE. TRINIDAD AND TOBAGO, PROVIDES MOST OF THE CURRENT INVESTMENT AND IS THE MAJOR CREDITOR IN THE REGION. WE HAVE BEEN COMMITTED TO BUILDING AND INTEGRATING THE CARICOM ECONOMIES, BUT OUR BUILDING BLOCKS ARE LIMITED IN SIZE AND QUANTITY. THE REALITY IS THAT OUR ECONOMIES ARE SMALL; DOMESTIC MARKETS AND EVEN INTRA-CARIBBEAN MARKETS ALONE, CANNOT ABSORB PRODUCTION AND THEREFORE CANNOT FOSTER MEANINGFUL TRADE EXPANSION. ***OUR FUTURE LIES IN CONTINUED INTEGRATION INTO THE NORTH AMERICAN MARKET.***

I CANNOT STRESS THIS LAST POINT ENOUGH. ALTHOUGH OUR ECONOMIES ARE SMALL RELATIVE TO OUR OTHER HEMISPHERIC NEIGHBORS, THERE IS STILL REMARKABLE DIVERSITY WITHIN OUR REGION. CARICOM TOOK NOTE OF THIS WHEN IT CONSIDERED THE QUESTION OF THE RELATIONSHIP WITH THE NAFTA PARTNERS AND AFFIRMED THAT INDIVIDUAL MEMBER STATES WOULD NEED DIFFERENT PROVISIONS AND TIMETABLES TO ACCOMMODATE PARTICULAR NATIONAL INTERESTS. SEVERAL OF THE MORE DEVELOPED ECONOMIES HAVE MADE REMARKABLE PROGRESS IN DISMANTLING TRADE BARRIERS, WHILE THE

SMALLER ECONOMIES HAVE HAD MORE DIFFICULTIES. NEVERTHELESS, THERE HAVE BEEN STRONGER GROWTH RATES IN SOME OF THE OECS COUNTRIES THAT HAVE STARTED TO WEAN THEMSELVES AWAY FROM MONOCULTURE DEPENDENCE.

OVER THE PAST DECADE, THE CARIBBEAN COUNTRIES HAVE DIVERSIFIED THEIR ECONOMIES AND THIS IS REFLECTED IN AN IMPRESSIVE INCREASE IN MANUFACTURED EXPORTS FROM $U.S. 1.6 BILLION IN 1980 TO $U.S. 4.5 BILLION IN 1992. DURING THIS SAME PERIOD AID FLOWS DECREASED SIGNIFICANTLY. U.S. LEGISLATION -- CBI I AND II, THE ENTERPRISE FOR THE AMERICAS, THE AVAILABILITY OF 936 FUNDS, ALL CONTRIBUTED TO A POLICY FRAMEWORK WHICH HAS BEEN A CRITICAL STIMULUS FOR ECONOMIC AND TRADE LIBERALIZATION. IT IS LARGELY BECAUSE THE U.S. POLICY IN FAVOR OF CARIBBEAN DEVELOPMENT HAS BEEN CONSISTENT, SUSTAINED AND BI-PARTISAN THAT THE RESULTS HAVE BEEN POSITIVE. THE EFFORT, HOWEVER, IS NOT YET COMPLETE AND H.R. 553 TAKES THE NEXT STEP REQUIRED IN PROVIDING SOME OF THE NECESSARY INCENTIVES FOR CONTINUED TRADE LIBERALIZATION.

THE VARIABLES THAT MUST BE CONSIDERED IN ORDER TO PROMOTE GROWTH IN THE GLOBAL ECONOMY ARE EVER MORE COMPLEX. WHILE THE URUGUAY ROUND HAS REDUCED TARIFFS, WHICH IN PRINCIPLE SHOULD HAVE A SALUTARY EFFECT ON CARIBBEAN TRADE, THE REALITY MAY BE OTHERWISE, GIVEN THAT TARIFF CUTS ERODE THE VALUE OF PREFERENCES UNDER CBI, CARIBCAN AND LOME. HOWEVER, THERE MUST BE FULL MFN TARIFF REDUCTIONS, ESPECIALLY WHERE THERE ARE HIGH TARIFFS IN THE DEVELOPED COUNTRIES, (I.E., TEXTILES) OR NON-TARIFF BARRIERS -- THE U.S. HAS NTB'S ON MANY CLASSES OF CLOTHING OF OVER 40% AND CONTINUES EXPORT SUBSIDIES ON SEVERAL AGRICULTURAL COMMODITIES, PARTICULARLY ON SUGAR. NAFTA PARITY AND ULTIMATELY ACCESSION ARE IMPORTANT BECAUSE A PERMANENT FRAMEWORK FOR ADDRESSING THESE NTB'S WILL BE AVAILABLE.

THE COMMON EXTERNAL TARIFF OR CET, TO WHICH ALL CARICOM MEMBERS HAVE AGREED, DEMONSTRATES THE WILLINGNESS OF THE REGION TO ENGAGE IN SIGNIFICANT TARIFF CUTTING OVER THE NEXT FIVE YEARS. TRINIDAD AND TOBAGO HAS ACCELERATED THE TARIFF REDUCTION SCHEDULE FOR ITSELF VOLUNTARILY. THIS MEANS THAT OUR MARKETS WILL BECOME EVEN MORE OPEN THAN THEY CURRENTLY ARE. OUR FOCUS IS TO MAKE SURE THAT THE MAJOR NORTH AMERICAN MARKETS FOR OUR PRODUCTS ARE EQUALLY OPEN. ADHERENCE TO NAFTA WILL SIGNIFICANTLY STRENGTHEN OUR ABILITY TO PROMOTE MARKET ACCESS AND BECOME MEANINGFUL PARTNERS IN THE CONSTRUCTION OF A FREE TRADE AREA THAT ENSURES THE SHARED PROSPERITY AND SECURITY THAT IS THE CORE MOTIVATION OF OUR COMBINED EFFORTS.

MR. CHAIRMAN, THIS CONCLUDES MY ORAL TESTIMONY, HOWEVER, BECAUSE MY GOVERNMENT HAS MADE DETERMINED EFFORTS TO CREATE A SOLID MACROECONOMIC CLIMATE AND BECAUSE THOSE EFFORTS HAVE FOSTERED PRIVATE SECTOR-LED EXPORT EXPANSION AND GROWTH IN THE ECONOMY, I AM SUBMITTING ADDITIONAL INFORMATION ON OUR SPECIFIC EXPERIENCE, WHICH I HOPE WILL BE HELPFUL FOR THE RECORD.

AGAIN, THANK YOU FOR THIS OPPORTUNITY.

[ADDITIONAL COMMENTS]

II.

AS I MENTIONED IN MY ORAL TESTIMONY ON H.R. 553, I BELIEVE THAT IT WILL BE USEFUL FOR THE COMMITTEE TO UNDERSTAND IN SOME ADDITIONAL DEPTH, THE DETERMINED COMMITMENT OF THE GOVERNMENT OF TRINIDAD AND TOBAGO TO FISCAL DISCIPLINE, MACROECONOMIC STABILITY AND TRADE LIBERALIZATION.

THE REFORMS UNDERTAKEN BY MY GOVERNMENT HAVE NOT BEEN EASY. THERE HAVE BEEN SOCIAL AND POLITICAL COSTS INVOLVED. WE HAVE PERSEVERED BECAUSE WE UNDERSTAND THAT OUR SURVIVAL DEPENDS ON OUR ABILITY TO TRADE WITH THE REST OF THE WORLD, BUT OUR PROSPERITY AND WELL-BEING DEPENDS ON OUR ABILITY TO STRUCTURE OUR TRADING RELATIONSHIPS SO THAT THE TALENTS AND LABOR OF OUR CITIZENS FULLY CONTRIBUTE TO OUR GROWTH; BUT MOST IMPORTANTLY THE STRUCTURE OF OUR NEW TRADING RELATIONSHIPS MUST BE CONSTRUCTIVE AND SUSTAINED, PROMOTING THE EXCELLENCE AND INNOVATION THAT WINS AND MAINTAINS MARKETS. OUR PARTNERSHIP WITH THE UNITED STATES MUST BE BUILT IN THIS SPIRIT.

MOVING OUR PRIVATE SECTOR OUT OF THE PROTECTIONIST ENVIRONMENT THAT INITIALLY FOSTERED INDUSTRIALIZATION AND MOVING THE GOVERNMENT OUT OF PRIVATE SECTOR ACTIVITIES, HAVE REQUIRED ATTITUDINAL AS WELL AS PRACTICAL ADJUSTMENTS. FORTUNATELY, THESE POLICY DECISIONS, RIGOROUSLY IMPLEMENTED, HAVE YIELDED MANY POSITIVE RESULTS AND CREATED ALLIES OUT OF MANY SKEPTICS IN OUR BUSINESS COMMUNITY. DESPITE OUR SUPPORT FOR HIGH LABOR STANDARDS AND PROTECTION OF WORKER'S RIGHTS AND DESPITE ACTUAL REDUCTIONS IN UNEMPLOYMENT (CURRENTLY ABOUT 18%), OUR MACRO-ECONOMIC REFORMS ALONE CANNOT REDUCE UNEMPLOYMENT TO ACCEPTABLE LEVELS. THIS IS YET ANOTHER REASON THAT H.R. 553 IS SUCH A WELCOME U.S. INITIATIVE: THE SECURITY CREATED BY THE SIX-YEAR TIME FRAME CREATES AN INCENTIVE FOR BOTH THE GOVERNMENT AND THE PRIVATE SECTOR, TO CREATE EXPORT-ORIENTED ENTERPRISES THAT TAKE ADVANTAGE OF THIS WINDOW OF OPPORTUNITY. THIS LEGISLATION PROVIDES CERTAIN PROOF TO OUR ECONOMIC ACTORS THAT THE U.S. IS SINCERE IN ITS STATED INTENTIONS TO ENSURE THAT NAFTA DOES NOT HAVE A DETRIMENTAL EFFECT ON THE CARIBBEAN AND THAT THERE ARE EVEN GREATER OPPORTUNITIES FOR TRADE BECAUSE THE PRODUCTS EXCLUDED FROM CBI CAN NOW BE EXPORTED TO THE NAFTA MARKET. THE MESSAGE OF H.R. 553 IS REASSURING AND MOTIVATING.

WE HAVE ENTRENCHED OUR MAJOR MACROECONOMIC REFORMS. OUR GOVERNMENT ACCOUNTS ARE NOW TRACTABLE. THE FISCAL DEFICIT, WHICH AVERAGED 7.2% OF GDP IN 1986-88, HAS BEEN REDUCED TO 1.7% OVER THE LAST FIVE YEARS. IN 1994, WE CLOSED THE YEAR WITH A SMALL FISCAL SURPLUS AND WE EXPECT A SIMILAR RESULT AGAIN IN 1995.

OUR BALANCE OF PAYMENTS HAS BEGUN TO DEMONSTRATE A NEW ROBUSTNESS. FOLLOWING ELEVEN YEARS OF CONTINUOUS DEFICIT, FOR THE PAST TWO YEARS THE EXTERNAL ACCOUNTS WERE IN SURPLUS. SUPPORTIVE MONETARY POLICY IS IN PLACE, AIMED AT RESTRAINING AGGREGATE DEMAND TO LEVELS CONSISTENT WITH LOW INFLATION AND THE NEED TO REBUILD OUR FOREIGN EXCHANGE RESERVES. AS A RESULT, INFLATION IS MODERATE AND FALLING. THE INFLATION RATE FROM SEPTEMBER 1993 TO SEPTEMBER 1994 WAS ONLY 6.4%.

WE FLOATED THE TRINIDAD DOLLAR IN 1993 AND HAVE NOW FULLY ABSORBED THE DEVALUATION OCCASIONED BY THAT FLOTATION AND OUR

EXCHANGE RATE HAS HELD REMARKABLY FIRM. CONSEQUENTLY, OUR INFLATION RATE IS EXPECTED TO FALL TO UNDER 5% THIS YEAR.

OUR EXTERNAL DEBT SERVICE PAYMENTS HAVE BEEN ONEROUS -- WE PAID WELL OVER A HALF A BILLION U.S. DOLLARS LAST YEAR. NEVERTHELESS, WE HAVE REDUCED OUR DEBT SIGNIFICANTLY AND IT NOW REPRESENTS BARELY 30% OF GDP -- THIS DOWN FROM 42% IN 1992.

WE HAVE INSTITUTED A MAJOR RESTRUCTURING AWAY FROM IMPORT SUBSTITUTION AND ARE VIGOROUSLY PURSUING A POLICY OF EXPORT LED GROWTH. PIVOTAL TO OUR NEW EXPORT THRUST IS OUR COMMITMENT TO TRADE LIBERALIZATION. ALMOST OVERNIGHT, THE OLD TARIFF STRUCTURE HAS BEEN DISMANTLED. IN 1991, 40% OF THE ITEMS WERE REMOVED THE IMPORT NEGATIVE LIST. IN 1992, VIRTUALLY ALL NON-OIL MANUFACTURED PRODUCTS WERE REMOVED FROM THIS LIST. IN 1995, THE TEMPORARY SURCHARGE IMPOSED SUBSEQUENT TO THE REMOVAL OF ITEMS FROM THE NEGATIVE LIST, WERE REDUCED TO ZERO. STAMP DUTIES ON IMPORTED GOODS WERE ELIMINATED.

IN 1994, THE MAJORITY OF AGRICULTURAL ITEMS WERE REMOVED FROM THE NEGATIVE LIST. NEVERTHELESS, TOTAL OUTPUT IN THIS SECTOR INCREASED BY ALMOST 12%. CONSISTENT WITH OUR OBLIGATIONS WITHIN CARICOM, OUR EXISTING MAXIMUM TARIFF OF 30% WILL BE PHASED DOWN TO 20% BY 1998. IT IS IMPORTANT TO NOTE, HOWEVER, THAT A MORE ACCURATE REFLECTION OF THE OPENNESS OF OUR TRADE REGIME IS THAT **AVERAGE TARIFF RATES ARE NOW LESS THAN 6%** FOR IMPORTS FROM THE U.S.

THE BEST PROOF OF OUR SUCCESS IN CREATING A FAVORABLE INVESTMENT CLIMATE, IS EVIDENCED BY THE SURGE OF DIRECT INVESTMENT. IN 1994, INVESTMENT FLOWS FROM THE U.S. REACHED ALMOST $US 700 MILLION AND FOR 1995, WE HAVE COMMITMENTS FROM YOUR COUNTRY FOR $US 1.2. BILLION. (THIS FIGURE DOES NOT COUNT FOREIGN DIRECT INVESTMENT FROM OTHER COUNTRIES.) AT OVER $US 1000 PER CAPITA, TRINIDAD AND TOBAGO WILL EASILY SURPASS ALL OTHER COUNTRIES IN THE HEMISPHERE IN ATTRACTING FOREIGN INVESTMENT.

OVER THE PAST THREE YEARS, NEW U.S. ENTRANTS TO TRINIDAD AND TOBAGO INCLUDE ENRON, NUCOR, ARCADIAN PARTNERS, SOUTHERN ELECTRIC, FARMLAND AND CABOT. AMOCO, ONE OF OUR LONGSTANDING U.S. CORPORATE NEIGHBORS, IS CURRENTLY WORKING WITH BRITISH GAS AND CABOT ON A NEW LIQUIFIED NATURAL GAS PROJECT THAT WILL BE THE FLAGSHIP OF OUR SECOND MAJOR INDUSTRIAL PARK.

TRINIDAD AND TOBAGO HAS HAD AN AGGRESSIVE PROGRAM OF DIVESTMENT OF PUBLIC HOLDINGS IN COMMERCIAL COMPANIES. FIFTEEN COMPANIES HAVE BEEN DIVESTED OVER THE PAST THREE YEARS, INCLUDING THE GENERATION DIVISION OF THE NATIONAL ELECTRIC COMPANY, THE NATIONAL AIRLINE AND THE IRON AND STEEL COMPANY. DIVESTMENT PROCEDURES ARE IN PROGRESS FOR ANOTHER THIRTEEN COMPANIES. FOURTEEN COMPANIES HAVE BEEN LIQUIDATED AND OTHER COMPANIES THAT WERE IN THE STATE'S PORTFOLIO HAVE BEEN MERGED OR RESTRUCTURED. THE PUBLICATION "LATIN AMERICAN FINANCE" HAS CHARACTERIZED OUR EFFORTS AS "ONE OF THE MOST ACTIVE DIVESTMENT PROGRAMS IN THE REGION".

OUR COUNTRY HAS ALSO BEEN FORTUNATE TO HAVE HAD THE ASSISTANCE OF U.S. CUSTOMS IN MODERNIZING OUR CUSTOMS OPERATIONS. WE HAVE INTRODUCED THE AUTOMATED SYSTEM FOR THE COLLECTION OF CUSTOMS DATA (ASYCUDA), WHICH IS NOW OPERATIONAL IN MOST OF THE COUNTRY. WE EXPECT THAT THIS CRITICAL ELEMENT IN

OUR ADMINISTRATIVE REFORM OF THE CUSTOMS DEPARTMENT, WILL BE EXTENDED TO TOBAGO AND TO THE INDUSTRIAL ESTATE AT POINT LISAS DURING 1995.

THE GOVERNMENT HAS COMMISSIONED COMPREHENSIVE STUDIES RELATED TO COMPETITION POLICIES, ANTI-DUMPING AND COUNTERVAILING DUTIES, AND UNFAIR TRADE PRACTICES. THE RECOMMENDATIONS FROM THESE STUDIES ARE BEING EVALUATED AND IMPLEMENTED AS APPROPRIATE, THROUGH BOTH LEGISLATIVE AND ADMINISTRATIVE REFORMS. ALL OF THESE EFFORTS ARE GEARED TOWARDS THE CREATION OF AN EFFICIENT AND MODERN BUSINESS ENVIRONMENT.

FINALLY, LET ME REITERATE THE GREAT UTILITY OF SECTION 202 (B)(2) OF H.R. 553 AS A GAUGE FOR OUR ECONOMIC REFORMS. TRINIDAD AND TOBAGO HAS CHARTED ITS EFFORTS AGAINST THIS YARDSTICK OF CRITERIA AND THE RESULTS MAY BE FOUND IN THE ATTACHED CHART.

MY GOVERNMENT STRONGLY ENDORSES THE APPROACH TO CARIBBEAN PARITY IN H.R. 553, BECAUSE IT INCLUDES PETROLEUM AND ITS DERIVATIVE PRODUCTS AND CLEARLY PLACES PARITY WITHIN THE CONTEXT OF NAFTA ACCESSION.

ACHIEVEMENT OF KEY NAFTA MILESTONES

A **WORLD TRADE ORGANISATION**

- In April, 1994 Trinidad and Tobago signed the Agreement establishing the World Trade Organisation

B **EQUITABLE MARKET ACCESS**

- Trinidad and Tobago provides most favoured nation treatment to all imported goods.

C **ABSENCE OF EXPORT SUBSIDIES**

- Trinidad and Tobago does not grant export subsidies nor impose performance export requirements nor local content requirements.

D **MACROECONOMIC REFORMS**

- Trinidad and Tobago has undergone extensive macroeconomics reform:

1994 Performance Highlights

• Fiscal surplus .	0.07% of GDP
• Inflation	8.6%
• Exchange Rate	0.9% depreciation
• Balance of Payments Surplus	3.1% of GDP
• Foreign Debt Fully Serviced	
• Foreign Exchange Reserves	2.6months import cover

ACHIEVEMENT OF KEY NAFTA MILESTONES

- Money supply growth 0.5%
- Price controls restricted to the following products:

  Sugar
  School books
  Pharmaceuticals

- Growth of GDP 4%

E **PROTECTION OF INTELECTUAL PROPERTY RIGHTS**

- Intellectual Property Rights Agre ment with the USA.

F **ELIMINATION OF BARRIERS TO TRADE IN SERVICES**

- Committed to liberalisation of trade in services consistent with Uruguay Round.
- Bilateral Investment Treaty with t e USA provides for fully liberalised trade in services with the exception of civ aviation, customs brokerage, gambling ,betting and lotteries

G **NATIONAL TREATMENT TO FOREGN INVESTMENT**

- Bilateral Investment Treaty commits Trinidad and Tobago to national treatment to foreign investment.

ACHIEVEMENT OF KEY NAFTA MILESTONES

H **URUGUAY ROUND TARIFF LEVELS**

- Trinidad and Tobago fully committed to Uruguay Round Tariff levels.

I **EXTENSIVE TRADE LIBERALISATION**

- Import Negative List restricted to items which have implications for national security, public health or for which Trinidad and Tobago has commitments under International Treaties.

- Trinidad and Tobago continues to honour its obligations under the WTO, such as National Treatment and Most Favoured National Treatment, and remains committed to the concept of Trade liberalisation.

J **CONSISTENCY WITH MARKET ACCESS OBJECTIVES OF THE UNITED STATES**

- Extensive programme of trade liberalisation and the Bilateral Investment Treaty commits Trinidad and Tobago to the market access objectives of the USA.

Chairman CRANE. Thank you, Minister Mottley.
Minister Castillo.

STATEMENT OF HON. EDUARDO GONZALEZ CASTILLO, MINISTER OF ECONOMY, GOVERNMENT OF GUATEMALA

Mr. CASTILLO. Good morning, Mr. Chairman. My name is Eduardo Gonzalez Castillo, Minister of Economy of Guatemala, and I appreciate the opportunity to appear before you today to testify on behalf of Central America in support of H.R. 553, the Caribbean Basin Trade Security Act of 1995.

Our countries welcome the introduction of this legislation as it addresses the key issue of CBI competitiveness in light of additional benefits obtained by Mexico under NAFTA, as well as setting the parameters for our region's participation in a broad free trade area.

After discussing this matter in detail, the Central American ministers of economy met in Guatemala and reached a consensus last Friday that we must act together to promote this initiative. As such, I am honored to have the region's representation bestowed on me to present a common point of view at this hearing.

At present, Central America is closer culturally to the United States than the Asians, African, and even European nations. We jog, we watch more than 50 channels of U.S. TV by cable and we are even giving up smoking. This special link between our region and the United States is exemplified by our trading relationship with a considerable flow of goods and services for decades.

In light of declining consistent levels for the past years, we are convinced trade will become the driving force that will determine our relations for years to come and welcome opportunities to open up markets and facilitate the exchange of products between our people.

The Caribbean Base Initiative, which took effect in 1984, has done a great deal to further commerce and brought about prosperity for all parties involved. The results speak for themselves. In 1983, before the CBI came into being, Central American exports to the United States were close to $2 billion, while imports of U.S. products equaled $2.3 billion.

In 1993, our exports to the United States reached $4.5 billion, while U.S. exports to Central America rose to $6.1 billion, with the CBI as the main driving force. These figures evidence a fact that is often overlooked. For every dollar that Central America exports to anyplace in the world, 70 to 75 cents goes directly to purchasing U.S. products, underscoring the point that a program's results should be viewed from the benefits it brings about rather than narrowly focusing on the access it provides.

The CBI has also generated considerable employment with over half a million new jobs in Central America since the program took effect. In the United States, the CBI has also created jobs. For example, many ports in the United States located in States like Florida, California, Texas, and Louisiana, through which our products enter, have reaped substantial benefits due to the rising trade, providing good paying jobs and countless opportunities for the service industry.

Internally the CBI has caused a diversification in our economies that lessens our dependency on traditional commodities subject to volatile swings in world prices. It had provided a window of opportunity for small and medium entrepreneurs that can now take advantage of their abilities and dedicate themselves to production for export under CBI.

In the agricultural sector, we are significant exporters of fruits and vegetables, cut flowers and ornamental plants, and seafood. Industrially, the textile and apparel industry has prospered tremendously and currently plays an important role in our economies despite not enjoying CBI duty-free treatment.

It has generated significant foreign exchange earnings and contributed to the generation of employment. In addition, programs like the guaranteed access levels, GALs, have resulted in tangible benefits not only for our apparel manufacturers, but for U.S. exports as well, which last year sold over $500 million in raw materials to this industry alone.

With NAFTA taking effect in 1994, Central America has suffered an impact that adversely affects many of these key sectors. As a result of additional benefits obtained by Mexico under NAFTA, the competitiveness of our exports to the United States has been eroded. In the textile and apparel sector, where our exports had been steadily increasing in comparison to Mexico, the impact is real.

In 1994, exports of our textile and apparel industry from Central America to the United States grew only by 9.9 percent after yearly averaging 35 percent, compared to Mexico's astonishing jump of 39.2 percent growth after averages of about 25 percent prior to NAFTA. This has resulted in the closing of over 100 plants in Central America and the loss of over 15,000 jobs in 1994 alone.

Some agricultural products have lost market share in the United States as a result of NAFTA, and investment has virtually come to a grinding halt as interest in our region fades. The impact of NAFTA will continue to detrimentally affect trade between Central America and the United States with consequences for various sectors that we have yet to pinpoint in this first year.

For these reasons, we were pleased to establish a constructive dialog with the U.S. Government during 1994, seeking options to restore CBI competitiveness and allowing for the progress made to date to continue and our region to prosper. Despite the unfortunate demise of the program, we were encouraged that the United States remain committed to addressing this issue as expressed by Vice President Gore at the Managua summit and categorically emphasized by President Clinton in Miami during the Summit of the Americas.

Now we have the golden opportunity to make our ideals a reality and take action consistent with the free trade principles agreed to by the entire hemisphere. This is why Central America staunchly supports the Caribbean Basin Trade Security Act as introduced in the Trade Subcommittee by Chairman Crane, and Congressmen Gibbons, Rangel, and Shaw.

The bill clearly addresses the CBI competitiveness by providing treatment equivalent to NAFTA for those products excluded from the CBI, which will mitigate the damage suffered to date and provide some just access to the U.S. markets. In addition, it paves the

way for Central America to commence negotiations conducive to its participation in NAFTA.

The provisions in the legislation recognize that concrete action is of paramount importance, establishing a mechanism such as the meeting between our trade ministers and the United States Trade Representative, which is the appropriate vehicle to examine how we can work together and make tangible progress.

Sectoral negotiations in areas such as investment, phytosanitary regulations, intellectual property rights, and customs procedures could begin immediately with the dual objectives of facilitating trade and removing barriers, as well as creating a momentum that permits us to tackle more complex issues. Central America is prepared to do its part in meeting the criteria necessary for proceeding with the free trade negotiations, as they are consistent with the economic liberalization process we strive to further in our region's participation in the World Trade Organization.

Time is of the essence, as the delaying action will only exacerbate the problems we are experiencing to date. We feel that this legislation has widespread bipartisan support in the U.S. Congress and deserves the full backing of the Clinton administration in accordance with the commitment made to our region, which can now be fulfilled by achieving swift passage and prompt implementation of H.R. 553.

The bill is vital to maintain the momentum for trade liberalization and warrants the effort of all those who genuinely care to foster growth and prosperity. As President De Leon Carpio of Guatemala stated in Miami, "Let it be clear that the political will to promote trade liberalization is there. Now is the time to abandon rhetoric and undertake action * * *."

Thank you for the opportunity to share these comments with you today, and I trust that you will back this initiative. I am in the best position to answer any questions that may enrich this productive dialog. Thank you very much, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF MR. EDUARDO GONZALES CASTILLO, MINISTER OF ECONOMY OF GUATEMALA, REPRESENTING CENTRAL AMERICA, IN SUPPORT OF "H.R. 553", THE CARIBBEAN BASIN TRADE SECURITY ACT, BEFORE THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS & MEANS COMMITTEE

GOOD MORNING. MY NAME IS EDUARDO GONZALES CASTILLO, MINISTER OF ECONOMY OF GUATEMALA, AND I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO TESTIFY ON BEHALF OF CENTRAL AMERICA IN SUPPORT OF "H.R. 553", THE CARIBBEAN BASIN TRADE SECURITY ACT OF 1995". OUR COUNTRIES WELCOME THE INTRODUCTION OF THIS LEGISLATION AS IT ADDRESSES THE KEY ISSUE OF CBI COMPETITIVENESS IN LIGHT OF ADDITIONAL BENEFITS OBTAINED BY MEXICO UNDER NAFTA, AS WELL AS SETTING THE PARAMETERS FOR OUR REGION'S PARTICIPATION IN A BROAD FREE TRADE AREA. AFTER DISCUSSING THIS MATTER IN DETAIL, THE CENTRAL AMERICAN MINISTERS OF ECONOMY REACHED A CONSENSUS LAST FRIDAY THAT WE MUST ACT TOGETHER TO PROMOTE THIS INITIATIVE; AS SUCH, I'M HONORED TO HAVE THE REGION'S REPRESENTATION BESTOWED ON ME TO PRESENT A COMMON POINT OF VIEW AT THIS HEARING.

AFTER DECADES OF POLITICAL STRIFE, CENTRAL AMERICA IS EMERGING UNDER DEMOCRATICALLY-ELECTED GOVERNMENTS TO FACE THE CHALLENGE OF ACHIEVING SELF-SUSTAINED GROWTH, THEREBY PROMOTING THE PROSPERITY THAT OUR PEOPLE YEARN FOR AND CREATING THE CONDITIONS CONDUCIVE TO IMPROVING THEIR STANDARD OF LIVING. THE STRENGHTHENING OF DEMOCRATIC INSTITUTIONS AND THE IMPLEMENTATION OF PARTICIPATORY MECHANISMS THAT ALLOW FOR ALL SECTORS OF SOCIETY TO HAVE A VOICE HAVE ADVANCED SIGNIFICANTLY, LAYING THE GROUNDWORK TO CONTINUE OUR QUEST UNDER THE FIRM CONVICTION THAT BY WORKING TOGETHER WE CAN BEST ACHIEVE THE GOALS WE COMMONLY SHARE. WE FIRMLY BELIEVE THAT OUR SUCCESS DEPENDS ON TAPPING OUR RESOURCES AND TAKING ADVANTAGE OF OUR STRENGHTS, IN ADDITION TO CREATING AN INFRASTRUCTURE THAT RESPONDS TO THE CHALLENGES BEFORE US AND ALLOWS OUR NATIONS TO PARTICIPATE IN THE GLOBAL LIBERALIZATION PROCESS.

CENTRAL AMERICA, WHILE VERY QUIET AT PRESENT, IS A PART OF THE WORLD WHICH HAS OCCUPIED THE TIME OF THE U.S. LEGISLATIVE AND EXECUTIVE BRANCHES OFTEN IN THE PAST. WE BELIEVE THAT ONE OF THE BENEFITS OF THIS LEGISLATION IS THAT IT SHOULD HELP KEEP YOU FROM HAVING TO WORRY MUCH ABOUT US IN THE FUTURE. FOR EXAMPLE, U.S. ASSISTANCE TO OUR COUNTRIES, WHICH TOTALLED NEARLY ONE BILLION A YEAR IN THE 1980'S, WILL BE LESS THAN $200 MILLION THIS YEAR AND MUCH LESS IN FUTURE YEARS. WE ARE VERY PLEASED THAT TRADE IS REPLACING AID.

WHILE WE ARE SMALL COUNTRIES AND LOOK VERY SIMILAR ON THE MAP, WE RANGE FROM THE RELATIVELY LOW-LAND AND TROPICAL NICARAGUA TO MY COUNTRY IN WHICH OVER HALF OUR POPULATION LIVES IN HIGHLANDS OF OVER 5,000 FEET WHERE THEY ENJOY SPRINGLIKE WEATHER ALL YEAR ROUND. HONDURAS, COSTA RICA AND EL SALVADOR FALL SOMEWHERE BETWEEN THESE TWO EXTREMES. RACIALLY, WE RANGE FROM THE LARGELY EUROPEAN ORIGIN COSTA RICANS TO MY COUNTRY IN WHICH INDIANS COMPRISE ABOUT HALF OUR POPULATION. ALL OF OUR COUNTRIES HAVE SMALL POPULATIONS OF BLACKS ON THEIR CARIBBEAN COASTS.

THE MAYAN AND SPANISH EMPIRES OF THE PAST HAVE LEFT THEIR IMPACT ON THE PEOPLE OF OUR COUNTRIES, BUT CURRENTLY THE MOST IMPORTANT INFLUENCES ON US COME FROM THE U.S. OUR CULTURES ARE MUCH CLOSER TO THAT OF THE U.S. THAN ARE THOSE OF ALMOST ALL ASIAN, AFRICAN AND EVEN EUROPEAN COUNTRIES. WE JOG, ARE GIVING UP SMOKING AND WATCH UP TO 50 CHANNELS OF U.S. TELEVISION.

POLITICALLY, COSTA RICAS HAS A LONG HISTORY OF DEMOCRATIC GOVERNMENT, WHILE THE REST OF US HAVE BEEN GETTING PRETTY GOOD AT DEMOCRACY OVER THE PAST DECADE OR SO. ALL OF OUR COUNTRIES HAVE

SUCCESSFULLY COMPLETED THAT MOST DIFFICULT DEMOCRATIC PROCESSES; I.E. THE TRANSFER OF POWER TO AN OPPOSITION PARTY BY ELECTIONS. MEXICO AND OTHER DEMOCRACIES HAVE YET TO ACHIEVE THIS SORT OF TRANSFER.

ECONOMICALLY, WE USED TO RELY ON OUR NATURAL RESOURCES AND SHORT-SIGHTED, INWARD-LOOKING IMPORT SUSTITUTION . POLICIES. THESE POLICIES BROUGHT GOOD LIVES FOR A VERY SMALL PERCENTAGE OF OUR CITIZENS. IN RECENT YEARS, HELPED BY THE CBI PROGRAM (WHICH INITIATED IN THIS COMMITTEE), WE HAVE DECIDED THAT THE ONLY WAY TO BRING BETTER LIVES FOR ALL OF OUR CITIZENS IS TO INCORPORATE OUR COUNTRIES MORE FULLY INTO THE GLOBAL ECONOMY.

THIS LEGISLATION I AM TESTIFYING ON BEHALF OF TODAY WILL HELP OUR COUNTRIES BRING BETTER LIVES FOR ALL OUR CITIZENS. IT WILL ALSO CONTRIBUTE SOMEWHAT TO BETTER LINES FOR U.S. CITIZENS. CENTRAL AMERICA HAS A LONGSTANDING TRADITION OF TRADE, DATING BACK THOUSANDS OF YEARS TO THE MAYAN CULTURE THAT EXCELLED IN COMMERCE; WHEN THE SPANISH CAME TO OUR REGION, THEY FOUND A NATION OF MERCHANTS THAT SPECIALIZED IN THE EXCHANGE OF GOODS AND SERVICES, UNLIKE OTHER PLACES LIKE PERU AND MEXICO WHERE GOLD AND SILVER CONSTITUTED THE MAIN ATTRACTION. SINCE 1962, WHEN THE CENTRAL AMERICAN COMMON MARKET WAS FOUNDED, OUR REGION HAS SOUGHT TO FOSTER FREE TRADE BY FACILITATING THE MOVEMENT OF PRODUCTS BETWEEN OUR BORDERS. EMPHASIS HAS BEEN PLACED ON THE ELIMINATION OF TARIFF AND NON-TARIFF BARRIERS THAT IMPEDE AND DISTORT COMMERCE, INTRODUCING LEGISLATIVE AND ADMINISTRATIVE REFORMS THAT FACILITATE THE FREE FLOW OF GOODS AND SERVICES. IN ADDITION, WE HAVE SOUGHT TO HARMONIZE OUR LEGAL FRAMEWORKS AND UNIFY PROCEDURES THAT MAKE IT EASIER FOR PEOPLE TO CARRY OUT THEIR ACTIVITIES WIHOUT HAVING TO FACE A MYRIAD OF FORMS AND OTHER REQUIREMENTS. THE DECISION-MAKING PROCESS IS MORE AGILE WITH THE CONSTANT CONTACTS AND EXCHANGE OF VIEWPOINTS IN PERIODIC PRESIDENTIAL SUMMITS, WHICH ARE THEN FOLLOWED-UP BY THE MEETINGS OF OUR COUNTRIES' ECONOMIC CABINETS AND OTHER REGIONAL FORA DESIGNED TO STREGHTEN CONSENSUS AND REACH COMMON POSITIONS VIS-A-VIS THE MANY ISSUES BEFORE US. OUR GOVERNMENTS ARE COMMITTED TO THE CONSOLIDATION OF CENTRAL AMERICA AS A UNITY, RECOGNIZING OUR DIFFERENCES WHILE AT THE SAME TIME HIGHLIGHTING OUR SIMILARITIES. THE TASK IS NOT AN EASY ONE, BUT WE ARE AWARE THAT WE MUST CONSTRUCTIVELY TACKLE OUR PRIORITIES WITH THE VIEW OF MOVING FORWARD, WITHOUT LETTING ANY OBSTACLES DIMINISH OUR MOMENTUM AND SEEKING VIABLE SOLUTIONS THAT SATISFY THE CONCERNS OF ALL PARTIES INVOLVED. TRUST AND RESPECT ARE TWO KEY ELEMENTS IN THIS EQUATION, SINCE THEY REPRESENT THE FOUNDATION FOR PRODUCTIVE RELATIONS AND CREATE THE POSITIVE CLIMATE NECESSARY TO MAKE PROGRESS. WITH THESE PRINCIPLES IN HAND, OUR REGION SEEKS TO FOSTER INCREASED LINKS WITH OTHER NATIONS AND REGIONS, FORGING A PARTNERSHIP THAT LEADS TO GROWTH AND PROSPERITY.

FOCUSING ON TRADE, CENTRAL AMERICA HAS HAD A COMMON TARIFF SYSTEM FOR THE PAST DECADES; IN 1993, WE IMPLEMENTED CHANGES TO CONFORM TO INTERNATIONALLY RECOGNIZED STANDARDS BY ADOPTING THE "HARMONIZED TARIFF SCHEDULE" (HTS) SYSTEM. IN ADDITION, WE ARE IN THE PROCESS OF COMPLETING COMMON FRAMEWORKS IN AREAS SUCH AS "RULES OF ORIGIN", "DUMPING", "TECHNICAL STANDARDS", "DISPUTE-SETTLEMENT PROCEDURES" AND "FITOZOOSANITARY REGULATIONS", WHITH THE IDEA OF HAVING A SINGLE MECHANISM IN PLACE FOR THE ENTIRE ISTHMUS IN THE NEAR FUTURE THAT PROVIDES THE UNIFORMITY AND CONSISTENCY NECESSARY TO GROW AS A UNITY. THE CONTENT IN THE MAJORITY OF THESE AREAS IS BASED ON THE TREATMENT ESTABLISHED BY THE "NORTH-AMERICAN FREE TRADE AGREEMENT" (NAFTA), WHICH HAS SET THE GUIDELINES FOR THE SUBSTANCE AND FORM IN THESE FIELDS, AS WELL AS CONSISTENT WITH THE APPLICABLE PROVISIONS OF THE "WORLD TRADE ORGANIZATION" (WTO). INTERNALLY, THE NATIONS OF CENTRAL AMERICA HAVE TAKEN SIGNIFICANT STEPS TO LIBERALIZE THEIR TRADE AND INVESTMENT REGIMES BY SIMPLIFYING

PROCEDURES AND REMOVING IMPEDIMENTS THAT ONLY CURTAILED COMMERCE WITHOUT ANY TANGIBLE BENEFIT FOR THE LONG TERM. THESE MEASURES HAVE BENEFITTED BOTH LOCAL ENTREPRENEURS AS WELL AS FOREIGN BUSINESSES THAT NOW FIND IT EASIER TO OPERATE IN OUR REGION AS A RESULT OF THE ACTIONS TAKEN AND THE PROGRESSIVE ELIMINATION OF UNFAIR AND DISCRIMINATORY PRACTICES.

WITH THE "WORLD TRADE ORGANIZATION" (WTO) COMING TO LIFE IN 1995 AFTER THE SUCCESSFUL CONCLUSION OF THE "GATT-URUGUAY ROUND", CENTRAL AMERICA WILL SEEK TO PLAY AN ACTIVE ROLE IN TRADE LIBERALIZATION PROMOTING FAIRNESS AND TRANSPARENCY WITHING THIS CONTEXT. WE STRONGLY FEEL THAT A UNIFORM SET OF RULES IS VITAL FOR THE FREE FLOW OF GOODS AND SERVICES, IN WHICH COUNTRIES CAN TAP THEIR COMPETITIVE ADVANTAGES AND INCREASE THEIR EXPORTS IN CONSUMER MARKETS WORLDWIDE. WE ARE PLEASED THAT THE DIFFERENCES IN THE ECONOMIES OF NATIONS AROUND THE GLOBE ARE ADEQUATELY RECOGNIZED IN THE WTO, ALLOWING FOR TREATMENT CONGRUENT WITH A GIVEN COUNTRY'S LEVEL OF DEVELOPMENT, AND FEEL THAT WE CAN STILL MAKE GREATER PROGRESS. IN ORDER TO EFFECTIVELY PROMOTE GROWTH, ONE MUST TAKE INTO ACCOUNT THE SIZE AND SCOPE OF THE ECONOMIES AROUND THE GLOBE TO GENUINELY REFLECT THE NATURE OF THE TRADING RELATIONSHIPS THAT EXIST; OTHERWISE, ONE RUNS THE RISK OF CREATING EXPECTATIONS THAT FALL SHORT OF RESULTS AND UNDERMINE THE PROCESS OF TRADE LIBERALIZATION AND THE GOAL OF ECONOMIC WELL-BEING. CONFIDENT THAT THE WTO ENCOMPASSES THE VARIOUS TRADE DISCIPLINES IN A STRAIGHTFORWARD MANNER, WE ARE WORKING TO SPEEDILY COMPLETE OUR FULL ACCESION AND PARTICIPATE IN DELIBERATIONS OF INTEREST TO OUR ECONOMIES, CONSTRUCTIVELY ENGAGING WITH OUR TRADING PARTNERS TO FORGE A CONSENSUS THAT SOLIDIFIES ITS PRACTICAL VIABILITY. WE FEEL THAT THE SACRIFICES WE HAVE TO MAKE IN ORDER TO CONFORM TO THE NEW WORLD TRADE ORDER ARE WORTH THE BENEFITS WE WILL OBTAIN FROM AN OPEN ECONOMIC SYSTEM THAT REWARDS QUALITY IN BOTH GOODS AND SERVICES. GREATER EFFORTS SHOULD BE MADE TO ENSURE THAT MARKET ACCESS FOR DEVELOPING COUNTRIES' PRODUCTS IS AS FREE AS POSSIBLE, UTILISING THE WTO MECHANISMS TO GUARANTEE THEIR UNIMPEDED ENTRY INTO CONSUMER NATIONS AND AVOIDING THE USE OF RESTRICTIVE ACTIONS THAT RUN COUNTER TO THE GOALS AGREED TO UNDER THIS BODY.

THE UNITED STATES HAS TRADITIONALLY BEEN CENTRAL AMERICA'S MAIN TRADING PARTNER, WITH CONSIDERABLE FLOWS OF GOODS AND SERVICES FOR THE PAST DECADES; AS SUCH, WE FEEL A SPECIAL LINK TO THE UNITED STATES WHICH WE HOPE TO FURTHER STRENGHTHEN BY WORKING TOGETHER IN A SPIRIT OF TRUE PARTNERSHIP.

IN 1984, THE "CARIBBEAN BASIN INITIATIVE" (CBI) TOOK EFFECT GIVING THE MAJORITY OF PRODUCTS IN OUR REGION PREFERENTIAL ACCESS TO THE U.S. MARKET WITH THE GOAL OF PROMOTING ECONOMIC PROSPERITY THROUGH EXPORT-LEAD GROWTH. AFTER 10 YEARS, THE RESULTS SPEAK FOR THEMSELVES: TRADE BETWEEN US HAS GROWN SUBSTANTIALLY WITH TANGIBLE BENEFITS FOR ALL PARTIES INVOLVED. IN 1983, CENTRAL AMERICAN EXPORTS TO THE UNITED STATES TOTALLED $2 BILLION AND IMPORTS FROM THE UNITED STATES EQUALED $2.3 BILLION DOLLARS. IN 1993, WE SEE THAT OUR EXPORTS TO THE U.S. REACHED $4.5 BILLION, AND IMPORTS OF U.S. PRODUCTS TO OUR REGION CLIMBED TO $6.1 BILLION. THESE FIGURES UNDERSCORE A FACT THAT IS OFTEN OVERLOOKED: FOR EVERY DOLLAR CENTRAL AMERICA EARNS THROUGH EXPORTS TO THE ENTIRE WORLD APPROXIMATELY 70-75 CENTS GO TO PURCHASING U.S. PRODUCTS. THIS IS TRULY A "WIN-WIN" SITUATION THAT OPPONENTS OF FREE TRADE LOOK TO DOWNPLAY OR IGNORE, NARROWLY FOCUSING ON THE INILATERAL EXTENSION OF TRADE ACCESS WITHOUT TAKING NOTE OF THE FAVORABLE RESULTS PRODUCED. THE CBI HAS ALSO CONTRIBUTED TO THE GENERATION OF EMPLOYMENT, WITH MORE THAN HALF A MILLION JOBS CREATED IN CENTRAL AMERICA SINCE THE PROGRAM TOOK EFECT. IN THE UNITED STATES, THE INCREASE IN TRADE WITH CENTRAL AMERICA HAS ALSO CREATED EMPLOYMENT; FOR EXAMPLE, THE MANY PORTS IN THE UNITED STATES THROUGH WHICH OUR

PRODUCTS ENTER, HAVE REAPED SUBSTANTIAL BENEFITS DUE TO THE INCREASE IN TRADE, PROVIDING GOOD-PAYING JOBS AND COUNTLESS OPPORTUNITIES FOR THE SERVICE INDUSTRY.

FOR OUR REGION, THE CBI HAS ALSO PROMPTED A DIVERSIFICATION OF OUR ECONOMIES WHOSE BENEFITS WILL REACH INTO THE FUTURE; IN THE PAST, WE HAD DEPENDED ON A SMALL NUMBER OF TRADITIONAL PRODUCTS, SUCH AS COFFEE, SUGAR, BEEF AND COTTON, WHICH HINGED ON INTERNATIONAL WORLD MARKETS THAT ARE UNPREDICTABLE. WITH THE CBI, OUR PRODUCTION FOR EXPORT HAS SPAWNED A WIDE VARIETY OF NEW SECTORS WHICH CONTRIBUTE TO OUR ECONOMIES AND MITIGATE THE IMPACT OF ADVERSE PRICES IN OUR TRADITIONAL COMMODITIES. MANY OF OUR COUNTRIES HAVE BECOME IMPORTANT SUPPLIERS OF FRUITS & VEGETABLES, ORNAMENTAL PLANTS AND OTHER PRODUCTS, TAKING ADVANTAGE OF OUR ABUNDANT NATURAL RESOURCES AND FAVORABLE CLIMATE. IN THE INDUSTRIAL AREA, THE GROWTH IN THE TEXTILE & APPAREL INDUSTRY, AS WELL AS IN OTHER MANUFACTURED GOODS MADE FROM WOOD AND CERAMIC, HAVE GENERATED CONSIDERABLE EMPLOYMENT AND TANGIBLE BENEFITS THROUGHOUT OUR NATIONS. THE BROADENING OF OUR PRODUCTIVE CAPACITY UNDOUBTEDLY MAKES OUR ECONOMIES LESS DEPENDENT ON VOLATILE MARKETS FOR TRADITIONAL PRODUCTS, IN ADDTION TO PROVIDING A WINDOW OF OPPORTUNITY FOR MANY SMALL AND MEDIUM ENTREPRENEURS MANY OF WHICH WERE DEDICATED TO SUBSISTANCE AGRICULTURE PLANTING CORN AND BEANS. THE BOOM OF INDIGENOUS COOPERATIVES THAT PULL TOGETHER TO BETTER EXPORT THEIR PRODUCE HAS CONTRIBUTED TO IMPROVE THE STANDARD OF LIVING IN MANY AREAS WHERE HOPE WAS DIM WITH BETTER SALARIES THAN THOSE SECTORS PRODUCING COMMODITIES SUBJECT TO INTERNATIONAL PRICE FLUCTUATIONS. WITH THE CBI MADE PERMANENT IN 1990, THE ASSURANCE OF MARKET ACCESS HAS GENERATED CONFIDENCE AND MADE IT POSSIBLE FOR US TO CONTINUE FOSTERING EXPORTS THROUGH PROGRAMS DESIGNED TO ASSIST THEIR QUALITY AND THE SERVICES NECESSARY FOR THEM TO REACH CONSUMERS IN THE UNITED STATES. YOU WILL NOTICE THAT MANY OF THE FRESH PRODUCE YOU ENJOY DURING THE WINTER MONTHS COMES FROM CENTRAL AMERICA; FOR US IT'S A GREAT SOURCE OF PRIDE TO SEE DEMANDING CONSUMERS SAVORING OUR MELONS, BROCCOLI AND CAULIFLOWER IN A SEASON WHERE FRESHNESS HAS A NEW MEANING.

HOWEVER, WITH THE "NORTH-AMERICAN FREE TRADE AGREEMENT" (NAFTA) THAT TOOK EFFECT IN 1994, OUR COMPETITIVENESS IN MANY VITAL AREAS HAS BEEN ERODED DUE TO THE ADDITIONAL BENEFITS OBTAINED BY MEXICO IN THE NEGOTIATIONS. MANY SECTORS THAT HAD EXPERIENCED SOLID GROWTH ARE NOW IN A POSITION OF DISADVANTAGE AS A RESULT OF THE GREATER MARKET ACCESS ENJOYED BY MEXICO, WITH REPERCUSSIONS NOT ONLY FOR OUR ECONOMIES BUT SERIOUS CONSEQUENCES FOR THE UNITED STATES AS WELL.

PERHAPS THE SECTOR THAT HAS SUFFERED THE GREATEST IMPACT IS THE TEXTILES & APPAREL INDUSTRY, WHICH DESPITE NOT BEING SPECIFICALLY COVERED DUTY-WISE BY THE CBI HAS TAKEN ADVANTAGE OF ITS CAPACITY AND PROGRAMS SUCH AS THE "GUARANTEED-ACCESS LEVELS" (GALS). THIS PROGRAM, WHICH FAVORS THE USE OF U.S. FABRIC IN THE MANUFACTURE OF APPAREL BY GRANTING VIRTUALLY QUOTA-FREE ACCESS, HAS ALSO REPRESENTED A BOOM FOR THE U.S. TEXTILE INDUSTRY, WHICH LAST YEAR EXPORTED CLOSE TO $500 MILLION IN RAW MATERIALS TO CENTRAL AMERICA. LOOKING BACK, IN 1992 APPAREL IMPORTS FROM THE CBI REGION GREW BY 28.2%, COMPARED TO MEXICO'S 26.5%; IN 1993, CBI APPAREL EXPORTS TO THE UNITED STATES GREW BY 31.6% AND MEXICO'S BY 19.4%. IN THE 1994 WITH NAFTA IN PLACE, CBI APPAREL EXPORTS GREW BY A MEAGER 9.9%, COMPARED TO A HUGE INCREASE OF MEXICAN APPAREL EXPORTS TO THE UNITED STATES THAT CLIMBED TO 39.2%. THIS HAS PROMPTED A HALT TO NEW INVESTMENT IN THIS SECTOR AND THE CLOSING OF OVER 100 PLANTS IN OUR REGION DURING 1994 ALONE!! IN AN INDUSTRY THAT GENERATES SIGNIFICANT EMPLOYMENT, THE IMPACT HAS BEEN TREMENDOUS WITH OVER 15,000 WORKERS LOSING THEIR JOBS AS RESULT, A LOSS THAT OUR ECONOMIES CAN SCARCELY ABSORB AND WHOSE SOCIAL CONSEQUENCES

PRESSURE OUR DEMOCRACIES AND OUR CHANCES FOR PROSPERITY. THE U.S. TEXTILE INDUSTRY HAS ALSO FACED DECLINING ORDERS FROM CENTRAL AMERICA, WHICH WILL CONTINUE TO DIMINISH AS PRODUCTION FACILITIES CONTINUE TO CLOSE.

WE ARE ALSO EXPERIENCING THE IMPACT OF MEXICO'S ADDITIONAL BENEFITS UNDER NAFTA IN OTHER AREAS, WHERE THE TREATMENT GRANTED BY THE CBI HAS BEEN RENDERED INEFFECTIVE. MANY AGRICULTURAL PRODUCTS, SUCH AS VEGETABLES, FUITS, CUT FLOWERS AND OTHER ARE LOSING THEIR MARKET SHARE AS A RESULT OF MEXICO UNDER NAFTA. HERE, ONE MUST ALSO POINT OUT THAT, ALTHOUGH TARIFFS ARE IMPORTANT IN DETERMINING MARKET ACCESS, NON-TARIFF REGULATIONS CAN ALSO BE A FACTOR IN LIMITING ENTRY TO CONSUMER MARKETS. MANY EXPORTERS IN CENTRAL AMERICA ARE CURRENTLY SURPRISED THAT MEXICAN EXPORTS SEEM TO HAVE NO PROBLEM WITH CUSTOMS PROCEDURES, FITOSANITARY REGULATIONS AND QUALITY STANDARDS, WHEREAS OUR REGION'S PRODUCTS OFTEN FACE A NEVER-ENDING MAZE OF REQUIREMENTS AND INSPECTIONS. THIS IS ONE OF THE MAIN REASONS CENTRAL AMERICA WISHES TO ADVANCE IN NEGOTIATING ITS PARTICIPATION IN NAFTA, WHICH COULD COMMENCE BY SECTORIAL NEGOTIATIONS TO ADDRESS THESE AREAS AND ESTABLISH CLEAR, TRANSPARENT AND NON-DISCRIMINATORY GUIDELINES THAT ENCOURAGE AND FACILITATE TRADE. WE ARE PREPARED TO DO OUR PART AND ELIMINATE THE FEW MINUSCULE REMAINING OBSTACLES TO THE FREE ACCESS FOR U.S. GOODS AND SERVICES, CONSCIOUS THAT WE NEED TO ADVANCE ON A RECIPROCAL BASIS IN THESE FIELDS.

IN THE AREA OF INVESTMENT, NAFTA HAS PROMPTED A SHIFT IN THE ATTENTION OF INVESTORS DETRIMENTAL TO OUR REGION, WHICH HAS TAKEN CONCRETE STEPS TO FACILITE FOREIGN INVESTMENT. OUR COMMERCIAL OFFICES IN THE UNITED STATES CONSTANTLY REPORT DRASTIC DROPS IN INVESTOR INTEREST TO EXPLORE CENTRAL AMERICA AS AN OPTION. THIS POSES A SERIOUS QUANDRY FOR COUNTRIES GIVEN THE TIME AND EFFORT DEDICATED TO INVESTMENT PROMOTION, CONTRASTED WITH THE DAUNTING CHALLENGES WE FACE IN AREAS SUCH AS HEALTH, EDUCATION AND ENVIRONMENT WHICH DEMAND FOR CONSISTENT RESOURCE ALLOCATIONS. PEOPLE OFTEN QUESTION MEASURES ORIENTED TO ATTRACT INVESTMENT WHEN NO RESULTS ARE DERIVED, AND THE CURRENT SITUATION MAKES IT EXTREMELY DIFFICULT TO JUSTIFY ACTIONS. ANOTHER IMPORTANT THING TO KEEP IN MIND IS THAT, WITH INVESTMENT, COMES THE TRANSFER OF TECHNOLOGY ESSENTIAL FOR OUR REGION TO IMPROVE ITS RESOURCE UTILIZATION AND KEEP UP WITH THE LATEST INNOVATIONS. IN SECTORS LIKE AGRIBUSINESS, OUR COUNTRIES HAVE THE POTENTIAL TO TAKE THEIR FRESH PRODUCE ONE STEP FURTHER AND INCREASE THEIR EXPORTS OF PROCESSED FOODS TO MARKETS THAT SHOW AN ATTRACTIVE DEMAND. BUT FOR THIS, WE NEED TO HAVE ACCESS TO EQUIPMENT AND KNOW-HOW THAT COULD ENABLE US TO ADVANCE IN THIS DIVERSIFICATION OF OUR EXPORT SUPPLY AND TAKE ADVANTAGE OF MARKETS LIKE THE UNITED STATES AND EUROPE.

ONE CANNOT DENY THAT THE IMPACT OF NAFTA WILL CONTINUE TO BE FELT THROUGHOUT THE CARIBBEAN BASIN, PERHAPS EVEN AFFECTING AREAS WHICH WE HAVE YET TO PINPOINT; OUR REGION IS CONCERNED THAT THE MOMENTUM FOR PROGRESS THROUGH INCREASED TRADE WILL SUFFER A SERIOUS SETBACK THAT ENDANGERS MANY OF THE ACCOMPLISHMENTS WE'VE FOUGHT SO HARD FOR. FOR THIS REASON, WE WERE PLEASED TO ESTABLISH A CONSTRUCTIVE DIALOGUE WITH THE GOVERNMENT OF THE UNITED STATES DURING 1994, WORKING TOGETHER TO FIND ALTERNATIVES AND VIABLE OPTIONS THAT MAINTAIN THE COMPETITIVENESS OF THE CBI WHILE EXPLORING MECHANISMS FOR AN EVENTUAL FREE-TRADE NEGOTIATION. DESPITE THE UNFORTUNATE DEMISE OF THE "INTERIM TRADE PROGRAM" (ITP) LAST YEAR, WE WERE HAPPY TO LEARN FROM VICEPRESIDENT GORE AT THE MANAGUA SUMMIT THAT THE U.S. REMAINED COMMITTED TO PROMOTING THIS ISSUE AT THE EARLIEST POSSIBLE DATE. PRESIDENT CLINTON EMPHASIZED HIS ADMINISTRATION'S CONVICTION TO PUSH FOR CBI PARITY AT THE "SUMMIT OF THE AMERICAS" IN MIAMI AND PROMISED TO TAKE ACTION IN EARLY 1995, WORKING TOGETHER WITH THE U.S. CONGRESS TO ENSURE A SWIFT PASSAGE OF THE

LEGISLATION.
NOW WE HAVE THE OPPORTUNITY TO ACCOMPLISH THIS GOAL AND JOIN EFFORTS IN MAKING OUR IDEAS A REALITY, RE-ENFORCING THE TRADE PRINCIPLES THAT BOUND TOGETHER OUR HEMISPHERE AT THE MIAMI SUMMIT.

FOR THIS VERY REASON, CENTRAL AMERICA FULLY SUPPORTS "H.R. 553", THE "CARIBBEAN BASIN TRADE SECURITY ACT", AS INTRODUCED IN THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS & MEANS COMMITTEE BY CHAIRMAN CRANE AND CONGRESSMEN GIBBONS, RANGEL AND SHAW. WE BELIEVE THAT THIS LEGISLATION ENJOYS WIDESPREAD BIPARTISAN SUPPORT IN THE U.S. CONGRESS, AND TRUST THAT THE CLINTON ADMINISTRATION WILL GIVE IT FAVORABLE CONSIDERATION IN ACCORDANCE WITH THE COMMITMENT MADE AND CONSISTENT WITH A SPIRIT OF TRUE PARTNERSHIP. WE MUST ACT NOW AND MOVE AHEAD WITH THIS BILL WHICH CARRIES TANGIBLE BENEFITS FOR ALL PARTIES INVOLVED, AS LETTING TIME PASS WILL ONLY HAMPER THE OBJECTIVES WE COMMONLY SHARE. SERIOUS ATTENTION SHOULD BE GIVEN TO THE POSITIVE EFFECT THAT THIS BILL WILL HAVE AND THE INCREASE IN TRADE IT WILL BRING ABOUT, WHICH WILL ABUNDANTLY COMPENSATE ANY SHORT-TERM IMPACT IT COULD CAUSE. PROMPT IMPLEMENTATION OF THIS LEGISLATION IS A MUST, REQUIRING A SERIOUS AND DILLIGENT EFFORT OF ALL WHO GENUINELY BELIEVE IN SUPPORTING TRADE GROWTH.

THE "CARIBBEAN BASIN TRADE SECUTIRY ACT" COMPREHENSIVELY ADDRESSES THE TWO MAIN ISSUES CURRENTLY RELEVANT TO TRADE BETWEEN THE UNITED STATES AND THE CARIBBEAN BASIN: 1) MITIGATE THE IMPACT OF NAFTA BY OFFERING EQUIVALENT BENEFITS TO CBI BENEFICIARIES, THEREBY MAINTAINING THEIR COMPETITIVENESS IN KEY SECTORS, AND, 2) ESTABLISHING THE GUIDELINES FOR THE REGION'S NEGOTIATION PROCESS THAT LEADS TO ITS PARTICIPATION IN NAFTA.

THE FINDINGS IN THE BILL REFLECT MANY OF THE COMMENTS MADE BEFORE AND REPRESENT THE DRIVING MOTIVE FOR THE LEGISLATION, DEMOSTRATING THAT WE SEE THINGS UNDER THE SAME PERSPECTIVE.

SECTION 101 DEALS WITH THE FIRST OF THE TWO ISSUES MENTIONED ABOVE BY PROVIDING EQUAL TREATMENT WITH NAFTA FOR THOSE PRODUCTS THAT ARE EXCLUDED FROM THE CBI PROGRAM DURING A TRANSITIONARY PERIOD OF TIME. OUR REGION STRONGLY BELIEVES THAT THIS WILL RESTORE THE COMPETITIVENESS OF KEY SECTORS IN OUR ECONOMIES AND BRING A HALT TO THE ADVERSE EFFECT PREVIOUSLY EXAMINED IN MY TESTIMONY. FOR EXAMPLE, OUR TEXTILE & APPAREL INDUSTRY WOULD BE GIVEN THE CHANCE TO COMPETE UNDER JUST TERMS BY ALLOWING THESE ITEMS TO HAVE EQUIVALENT TREATMENT WITH NAFTA AND ACCESS TO THE U.S. MARKET, CONTINUING TO PROVIDE EMPLOYMENT AND FOREIGN EXCHANGE EARNINGS THAT ARE CRUCIAL TO OUR NATIONS. AS STATED BEFORE, ITS BEEN THE HARDEST HIT BY NAFTA. WE ARE PREPARED TO MEET THE APPLICABLE REQUIREMENTS AND COMPLY WITH THE NAFTA RULES OF ORIGIN, AND ALSO WELCOME THE ESTABLISHMENT OF "TARIFF-PREFERENCE LEVELS" IN THOSE CASES WHERE THEY SERVE A PURPOSE AS IDENTIFIED BY THE LANGUAGE OF THE BILL. IMPLEMENTATION OF THIS PROVISION WOULD ALSO BENEFIT THE U.S. FABRIC INDUSTRY, WHICH COULD SEE INCREASES IN SALES TO THE REGION THAT COULD SURPASS $50 MILLION IN THE FIRST YEAR ACCORDING TO PRELIMINARY ESTIMATES, TAKING INTO CONSIDERATION THAT CENTRAL AMERICA'S HIGH USE OF U.S. COMPONENTS COMPARED TO OTHER REGIONS IN THE WORLD, LIKE ASIA, THAT HAVE A LOWER PROPENSITY TO IMPORT U.S. GOODS. SEVERAL COUNTRIES IN OUR REGION PRODUCE QUALITY FABRIC AND WOULD ALSO STAND TO GAIN FROM THIS BILL, EXPANDING THEIR EXPORTS AND CREATING THE PROSPERITY THAT COMES WITH IT. IN ADDITION, THE RECOGNITION FOR FOLKLORIC ARTICLES IS OF PARTICULAR IMPORTANCE TO NATIONS WHERE THE HANDICRAFTS INDUSTRY PROVIDES A LIVING FOR MANY PEOPLE THAT RELY ON THEIR SKILLS AND UNIQUENESS OF THEIR TRADITIONS. ITS IMPORTANT TO REALIZE THAT THEIR PRODUCTS WARRANT SPECIAL TREATMENT AS THEY DON'T COMPETE OR AFFECT COMMON APPAREL MADE IN THE UNITED STATES AND POSE NO THREAT OF MARKET DISRUPTION.

IN THE CASE OF FOOTWEAR, THE REGION HAS THE PRODUCTIVE CAPACITY TO INCREASE ITS EXPORTS PROVIDED IT HAS THE ASSURANCE OF MARKET ACCESS; IN TERMS OF U.S. IMPORTS, THE ENTIRE CBI WOULD PROBABLY NEVER EXCEED 3% OF THE MARKET AND DOES NOT REPRESENT A CONCERN THAT SHOULD ALARM ANYONE IN COMPARISON TO OTHER SUPPLIERS THAT HAVE FLOODED THE U.S. MARKET WITHOUT GRANTING RECIPROCAL ACCESS. FOR OTHER ITEMS, SUCH AS LEATHER ARTICLES, HANDBAGS, LUGGAGE AND FLAT GOODS, NAFTA-LIKE TREATMENT WOULD BE AN INCENTIVE TO OUR ENTREPRENEURS THAT WOULD UNDOUBTEDLY LEAD TO INCREASED PRODUCTION FOR EXPORT. IN THIS REGARD, WHAT MIGHT BE VIEWED AS MINOR IN DOLLAR TRADE VOLUME BY DEVELOPING NATIONS, REPRESENTS A BIG PLUS FOR OUR ECONOMIES AND CONTRIBUTES TO GROWTH OF MANY SMALL AND MEDIUM BUSINESSES.

GIVEN THE IMPORTANCE OF SUGAR EXPORTS FOR CENTRAL AMERICA, SECTION 102 ENSURES THAT CLOSE ATTENTION WILL BE PLACED ON THE IMPACT OF NAFTA ON THIS COMMODITY'S TRADE; ACCESS TO THE U.S. MARKET IS OF PARAMOUNT IMPORTANCE FOR US AND ITS EROSION WOULD CARRY SERIOUS CONSEQUENCES.

SECTIONS (201) AND (202) FOCUSES ON THE SECOND MAIN ISSUE OF SETTING THE GROUNDWORK TO COMMENCE NEGOTIATIONS BETWEEN THE UNITED STATES AND THE CARIBBEAN BASIN, CONDUCIVE TO ACCESION TO NAFTA. AS EXPRESSED BEFORE, CENTRAL AMERICA IS IN THE BEST DISPOSITION TO BEGIN THE DIALOGUE AND WILL CONTINUE TO PREPARE ITSELF TO MEET THIS CHALLENGE. IN THIS SENSE, THE MEETING BETWEEN OUR TRADE MINISTERS AND THE UNITED STATES TRADE REPRESENTATIVE IS AN APPROPRIATE MECHANISM TO CONDUCT CONSULTATIONS ON THE RELEVANT ISSUES AND DRAFT A PLAN OF ACTION THAT RESPONDS TO THE REALISTIC POSSIBILITIES OF MAKING TANGIBLE PROGRESS. WITHING THIS FRAMEWORK, OUR COUNTRIES WISH TO EXPLORE ADVANCING WITH SECTORIAL NEGOCIATIONS IN AREAS SUCH AS INVESTMENT, CUSTOMS PROCEDURES, INTELLECTUAL PROPERTY RIGHTS, AND FITOZOOSANITARY REGULATIONS, WHERE WE ARE READY TO MOVE AHEAD THEREBY STRENGTHENING THE IMPETUS TO TACKLE MORE COMPLEX MATTERS. WE BELIEVE THAT THIS TYPE OF AGREEMENTS, WITH PROVISIONS COMPARABLE TO NAFTA, WOULD PROMOTE INCREASED TRADE INMEDIATELY, AS WELL AS PAVING THE WAY FOR THE FUTURE BY REMOVING ANY DISTORTING ELEMENTS THAT IMPEDE THE FREE FLOW OF GOODS AND SERVICES. THERE IS A LOT WE CAN DO WHILE WE BUILD THE EDIFICE FOR A FULL-SCALE PACT AND ITS OUR OBLIGATION TO ADVANCE WHEREVER POSSIBLE.

THE CRITERIA CONTAINED IN SECTION (202) ARE CONSISTENT WITH THE FACTORS REQUIRED UNDER WTO FOR ANY GIVEN PARTY'S MEMBERSHIP AND PARTICIPATION. CENTRAL AMERICA MEETS MANY OF THEM AND WILL DO EVERYTHING POSSIBLE TO ATTAIN COMPLIANCE WITH THE OTHERS, AS THEY FORM PART OF THE ECONOMIC LIBERALIZATION WE SEEK TO FURTHER.

GENTLEMEN, THE "CARIBBEAN BASIN TRADE SECURITY ACT" CONSTITUTES A UNIQUE OPPORTUNITY FOR US TO JOIN TOGETHER IN FOSTERING TRADE AND CREATING JOBS. CENTRAL AMERICA STAUNCHLY SUPPORTS THE BILL AND IS READY TO DO ITS PART, UNDERTAKING ANY ACTIONS CONDUCIVE TO ITS PASSAGE BY THE U.S. CONGRESS. I THANK YOU FOR GIVING ME THE CHANCE TO SHARE OUR VIEWPOINTS WITH YOU AND TRUST THAT YOU WILL BACK THIS INITIATIVE.

Chairman CRANE. Thank you, Minister Castillo. Mr. Hylton, if you can keep your remarks under 5 minutes, we have another vote in progress, I would prefer to hear your testimony before we temporarily recess. But if you think you are going to be possibly pushing it, we can reserve that until we come back from this vote.

Mr. HYLTON. Well, I will try, Representative Crane, to be very close.

Chairman CRANE. All right, very good.

STATEMENT OF ANTHONY HYLTON, PARLIAMENTARY SECRETARY, MINISTRY OF FOREIGN AFFAIRS, GOVERNMENT OF JAMAICA

Mr. HYLTON. Mr. Chairman and members of this subcommittee, thank you for providing me this opportunity to appear before you on a matter of critical importance to Jamaica, to Caribbean countries, and to the entire Caribbean Basin. I will take this opportunity to publicly thank you and Representatives Rangel and Shaw for introducing the Caribbean Base Trade Act within the first 100 days of this Congress.

May I ask that a full and lengthier submission be accepted for the record before I summarize.

The Caribbean Basin is faced with two fundamental, yet conflicting trade trends. On the one hand, NAFTA has emerged as an immediate challenge to the viability of the U.S.-Caribbean trading relationship. On the other hand, NAFTA represents the first step in the establishment of a hemispheric free trade area, which we absolutely support.

It is in this context that I appear before you with two simple objectives. First, I wish to explain why passage of the Caribbean Basin Trade Security Act is urgently needed as a short-term remedy to the trade and investment diversion caused by NAFTA. Second, I will highlight how this measure will act as a transitional mechanism to attain the long-term goal of hemispheric integration.

Through its combination of trade, investment, and tax policies, the CBI legislation has progressively established a framework that has facilitated mutually beneficial U.S.-Caribbean economic links. In turn, Jamaica and other Caribbean countries have launched their own trade and investment economic reform programs. Together, the United States and Caribbean countries have a trade partnership worth over $20 billion a year, employing hundreds of thousands of workers throughout the region and in the United States itself. This strengthened trade and commercial links between the United States and the Caribbean to which CBI has made a contribution and has also created a sound basis for cooperation in other areas such as environmental protection, counternarcotics activities, the promotion of democracy, and regional security measures.

Although the CBI program provides for duty-free treatment for a vast number of products, it statutorily excludes a few items, such as textile, apparel, footwear, tuna, and petroleum that are among the Caribbean Basin's most valuable exports. According to a recent study by the Association of American Chambers of Commerce in Latin America, at least 37 percent of Jamaica's exports to the Unit-

ed States are not covered by either the CBI or GSP. Moreover, some of these products also face quotas in addition to these duties.

In the 12 months since NAFTA was implemented, we are beginning to see signs that 12 years of the CBI could be undermined. The American Apparel Manufacturers Association reports that the growth rate of U.S. apparel imports from the CBI region dropped by 60 percent from 1993 to 1994. During that same period, the growth rate of apparel imports from Mexico nearly doubled.

As this trend continues, we could witness a broad diversion of American demand for supplies in CBI countries for firms in Mexico, thus reducing CBI exports and income. Already, a related industry, shipping, has been adversely affected by these developments.

Another consequence of NAFTA's implementation has been the diversion of new investment. One of the primary indicators has been the fact that in the last 2 years there has been a pause in investment in the region as investors waited to evaluate the NAFTA provisions.

It is in this context, therefore, that we see H.R. 553 as a timely solution. If passed, H.R. 553, very simply, will restore equity between Mexico and the Caribbean Basin countries. It will provide for nondiscriminatory access in the U.S. market for those products on which NAFTA gives Mexico an advantage. H.R. 553 is also a cost-effective way for the United States to conduct foreign trade and economic policy in the region, especially in this era of budget cutbacks.

The gains of trade liberalization and economic growth should generate alternative sources of revenue for the U.S. Government to offset any revenue losses.

H.R. 553 both explicitly and implicitly recognizes a greater goal of bringing the Caribbean Basin countries into a free trade area. In this regard, H.R. 553 furthers the agenda developed at the Miami summit with one critical difference. While much of the attention was focused on linking the large economies of South America with that of the NAFTA, H.R. 553 puts forth a tangible framework to determine how the Caribbean economies will be joined in this free trade arrangement as well.

Specifically, H.R. 553 provides for a 6-year period during which full parity with Mexico will be provided for Caribbean countries. Six years is both appropriate and realistic to provide Caribbean Basin countries an opportunity to complete the trade liberalization and economic reform steps necessary for full accession to a free trade agreement with the United States.

Importantly, the bill also initiates dialog between the administration and the Caribbean Basin countries on ways to preserve and strengthen this U.S.-Caribbean trading relationship. In addition, the bill requires the administration to perform a series of studies and reports on the U.S.-Caribbean trade relationship.

In a sense, H.R. 553 asks the administration to continually ask the question: What will be the impact of the specific policy change on the Caribbean? Such a question should have been asked as NAFTA was considered. We believe this emphasis is appropriate, partly because of the close trade relationship between the United States and the Caribbean. In addition, H.R. 553 will ensure that

eventual free trade negotiation in the hemisphere fully includes Caribbean Basin countries.

Jamaica is deeply committed to a multilateral trading system which we believe is a stimulant to economic growth. Jamaica subscribes to, and its policy has been fully consistent with, the principles and disciplines of the GATT.

Chairman CRANE. Mr. Hylton, I apologize for this, but we are down to under 5 minutes to make this vote. If you would temporarily sustain, but please stay here because there are a couple of questions I have and I think Mr. Payne does too. We will be back right after this vote. The subcommittee stands in temporary recess.

[Recess.]

Chairman CRANE. Again, we apologize for the interruption, and if you will complete your statement, Mr. Hylton, we will get to questions.

Mr. HYLTON. Thank you very much, Congressman. I ended at a point where I was saying Jamaica is deeply committed to an open, multilateral trading system, which we believe is a stimulant to economic growth. Jamaica subscribes to, and its policies have always been fully consistent with, for instance, the principles and disciplines of the GATT. Jamaica ratified the agreement establishing the World Trade Organization only 2 weeks ago on January 31, 1995.

Jamaica's domestic economic policies have for several years focused on economic reform, stabilization, and structural adjustment in an attempt to create an environment conducive to a private sector-led, market-driven, outward-looking growth strategy.

An important aspect has been a comprehensive program of trade liberalization involving substantially reduced tariffs and the elimination of quantitative trade restrictions. This has been complemented by the abolition of price and exchange controls and a vigorously implemented campaign of privatization and fiscal and monetary discipline. A market-determined exchange rate system is operating successfully. Jamaica's privatization program is one of the most extensive and successful anywhere in the developing world.

Jamaica sees a CBI program as a springboard to greater hemispheric trade liberalization and we have taken steps to accelerate this process. In the past year, for example, Jamaica signed both a Bilateral Investment Treaty and an intellectual property rights agreement with the United States. We were also concerned with fair trade and were the first country to include strengthened and anti-circumvention language in our bilateral textile agreement with the United States.

In conclusion, let me emphasize that the potential for NAFTA to divert trade and investment from the Caribbean was widely recognized from the outset and is now being confirmed. Within the Congress this problem has also been recognized, and I would like to note and thank those members of this subcommittee who have been among the leaders in working to legislate a solution.

We recall that last year Congress came close to adopting measures to address the problem by considering the administration's Interim Trade Program. Although the ITP did not fully address the

issue of NAFTA parity, it heightened the awareness of this problem and the need to resolve it quickly.

As we look for ways to keep the U.S.-Caribbean partnership healthy and build a framework to make a free trade spirit of Miami a reality, the Caribbean needs a comprehensive transitional mechanism to alleviate the adverse effects of NAFTA and CBI countries and to help the region move purposefully toward hemispheric free trade.

I thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF
MR. ANTHONY HYLTON
PARLIAMENTARY SECRETARY
IN THE MINISTRY OF FOREIGN AFFAIRS
OF JAMAICA
BEFORE THE
HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE
FEBRUARY 10, 1995 ON THE
CARIBBEAN BASIN TRADE SECURITY ACT (HR 553)

Mr. Chairman and members of your Committee, thank you for providing me this opportunity to appear before you on a matter of critical importance to Jamaica, to Caricom countries and to the entire Caribbean Basin.

Let me take the opportunity to publicly thank you and Representatives Gibbons, Rangel, and Shaw for introducing the Caribbean Basin Trade Security Act (HR 553) within the first one hundred days of this Congress.

The Caribbean Basin is faced with two fundamental, yet conflicting trade trends. On the one hand, NAFTA has emerged as an immediate challenge to the viability of the US/Caribbean trading relationship.

On the other hand, NAFTA represents the first step in the establishment of a hemispheric free trade area which we welcome.

It is in this context that I appear before you today with two simple objectives. First, I wish to explain why passage of the Caribbean Basin Trade Security Act is urgently needed as a short term remedy to the trade and investment diversion caused by NAFTA. Second, I will highlight how this measure will act as a transitional mechanism to attain the long term goal of hemispheric integration.

A. The Caribbean Basin Initiative at Twelve

In 1995, the Caribbean Basin Initiative (CBI) marks its 12th anniversary. In the dozen years since it has been enacted, the CBI has emerged as an important stimulus of economic development in the Caribbean Basin and of trade linkages throughout the region. The effect has been felt -- not only in Kingston and Montego Bay -- but also in Miami, Baltimore, New Orleans, and hundreds of other communities throughout the United States. In many ways, the CBI has exceeded the expectations of the drafters of the CBI legislation who wrote in 1990 that:

> "The Congress finds that...a stable political and economic climate in the Caribbean region is necessary for the development of the countries in the region and for the security and economic interests of the United States."[1]

Through its combination of trade, investment, and tax policies, the CBI legislation has progressively established a framework that has facilitated mutually beneficial, U.S./Caribbean economic links. In turn, Jamaica and other Caribbean countries have launched their own trade and investment economic reform programs. Together, the United States and Caribbean countries have created a trade partnership worth more than $20 billion a year, employing hundreds of thousands of workers throughout the region and in the United States itself.

Since the mid-1980's, U.S. overall exports to the Caribbean have expanded by over 100 percent and Caribbean exports to the United States have climbed by roughly 50 percent. The Caribbean Basin now comprises the tenth largest market for the United States, and is one of the few regions where the United States consistently posts a trade surplus. In Jamaica's case, over 60 percent of our trade, takes place with the United States. One of the highest levels in the hemisphere.

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[1] Section 202 of the Caribbean Basin Economic Recovery Expansion Act of 1990 [19 usc 2701nt; PL 101-382; Title II]

Roughly 60 cents of every dollar Jamaica earns from exports to your country, is spent in the United States buying American-made consumer goods, food products, industry inputs, and capital equipment. This, when compared with each dollar of Asian imports, which only generates about 10 cents worth of subsequent U.S. purchases, makes trade with the Caribbean, both in relative and absolute terms a significant contributor to U.S. employment and income.

The strengthened trade and commercial links between the U.S. and the Caribbean, to which the CBI has made a major contribution, have also created a sound basis for cooperation in other areas such as environmental protection, counter-narcotics activities, the promotion of democracy, and regional security measures.

B. The Impact of NAFTA on CBI Trade

Although the CBI program provides for duty free treatment for a vast number of products, it statutorily excludes a few items -- such as textiles and apparel, footwear, luggage, tuna, and petroleum -- that are among the Caribbean Basin's most valuable exports. According to a recent study by the Association of American Chambers of Commerce in Latin America, at least 37% of Jamaica's exports to the U.S. are not covered by either the CBI or GSP. Moreover, some of these products also face quotas in addition to these duties.

NAFTA, on the other hand, eliminates the duty and quota treatment for these same articles, either immediately or over a phase-out period. To be sure, NAFTA also phases out the duties on the products for which the CBI currently enjoys duty free treatment.

But the result is far from even.

In the twelve months since NAFTA was implemented, we are beginning to see signs that the twelve years of the CBI could be undermined:

It has been established that the elimination of quota and phase-out of tariffs on Mexican products will remove or at least reduce the advantage enjoyed by CBI exports to the U.S. market. The American Apparel Manufacturer's Association reports that the growth rate of US apparel imports from the CBI region dropped by 60 percent from 1993 to 1994. During that same period, the growth rate of apparel imports from Mexico nearly doubled. As this trend continues, we could witness a broad diversion of American demand from suppliers in CBI countries to firms in Mexico, thus reducing CBI exports and income. Already, a related industry, shipping, has been adversely affected by these developments.

Another consequence of NAFTA'S implementation has been the diversion of new investment. One of the primary indicators has been the fact that in the last 2 years there has been a pause in investment in the region, as investors waited to evaluate the NAFTA provisions.

C. HR 553 - A Timely Solution

It is in this context, therefore, that we see HR 553 as a timely solution. If passed, HR 553 very simply will restore equity between Mexico and the Caribbean Basin countries. It will provide for non-discriminatory access into the US market for those products on which NAFTA gives Mexico an advantage.

HR 553 builds on the existing CBI program and legislation. It does not establish a new set of criteria by which countries can become eligible for the benefits, but rather links the enhanced benefits to the existing program criteria. In this way, HR 553 recognizes that many Caribbean countries -- through trade liberalization and economic reform measures -- have already undertaken steps that exceed the criteria outlined in the original legislation.

HR 553 is also a cost-effective way for the United States to conduct foreign trade and economic policy in the region, especially in this era of budget cutbacks.

The gains of trade liberalization and economic growth should generate alternative sources of revenue for the US Government to offset any tariff revenue losses.

D. HR 553 as the First Step towards a wider Hemispheric Free Trade Area

HR 553 -- both explicitly and implicitly -- recognizes a greater goal of bringing the Caribbean Basin countries into a hemispheric free trade area. In this regard, HR 553 furthers the agenda developed at the Miami Summit with one critical difference. While much of the attention has focused on linking the larger economies of South America with that of the NAFTA, HR 553 puts forth a tangible framework to determine how the Caribbean economies will be joined in this free trade arrangement as well.

Specifically, HR 553 provides for a six year period during which full parity with Mexico will be provided for Caribbean countries. Six years is both appropriate and realistic to provide Caribbean Basin countries an opportunity to complete the trade liberalization and economic reform steps necessary for accession to a free trade agreement with the United States. While some countries -- such as Jamaica -- are now ready to negotiate a free trade agreement with the United States, others may need the full six year period outlined in HR 553.

The six year period will also create a viable time frame that will help restore "confidence" in the Caribbean, confidence that has been eroded as previous parity bills have been proposed and not enacted. As investors and traders see that time period, they will be able to grasp a tangible
expression of the US commitment to its trade relationship with CBI countries.

Importantly, also, the bill initiates a dialogue between the Administration and the Caribbean Basin countries on ways to preserve and strengthen the US/Caribbean trading relationship. Even in the absence of specific trade negotiating authority, such a dialogue is important to help maintain the momentum of the Miami Summit.

In addition, the bill requires the Administration to perform a series of studies and reports on the US/Caribbean trade relationship. In a sense, HR 553 asks the Administration to continually ask the question: "What will be the impact of a specific policy change on the Caribbean." Such a question should have been asked as NAFTA was considered. We believe this emphasis is appropriate, partly because of the close trade relationship between the United States and the Caribbean. In addition, HR 553 will ensure that eventual free trade negotiations in the hemisphere fully includes Caribbean Basin countries.

E. Jamaica's Commitment to Free Trade

Jamaica is deeply committed to an open multilateral trading system which, we believe, is a stimulant to economic growth.

Jamaica subscribes to, and its policy has always been fully consistent with, the principles and disciplines of the GATT. Jamaica ratified the Agreement establishing the World Trade Organization two weeks ago on January 31, 1995.

Jamaica's domestic economic policies, has for several years now, focused on economic reform, stabilization, and structural adjustment in an attempt to create an environment conducive to a private sector-led, market-driven, outward-looking growth strategy. An important aspect has been a comprehensive programme of trade liberalization involving substantially reduced tariffs and the elimination of quantitative trade restrictions. This has been complemented by the abolition of price and exchange controls and a vigorously implemented campaign of privatization and fiscal and monetary discipline. A market-

determined exchange rate system is operating successfully. Jamaica's privatisation programme is one of the most extensive and successful anywhere in the developing world.

Jamaica sees the CBI program as a springboard to greater hemispheric trade liberalization. And we have taken steps to accelerate this process. In the past year, for example, Jamaica signed both a Bilateral Investment Treaty (BIT) and an Intellectual Property Rights (IPR) Agreement with the United States. We were also concerned with fair trade and were the first country to include strengthened anti-circumvention language in our bilateral textile agreement with the United States.

Jamaica is ready and has a demonstrated commitment to enter the next stage of trade liberalization with the United States and other hemispheric partners.

F. Conclusion

In conclusion, let me emphasize that the potential for NAFTA to divert trade and investment from the Caribbean was widely recognized from the outset and is now being confirmed.

Within the Congress, this problem has also been recognized and I would like to note and thank those members of this Sub-Committee who have been among the leaders in working to legislate a solution. We recall that last year, Congress came close to adopting measures to address this problem by considering the Administration's Interim Trade Program (ITP). Although the ITP did not fully address the issue of Nafta Parity, it heightened the awareness of this problem and the need to resolve it quickly.

As we look for ways to keep the US/Caribbean partnership healthy and build the framework to make the free trade spirit of Miami a reality, the Caribbean needs a comprehensive transitional mechanism to alleviate the adverse effects of Nafta on CBI Countries and to help the region move purposefully towards Hemispheric Free Trade.

Chairman CRANE. Thank you, Mr. Hylton.

Minister Castillo, I had the privilege of being in your country in 1979 to deliver a commencement address in which Francisco Marroquin and Manuel Ayau conferred upon me an honorary doctorate of political science. Is Manuel, out of curiosity, still in Guatemala?

Mr. CASTILLO. Yes, he is in Guatemala and very active. In fact, he is working with our government now. He has been named chief, responsible for privatization in Guatemala.

Chairman CRANE. That is encouraging to hear because he was a devoted disciple, as was I, of Milton Friedman, Friedrich Von Idayek, and George Stigler. I am happy to hear he is still active and involved and please convey my very best to him.

Mr. CASTILLO. I will certainly do that. Thank you.

Chairman CRANE. Let me ask you a question, though, and this has to do with restrictions on foreign ownership and repatriation of profits and lack of intellectual property rights which have the effect of putting a damper on investment flows. I was wondering, in both Guatemala and Ambassador Sol in El Salvador, are these problems that are being addressed at the present time in both El Salvador and Guatemala?

Mr. CASTILLO. Please, ladies first.

Ms. SOL. Mr. Chairman, I know in El Salvador we are at this moment working on a bilateral intellectual property right agreement with the United States. So I believe that all this will be taken care of with this treaty.

Chairman CRANE. Very good.

Mr. CASTILLO. In the case of Guatemala, we do have a comprehensive package that we are presenting to Congress about the month of April that is part of the negotiation with the Inter-American Development Bank and a compromise to pursue legislation that would give absolute same and equal treatment to foreign investment and to products going out of the country, and free flow of capital, yes.

Chairman CRANE. Very good. That is most encouraging, and we have the intention of trying to push this legislation through at least the committee, hopefully, before the end of March, and the sooner the better in terms of my perspective and the interests, not only of the Caribbean, but of the United States, too. I thank you for your testimony.

Mr. Rangel.

Mr. RANGEL. Thank you. You have heard the administration's testimony and perhaps we would not have to go through this amendment process. It appears from those members of the Caribbean community that many of the objections that they raise are not objections in terms of workers' rights, protection of investment, and intellectual property. So exactly what country has received complaints from any representative from the United States as it concerns intellectual property rights?

What commodity would be the problem, that you know of, that we are insisting on protecting? Do you know? What agreement is it that you are signing? What intellectual property do we have that is being threatened by any one of your countries, do you know?

Mr. MOTTLEY. Congressman, I think the United States is concerned about pirating of television transmission and things of this nature. So some of it does exist, but certainly both Jamaica and Trinidad and Tobago have signed intellectual property rights agreements with the United States and are proceeding to enforce them.

Mr. RANGEL. I don't know how it is done diplomatically, but I would hope it could be done more speedily than what we have to do legislatively. I am just encouraging you to try to work out those differences with our country as it relates to the protection of American investors.

I think you have a history of doing that because of the close proximity and the friendships that have been enjoyed historically between the countries and, of course, immigration between the United States and all of the countries before us.

Of course, the major problem, as it relates to labor in the United States, is the protection of the workers' rights, and I think that all of the countries agree that you want to improve the quality of protection for your own people even more so than we would want.

As I understand it, this piece of legislation would not adversely affect jobs; but what it intends to do is to stop the hemorrhage of the jobs going to Mexico through the North American Free Trade Agreement and to bring some equity to the commitment we made initially to the Caribbean Basin Initiative. Is that your understanding?

Mr. HYLTON. That is absolutely correct, Congressman. I would like to point out that certainly with respect to the labor concerns, that, as you are well aware, Jamaica and other Caribbean countries have consistently—not only have we adopted most of the, if not all of the 11 conventions on the international labor standards, but that we have consistently enforced them. Environmental and other issues are consistently enforced. So we feel certainly in Jamaica that we are ready to undertake the NAFTA obligation if and when that is made available to us.

Mr. RANGEL. Well, I would encourage you to have our trade representatives' fears allayed by whatever diplomatic causes you have at your disposal so that we can move swiftly on this legislation with assurances that we are all reading from the same page. Thank you so much for your testimony, your friendship, and your support over the years.

Ms. SOL. Congressman, excuse me. I would like to say that intellectual property rights legislation in El Salvador—we have an intellectual property rights legislation, and we are enforcing it. We are working now on an agreement, intellectual property agreement, with the United States. The labor rights El Salvador just passed, well, several months ago, a new labor code has been recognized by the ILO as one of the most advanced in Latin America. So I would like to leave that for the record.

Mr. RANGEL. Well, send a note to the State Department and the Trade Administration and maybe that would help them in their thinking about working with us. Thank you.

Chairman CRANE. Thank you.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and I also want to welcome all of you and appreciate very much your testimony. It has been very helpful and I have learned from it.

As you may have heard from the previous witnesses, my perspective is a little bit different in that I represent an area that has quite a few apparel workers at the present time. Ambassador Sol was commenting on how easy it is to move the apparel industry. It just takes one telephone call and it is moved, and I must tell you that no one knows that any better than I and the people in my district do.

The textile and apparel industry in this country has lost about a half million jobs over the last 10 years, and just last year, in the apparel industry, we lost some 13,000 jobs in our country. In my own district, this is a very important industry. We do not have a lot of alternative industries if people are not employed in the apparel industry. So I think you might understand my perspective, or certainly I would hope so.

Let me just ask one question. We have another vote and I have a limited amount of time, and this is really from the written testimony of Minister Castillo. It talks about the tariff preference level, and you mention that you also welcome the establishment of these tariff preference levels in those cases where they serve a purpose identified by the language of the bill. My concern about the tariff preference levels is that they would undo some of what was done in NAFTA in terms of the rule of origin.

Would you comment on exactly what you might expect in Guatemala and perhaps other CBI nations as it relates to the TPLs and what you might be seeking under that provision.

Mr. CASTILLO. Sure. I think the comments in the written statement are pointing to the fact that the legislation proposed in H.R. 553 is a comprehensive piece of legislation that is asking for full parity in every sense of the word. If the TPLs are given to Mexico and they do not use them, well, we welcome that they will be given to Central America.

Maybe we will not use them either, but the purpose of the legislation was to propose absolute parity and the same conditions as Mexico.

Mr. PAYNE. You do not anticipate any particular need at this time or any necessity of the TPLs as you envision this legislation being enacted?

Mr. CASTILLO. I think we could not tell at this time. It will depend, of course, on the economic forces whether they will start utilizing them or not. But my comment in the written statement was toward this line of argument.

Mr. PAYNE. I also wanted to express my appreciation to Minister Mottley who tried very hard to come by and see me yesterday. We had schedules that did not quite work out, but you were very kind to offer to visit, and I appreciate the telephone call and hope to see you on another trip to Washington. Thank you very much.

Mr. CASTILLO. Mr. Chairman, I would just say that we understand, Mr. Payne, your situation and the situation of your district. Our countries have 40 percent unemployment. This has created a lot of jobs for us and we are losing 15,000 jobs also this year. So

we feel a lot the same way you do and we understand your situation and your position. We understand.

Mr. PAYNE. I also understand that there was a rate of growth last year, some 14 percent in terms of the apparel industry throughout the Caribbean. You mentioned 9.9 percent in Guatemala and that is a good rate of growth and should be sustained even under the existing CBI program. Thank you.

Mr. CASTILLO. I am glad you brought that up. The problem is that was in the first year. You are right, maybe 9 percent or 14 percent for the whole Caribbean sounds like a good growth rate, but that is only the first year effect of NAFTA. It continues giving more and more benefits to Mexico for the next 2 years. So if the full impact is measured by the end of those 2 years that are still left, it will be completely gone. This is the impact only of the first reduction, and the reductions in textile and apparel for Mexico are 3 years. So there is still more to come.

Mr. PAYNE. As Ambassador Sol said, this is an industry that can move very quickly. In fact NAFTA has been in place now for over 1 year and you are still seeing positive growth and not negative growth, which was the concern 1 year ago. It seems to me, in fact, the initiative in place now is continuing to work, although certainly NAFTA parity would work better for the Caribbean nations.

Mr. CASTILLO. However, some of the investment—in fact, the hundred companies that left, left mostly the last 2 months of the year. Most of them stayed the months before because we were counting on the interim trade program. In those 2 months where the interim trade program did not go through, that created a tremendous deception and a lot of people that had not made the decision to go, did leave the country.

So we hope that this—just the presentation of this legislation will stop the movement of capitals and of companies and, of course, the passage will absolutely halt it.

Mr. HYLTON. Mr. Chairman, let me just associate myself with the remarks of the representative from Guatemala in making the point that while the 14 percent growth last year Caribbean-wide is commendable, or is certainly noteworthy, we do share the concerns that it is just the first. It is the opening salvo, and that, indeed, as this legislation moves through the Congress, a number of investors are waiting to see just exactly what will happen.

The same thing occurred on the interim program last year. Everyone was hopeful that we would have had some positive results under that, but I think if we were to both interminably delay this legislation or if it were not to pass, then I think you will see a continued quickening slide of those numbers.

Ms. SOL. Mr. Chairman, may I just add one little thing?

Mr. Payne, we see this as a partnership between Latin America and the Caribbean region and the United States. We see it as a partnership that will make us more effective and more efficient against imports from other parts of the world. So we understand your problems and we have the same problems, but we think that we can work a partnership to make it better, to make it a win-win situation, like Mr. Crane said earlier. Thank you.

Chairman CRANE. I want to thank all the members of this panel for their participation and can only applaud the fact that you are

in the textile industry because you had to bundle up to come up here to testify. We would all infinitely prefer to be down in the Caribbean.

Let me also encourage you, we are confident that we can make forward steps on this issue sooner rather than later. I have to apologize now to our next panel before they come up here. This is a motion to recommit, which will be followed by a final passage vote, so there will be a little break for anyone that wants to go get coffee. We stand in temporary recess.

[Recess.]

Chairman CRANE. Are the representatives of the apparel industry manufacturers and the importers and exporters ready? Will all of you folks please take a seat here on the panel.

Ms. Hughes, Mr. Vine, Mr. Ermatinger.

All right. While we are waiting, we will proceed with our first panelist, Mr. Martin.

STATEMENT OF LARRY MARTIN, PRESIDENT, AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Mr. MARTIN. Thank you, Mr. Chairman.

I am Larry Martin, President of the American Apparel Manufacturers Association. We are the central trade association for American producers of garments. Our members are responsible for about 70 percent of domestic production.

Many of them also operate in Mexico under NAFTA and in the Caribbean and Central American under the 807 program. Some import garments from other parts of the world.

Mr. Chairman, I would like to take this opportunity to commend you, Mr. Gibbons, Mr. Rangel, and Mr. Shaw, for introducing H.R. 553, the Caribbean Basin Security Act. We have supported the idea of CBI parity since before the NAFTA negotiation was completed. We believe parity should have been made part of the NAFTA-enabling legislation.

We believe it should have been made part of the Uruguay round enabling legislation. We regard CBI parity as leftover work from the previous Congress, and we hope this Congress will approve it at the earliest possible date.

Historically, the CBI region and Mexico have been treated alike in terms of apparel trade. Both had the advantage of section 807 under which garments sewn in Mexico or the Caribbean can be returned to the United States with duty paid only on the value added by the sewing.

When the 807 aid program was created in 1986, it essentially made many classes of apparel quota free from the Caribbean. That program immediately was extended to Mexico where it was called the Special Regime. NAFTA, however, tipped the scale dramatically in favor of Mexico.

Under NAFTA, most garments now enter the United States duty and quota free. This amounts to an 8- to 10-percent cost advantage for Mexico, a very significant advantage in an industry with historically low profit margins. That advantage has been increased with the devaluation of the Mexican peso.

CBI parity is good for both the Caribbean region and for the U.S. apparel industry. U.S. apparel companies have contributed thou-

sands of jobs to the region, contributing significantly to economic development and the acceptance of democratic principles.

But our industry is not in business to move jobs offshore. The production that had gone to the Caribbean was no longer viable in the United States. If it had not gone to the CBI or Mexico, it would have gone to the Far East where there would be very little American participation in the manufacturing process.

We estimate that every 100 jobs in the CBI produces 15 apparel jobs in the United States in design, cutting, marketing, and distribution. In addition, it preserves many jobs in the textile and other supplies industries.

More importantly, the coproduction in Mexico or the Caribbean allows U.S. companies to lower their overall costs, compete in the world market, and maintain very large volumes of employment in the United States.

Mr. Chairman, the U.S. apparel industry very much stands at a crossroads today. Because of the Uruguay round, we face for the first time since the late 1960s, a future without benefit of quotas on imported apparel. We believe the U.S. industry has the strength to compete because of two very important advantages: The first is our proximity to our market and our commitment to quick response programs which allow us to replenish retail shelves in a fraction of the time it takes from the Far East.

The second is our ability to share some production with Mexico, Central America, and the Caribbean. If we exploit these two advantages, and we fully intend to, we can remain a major factor in the global apparel marketplace and can continue to provide good jobs to many thousands of Americans.

I thank you for the opportunity to be here today, and I would be pleased to respond to your questions.

Chairman CRANE. Thank you, Mr. Martin.

[The prepared statement and attachment follow:]

TESTIMONY OF LARRY MARTIN
AMERICAN APPAREL MANUFACTURERS ASSOCIATION

Mr. Chairman, my name is Larry Martin, I am President of the American Apparel Manufacturers Association (AAMA). AAMA is the primary trade association of the U.S. apparel industry, representing approximately 70 percent of the U.S. production. Our members make everything from socks to caps, from underwear to shirts and sweaters, to suits and overcoats. While the industry is large, most of the companies are relatively small. Three-fourths of our members have sales under $20 million and more than half have sales under $10 million. Our members are the source of more than 700,000 manufacturing jobs. In total there are approximately 1,000,000 apparel manufacturing jobs in the U.S. and almost every state has some apparel employment. Ninteen states have more than 10,000 apparel jobs and eight of those have more than 50,000 jobs. Approximately 40% of American apparel workers are minorities and 90% are women.

AAMA supports the maintenance of a large and viable U.S. apparel manufacturing industry. American apparel companies are not in the business to move jobs offshore. However, we must compete with low-wage imports which have taken over half of our market. In order to compete with low-wage imports, many U.S. companies opened production in Mexico and the CBI countries. Firms often found sourcing from the CBI countries best fit their operations, even though apparel was specifically excluded from the CBI program.

This exclusion was partially offset by the 807 program which gives us lower average costs, makes U.S. companies more competitive and allows us to maintain significant employment in the U.S. Under 807, a $10.00 garment usually has $6.00 in U.S. components and about $4.00 in value-added by offshore assembly. The duty is assessed on only the value-added. That duty is usually about 20%, which on $4.00 is 80 cents. This is equivalent to 8% on the value of the entire garment. With wholesale and retail markups, a garment from the CBI region carries a penalty of approximately $3.00, as compared to the same garment coming from Mexico.

In 1986, 807 was modified by the creation of the 807-A program. Under it, duty still was paid, but only on the value-added in the region. However, the creation of Guaranteed Access Levels (GALs) essentially made many products from the region quota-free. 807-A was duplicated for the Mexican industry and named the Special Regime.

It is important to realize the production moved was no longer viable in the U.S. Without the incentives of 807-A, NAFTA and hopefully CBI parity, that production would go to the Far East where there would be little U.S. involvement in the manufacturing process.

With the implementation of NAFTA, which AAMA strongly supported, apparel assembled in Mexico of U.S. formed fabric enters our market quota and tariff-free. However, duties are still charged on the value added to imports from the CBI countries. This places the CBI countries at a great competitive disadvantage vis-a-vis Mexico, and the progress the U.S. fostered in the Caribbean Basin will, in large part, be reversed. Competition from Mexico will force many local and U.S. firms out of business or to move their investments from the CBI countries to Mexico.

With the elimination of tariffs under NAFTA, this 8% cost no longer is added to the price of garments coming from Mexico. Couple this with slightly easier and cheaper transportation between Mexico and the U.S. vs. that between the Caribbean and the U.S. and Mexico has a significant advantage. Eight percent may not appear to be a significant savings, but the average profitability of an apparel firm in the U.S. is much less than that.

Historically, Mexico and the CBI region played on a level playing field. The implementation of NAFTA tilted the field sharply in favor of Mexico. As this chart demonstrates, traditionally, the growth rate of imports from the CBI region and Mexico were at approximately 20%. For the first nine months of 1994, since NAFTA's implementation, the growth rate for Mexico soared to more than 45% and

the CBI's growth rate fell to 10%. And that tilt, undoubtedly, was steepened by the devaluation of the peso.

807 production created thousands of good jobs in Mexico and the Caribbean Basin. We estimate 15 apparel jobs in the U.S. are created by every 100 jobs in 807 production in the region. This is in addition to the thousands of U.S. jobs it maintains in the textile, transportation and other industries. These jobs in Caribbean Basin, the related U.S. apparel jobs and the jobs in ancillary industries will not come to the U.S. if the Caribbean should be shut down. They will migrate to the Far East.

Parity makes good foreign policy. It is clearly in the best interests of the U.S. to have stable, democratic governments in our hemisphere, and the jobs available in the apparel industry contribute considerably to that stability. Enacting legislation affording NAFTA parity for the CBI region, the U.S. will continue to encourage CBI countries to assume their full obligations under a free trade agreement and to further open their markets to U.S. products, services and investment.

The continued economic health of the CBI region is tied inextricably to the growth of the region's apparel assembly. Export revenues generated by apparel assembly encourages Caribbean Basin governments to increase and accelerate economic reform, including investment liberalization, protection of intellectual property rights and market access. Job creation in the region would have been stagnant without the demand for apparel assembly workers. Improving economic conditions contribute to political stability, deter illegal immigration, and create an alternative to the production and trafficking of illegal drugs.

We commend you, Mr. Chairman, as well as Congressmen Gibbons, Rangel and Shaw for introducing H.R. 553 and urge you to move quickly to adopt the legislation. We believe parity should be provided immediately and permanently. At this time, we are not going to comment on specific provisions of the legislation except to say we are studying carefully the textile and apparel provisions. We are working closely with our members and other associations, such as ATMI and USAIC, on those provisions and hope we will have an opportunity to meet with Subcommittee staff in the near future to discuss technical aspects regarding certain provisions.

In addition, we believe, after 6 years of parity, USTR should review each country individually, assessing the progress of each country in fulfilling the factors you listed in your legislation as necessary for accession to NAFTA. USTR should have the authority to suspend parity benefits to an individual country, until such time USTR determines the country made progress in the areas enumerated in the legislation as necessary for accession to NAFTA.

In summary, there is a strong and consistent movement by countries of the CBI region towards democracy, economic reform and trade and investment liberalization. During the past few years, countries of the Caribbean Basin initiated significant economic restructuring and trade liberalization and continue to do so as part of their move to NAFTA accession.

Programs such as CBI and 807 contributed significantly to the political stability and economic growth in the region. Progress in the region enhances each country's political security, as well as the United States'.

Passage of NAFTA adversely affected the competitiveness of the CBI region by diverting existing and potential investment from the region in favor of Mexico. Parity assures a level playing field will exist between the CBI region and Mexico. Without parity, U.S. companies already in the region, competitively disadvantaged by the

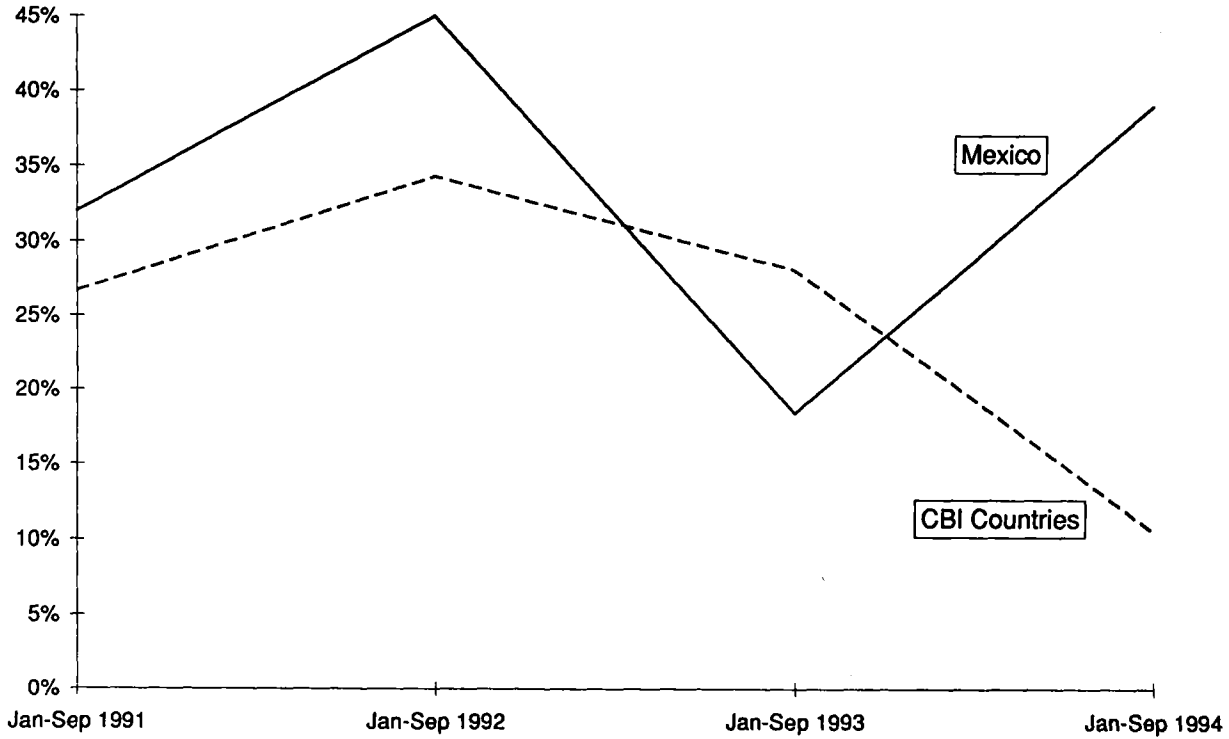
elimination of Mexican duty rates and quotas, will disinvest existing manufacturing facilities, destabilizing the economies of the region.

A reversal in the investment climate will have serious consequences for the social, economic and political stability of the CBI region. Economic stability have much to do with how effectively longstanding political issues -- terrorism, drug trafficking, immigration, democracy and human rights -- are addressed. Economic stability in the region is the key to keeping the flow of drug trade and its transshipment to a minimum.

The GATT Agreement which went into effect on January 1, 1995, presents a new challenge to the U.S. apparel industry. For the first time since the late 1960s, we see a future where quotas on imported apparel will cease to exist. The U.S. apparel industry is determined to meet this new global competition, and to do it while maintaining a large domestic work force. We believe a combination of NAFTA, CBI Parity and quick response to our domestic markets will enable us to compete with other parts of the world and maintain large domestic employment.

Growth of U.S. Exports of Cut Parts to Mexico and the CBI

Percent Changes for January-September 1991-1994



Chairman CRANE. Mr. Moore.

STATEMENT OF CARLOS MOORE, EXECUTIVE VICE PRESIDENT, AMERICAN TEXTILE MANUFACTURERS INSTITUTE

Mr. MOORE. Thank you, Mr. Chairman.

My name is Carlos Moore, and I am executive vice president of the American Textile Manufacturers Institute, which is the national trade association for the domestic textile industry. Our member companies account for approximately 80 percent of all textile fibers consumed by mills in the United States.

Mr. Chairman, ATMI strongly supported NAFTA and worked hard for its passage because we believe that Canada, Mexico, the Caribbean, and all of Latin America should become part of a hemispheric trading block with the United States. We, therefore, support the concept that the countries of the Caribbean Basin should become full NAFTA partners as soon as they can.

Until they do, we also support the concept of extending certain benefits to them so that Caribbean garment-making operations are not put at a comparative disadvantage before becoming NAFTA's signatories. Last year, ATMI supported the interim trade program to grant the Caribbean countries access to our market equivalent with that of Mexico for apparel and other textile products which follow a NAFTA rule of origin.

One reason for doing that is that we believe the region should remain a growing major market for U.S. textiles. In 1994, the United States exported 2.25 billion dollars' worth of textiles to the Caribbean, either as cut pieces or as fabrics or yarns. The region ranked first ahead of even Canada and Mexico, among the U.S. textile industry's top export markets for fabrics and yarns.

We are concerned that if NAFTA-type access is not provided quickly, garment production will begin to shift from the Caribbean to other countries. In fact, growth in that trade is already starting to slow.

For these reasons, we were enthusiastic about the interim trade program last year and greatly appreciate your introducing H.R. 553 this year. ATMI support for these efforts is based on three key points: The legislation should be based on the NAFTA yarn-forward rule of origin; it should include NAFTA provisions concerning Customs enforcement; and there should be no exemptions or exceptions to the rule of origin unless and until the country signs on to the entire NAFTA agreement.

We are pleased that H.R. 553 does include the first two of our objectives. However, we are concerned that the bill provides for exceptions to the rule of origin, known as tariff preference levels, or TPLs.

TPLs do nothing more than permit countries to circumvent the rule of origin up to a specific quantity each year and are totally unjustified in this instance. The NAFTA itself does include TPLs, but the NAFTA is a fully reciprocal trade agreement whereby each country provides unrestricted access to its market and makes many other commitments to facilitate two-way free trade.

Neither the interim program nor H.R. 553 provides for full, nor are they intended to provide, for full NAFTA reciprocal concessions.

Instead, both are unilateral grants of access to the U.S. market if certain conditions are met.

We strongly believe that TPLs are inappropriate in this instance and should not be part of one-way special access programs. We urge that TPLs not be authorized until the countries in the region do become full-fledged NAFTA partners and are signatories to a completed agreement, as we have with Mexico and Canada.

Thank you.

Chairman CRANE. Thank you, Mr. Moore.

[The prepared statement follows:]

TESTIMONY OF CARLOS MOORE
AMERICAN TEXTILE MANUFACTURERS INSTITUTE

My name is Carlos Moore. I am Executive Vice President of the American Textile Manufacturers Institute (ATMI), the national trade association for the domestic textile industry. Our member companies operate in more than 30 states and account for approximately 80 percent of all textile fibers consumed by mills in the United States. The textile industry in this country employs 670,000 workers and contributes approximately $21.7 billion to our country's gross domestic product.

Mr. Chairman, we welcome the opportunity to testify before the Trade Subcommittee about H.R. 553, the "Caribbean Basin Trade Security Act" which would extend benefits under NAFTA to the countries of the Caribbean. Some ATMI member companies have invested in the region, but we also export each year hundreds of millions of yards of fabric which is sewn into garments in the Caribbean countries. The region has become one of our largest and fastest growing export markets and in 1994 accounted for almost nine percent of our industry's fabric exports and six percent of our yarn exports.

ATMI strongly supported NAFTA and worked hard for its passage because we believe that Mexico, the Caribbean and all of Latin America should become part of a hemispheric trading bloc with the U.S. We therefore support the concept that the countries of the Caribbean Basin should become full NAFTA partners as soon as they can. Until they do, we also support the concept of extending those benefits to them so that they are not harmed during the interim. Last year ATMI supported the "Interim Trade Program" (ITP) to grant the CBI countries access to our market equivalent with that of Mexico for apparel and other textile products which follow a NAFTA rule of origin.

The ITP was a one-way grant of access by the U.S. that served several very important purposes. First, by granting Caribbean exports of certain textile products access to the U.S. on terms equivalent to similar shipments from Mexico, jobs and investments in the CBI region would not move to Mexico or other locations.

Second, the region would remain a growing and major market for U.S. textiles. In 1994, the U.S. exported $2.25 billion worth of textiles to the Caribbean -- either as cut pieces or as fabrics or yarns. The region ranked first, ahead of even Canada and Mexico, among the United States' top export markets for fabrics and yarns. We are concerned that if NAFTA-type access is not provided quickly, garment production will begin to shift from the Caribbean to other countries -- in fact, growth in fabric and garment trade with that region to the U.S. is already starting to slow.

For these reasons, we were enthusiastic about the Interim Trade Program last year and greatly appreciate your introducing H.R. 553 this year, Mr. Chairman.

ATMI's support for these efforts is based on three key points: the legislation should include the NAFTA yarn-forward rule of origin; it should include NAFTA provisions concerning customs enforcement; and there should be no exemptions or exceptions to the rule of origin unless and until the country signs on to the entire NAFTA agreement. We are pleased that H.R. 553 does include the first two of our objectives. However, we are concerned that the bill provides for exceptions to the rule of origin, known as tariff preference levels, or TPL's.

TPL's permit countries to circumvent the rule of origin up to a specific quantity each year and are totally unjustified in this instance. The NAFTA does include TPL's, but the NAFTA is a fully-reciprocal free trade agreement whereby each country provides unrestricted access to its market and makes many other commitments to facilitate two-way free trade.

Neither the interim program nor H.R. 553 provides for full-NAFTA reciprocal concessions. Instead, both are unilateral grants of access to the U.S. market if certain conditions are met.

We strongly believe that TPL's are inappropriate in this instance and should not be part of one-way special access programs. We urge that TPL's not be authorized until the countries in the region become full-fledged NAFTA partners and are signatories to a completed agreement as we have with Mexico and Canada.

Chairman CRANE. Mr. Ermatinger.

STATEMENT OF JOHN ERMATINGER, VICE PRESIDENT, NORTH AMERICAN OPERATIONS & SOURCING, LEVI STRAUSS & CO.

Mr. ERMATINGER. Mr. Crane, Mr. Payne, good afternoon. My name is John Ermatinger and I represent the real world of manufacturing. I am the vice president, Operations & Sourcing, for Levi Strauss & Co., North America.

I am responsible for 41 U.S. facilities and 25,000 American workers, as well as our sourcing strategies in Asia, Mexico, Central America, South America, and the Caribbean. As a result, I come here today with a perspective from our factory floors in places like Powell, Tenn., El Paso, Tex., Fayetteville, Ark., and yes, Mr. Payne, Warsaw, Va.; and as a global company that must compete around the world in order to survive.

Levi Strauss & Co. supports H.R. 553 for the following reasons: Like many industries today, the textile and apparel sector is undergoing dramatic changes. These changes are a result of, one, new consumer demands and associate retailer demands; and two, increasing foreign competition, especially from the Asian countries.

Today's sophisticated, value-conscious consumers want more variety; they want higher quality, and they want reasonable prices. They have come—and they have more choices about where to find it. To meet these demands, retailers are seeking higher quality, faster delivery times, superior service, and customized ready-to-sell products.

Doing business in the Caribbean and in Central America is one solution to this challenge. They provide the following: proximity to the U.S. customer base. Reducing lead times from 126 weeks to 30 days, we need the logistics these countries provide; second, skills in garment assembly; and third, and a very important aspect, a willingness to play a key role in building a strong, hemispheric partnership which is good, frankly, for all of us.

Levi Strauss & Co. is also facing increasingly fierce competition from abroad. With the phaseout of import quotas under the GATT agreement during the next 10 years, the major textile and apparel exporting nations like China, India, Pakistan, and Indonesia will be gearing up their industries and could potentially dominate the textile and apparel trade worldwide.

To meet this new challenge, U.S. manufacturers need freer trade policies in our own backyard and in this hemisphere. Our industry must be ready to use every available tool and competitive advantage if we have any hope to be successful against the Asian producers. The Caribbean offers one such advantage, and that is right on our doorstep.

To compete successfully in the new global marketplace, we need long-term sourcing strategies and more stable relationships with suppliers and contractors. These relationships can have not only a positive influence on our business, but can also influence responsible business practices in the areas such as environment, ethics, worker health and safety, and employment practices.

Levi Strauss & Co. has already begun to examine how we need to structure ourselves for the future. One way has been to invest in our own U.S. employees and manufacturing facilities. We have

invested more than $165 million in training and new equipment to convert all of our U.S. factories from piece-rate systems to team manufacturing. In addition, we spent another $500 million to improve our customer service and competitiveness.

We have formed an unprecedented partnership with our major union, the Amalgamated Clothing and Textile Workers, that will improve our manufacturing performance. We have developed goals and will reduce the time it takes to move products from the design stage to the retail store, from 18 months to 30 days.

We are even linking our consumers, many like yourselves, directly to our manufacturing sites. Technology now allows consumers to send their personalized measurements electronically to our manufacturing facility in Mountain City, Tenn., where a team of employees cut, assemble, and finish made-to-order jeans.

Another part of the solution is to make use of trade partnerships in the Caribbean under a fair parity plan. We look forward to working with the Trade Subcommittee on the details of this critical issue.

We wholeheartedly encourage the Trade Subcommittee in Congress to approve this legislation expeditiously in a forum that provides U.S. companies with a valuable and flexible competitive advantage. In so doing, you will be creating an important tool that helps Levi Strauss & Co. and our employees meet the challenges of a constantly changing and increasingly competitive international marketplace.

The bottom line, gentlemen, we are not looking for special treatment. We just want to be competitive, and producing in the Caribbean and Central American countries will help us to do that. Our sourcing strategy has a role for all areas of the world, including the Caribbean and Latin American countries.

If the legislation is not approved, we have no plans to leave these areas. We are already there. But it will cause us to reevaluate, which may include investment elsewhere in order to protect our competitive advantage.

I have been with Levi Strauss & Co. 20 years. I have been in positions ranging from sales, to merchandizing, to marketing, and now operations. I have been face-to-face with consumers, retailers, and now production workers from all over the world.

I have seen apparel companies come and I have seen them go, and I know one thing. The consumer will be the final arbiter as to whether we remain in business or we fail.

On behalf of Levi Strauss & Co., I want to thank you, Mr. Chairman, Mr. Rangel, Mr. Payne, and especially Mr. Gibbons for your leadership in these issues.

Chairman CRANE. Thank you, Mr. Ermatinger.

[The prepared statement follows:]

TESTIMONY OF JOHN ERMATINGER
LEVI STRAUSS & CO.

My name is John Ermatinger and I am Vice President for North American Operations and Sourcing at Levi Strauss & Co. Our company appreciates the opportunity to express its support for freer trade policies in the Caribbean Basin region and for H.R. 553, "The Caribbean Basin Economic Security Act."

Levi Strauss & Co. supports H.R. 553 because we believe an equitable parity plan for the Caribbean must be comprehensive in scope and flexible in meeting new competitive circumstances. "The Caribbean Basin Trade Security Act" will help us keep U.S. production competitive globally, meet quick-response goals in a changing marketplace, expand our export capabilities to foreign markets, and provide the tools to meet unforeseen business challenges into the next decade. By including a provision for tariff preference levels (TPLs) for fabrics in short supply, not available or not formed in the United States, the legislation takes into account the capabilities of the Caribbean region and the practical needs of U.S. manufacturers.

Levi Strauss & Co. is the world's largest apparel manufacturer. We produce and market jeans, jeans-related products, and casual sportswear under the Levi's®, Dockers®, and Brittania® brands in the United States and more than 60 other countries. Our sales in 1994 exceeded $6 billion.

Although a global company, Levi Strauss & Co. remains firmly committed to its U.S. manufacturing roots. Of the approximately 36,000 Levi Strauss & Co. workers worldwide, more than 25,000 are employed in the United States. We operate 41 factories, finishing centers, and customer service centers in 20 states.

Levi Strauss & Co. and the Caribbean Basin:

Our company's experience with expanded trade and closer cooperation with the Caribbean Basin region has benefited Levi Strauss & Co.'s own U.S. manufacturing base, the American textile and apparel sectors, and the United States. For these benefits to continue -- and for Levi Strauss & Co. to remain competitive in the face of dramatic industry changes and increasing imports over the next 10 years -- it is critical that the Caribbean countries receive the equivalent tariff and quota treatment that exists under the North American Free Trade Agreement.

Levi Strauss & Co. has strong ties with Caribbean and Latin American nations. Shortly after Congress enacted the original Caribbean Basin Initiative (CBI) in 1983, our company responded to the call for private sector involvement in the region. Today, some of our key business partners are sewing and laundry contractors in Guatemala, the Dominican Republic, Honduras and Costa Rica, who help us produce garments for sale around the world. Most of these goods are made from U.S. fabric. In addition, the majority of the products assembled in the Caribbean are cut and finished in the United States by American workers.

U.S. Apparel Industry Faces New Competitive Pressures:

As a global company, we have had to examine ways in which Levi Strauss & Co. can remain one of the most competitive, well-positioned apparel manufacturers today -- and in the future.

Like many industries today, the textile and apparel sector is undergoing dramatic changes. These changes are being driven by: 1) new consumer demands and, in turn, our customers' needs; and 2) increased foreign competition.

Today's sophisticated, value-conscious consumers are seeking greater variety, high quality and reasonable prices -- and they have more choices about where to find it. To meet the demands of these consumers, our competitive retailers are seeking higher quality, faster delivery, superior service and customized, ready-to-sell products.

Against this backdrop of industry changes and challenges, Levi Strauss & Co. is also facing increasingly fierce competition from abroad. With the phase-out of import quotas under the Multi-Fiber Arrangement (MFA) during the next ten years, competitive pressure from major textile and apparel exporting nations in Asia will increase dramatically. To face this new challenge, U.S. manufacturers require freer trade policies "in our own backyard" -- in the Caribbean and in this Hemisphere. During the next decade, our industry must be prepared to meet this evolving foreign competition. To be successful, we will need to employ every available tool and competitive advantage.

Levi Strauss & Co. has already begun to examine how we need to be structured for the marketplace of the future. One way has been to invest in our own U.S. employees and manufacturing facilities. We have redesigned how we do business -- from the way work is organized in our factories to how we deliver products to our customers and consumers. For example:

- We have invested more than $300 million in training and new equipment to convert all of our U.S. factories from piece-rate production to team-manufacturing. An additional $500 million is being dedicated to improve our customer service and competitiveness.

- We have developed customer service goals that will reduce the total time it takes to move products from the design stage to the retail store from 18 months or more to 30 days.

- We are working toward a goal of delivering 95 percent of our orders within 72 hours of the request -- and on the day and hour specified by our customers.

- We will deliver floor-ready products that the customer can make available immediately to consumers. This means folded or on hangers, with customized tags, labels and packaging.

- We are even linking consumers directly to our manufacturing sites. Today, four of our Original Levi's® Stores are using technology that allows consumers to send their personalized measurements electronically to our manufacturing facility in Mountain City, Tennessee, where a team of employees cut, assemble and finish made-to-order jeans, and deliver them to the consumer within three weeks.

While lower costs will continue to be important to the textile and apparel industry, other issues will become even more critical for our continued success. Increasingly, it will be important to manufacture near our customers. Because products will be introduced more quickly and changed more frequently, manufacturers will need quick access to a variety of fabrics. Overnight deliveries will become the rule. High quality standards, geographic proximity and the ability to meet quick turnaround deadlines will become dominant competitive factors. Caribbean Basin parity as defined by H.R. 553 is essential to meeting these new business realities.

The Need for CBI Parity:

U.S. manufacturers, like Levi Strauss & Co., need to utilize new free trade arrangements, like CBI parity, to help keep high-value, higher-wage manufacturing jobs in the United States, while maintaining competitive prices that will enable us to take advantage of strategic market access abroad.

To compete successfully in the new global marketplace, we need long-term sourcing strategies and more stable relationships with suppliers and contractors. These strategies and relationships depend on flexible, sound trade policies and agreements that take into account the varying opportunities and challenges in individual countries

as well as the competitive needs of the U.S. textile and apparel industry. "The Caribbean Basin Trade Security Act" provides such sound policy and the framework for a permanent, but flexible agreement.

For Levi Strauss & Co., the benefits of CBI parity are as essential to our future success as the changes we are adopting in our own company. H.R. 553 will:

- Reduce tariffs on goods produced under "807" and "807A" programs, making them more competitive;

- Shorten the production cycle by making our production processes more vertically integrated so that sewing, finishing and packaging operations can be consolidated at a single location; and

- Create a new export platform from which we can sell more products abroad.

Faced with aggressive competition from China, India, Pakistan, Indonesia, and other major apparel exporting countries, U.S. manufacturers like Levi Strauss & Co. need to have the ability to obtain fabrics not available or in short supply from overseas sources. Likewise, if the small and undiversified economies of the Caribbean Basin are to remain our economic partners, they must be allowed to source globally without losing favorable access to the U.S. market.

Inclusion of tariff preference levels in the CBI parity plan and assurances that quota and tariff treatment for the Caribbean will be equal to that under NAFTA will provide U.S. apparel companies with the necessary flexibility to meet future competitive needs. Such flexibility will ensure that the Caribbean region remains an important business partner for American firms and that American manufacturers, like Levi Strauss & Co. can compete successfully once the MFA quotas have been phased-out.

In addition, "The Caribbean Basin Economic Security Act" will require that Caribbean nations assume greater responsibilities as members of the world trading system. This will benefit both the region and the United States. Protection of trademarks and intellectual property rights, as well as more rigorous enforcement of anti-counterfeiting and transshipment rules are especially important to Levi Strauss & Co. and the apparel industry. The Caribbean nations will also need to invest in modernizing their own infrastructures and in developing the skills of their work forces. Such efforts will help make the region more competitive internationally, ensure economic growth and stability, and encourage a more effective economic partner for the United States.

Promoting Responsible Business Practices:

More modern infrastructures and up-to-date production processes often accompany responsible business practices. Recently, greater attention has been focused on non-trade issues such as labor practices and environmental issues in the Caribbean Basin, in Latin America and around the world. Levi Strauss & Co. and other socially responsible companies have been recognized as leaders in promoting ethical business practices among our partners and suppliers.

At Levi Strauss & Co., we have put in place policies called Global Sourcing Guidelines. For contractors who do business with our company, quality, cost and on-time delivery are as important as environmental concerns, ethics, legal requirements, worker health and safety, and employment practices. Our Global Sourcing Guidelines are designed to serve as an early warning system and a tool for addressing problems before they adversely affect our business and our reputation. We have committed considerable human and financial resources toward working with our contractors to help them understand and meet these guidelines.

Voluntary efforts like ours should be used to highlight American companies' contributions toward achieving improvements through trade and investments. They should not become weapons that are used against well-intentioned companies by opponents of freer trade or by governments that want to legislate codes of business conduct. In fact, attempts to link business principles and trade agreements can raise resentments, create misunderstandings, and ultimately be counter-productive. Based upon our experience, we believe voluntary efforts that reflect individual companies' own values, choices and business conditions have the greatest chance for success.

We do not profess to have all the answers to responsible business practices. However, Levi Strauss & Co. is learning new lessons everyday. If these lessons can be useful to others in promoting voluntary, private sector solutions to these issues, we are pleased to be a resource.

Market forces can convey lessons as well, and help bring about some of this new accountability. Recent studies confirm that companies with strong corporate reputations and principles are better able to influence consumers' purchasing decisions, foster greater retailer and consumer loyalty, and enjoy higher sales and profits. By working with partners whose values and practices are similar to ours, Levi Strauss & Co. also ensures partnerships with the world's best contractors -- an essential component to be successful around the world. We believe that promoting responsible business practices is good business.

Conclusion:

Levi Strauss & Co. supports passage of H.R. 533, "The Caribbean Basin Trade Security Act," and we look forward to working with the Trade Subcommittee on this critical issue. This legislation will benefit the United States by protecting a carefully cultivated trade relationship that has achieved positive results for our country and the Caribbean. Protecting and strengthening this relationship will ensure continued economic and democratic growth in the region and cooperative trade that supports American jobs.

We urge the Trade Subcommittee and Congress to approve this legislation in a form that provides U.S. companies with a valuable and flexible competitive advantage. In so doing, you will be creating an important tool that helps Levi Strauss & Co. and other manufacturers meet the challenges of a constantly changing and increasingly competitive international marketplace.

Chairman CRANE. Mr. Vine.

STATEMENT OF HOWARD A. VINE, UNITED STATES REPRESENTATIVE, CENTRAL AMERICAN AND CARIBBEAN TEXTILE AND APPAREL COUNCIL

Mr. VINE. Thank you, Mr. Chairman.

I am Howard Vine, managing partner of the Washington office of the Miami law firm Greenberg Traurig. I appear here today as the United States Representative for the Central American and Caribbean Textile and Apparel Council, commonly known was CACTAC. CACTAC is the coordinating body for the representation of the textile and apparel industries located in the 24 countries that now form the CBI.

It is a great privilege for me to be here today to express CACTAC's strong endorsement for your bill, Mr. Crane, Mr. Rangel, Mr. Shaw, and Mr. Gibbons, the Caribbean Basin Trade Security Act, H.R. 553. I would like to begin by thanking the chairman and the ranking minority member, as well as Congressman Shaw and Congressman Rangel, in your dedication to the economic and political development of the Caribbean Basin region. Your continued sensitivity and support to the economic and trade concerns of Central America and the Caribbean is deeply appreciated, and we thank you for holding this hearing.

Mr. Chairman, we, the United States and the countries of the CBI, have long recognized the importance improved economic conditions play on fundamental political issues: human rights, terrorism, drug trafficking, democracy, and immigration. Despite our support for NAFTA, our members previously expressed to you our fears that passage of NAFTA, without accommodation for the CACTAC countries, would adversely affect our competitiveness by drawing existing and potential investment from our region to Mexico, particularly in the textile and apparel sectors. We all know well that in the final moments of both the NAFTA, and more recently, the GATT implementing legislation, the need to address the basin concerns was deferred to some future date.

Mr. Chairman, sometimes the worst thing in life is to be right. Unfortunately, today as we appear before you, we find ourselves before the subcommittee again armed with the proof that our predictions about the effects of NAFTA, without parity, were entirely correct. Since the implementation of NAFTA in 1993, CBI textile and apparel trade growth, which had been on the rise, began a serious decline. Indeed, the growth of Mexican textile and apparel exports to the United States matched, nearly dollar for dollar, the decline in exports in the CBI nations since NAFTA was implemented.

One may merely look to Guatemala as an indicator. In the past 6 months, 72 factories have closed, with approximately 25,000 people now unemployed. To add insult to injury, the devaluation of the Mexican peso has given manufacturers an even larger incentive to move operations to Mexico.

Mexico now has a triple threat. The unique advantage with regard to unrestricted quotas and tariffs, proximity to the United States with transportation cost advantages, and now devalued, discounted production costs. I should point out that the impact can be felt immediately as has been discussed earlier.

Our industry is highly portable. Apparel operations can be closed, moved, and reopened in a matter of 6 to 7 weeks.

Mr. Chairman, without parity, U.S. companies already in the region, competitively disadvantaged by the elimination of Mexican duty rates and quotas, and now the peso devaluation, will be forced to consider relocating existing manufacturing facilities. At the very least, they will likely avoid any future investment in the region. Such a reversal in the investment climate of the region will have tragic consequences for the social, economic, and political stability of the region.

Over the last decade, largely as a result of CBI, we have witnessed a strong and consistent movement by the Central American and Caribbean nations toward democracy, economic reforms, and trade and investment liberalization. The growth has occurred with the help of the CBI programs that Congress has instilled and installed. The United States has maintained a larger, more consistent job-creating trade surplus for the CBI than any other region in the world, and the Central American Panamanian Federation of Private Entities indicates in a report that 60 percent of the CBI region's income goes to buy American products.

The report also states that 45 percent of raw material, machinery and equipment imports of Central American and Caribbean Basin countries comes from the United States. Thus, we have the truest elements of symbiotic trade—mutuality of interest and benefit.

For every 100 jobs created in the CBI, 15 new jobs are created in the United States; in contrast to the Pacific Rim, where for every trade job created there, every two jobs, only two U.S. jobs are created for every 100 jobs created in the Pacific Rim.

U.S. exports to the CBI region are expanding at a rate three times the rate of exports to the world as a whole. If Central America and the Caribbean should be shut down, the thousands of jobs in the region and the related U.S. textile apparel and ancillary jobs will not come to the United States, they will migrate back to the Far East.

H.R. 553 protects the interests of the U.S. companies in the region, especially in the textile and apparel industry. Many U.S. firms have invested in the region in order to compete, as we have heard from Levi Strauss and others, with low-cost Asian textile and apparel manufacturers while still maintaining facilities in the United States.

Failure to provide NAFTA-like access would punish U.S. firms who took the risk and invested in the Caribbean region at the urging of our government and at the convincing of our government that this was a region to be preserved, secured, and grown with the support of our government. More importantly, it would also harm American workers in the mill and apparel sectors reliant on co-production with the region.

H.R. 553 continues the progressive thinking that has the textile and apparel industry working hand in hand in the United States, Central America, and the Caribbean. H.R. 553 also necessitates that the nations of the CBI enter into reciprocal free trade agreements with the United States, thus laying the groundwork for Central America and the Caribbean to become part of the perma-

nent economic integration of the entire Western Hemisphere. We strongly urge its adoption.

Thank you, Mr. Chairman, for the opportunity to testify on this issue of great urgency. We look forward to a favorable outcome.

Chairman CRANE. Thank you, Mr. Vine.

[The prepared statement follows:]

Testimony of Howard A. Vine
United States Representative
The Central American and Caribbean Textile and Apparel Council
Before the Subcommittee on Trade
House Ways and Means Committee
February 10, 1995

Thank you, Mr. Chairman, I am Howard Vine, managing partner of the Washington office of Greenberg, Traurig, Hoffman, Lipoff, Rosen and Quentel, one of Florida's oldest and largest law firms. I appear here today as the United States Representative for the Central American and Caribbean Textile and Apparel Council, commonly know as CACTAC. CACTAC is the coordinating body for the representation of the textile and apparel industries located in 24 countries in the Caribbean and Central America. In these countries, several hundred U.S. companies, employing tens of thousands of people, have responded to the U.S. support for the CBI by building facilities to process textiles and apparel, making these U.S. companies globally competitive.

It is a great honor and pleasure to appear before your subcommittee today to express CACTAC's strong support for the Caribbean Basin Trade Security Act, HR 553. Mr. Chairman, I would like to begin by thanking you and the Ranking Minority Member, Mr. Gibbons, for your dedication to the cause of economic and political development in the Caribbean Basin region. Your continued sensitivity and support to the economic and trade concerns of Central America and the Caribbean is deeply appreciated. I would also like to thank you for introducing H.R. 553 and for holding this hearing.

On September 23, 1993, in testimony submitted to this committee, CACTAC went on record as supporting the completion and passage of NAFTA. At that time NAFTA stood as, and remains, the next logical step in the economic restructuring and market openings that Mexico, Latin America and the Caribbean had recently undertaken. In part, our support grew from the realization that the improvement of economic relations in the region had a positive impact on long-standing political issues - human rights, terrorism, drug trafficking, democracy, and immigration. At the same time, our members were extremely concerned the passage of NAFTA would adversely affect the competitiveness of the Central American and Caribbean region by drawing existing and potential investment from the region to Mexico, particularly in the textile and apparel sectors.

So while supporting NAFTA, we worked toward the passage of free standing parity legislation and/or the inclusion of language in NAFTA granting limited parity to the nations of Central America and the Caribbean to mitigate some of the harsh effects we predicted would be caused by the lopsided benefits NAFTA would bestow on Mexico. Unfortunately this language was dropped from the bill's final version, and instead the region was promised its opportunity to blunt NAFTA's unintended, disadvantaging consequences would come in the GATT Uruguay Round implementing legislation.

The Interim Trade Program, the Administration's version of limited parity, was first included in the draft version of the Uruguay Round legislation. However, as a result of concern over "extraneous" provisions causing added controversy on an already controversial measure, the provision was jettisoned from the GATT in the final hours of the negotiations prior to the bill's introduction.

Unfortunately, today we find ourselves before this subcommittee armed with proof that our predictions about the effects of NAFTA, without parity, were entirely correct. Since the implementation of NAFTA in 1993, CBI textile and apparel trade, which had been on the rise, began a serious decline. Indeed, the growth of Mexican textile and apparel exports to the U.S. matched, nearly dollar for dollar, the decline in exports from the CBI nations since NAFTA was implemented (see Appendix A). In the past 6 months, 74 factories have closed in Guatemala.

To add insult to injury, the devaluation of the Mexican peso has given manufacturer's an even larger incentive to move operations to Mexico. Where as under NAFTA, Mexico has a unique advantage with regard to unrestricted quotas and tariffs, it now is able to undercut the nations of the CBI with regard

to labor costs. This represents a grave situation for textile and apparel manufacturers in the region who find themselves unable to compete with Mexican products in a highly portable industry. CACTAC estimates that these textile and apparel operations can be closed, moved and reopened in a matter of 6-7 weeks.

Without parity, U.S. companies already in the region, competitively disadvantaged by the elimination of Mexican duty rates and quotas and now the peso devaluation, will be forced to consider relocating existing manufacturing facilities. At the very least, they will likely avoid any future investment in the region. Such a reversal in the investment climate will have tragic consequences for the social, economic and political stability of the region. The passage of H.R. 553 would reassure both established and future investors that a level playing field will continue to exist between the Central American and Caribbean region and Mexico in textile and apparel.

The Caribbean Basin Initiatives to date have over the past 10 years contributed significantly to the economic growth and political stability in this nearby, strategically important region. Clearly, any progress our neighbors to the South make enhances our own country's political security. In fact over the last decade, largely as a result of CBI, we have witnessed a strong and consistent movement by the Central American and Caribbean nations towards democracy, economic reforms and trade and investment liberalization.

This growth and development has occurred with the help of an economic base stimulated by our Congress' CBIs and, as a result, the demand for U.S. goods and services has grown. The U.S. has maintained a larger and more consistent job-creating trade surplus (on a per capita basis) with Central America and the Caribbean than with any other region in the world (Appendix B). The Central American Panamanian Federation of Private Entities indicated in a report that "60% of the Caribbean and Central American region's income goes to buy American products". The report also stated "45% of raw material, machinery and equipment imports of Central America and Caribbean Basin countries comes from the United States." Thus, we have the truest elements of symbiotic trade ... mutuality of interest and benefit.

For every 100 jobs created in Central America and the Caribbean, 15 new jobs are created in the U.S. In contrast, the Pacific Rim apparel trade creates only 2 jobs in the U.S. for every 100 jobs dedicated to apparel production in that region. And, U.S. exports to the Central American and Caribbean Basin region are expanding at a rate three times the rate of exports to the world as a whole. If Central America and the Caribbean should be shut down, the thousands of jobs in the region and the related U.S. textile and apparel jobs and the jobs in the ancillary industries they support, will not come to the United States; they will migrate back to the Far East.

A large number of the textile and apparel producers that make up CACTAC use U.S. cut and formed fabric. Over 77 percent of Central American and Caribbean textile and apparel exports to the U.S. are assembled, in whole or in part, from U.S. components. This fabric is shipped from the U.S. to Central America and the Caribbean and assembled. This two way process provides numerous benefits for both Central America and the Caribbean and the United States with the most important benefits being investment, jobs, and trade.

These imports from Central America and the Caribbean displace imports from Asia which contain little, if any, U.S. content. Jobs are thus protected in the United States that would otherwise go offshore. In fact, the textile and apparel jobs that are being created in Central America and the Caribbean were lost to East Asia long ago. Indeed, the decline in textile and apparel exports from Asia has a direct correlation to increases from the CBI region.

As a practical matter, parity is essential to products such as textile and apparel. These products account for nearly 50 percent of total U.S. imports for Central America and the Caribbean. These products are currently ineligible for CBI duty-free treatment, they carry the highest rates in the U.S. tariff schedule. Free access for Mexico's exports of these products gives the Mexican exporter anywhere between an 8 to 25 percent cost advantage over his competitors in the Central American and Caribbean beneficiary countries.

H.R. 553 protects the interests of U.S. companies in the region especially in the textile and apparel

industry. Many U.S. firms invested in the region in order to compete with low cost Asian textile and apparel manufacturers while still maintaining facilities in the U.S. Failure to provide NAFTA-like access for Central American and Caribbean nations would punish U.S. firms who at the encouragement of the U.S. Government took the risk and invested in Central America and the Caribbean. More importantly, it would also harm American workers in the mill and apparel sectors reliant on co-production with the region.

From a broader perspective a combination of NAFTA and Central American and Caribbean parity would help create a regional trading area which will allow the United States to compete more effectively compete with the European trading block and to counter competition from the Pacific Rim countries. Over the past 10 years, the combination of private U.S. investment and foreign and economic policy has been instrumental in the establishment of the textile and apparel industry in Central America and the Caribbean. This industry has contributed to the democratic stability and economic growth in the region. H.R. 553 continues the progressive thinking that has the textile and apparel industry working hand-in-hand in the U.S. and Central America and the Caribbean. H.R. 553 also necessitates that the nations of the CBI region enter into reciprocal free-trade agreements with the United States thus laying the groundwork for Central American and the Caribbean to become part of the permanent economic integration of the entire Western Hemisphere. We strongly urge the adoption of H.R. 553.

Thank you Mr. Chairman for providing CACTAC the opportunity to testify on this issue of great urgency. I will gladly answer any questions.

Chairman CRANE. Ms. Hughes.

STATEMENT OF JULIA K. HUGHES, CHAIRMAN OF THE BOARD, UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

Ms. HUGHES. Thank you, Mr. Chairman.

I am pleased to have the opportunity to speak today in favor of H.R. 553. I am speaking as chairman of the United States Association of Importers of Textiles and Apparel, USA–ITA. USA–ITA member companies source textile and apparel products domestically and overseas. Our members include apparel manufacturers, retailers, importers, service companies, and distributors. We account for more than $40 billion in U.S. sales annually, and employ more than 1 million workers in the United States.

USA–ITA strongly supports the goals of H.R. 553, and we commend the sponsors. This is the first CBI parity bill to offer access to the U.S. market for the broad range of products that have heretofore been considered import sensitive. We also applaud your decision to include tariff preference levels and make them available to those textile products that do not meet NAFTA rules of origin. This is especially important to USA–ITA and our members.

Without the availability of TPLs for goods that do not meet the NAFTA's very tough rules of origin, many of our members will not have a basis for expanding sourcing from the Caribbean region. To meet the demands of our customers, we need to have the flexibility to periodically use non-NAFTA originating yarns and fabrics. TPLs will preserve that essential flexibility.

I think it is important to note, although it is not in my official testimony, that we have some comments about why Mexico is not using the TPLs. We think that Mexico is not using them predominantly because their business qualifies as NAFTA-originating.

When you look at the trade statistics for the first 11 months of NAFTA, 91.5 percent of the imports to the United States from Mexico were NAFTA-originating. Ninety-six percent of the total were 807 products, which means they were at least cut in the United States, even if the component fabric might have been of foreign origin. This is quite different than the situation in the Caribbean.

In addition, the TPLs impose a paperwork burden that thus far in the process tends to overwhelm the duty cuts that you have already seen. Combine with that the Mexican decision to allocate TPLs based on an auction system, which also added a cost to using TPLs and, of course, now the peso devaluation. We see that it is very unlikely that any foreign fabrics are going to become part of the mix in Mexico.

We think it is not appropriate to say that what Mexico is doing should necessarily affect the Caribbean Basin. We think the use of TPLs will work in the Caribbean and it will be an important addition to maintaining their parity and flexibility with the NAFTA with Mexico and Canada.

We also have some technical recommendations regarding the use of TPLs that we want to mention. We believe that the bill should have the language revised to instruct the United States Trade Representative to establish TPLs, not merely give them the authority. From this morning's testimony, it is apparent that the administra-

tion is not really interested in using the TPL process to enhance the trade in the region.

Second, we believe the legislation should instruct the United States Trade Representative to establish TPLs that more closely correspond to the categories of goods already subject to quota.

Third, we propose that the TPL provision also instruct the administration to establish specific, short-supply provisions to permit quota levels to be increased when consumer demand outstrips production. This is a proposal that was also included in NAFTA, but because the administrative procedures have not been decided by the administration, it is impossible for us to use this provision.

USA–ITA has one other concern. One provision of the bill instructs the United States Trade Representative to undertake negotiations for purposes of seeking appropriate reductions in existing quotas to compensate for products that would be available for NAFTA parity and for the TPLs. USA–ITA opposes this provision. We believe it is inappropriate in the bill because it would potentially take away the rights of Caribbean countries that they already have to ship products to the United States.

At a sourcing conference earlier this week in El Salvador, many participants expressed their concern that this provision could potentially put them at a competitive disadvantage. Instead of reducing CBI quotas, we believe that the United States should be avoiding the establishment of quotas on CBI products entirely.

We believe that during the transition period to a MFA-type quota free world, it would be an appropriate start toward liberalization to exclude the CBI countries from the safeguard mechanism establishing new quotas.

Mr. Chairman, members of the subcommittee, we appreciate the opportunity to meet with you and staff to further discuss these and other proposals, and hope to work with you toward passage of H.R. 553.

Thank you.

Chairman CRANE. Thank you very much, Ms. Hughes.

[The prepared statement follows:]

STATEMENT OF JULIA K. HUGHES
CHAIRMAN OF THE BOARD,
UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

ON H.R. 553,
THE CARIBBEAN BASIN TRADE SECURITY ACT

Before the Committee on Ways and Means
Subcommittee on Trade

February 10, 1995

On behalf of the United States Association of Importers of Textiles and Apparel, USA-ITA, a seven-year-old association of more than 150 companies involved in the textile and apparel business, I am pleased to have the opportunity to speak today in favor of H.R. 553, the Caribbean Basin Trade Security Act.

USA-ITA member companies source textile and apparel products domestically and overseas. Our members include manufacturers, distributors, retailers, and related service providers, such as shipping lines and customs brokers. We account for over $40 billion in U.S. sales annually and employ more than one million American workers.

To meet the needs of our customers, USA-ITA members necessarily take a global approach to doing business. We look for the quality product that offers the best value for our customers. Part of the equation, however, is the availability of merchandise. The U.S. quota program substantially limits the availability of affordable quality goods. The quota program adds to our costs in a number of ways, but most significantly through 1) the premium we must pay for goods whose quantity is limited and 2) the added costs and overhead involved in meeting the additional paperwork and management burdens of handling restricted goods.

Because of the special relationship between the United States and the Caribbean, there are currently fewer restrictive quotas on textile and apparel products made in the Caribbean. Thus, the Caribbean Basin countries are among the sources that can best meet our objective of obtaining affordable quality merchandise for our customers. And the U.S. is helping these economies develop by providing these benefits. Nevertheless, because of the implementation of the North American Free Trade Agreement (NAFTA), Caribbean Basin countries are currently operating at a disadvantage vis-a-vis Mexico. No sensitive products are eligible for duty-free entry into the United States, and the threat of new quotas on textile and apparel products remains very real, making new investment more risky.

USA-ITA strongly supports the goals of H.R. 553 and we commend the sponsors. This is the first CBI "parity" bill to offer access to the U.S. market for a broad range of products that have heretofore been considered "import sensitive."

With respect to textile and apparel products in particular, we are pleased to see that Section 101 would provide duty-free access to any products that originate in a CBI country, to any products that are assembled in a CBI country from U.S.-formed and -cut fabric, and to any handloomed, hand-made or folklore article.

We also applaud your decision to make tariff preference levels available to products that do not meet the NAFTA rules of origin. This provision is especially important to USA-ITA. Allow me to take a moment to explain the reasons why.

First, as you know, tariff preference levels, or TPLs, as described in the NAFTA, permit a limited number of goods that do not meet the stringent NAFTA "yarn-forward" rules of origin to nevertheless enter the U.S. at the preferential NAFTA duty rate. While this is not duty-free entry, at least not yet, it does permit

products that meet the "normal" rules of origin to be competitive with NAFTA's duty-free products and that competitive edge provides an incentive for further investment in the Caribbean.

Without the availability of TPLs for goods that do not meet the NAFTA's very tough, hard-to-meet rules of origin, many of our members will not have a basis for expanding sourcing from the Caribbean. To meet the demands of our customers we need to have the flexibility to use non-NAFTA originating yarns and fabrics. TPLs preserve that essential flexibility.

The fact that Mexico is not using the TPLs should not be a factor here. TPLs are much more important for the future of the CBI than they were to Mexico during the NAFTA debate. Mexico has the added advantage of lower cost over-land shipping. Sourcing from the Caribbean means that we must deal with sea and air shipping, which is generally more expensive, and that additional cost must be passed on to the consumer. Preferential duties for CBI goods will help CBI countries address that cost differential and be competitive with Mexico.

Given the importance of TPLs to USA-ITA, we have given the issue a great deal of thought and have carefully studied the language of H.R. 553. For that reason, we have some technical recommendations that we believe will enhance the goal of promoting the growth of free enterprise and economic opportunity in the CBI region.

First, we believe that the bill should instruct the U.S. Trade Representative to establish TPLs, instead of merely authorizing the U.S. Trade Representative to do so.

Second, we believe that the legislation should instruct the U.S. Trade Representative to establish TPLs that correspond directly to the categories of goods subject to quotas. This suggestion is based upon our experience with NAFTA. As you know, each of the NAFTA TPLs covers a broad grouping of products. For example, there is one TPL for "cotton and man-made fiber apparel" and another TPL for "wool apparel." That means that a variety of products are eligible for each of those TPLs. Each of these products also may be subject to a particular category quota. As a result, companies hoping to take advantage of a TPL must keep track of both the individual quota and the TPL. It is entirely possible that a quota will fill before a TPL fills, or vice-versa. This headache and uncertainty that acts as a dis-incentive to even bother with TPLs could be eliminated if the TPLs and the quotas were synonymous. In fact, we propose that all CBI textile and apparel products subject to quotas be provided preferential duty treatment equivalent to the NAFTA preferential duty rate.

Third, we propose that the TPL provision also instruct the Administration to establish short-supply procedures, to permit the levels to be increased when consumer demand outstrips available domestic production. Again, this proposal is borne out of our experience with the NAFTA. The NAFTA contains a short supply provision, but the Administration has yet to establish any administrative procedures or mechanisms for determining whether a product is in short supply domestically. With no procedures to follow, we have been unable to seek any short supply reviews. H.R. 553 presents an opportunity to rectify this situation.

USA-ITA has one other concern. One provision of the bill instructs the U.S. Trade Representative to "undertake negotiations for purposes of seeking appropriate reductions" in existing quotas, to compensate for the quantities of goods that become exempt from quota by reason of meeting the NAFTA rules of origin or by being assembled in the Caribbean from U.S.-formed and -cut fabric. USA-ITA opposes this provision because it could serve to restrict the Caribbean's access to the U.S. market, and undercut the benefits that should accrue to the CBI under the Uruguay Round's Agreement

on Textiles and Clothing. At a sourcing conference in El Salvador earlier this week, many participants also expressed their concern that quota cuts would put CBI countries at a competitive disadvantage.

As an initial matter, apparel products that are assembled in the Caribbean from U.S.-formed and -cut fabric are already subject to levels separate from the regular quotas. When these "guaranteed access levels" were established, existing quota levels were reduced to compensate for the trade that was supposedly transferred to the guaranteed access levels. There should not be further reductions in the quotas now.

Further, Caribbean nations are already worried about the impact that liberalization of the quota program under the Uruguay Round will have on their ability to compete with major low cost producers. To address this situation, the U.S. has provided the CBI countries, and other small suppliers, with higher growth rates than those available to the major suppliers. These higher growth rates, typically 6 percent, should provide the CBI with an advantage during the Uruguay Round Agreement's 10 year phase-out of the quota program, thereby encouraging U.S. importers and retailers to increase their sourcing from the Caribbean. However, that advantage will be dramatically reduced if the base quotas upon which the growth rates are applied are cut back. Clearly, this will not help our Caribbean neighbors position themselves to compete in a post-quota world.

Instead of reducing CBI quotas, the U.S. should be avoiding the establishment of quotas on CBI products. Toward that end, USA-ITA proposes that a provision be included in H.R. 553 precluding the creation of new quotas limiting textile and products from the Caribbean throughout the Uruguay Round's 10 year transition period.

Mr. Chairman, we greatly appreciate the opportunity to present our views and suggestions to you and look forward to working with you to quickly enact H.R. 553 into law. Thank you.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. No questions. Thank you so much for your testimony.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I just wanted to follow up briefly on the TPL issue that you have just brought up. As I understand it, in the testimony you just said that the use of the TPLs would come about because you felt that the rules of origin within the NAFTA agreement would be more restrictive than would be desirable for the Caribbean Basin area; is that correct?

Ms. HUGHES. Well, we believe that the yarn-forward rule of origin that has been a part of the NAFTA agreement is a very restrictive rule, and because of those restrictions to be an originating product, we believe that the tariff preference levels are an appropriate mechanism in those cases where foreign fabrics that don't meet the criteria would be used.

Mr. PAYNE. But to the extent that we are trying to achieve parity with the NAFTA, and to the extent that the yarn-forward rule is a part of the NAFTA, then wouldn't it apply that the yarn-forward rule ought to apply to the Caribbean as well, or unless you are seeking something in addition to parity with NAFTA?

Ms. HUGHES. We are seeking parity, which would include the tariff preference levels. We believe that that would meet the criteria of enabling our business to have the flexibility we need to have to continue to improve investment and sourcing opportunities in the region.

Mr. PAYNE. To some extent, though, that refutes the argument I think of some of our friends from the Caribbean who were saying that there is a symbiotic relationship here among those who produce textiles and apparels, in that producing textile goods in this country and having apparels made in other countries was a good relationship. Now what we are saying is why not have the textiles made in China or India, or somewhere else, and have those made into apparel items in the Caribbean, and then send them into this country duty free; is that what you are suggesting?

Ms. HUGHES. We are advocating that when products meet the appropriate rule of origin. We do support the use of U.S. fabric, but it is not always available in the quantities needed for the goods that we are supplying to U.S. retailers and to U.S. consumers. In those situations, we would like to have the flexibility, as Mexico does in NAFTA, to use a foreign fabric, not products that are cut overseas, but merely a foreign fabric, to make the apparel in the Caribbean region and then ship it to the United States with the tariff benefit levels that are available in the NAFTA agreement.

Mr. PAYNE. Mr. Ermatinger, you mentioned—in fact, I heard on National Public Radio the other day a discussion concerning how apparel companies are restructuring in this country in order to be able to be more responsive and more able to comply with just-in-time inventory situations, and that sort of thing. They mentioned your company as a leader in this area, the work that you are doing with the unions, and so forth, in terms of team construction as opposed to the linear kind of work that has been typical in the apparel industry.

Do you think that that change is one that makes the U.S. apparel industry more competitive, and that there are niches then in the market where the U.S. industry may be competitive, more competitive than they currently are?

Mr. ERMATINGER. Well, team manufacturing, Mr. Payne, is just the beginning. It is not only team configurations, but it is also the insertion of the proper amount of automation and mechanization in the way we conduct our work. We think that the investment that we have seen thus far, by empowering our employees and enabling them to participate in the business environment through training and education, is a competitive advantage anywhere in the world. That, coupled with the fact that they are closest to the American consumer base, we think there is a significant role for our factories and our workers here in America, and a role that they can play in satisfying the ultimate consumer base.

Mr. PAYNE. I see my time is about up.

Mr. Moore, I think you adequately in your testimony talked about the concern of the textile manufacturers as it relates to TPLs, and so I won't get into that, in view of the time.

But thank you all very much for your testimony, and thanks, Mr. Chairman.

Chairman CRANE. Well, I want to thank you all too, and especially Ms. Hughes, for the additional information. If any of you have additional information, either for the record or for our deliberations, please forward it.

Thank you again.

Our next panel is Dr. Herman Starobin, Mitchell J. Cooper, Thomas Mason, Robert Hall, and William Isaac.

All right.

Dr. Starobin, if you will open up for us.

STATEMENT OF JAY MAZUR, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AS PRESENTED BY HERMAN STAROBIN, PH.D., RESEARCH DIRECTOR, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Mr. STAROBIN. Thank you, Mr. Chairman.

I am presenting this testimony on behalf of Jay Mazur, president of the International Ladies' Garment Workers' Union. I want to summarize the rather lengthy testimony submitted to you in the hope that you will have the opportunity to review it with some care. It tries to cover most every aspect of the problem as we see it.

Chairman CRANE. Well, Dr. Starobin, let me say to all, that if you can try and condense to 5 minutes or less, but all of your statements will be a part of the record and any additional material that any of you want to forward to us on the subcommittee, please feel welcome.

Thank you.

Mr. STAROBIN. Thank you, Mr. Chairman.

To summarize our thinking on the CBI bill, H.R. 553, to us this bill is essentially an apparel preference bill that we firmly believe will result in further job loss of U.S.-based jobs. We represent workers in a job entry, domestic industry, which currently still employs about 800,000 production workers.

Almost half of these workers are minorities: Hispanic, black, and Asian. In the last 20 years, 500,000 production worker jobs have been lost, largely as a result of the import policy followed by successive administrations.

This bill, H.R. 553, further hastens the loss of U.S. apparel jobs in a domestic industry that has already been marked for extinction in 10 years as a result of the GATT-Uruguay round. The workers in our industry will have enormous difficulty finding new jobs. Many may, therefore, become public charges.

I don't say this for any but the most obvious reasons. Reported imports of assembled apparel from the CBI have doubled in the last 4 years, and now total over $4 billion. Using the widely accepted formula, to which I shall likely return at a later point in this brief testimony, this means that 80,000 U.S. apparel jobs have been lost as a result of the CBI program.

At the same time, no program has been set in process to create or help to create jobs for those workers who lose their jobs as a result of the CBI program and trade policy in general. The bill, most importantly, omits from consideration worker rights and labor standards and child labor.

Even the weak provisions in the NAFTA side agreements recognize the need to deal with these issues. At the very least, this subcommittee should seek to interdict at the border products that are made with child labor in the Caribbean, most notably throughout Central America.

The issue of worker rights and labor standards and child labor have obvious social connotations, but they also have economic connotations. In economic terms, the experience of our own country has shown that workers will buy products, including imports from the United States, only if they have the money to do so.

The bill strangely omits reference to intellectual property, a make or break question in our government's trade relations with China. On TPLs, Korea, many of whose companies play a major role in the CBI apparel production and practice among the worst labor and human relations, will be among the primary beneficiaries.

Data used to promote trade policy and trade legislation, through no fault of this subcommittee or of the Congress, are wrong for the following reasons: The formulas used focus only on exports and ignore the effect of imports on jobs in this country. Exports are not fairly counted, as the ILGWU testimony shows in detail. They ignore the turnaround of the parts that were assembled abroad and shipped back to the United States.

Julius Katz, the principal U.S. NAFTA negotiator in the Bush administration, has publicly stated that the job creation numbers used to justify NAFTA are, to use his word, "phoney." Yet they continue to be used in trade discussions and in justification of trade legislation.

A study we have made shows that 65 percent of our alleged $5 billion in apparel exports are, in fact, parts and not exports of apparel; they never enter the market of the countries where they are assembled but are returned to the United States. The General Accounting Office 18 months ago questioned the methodology used in

reporting trade figures. They continue to be used and used incorrectly.

To make trade policy, this subcommittee and the Congress should require honesty in dealing with data. I could identify other instances where "phoney" data are used. They are included in the submitted testimony.

This is not a new issue, Mr. Chairman. We have been presenting it to the appropriate agencies and to congressional committees for the last 5 years, all to no avail. We and the majority on this subcommittee and the Congress may end up disagreeing on policy, but at least as far as data are concerned, we should all sing out of the same hymn book. This subcommittee should not be asked to propose legislation based on false data.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Dr. Starobin.

[The prepared statement follows:]

Before the Subcommittee on Trade
Committee on Ways and Means
U. S. House of Representatives
February 10, 1995

TESTIMONY OF
JAY MAZUR, PRESIDENT
INTERNATIONAL LADIES' GARMENT WORKERS' UNION
ON H. R. 553
THE CARIBBEAN BASIN TRADE SECURITY ACT

I appreciate this opportunity to testify on H. R. 553, the Caribbean Basin Trade Security Act, on behalf of the 160,000 members of the International Ladies' Garment Workers' Union who are employed in the production of women's and children's apparel and accessories. Our members live and work in all parts of our country. They are a cross section of the U. S. workforce: native born, minorities and new Americans who have come to our shores from just about every country in the world.

Apparel plants are located in the central cities and in small towns throughout the nation. Since its inception around the turn of the century, the apparel industry has been a job entry industry and it still is. Minorities make up almost half of the industry's roughly 800,000 production workers who are roughly equally divided between the women's and the men's clothing industries. Twenty-two percent of the workforce are of Hispanic origin, 18 percent are Afro-Americans and 5 percent have their origins in Asia. Eighty-five percent of the workers in the industry are women, many the sole supports of their families.

The ILGWU is not new to the Caribbean scene. Many of our members came to the United States from the Caribbean countries. Many maintain close contact with the region, have family living there and visit the lands of their birth. And so we, too, feel a special obligation to assist the peoples of these countries to improve their economic circumstances. We do not gainsay the importance of the region to our nation's well-being.

We do not believe, however, that the provisions of H. R. 553 meet the needs of the people of the Caribbean. They are poorly designed to accomplish the task of promoting economic development in the region. They do not really address the problems besetting the region -- and our country as well. They do not, to use the latest trade language, lift all boats.

This is the fourth attempt, I believe, to end apparel tariffs and quotas for the CBI countries. When our views were solicited on previous occasions, we proposed that quotas be taken away from major Asian suppliers and given to the CBI so that U. S. apparel workers would not suffer job losses. Given the high apparel import penetration level, we sought to help workers in the Caribbean, while at the same time not jeopardize further U. S.-based jobs. I testified to this effect before this Committee as far back as March 30, 1989. Our proposal was not accepted.

The bill was introduced almost coincidentally with the financial collapse in Mexico, although I believe that it would have been introduced even without regard to the Mexican events. The argument in its favor is that because of the elimination of tariffs and quotas for Mexico as a result of the North American Free Trade Agreement, the CBI will be less competitive and U. S. investment will flow out of the CBI and into Mexico. Now it will also be argued that Mexico's devaluation creates an even greater competitive threat to CBI production.

Such arguments skirt the real issue. The economies of the CBI countries -- and Mexico -- can only be bolstered if their people, including their workers, truly share in economic development and

truly benefit from it. This requires that workers have a voice in their own and in their nations' destinies.

My comments on H. R. 553 and the issues involved in the CBI and other developing nations are neither arbitrary nor do they reflect protectionist thinking. I have had the opportunity to visit these countries, as have some of my colleagues. We have witnessed the conditions that prevail there at first hand. Our concern is first and foremost for the workers in the CBI countries -- and for workers in Mexico and everywhere.

My most critical comment, one that I shall deal with first, is the question of worker rights and labor standards, its importance in both human and economic terms and the fact that it is ignored in the proposed legislation and in trade policy decisions in general. Support for the rights of workers to protect themselves and share in a nation's prosperity are basic to any help we can give to the people of the Caribbean to improve their lot and to help them to create stable democratic societies.

I will also suggest to you how false and incomplete data have been used to promote the CBI and the current legislation, who have been principal beneficiaries of the CBI and who will benefit from this bill. The fact is that Caribbean Basin programs put in place by administrations of both parties have not improved living standards in the region, but have resulted in the most frightful degradation of workers.

The CBI, we were told, would benefit the people of the region. But it has not worked. Nor has trickle down worked. Nor has the U. S. consumer benefitted from lower labor costs to importers. Aside from U. S. apparel companies and other importers, the principal beneficiaries have been a small elite in the Caribbean and some Asian companies, many from South Korea, who have set up apparel factories in the CBI which export to the U. S. market.

The bill before you aims "to encourage the development of strong democratic governments and healthy economies in the Caribbean countries through the expansion of trade." Although the CBI was adopted by the Congress in 1983, such aspirations are far from having been accomplished. Brutal governments continue to exist in many Caribbean lands, democracy as we see it is still a distant hope, poverty is universal and the reported expansion of trade raises more questions than it answers. Unless it is revised to take care of some serious omissions, H. R. 553 will not help the people of the Caribbean realize the aspirations cited in the bill.

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The abysmal exploitation of workers in almost every CBI country has been fully documented, in testimony before committees of the Congress by workers from CBI nations, by government investigators and in petitions filed with the office of the United States Trade Representative. The extensive and continued use of child labor in the CBI, perhaps the most heinous practice of all, has also been fully documented. Frightful working conditions in Honduras, for example, and the most vicious forms of sexual harassment have been testified to in hearings held by congressional committees. Honduras is not alone. Nor is Guatemala, where a labor leader was thrown out of a helicopter for attempting to organize workers.

Many CBI countries have elaborate and extensive labor codes, some even more advanced than those in our own country. They guarantee workers the right to organize and to bargain collectively with their employers on working conditions and wages. They establish standards that protect the health and physical well-being of workers in their countries. They create labor courts for workers to appeal injustices directed at them. Some endorse the conventions of the International Labor Organization on worker

rights, labor standards and child labor -- something our own country has not done, although we accept them.

Just about every CBI country honors such codes in the breach. Child labor is prevalent in the apparel plants of the CBI countries as even the most casual observer will testify. Workers are effectively denied the right to form unions. USTR has investigated cases of abuses of worker rights in the CBI, making use of the worker rights provisions of the General System of Preferences. This has resulted in some improvements, especially in the Dominican Republic and in its free trade zone factories. It remains to be seen how consistently our government will enforce the GSP labor provisions, a most potent weapon, but prone to be limited by other policy considerations.

GSP was renewed for a few months when the Congress passed the Uruguay Round implementing legislation. It comes up for renewal in June. Hopefully, this Committee will come help to develop a renewal bill that will strengthen worker rights and labor standards as key criteria for countries receiving GSP benefits.

H. R. 553 does not deal with the issues I have raised. Aside from human concerns that have always won resonance in our country, there is reason to question whether we are really helping to create "emerging market economies" in these countries. Reciprocal trade would have meaning if trade between the U. S. and the CBI countries led to the creation of good and well-paying jobs in both countries -- and, in the words of this Committee, "encourage the development of strong democratic governments and healthy economies" in the CBI.

This desire can only work if the economics work. Otherwise, it becomes a fiction, one in which the beneficiaries are merely a small group in each country. The living standard we enjoy, somewhat tarnished in recent years, did not come about by keeping wages low and maintaining terrible working conditions. Yes, there were struggles, but gains for working people were possible. The extent of the maldistribution of income in the CBI nations -- and, if I may add a very current observation, in Mexico -- did not obtain in the U. S.

Leading figures in our industrial and economic development also recognized that workers who are paid low wages and who work in misery will not be able to purchase the products they produce. Henry Ford, certainly no friend of organized labor, saw this clearly when he set wage rates at a level whose purpose, he said, was to permit his workers to buy his automobiles.

Reciprocal market opening can only help to improve living standards and provide jobs for workers in countries that trade with each other, including the U. S. and the CBI countries, if there is sufficient demand in both countries and this demand can be realized by people having enough purchasing power. This is a simple truism. Trickle down economics has not worked anywhere.

H. R. 553 does not address the economic circumstance in which the mass of Caribbean people live and work, nor does it show how a market for U. S. products will develop. There is no magic in the economics of expanding mass markets: either people have the wherewithal to purchase or they don't. Either we pursue policies in the CBI to increase the ability of people to buy our products or we are saying that we don't really care, that we are engaged in a facade to benefit an elite in the CBI and U. S. importers.

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Before dealing with how CBI, NAFTA, and trade policy in general have affected U. S. apparel jobs and how misleading data are used to justify such policies, I would like to say a few words about some of the specific provisions of H. R. 553. As I read the bill,

it goes beyond NAFTA parity in some areas. This makes me wonder if the bill's sponsors are seeking differing trade programs in the hemisphere, rather than building on NAFTA and the Enterprise for the Americas Initiative and, if so, why?

As I understand the bill, its provisions are both identical with the provisions enjoyed by Mexico under NAFTA and ones that are different. In some areas, it also goes beyond the proposals made last year by the Clinton Administration, but which were withdrawn from the GATT implementing legislation because they were considered to be too controversial and threatened passage of the legislation.

Identical provisions include giving the CBI the same quota-free and duty-free treatment as imports from Mexico under NAFTA for six years during which time the U. S. and the CBI nations would negotiate possible accession to NAFTA or a comparable agreement. The bill goes further than the Administration proposal by establishing Tariff Preference Levels (TPLs) for the CBI, similar to those in NAFTA. The TPL provision would permit the import into the U. S. of apparel made from specified amounts of non-CBI and non-U. S. origin fabric as if they were the product of the agreement countries. The same NAFTA provision is also called non-originating apparel imports.

The reasoning behind this provision had some basis in the NAFTA negotiations, but I fail to see how it relates to the CBI, except as I will indicate below. The NAFTA negotiators agreed that both Mexico and Canada should have the use of TPLs because neither country produced sufficient amounts and varieties of fabric and a concern that U. S. fabric producers would dominate the NAFTA fabric market. The U. S. also received a minimum amount of TPLs.

In the case of the CBI countries, however, none are serious fabric producers. Is this aspect of H. R. 553 aimed at creating fabric-producing facilities in the CBI or moving U. S. factories there? Why is this provision included in the bill? For reasons indicated below, it would assist and encourage increased use of the CBI countries by South Korea and others as a way of selling into the U. S. market without quota or tariff restrictions on exports from South Korea itself.

H. R. 553 covers all products exported from the CBI, including apparel. The 1983 CBI legislation exempted apparel from duty-free and quota-free treatment because the industry and its jobs were considered to be very import sensitive. For more than thirty years successive U. S. administrations, regardless of party, have treated apparel as import sensitive.

The bill differs from last year's Administration bill in that it does not require the coupling of increased CBI access to U. S. markets with requirements that the CBI commit on intellectual property, investment and even the highly limited NAFTA side agreement on worker rights and the environment.

Omission of a provision to protect the intellectual property rights of U. S. companies raises yet another question. This omission comes at a time when our trade negotiators have insisted that other trading partners, most notably China, commit on such protection and enforce their commitments. Last week, USTR announced imposition of trade sanctions on China for violating U. S.-owned intellectual property rights. Could the sponsors of the legislation explain why such a provision was not included in the bill?

H. R. 553 also makes no provision for finding revenue offsets to compensate for expected tariff losses, despite the House budget resolution. Compensating for revenue loss, it will be recalled, proved to be a major stumbling block when the Senate voted on the GATT implementing legislation last December. What has happened to the budget resolution of the House? Is it no longer a House rule

or is the loss of tariff revenue no longer germane? Do the sponsors expect the bill to sail through the Congress if the Senate's ten-year budget rule is brought up again?

Earlier in this testimony I expressed my concern about the omission in H. R. 553 of provisions on worker rights and labor standards. I want to repeat and emphasize that concern once again. Even though the NAFTA side agreement on labor has no teeth, it at least reflects a recognition that the issues involved are important to Americans. Are the bill's sponsors saying that they are being selective in accepting parts of NAFTA and rejecting other parts?

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I also want to call to the attention of this Committee a concern about how questionable government data have been and are being used to justify trade policy and trade agreements. This has happened regardless of which party has been in the Executive Branch.

One serious distortion relates to the assertion that every $1 billion in exports creates 20,000 jobs. The other has to do with a misclassification of export data. In the latter case, exports of apparel parts for assembly and return of the finished product to the U. S. under Item 9802 of the Harmonized Tariff Code are treated as the export of finished product.

Given the tremendous increase in outward processing in recent years, this methodology has resulted in distorting U. S. export data. These distorted data, in turn, have been used to justify various apparel trade agreements and trade policy in general. Policy is being made on the basis of data that are patently wrong.

Our analysis of the use of incorrect data, presented to the appropriate agencies over the last five years, has been underlined in a study by the General Accounting Office, entitled U. S.-Mexico Trade. The study was released eighteen months ago, in the midst of the NAFTA debate. While it does not deal specifically with apparel, its methodological comments relate to reported apparel exports as well as to other trade between the U. S. and Mexico. These comments also pertain to the use of data on U. S.-CBI trade.

The report stated that Mexican trade data differed from U. S. data because Mexico excluded from its import figures shipments used in maquiladora operations (and presumably free trade zones as well) because the products assembled there did not enter the Mexican market. U. S. data, on the other hand, do not distinguish between parts sent to Mexico (or anywhere abroad, including the CBI) for assembly and return to the U.S. The GAO recommended that U. S. export data be revised. Unfortunately, this has not been done by the appropriate agencies and false data continue to be used, including U. S.-CBI trade.

Before detailing this argument, I would like to deal briefly with the assertions about export-led job creation because they also relate to trade with the CBI.

It is asserted that every billion dollars in exports creates 20,000 jobs -- good and high paying jobs at that. The argument was developed in support of NAFTA. It was used to promote GATT, to justify the Mexican bailout and is now being used to promote expansion of the CBI program.

What may have been meant was that each billion dollars of the surplus of exports over imports created 20,000 jobs. But that's not the way it has been put because if each billion dollars in exports creates 20,000 jobs, each billion dollars in imports should result in the loss of 20,000 jobs. Given our negative trade balance, more jobs would have been lost than created.

The Department of Commerce developed the formula during the Bush Administration. It later "perfected" the number to 17,600 jobs per billion dollars in exports. However, the earlier figure continues to be used, perhaps because it is a round number and is, therefore, easier to deal with.

The government official for whom the formula was developed, Julius Katz, the principal NAFTA negotiator during the Bush presidency, now says, "The job numbers are totally phony numbers." (The Wall Street Journal, January 4, 1995.) Katz goes on to say, "My great regret is we got trapped into that argument." Katz comment has been ignored; the use of "totally phony numbers" continues.

Using Bureau of the Census data, the ILGWU Research Department has found that of the reported exports of domestic apparel (net of reexports of foreign apparel) of $4.8 billion in 1993, $3.1 billion or 65.2 percent were exports of parts for assembly abroad under the provisions of Item 9802. Yet, the $4.8 billion figure is used to show how rapidly apparel exports are growing and that reciprocal market opening works.

It is also of interest that, of the remaining $1.7 billion in reported apparel exports, 95.4 percent went to Canada, the European Union and Japan. This left a total of slightly under $77 million in apparel exports to the rest of the world, including the CBI -- and Mexico -- far from the massive apparel exports reportedly exported to these countries.

This is a very different picture than the one used by those who favored NAFTA and other trade programs and now support an expanded CBI. Current data on our apparel trade with the CBI present an even more devastating picture. I would like to give you some figures that bear this out and would be pleased to expand upon them if the Committee so desires. The data are somewhat complex, but I will try to hit the high points and their implications.

In the year ending September 1994, the latest date for which Item 9802 data are available (Office of Textiles and Apparel, U. S. Department of Commerce), the U. S. imported $4.2 billion worth of apparel from the CBI. Of this total, $3.4 billion or 80 percent were imports of apparel assembled under the "regular 807" program, the former classification for Item 9802, and the CBI program.

Under "Regular 807", imports assembled in the CBI or elsewhere of U. S. components reenter the U. S. duty free. Duty is paid only on the added value of (lowcost) labor. Components shipped abroad for assembly can be made in the U. S. or can consist wholly or in part of foreign materials. Imported fabric cut into parts in the U. S., is treated as a U. S. component because it is cut in the U. S.

The Special Access program for the CBI, announced by President Reagan in February 1986, provides that the garment exported from the CBI to the U. S. must be assembled from fabric that is both made and cut in the U. S. in order to enjoy special treatment. This program differs from "regular 807" in that the fabric must not only be cut in the U. S., but it must be formed here as well.

The special program provides that any CBI member can negotiate an agreement to create Guaranteed Access Levels for apparel products subject to quota restraints. Since GAL quotas are essentially open-ended, GALs are more attractive to CBI assemblers than "regular 807". Many "regular 807" suppliers, especially those using foreign fabric for price and other reasons, including South Korean and U. S. firms, are major players in the CBI.

To get back to the numbers: of the $3.4 billion in combined "regular 807" and Special Access U. S. apparel imports from the CBI, $2.2 billion or almost two-thirds were "regular 807". The

Special Access program accounted for $1.1 billion in apparel imports, roughly only 26 percent.

One final number should be mentioned, reported U. S. apparel exports to the CBI, distorted as they are for reasons mentioned earlier. In the year ending September 1994, U. S. apparel exports were reported to be just under $2 billion. This figure should be increased by about 20 percent to account for the CBI assembly labor, bringing the total $2.3 billion, $1 billion less than total of CBI apparel exports to the U. S. under the two programs.

Given the lack of hard government data, it is a reasonable approximation to say that at least the $1 billion in CBI apparel exports came from South Korean and other non-hemisphere companies. South Korean companies play a major role in the Caribbean apparel industry. They are also major beneficiaries of the program. How much fraud, which would further increase the Korean share, is involved in mislabelling and misreporting is difficult to say. We know from Customs testimony before committees of the Congress that apparel fraud is among the most prevalent.

Reported U. S. apparel imports from the CBI as a whole in the year ending November 1994, the latest month for which data are available, were larger than that from any single apparel exporting nation, including China.

Assembly operations, as I have stressed throughout this testimony, take place under the most difficult circumstances for CBI workers. If the proposed legislation passes the Congress without provision for worker rights and labor standards, the conditions of CBI workers will not improve. A small native elite and U. S. and South Korean companies will be the primary beneficiaries.

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Hundreds and thousands of U. S. apparel production jobs have been lost as a result of trade policy. Using the Department of Commerce formula, a $31 billion imbalance in apparel trade in 1994 should result in a loss of 620,000 U. S. apparel jobs. The figure would be 60,000 higher if U. S. apparel export data were corrected.

Department of Labor data on apparel production jobs are almost a half million less than in the 1973 peak year, despite a more than 20 percent increase in population. Workers in the Caribbean and elsewhere have not benefitted from the U. S. job loss. Their wage levels remain abysmal as do their conditions of work.

We do not seek to compete for jobs with these workers. We seek, as I have said throughout this testimony and elsewhere, a trade policy that would truly lift all boats, a trade policy with as much concern for worker rights and labor standards as for profits.

At issue is not how to benefit elites in the CBI and U. S. -- and Korean -- companies. It is how working people in the CBI and the U. S. can improve their conditions of work and enhance their living standards. This goes to the heart of the Committee's concern, one I wholeheartedly share, "that it is in the national interest of the United States to encourage the development of strong democratic governments and healthy economies in Caribbean countries."

Chairman CRANE. Next, Mr. Cooper.

STATEMENT OF MITCHELL J. COOPER, COUNSEL, RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION

Mr. COOPER. Thank you, sir.

Mr. Chairman, the Rubber & Plastic Footwear Manufacturers Association is the spokesman for manufacturers of most of the waterproof footwear, rubber sole fabric-upper footwear and slippers produced in this country. The short answer to the issues set forth in the subcommittee's announcement of this hearing is that so far as the rubber footwear and slipper industry is concerned, NAFTA has had absolutely no effect on CBI-beneficiary countries, nor is it likely to have any effect in the foreseeable future.

For the year 1990, the last year when footwear with domestic components was exempt from CBI duty-free treatment, imports from the Caribbean of fabric-upper footwear with plastic or rubber soles totaled 273,000 pairs. In 1991, the first year of duty-free treatment, the volume more than doubled to 561,000, and in 1992, imports of such footwear surged to 2,593,000, or by about 421 percent.

For the first 9 months of 1994 alone, imports of this footwear from the Caribbean amounted to 6,546,000 pairs, of which 6,540,000 came from the Dominican Republic. In short, when we speak of the CBI and its impact on domestic rubber footwear and slipper production, we are speaking about one country, the Dominican Republic.

When one recognizes that most rubber footwear duties range from 20 percent to in excess of 60 percent, it is no wonder that the granting of duty-free treatment to the Dominican Republic, where there are several well-established rubber footwear plants, has had a devastating effect. It was, incidentally, shortly after rubber footwear duties were removed from CBI exports to this country that Carter Footwear, a reputable and highly successful manufacturer of low-end casual footwear, closed its factory in Jasper, Ga., fired its approximately 200 employees, and expanded its operations in the Dominican Republic.

The average unit value of fabric-upper, rubber sole footwear from the Dominican Republic for the first 9 months of 1994 was $2.19, which will give you some idea of the kind of competition faced by domestic manufacturers of low-end rubber footwear.

In each of the past 3 years, legislation was introduced in both Houses which would reinstate dutiable treatment on all footwear from the Caribbean. In each of those years, this subcommittee declined to hold a hearing, but such legislation was nonetheless passed by both Houses at the end of the 1992 congressional session and was included as part of that year's tax bill. President Bush, however, then vetoed that tax bill.

To put this matter in perspective, you should be aware of the facts that this labor-intensive, import-sensitive industry did not have its duties cut in the Kennedy or Tokyo rounds of multilateral negotiations, had but minimal cuts in the Uruguay round, was one of the very few industries granted a 15-year phaseout from NAFTA, and is exempt from GSP duty-free treatment. Despite its relatively high duties, imports of fabric-upper footwear with rubber

or plastic soles took 83 percent of our domestic market in 1993, and imports of waterproof footwear took 36 percent.

We recognize the difficulty of turning the clock back. We do ask that you give the kind of serious consideration to the import problems of this industry that has been given for the past 30 years by both Republican and Democratic administrations in an effort to help the survival of what is left of domestic rubber footwear and slipper production.

If you really want to have NAFTA parity between the Caribbean and Mexico, you will amend H.R. 553 so as to restore duties on all rubber footwear from the Caribbean and then commence a 15-year phaseout of such duties. In the alternative, we would ask that you permit the continuation of duty-free treatment on the current volume of rubber footwear imports from the Caribbean, but that you restore the full duty on all rubber footwear in excess of that volume.

We prefer to believe that it is not the policy of this subcommittee to increase employment in the Dominican Republic at the direct expense of employment in domestic rubber footwear and slipper plants. I regret to say, however, that if H.R. 553 passes in its present form, that is likely to be the consequence so far as this industry is concerned.

Chairman CRANE. Thank you, Mr. Cooper.

[The prepared statement and attachments follow:]

TESTIMONY OF MITCHELL J. COOPER
RUBBER & PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION

The Rubber and Plastic Footwear Manufacturers Association (RPFMA) is the spokesman for manufacturers of most of the waterproof footwear, rubber sole fabric-upper footwear and slippers produced in this country. The names and addresses of the Association's members appear on Appendix I.

The short answer to the issue set forth in the Committee's announcement of this hearing is that, so far as the rubber footwear and slipper industry is concerned, NAFTA has had absolutely no effect on CBI beneficiary countries, nor is it likely to have any effect in the foreseeable future.

For the year 1990, the last year when footwear with domestic components was exempt from CBI duty-free treatment, imports from the Caribbean of fabric upper footwear with plastic or rubber soles totalled 273,000 pairs. In 1991 the first year of duty-free treatment, the volume more than doubled to 561,000 and in 1992, imports of such footwear surged to 2,593,000 or by about 421%. For the first nine months of 1994 alone, imports of this footwear from the Caribbean amounted to 6,546,000 pairs, of which 6,540,000 came from the Dominican Republic. In short, when we speak of the CBI and its impact on domestic rubber footwear and slipper production, we are speaking about one country - the Dominican Republic.

When one recognizes that most rubber footwear duties range from 20% to in excess of 60%, it is no wonder that the granting of duty-free treatment to the Dominican Republic, where there are several well-established rubber footwear plants, has had such a devastating effect. It was, incidentally, shortly after rubber footwear duties were removed from CBI exports to this country that Carter Footwear, a reputable and highly successful manufacturer of low-end, casual footwear, closed its factory in Jasper, Georgia, fired its approximately 200 employees and expanded its operations in the Dominican Republic.

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In each of the past three years, legislation was introduced in both Houses which would reinstate dutiable treatment on all footwear from the Caribbean. In each of those years, this Committee declined to hold a hearing, but such legislation was nonetheless passed by both Houses at the end of the 1992 Congressional session and was included as part of that year's tax bill. President Bush, however, then vetoed that tax bill.

To put this matter in perspective, you should be aware of the facts that this labor-intensive, import-sensitive industry did not have its duties cut in the Kennedy or Tokyo Rounds of multilateral negotiations, had but minimal cuts in the Uruguay Round, was one of the very few industries granted a fifteen-year phaseout from NAFTA and is exempt from GSP duty-free treatment. Despite its relatively high duties, imports of fabric upper footwear with rubber or plastic soles took 83% of our domestic market in 1993 and imports of waterproof footwear took 36%.

We recognize the difficulty of turning the clock back. We do ask that you give the kind of serious consideration to the import problems of this industry that has been given for the past 30 years by both Republican and Democratic Administrations in an effort to help the survival of what is left of domestic rubber footwear and slipper production.

If you really want to have NAFTA parity between the Caribbean and Mexico, you will amend HR.553 so as to restore duties on all rubber footwear from the Caribbean and then commence a fifteen-year phaseout of such duties. In the alternative, we would ask that you permit the continuation of

imports from the Caribbean but that you restore the full duty on all rubber footwear and slipper imports from the Caribbean in excess of that volume.

We prefer to believe that it is not the policy of this Committee to increase employment in the Dominican Republic at the direct expense of employment in domestic rubber footwear and slipper plants. I regret to say, however, that if HR.553 passes in its present form, that is likely to be the consequence so far as this industry is concerned.

APPENDIX I

RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION
(February 10, 1994)

American Steel Toe Co.
P.O. Box 959
S. Lynnfield, MA 01940-0959

Converse, Inc.
One Fordham Road
North Reading, MA 01864

Draper Knitting Co., Inc.
28 Draper Lane
Canton, MA 02134

Frank C. Meyer Co.
585 South Union Street
Lawrence, MA 01843

Genfoot America, Inc.
The Old South Building
11th Floor
294 Washington Street
Boston, MA 20108-4675

Gitto Global Corp.
140 Leominster-Shirley Road
Gianna Park
P.O. Box 318
Lunenburg, MA 01462

Hudson Machinery Worldwide
Hudson Industrial Park
P.O. Box 831
Haverhill, MA 01831

Kaufman Footwear Corporation
700 Alicott Street
Batavia, NY 14020

Kaumagraph, Inc.
P.O. Box 632
525 W. South Street
Kennett Square, PA 19348

LaCrosse Footwear, Inc.
P.O. Box 1328
LaCrosse, WI 54602-1328

New Balance Athletic Shoe, Inc
38 Everett Street
Allston, MA 02134

Norcross Footwear, Inc.
9300 Shelbyville Road
Suite 300
Louisville, KY 40222

S. Goldberg & Co., Inc.
20 East Broadway
Hackensack, NJ 07601-6892

Spartech Franklin
113 Passaic Avenue
Kearney, NJ 07032

Supreme Slipper Manufacturing
Company, Inc.
P.O. Box 1376
Lewiston, ME 04240

Tingley Rubber Corporation
P.O. Box 100
S. Plainfield, NJ 07080

APPENDIX II

Fabric upper footwear with rubber or plastic soles.
U.S. imports for consumption by principal sources.
Jan.-Sept. 1992-94; July-Sept. 1992-94; annual 1992-94

Source	Jan.-Sept. 1992	Jan.-Sept. 1993	Jan.-Sept. 1994	Percentage change, Jan.-Sept 1994 from Jan.-Sept 1993	July-Sept. 1992	July-Sept. 1993	July-Sept. 1994	Percentage change, July-Sept 1994 from July-Sept 1993	July-Sept. 1992	July-Sept. 1993	Percentage change, 1993 from 1992
					Quantity (1,000 pairs)						
China	132,523	162,814	170,769	19.8	34,881	36,950	37,679	39.8	162,972	176,244	8.2
Korea	24,545	18,776	12,831	- 31.8	6,797	5,246	2,988	- 43.6	35,519	23,539	- 28.2
Indonesia	6,514	8,980	13,082	45.7	2,168	3,466	3,824	10.3	8,875	10,821	21.9
Taiwan	7,743	6,033	4,977	- 17.5	2,255	1,639	1,418	- 13.5	9,555	7,390	- 22.7
Thailand	7,622	8,398	7,472	- 10.1	1,641	2,558	2,038	- 13.6	16,023	10,936	- 0.1
Mexico	14,339	14,355	14,609	1.8	5,171	4,830	5,594	15.8	19,477	18,717	- 3.9
Dominican Rep	1,690	2,910	6,540	124.7	849	1,398	2,572	84.0	953	4,495	52.5
Philippines	1,032	2,646	351	- 11.1	414	1,616	1,019	- 36.9	442	3,015	109.1
Hong Kong	5,171	1,975	237	13.3	631	399	644	61.4	372	2,522	- 60.4
Italy	124	157	308	96.2	31	44	59	- 7.8	143	221	54.5
Israel	624	646	562	- 13.0	127	195	181	- 7.2	726	781	7.6
Malaysia	284	183	485	165.0	58	22	165	650.0	279	249	- 10.8
Brazil	680	732	1,101	50.4	152	165	166	0.5	769	794	3.3
Spain	98	177	578	226.6	50	49	80	63.3	116	243	109.5
Germany	211	96	65	- 16.1	6	22	27	22.7	235	82	- 65.1
Canada	77	164	147	- 10.4	37	111	51	- 54.1	122	258	111.5
Portugal	16	20	62	210.0	0	9	25	177.8	18	30	66.7
Austria	5	1	25	400.0	1	0	15	0.0	5	8	140.0
France	46	60	100	66.7	8	16	11	- 31.3	50	79	58.0
Japan	55	68	69	1.5	1	18	34	88.9	64	74	15.6
All Other	132	432	288	- 33.3	32	123	29	- 76.4	193	520	117.4
Total	205,814	269,539	234,637	- 12.9	45,242	58,858	54,649	- 28.1	259,976	259,984	1.2
CBI total	1,692	2,919	6,546	124.3	850	1,401	2,576	83.9	1,955	4,555	54.1
European Union tot	505	493	1,127	128.6	103	163	210	28.8	580	680	17.2
					Value (1,000 dollars)						
China	243,211	410,406	530,448	29.2	54,400	112,804	107,895	- 31.1	328,400	518,311	57.8
Korea	302,771	303,341	284,440	- 33.8	94,439	97,404	69,547	- 45.9	435,935	382,642	- 8.0
Indonesia	36,403	85,804	116,957	36.3	13,570	39,361	41,202	4.7	55,095	106,467	93.2
Taiwan	85,247	93,162	85,808	- 7.9	31,817	29,738	25,394	- 14.6	111,623	117,338	5.1
Thailand	28,675	42,967	61,376	42.8	7,858	15,465	14,979	- 8.5	37,358	57,197	52.9
Mexico	26,349	27,472	27,299	- 0.6	10,765	10,423	10,904	4.6	35,806	36,974	5.6
Dominican Rep	4,188	5,448	14,337	163.2	1,774	2,720	6,873	123.3	7,165	8,478	18.3
Philippines	4,112	8,728	8,236	- 5.6	1,862	4,439	3,555	- 19.9	7,684	10,289	81.0
Hong Kong	7,732	8,465	12,259	44.8	1,317	2,540	3,199	25.0	10,908	11,302	3.6
Italy	2,640	4,115	6,725	63.4	735	2,099	1,848	- 12.0	5,270	5,597	71.2
Israel	2,866	3,754	3,797	1.1	710	1,383	1,335	- 3.5	5,327	4,734	42.9
Malaysia	954	1,347	3,165	135.1	270	241	1,125	366.6	1,211	1,804	49.0
Brazil	1,313	1,952	4,078	108.9	453	523	929	77.6	1,841	2,087	13.4
Spain	711	1,545	5,193	236.1	186	367	847	130.8	955	2,362	147.3
Germany	589	1,281	1,563	22.0	252	488	545	15.8	1,018	1,857	82.4
Canada	713	944	956	0.8	342	389	389	- 23.6	1,090	1,534	40.7
Portugal	148	213	712	234.3	0	84	307	265.5	168	304	81.0
Austria	324	137	874	538.0	135	22	280	564.7	324	343	5.9
France	974	1,929	2,515	30.4	128	534	255	- 52.2	1,177	2,636	124.0
Japan	257	348	533	53.2	15	69	250	262.3	308	453	47.1
All Other	1,102	2,319	2,938	26.7	338	1,021	932	- 8.5	1,188	3,677	32.2
Total	753,334	1,007,555	1,093,370	8.5	223,152	317,264	313,724	- 1.1	1,029,339	1,275,904	24.0
CBI total	4,199	5,491	14,350	161.3	1,777	2,744	6,081	121.6	8,176	8,467	20.8
European Union tot	5,335	9,211	16,910	83.6	1,487	3,604	3,903	8.3	7,987	12,900	84.6
					Unit value (per pair)						
China	81.85	82.87	83.18	8.0	82.19	84.18	83.92	- 8.2	81.81	82.94	46.3
Korea	12.33	16.24	15.95	- 21.8	16.18	17.67	16.88	- 4.1	12.79	16.39	28.1
Indonesia	5.58	9.55	8.94	- 6.4	6.25	11.35	10.77	- 5.1	6.20	9.83	58.5
Taiwan	11.00	15.44	17.24	11.7	14.10	18.14	17.90	- 1.3	11.68	15.87	35.9
Thailand	3.76	5.17	8.21	58.8	4.77	6.05	8.33	25.6	13.72	5.50	53.0
Mexico	1.81	1.91	1.86	- 2.6	2.07	2.15	1.94	- 9.8	1.79	1.97	10.1
Dominican Rep	2.47	1.87	2.19	17.1	2.08	1.94	2.36	21.6	2.42	1.88	- 22.3
Philippines	3.98	3.29	3.50	6.4	3.33	2.74	3.48	27.0	3.94	3.41	- 13.3
Hong Kong	1.49	4.28	5.48	28.0	2.08	6.41	4.96	- 22.6	1.71	4.46	162.0
Italy	21.29	26.21	21.85	- 16.7	23.71	47.79	31.32	- 34.5	37.86	23.36	10.8
Israel	4.56	5.81	6.75	16.2	5.59	7.09	7.37	3.9	4.58	6.08	32.8
Malaysia	4.07	7.46	6.52	- 12.6	4.90	10.95	6.81	- 37.8	4.34	7.24	66.8
Brazil	2.18	2.66	3.70	39.1	2.98	3.82	5.59	77.0	2.39	2.62	9.6
Spain	7.25	8.72	8.98	3.0	3.72	7.48	10.58	41.4	8.23	9.72	18.1
Germany	2.79	22.87	24.04	5.1	42.00	22.18	20.92	- 5.7	4.33	22.64	422.9
Canada	9.25	5.78	6.50	12.5	9.78	4.58	7.62	66.4	8.93	5.94	- 33.5
Portugal	9.25	10.65	11.48	7.8	.00	9.33	12.28	31.6	9.33	10.13	8.6
Austria	64.80	37.00	34.96	- 5.5	35.00	.00	18.66	0.0	64.80	28.58	- 55.9
France	21.17	32.15	25.15	- 21.8	16.00	33.37	23.18	- 30.5	23.54	33.36	41.7
Japan	4.67	5.11	7.72	51.1	15.00	3.83	7.35	91.9	4.81	6.12	27.2
All Other	8.36	5.37	7.82	45.7	10.53	8.27	7.71	- 6.8	6.16	7.07	14.8
Total	4.08	3.74	4.66	24.7	4.93	5.39	5.74	6.5	3.96	4.90	23.7
CBI total	2.48	1.88	2.19	16.5	2.09	1.95	2.36	21.0	2.42	1.86	- 23.5
European Union tot	10.36	10.68	15.00	39.7	14.43	22.11	18.58	- 16.0	12.94	18.97	57.6

SOURCE: Compiled from official statistics of the U.S. Department of Commerce.

APPENDIX III

Rubber footwear: U.S. production, imports for consumption, exports of domestic merchandise, and apparent consumption. 1989-93 and by quarters, 1993-94

Table 4
Rubber footwear: U.S. production, imports for consumption, exports of domestic merchandise, and apparent consumption, 1989-93 and by quarters, 1993-94

Period	Production	Imports	Exports	Apparent consumption	Ratio of imports to consumption1/	Change from year-earlier period1/ Production	Imports	Exports	Apparent consumption
	Quantity (million pairs)				Percent				
Fabric-upper footwear with rubber or plastic soles:									
1989.....	76.8	190.1	10.0	256.9	74	0	21	2/1 13	10
1990.....	89.7	199.2	8.7	280.3	71	17	5	13	9
1991.....	97.5	213.4	9.7	301.2	71	9	7	11	7
1992.....	92.7	257.0	9.5	340.2	76	-5	20	-2	13
1993.....	62.5	260.0	9.2	313.3	83	-33	1	-3	-8
1993:									
Jan.-Mar...	21.2	89.4	2.8	107.8	83	-31	4	-2	-5
Apr.-Jun...	17.1	71.3	2.2	86.2	83	-37	-2	-6	-12
Jul.-Sep...	11.5	48.8	2.1	58.2	84	-27	8	8	-1
Oct.-Dec...	12.9	50.5	2.2	61.1	83	-34	-5	11	-13
1994: 3/									
Jan.-Mar...	18.1	93.0	2.4	108.7	86	-14	4	11	1
Apr.-Jun...	16.3	87.0	2.3	101.0	86	-4	22	5	17
Jul.-Sep...	11.6	58.6	2.2	68.1	86	2	20	6	17
	Quantity (million pairs)				Percent				
Protective footwear:									
1989.....	14.1	8.2	0.6	21.6	38	2	-8	10	-2
1990.....	16.0	8.7	0.8	23.9	37	13	-7	24	11
1991.....	15.6	8.0	0.9	22.7	35	-2	-8	17	-5
1992.....	16.1	7.7	0.8	23.1	34	3	-3	16	2
1993.....	18.1	9.7	0.7	27.0	36	12	25	-2	17
1993:									
Jan.-Mar...	4.0	1.5	0.2	5.4	28	-14	16	35	-6
Apr.-Jun...	4.9	2.0	0.2	6.7	30	-2	-7	9	-4
Jul.-Sep...	4.2	3.2	0.2	7.2	44	7	30	43	15
Oct.-Dec...	4.7	3.0	0.2	7.5	40	11	65	-8	28
1994: 3/									
Jan.-Mar...	4.7	1.8	0.1	6.4	28	17	15	12	18
Apr.-Jun...	4.8	2.5	0.2	7.2	35	-0	25	4	7
Jul.-Sep...	4.2	4.3	0.1	8.3	51	-1	34	37	16

1/ Percentages based on unrounded data.
2/ This increase probably reflects the change in export classification from the Schedule B to the HT-, and not necessarily an actual increase in export volume.
3/ Preliminary.

Note.--Because of rounding, figures may not add to totals shown.

Source: Compiled by the U.S. International Trade Commission from official statistics of the U.S. Department of Commerce.

APPENDIX IV

PRODUCTION EMPLOYMENT
(in thousands)

RUBBER AND PLASTIC FOOTWEAR

1973	26.3	1984	14.0
1974	25.3	1985	10.9
1975	22.3	1986	9.2
1976	21.6	1987	9.3
1977	20.9	1988	9.7
1978	21.0	1989	9.2
1979	19.9	1990	8.9
1980	19.8	1991	8.8
1981	19.0	1992	8.9
1982	16.2	1993	8.9
1983	14.1		

PRODUCTION EMPLOYMENT
(in thousands)

SLIPPERS

1973	10.2	1984	6.0
1974	9.7	1985	5.1
1975	7.8	1986	4.4
1976	7.2	1987	4.7
1977	7.2	1988	4.6
1978	7.5	1989	4.2
1979	7.1	1990	3.7
1980	7.5	1991	3.5
1981	8.2	1992	3.2
1982	7.5	1993	2.6
1983	6.5		

Chairman CRANE. Mr. Mason, before you speak, I would like to defer to our distinguished colleague from your neck of the woods, Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I wanted to introduce my constituent, Tom Mason. Tom and his dad, Sid, have built a business in Rocky Mount, Va., the Virginia Apparel Corp. It is a well-run business, I have been there several times. Not only does it make good products for their customers, but they do a really good job for the people who work there, providing wages and benefits, including health insurance, to more than 250 people, mostly women and minorities, in their area of my district and in rural Virginia.

There are few, if any, opportunities for these folks in the event that Virginia Apparel is not successful, and Tom has been fighting a good fight.

I am pleased that you are here with us today to tell us about your company.

STATEMENT OF THOMAS W. MASON, PRESIDENT AND CEO, VIRGINIA APPAREL CORP., ROCKY MOUNT, VA.

Mr. MASON. Thank you.

Thank you, Mr. Chairman, thank you, Congressman Payne. I have been sitting here since 11 o'clock this morning trying to figure out what makes me different from everybody else that has testified here today. Aside from the fact that as an opponent, complete opponent of H.R. 553, I don't have a whole lot of allies. But in looking at the list, most everybody here today represents a trade association or a union or a government entity. The biggest single difference between them and me is they have never been personally responsible and accountable for meeting a payroll, and the failure to meet a payroll.

Prefacing that, I would like to start and tell you a little bit about Virginia Apparel. We are an apparel contractor, and we are located in Franklin County, Va., which is a rural agricultural area of southwest Virginia. This company was started in 1971 by my father, and I have been with him for over 20 years.

Ninety percent of our employees are women, and 50 percent of these women are the sole source of income for their families. Between 20 percent of our employees are African-Americans and 3 percent are of other ethnic origins.

Our average hourly pay is over $7.50 an hour, but with the bonus programs and the additional group incentives that we have, we have many employees that earn over $9 an hour, considerably more than the minimum wage with which our industry is most often associated.

At our company, we also pay for vacations, holidays, health insurance, life insurance, and retirement plans. In fact, our wage and benefit package is equal to or better than anyone else in our area. We also spend hundreds of thousands of dollars each year to cover the cost of social security, workmen's compensation, unemployment taxes, and many other programs that our competitors in the Caribbean Basin and Latin America do not have to worry about.

Yet in the advisory that was sent to me regarding H.R. 553, it states, if the consequences of NAFTA on the Caribbean are not ad-

dressed, the resulting economic instability in the region threatens the future of democratic governments there. What has happened to the concern for the resulting economic instability put on the displaced American apparel worker when their jobs are gone?

This bill to me appears to be no more than a foreign aid package that is being funded by American apparel workers. This bill will cost jobs. It will cost thousands of jobs, and this subcommittee cannot guarantee that the thousands of dislocated workers will find comparable employment, if they find employment at all.

American apparel contractors and their employees are already at a competitive disadvantage to the Caribbean Basin and Latin American countries due to 807 and 807(a). These programs, plus guaranteed access levels, which offer unlimited quotas of goods made of U.S. fabric, contribute to this competitive disadvantage. Additionally, under H.R. 553, CBI nations will have substantial exceptions for apparel made with imported fabric.

As I see it, putting the mechanisms in place that would allow CBI beneficiaries to achieve NAFTA parity and subsequent NAFTA accession would raise the current competitive disadvantage we face to an insurmountable level. This bill is essentially a unilateral gift of American jobs. Even for the countries that could possibly absorb some of our products, there is not the slightest benefit of reciprocal considerations for the United States.

I have been in the Dominican Republic and I have had conversations with retailers in Central America, and there are minimal markets there at best. In all seriousness, how much product do we really think we can sell to Haiti, Belize, and the Grenadians as far as quality apparel is concerned?

But let's suppose for a moment that some of these countries did develop a middle class capable of purchasing American-made products. This bill, in its present form, gives these countries the right to control, even cut off, all exports from the United States, while maintaining full access to U.S. markets. It just does not make sense to pass legislation that has so little protection for the jobs and well-being of the workers in America.

The American apparel industry is disappearing and our government seems intent on making sure that it does. But please think on this: The U.S. textile and apparel industry is second only to steel in importance to national defense. It provides some 10,000 items for military use.

For Operation Desert Storm alone, it produced and provided 5.2 million pairs of pants, 5.2 million coats, 750,000 camouflage helmet covers, 400,000 field jackets, in addition to thousands of tents and sandbags, to name only a portion of the items required by the U.S. military.

Of the 5.2 million pairs of pants provided for Desert Storm, 10 percent or 500,000 were produced by my company. The plant that produced those pants located in Blackstone, Va., employed 200 people. Over 70 percent of them were minorities. That plant is now closed due to defense cuts and increased competition from CBI and Latin American countries.

I am here representing 260 people of Virginia Apparel Corp. These people are motivated, productive, and proud. All they want is the opportunity to keep the opportunities that we have provided

for them. They want the security of knowing that their job is not going to be taken away from them.

Even if our employees could be retained to be productive in southwest Virginia, it would be virtually impossible to relocate 260 people in any industry. I ask you to look at that; I ask you to consider them, and I thank you for the great privilege that I have had here today.

Chairman CRANE. Thank you, Mr. Mason.

[The prepared statement follows:]

Thomas W. Mason
Testimony Before The
House Ways & Means Subcommittee on Trade
Re: HR533 Caribbean Basin Trade Security Act
February 10, 1995

My name is Thomas Mason and I am President & CEO of Virginia Apparel Corp. in Rocky Mount, Virginia. I sincerely appreciate the opportunity to submit my testimony to the House of Representatives Ways and Means Subcommittee on Trade, regarding the Caribbean Basin Trade Security Act or HR553. To actually be a part of the process of government is a privilege that comes from the very essence of what makes America the greatest country in the world and a privilege for which I am truly grateful.

Virginia Apparel Corp. is a family owned apparel contractor employing 260 people in a rural area of southwest, Virginia. In 1971 my father, Sid Mason, left the security of a high profile, high paying job with a large multinational corporation to pursue the "American Dream"; the dream of being an entrepreneur, risking it all because he believed that there was a better way and that he could make a difference. He did make a difference and when he retired in 1993 he retired a wealthy man - not in a monetary sense, for when he retired he was drawing the same salary as he drew in 1971. My father's wealth was a result of the lives he touched, the people he helped, the jobs he provided.

I have spent twenty years helping my father. With his retirement it became my responsibility and my desire to continue the pursuit of that dream. But, this government, with its current position on trade, is taking that dream away. The very focus of this hearing demonstrates the attitude this government has on the American dream and American jobs. According to Advisory No. TR-2 from the Committee on Ways and Means, Subcommittee on Trade, H.R. 553 was introduced to "ensure that the Caribbean Basin is not adversely affected by implementation of NAFTA..." What about seeing that American jobs are not adversely affected by the "Caribbean Basin Security Act"? American apparel contractors are already at a competitive disadvantage to Caribbean Basin and Central American countries due to 807 and 807(A). These programs already give CBI countries generous access to domestic apparel markets, especially the "gals" or guaranteed access levels which offer unlimited quota to goods made of U.S. produced fabric.

Additionally, under HR553, CBI nations have substantial exceptions for apparel made with imported fabric. In fact, under current law, and especially with the addition of this bill, it would be more economically advantageous for Virginia Apparel Corp. and me, as its owner, to have all of its product made in the Dominican Republic or Honduras or Costa Rica or Barbados. What about the 260 employees, most of whom would lose their job if I followed through with that logic? Who will look after them? Who will provide them with jobs? Will anyone on this committee come to Virginia, look my people in the eye and guarantee them a comparable job in the event I move my production operation to Latin America? Most domestic apparel contractors are not large enough to be able to take advantage of the Caribbean as a production source, even if they wanted to. They will be thrown into competition with larger companies and with foreign companies operating in the Caribbean which will further erode domestic production, especially at the smaller company level. **Putting the mechanisms in place that would allow CBI beneficiaries to achieve NAFTA parity and subsequent NAFTA accession would raise the current competitive disadvantage we face to an insurmountable level. I believe that this legislation, in combination with NAFTA and GATT, will mean certain death for the American apparel contractor.**

Perhaps, I should explain the difference between apparel manufacturer and contractor. The manufacturer is someone who sells a finished product to an

end user, such as a retailer. They are the brand names, the big labels such as Polo, Guess, Liz Claiborne and Dockers. The contractor is someone who sells labor to the manufacturer and does the actual making of the garments. Manufacturers compete against each other for space in the retailer's store. American contractors compete against contractors all over the world for the chance to make product for the manufacturer. The manufacturer's competitors force him to sell his product for the lowest price he can, and since labor can account for up to 40% of his costs, he is compelled to look for the cheapest source of labor he can find. A careful examination of wage and benefit costs in most Caribbean and Latin American countries compared to wage and benefit costs in the U.S. make an obvious case against having apparel made in this country. Even manufacturers that own their own plants, such as Levi Straus and Lee Apparel, are moving production south of the border and off shore at the expense of their own domestic facilities.

Virginia Apparel is located in Franklin County a rural, agricultural area of southwest Virginia. 90% of our employees are women and 50% of these women are either the primary or only source of income for their family. 20% of our employees are black and 3% are of other ethnic origin. Our base rate of pay is $5.60 per hour. It is driven by healthy competition for labor between the industries in our area. However, we add individual incentives and group incentives on top of base pay which makes our average hourly pay $7.58 per hour. With our bonus program, we have many employees that earn over $9.00 per hour, considerably more than minimum wage with which we are associated with most of the time. We also pay for vacations, holidays, health insurance, life insurance, and retirement plans. This wage and benefit package is equal to or better than anyone else in the area. We try very hard to make sure that our employees are given every opportunity to earn a decent living and are taken care of. We also spend hundreds of thousands of dollars each year to cover the cost of Social Security, workman's compensation, unemployment taxes and many other programs for which our competitors in the Caribbean and Latin America have no concern at all. Yet the advisory states, "If the consequences of NAFTA on the Caribbean are not addressed, the resulting economic instability in the region threatens the future of democratic governments there." **Dear God! What has happened to the concern for the resulting economic instability put on displaced American apparel worker when their jobs are gone?** This bill appears to be no more than a foreign aid package that is being funded by American apparel workers. Why not simply send money and save domestic dislocation costs? **This bill will cost jobs - thousands of them! And not one of you on this subcommittee can guarantee that the thousands of dislocated workers will find comparable employment, if they find employment at all.**

Advisory No. TR-2 also states that, since its inception in 1990, the CBI Program has, "served as a textbook example of the job-creating effects of promoting increased trade. U.S. exports to the Caribbean Basin grew from $5.8 billion in 1983 to $12.3 billion in 1993." If you examine these figures more closely, I believe that you will find that, at least, two-thirds of apparel exports to the Caribbean and Latin American countries were cut parts that were then sewn together and then imported back into the U.S. Additionally, during 1990 and early 1991, a total of 56 textile plants and 45 apparel facilities in the U.S. were closed. **In fact, 560,100 jobs have been lost in the U.S. textile and apparel sectors since 1979 for a net decrease of 26%. This number also accounts for 20.1% of <u>all</u> manufacturing jobs were lost during that time. That is an average of 35,000 jobs per year!"** Over 800 apparel jobs were lost in 1994 in my own Congressional District. Of those, over 700 were lost because the company could no longer compete in the product line produced in those plants. **Looking at these figures, how can anyone possibly believe the CBI program has been, "a textbook example of the job-creating effects of promoting trade?" Whose jobs are we talking about?**

This bill is essentially a unilateral gift of American jobs. Even for the countries that could possibly absorb some of our products there is not the slightest benefit of reciprocal concessions for the U.S. I have been to the Dominican Republic and I have had conversations with retailers in Central America and there are minimal markets there, at best. And in all seriousness, how much product do we really think we will sell to Haiti, Belize, and the Grenadines? Let's suppose, for a moment, that some of these countries did develop a middle class capable of purchasing American made products. This bill, in its present form, gives these countries the right to control, even cut off, all exports from the U.S. while maintaining full access to U.S. markets. It just doesn't make sense to pass any legislation that has so little protection for the jobs and well-being of the workers of America.

The American apparel industry is disappearing and our government seems intent on making sure that it does. But, please, think on this: the U.S. textile and apparel industry is second only to steel in importance to national defense. It provides some 10,000 items for military use. For "Operation Desert Storm," it provided 5.2 million pair of pants, 5.2 million coats, 750,000 camouflage helmet covers and 400,000 field jackets in addition to thousands of tents and sand bags, to name only a portion of the items ordered by the U.S. military .* Of those 5.2 million pairs of pants, 500,000, almost 10%, were produced by my company. The plant that produced those pants employed 200 people. It is now closed because of defense cuts and increased competition from CBI and Latin American countries.

Part of the logic behind NAFTA was that, because of the size of Mexican and Canadian markets far more jobs would be created in the U.S. than lost. I do not agree with that argument but I admit that there is reason to think that it could be true. **But, that is <u>not</u> the case here.** Ladies and gentlemen, I implore you to carefully consider the ramifications of what you are about to do. **HR553 is wrong!** Yes, it is about jobs. But, jobs can not be considered in terms of numbers. **Jobs are people!** This is about people.

Look at me! I am a simple businessman who, like my father before me, has worked all of my adult life trying to run a business that produces the finest quality apparel in the world and provides good employment opportunities for the people of Franklin County, Virginia. I am here representing the 260 employees of Virginia Apparel Corp. But, I am also here representing the thousands of apparel workers all over America. They are my people, they are **<u>your</u>** people. They are human beings with families and needs. Many of them have never worked in any other type of job, nor do they wish to. Many have spent their entire working life in the apparel industry, which in many cases has been with us. Most do not want to be retrained for some other type of job because it may mean taking a pay cut while they are learning or they may be forced into a job they do not like. Many, due to age and ability, could not be trained to do something else. These are motivated, productive and proud people. All they want is to keep the opportunities they have and the security of knowing that their job is not going to be taken away from them. Even if all of our employees could be retrained to be productive, in southwest Virginia it would be impossible to relocate 260 people in any industry!

Please, stop looking at the effect your decisions will have on the people of other countries and focus on the effect your decisions will have on the individuals and families right here in America. If you do, then I am sure that you will see that this bill, HR553, is wrong!

Thank you again, for the privilege that you have given me today!

*Provided by Crafted With Pride and the U.S.A. Council

Chairman CRANE. Mr. Hall.

STATEMENT OF ROBERT P. HALL III, VICE PRESIDENT, GOVERNMENT AFFAIRS COUNSEL, NATIONAL RETAIL FEDERATION

Mr. HALL. Good afternoon, Mr. Chairman and Mr. Payne. I am Robert Hall, vice president, Government Affairs Counsel of the National Retail Federation, and I am pleased to have the opportunity today to testify in support of H.R. 553, the Caribbean Basin Economic Security Act.

The Federation is the Nation's largest trade group which speaks for the retail industry. We represent the entire spectrum of retailing from mass merchandisers, to specialty stores, to discount stores, to department stores, to mom and pop small, independent retailers. Our Federation represents over 30 national retail associations and all 50 State retail associations. Our membership represents over 1.5 million retail establishments, employs 20 million Americans, and registered sales in excess of $2 trillion in 1994.

Mr. Chairman, the Federation supports H.R. 553 because it offers a significant opportunity to correct the deficiencies of both the Caribbean Basin Initiative (CBI) program and also the NAFTA textile apparel provisions. We also support your legislation because it includes TPL preferences.

History has shown us that past efforts to liberalize world trade have been crippled by restrictive rules of origin, particularly in regard to the NAFTA and to last year's implementation of the GATT agreement. A rule of origin that is not commercially useful is of no benefit to American retailers and importers and the consumers we serve.

With increasing frequency, the United States has set out to liberalize world trade and to reduce trade barriers only to see those benefits evaporate, and the details are drafted, particularly, the rules of origin that define which products will qualify for trade liberalization. Restrictive rules of origin have narrowed, complicated, or even erased the benefits of trade agreements affecting apparel trade, including the NAFTA, and most recently, the Uruguay round agreement.

In the case of the NAFTA, we originally expected that the NAFTA tariff and quota reductions would provide sufficient incentive for U.S. importers to shift sourcing to the region from countries outside North America. But negotiators subsequently devised a very complicated yarn-forward rule of origin to prescribe which textile and apparel products would receive NAFTA's tariff and quota benefits.

This rule of origin generally requires the beneficiary apparel products to be made both of yarn and fabric that was made in North America. In many cases, the yarn and fabric required is not available from U.S. or North American suppliers and importers, therefore, must continue to source that apparel product from non-North American suppliers.

Had the rule of origin been less restrictive, importers could have arranged the requisite fabric to be shipped to Mexico for fabrication and import to the United States, allowing the apparel product to qualify as a NAFTA product. Alternately, U.S. importers could

have brought the foreign fabric into the United States for manufacture and exportation to Canada.

Moreover, we have seen as a rule of origin becomes more complicated, the greater the recordkeeping requirements for retailers, importers, and manufacturers. At some point, the burden becomes too great, both in terms of expense and risk of error. NAFTA then is no longer a commercially viable benefit and sourcing from non-NAFTA suppliers continues.

Most recently, Congress approved legislation to implement the Uruguay round agreement, which will gradually phase out long-standing U.S. quotas on textile and apparel products. However, included in the implementing legislation is a change in the current rules of origin which becomes effective after the quota phaseout process has begun. This rule of origin change will disrupt apparel trade, which was clearly the intent of advocates, and will render numerous apparel product levels inadequate.

It will complicate apparel sourcing and increase the cost of importing, and erase one clear benefit of the agreement's textile and apparel provisions: more flexible sourcing alternatives and, consequently, it will lower prices for consumers.

With this legislation, Mr. Chairman, you have clearly made an effort to draft a parity bill that will be genuinely useful to CBI countries. Your bill offers an important avenue to incorporate a commercially useful rule of origin and will provide benefits to the CBI countries and to U.S. consumers and retailers.

We look forward to working with you and the members of this subcommittee to ensure that this legislation incorporates such a rule of origin.

Chairman CRANE. Thank you, Mr. Hall.

[The prepared statement follows:]



NATIONAL RETAIL FEDERATION

STATEMENT OF ROBERT HALL, VICE PRESIDENT
GOVERNMENT AFFAIRS COUNSEL

Good morning, Mr. Chairman, I am Robert Hall, Vice President, Government Affairs Counsel, at the National Retail Federation (the "Federation"). I am pleased to have the opportunity to appear before you today in support of H.R. 553, The Caribbean Basin Economic Security Act.

The Federation is the nation's largest trade group which speaks for the retail industry. It represents the entire spectrum of retailing, from mass merchandisers and specialty stores to department stores and "mom and pop" small, independent retailers. The Federation also represents over 30 national retail associations and all 50 state retail associations. Our membership represents an industry that encompasses over 1.5 million retail establishments, employs more than 20 million people, and registered sales in excess of $2 trillion in 1994.

Mr. Chairman, the Federation supports H.R. 553 because it offers a significant opportunity to correct the deficiencies of both the Caribbean Basin Initiative (CBI) and the North American Free Trade Agreement's (NAFTA) textile and apparel provisions.

History has shown us that past efforts to liberalize world trade have been crippled by restrictive rules of origin, particularly in regard to the NAFTA and last year's implementation of the GATT Agreement. A rule of origin that is not commercially useful is of no benefit to American retailers and importers and the consumers we serve.

With increasing frequency, the United States has set out to liberalize world trade and reduce trade barriers only to see those benefits evaporate as the details of that liberalization are drafted, particularly the rules of origin that define which products will qualify for trade liberalization. Restrictive rules of origin have narrowed, complicated, or even erased the benefits of trade agreements affecting apparel trade, including the NAFTA and, most recently, the Uruguay Round Agreement.

In the case of the NAFTA, we originally expected that NAFTA's tariff and quota reductions would provide sufficient incentive for U.S. importers to shift sourcing to the region from countries outside North America. But negotiators subsequently devised a complicated "yarn forward" rule of origin to prescribe which

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textile and apparel products would receive NAFTA's tariff and quota benefits. This rule of origin generally requires the beneficiary apparel products to be made from both yarn and fabric that was made in North America. In many cases, the yarn or fabric required to make an apparel product is not available from North American suppliers, so U.S. importers must continue to source that apparel product from non-North American suppliers. Had the rule of origin been less restrictive, importers could have arranged for the requisite fabric to be shipped to Mexico for fabrication and eventual exportation into the United States, allowing the apparel product to qualify as a NAFTA product. Alternatively, U.S. importers could have brought the foreign fabric into the United States for manufacture and exportation to Canada.

Moreover, as the rule of origin becomes more complicated, the greater the record-keeping requirements for importers and manufacturers. At some point, the burden becomes too great, both in terms of expense and risk of error. NAFTA then is no longer a commercially viable benefit and sourcing from non-NAFTA suppliers continues.

Most recently, Congress approved legislation to implement the Uruguay Round Agreement, which will gradually phase out longstanding U.S. quotas on textile and apparel products. However, included in the implementing legislation is a change in the current rules of origin which becomes effective after the quota phase-out process has begun. This rule of origin change will disrupt apparel trade -- clearly the intent of its advocates -- and render numerous apparel product quota levels inadequate.[1] It will complicate apparel sourcing, increase the costs of importing, and erase the one clear benefit of the Agreement's textile and apparel provisions: more flexible sourcing alternatives and, consequently, lower prices for consumers.

With your legislation Mr. Chairman, you have clearly made an effort to draft a parity bill that will be genuinely useful to CBI countries. Your bill offers an important avenue to incorporate a commercially useful rule of origin that will provide benefits to the CBI countries and to U.S. consumers and retailers. We look forward to working with you and members of the committee to ensure that this legislation incorporates such a rule of origin.

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1 Current U.S. quota levels are based on trade patterns that prevailed in 1994, when U.S. rules of origin generally dictated that the country of origin is the country in which the apparel product was cut. The new rule of origin for apparel will generally dictate that the country of origin is that country where the apparel product is assembled. Therefore, many quota levels for particular countries will be too small after the United States adopts the new rule of origin.

Chairman CRANE. Mr. Isaac.

STATEMENT OF CHANDRI NAVARRO-BOWMAN, EXECUTIVE DIRECTOR, UNITED STATES APPAREL INDUSTRY COUNCIL, AS PRESENTED BY BILL ISAAC, PRESIDENT, TEXAS APPAREL COMPANY, DIVISION OF SALANT CORPORATION; MEMBER, UNITED STATES APPAREL INDUSTRY COUNCIL

Mr. ISAAC. Mr. Chairman, Mr. Payne, my name is Bill Isaac, I am the president of Texas Apparel Company, a division of Salant Corporation, a multinational apparel company with substantial U.S. and CBI production operations. I am here today as an executive board member of the United States Apparel Industry Council, also known as USAIC.

USAIC wholeheartedly supports H.R. 553, the Caribbean Basin Trade Security Act, and urges you to promptly approve this bill.

USAIC is a national trade association representing the major U.S. apparel companies importing apparel from Central America, Mexico, and the Caribbean. USAIC was formed in June of 1986 to address the concerns of American multinational apparel companies involved in twin-plant apparel production, which involves the offshore assembly of U.S. components. USAIC-member companies include Haggar, Levi Strauss, Sara Lee, Oxford, Salant, Wrangler, Bend and Stretch, Colonial, Greenwood Mills, OshKosh B Gosh, Phillip Van Heusen, Tropical Garment, Umbro USA, among others.

USAIC supports H.R. 553's CBI parity provisions. This bill will restore tariff equalization between CBI and Mexican apparel operations. Moreover, the provisions of this legislation would act as a bridge to the conclusion of free trade agreements with the CBI countries.

The CBI represents a permanent commitment by the United States to the countries of the region to encourage U.S. investment and U.S.-CBI trade. As a result of the quota preferences according CBI countries, U.S. apparel companies have expanded investment in assembly operations in these countries.

This has lowered average costs and enabled the U.S. apparel industry to compete more effectively with foreign competition while providing a source of stability in the CBI region.

I, too, have to make a payroll, and I can tell you that were it not for NAFTA and the CBI, we would be losing jobs today to the Far East. The CBI and NAFTA have allowed us to do cost averaging, whereby we were able to save jobs in the United States and keep these people working.

However, the tariff benefits gained by Mexico under the NAFTA threaten to derail the progress made by the CBI program. Trade figures since the implementation of NAFTA for the first 11 months of 1994 show that NAFTA creates a disincentive to new and expanded investment in the CBI region.

Growth in Mexican apparel imports has far outpaced the growth in CBI apparel imports in 1994. This provides a marked change from the trade figures for the last 8 years.

U.S. companies have increased their operations in Mexico to the detriment of plans to increase production in their long-established CBI operations. This trend will only speed up as further tariff reductions take place in the near future under NAFTA, placing in

jeopardy U.S. apparel operations in the CBI, and in turn, the stability of the region's economies. USAIC believes that the U.S. commitment to CBI countries and U.S. operations in these countries should be preserved.

The NAFTA provides preferential access to the North American market for products that originate in the NAFTA region. Under NAFTA, tariffs on originating textile and apparel products will be eliminated over 10 years. Quotas were eliminated for originating products on January 1, 1994, and will be completely eliminated in 10 years for nonoriginating goods. Also, on January 1, 1994, the United States eliminated duties and quotas on apparel made from U.S. formed and cut fabrics.

As the above demonstrates, there are certain benefits that NAFTA provides to Mexican textile and apparel products which have encouraged increased sourcing from and investing in Mexico at the expense of the CBI. Providing equal treatment to CBI textile and apparel imports made principally from U.S. yarn and fabric would allow U.S. companies to remain competitive, without disrupting U.S. apparel operations in the CBI, and excessively diverting trade and investment to Mexico.

H.R. 553 provides a short-term solution by providing tariff and quota treatment equal to that given to Mexico, and thereby, protecting the CBI region from disruptive shifts in trade and foreign investments, resulting from the implementation of NAFTA. It provides U.S. and local apparel companies incentives to continue investing in apparel operations in the region, which provide an important alternative to drug trafficking and a disincentive to immigration to the United States.

H.R. 553 will encourage countries in the region to accelerate their internal reforms and move to ready themselves to negotiate free trade agreements with the United States. USAIC believes it imperative that NAFTA-like benefits be immediately accorded to textile products assembled in the region. This is necessary to minimize the potential impact of NAFTA on the apparel industries in the United States and throughout the region.

It will allow U.S. companies to continue to compete effectively in the U.S. market and to maintain a viable U.S. apparel industry. In so doing, the countries of the region will benefit from continued investment, furthering economic development and political stability.

In addition, in light of the passage of the GATT Uruguay round agreement, which calls for the elimination of long-standing quotas on textile imports, U.S. apparel companies face a future with increased competition from low-cost imports, primarily from the Far East. H.R. 553 would permit U.S. companies to have production both in the United States and in the CBI, lowering their average costs and allowing them to better compete with the Far East imports. Further, production in the CBI contributes to U.S. employment in textile mills, cutting facilities, trim suppliers, transportation, and other sectors which service these operations. USAIC urges the Congress to promptly approve H.R. 553 and place U.S. apparel operations in the CBI on an equal footing, vis-a-vis Mexico.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you, Mr. Isaac.

[The prepared statement follows:]

STATEMENT OF CHANDRI NAVARRO-BOWMAN
EXECUTIVE DIRECTOR, UNITED STATES APPAREL INDUSTRY COUNCIL
AS PRESENTED BY WILLIAM ISAAC, PRESIDENT,
TEXAS APPAREL COMPANY, A DIVISION OF SALANT CORPORATION
MEMBER, UNITED STATES APPAREL INDUSTRY COUNCIL

The United States Apparel Industry Council (USAIC) wholeheartedly supports H.R. 553, the "Caribbean Basin Trade Security Act", introduced on January 18, 1995 by Rep. Philip M. Crane (R-IL). USAIC urges prompt passage of H.R. 553 which provides for the application of NAFTA tariff and quota treatment to U.S. textile and apparel imports from CBI beneficiary countries.

USAIC is a national trade association representing the major U.S. apparel companies importing apparel from Central America, Mexico and the Caribbean under subheading 9802.00.80 of the Harmonized Tariff Schedule of the U.S.-HTSUS (formerly known as item 807 TSUS). USAIC was formed in June of 1986 to address the concerns of American multinational apparel companies involved in twin-plant apparel production, involving the offshore assembly of U.S. components. USAIC member companies include Haggar Apparel Co., Levi Strauss & Co., Sara Lee Knit Products, Oxford Industries, Salant Corp., Wrangler, Inc., Bend'n Stretch, Inc., Colonial Corp., Greenwood Mills, OshKosh B'Gosh, Phillips-Van Heusen Corp., Tropical Garment Manufacturing Co., Umbro-USA among others.

USAIC supports H.R. 553's enhancement of the Caribbean Basin Initiative (CBI). This bill will restore tariff equalization between CBI and Mexican apparel operations. Moreover, the provisions of this legislation would act as a bridge to the conclusion of free trade agreements with these countries.

The CBI represents a permanent commitment by the U.S. to the countries of the region to encourage U.S. investment and U.S.-CBI trade. In order to provide economic and political stability to the region, and to expand trade and prosperity throughout the Americas, the United States provides preferential treatment to imports from Caribbean and Central American countries. As a result of the quota preferences accorded CBI countries, U.S. apparel companies have expanded investment in assembly operations in these countries. This has lowered average costs and enabled the U.S. apparel industry to compete more effectively with foreign competition, while providing a source of stability in the CBI region.

However, the tariff benefits gained by Mexico under the NAFTA threaten to derail the progress made by the CBI program. Trade figures since the implementation of NAFTA, for the first eleven months of 1994, show that the NAFTA creates a disincentive to new and expanded investment in the CBI region. Growth in Mexican apparel imports has far outpaced the growth in CBI apparel imports in 1994. This provides a marked change from the trade figures for the last eight years which show growth in CBI apparel imports at a par or above Mexican apparel import growth levels.

U.S. apparel companies with operations in the CBI have had to reconsider their production plans. These companies have increased their operations in Mexico to the detriment of plans to increase production in their long-established CBI operations. This trend will only speed up, as further tariff reductions take place in the near future under the NAFTA, placing in jeopardy U.S. apparel operations in the CBI, and in turn the stability of the region's economies. USAIC believes that the U.S. commitment to CBI countries and U.S. operations in those countries should be preserved.

The NAFTA provides preferential access to the North American market for products that originate in the NAFTA region. Under NAFTA, tariffs on originating textile and apparel products will be eliminated over a maximum transition period of ten (10) years. Quotas were eliminated for originating products on January 1, 1994, and will be completely eliminated in ten (10) years for non-originating goods.

NAFTA benefits apply to textile products that, under the rules of origin set forth in Annex 401 to the Agreement, "originate" in one of the three countries. For a garment to be considered originating, it must satisfy the rule of origin for that specific product. For textile and

apparel products, a "yarn forward" rule of origin generally applies. This means that finished textile and apparel products must be made from the yarn stage forward in North America. The fibers from which the yarn is made may be imported; however, the yarn must be produced, the fabric made and the garment cut and sewn in North America.

Textile and apparel products traded among the NAFTA countries that do not conform to the rule of origin (i.e., non-originating apparel) can receive NAFTA tariff preferences, up to a certain limit known as a Tariff Preference Level (TPL). Once imports have reached the TPL limit, regular tariffs will apply to any additional imports. For Mexican exports to the U.S. there are two types of TPL. The first is for apparel which is cut and sewn in North America but is manufactured of non-originating fabrics. The second TPL is limited to 9802 (807) merchandise manufactured from fourth-country yarn or fabric, cut in the U.S. and assembled in Mexico. Certain non-originating apparel cannot qualify for entry under the TPL and must always pay full duty, including apparel made from blue denim and oxford cloth, men's and boys' and women's and girl's cotton and man-made fiber under pants and briefs made from circular knit fabrics, and others. All import duties on textile products traded between the U.S. and Mexico are to be reduced to zero in three phases: January 1994; staged reductions for 6 years; or, staged reductions for 10 years depending on the type of garment.

Upon implementation of the NAFTA, the U.S. eliminated duties and quotas on textile and apparel products that qualified for an amended Special Regime status, i.e., goods assembled in Mexico from fabrics wholly formed and cut in the U.S., even if they do not meet the yarn-forward or fiber-forward rule of origin. These products enter the U.S. free of duty under U.S. tariff item 9802.00.9000. This duty preference will be maintained even if such products have been subject to certain finishing operations in Mexico, including stonewashing, acidwashing, bleaching, garment dyeing, or permapressing before being reimported into the U.S. All quota and visa restrictions for eligible textile products were similarly eliminated. To qualify for this benefit, the fabric must be woven, knit or otherwise formed in the U.S. The U.S. formed fabric must be cut in the U.S. before exportation to Mexico for assembly.

As the above demonstrates, there are certain benefits that NAFTA provides to Mexican textile and apparel products which have encouraged increased sourcing from and investing in Mexico, at the expense of the CBI. Providing equal treatment to CBI textile and apparel imports made principally from U.S. yarn and fabric would allow U.S. companies to remain competitive without disrupting U.S. apparel operations in the CBI and excessively diverting trade and investment to Mexico.

H.R. 553 provides a short-term solution by providing tariff and quota treatment equal to that given to Mexico, and thereby protecting the CBI region from disruptive shifts in trade and foreign investment, resulting from the implementation of the NAFTA. It provides U.S. and local apparel companies incentives to continue investing in apparel operations in the region, which provide an important alternative to drug trafficking and a disincentive to immigration to the U.S.

H.R. 553 will encourage countries in the region to accelerate their internal reforms and move to ready themselves to negotiate free trade agreements with the U.S. USAIC believes it imperative that NAFTA-like benefits be immediately accorded to textile products assembled in the region. This is necessary to minimize the potential impact of NAFTA on the apparel industries in the United States and throughout the region. It will allow U.S. companies to continue to compete effectively in the U.S. market and to maintain a viable U.S. apparel industry. In so doing, the countries of the region will benefit from continued investment, furthering economic development and political stability.

In addition, in light of the passage of the GATT Uruguay Round Agreement which calls for the elimination of long-standing quotas on textile imports, U.S. apparel companies face a future with increased competition from low-cost imports, primarily from the Far East. H.R. 553 would permit U.S. companies to have production both in the U.S. and in the CBI, lowering their average costs and allowing them to better compete with Far East imports. Further, production in the CBI contributes to U.S. employment in textile mills, cutting facilities, trim suppliers, transportation and other sectors which service these operations. USAIC urges the Congress to promptly approve H.R. 553 and place U.S. apparel operations in the CBI on an equal footing vis-a-vis Mexico.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I don't have any questions.

I would like to ask unanimous consent to have a letter entered into the record, which is a letter that Congressman Spratt—and had sent to you, Mr. Chairman, earlier this week.

Chairman CRANE. Without objection.

[The information follows:]

Congress of the United States
Washington, DC 20515

February 9, 1995

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
House Ways and Means Committee
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to express our strong opposition to H.R. 553, the Caribbean Basin Initiative (CBI) Parity measure, which you recently introduced.

Like you, we support the goal of promoting economic stability and the development of strong democracies in the Caribbean. However, we believe that H.R. 553 is the wrong way to accomplish this goal. The goals of the bill are more appropriate for a foreign aid bill than for a one-way trade bill that will cost many American textile and apparel workers their jobs.

We voted for the North American Free Trade Agreement (NAFTA) because we believed it would lead to more American textile and apparel jobs. By contrast, we believe H.R. 553 will cost American jobs by encouraging apparel companies to relocate from the United States to the Caribbean.

We find the Tariff Preference Level (TPL) provision in H.R. 553 particularly objectionable because we believe it would eviscerate NAFTA's yarn-forward rule of origin. It should be noted that the Administration wisely decided not to include TPL in its CBI bill last year. H.R. 553 grants USTR the authority to permit Caribbean apparel imports into our country at low NAFTA tariff rates even if the apparel fails to meet the NAFTA yarn forward rule of origin. This means that Caribbean manufacturers can sell their products in the United States at low tariff rates even when the products are made with Chinese or Korean fabric. The bill merely requires USTR to "consult" with domestic industry before it grants the TPL. But the measure neither establishes any conditions before USTR grants TPL nor specifies which products are eligible. As a result, the Caribbean countries can flood our market with our most import sensitive products and put thousands of Americans out of work.

Even without the TPL, we strongly oppose this bill for several reasons.

First, it will lead to a sharp increase in Caribbean textile imports entering the United States. The first eleven months of

1994 saw apparel imports from CBI nations grow by 27% over the same period in 1993, without NAFTA parity or a TPL. Over the last five years, CBI imports of textile and apparel products have more than doubled. In view of the growth of CBI imports, there is simply no reason for the U.S. to grant unconditioned, non-reciprocated access for CBI textile and apparel products. To cite an example of its impact on just one product line, CBI parity will result in the loss of those Americans who produce the fabric used for brassiere since Caribbean brassiere will not need to meet the yarn forward rule. CBI parity will not only cause the loss of American jobs, it will also encourage manufacturers to shut Mexican apparel plants and move them to those Caribbean countries where wages are generally lower. At a time when our nation is guaranteeing billions of dollars in Mexican debt and the Mexican economy has experienced a free-fall, it makes no sense to approve a measure which will hurt not just our economy, but Mexico's as well.

Second, this bill is really closer to "CBI disparity" than CBI parity. While the United States would entirely eliminate U.S. tariffs on qualified CBI apparel, CBI nations will still have the right to impose tariffs on U.S.-made fabric. By contrast, NAFTA required Mexico, Canada and the U.S. to eliminate all tariffs on NAFTA-origin products. Similarly, NAFTA required Canada and Mexico to eliminate all non-tariff barriers on U.S. textile products. CBI parity lacks similar requirements. Why are we now accepting an agreement lacking the reciprocity which was so important for NAFTA?

Third, we believe that this initiative will make our current transhipment problem significantly worse. Each year, foreign companies and countries smuggle as much as $4 billion in transshipped textile and apparel products across our border. By extending duty-free treatment for textiles to 24 additional countries, we are creating 24 new platforms for transshippers to smuggle goods into our country. How will Customs be able to police this new agreement when its manpower and resources are insufficient to enforce existing trade agreements? While H.R. 553 states that the same "customs procedures" will apply to CBI and NAFTA countries, does that mean the same transshipment provisions will be required before we grant CBI nations parity status?

Fourth, CBI parity will cost U.S. taxpayers approximately $772 million over five years in a loss of tariff revenue. That figure does not include the loss of tax revenue because of textile/apparel jobs which will flow to the Caribbean. At a time when the Congress must find over $1 trillion in budget cuts to balance the budget by 2002, it makes no sense for the House to pass a trade bill which will force us to find an extra $1 billion in spending.

Finally, CBI, unlike NAFTA, does not open a large new consumer market for American products. The per capita income in most CBI nations is even lower than Mexico's which is a fraction of our own. This low per capita income suggests that few Caribbean consumers earn the disposable income necessary to purchase American products. Moreover, as we mentioned before, CBI parity, unlike NAFTA, does not require CBI nations to open their markets to U.S. products.

In conclusion, we believe CBI parity is a serious mistake for our country and we urge your committee to reject it. We would be happy to discuss with you different approaches to promote economic development and democratic reform in the Caribbean so long as they do not come at the expense of American jobs.

Sincerely yours,

L. F. Payne Jr.
Member of Congres

John M. Spratt, Jr.
Member of Congress

Mr. PAYNE. I would like just for the record to say concerning the rule of origin on the GATT, and I was one of the proponents of that, I think what we did there was bring the rule of origin that the United States uses into conformance with the European Community and Canada, and I felt at that time, and still do, that that was an important thing for us to do.

Mr. Mason, I want to thank you again very much for coming and testifying. I think that it was a very important part of the record and I appreciate very much your being here with us today.

Mr. MASON. I appreciate the opportunity.

Mr. PAYNE. I look forward to working with you in the future.

Chairman CRANE. I want to thank all of the panelists for their participation. If you have further communication above and beyond submissions for the record at this time, please forward them.

Thank you.

Our next panel is Peter Johnson, Forrest Hoglund, Dr. Anthony Bryan, and Gilbert Sandler.

If you gentlemen will please come to the table.

Folks, they just sounded the bells here, so before your panel starts, if you will excuse us for about 5 to 10 minutes, we will run over and make this vote, and I think this is it for the day, and then we can start without interruption.

Thank you.

[Recess.]

Chairman CRANE. I apologize, gentlemen, for this interruption.

I would like to welcome you all to the subcommittee. I want to pay tribute to Peter Johnson, who is the executive director of Caribbean/Latin American Action (CLAA). I am on the board of CLAA, along with some other colleagues, and have worked very closely with Peter through the years in trying to advance the Caribbean Basin Initiative and expand it.

So I am happy to see you here, Peter. We are sorry you guys are so late on the dais, or on the program, but we welcome your testimony.

Fire away, Peter.

STATEMENT OF PETER B. JOHNSON, EXECUTIVE DIRECTOR, CARIBBEAN/LATIN AMERICAN ACTION

Mr. JOHNSON. Thanks, Mr. Chairman, and thank you for the compliment.

My name is Peter Johnson, executive director of this nonprofit organization called Caribbean/Latin American Action, which is comprised of some 120 American companies involved in the Caribbean and Central America and in Latin America. In fact, the man on my right—an Enron executive—is one of them.

Beyond submitting my testimony for the record, I would like to make maybe three very informal points, that will probably only take 3 minutes. One is that it is very exciting for us to see the quality of your bill, H.R. 553, which embraces all of the concepts that we all believe in with respect to the relationship between the United States and the Caribbean Basin.

Frankly, I would say that I am not sure that our colleagues in the administration have really correctly assessed the depth and breadth of the interest in the Congress as we move into 1995 for

this kind of legislation and the qualitative relationships with these countries.

The second point, Mr. Chairman, that I would like to make has to do with the section of the 6-year period for working out the reciprocity with these countries. I don't think there are any of us in those countries or those associations or groups that relate to them, that would not wish to see reciprocity, both in our interests and in theirs, as quickly as we can do it.

However, as a matter of approach, I would like to see this reciprocity process as more of a graduation than a matriculation. I say this because we are really speaking of countries which are very, very different, ranging from populations of 100,000 people, up to sophisticated societies and economies of 6 or 7 million. All of those differences, and that unevenness, really requires a much more careful approach, rather than insisting up front that the full measure of reciprocity across the board, IPR, market access, and so on, be required before any further steps are taken. I think that is an important consideration to get on the record.

The penultimate point I would make is one that has been made so many times during the past several hours. The numbers are just overwhelmingly persuasive, that the time has come for this kind of legislation. Whether it is $12 billion in exports, a $2 billion trade surplus, or 60 or 70 or 75 cents returning to the United States, or 250,000 jobs created in the United States, and on, and on, the numbers are simply there. We have to respond to that sooner or later.

Finally, in reference to some comments made earlier—and I will stop here—from the organized labor sector. There have indeed been some problems in the Caribbean Basin with the labor abuse issue. I think we ought to face that head-on.

One of the reasons, among others, I believe, that the 1994 interim parity bill went down, was the fact that there were some obvious labor abuses, very few, but there nonetheless were some in the region. There are some in Los Angeles, there are some in New York. This happens. I think the exciting thing is, however, that not withstanding the quality of emerging governmental measures, in the area of labor law, more important is that the companies themselves are following the lead from what the American firms are doing here and have done here in the United States. They are informally tying themselves together in such a way that they are examining themselves, picking out those bad apples, exposing them, and asking for sanctions against them.

There is a clear move afoot in the region to deal with these few labor abuse situations, and when those cases are brought to the Congress to view, I hope that the countries will be in a condition to bring and show to this Congress, and to this subcommittee, that the workers' conditions in the Central American and Caribbean region are as good as anyplace in the world, if not better.

I wish you the best of luck, and we pledge all of our support to passing this bill with you.

Thank you.

Chairman CRANE. Thank you very much, Peter.

[The prepared statement follows:]

Testimony of
Peter B. Johnson
Executive Director, Caribbean/Latin American Action

Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
February 10, 1995

Mr. Chairman, Members of the Committee:

My name is Peter Johnson. I am Executive Director of Caribbean/Latin American Action, a private, non-profit group dedicated to promoting economic development in the Caribbean and Latin America. C/LAA is familiar to many of you, since we have worked together frequently over the years on issues pertaining to the Caribbean Basin, but I would like to state for the record that Caribbean/Latin American Action was founded to help people in Caribbean Basin countries become more prosperous through the growth of trade, investment and other business activities reflecting vigorous and progressive private sectors and supportive public policies.

I am here on behalf of the board of trustees of C/LAA to testify in support of H.R. 553, the Caribbean Basin Trade Security Act. This is a soundly conceived and appropriately crafted measure urgently needed to insure that countries of the Caribbean Basin do not suffer diversion of trade and investment as a result of the implementation of NAFTA.

My testimony will make three basic points about the Crane Bill. First, doing what the bill aims to do is good U.S. policy. Second, its provisions are exactly what is needed to accomplish its purpose. And third, implementing it will not only be good for the Caribbean and Central America but will be very good for the U.S. economy.

Caribbean Basin Must Not be Harmed by NAFTA

First, the soundness of the bill's purpose.

As many of you may recall, C/LAA strongly supported NAFTA, and we continue to welcome it as a first step toward the goal of Hemispheric free trade recently endorsed by all the nations of the Americas except Cuba. At the same time, we pointed out at the time of the NAFTA debate, and have continued to press with growing urgency, the need to enact simultaneous provisions extending NAFTA-equivalent trade access to the beneficiary countries of the Caribbean Basin Initiative. To do so would not break new policy ground but merely conform U.S. trade practice in the NAFTA era to the policy expressed in the Caribbean Basin Initiative--a commitment that Congress chose to extend indefinitely and which therefore remains United States policy toward these nations. That commitment is to boost their economic opportunity by giving them preferential access to the U.S. market--that is, access on better terms than their competitors.

The effect of NAFTA is to leapfrog Mexico ahead of the Caribbean and Central America in terms of access for a number of the region's key export products either not included, or not treated as advantageously, in the CBI as they are in NAFTA. The most critical of these are apparel products; other key areas include footwear, leather goods, and petroleum.

The CBI countries lack preferential access under the CBI for footwear, certain leather goods, petroleum, and a few other products. They do have important special access arrangements for some apparel products, but only those made from U.S. fabric already cut in the U.S.. Even on these, Mexico's terms are more advantageous. Under the 807A program, garments assembled in the Caribbean Basin from U.S. inputs can re-enter the U.S. free of duties on the value of the U.S. components, and free of quotas. But the counterpart Mexican products have those quota advantages and are free of duties on the Mexican value-added portion as well. Unlike the CBI, NAFTA also provides reduced or eliminated duties for apparel cut in Mexico, or made from fabric that can be of Mexican, Canadian or U.S.-origin.

Finally, Mexico has an important concession for apparel products that do not qualify for NAFTA origin: It provides Tariff Preference Levels (TPL's), a form of tariff-rate quota, for products containing fabric from outside NAFTA. The TPL's would allow a certain amount of imports to enter the U.S. at NAFTA duty rates annually, before applying the MFN tariff to any amounts above quota. CBI countries face these higher MFN tariff levels on all apparel products made of non-U.S. materials. This can be an important consideration since many popular fabrics are unavailable or in short supply in the United States, and many U.S. manufacturers and retailers procure at least some fabric from Asian sources.

The relative advantage enjoyed by Mexico threatens to divert trade and investment from what has become one of the Caribbean Basin's more important and most promising sectors. Since 1988, textiles and apparel have been the leading category of CBI ineligible U.S. imports from the CBI countries. Imports of textiles and apparel doubled from $1.5 billion in 1988 to $3 billion in 1992. By 1993 they reached $4 billion--eight times their value in 1984 when the CBI began.

During this time Mexico has been subject to relatively high import duties on textiles and apparel, as well to the indirect costs arising from the quantitative limits of U.S. quotas. But now under NAFTA, import duties were removed immediately on a very high proportion--probably more than 80 percent--of Mexican apparel exports to the U.S. The remaining 20 percent will benefit from an accelerated implementation of free trade, with annual duty cuts and quota liberalization which began on January 1, 1994 and will end by the year 2000.

The adverse impact on Caribbean and Central American exporters is more than a concern for the future; it is happening already. Trade figures for the first nine months of 1994 show that U.S. apparel imports from the CBI countries grew by only ten percent over the first nine months of 1993, while apparel imports from Mexico during that period jumped by 45 percent.

The Caribbean Basin faces not only loss of trade but loss of investment. Mexico's duty-free access for 807 goods gives it a critical advantage over the CBI countries in the intense competition for plant sites in the assembly industry. At the same time, the U.S. manufacturer's option to include foreign fabric in goods produced in Mexico places the Caribbean and Central America at a disadvantage in their efforts to develop their apparel sectors beyond assembly into more integrated production creating higher-paying and more secure jobs. But whether a prospective investor contemplates an 807 assembly plant in a free zone, a yarn or fabric plant using indigenous cotton, or an fully-integrated garment manufacturing facility, attracting that investor to the Caribbean Basin has become a much harder task in the NAFTA era. Mexico's ability to offer a higher rate of return, or a lower more competitive cost to the consumer, has become a powerful incentive to divert investment from the CBI country to Mexico, especially in combination with the free access to Mexico's large domestic market that apparel firms operating there also enjoy under NAFTA.

Other ineligible CBI products have also become important export earners for the region, and are now threatened. Despite the absence of preferential access, CBI countries have been able to compete effectively for the U.S. market in leather products and footwear, subject to the same high tariff paid by all their competitors. Footwear exports from the Caribbean Basin to the United States grew from $10 million in 1984 to almost $46 million in 1992. In the same period, exports of certain leather apparel goods increased from $2 million to over $17 million in 1992. Now the Caribbean exporters who have built up their industry despite intense global competition must survive in a competitive environment in which Mexico has been given a major advantage.

The exclusion of products like apparel and footwear from the original CBI was intended by Congress to protect U.S. workers and businesses from possible competition in the region. It was never intended to put the Caribbean at a disadvantage vis a vis other developing nations. The passage of NAFTA indicates that Congress has since concluded--correctly, we believe--that the U.S. apparel sector will not be adversely affected by encouraging this type of production in Mexico. The same is true of the Caribbean. Helping Mexico or the Caribbean attract production that is otherwise going to be done not in North America but in Asia cannot hurt but only help U.S. manufacturers, exporters and consumers. At the same time, no U.S. interest stands to gain by limiting those nearby sites

to Mexico. NAFTA without CBI parity has tilted the playing field so drastically as to risk driving Caribbean and Central American nations out of the game. This would seriously undermine the U.S. policy goals underlying the CBI.

The CBI reflected the conviction that having politically healthy and economically prosperous nations in the immediate vicinity of the United States is important to this nation's long-term security, for a wide variety of reasons eloquently expressed in the preamble to that legislation. None of those reasons have changed. The end of the Cold War has removed some of the immediacy about military security concerns both near and far, but has not made peace and prosperity on our borders less important. Economic collapse, social upheaval, political chaos in any country of the Caribbean Basin would represent a serious problem for the United States--in terms of loss of trade, security of American citizens and property in the country, refugee problems, possible disruption of shipping, and pressure for political or military intervention. We need look no farther than Haiti to be reminded that trouble in the Western Hemisphere--trouble in the Caribbean Basin--does not require Soviet sponsorship.

But U.S. policy is, and must be, based on more than just heading off trouble. The Summit of the Americas reflected the spirit of confidence and positive engagement of today's challenges that make for effective U.S. leadership in a changing world. We recognize that freer trade and closer economic cooperation with our neighbors is the road to maintaining and building the vitality of the U.S. economy as well as U.S. political leadership in the region. The economic health of the Caribbean Basin is an important part of that equation. It is therefore both appropriate and urgently important for this Subcommittee to be seeking ways of redressing the harm to this region inadvertently caused by the implementation of NAFTA.

Positive Features of the Bill

That brings me to my second point. The Crane Bill meets this need in every important respect, and should be passed.

I would like to point out the ways in which this bill closes the important gaps in trade access between Mexico and the CBI countries, and also the ways in which it serves as an appropriate transition mechanism to the future of reciprocal trade and economic cooperation we all seek.

In the short term, the important question is whether a bill intended to give CBI countries relief from disadvantages caused by NAFTA in fact closes all or almost all of the gaps. This one does. Unlike some of the measures considered in the last session, the Crane bill equalizes the playing field not just in the first but in all of the three most important areas of disadvantage:

* first, equivalent duty-free treatment of value added to 807 apparel;

* second, TPL's giving quotas of reduced-duty access for apparel made of foreign fabric; and

* third, equivalent duty-free access for other non-CBI products, including leather goods and footwear.

The legislation before this Subcommittee covers all those bases. We urge you to keep that comprehensive character intact, and to resist any recommendations to recast it in a narrower vein. This relief is needed in all affected sectors, and needed immediately.

Looking at the longer term, the bill also contains important provisions relating not just to the content of the relief given but to the process it establishes. This legislation is intended strictly as a temporary transition measure. The bill as drafted recognizes that fact and deals with it in an appropriate manner.

It recognizes that the new benefits being granted unilaterally (like the CBI itself) are part of a passing world. The spirit of the Summit committed all the nations of the Hemisphere to fully reciprocal free trade by the year 2005. The type of free trade agreements of which NAFTA is a prototype, which are currently being negotiated between

and among many nations of the Americas, and which is contemplated for the entire Hemisphere in just ten years, go far beyond the traditional pattern of mutually reduced import barriers. They include close cooperation and reciprocal commitments on a wide range of issues relating to business and economic life--investment codes, intellectual property rights, labor standards, environmental standards, economic and monetary reform.

Many of these areas require major changes in laws, regulations, and administrative capabilities that cannot be achieved overnight. Throughout the Hemisphere, progress varies greatly from issue to issue and country to country. But these are processes to which the Caribbean and Central American countries are committed in principle, in some cases are quite advanced in practice, and in more difficult cases are making significant progress. These are directions they themselves have chosen, realizing that economic reform and trade liberalization will not only ease their way politically into the North American market, but will serve their own economic interest in dynamic economies and healthy private sectors.

The Crane Bill recognizes the commitment and progress of the CBI countries toward economic reform and trade liberalization, and contemplates their readiness within six years to assume full reciprocal obligations, either by acceding to NAFTA or by entering equivalent Free Trade Agreements with the United States. At that point the provisions of this bill would be unnecessary, and would in fact cease to exist.

This bill, unlike some other versions of temporary "NAFTA Parity" legislation you have considered in the past, makes several important concessions to the realities of the transition process:

* Recognizing the relief it grants as an emergency and temporary measure, it looks at reciprocal conditions on the part of beneficiary countries not as admission requirements at the front end but as graduation expectations out the back end. If these countries were ready to assume NAFTA-style reciprocal obligations now, then emergency transition measures like these would not be needed. The sooner this temporary relief is set in place, allowing them to hold on to precarious markets and skittish investors, the sooner they will have the strength and confidence to move forward to the next stage.

* The bill, however, does not merely grant the grace period during which progress toward being able to meet reciprocal conditions and obligations might occur on its own. It provides a framework to move the process along.

    -- It creates the expectation of NAFTA accession or NAFTA-equivalent FTA's in the near term--itself an important incentive.

    -- It mandates a process in which the U.S. will be meeting with CBI country trade ministers to plan the transition, and for the President to assess progress on the part of the CBI countries toward readiness to assume NAFTA-style obligations.

    -- It places the process in the context of global trade developments by making the country's participation in the World Trade Organization the first criterion in evaluating its NAFTA readiness.

    -- By specifying a comprehensive range of standards and areas for reciprocal agreement, it will recognize and support the process already underway in the U.S. Trade Representative's Office to encourage the countries of the region to move forward with liberalized access to their markets and with economic, labor, environmental and other needed reforms.

    -- By helping the countries meet the standards all of us recognize as appropriate and just, and ascertaining their progress toward compliance in advance, this approach will pre-empt the need to build express conditions into later legislation.

* Finally, the bill takes a realistic approach to the transition process by allowing six

years, as compared, for instance, with the 3-year period proposed by one of the bills last year. The security of the longer period gives companies time to plan, gives the countries the confidence they need to move forward on liberalization and reform measures, and gives the U.S. Government the flexibility it needs. We know, after all, that the readiness of the CBI countries is not the only factor driving this timetable. Congress may not be ready to provide the necessary negotiating authority. The U.S. Government may want to resolve other pending issues with specific countries before tackling NAFTA readiness with the Caribbean Basin across the board. USTR has its own priorities and manpower limitations, other countries in and out of the Hemisphere have trade matters under discussion with the United States, and it may not be possible to begin and conclude discussions on free trade agreements or NAFTA accession, with time for the countries to be advised of and to meet any reciprocal conditions, all in a 3-year period. The economies of these countries should not be put at risk for timing factors beyond their control. This bill provides a comfortable six-year period while allowing its temporarily provisions to be overtaken at any time for those countries reaching the next stage sooner.

All these factors--the comprehensive coverage including all apparel categories and all the other sectors, the adequate transition period, and the dynamic transition process--make this legislation a sound and desirable vehicle for remedying the problem before us--the threat to Caribbean Basin economies from the implementation of NAFTA.

It's Good for the U.S. Economy

The final point I would like to leave with you is this: Granting these trade concessions to the countries of the Caribbean Basin is not only good for U.S. policy objectives and good for the economies of the countries--it is good for the U.S. economy as well. It would be a mistake to see trade and investment growth as a zero-sum game, where greater exports from the CBI countries necessarily translates into fewer for Mexico, or into less production or fewer jobs in the United States. In fact, experience shows that prosperity in the Caribbean and Central America translates directly into more business, income and jobs for the United States.

The Caribbean Basin is one of the few regions of the world with which the United States enjoys a trade surplus--amounting to $2.1 billion in 1993. Since the CBI began in 1983, U.S. exports to the region have doubled, making the Caribbean Basin the 11th-largest export market for U.S. goods. In 1993, that translated into $11.9 billion of U.S. exports, supporting some 200,000 American jobs. During that decade, U.S. exports increased in all major product categories as Caribbean diversification and modernization generated greater foreign exchange earnings and additional demand for U.S. products, particularly manufactured goods.

The ties between the U.S. and Caribbean economies are strong and complex. It is estimated that for every dollar earned in the Caribbean Basin, 60 cents are used to buy American products, compared to Asia which spends only 10 cents of every dollar in the U.S. CBI industries have a strong propensity to purchase American raw materials, machinery and equipment. On average, over 45 percent of all CBI imports are sourced from the U.S., the highest percentage in Latin America. Most of the construction and procurement for 936 loan sourcing is from the United States. Most of every tourism dollar earned in the Caribbean finds its way into the United States.

As personal incomes in the region rise, demand for U.S. consumer goods--from food products to computers and software--also rises and is expected to do so even more as these economies take off. Major U.S. apparel manufacturers have noted that the growth market for U.S. producers, given population and income trends, is in the developing world. The Caribbean Basin, with its proximity to U.S. suppliers, its relatively high levels of education and income, is a particularly promising part of that new growth market.

Manufacturing in the Caribbean Basin is an important market for U.S. industrial equipment. At the same time, Caribbean inputs to U.S. production help keep our own manufacturing competitive in the global arena, especially in intensely competitive sectors. This is clearly the case in the apparel assembly industry, where coproduction in the Caribbean Basin has given U.S. firms an alternative to sourcing the entire product overseas. The U.S. footwear industry has also turned increasingly to Caribbean Basin countries--

primarily the Dominican Republic, recently joined by Honduras and Costa Rica--as a low-cost source of inputs. U.S. imports of footwear uppers from the Caribbean Basin reached $200 million in 1993, a 32% increase over the previous year. By contrast, U.S. imports of the uppers from all other countries rose by 16 percent to $127 million.

The U.S. agribusiness sector has been a major beneficiary of the growing Caribbean and Central American economies. The U.S. is the primary source of inputs, machinery, feeds, etc. used in the region's own agricultural industry, as well as a major source of consumer food products, especially those used in the tourism sector. Even subsectors that are large-scale export industries for the Caribbean Basin have stimulated new growth for U.S. businesses. An example is in horticultural trade, where CBI exports of $880 million to the U.S. in 1993 represented a 2% growth over the previous year, while U.S. exports of horticultural products to the CBI countries--while lower at $260 million--had grown by 21 percent during the same year.

The U.S. economic benefit from Caribbean prosperity goes far beyond those industries directly involved in imports, exports or coproduction. U.S. financial institutions have benefited as demand has increased for trade and investment financing, the countries' financing requirements have gotten more sophisticated, their dependency on aid has decreased, and their ability to access international capital markets has grown stronger.

Development of telecommunications in the Caribbean Basin offers major opportunities for U.S. business growth. U.S. suppliers of telecommunications equipment and services are benefiting as the sector in the region has opened to greater competition. As the region connects to the global superhighway, it will also translate into more business for U.S. computer, data and software firms. Better communication will give U.S. sellers access to a whole new spectrum of end-users, from small to large in size, while giving U.S. buyers deeper and broader access to competitive sources of the products they need.

As the region's economies grow, demand in the transportation sector will also benefit U.S. firms. Firms which now provide surface and air shipping, to those that supply equipment, packaging, and port services.

The direct benefits to U.S. workers, businesses and investors that will result from the stimulation to Caribbean trade and investment this bill provides will be enormous, and will more than offset the number of workers displaced or tariff revenues foregone.

Matters of Timing

There is no question that this legislation is beneficial to all parties, is needed urgently, and is needed now. I would like to close on a note regarding timing.

We at C/LAA urge you to report this bill as written. That does not mean that we are asking you to send it to the floor next week or next month if, in the view of the chairman and members, the timing would not be propitious. We realize there is much on Congress's agenda now, and that an offsetting revenue source must be found. We are saying, however, that we need this bill enacted into law this year, and with its major provisions intact.

This is not something that can wait indefinitely. Delay only makes the problem worse. This year, Mexican exports do not yet reflect the advantage NAFTA gives, for instance, to apparel products of non-NAFTA-originating fabric. That does not mean the disadvantage to the CBI countries is negligible. We have been told by one of the top three U.S. apparel firms that the critical point for taking advantage of this provision would not come until the second year or later. Now is the time that the Caribbean and Central American producers must position themselves to be competitive. This bill must pass this year.

For those of you on the Committee who share our conviction about the desirability and urgency of this legislation, the challenge is not just going on record in its favor in committee, but helping to build the constituency among your colleagues that will move it through floor debate and into law, and planning a strategy and timing that will maximize the chance of that happening.

On our part, we pledge to use the time between now and the time final action is likely to be taken to do our part, too, to maximize the chance of a favorable outcome. We will work to build understanding and support among your colleagues in the public sector, and also among the American public and business community. At the same time, we will work with public and private-sector leaders in the region to encourage their own efforts to meet in advance, to the extent possible, the kind of standards and conditions they would be working to meet as they move toward NAFTA readiness. One way, for example, that CBI countries could improve their reciprocity and at the same time become more attractive to new investment would be to eliminate restrictions on the amount of product that U.S. manufacturers in their free zones can sell into their domestic markets.

I cannot emphasize enough that the reform process is already underway. Among the modernizing reforms for which the Caribbean private sector should be given special recognition is in their imaginative and progressive new approaches to workers' protections. Local exporting firms are learning from their American connections how to apply practical management tools for assuring the health, safety, and economic rights of the workforce. This is enabling them to live up not only to the letter of national labor laws--all of which have been, or are undergoing modernization and are fully consistent with international standards--but to bind together as a network of socially responsible businesses.

C/LAA is working now with its related companies in the region to expand and formalize this network, and is looking at an ongoing experiment involving the creation of a three-sided monitoring body, which is empowered to discipline exporting firms through the denial of certain trade privileges. Under this system, those few obvious and habitual violators of internationally recognized workers' rights would no longer be able to depend on the cumbersome and drawn-out reviews embodied in formal labor or trade law to shield them from sanctions. Through a self-policing approach, social justice would be realized by those most immediately affected, who understand best the global challenges being confronted by small, developing economies.

This is the type of experiment that U.S. policy should be encouraging. This means that Washington should resist the temptation to reach beyond our borders to punish a limited number of commercial "bad apples" whose actions offend our national sense of fair play.

As the countries of the region continue to make substantial and visible progress across a whole array of trade-sensitive issues, we expect that support and appreciation for the value of this legislation now before you to grow as well. There are no objections to it that cannot readily be answered today. There is much to be lost--by the countries, and by U.S. business, U.S. workers, and the future of U.S. policy goals in this Hemisphere--in allowing the economies of the Caribbean and Central American nations to continue to be jeopardized, when the remedy is so readily at hand.

I urge you to give this bill your most favorable consideration.

Thank you.

Chairman CRANE. Mr. Hoglund.

STATEMENT OF FORREST E. HOGLUND, CHAIRMAN AND CEO, ENRON OIL & GAS COMPANY, HOUSTON, TEX.

Mr. HOGLUND. My name is Forrest Hoglund, Mr. Chairman. I am chairman and CEO of Enron Oil & Gas Company, one of the largest independent oil and gas companies in the United States. I am testifying today in favor of extending the NAFTA-like benefits to the Caribbean Basin countries as provided in this bill. Specifically, by using our experience in Trinidad and Tobago as an example, I hope to demonstrate the importance of extending NAFTA parity to these countries, and I think it will definitely further U.S. economic, political, and national security interests.

If you look at Trinidad and Tobago, their gross domestic product is over $5 billion, and the United States is its largest investment partner. According to the U.S. Department of Commerce, U.S. direct investments since 1990 have been about $500 million a year and were probably $700 million last year.

Now, the economic policies and performance of the country place it in a strong position to attract additional investment and trade dollars. Under their policies, Trinidad has obtained a balance of payment surplus of about $150 million for 1994. They had real GNP growth of about 4 percent, and inflation next year is expected to be under 5 percent. So it is a very, very strong kind of economic situation.

I think it shows their commitment to sound economic policies that have been very effective in creating this attractive investment climate. The two States, Florida and Texas, where I am headquartered, are the two largest exporter States to Trinidad, and these include a lot of things such as machinery parts, steel pipe, computers, software, oil products, lube oil, rice, corn, wheat, and soybeans. Texas and Florida export goods valued at about $200 million, and $80 million a year respectively, to customers in Trinidad, and there are a wide number of U.S. companies that are operating there.

If you look at the energy sector, that represents the greatest amount of foreign investment in Trinidad. Enron, Amoco, Texaco have been engaged in oil and gas development there since about 1971. Trinidad has large gas reserves, and also in 1994, the United States imported about 80,000 barrels a day of crude oil and products, about 1 percent of our Nation's imports, and a value of about $500 million.

They are also the second largest exporter of ammonia fertilizer, and about one-third of our imports in the United States come from Trinidad. Again, a value of about $240 million per year.

They are seeking to expand the role of foreign investment in the domestic energy sector. They are looking at an LNG, a liquid natural gas project, a new one, and encouraging other types of investments.

But I really wanted to talk about our experience in the country. We are investing $250 million over 5 years to develop gas fields and produce natural gas and condensate offshore Trinidad. We currently are producing 150 million cubic feet per day, or about 23 percent of the demand in Trinidad.

What got us there was a favorable investment climate, good gas reserve potential, and a very favorable operating and regulatory climate. Our people in Trinidad report that the political, the business, and the social environment are all especially suitable to what we are trying to accomplish. A low-cost, fast track operation in the oil and gas business.

As the above evidence shows, Trinidad is continuing its development of a competitive and efficient private sector that relies heavily on the United States as a market for its exports. A lot of progress has been made in that country. They have already made unilateral and bilateral commitments to liberalize trade policies and enhance the environment for foreign investment.

For instance, they have taken action beyond GATT in eliminating domestic subsidies and will under NAFTA maintain U.S. environmental health, safety, and workplace standards. Its government procurement provisions guarantee U.S. firms the ability to compete for government contracts to supply goods and services to Federal Government agencies. Tariffs on over two-thirds of the U.S. exports have been eliminated in the following sectors: computers, oil refining equipment, special industrial machinery, pharmaceuticals, telecommunications equipment, and photographic equipment.

They have already signed both a bilateral investment treaty and an agreement on intellectual property rights with the United States. In 1995, the Government of Trinidad and Tobago reduced the corporate tax rate from 45 percent to 38 percent.

We support the extension of NAFTA benefits to the Caribbean region, as well as early accession to NAFTA for Trinidad and Tobago. We believe that accomplishing these goals represents a firm step in the direction of Western Hemisphere economic integration. Because countries such as Trinidad have made substantial commitments on their own and with such positive results, we feel it is very important, and in the U.S. interest, to extend NAFTA-type parity to these countries.

Thank you.

Chairman CRANE. Thank you, Mr. Hoglund.

[The prepared statement follows:]

REMARKS OF FORREST E. HOGLUND
CHAIRMAN AND CEO OF ENRON OIL & GAS COMPANY
HOUSTON, TEXAS
BEFORE THE SUBCOMMITTEE ON TRADE
OF THE HOUSE COMMITTEE ON WAYS AND MEANS
FEBRUARY 10, 1995

My name is Forrest E. Hoglund and I am Chairman and CEO of Enron Oil & Gas Company. Enron Oil & Gas is one of the largest independent (non-integrated) oil and gas companies in the United States in terms of domestic proved reserves. The company's reserves base is 86 percent North American and 90 percent natural gas.

Oil and gas development and extraction has been underway in Trinidad by U.S. companies, including Enron, Amoco and Texaco, since about 1971. EOG is investing $250 million dollars over 5 years to develop gas fields and produce natural gas and condensates offshore Trinidad.

These wells are currently producing 150 MMCFD or 23 percent of Trinidad's natural gas demand. A favorable investment climate, good gas reserve potential, low finding costs and low operating costs are among the favorable conditions EOG finds in operating in Trinidad. Trinidad represents almost 20 percent of EOG's 1995 estimated gas production volumes.

Enron completed the development of the Kiskadee Gas Field within budget and ahead of a very aggressive schedule. Agreements were signed in November 1992 and first gas production was achieved less than one year later, a remarkable achievement.

Trinidad is in a strong position to attract additional investment and trade dollars. Trinidad will show for 1994, for the second consecutive year, a balance of payments surplus of about $150 million, which shows their economic policies are working. 1994 real GNP growth was at 4 percent, double their earlier expectations. In 1995, inflation is expected to be under 5 percent.

Their exchange rate, consequently, has held firm. Their natural gas reserves, at 10.6 trillion cubic feet, represents a 45 years reserves life index.

The U.S. currently imports 80 MBD of crude oil and petroleum products from Trinidad and Tobago valued at over $500 million dollars a year in 1994, or 1 percent of our nation's oil imports.

Trinidad is the world's second largest exporter of nitrogenous ammonia fertilizer, a natural gas by-product, (i.e. the Former Soviet Union is the largest). One-third of the United States 3 million tons of ammonia imports annually come from Trinidad, valued at $240 million dollars in 1994, according to the U.S. Department of Commerce. This equates to about 5 percent of U.S. ammonia fertilizer usage annually.

An LNG (or liquefied natural gas) export project is being planned for siting in Trinidad by the Government together with its partners, which include Amoco, at La Brea, on a new industrial site in southwest Trinidad. The end-use markets being considered for this LNG include Cabot LNG of Massachusetts and, Puerto Rico, where Enron Development Corporation is developing plans for an electric power plant project.

Among new U.S. companies to enter into business in Trinidad is Unocal, which has signed an agreement to explore for oil off the east coast, as part of a $411 million oil recovery program. Texaco (with U.K.'s British Gas) also aims to develop gas reserves to help supply the LNG export project. Other new entrants into Trinidad, in addition to EOG, are NUCOR, Chevron, Mobil, Exxon, Arcadian, Southern Electric and Farmland.

Enron Gas and Oil Trinidad, Limited reports that the political, business and social environment of Trinidad and Tobago is especially suitable for the low cost, fast track approach which is the hallmark of Enron's success.

ECONOMY, INVESTMENT AND TRADE

The gross domestic product (GDP) of Trinidad and Tobago is over $5 billion dollars annually. A top local government agenda item is to reduce the high 18.8 percent unemployment rate in the country, which has just over 1.2 million citizens. The U.S. is its largest investment partner, and through investment, free trade status can benefit the two countries--on both sides of business transactions--by creating valuable jobs in the energy

and trade sectors, and in related support service industries, like ports, shipping and trade finance. U.S. direct investments in the economy of Trinidad and Tobago have been averaging a half billion dollars a year since 1990, reports the U.S. Department of Commerce. The 1994 investment is estimated at $700 million dollars. With an expanded NAFTA trade agreement with Trinidad as a member, these investments can be expected to increase.

The State of Texas, where EOG is headquartered, and Florida are the two largest exporter states of goods to Trinidad and Tobago, which include machinery parts, steel pipes, computers and software, oil products and lube oils, rice, corn, wheat and soybeans. Texas and Florida export goods valued at $200 million and $80 million dollars a year, respectively, to customers in Trinidad and Tobago. Other U.S. businesses which have been active in Trinidad and Tobago include: Citibank, 3M Company of Minnesota, IBM, Johnson and Johnson and Hilton International.

BENEFITS OF FREE TRADE

Opportunities for growth and investment for companies here in the U.S. and in Trinidad and Tobago are increasing. The turnaround in the Trinidad oil and gas industry is underway. Trinidad presents very good expansion opportunities for U.S. firms interested in doing business in the Caribbean and in working with Trinidad as a nexus for trade with South America and the Pacific

Rim through the Panama Canal. Trinidad has gone beyond GATT in eliminating domestic subsidies.

Trinidad and Tobago will, under NAFTA, maintain U.S. environmental, health and safety and workplace standards. Its government procurement provisions guarantee U.S. firms the ability to compete for government contracts to supply goods and services to federal government agencies. Tariffs on over two thirds of U.S. exports are eliminated in these sectors: computers, oil refining equipment, special industrial machinery, pharmaceuticals, telecommunications equipment and photographic equipment. Trinidad has already signed both a Bilateral Investment Treaty and an Agreement on Intellectual Property Rights with the U.S. In 1995, the Government of Trinidad and Tobago reduced the corporate tax rate from 45 percent to 38 percent to improve the financial environment for foreign investors.

At Enron, we support the early accession to NAFTA for Trinidad and Tobago and see its accomplishment as a firm step in the direction of Western Hemisphere economic integration. We feel it is very important to let countries such as Trinidad and Tobago join in NAFTA, since they have met their requirements on their own and with such positive results.

Thank you.

Chairman CRANE. Dr. Bryan.

STATEMENT OF ANTHONY T. BRYAN, PH.D., DIRECTOR OF CARIBBEAN STUDIES PROGRAM, NORTH-SOUTH CENTER, THE UNIVERSITY OF MIAMI, CORAL GABLES, FLA.

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

I am pleased and honored at the invitation to appear before this subcommittee. I am a member of an academic research institution, namely, the North-South Center of the University of Miami, which has emphasized trade and the economic integration of the Americas in its research agenda since the announcement of the Enterprise for the Americas Initiative and the beginning of NAFTA negotiations in 1990.

The center's study, "Miami Report III," conducted during 1990 and 1991, and published early in 1992, indicated then the concern of CBI beneficiary countries as to the possibility of harm to them by NAFTA through investment diversion. Our study done at the center promotes the idea that the logical path toward hemispheric integration for the CBI-beneficiary countries is accession into NAFTA. The ideal legislation would offer trade benefits to protect these countries from a deterioration in their economic circumstances and offer a strong incentive to take the necessary measures for NAFTA integration as soon as is feasible.

I would like to avoid repetition of many of the points made today, but I want to place emphasis on several. First of all, the global emerging economic trends seem to have adverse implications for much of the Caribbean. Four of the Caribbean's largest countries have seen a tremendous increase in their poverty index. So in this very new economic environment, I think that U.S. exports to the Caribbean Basin and the merchandise trade that goes on between the two regions is extremely important.

Realistically, a lot of these jobs are attributable to joint production in the textile and apparel industry; but there are indications that the electronics assembly industry is also growing in the Caribbean region. The Caribbean Basin is still one of the few regions of the world in which the United States runs a trade surplus.

Second, NAFTA is only 1 year old, and there is as yet no massive quantitative evidence of the effect of NAFTA on the Caribbean Basin countries. But I think research coming out of the North-South Center and other agencies indicates that in a short time, without parity legislation, NAFTA will have a detrimental effect on the Caribbean Basin economies and that the statistical implications of that effect will soon be very obvious.

Third, I would like to stress that while absolute reciprocity may be the ultimate goal of hemispheric trade legislation, some small Caribbean countries simply cannot compete with other countries having more development structures and a range of available technologies. They cannot offer absolute reciprocity to industrialized countries, at least in the short run, and some compromise on the part of the developed trade partners may be appropriate.

Fourth, the recent decision to establish a free trade area of the Americas by 2005, strengthens the case for the provisions contained in H.R. 553. If tariff barriers continue to fall in the Western Hemisphere, the relative advantage of the Caribbean Basin Initia-

tive diminishes. But provided that the necessary transition mechanisms are in place, the accession of the CBI beneficiary countries to NAFTA at the earliest possible date would be accomplished smoothly.

There is a very strong rationale for Caribbean countries to enter NAFTA, either individually or through the Caribbean community, or other groupings. But interim arrangements are necessary for those countries unable to undertake even the present NAFTA discipline.

I think it is clear that as the estimates of the impact of NAFTA on Caribbean countries indicate, without parity, the agreement will have a strong impact on some of the countries with export concentrations on North America.

In summary, Mr. Chairman, there are reasons which I have listed in my statement as to why H.R. 553 is important, and the one I would simply like to stress in conclusion is that the legislation will encourage beneficiary countries to assume full obligations under the NAFTA discipline and prepare themselves for eventual accession into NAFTA.

In this regard, it is expected that there will be clear criteria for negotiating for NAFTA accession. I would reemphasize that some countries of the region are ready now for NAFTA accession, so that this diversity must be respected.

I congratulate the bill's sponsor, the chairman and the cosponsors, Representatives Clay Shaw, Sam Gibbons, and Charles Rangel for introducing this bill, and we look forward to its passage.

Thank you very much, Mr. Chairman.

Chairman CRANE. Thank you, Dr. Bryan.

[The prepared statement follows:]

TESTIMONY OF ANTHONY T. BRYAN
DIRECTOR OF THE CARIBBEAN STUDIES PROGRAM
NORTH SOUTH CENTER
UNIVERSITY OF MIAMI
CORAL GABLES, FLORIDA
FOR THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS

Mr. Chairman:

I am pleased and honored at the invitation to appear before the Subcommittee on Trade of the Committee on Ways and Means at the Hearing on H.R. 553, the "Caribbean Basin Trade Security Act." I come in my personal capacity to offer my support for this important piece of legislation.

I am currently the Director of the Caribbean Studies Program at the North South Center of the University of Miami. The North-South Center has emphasized trade and the economic integration of the Americas in its research agenda since the announcement of the Enterprise for the Americas Initiative and the beginning of NAFTA negotiations in 1990. The potential impact of NAFTA on the CBI countries was an item of early priority. The Center s study, Miami Report III, conducted during 1991 and published early in 1992, stated, as a key recommendation,

Trade preferences gained by Mexico in NAFTA not currently available in CBI should be extended unilaterally to CBI-beneficiary countries, but on a temporary basis for a defined period of time, to preserve CBI s benefits for the region but also to provide an incentive for CBI-beneficiary countries to collaborate in negotiating entry into NAFTA before or when these new benefits expire.

In subsequent years and particularly looking forward to the Summit of the Americas, the Center has participated in a number of trade-related studies and has published numerous policy-related books and reports on the subject. The concern of CBI-beneficiary countries as to the possibility of harm by NAFTA through investment diversion and trade diversion is consistent with the Center s studies. Similarly consistent is the view that the logical path toward Hemispheric integration for the CBI-beneficiary countries is accession into NAFTA. The ideal legislation would offer trade benefits to protect these countries from a deterioration in their economic circumstances and offer a strong incentive to take the necessary measures for NAFTA integration as soon as is feasible.

Background

The rapidly changing international environment presents uncertain territory for Caribbean countries. They are vulnerable economically, they no longer command geopolitical attention, and they must respond to increased competition in trade and investment as well as the demand for higher regional levels of human development. The implementation of the North American Free Trade Agreement (NAFTA) on January 1, 1994 is the nucleus of a free trade system that may eventually incorporate every nation in the Americas. Caribbean countries have to respond to the more dynamic hemispheric trade and business environment encouraged by the NAFTA and by the onset of a more competitive, bargaining-based approach to international economic relations. This prospect raises questions about the longevity and even relevance of non-reciprocal relationships of the type to which many Caribbean countries have become accustomed.

The CBI: Benefits to the USA and the Caribbean.

Since the global emerging economic trends may seem to have adverse implications for much of the Caribbean, the region's relationship with the U.S. in this new economic environment is important. US exports to the Caribbean Basin were $12.6 billion in 1993, an increase of 35% in the past five years. Using US

Department of Commerce estimates, these exports support over one quarter of a million jobs in the USA (252,000). Realistically, however, US jobs that depend on the Caribbean Basin are even higher because so many are attributable to the joint-production apparel assembly industry whereby garments cut in the US are exported to certain countries for sewing, and subsequent reimportation into the US. There are also indications that the electronics assembly industry is also growing in the Basin. The Caribbean Basin is still one of the few regions of the world in which the United States runs a trade surplus.

NAFTA's Impact on the Caribbean

In the short term it is the potential impact of NAFTA on all Caribbean economies which will be critical. Under the CBI, Caribbean Basin countries enjoy one-way preferential treatment for import access to the U.S. market. With the NAFTA, competition based upon market factors will weigh strongly in Mexico's favor. The major economic effects of the NAFTA on the Caribbean region are: trade and investment diversion, relocation of production capacity, and contraction of domestic economic activity.

Since NAFTA is only one year old, there is very little quantitative evidence of the effect of NAFTA on the Caribbean Basin countries. As a group, Caribbean economies appear to have performed no better or no worse than Latin America in the past year. There are as yet no statistics of significance to indicate general trade or investment diversion to Mexico. But I believe that in time, without parity legislation, NAFTA will have a detrimental effect on the Caribbean Basin economies, and that the statistical implications of that effect will be displayed in a few more years. The one area in which the trade figures already suggest a trend is in apparel. US apparel imports from the CBI in the first nine months of 1994 were only 10 percent greater that imports in the first nine months of 1993, whereas US apparel imports from Mexico over that period jumped by 45 percent.

All together, these NAFTA benefits will dramatically tilt the playing field in Mexico s favor. In other words, the Caribbean Basin find themselves with an overriding and immediate threat of trade and investment diversion due to NAFTA. NAFTA provides a reduced rate and generous quota for Mexican apparel made from Asian fabric, for which CBI countries have no preferential access. Furthermore, in critical competition in the assembly industry for 807A goods-garments assembled from US cut pieces of US origin fabric-Mexican exports will be entering duty free while CBI exports will still pay duty on their value added portion.

In sum, while absolute reciprocity may be the ultimate goal of hemispheric trade liberalization, some smaller Caribbean economies simply cannot compete with countries having more developed productive structures and a range of available technologies. They cannot offer absolute reciprocity to industrialized countries, at least in the short run, and some compromise on the part of the developed trade partners is essential.

The Caribbean Basin Trade Security Act

On January 19, 1995, Trade Subcommittee Chairman Philip Crane introduced the "Caribbean Basin Trade Security" Act extending NAFTA like treatment to all CBI products for six years. The Crane bill has the support of Rep. Sam Gibbons (D-FL), Rep. Charles Rangel (D-NY) and Rep. Clay Shaw (R-FL).

H.R. 553 declares that it is the policy of the United States to offer to the products of the Caribbean Basin beneficiary countries tariff and quota treatment equivalent to that accorded to products of NAFTA countries, and to seek the accession of these beneficiary countries to NAFTA at the earliest possible date, and in any case, no later than January 1, 2005.

Furthermore:

1. It covers the full spectrum of CBI products rather than just apparel.

2. It doesn't require reciprocity by the CBI in the areas of market access, intellectual property, and investment codes.

3. It allows for full parity in the textile and apparel sector.

4. It grants CBI countries NAFTA parity temporarily for six years instead of three years as stipulated in the "Interim Trade Program for the Caribbean Basin" (ITP) proposed in May 1994.

The recent decision to establish a Free Trade Area of the Americas (FTAA) by 2005 strengthens the case for the provisions contained in HR 553. As tariff barriers continue to fall in the Western Hemisphere, the relative advantage of the Caribbean Basin Initiative (CBI) diminishes. But provided that the necessary transition mechanisms are in place, the accession of the CBI beneficiary countries to NAFTA at the earliest possible date would be accomplished smoothly.

While there is a strong rationale for Caribbean countries to enter NAFTA, either individually or through the Caribbean Community (CARICOM) or other groupings, interim arrangements are necessary for those countries unable to undertake even the present NAFTA discipline. The static estimates of the impact of NAFTA on Caribbean countries indicates that without interim parity the agreement will have a strong impact on some of the countries with export concentration on North America.

Why HR 553 is important:

1. Most products from these countries already enter the US duty-free under the CBI and have very little adverse effect on US jobs and industry.

2. HR 553 covers the entire product spectrum of the CBI.

3. The legislation will encourage beneficiary countries to assume full obligations under the NAFTA discipline and prepare themselves for eventual accession to NAFTA.

4. Part of the preparation for entry into NAFTA is to offer reciprocity. Although HR 553 does not contain a reciprocity clause, the governments and private sectors in the Caribbean Basin would be strongly urged to prepare for reciprocity, and to solicit technical assistance in this regard during the six- year transition.

Mr. Chairman:

The arguments which I have tried to summarize are designed to urge this distinguished subcommittee to act favorably on HR 553. Through this legislation we can keep the CBI safe while the countries of the region move toward NAFTA accession and the FTAA. Without HR 553 the US might be turning its back on the aspirations of its closest friends and partners in its own neighborhood.

Chairman CRANE. Mr. Sandler.

STATEMENT OF GILBERT LEE SANDLER, MEMBER, EXECUTIVE COMMITTEE, GREATER MIAMI CHAMBER OF COMMERCE

Mr. SANDLER. Thank you, Mr. Chairman.

My name is Lee Sandler, I am an attorney from Miami, Fla. I serve on the executive committee of the Greater Miami Chamber of Commerce. The chamber is extremely grateful for the opportunity to express its strong support for H.R. 553. We are also grateful for the strong and continued support of the members of this subcommittee, and particularly of Chairman Crane, for the Miami Congressional Workshop on Hemispheric Affairs.

As the chairman knows, we will be holding our next workshop in April, and we look forward to having you and other Members of Congress present to look at issues such as this and the broader scope of issues which affect us in this hemisphere.

The day began with testimony from Florida's Senator Graham, and from south Florida's Congressman Deutsch. It is appropriate that the hearing end with the testimony of the Greater Miami Chamber of Commerce, an organization with 3,500 corporate constituents of those two elected representatives. We wish to emphasize four particular points to the subcommittee as it deliberates over this bill.

The first is that the Caribbean Basin Initiative may be a one-way program on paper, but it has proved to be a two-way program in practice.

We know for certain, in south Florida, that we are direct beneficiaries of the Caribbean Basin Initiative and we would like to see those benefits continue.

The second is that those benefits are very tangible and they are very desirable. We have seen CBI strengthen and stabilize the economies in our region. Make no mistake about it, the Caribbean Basin is our region. We are a part of it.

We know that our exports to the Caribbean Basin have grown as a result of the CBI. We know that there has been a lowering or deterrence of illegal traffic in narcotics as a result of CBI, and we know there has been a deterrence to illegal immigration as a result of CBI.

These are dramatic realities for us in south Florida. The Nation thinks of us as a community of Cuban exiles, but in point of fact, the largest number of foreign-born students in our public school system today are from Nicaragua, and that is because of a previous economic and political failure in our hemisphere. It is the purpose of CBI to give us the opportunity to make certain that we have the stability in our region so that we do not have those continuing problems. It is a daily reality for us. As I say, we are the beneficiaries of CBI.

Our third point is that NAFTA clearly has remodeled the architecture upon which the CBI benefits are built.

Fourth, last, and unfortunately, H.R. 553 is a necessary measure to rebuild the structure that will allow us to continue to move forward positively with our CBI partners.

We thank you very much for this opportunity to testify. We thank you for the good work that went into crafting this bill, and we look forward to moving it forward and to it being signed into law.

[The prepared statement follows:]

STATEMENT OF GILBERT LEE SANDLER, MEMBER EXECUTIVE COMMITTEE, GREATER MIAMI CHAMBER OF COMMERCE

The Greater Miami Chamber of Commerce ("GMCC") strongly supports H.R. 553, the "Caribbean Basin Trade Security Act," introduced on January 18, 1995 by Rep. Philip M. Crane (R-IL). H.R. 553 calls for Caribbean Basin Initiative-participating countries to receive NAFTA-like benefits, or "parity," for as long as six years on a range of products that are currently ineligible for CBI benefits. These products include textiles and wearing apparel, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, canned tuna, petroleum and petroleum products, and certain watches. The GMCC urges the passage of H.R. 553 in order to ensure the continued flow of trade and investment between South Florida and Caribbean Basin nations, and to preserve the orderly flow of immigration from those nations to the United States.

Since 1907, the Greater Miami Chamber of Commerce has represented civic and business leaders on issues of import to the South Florida area. As a non-profit organization funded exclusively by its membership, the GMCC provides leadership to, and fosters the betterment of, the entire Greater Miami community. Today, the GMCC counts more than 3,500 businesses as members, reflecting at its core the ethnic diversity of Greater Miami and the preponderance of small and mid-sized companies that make up South Florida.

I. FAILURE TO PASS H.R. 553 WOULD CAUSE SUBSTANTIAL HARM TO THE ECONOMY OF SOUTH FLORIDA

The GMCC strongly supports the passage of H.R. 553. Greater Miami's reputation as the center of trade for the Americas is due in no small part to the strong financial and commercial ties it has developed with Caribbean and Central American nations. Although the advent of the Caribbean Basin Economic Recovery Act of 1983 ("CBI") and the Special Access Program were instrumental in solidifying these ties, Greater Miami's relationship with these countries began long before either of these programs were ever contemplated. Trade in goods, trade in services, and foreign investment are the pillars of Miami's international business, and they are nowhere more evident than in Miami's relationships with the countries of Central America and the Caribbean. The GMCC and its members have played a strong role in developing these ties through trade missions, specific Chamber functions and activities, and individual committees, primarily organized around the idea that forging links between South Florida businesses and Caribbean and Central American nations is in the best interest of our economy.

Recent statistics bear out the success of these endeavors. Based on 1992 figures, total U.S. trade with the Caribbean equaled $11.6 billion, $5.5 billion of which were imports and $6.1 billion of which were exports. Of this trade, approximately $1.3 billion in imports and $2.9 billion in exports flowed through Miami's ports. In other words, over 36% of U.S.-Caribbean trade was conducted through the Greater Miami area. The Caribbean accounted for 16% of Miami's total trade in 1992, and represented Miami's third largest trading partner.

The numbers are even higher when the United States's trade with Central American nations is analyzed. Of total U.S. trade of $9.5 billion (comprised of $4 billion in imports and $5.5 billion in exports), approximately $2.8 billion in exports and $2.0 billion in imports was shipped through the airport and seaport in Miami. That translates into almost 51% of the trade that the United States conducted with Central American nations in 1992. In total, Central America was Miami's second largest trading partner in 1992, representing 17% of the trade that flowed through Miami during that year.

Those numbers continued to grow in 1993. Based on available figures, Miami's share of two-way trade with the Caribbean in calendar year 1993 represented 50% of trade by air and 41% of trade by vessel. Its share of two-way trade with Central America for that same time period was even higher, consisting of 68% of the trade by air and 43% of the trade by vessel. These are not static numbers, either, as the overall volume of trade with these regions increased by almost 13% with Central America, and over 5% with the Caribbean.

As should be apparent, whether with the Caribbean or with Central America, Greater Miami serves as a vital link for trade with Caribbean Basin nations. And, that trade is growing at a phenomenal rate. As trade has continued to blossom, more and more businesses have established operations in Greater Miami, leading to the creation (and preservation) of more and more jobs for South Florida's economy.

The passage of the North American Free Trade Agreement (NAFTA), however, threatens to have a negative impact on Miami-CBI trade. Already, and as discussed below in Part III to this submission, the impact of NAFTA is being seen in the changing pattern of U.S. trade. Businesses that once would have considered the Caribbean or Central America for their operations are now looking to Mexico because of the cost savings inherent in NAFTA. The advances that have been attained by Caribbean and Central American nations through more than ten years of U.S. trade and investment are under very real threat. The negative ramifications of these developments for Greater Miami should be apparent. A drop in trade and investment in the Caribbean and Central America would undoubtedly lead to a drop in the flow of trade through Greater Miami. That, in turn, would cause a concomitant loss in jobs for the South Florida economy, and the nation at large. Clearly, such an outcome is not the result intended by the Administration and by the Congress when they approved NAFTA.

II. FAILURE TO SUPPORT THE CARIBBEAN BASIN COUNTRIES THROUGH INVESTMENT AND TRADE INCENTIVE PROGRAMS SERVES AS A DISINCENTIVE TO LEGAL AVENUES OF IMMIGRATION

Besides the positive impact CBI-directed trade and investment incentives have had on the South Florida economy, those incentives have also played a positive role in tempering the flow of immigration into the Greater Miami area. Miami's status as a haven for immigrants has long been symbolized by the Cuban refugee. It is not the Cubans, however, who represent the largest minority group in Greater Miami's public elementary and secondary schools. Rather, of the 24% of K-12 students in greater Miami's public schools born outside of the United States, the greatest percentage of those students are Nicaraguans, whose citizens arrived in Greater Miami by the thousands during the early and mid-80's in an attempt to flee the turmoil in their own country. The Nicaraguans have been followed (or preceded) by immigrants from a wide range of countries, including Haiti, Cuba, the Dominican Republic, Honduras, and Panama. The Dade County school board estimates that, over the past three years, an average of 1,190 new foreign-born students enter the school system *monthly*. For each of these students, the school district incurs additional expenses of approximately $1,368.00. And, those numbers reflect simply the "normal" flow of immigration into Greater Miami -- any exacerbation of the present situation would only have a larger adverse impact on the South Florida area.

An excellent illustration of the negative effect that a failure to rectify the inequities created by the North American Free Trade Agreement is likely have on the South Florida economy is provided by the recent Haitian crisis. As the situation continued to deteriorate in Haiti, more and more Haitians took to boats or employed other means in an attempt to reach the shores of South Florida. Many thousands made it to Greater Miami where they remained. The absorption of these individuals placed an inordinate strain on Greater Miami's infrastructure. Already overcrowded and understaffed schools became even more overwhelmed, limited affordable housing became even more sparse, hospitals and clinics found themselves confronted with ever greater numbers of sick and uninsured patients, and the police and other enforcement agencies were faced with an increasing incidence of crime.

History shows us that, as opportunity grows more and more scarce in their own countries, the citizens of Caribbean and Central American countries have become increasingly likely to migrate to the United States. Greater Miami's geographical location, coupled with its many established minority communities, make it unique among all of the possible U.S. destinations of these immigrants. If parity is defeated, it is Greater Miami which is likely to bear the disproportionate economic and social burden of absorbing and caring for these individuals.

III. NAFTA CREATES ECONOMIC DISINCENTIVES TO INVESTING IN, AND TRADING WITH, CARIBBEAN AND CENTRAL AMERICAN COUNTRIES

As noted above, although the North American Free Trade Agreement is only a little more than one year old, its effect on U.S. trading patterns has already begun to take shape. NAFTA's impact on U.S. trade is exemplified by the most recent trade statistics on trade in wearing apparel. Based on trade statistics through November of 1994, imports from Mexico increased at a phenomenal 49% rate, while imports increased by only 15% from the CBI region. These data show a drastic change from the trend over the past six years of CBI and Mexican apparel import growth. Since In 1988, apparel imports from the CBI have increased at a rate greater than Mexico. Thus, it is clear that the elimination of import quotas and the phase-out of import tariffs under the NAFTA have caused a reduction in the growth of investment in and trade with CBI countries. If apparel imports from the CBI are not placed on an equal footing with those of Mexico, there will be a continued shift of production out of the region and accompanying disinvestment. This will have negative economic repercussions on Miami-CBI trade and on Greater Miami's economy as a whole.

IV. CONCLUSION

H.R. 553 will allow apparel producers in the CBI region to compete with Mexico which has a significant cost advantage because of NAFTA. It ensures that the trading relationship between Greater Miami and the CBI is not further eroded by the tariff reductions and quota elimination of the NAFTA. H.R. 553 fosters production in the CBI region, which contributes to employment in Greater Miami in cutting, marketing, transportation, shipping, handling and other tasks.

H.R. 553 will serve as a strong economic catalyst for the CBI region, fostering foreign investment and economic development. It will enhance Miami-CBI trade which will have a great positive impact on the economy of South Florida. It will create political stability in the CBI and discourage excessive migration to Greater Miami. The Greater Miami Chamber of Commerce strongly supports H.R. 553 and urges you to approve the legislation as quickly as possible.

Chairman CRANE. Thank you very much, Mr. Sandler, and I want to thank all of you folks and express my appreciation for your endurance, because it has been a long day with the protracted extension of our hearing owing to activities on the floor. But I very much relish your testimony and I look forward to seeing all but Mr. Hoglund, I guess, down in Miami for your April conference. That is contingent upon the activities of our committee, though, because our chairman says we may be back working during the recess.

So, with that, I salute you all, I thank you all, and this hearing is adjourned.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

[Submissions for the record follow:]

STATEMENT OF

THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO
JACK SHEINKMAN, PRESIDENT

IN OPPOSITION TO

H.R. 553, THE CARIBBEAN BASIN TRADE SECURITY ACT

TO CHAIRMAN CRANE AND MEMBERS OF
THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

FEBRUARY 24, 1995

Chairman Crane and Members of the Subcommittee:

Our union has always been an advocate of development, and not a spokesman for "protectionism." We have a long tradition of supporting workers in third world countries to better their living standards and encouraging policies that assist in that effort. The problem with the current proposal for CBI parity is that it fails on all the tests of economic improvement: it contributes to undermining the US economy, it does not promote economic development in the CBI countries, and it drags down living standards in the entire Hemisphere.

ACTWU believes this legislation is bad policy for a host of reasons which will be summarized in the following points:

1. **The Case That CBI Countries Will Suffer Serious Disinvestment Due to NAFTA Has Not Been Made.** This conclusion is largely supported by a study prepared by the US International Trade Commission (USITC) in July, 1992 on the potential effects of a North American Free Trade Agreement on apparel investment in CBERA countries (USITC Publication 2541, July 1992). Among other things, the report found that low wages were a critical element in investment decisions and the Caribbean would continue to be competitive in this area even after NAFTA.

> "Labor costs ranging between 58 cents and $1.10 per hour for an apparel assembly worker in CBERA countries, are sufficiently low (particularly in relation to US wages) **to encourage further growth** [emphasis added] in the region's apparel industry."

Many CBI countries have wages and labor standards that are substantially below Mexico's even after the recent devaluation of the peso. In fact, the labor laws on the books in Mexico are relatively strong and there is an established trade union movement in Mexico. Thus there is an institutional mechanism to give workers a voice in distribution of the added wealth produced by enhanced trade. With rare exception, the same can not be said of the majority of CBI countries that would receive these trade concessions. Almost all production takes place in Free Trade Zones where domestic laws on worker rights and standards are either inapplicable or unenforceable.

The Dominican Republic alone produces 50% more apparel for export to the US than Mexico right now.

The entire CBI apparel exports are 4 times greater than Mexico's. Why? **Labor costs,** as the ITC clearly identified. Duty levels are almost irrelevant, except for the big retailers and multinationals who hunger to pocket this extra money.

TABLE 1

ADJUSTED HOURLY WAGE OF CBI APPAREL OPERATORS,
AS A PERCENTAGE OF US WAGE

Country	Hourly Wage As Percentage of US
US	100%
Dominican Republic	8% to 10%
Guatemala	10% to 12%
Honduras	12% to 14%
Jamaica	8% to 10%
El Salvador	8% to 10%

Source: Based on Bobbin, November 1993. Wages include fringe benefits and social charges.

Expansion of CBI apparel production is still skyrocketing despite NAFTA, and our economy doesn't need further encouragement of American companies to close here and open there.

2. **It Will Increase Job Losses and Reduce Living Standards in the US.** There still are 1.7 million people making apparel and textile products in the US -- more than in the auto, steel, and rubber industries combined. And it is the 600 thousand Hispanic Americans and Black Americans who will be the primary losers of these jobs as companies relocate in response to the perverse incentives of this NAFTA parity proposal. It will certainly undermine the apparel industry in Puerto Rico, where apparel accounts for 20 percent of all manufacturing jobs. The only true winners will be the big retailers like the Wal-Marts and K-Marts, not US consumers or workers. It contributes to a race to the **lowest** common denominator of living standards, not a lifting of standards everywhere. Just as increasing supply reduces consumer prices in classical theory, increasing the supply of labor by making CBI and American workers compete directly with each other has to reduce the "price" of workers -- their wages and conditions of work. Consumer prices may decline, but US workers wages will decline even more!

The bill's premise is "to avoid the potential diversion of investment from beneficiary countries under the program to Mexico as a result of the North American Free Trade Agreement." The irony of this legislation is not lost on thousands of textile, apparel, footwear and leather products workers who have lost their jobs to Caribbean and Mexican imports of these products. They are wondering why the Subcommittee is not more concerned about the diversion of investment from the United States to the Caribbean and Mexico that has occurred and is continuing to occur as a result of the current CBI program, "807," and the potential of NAFTA. They want to know why it is that the Subcommittee is not considering legislation that minimizes, not maximizes, the transference of jobs of thousands of American workers to the Caribbean and Mexico and why they have been all but forgotten in this debate.

ACTWU Statement
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3. **It Will Perpetuate the Underdevelopment of CBI Countries** since CBI is already a bad development policy for the region's economies. Jobs in export-oriented manufacturing have been created in the area due to CBI, but job losses have also occurred in the agricultural, mining and domestic-oriented manufacturing sectors of Caribbean and Central American countries under CBI. Job losses in these traditional sectors have far outweighed job gains. CBI displaced workers have not been re-hired in CBI-related jobs. And CBI-related jobs pay below poverty level wages, thus exacerbating income inequality, social instability and migration from the Caribbean Basin region.

4. **It Will Further Weaken Workers and Human Rights and Undermines Labor Standards** as repressive and inhuman conditions characteristic of free trade zones in countries like Guatemala, El Salvador, Honduras and Dominican Republic are not addressed. The best national laws are deliberately violated or ignored in the Foreign Trade Zones (FTZs).

For example, the Government of El Salvador recently drafted a new labor code to maintain its GSP privileges. But when the 900 workers at Mandarin International informed management last month that a legal union representing the workers had been formed, including legal recognition by the Ministry of Labor, the company locked out all the workers saying it would never accept a union. The workers still don't have their jobs as of today, despite their compliance with Salvadoran labor law.

In Honduras, the story is essentially the same at the King Star Garment Co. There in January, the union officers and active union members were all fired, despite their union being completely legal under recognition by the Honduras Ministry of Labor and a written agreement by the company signed last year that it would abide by workers desire to be represented by a union.

We also know that laws against child labor are never enforced in many CBI countries. In Honduras, El Salvador and Guatemala children 15 years old and younger make up 13 to 15 percent of the work force in the apparel industries. We have the testimony of hundreds of women reporting they are forced to work long hours of overtime above the normal 44 hour week, that they are literally physically abused (slapped, punched, kicked, etc.) or constantly sexually propositioned to keep their jobs. Health care, even legally mandated benefits, are frequently ignored.

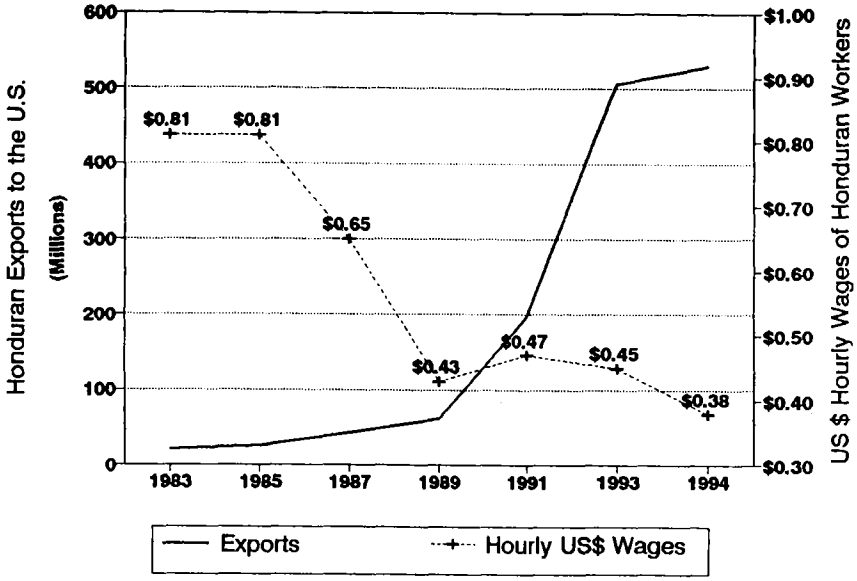
Consequently, the countries in the Caribbean that have relatively high wages, strong effective unions, and political democracy will lose out to those countries which are weakest on these measures of social and political development.

5. **It will increase migration** from the Caribbean Basin countries to the US as working conditions in those countries deteriorate to the lowest common denominator. For instance, between 1983 and 1991 as Dominican Republic exports from FTZs increased by 470 percent, real minimum wages **declined** by 26 percent and immigration to the United States **increased** by 88 percent.

The evidence of failed benefits of an export-only oriented trade program to developing countries is most clear in the following comparison of wages and maquiladora exports in Honduras over the last decade:

ACTWU Statement
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As Honduran Maquiladora Exports Skyrocket the Dollar Wages Paid by U.S. Companies Decline by 53%



Year	U.S. Maquiladora Imports from Honduras	Hourly Minimum Wage (Lempiras)	Exchange Rate (Lempiras/US$)	Hourly Minimum Wage (US$)
1983	$ 20,400,000	1.62	2/$1	$0.81
1984	$ 22,200,000	1.62	2/$1	$0.81
1985	$ 25,800,000	1.62	2/$1	$0.81
1986	$ 31,900,000	1.62	2/$1	$0.81
1987	$ 41,900,000	1.62	2.48/$1	$0.65
1988	$ 62,000,000	1.62	3.10/$1	$0.52
1989	$ 86,700,000	1.62	3.73/$1	$0.43
1990	$112,600,000	2.15	5.10/$1	$0.42
1991	$196,600,000	2.66	5.63/$1	$0.47
1992	$367,131,000	3.02	5.75/$1	$0.53
1993	$506,000,000	3.29	7.26/$1	$0.45
YTD 1994	$507,830,000*	3.29	8.69/$1	$0.38

* Sources: Import figures from U.S. Commerce Department. Year-to-date 1994 imports are January-May figures annualized, but not seasonally adjusted. Minimum wage and foreign exchange rates were obtained from various business sources. YTD 1994 foreign exchange rates are as of 7/12/94.

Certainly the decade of CBI benefits in non-apparel industries has not demonstrated any takeoff in CBI economic development nor lessened migration flow to our shores. In fact this legislation creates the same hyperinflated investment incentives that in good measure led to the Mexican currency collapse.

6. **It Will Reduce Tax Revenues** for the US treasury, which will further increase the federal budget deficit. We calculate the amount of tax revenue loss will be nearly $1.5 billion for the next 5 years, not the $800 million previously predicted. And this does not count the huge federal revenue loss from import-displaced Americans, who will far outnumber the few additional workers employed by increased exports.

The supposed $13 billion of US exports to CBI countries is a statistical fraud. Probably two thirds of our "exports" are not designed for sale in these countries, but are simply component parts being processed for return to our country. This is not trade.

This legislation is a perversion of free trade, not an enhancement of it. It is a one-way free trade road, where everything can come here, but all road blocks on products going there remain intact.

Just because NAFTA parity benefits are extended for "only" six years -- at which time the CBI countries would either accede to NAFTA, or sign their own free-trade accord with the US, or lose benefits -- no one should believe for a minute that the benefits would be revoked under any circumstances. Once extended, the congressional sponsors of this legislation would never permit the benefits to be withdrawn. The legislation is just a not-so-clever ruse to provide trade preferences or "foreign aid" to the Caribbean at the expense of American workers and American standards of living.

The approach taken by HR 553 is capitulation before negotiation. Benefits and obligations go together. Granting the former first creates no incentive for acceptance of the latter. What HR 553 will produce is a managed trade agreement benefiting only corporate managers and shareholders. What should really be done by Congress is to mandate the President to renegotiate NAFTA, fix its neglect of currency policy, labor rights standards and environmental consequences.

At least in the 70s there was a tacit social contract between Government and our citizenry. As trade was to be made more open, the people who would be displaced would be given income support and educational opportunities to allow them to move to new occupations or opportunities. Today this Congress is tearing up that contract and throwing the dispossessed unto the scrap heap of permanent joblessness, poverty and long term misery.

We therefore urge this Subcommittee and Congress to reject this legislation.

*** *** ***

[BY PERMISSION OF THE CHAIRMAN]

7th February, 1995

Hon. William Coyne
2455 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Congressman,

The Ambassadors of the Caribbean and Central American countries wish to express our strong support for the Caribbean Basin Trade Security Act (HR553) introduced by Congressmen Crane, Shaw, Rangel and Gibbons.

The Act will grant CBI countries parity with NAFTA for those products which are excluded from the CBI duty-free preferences. It also allows CBI countries to either accede to the NAFTA or to negotiate bilateral Free Trade Agreements at the end of the six-year transition period.

We believe this Act will address the problems of diversion of trade and investment faced by CBI countries since the implementation of the NAFTA. We sincerely hope that the Congress will support this initiative. We believe that it is in keeping with the US commitment to provide NAFTA Parity for CBI countries.

We take this opportunity to renew to you the assurances of our highest consideration.

Yours sincerely,

Patrick A. Lewis
Ambassador of Antigua & Barbuda

Timothy Donaldson
Ambassador of The
Commonwealth of the Bahamas

Courtney Blackman
Ambassador of Barbados

Dean Lindo
Ambassador of Belize

Sonia Picado
Ambassador of Costa Rica

Jose del Carmen Ariza
Ambassador of Dominican Republic

Ana Cristina Sol
Ambassador of El Salvador

Denneth Modeste
Ambassador of Grenada

Edmund Mullet
Ambassador of Guatemala

Mohammed Ali-Odeen Ishmael
Ambassador of Guyana

Jean Casimir
Ambassador of Haiti

Roberto Flores Bermudez
Ambassador of Honduras

Richard L. Bernal
Ambassador of Jamaica

Roberto Mayorga-Cortes
Ambassador of Nicaragua

Ricardo Alberto Arias
Ambassador of Panama

Mr. Irvin Sweeney
Chargé d'affaires ad interim
Embassy of St. Kitts and Nevis

Joseph Edmunds
Ambassador of St. Lucia

Kingsley C. A. Layne
Ambassador of St. Vincent and
the Grenadines

Corinne McKnight
Ambassador of Trinidad and Tobago

Statement of the American Chamber of Commerce of the Dominican Republic Favoring Passage of the Caribbean Basin Trade Security Act (H.R. 553)

Introduction

The American Chamber of Commerce of the Dominican Republic wishes to express its full support for the proposed "Caribbean Basin Trade Security Act of 1995" (H.R. 553), introduced by Representative Phil Crane (R-IL), Chairman of the Trade Subcommittee of the House Ways and Means Committee, and cosponsored by Representative Sam Gibbons (D-FL) and Representative Charles Rangel (D-NY).

This American Chamber, representing over 3,400 business firms, large and small, is committed to the promotion of trade and investment between the Dominican Republic and the United States of America in order to improve the standard of living of their peoples.

As a member of the Association of American Chambers of Commerce in Latin America (AACCLA), we fully endorse the statement by Mr. David E. Ivy, President of AACCLA, before this subcommittee on February 9, 1995. The position stated by AACCLA on this legislation very clearly reflects the importance which the Caribbean Basin Countries give to sustained economic development and political stability in the region.

The Impact of the Industrial Free Zones on the Economic Development of the Dominican Republic

The adoption of H.R. 553 is essential for the continued economic development of the Dominican Republic consistent with the pro-free trade declarations made at the Summit of the Americas. The United States is the principal trading partner of the Dominican Republic, with bilateral trade of more than $5 billion in 1994. This volume of commerce makes the Dominican Republic the seventh largest importer of U.S. goods within Latin America, and 35th largest consumer of American products in the world.

The close trading relationship between the U.S. and the Dominican Republic was strengthened with the enactment of the Caribbean Basin Initiative in 1983, and given permanent status in 1990. This program, which facilitates trade between the two countries, has created a significant number of jobs in both nations over the past 11 years. However, passage of the North American Free Trade Agreement has, unintentionally, made taken away some of the benefits of CBI program granted firms in the region.

Now, it is crucial that this Congress approve H.R. 553 in a timely manner. By doing so, the United States can stem the loss of jobs in the Dominican Republic that has resulted from firms either moving to Mexico or cancelling contracts with Dominican factories.

It is calculated that for every five jobs created in the Dominican Republic's free trade zones, 1 job is created in the United States. Should companies continue to divest from the zones and grant contracts to competitors in Mexico, this figure will be reduced in both countries.

The government of the Dominican Republic is working to adopt new and more liberal foreign investment legislation in order to attract and facilitate foreign direct investment. The

American Chamber of Commerce is confident that such measures, if constructed correctly, will create a more favorable investment environment for American firms. Without speedy passage of H.R. 553, market-oriented economic liberalization policies now under review by the government will do little to increase the strong ties between the U.S. and the Dominican Republic A burgeoning export market for U.S. firms will be lost, as will investment opportunities and the job creation effect trade has on all nations opening their economies.

Finally, it is important to note the social and political stability that job creation in the free trade zones has fostered. Thousands of young and eager workers owe their jobs to the Caribbean Basin Initiative. Without those employment opportunities, the Dominican Republic runs the risk of suffering social unrest which would, in turn, pose a serious challenge to the country's nascent democratic institutions.

The American Chamber of Commerce in the Dominican Republic urges the U.S. Congress to approve H.R. 553, the Caribbean Basin Trade Security Act.



AMERICAN CHAMBER OF COMMERCE OF TRINIDAD AND TOBAGO

Hilton International - Upper Arcade, Lady Young Road, Port-of-Spain,
Trinidad & Tobago, W.I. Fax: 627-7405
Telephone: 627-8570, 624-3211 (Ext. 6081).

STATEMENT OF
CLYDE ALLEYNE
PRESIDENT
AMERICAN CHAMBER OF COMMERCE OF TRINIDAD AND TOBAGO
FAVORING PASSAGE OF
THE CARIBBEAN BASIN TRADE SECURITY ACT
FEBRUARY 22ND, 1995

The American Chamber of Commerce of Trinidad and Tobago (AmCham T & T)strongly supports the Caribbean Basin Trade Security Act (HR 553) as proposed by Trade Subcommittee Chairman Phil Crane and cosponsored by ranking Ways and Means Committee member Sam Gibbons and Congressman Clay Shaw and Charles Rangel.

AmCham T & T represents virtually 100% of the American investment in Trinidad and Tobago as well as a large percentage of the Trinidadian business community. AmCham T & T is therefore in the unique position of being able to reflect the interests of both US and Trinidadian business operating here.

The chief beneficiary in the US-Caribbean Basin trading relationship is the US which exports over US$5 billion annually to the region. Trinidad and Tobago alone imports over half a billion dollars worth of goods and services from the US which is by far its largest trading partner. The states of Florida and Texas each export US$100million in goods and services to Trinidad and Tobago per year.

AmCham Trinidad and Tobago is particularly pleased to note that petroleum exports have been specifically identified by this bill for special treatment. This will be of great benefit to Trinidad and Tobago whose major export is petroleum and petroleum-related products The major U.S. investments in Trinidad and Tobago are in the petroleum and petrochemical sectors.

The Government of Trinidad and Tobago has adopted an agressive program to liberalise the economy and has taken some political risk in doing so. It is this new liberalised environment which makes Trinidad and Tobago such an attractive market for US companies to invest. New investment in Trinidad and Tobago has come from Enron Oil and Gas, NUCOR, Unocal, Southern Electric, Exxon, Arcadian, Mobil, Farmland and

Chevron. Some other US companies operating in Trinidad and Tobago are Citibank, Amoco, Texaco, 3M of Minnesota, IBM and Johnson and Johnson.

US investment has grown from US$101 million in 1992 to US$643 million in 1994 and is estimated, according to U.S. company committments, to reach US$1 billion in 1995. (Figures from U.S. Embassy, Port of Spain). This expansion in cross-border investment has been facilitated by the policies of economic liberalisation and open economy practices which the T & T government has rigorously implemented over the last three years. AmCham T & T strongly supports the Crane bill which will reduce investment diversion to Mexico & Canada where exports enjoy superior access to the US over products from the Caribbean.

In summary, AmCham T & T, being in the unique position of reflecting the views of both American and Trinidadian interests, strongly supports HR 553 since it will:

1. - expand the export and investment opportunities for the United States.
2. - be of great benefit to Caribbean basin countries in that it will support the continued programs of economic liberalisation taking place across the region as well as the political stability and democratic rule.
3. - provide the framework to strengthen and expand trade and job opportunites in both countries.
4. - reduce the possibility of investment diversion away from Caribbean countries such as Trinidad and Tobago.

**COMMENTS OF AMERICAN TOURISTER, INC.
TO THE SUBCOMMITTEE ON TRADE
ON H.R. 553**

These comments are submitted on behalf of American Tourister, Inc., of Warren, Rhode Island and Jacksonville, Florida, in support of H.R. 553, the "Caribbean Basin Trade Security Act."

Currently NAFTA provides duty-free treatment for textile luggage assembled in Mexico which incorporates wholly U.S.-formed fabric, however, the same product is subject to a substantial tariff on importation from CBI countries, even if U.S. fabric is utilized.

American Tourister is a leading U.S. manufacturer and importer of luggage, with headquarters at 91 Main Street, Warren, Rhode Island. American Tourister has captive suppliers in the Dominican Republic, where it manufactures luggage from raw materials sourced from both the United States and the Far East. Accordingly, the company has an interest in H.R. 553 and is supportive of the bill.

In late 1989 American Tourister started shifting from buying soft luggage in the Far East, and started sourcing soft luggage in the Dominican Republic, using raw materials sourced both in the United States and the Far East. For this the company set up a 165,550 square foot facility in Jacksonville, Florida to cut the fabric used in the Caribbean assembly operations and then to distribute the finished luggage.

Over 80 percent of textile soft-side luggage sold in the United States is imported predominantly from Pacific Rim countries, principally from Taiwan, Korea, Thailand, and China. Therefore, to the extent textile luggage is produced in Caribbean countries utilizing U.S. origin materials, only Far Eastern suppliers are affected. The only domestic U.S. production of textile luggage is high-end, low volume product which is not competitive with imported soft-sided luggage. American Tourister's production in the Dominican Republic has shifted some of the U.S. supply from the Far East to North America -- a specific goal of the Caribbean Basin Economic Recovery Act.

The CBI-NAFTA parity bill is intended to provide duty-free treatment (in the same manner as NAFTA) for products assembled in CBI-eligible countries utilizing U.S.-origin fabric and qualifying for tariff treatment under Heading 9802 of the HTSUS. Since American Tourister is the sole purchaser from the captive suppliers in the Caribbean, it is in a position to stipulate that these producers use only U.S. fabric in order to take advantage of any duty benefits offered by the CBI-NAFTA parity bill. Therefore, not only would the bill allow continued benefits to Caribbean development, but it would also expand greatly the market for U.S.-origin textile material.

The location of American Tourister's softside luggage operations in the Dominican Republic and Florida has created wide-ranging benefits in both areas. In the Dominican Republic, the company is responsible for about 2,000 jobs. These jobs had previously been in the Far East. This obviously contributes in a very substantial way towards the goal of the Caribbean Basin Initiative of promoting economic growth and stability in the Caribbean region. The Jacksonville, Florida facility, which opened in late 1991 to support the Dominican operations, directly provides over 200 jobs, and also supports independent service operations, such as transportation companies.

Providing duty-free treatment for textile luggage assembled in CBI beneficiary countries from fabrics wholly formed and cut in the United States would benefit rather than harm U.S. interests for several reasons. It would support the expansion of the American Tourister facility in Florida and potential job increases. It would not affect U.S. manufacturers since there is no domestic production of textile luggage in the same market category as that imported from CBI countries. It would discourage the diversion of this activity from this hemisphere to the Far East; and it would expand the market for U.S.-origin textile material.

STATEMENT OF THE

AMERICAN YARN SPINNERS ASSOCIATION

TO THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ON H.R. 553

"THE CARIBBEAN BASIN TRADE SECURITY ACT"

This statement is being submitted on behalf of the American Yarn Spinners Association, (AYSA), which is the national trade association of the sales yarn sector of the textile industry. The association's member firms employ more than 80,000 Americans in 350 manufacturing facilities in 12 states, producing yarns of natural and manmade fibers for the apparel, homefurnishings, industrial, and craft markets. Bureau of Census reports show that 42.5 percent of total U.S. yarn production in 1993 was produced by the sales yarn sector for conversion by other sectors of the textile and apparel industry into finished products.

AYSA was the first textile organization to officially announce support for the North American Free Trade Agreement (NAFTA). That support was given on the basis that it was the first trade agreement involving textiles and apparel that truly provided reciprocal market access on a basis that permits U.S. yarn producers to share equitably in the greater NAFTA market. It was our hope that the Caribbean Basin Trade Security Act would provide this same reciprocity and that we would be in a position to support H.R. 553. Unfortunately, this is not the case for the reasons outlined in the following paragraphs.

Findings and Policy

H.R. 553 appears to be based on the premise that unless CBI countries receive NAFTA equivalent benefits, there will be a diversion of investment to Mexico. Before addressing this issue, one should first consider why investment in textiles and apparel located in the CBI in the first place. We submit that the primary motivation was directly related to the quota system under the Mulfi-Fiber Arrangement. The proliferation of Free Trade Zones and low wages in CBI countries simply provided manufacturers and opportunity to take advantage of the move liberal quota treatment accorded this area.

In our view, H.R. 553 will cause some dislocation in the CBI, but Mexico is unlikely to be the beneficiary. The fact is that some CBI countries offer advantages over others, including size of the labor force, infrastructure, energy costs etc. It is reasonable, therefore, to assume that with the elimination of textile and apparel quotas from all sources, investment will no longer be motivated by quota, but by real economic and structural considerations. This, rather than parity, will likely determine investment decisions in the future.

We are in agreement that the goal of H.R. 553 should be to achieve accession of the CBI countries in NAFTA at the earliest possible date, but not without reciprocity. For U.S. firms to have to wait for up to six years to achieve the same market access to the CBI, already in effect with Mexico and Canada is simply unjustified.

Tariff Treatment of Certain Textile Articles During the Transition Period

While giving NAFTA tariff treatment to goods entering the United States from CBI countries, H.R. 553 does not require reciprocity for U.S. goods going to CBI countries. We believe this to be unfair to firms in the CBI, as well as potential U.S. suppliers to those firms. For instance, a knitter in Jamaica could be disadvantaged compared with a knitter in Mexico who may receive a lower tariff on yarn imported from the United States under NAFTA.

As a condition for receiving NAFTA parity, CBI governments should be required to accept the same tariff reduction obligations and other market access provisions that apply to current NAFTA partners. Otherwise, U.S. producers would gain no benefit over non-NAFTA countries during the six-year transition and perhaps even longer, since lowering of CBI tariffs would be the subject of negotiation at the time of full accession to NAFTA. One must assume from the language in Title II, Sec. 202 (b)(1) that additional tariff phase-out periods are anticipated.

A final argument for immediate access benefits for U.S. yarn producers is the potential for yarn sales in the CBI countries. AYSA has been able to identify millions of pounds of yarn transshiped from the Far East through U.S. ports to Costa Rica, Dominican Republic, Guatemala, and Honduras. All of these yarns are produced in the United States but are brought in from the Far East by Far Eastern firms who have located in CBI countries to presumably obtain quota access to the U.S. market. Attached as Exhibit A is a listing of the CBI importers, the type of yarn and country of origin of the yarn. This information clearly illustrates a potential yarn market in the CBI that is being supplied by low cost subsidized producers in the Far East. With the exception of a few small mills in Guatemala and El Salvador, yarn production in the CBI is non-existent. Providing reciprocal tariff reductions would enhance competitiveness of U.S. producers and at the same time benefit CBI purchasers of yarn.

Tariff Preference Levels

We are opposed to providing Tariff Preference Levels for two reasons. First, they are not justified and, second, they undermine the NAFTA rules of origin. While NAFTA provides for TPL's, it is our view that the alleged need for TPL's, with some exception, was a smokescreen to circumvent the rules of origin. This is born out by Mexico's lack of use of their allowable TPL's. It should also be noted that NAFTA provides full trade reciprocity, which is not the case with the CBI parity proposal embodied in H.R. 553.

NAFTA contains a provision known as 807-A which is carried over into H.R. 553. Under this provision, apparel may enter the United States duty free provided the fabric components were formed and cut in the United States. The fabric is not subject to the yarn-forward rule. While AYSA acknowledges the difficulty of changing this provision since it is already incorporated in NAFTA, we nonetheless view it as a potential means by which the rule of origin could be circumvented.

Perhaps more important for yarn producers is that some textile and apparel products are produced directly from yarn in a single process with little or not sewing. Hosiery, including socks, is an example since the body of the hosiery is knit to shape with sewing required only to close the toe. Unlike fabric components, U.S. produced yarn does not qualify for 807 or 807-A tariff treatment, although the conversion of the yarn into a product requires little or not sewing in Mexico.

Numerous comments have been received from potential yarn purchases in Mexico and CBI countries questioning why yarn does not receive 807 type benefits. AYSA believes that the time has come to include U.S. produced yarn for special tariff treatment similar to that now in effect for fabrics. This would be beneficial to Mexico and the CBI as well as enhance market potential for U.S. yarn producers.

Conclusion

In conclusion, AYSA would like to be in a position to support H.R. 553 but cannot do so as currently written. All we are requesting is that fairness and reciprocity be incorporated in the legislation as outlined in this statement. It is hoped that the Committee will give our suggestions serious consideration.

EXHIBIT A

02/22/95

PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
JACKSONVILLE	BRAZIL	COTTON	36601	GONZALEZ	DR	11/17/93
EVERGLADES	BRAZIL	COTTON	98216	TEXTIL CENTRO	COST	07/21/93
EVERGLADES	BRAZIL	COTTON	16369	TEXTIL CENTRO	COST	07/21/93
EVERGLADES	BRAZIL	COTTON	50128	TEXTILES SALU	GUAT	05/26/93
PT EVERGLADES	BRAZIL	COTTON	36601	GONZALEZ	DR	11/03/93
EVERGLADES	BRAZIL	COTTON CARDED	32739	TEXTIL CENTRO	COST	04/21/93
JACKSONVILLE	BRAZIL	COTTON CARDED	17364	M GONZALEZ	DR	12/22/93
PT EVERGLADES	BRAZIL	COTTON	15894	EL ZIPPERLE	GUAT	12/29/93
JACKSONVILLE	BRAZIL	COTTON	16591	MFRS TEXTILES	DR	01/05/94
PT EVERGLADES	BRAZIL	COTTON	39396	MARSOL INTL	HOND	05/18/94
SAN JUAN	BRAZIL	COTTON	29947	CONF. FEMENIN	DR	09/14/94
EVERGLADES	BRAZIL	COTTON	100000	LEVISAN TRDG	DR	09/07/94
SAN JUAN, PR	BRAZIL	COTTON	14709	M GONZALEZ	DR	08/10/94
MIAMI	BRAZIL	COTTON	73000	TEJ. DEL SOL	DR	01/18/95
			577,555			
MIAMI	EL SALVADOR	COTTON	36028	HILANDERIAS	DR	03/17/93
MIAMI	EL SALVADOR	COTTON	33234	HILANDERIAS	DR	11/03/93
MIAMI	EL SALVADOR	COTTON	36028	HILANDERIAS	DR	06/09/93
MIAMI	EL SALVADOR	COTTON	11436	ORDER OF SHIP	DR	12/22/93
EVERGLADES	EL SALVADOR	COTTON	46055	ORDER	DR	08/17/94
EVERGLADES	EL SALVADOR	COTTON	42150	MFRS TEXTILES	DR	08/17/94
MIAMI	EL SALVADOR	COTTON	91000	ORDER	DR	01/25/95
MIAMI	EL SALVADOR	COTOTN	22313	ABRAHAM INTL	DR	01/25/95
MIAMI	EL SALVADOR	COTTON	23699	HILANDERIAS	DR	01/25/95
MIAMI	EL SALVADOR	COTTON	45127	TEXTIL DOMINI	DR	01/11/95
			387,070			
MIAMI	GUATEMALA	COTTON	46065	TEXTIL CENTRO	DR	06/02/93
MIAMI	GUATEMALA	COTTON	55956	TEXTIL HILLAS	DR	06/01/94
MIAMI	GUATEMALA	COTTON	46027	TEXTIL ELLAST	DR	11/02/94
MIAMI	GUATEMALA	COTTON	46033	TEXTIL HILLAS	DR	10/12/94
MIAMI	GUATEMALA	COTTON	42545	SOLITEX	DR	11/23/94
MIAMI	GUATEMALA	COTTON	39411	TEXTIL HILLAS	DR	12/07/94
			276,037			
LONG BEACH	HONG KONG	THREAD POLYESTER	0	C & F IND	DR	06/23/93
LONG BEACH	HONG KONG	COTTON RING	5511	NEW CARI	DR	06/23/93
LONG BEACH	HONG KONG	COTTON	12870	TRAP RAIN	DR	04/14/93
MIAMI	HONG KONG	THREAD POLYESTER	0	BALDWIN & EBE	DR	04/14/93
LONG BEACH	HONG KONG	COTTON	94489	NEW CARI	DR	03/17/93
MIAMI	HONG KONG	THREAD POLY SPUN	0	GOTEX	DR	03/17/93
LONG BEACH	HONG KONG	COTTON	42989	NEW CARI	DR	11/24/93
MIAMI	HONG KONG	THREAD POLYESTER SP	0	GOTEX	DR	04/07/93
MIAMI	HONG KONG	THREAD POLYESTER	0	GOTEX	DR	03/03/93
MIAMI	HONG KONG	POLYESTER SPUN	32651	EAST ONE	HOND	09/22/93
MIAMI	HONG KONG	COTTON	0	FEBENA FASHIO	HOND	09/22/93
LONG BEACH	HONG KONG	COTTON	167549	NEW CARI	DR	10/13/93
LONG BEACH	HONG KONG	COTTON	157042	NEW CARI	DR	03/24/93
LONG BEACH	HONG KONG	COTTON	10387	NEW CARI	DR	07/21/93

02/22/95

PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
CHARLESTON	HONG KONG	THREAD POLY SPUN	26093	HILOS	COST	05/26/93
MIAMI	HONG KONG	THREAD POLYESTER	0	FORTEX IND	HOND	05/26/93
CHARLESTON	HONG KONG	THREAD POLYESTER	66950	HILOS	COST	03/31/93
LONG BEACH	HONG KONG	COTTON	187391	NEW CARI	DR	09/15/93
MIAMI	HONG KONG	THREAD	0	STRONG PROGRE	HOND	04/21/93
MIAMI	HONG KONG	NYLON	0	INTL SEWING S	HOND	04/21/93
LONG BEACH	HONG KONG	THREAD COTTON	2636	CASA BARAHONA	HOND	03/10/93
LONG BEACH	HONG KONG	THREAD ACRYLIC POLY	31911	TEJIDOS INTL	DR	03/10/93
LONG BEACH	HONG KONG	COTTON	95900	NEW CARL	DR	10/27/93
LOS ANGELES	HONG KONG	RAMIE/COTTON DYED	6142	UNION D MFG	DR	05/19/93
LOS ANGELES	HONG KONG	MISC	41647	UNION DE MFG	DR	02/03/93
BALTIMORE	HONG KONG	THREAD POLYESTER	11962	HILOS	COST	02/24/93
LONG BEACH	HONG KONG	THREAD COTTON	16754	NEW CARI	DR	02/24/93
LONG BEACH	HONG KONG	THREAD POLYESTER	0	C&F IND	DR	02/24/93
LONG BEACH	HONG KONG	MISC	140256	NEW CARI	DR	02/24/93
LONG BEACH	HONG KONG	COTTON	216844	NEW CARI	DR	02/24/93
LOS ANGELES	HONG KONG	COTTON/RAMIE	29598	TRAP RAIN	DR	02/24/93
LOS ANGELES	HONG KONG	RAMIE/COTTON	24250	TRAP RAIN	DR	02/24/93
LONG BEACH	HONG KONG	COTTON	94489	NEW CARI	DR	06/09/93
MIAMI	HONG KONG	THREAD POLY SPUN	0	GOTEX	DR	06/09/93
MIAMI	HONG KONG	NYLON	0	BALDWIN & EBE	DR	02/16/94
MIAMI	HONG KONG	NYLON	0	BALDWIN & EBE	DR	03/30/94
LOS ANGELES	HONG KONG	POLYESTER	22486	MULTISERVICIO	GUAT	05/18/94
MIAMI	HONG KONG	NYLON	0	BALDWIN & EBE	DR	05/11/94
MIAMI	HONG KONG	NYLON	0	BALDWIN & EBE	DR	05/04/94
LOS ANGELES	HONG KONG	COTTON	16799	OCHENTA & OCH	GUAT	06/01/94
LONG BEACH	HONG KONG	THREAD POLY SPUN	0	NYF GARMENTS	HOND	11/02/94
LONG BEACH	HONG KONG	THREAD POLY SPUN	0	CORTEX INTL	GUAT	11/02/94
LONG BEACH	HONG KONG	COTTON	11902	TEJIDOS INTL	DR	11/02/94
LONG BEACH	HONG KONG	THREAD POLYESTER	0	CORTEX INTL	GUAT	10/12/94
LONG BEACH	HONG KONG	THREAD	0	C&F IND.	DR	09/28/94
MIAMI	HONG KONG	THREAD POLY SPUN	0	CHARMING GRMN	HOND	09/28/94
LONG BEACH	HONG KONG	THREAD	11589	WAVECON	GUAT	09/07/94
LONG BEACH	HONG KONG	COTTON/RAYON	15000	TEJIDOS INTL	DR	11/23/94
LONG BEACH	HONG KONG	COTTON/ACRYLIC	15546	TEJIDOS INTL	DR	08/10/94
			1,609,633			
LONG BEACH	INDIA	COTTON	34568	TEXTILE CENTR	COST	06/23/93
LONG BEACH	INDIA	THREAD COTTON	5297	DISTR MARTE	GUAT	03/17/93
LONG BEACH	INDIA	COTTON	34658	TEXTIL CENTRO	COST	03/17/93
LONG BEACH	INDIA	COTTON	34568	TEXTILE CENTR	COST	03/17/93
LONG BEACH	INDIA	COTTON SUPER CARDED	34568	TEXTIL CENTRO	COST	05/12/93
LONG BEACH	INDIA	COTTON KNITTING	34568	TEXTIL CENTRO	COST	04/21/93
LONG BEACH	INDIA	THREAD COTTON	5297	DISTR MARTE	GUAT	06/09/93
LONG BEACH	INDIA	COTTON	34658	TEXTIL CENTRO	COST	06/09/93
LONG BEACH	INDIA	COTTON	34568	TEXTILE CENTR	COST	06/09/93
LONG BEACH	INDIA	COTTON COMBED	39131	KUNJA KNITTIN	DR	03/09/94
LOS ANGELES	INDIA	COTTON	137535	KUNJA KNITTIN	DR	03/16/94
LONG BEACH	INDIA	COTTON	39131	KUNJA KNITTIN	DR	03/30/94
LONG BEACH	INDIA	COTTON COMBED	78262	KUNJA KNITTIN	DR	03/30/94
LOS ANGELES	INDIA	COTTON	103128	KUNJA KNITTIN	DR	03/30/94
LONG BEACH	INDIA	COTTON COMBED	39131	KUNJA KNITTIN	DR	04/20/94

02/22/95

PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
LONG BEACH	INDIA	COTTON	117393	KUNJA KNITTIN	DR	05/18/94
LOS ANGELES	INDIA	COTTON	36594	KUNJA KNITTIN	DR	05/18/94
LOS ANGELES	INDIA	COTTON	36594	KUNJA KNITTIN	DR	05/04/94
LONG BEACH	INDIA	COTTON COMBED	117393	KUNJA KNITTIN	DR	05/25/94
LOS ANGELES	INDIA	COTTON	36594	KUNJA KNITTIN	DR	05/25/94
LOS ANGELES	INDIA	COTTON	33397	KUNJA KNITTIN	DR	06/01/94
LONG BEACH	INDIA	COTTON COMBED KNITT	39181	KUNJA KNITTIN	DR	10/05/94
LONG BEACH	INDIA	COTTON/POLY CP KNIT	39131	KUNJA KNITTIN	DR	09/28/94
LONG BEACH	INDIA	COTTON COMBED	39131	KUNJA KNITTIN	DR	09/21/94
LONG BEACH	INDIA	COTTON	39131	KUNJA KNITTIN	DR	09/07/94
LONG BEACH	INDIA	COTTON COMBED	39131	KUNJA KNITTIN	DR	08/24/94
LONG BEACH	INDIA	COTTON COMBED KNITT	39131	KUNJA KNITTIN	DR	08/10/94
			1,301,869			
LONG BEACH	INDONESIA	POLY/COTTON KNITTIN	37974	KUNJA KNITTIN	DR	10/26/94
			37,974			
MIAMI	ISRAEL	THREAD	3631	GRUPO FOLLAZE	COST	02/17/93
MIAMI	ISRAEL	THREAD	13102	RIEGOS MODERN	COST	02/17/93
			16,733			
MIAMI	JAPAN	MISC	35639	KUNJA KNITTIN	DR	03/24/93
MIAMI	JAPAN	THREAD	0	SP	HOND	04/21/93
MIAMI	JAPAN	THREAD POLYESTER	0	PRIMA IND	HOND	04/21/93
			35,639			
MIAMI	MACAU	THREAD	0	STRONG PROGRE	DR	03/17/93
MIAMI	MACAU	THREAD	0	STRONG PROGRE	HOND	06/30/93
MIAMI	MACAU	THREAD	0	STRONG PROGRE	HOND	09/22/93
MIAMI	MACAU	THREAD	0	STRONG PROGRE	HOND	04/28/93
MIAMI	MACAU	THREAD	0	STRONG PROGRE	HOND	04/21/93
MIAMI	MACAU	THREAD	0	STRONG PROGRE	DR	06/09/93
			0			
NEW YORK	PAKISTAN	COTTON CARDED	36375	KUNJA KNITTIN	DR	11/17/93
LOS ANGELES	PAKISTAN	COTTON	71000	MFRS TEXTILES	DR	04/07/93
LOS ANGELES	PAKISTAN	COTTON	73000	KUNJA KNITTIN	DR	04/07/93
LOS ANGELES	PAKISTAN	COTTON	36221	M GONZALEZ	DR	04/07/93
LOS ANGELES	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	02/17/93
LOS ANGELES	PAKISTAN	COTTON	71296	KUNJA KNITTIN	DR	10/13/93
LOS ANGELES	PAKISTAN	COTTON	160945	KUNJA KNITTIN	DR	03/24/93
NEW YORK	PAKISTAN	COTTON CARDED WAXED	36375	KUNJA KNITTIN	DR	09/15/93
NEW YORK	PAKISTAN	COTTON CARDED WAXED	36375	KUNJA KNITTIN	DR	09/15/93
MIAMI	PAKISTAN	COTTON WAXED	36230	AGENCIAS ROMA	DR	09/15/93
LOS ANGELES	PAKISTAN	COTTON	35203	MFRS TEXTILES	DR	06/02/93
LOS ANGELES	PAKISTAN	COTTON	35648	KUNJA KNITTIN	DR	10/27/93
LOS ANGELES	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	07/28/93
LOS ANGELES	PAKISTAN	COTTON	109127	KUNJA KNITTNG	DR	02/03/93

02/22/95

PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
NEW YORK	PAKISTAN	COTTON CARDED	16534	ALMACEN & FAB	COST	02/24/93
NEW YORK	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	09/29/93
LOS ANGELES	PAKISTAN	COTTON	36373	SEKWANG IND	GUAT	12/29/93
LONG BEACH	PAKISTAN	COTTON	18368	GONZALEZ	DR	01/12/94
MIAMI	PAKISTAN	COTTON WAXED KNITTI	71296	KUNJA KNITTIN	DR	02/09/94
NEW YORK	PAKISTAN	COTTON CARDED	36375	KUNJA KNITTIN	DR	03/09/94
MIAMI	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	03/09/94
MIAMI	PAKISTAN	COTTON CARDED	72750	KUNJA KNITTIN	DR	03/09/94
MIAMI	PAKISTAN	COTTON CARDED	71296	KUNJA KNITTIN	DR	03/16/94
LONG BEACH	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	04/06/94
LOS ANGELES	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	04/20/94
LOS ANGELES	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	05/18/94
LOS ANGELES	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	06/01/94
NEW YORK	PAKISTAN	COTTON/POLY COMBED	36375	KUNJA KNITTIN	DR	11/09/94
NEW YORK	PAKISTAN	COTTON	36375	KUNJA KNITTIN	DR	11/09/94
LONG BEACH	PAKISTAN	COTTON	66000	TXT CENTRO AM	COST	11/02/94
LONG BEACH	PAKISTAN	COTTON	32936	TX. CENTRO AM	COST	09/21/94
LONG BEACH	PAKISTAN	COTTON	32936	TX. CENTRO AM	COST	09/21/94
LONG BEACH	PAKISTAN	COTTON	32936	TX. CENTRO AM	COST	09/21/94
NEW YORK	PAKISTAN	POLY/COTTON COMBED	36375	KUNJA KNITTIN	DR	11/16/94
NEW YORK	PAKISTAN	COTTON CARDED KNITT	36375	KUNJA KNITTIN	DR	11/16/94
MIAMI	PAKISTAN	COTTON CARDED	109127	KUNJA KNITTIN	DR	08/24/94
			1,771,222			
PT EVERGLADES	PORTUGAL	COTTON	66266	ARDMORE	DR	10/20/93
			66,266			
LONG BEACH	PRC	THREAD	0	TAN WAY	DR	06/23/93
LONG BEACH	PRC	THREAD ON CONES	0	YA MEI ENTERP	DR	06/23/93
LONG BEACH	PRC	THREAD	40079	YA MEI ENTERP	DR	03/17/93
LONG BEACH	PRC	THREAD	0	TAN WAY	DR	06/30/93
LONG BEACH	PRC	THREAD COTTON/POLY	32652	MEDPLY	COST	09/01/93
LONG BEACH	PRC	COTTON	17535	EXCELLMODES E	GUAT	03/31/93
LONG BEACH	PRC	THREAD	0	YA MEI ENTERP	DR	09/15/93
LONG BEACH	PRC	COTTON DYED	113065	CAMOSA	GUAT	03/10/93
LONG BEACH	PRC	COTTON DYED	88294	CAMOSA	GUAT	03/10/93
LONG BEACH	PRC	THREAD	40079	YA MEI ENTERP	DR	06/09/93
LONG BEACH	PRC	COTTON DYED	28483	ZEP CARIBBEAN	DR	03/09/94
LONG BEACH	PRC	COTTON	31481	LEP CARIBBEAN	DR	03/30/94
LONG BEACH	PRC	COTTON	48214	SASTEX	DR	04/20/94
TACOMA	PRC	POLYESTER SPUN	33002	LLOYDS BANK	HOND	11/09/94
MIAMI	PRC	THREAD POLY SPUN	17601	EAST ONE	HOND	11/30/94
MIAMI	PRC	POLY SPUN	17607	EAST ONE	HOND	08/31/94
			508,092			
LONG BEACH	ROK	THREAD	956	IND TEXSEDA	COST	06/16/93
LONG BEACH	ROK	COTTON	22046	TAE YOUNG	GUAT	06/16/93
LONG BEACH	ROK	COTTON	0	TAE YOUNG	GUAT	06/16/93
LONG BEACH	ROK	COTTON COMBED	25207	WONCHANG HOND	HOND	06/16/93
CHARLESTON	ROK	ACRYLIC SPUN	17289	KOCOMERICA	COST	06/23/93

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PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
LONG BEACH	ROK	COTTON COMBED DYED	33069	TAE YOUNG	GUAT	06/23/93
LONG BEACH	ROK	ACRYLIC DYED	5628	WOO CHANG	DR	06/23/93
LONG BEACH	ROK	COTTON	23902	WONCHANG HOND	HOND	04/14/93
LONG BEACH	ROK	COTTON	30864	HYUP SUNG	HOND	04/14/93
LONG BEACH	ROK	MISC	444000	KUNJA KNITTIN	DR	04/14/93
LONG BEACH	ROK	MISC	115000	GALAXY IND	HOND	04/14/93
LONG BEACH	ROK	NYLON/ACETATE	29000	MODESTO LOPEZ	DR	04/14/93
MIAMI	ROK	COTTON WAXED	26100	WONCHANG HOND	HOND	04/14/93
MIAMI	ROK	FIL POLYURETHANE	15057	KOCOMERICA	COST	03/17/93
MIAMI	ROK	ACRYLIC SPUN DYED	24967	KOCOMERICA	COST	03/17/93
MIAMI	ROK	MISC	135000	KUNJA KNITTIN	DR	03/17/93
LONG BEACH	ROK	MISC	35000	GALAXY IND	HOND	05/12/93
LONG BEACH	ROK	COTTON CARDED	12083	TAE YOUNG	GUAT	05/12/93
LONG BEACH	ROK	MISC	76000	KUNJA KNITTIN	DR	05/12/93
LONG BEACH	ROK	ACRYLIC DYED	26400	WOO CHANG DOM	DR	05/12/93
LONG BEACH	ROK	MISC	57318	KUNJA KNITTIN	DR	05/12/93
LONG BEACH	ROK	MISC	831	GALAXY IND	HOND	05/12/93
LONG BEACH	ROK	MISC	72518	KUNJA KNITTIN	DR	05/12/93
LONG BEACH	ROK	COTTON CARDED	14259	YOUNG COLLECT	DR	05/12/93
LONG BEACH	ROK	ACRYLIC/NYLON SPUN	26455	YOUNG COLLECT	DR	11/17/93
LONG BEACH	ROK	COTTON CARDED SPUN	48501	TAE YOUNG	GUAT	11/17/93
MIAMI	ROK	MISC	150000	KUNJA KNITTIN	DR	04/07/93
BALTIMORE	ROK	COTTON CARDED	20068	KOCOMERICA	COST	02/17/93
BALTIMORE	ROK	COTTON COMBED	13227	KOCOMERICA	COST	02/17/93
BALTIMORE	ROK	COTTON CARDED	11463	KOCOMERICA	COST	02/17/93
LONG BEACH	ROK	MISC	95000	KUNJA KNITTIN	DR	02/17/93
MIAMI	ROK	COTTON COMBED	28179	WONCHANG HOND	HOND	09/22/93
LONG BEACH	ROK	POLY/COTTON SPUN	41887	TAE YOUNG	GUAT	10/13/93
LONG BEACH	ROK	NYLON ANTRON	9446	BIBONG APPARE	DR	10/13/93
MIAMI	ROK	COTTON COMBED SPUN	12123	WONCHANG HOND	HOND	10/13/93
LONG BEACH	ROK	THREAD	392	EUNSUNG	GUAT	03/24/93
LONG BEACH	ROK	MISC	35639	KUNJA KNITTIN	DR	03/24/93
LONG BEACH	ROK	COTTON	33540	MODAS J S	GUAT	03/24/93
LONG BEACH	ROK	ACRYLIC SPUN DYED	26455	KOCOMERICA	COST	03/24/93
MIAMI	ROK	ACRYLIC DYED	21874	WOO CHANG DOM	DR	03/24/93
MIAMI	ROK	MISC	35639	KUNJA KNITTIN	DR	03/24/93
CHARLESTON	ROK	ACRYLIC/COTTON	16609	KOCOMERICA	COST	07/21/93
MIAMI	ROK	COTTON COMBED	23117	WONCHANG HOND	HOND	09/01/93
LONG BEACH	ROK	THREAD POLYESTER	7722	IND TEXSEDA	COST	02/10/93
LONG BEACH	ROK	MISC	128963	KUNJA KNITTIN	DR	02/10/93
LONG BEACH	ROK	MISC	3306	GALAXY IND	HOND	04/28/93
LONG BEACH	ROK	MISC	28902	GALAXY IND	HOND	04/28/93
LONG BEACH	ROK	COTTON CARDED	18236	KIMI	HOND	04/28/93
LONG BEACH	ROK	COTTON	23725	WONCHANG HOND	HOND	05/26/93
LONG BEACH	ROK	COTTON	24283	WONCHANG HOND	HOND	05/26/93
LONG BEACH	ROK	COTTON CARDED	17195	ZONAS IND	HOND	05/26/93
LONG BEACH	ROK	MISC	78000	KUNJA KNITTIN	DR	05/26/93
MIAMI	ROK	COTTON COMBED	23900	WONCHANG HOND	HOND	05/26/93
LONG BEACH	ROK	ACRYLIC NYLON	50704	YOUNG COLLECT	DR	10/20/93
LONG BEACH	ROK	MISC	50705	TAE YOUNG	GUAT	10/20/93
LONG BEACH	ROK	COTTON CARDED DYED	35273	TAE YOUNG	GUAT	07/07/93
LONG BEACH	ROK	COTTON CARDED DYED	7716	TAE YOUNG	GUAT	07/07/93
LONG BEACH	ROK	MISC	60000	GALAXY IND	HOND	03/31/93

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PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
MIAMI	ROK	COTTON COMBED	33519	WONCHANG HOND	HOND	03/31/93
LONG BEACH	ROK	COTTON DYED	44092	TAE YOUNG	GUAT	09/15/93
MIAMI	ROK	COTTON COMBED	9552	WONCHANG HOND	HOND	09/15/93
MIAMI	ROK	COTTON	26693	WONCHANG HOND	HOND	06/02/93
MIAMI	ROK	MISC SPUN	37420	WONCHANG HOND	HOND	06/02/93
LONG BEACH	ROK	MISC	170000	KUNJA KNITTIN	DR	04/21/93
LONG BEACH	ROK	MISC	34000	GALAXY IND	HOND	04/21/93
MIAMI	ROK	COTTON COMBED	12571	WONCHANG HOND	HOND	04/21/93
LONG BEACH	ROK	THREAD POLYESTER	9537	IND TEXSEDA	COST	03/10/93
LONG BEACH	ROK	COTTON CARDED	35273	JS MODAS	GUAT	03/10/93
LONG BEACH	ROK	MISC	56085	GALAXY IND	HOND	03/10/93
MIAMI	ROK	ACRYLIC DYED	24984	WOO CHANG DOM	DR	03/10/93
MIAMI	ROK	MISC	85000	KUNJA KNITTIN	DR	03/10/93
LONG BEACH	ROK	COTTON CARDED DYED	79364	T A YOUNG	GUAT	10/06/93
LONG BEACH	ROK	COTTON	79364	TAE YOUNG	GUAT	10/06/93
LONG BEACH	ROK	COTTON	36375	GOLDENTEX	HOND	10/06/93
MIAMI	ROK	COTTON CARDED SPUN	9978	WONCHANG HOND	HOND	10/06/93
MIAMI	ROK	COTTON COMBED SPUN	12008	WONCHANG HOND	HOND	10/06/93
MIAMI	ROK	MISC	35693	KUNJA KNITTIN	DR	07/28/93
LONG BEACH	ROK	MISC	81221	KUNJA KNITTIN	DR	05/19/93
LONG BEACH	ROK	ACRYLIC DYED	23099	WOO CHANG ENT	DR	05/19/93
LONG BEACH	ROK	COTTON	4594	KOCOMERICA	COST	02/24/93
LONG BEACH	ROK	COTTON	6957	KOCOMERICA	COST	02/24/93
LONG BEACH	ROK	COTTON	21000	KOCOMERICA	COST	02/24/93
MIAMI	ROK	FIL POLYURETHANE	15057	KOCOMERICA	COST	06/09/93
MIAMI	ROK	ACRYLIC SPUN DYED	24967	KOCOMERICA	COST	06/09/93
MIAMI	ROK	MISC	135000	KUNJA KNITTIN	DR	06/09/93
MIAMI	ROK	COTTON COMBED	26949	WONCHANG HOND	HOND	09/29/93
LONG BEACH	ROK	ACRYLIC/NYLON	22266	YOUNG COLLECT	DR	12/29/93
LONG BEACH	ROK	COTTON	38121	IND RCA	GUAT	12/29/93
MIAMI	ROK	COTTON COMBED SPUN	24063	WONCHANG HOND	HOND	01/12/94
MIAMI	ROK	MISC BLENDED SPUN	13873	WONCHANG HOND	HOND	01/12/94
MIAMI	ROK	COTTON CARDED SPUN	12742	WONCHANG HOND	HOND	01/12/94
LONG BEACH	ROK	COTTON CARDED GREY	45877	MULTISERVICIO	GUAT	02/09/94
MIAMI	ROK	COTTON	53805	WONCHANG HOND	HOND	02/09/94
LONG BEACH	ROK	COTTON COMBED	16093	KIMI	HOND	02/16/94
MIAMI	ROK	COTTON COMBED RS	30017	WONCHANG HOND	HOND	02/16/94
LONG BEACH	ROK	COTTON	17195	KIMI	HOND	03/02/94
LONG BEACH	ROK	COTTON CARDED	68342	MULTISERVICES	GUAT	03/09/94
LONG BEACH	ROK	MISC	54011	MULTISERVICIO	GUAT	03/16/94
LONG BEACH	ROK	COTTON COMBED	6724	KIMI	HOND	03/16/94
MIAMI	ROK	COTTON COMBED RS	119861	WONCHANG HOND	HOND	03/16/94
MIAMI	ROK	COTTON COMBED	58547	WONCHANG HOND	HOND	03/30/94
MIAMI	ROK	COTTON CARDED	80689	WONCHANG HOND	HOND	04/06/94
LONG BEACH	ROK	MISC	23148	KUNJA KNITTIN	DR	04/20/94
MIAMI	ROK	COTTON COMBED SPUN	93502	WONCHANG HOND	HOND	05/04/94
MIAMI	ROK	COTTON CARDED SPUN	42024	WONCHANG HOND	HOND	05/04/94
MIAMI	ROK	COTTON CARDED SPUN	39391	WONCHANG HOND	HOND	06/01/94
LONG BEACH	ROK	POLYESTER SPUN	6060	SAE HAN TEXT	GUAT	11/09/94
LONG BEACH	ROK	COTTON COMBED	29762	KIMI	HOND	11/09/94
LONG BEACH	ROK	MISC	27667	GALAXY IND.	HOND	11/09/94
MIAMI	ROK	COTTON CARDED	41422	WONCHANG HOND	HOND	11/09/94
LONG BEACH	ROK	MISC	23999	GALAXY IND.	HOND	11/02/94

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PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
LONG BEACH	ROK	COTTON COMBED KNITT	29982	KIMI	HOND	11/02/94
MIAMI	ROK	COTTON CARDED	24140	WONCHANG HOND	HOND	10/26/94
LONG BEACH	ROK	MISC	29122	KUNJA KNITTIN	DR	10/19/94
LONG BEACH	ROK	MISC	64266	GALAXY IND	HOND	10/19/94
MIAMI	ROK	COTTON COMBED	38862	WONCHANG HOND	HOND	10/12/94
LONG BEACH	ROK	COTTON CARDED	63928	TAE YOUNG	GUAT	09/21/94
LONG BEACH	ROK	MISC	12125	KUNJA KNITTIN	DR	09/07/94
LONG BEACH	ROK	COTTON COMBED	22597	KIMI	HOND	11/23/94
LONG BEACH	ROK	COTTON CARDED	26455	TAE YOUNG	GUAT	11/16/94
LONG BEACH	ROK	COTTON COMBED	24471	KIMI	HOND	11/16/94
LONG BEACH	ROK	COTTON	8659	GALAXY IND	HOND	11/16/94
MIAMI	ROK	COTTON CARDED	50273	WONCHANG HOND	HOND	11/16/94
MIAMI	ROK	COTTON COMBED	23736	WONCHANG HOND	HOND	11/16/94
LONG BEACH	ROK	MISC KNITTING	41000	KUNJA KNITTIN	DR	08/31/94
MIAMI	ROK	COTTON COMBED	63000	WONCHANG HOND	HOND	08/31/94
LONG BEACH	ROK	MISC KNITTING	8796	KUNJA KNITTIN	DR	08/17/94
MIAMI	ROK	COTTON COMBED	96000	WONCHANG HOND	HOND	08/10/94
LONG BEACH	ROK	COTTON CARDED	30864	TAE YOUNG	GUAT	01/25/95
LONG BEACH	ROK	COTTON COMBED	13227	EUNSUNG	GUAT	01/25/95
LONG BEACH	ROK	MISC	10119	GALAXY IND	HOND	01/25/95
LONG BEACH	ROK	COTTON	24250	EUNSUNG	GUAT	01/18/95
LONG BEACH	ROK	MISC	16272	GALAXY IND	HOND	01/11/95
			5,332,435			
LONG BEACH	TAIWAN	ACRYLIC LOOP HANG T	40167	UNION D MFG T	DR	06/23/93
LONG BEACH	TAIWAN	ACRYLIC	41997	UNION D MFG T	DR	03/17/93
LONG BEACH	TAIWAN	ACRYLIC SPUN	35187	YOUNG COLLECT	DR	05/12/93
LONG BEACH	TAIWAN	COTTON/POLY	22857	HAN CHANG TEX	DR	11/17/93
LONG BEACH	TAIWAN	MISC	36640	UNION DE MFG	DR	10/13/93
LONG BEACH	TAIWAN	ACRYLIC	36508	UNION D MFG	DR	04/28/93
LONG BEACH	TAIWAN	ACRYLIC SPUN	31556	YOUNG COLLECT	DR	05/26/93
LONG BEACH	TAIWAN	ACRYLIC	39241	UNION D MFG T	DR	05/26/93
LONG BEACH	TAIWAN	ACRYLIC NYLON SPUN	30643	YOUNG COLLECT	DR	11/03/93
LONG BEACH	TAIWAN	MISC	20061	GALAXY IND	HOND	07/07/93
LONG BEACH	TAIWAN	MISC	21880	TRAP RAIN	DR	03/31/93
MIAMI	TAIWAN	POLYESTER	43077	TEXTILES RIO	HOND	06/02/93
LONG BEACH	TAIWAN	ACRYLIC	31675	UNION D MFG	DR	04/21/93
LONG BEACH	TAIWAN	MISC	24678	TRAP RAIN	DR	02/24/93
LONG BEACH	TAIWAN	ACRYLIC	41997	UNION D MFG T	DR	06/09/93
LONG BEACH	TAIWAN	ACRYLIC/NYLON	26896	YOUNG COLLECT	DR	12/15/93
LONG BEACH	TAIWAN	ACRYLIC/NYLON	26896	YOUNG COLLECT	DR	12/15/93
LONG BEACH	TAIWAN	POLYESTER TEXTURED	47255	TEXTILES RIO	HOND	01/12/94
LONG BEACH	TAIWAN	POLYESTER TEXTURED	46027	TEXTILES RIO	HOND	04/20/94
LONG BEACH	TAIWAN	COTTON	26455	TAE YOUNG	GUAT	09/28/94
LONG BEACH	TAIWAN	MISC KNITTING	10416	KUNJA KNITTIN	DR	09/28/94
LONG BEACH	TAIWAN	COTTON COMBED	26896	KIMI	HOND	09/28/94
LONG BEACH	TAIWAN	MISC	18459	KON WAH TEXT.	COST	01/25/95
			727,464			
PONCE, PR	THAILAND	THREAD POLY SPUN	16508	HILOS	DR	10/26/94
MIAMI	THAILAND	POLY/COTTON COMBED	1512	INTERMODA	HOND	08/31/94

02/22/95

PORT	ORIGIN	TYPE	POUNDS	IMPORTER	DESTINATN	DATE
			18,020			
EVERGLADLES	URGUGUAY	COTTON/WOOL	3459	IND GODBERG	COST	09/22/93
			3,459			
PT EVERGLADES	WEST GERMANY	COTTON	0	EDIFICIO QUEE	HOND	10/13/93
PT EVERGLADES	WEST GERMANY	MISC	0	CROPA	HOND	12/08/93
PT EVERGLADES	WEST GERMANY	MISC	0	SCHENKERS INT	GUAT	12/08/93
PT EVERGLADES	WEST GERMANY	MISC	0	CROPA	HOND	01/26/94
PT EVERGLADES	WEST GERMANY	MISC	0	SCHENKERS INT	GUAT	03/09/94
PT EVERGLADES	WEST GERMANY	MISC	0	SCHENKERS INT	GUAT	05/04/94
			0			
		GRAND TOTAL	12,669,468			

Testimony of David Wight
President of Amoco Trinidad Oil Company
Port of Spain, Trinidad
Submitted to the Subcommittee on Trade
(regarding HR 553)
of the House Committee on Ways and Means
February 1995

My name is David Wight. I am president of Amoco Trinidad Oil Company, a subsidiary of Amoco Corporation, the leading marketer of gasoline in the United States and a leading producer of oil and natural gas resources worldwide. Amoco is both the largest producer of natural gas and the largest holder of natural gas reserves in North America.

Amoco is the largest company working in Trinidad and Tobago today, employing nearly 450 persons and producing more than 350 million cubic feet of natural gas and 60,000 barrels of oil per day. Amoco has found the business climate in Trinidad to be very conducive to the formation of long-term relationships, as evidenced by our nearly 30-year history of doing business there.

In the early days of our business ventures in offshore Trinidad and Tobago, the play was oil. Our production eventually peaked at 150,000 b/d from our fields off Trinidad, production that benefited my company, the people of Trinidad, and the myriad of other companies who supply materials and services to keep this operation going. Throughout, we have found the business climate and political climate stable and conducive to a growing business.

Today, the play is shifting from oil to gas as the country's oil reserves diminish and gas reserves continue to grow. Amoco is adapting our operation to continue successful business operations there, gearing up to produce more natural gas. Even as our primary business is changing from the production of oil to the production of gas, the business climate is also adapting to retain existing businesses and attract new companies to Trinidad and Tobago.

Because of that climate, Amoco, British Gas, Cabot, and the National Gas Company of Trinidad and Tobago are in the early stages of jointly developing a liquefied natural gas plant there. A successful conclusion to feasibility studies that are now underway could see additional investments of hundreds of millions of dollars in Trinidad.

In addition, numerous other companies are investing in Trinidad, including Farmland, Nucor, Arcadian, Enron and another Amoco subsidiary company -- Amoco Power Resources Company (APRC). APRC recently purchased a stake in the Trinidad and Tobago Electric Company along with our partner Southern Electric Inc., of Atlanta.

Obviously, Trinidad and Tobago maintains a positive business climate. The US is its largest investment partner, a relationship that benefits both countries. In the 1990s, for example, American companies have invested half a billion dollars a year in the Trinidad economy, according to the US Department of Commerce. This investment can be expected to grow even more under an expanded NAFTA trade agreement, as the cost of doing business becomes equal for Caribbean countries and their competitors, such as Mexico.

Trinidad has taken proactive steps to foster a stable economy. The Trinidad currency has floated freely in the market, and as such is stable against foreign currencies. In 1994, its balance of payments was about $150 million -- on the positive side. Trinidad's exports to the United States include about 80,000 b/d of crude oil and petroleum products, as well as fully one-third of the 3 million tons of ammonia the United States imports annually.

Free trade status, as generally outlined in HR 553, can further benefit the two countries by creating valuable jobs in the energy and trade sectors, as well as related industries that support those core businesses. Small and medium companies, like their larger counterparts, must make capital allocation decisions based on economics and "scarce" capital. In Trinidad and Tobago, new business opportunities will be created over the next few years, as the major companies represented on the island expand their operations or new companies discover its advantageous climate.

But companies interested in doing business there must weigh the cost of doing business in Trinidad versus other countries. Herein lies the benefit of NAFTA parity for Caribbean nations such as Trinidad and concurrently for the United States. It would no doubt be beneficial for the United States -- through expanded employment, increased demand for raw materials, etc. -- to create an even playing field for US companies through NAFTA accession. We know the business climate is stable and conducive and that US companies are already there and are in need of high quality, competitive-cost suppliers.

In March, the city of Houston will host a trade mission to Trinidad and Tobago. This overture marks an additional effort by the city of Houston to expand business relationships in the island nation in areas outside the oil sector. Obviously, Houston's leaders are aware of the positive business climate there and believe additional opportunities exist for US companies. Amoco has been working closely with the organizers of that visit to identify new opportunities for Houston companies to do business in Trinidad.

As our business grows, so do the fortunes of smaller companies who support us. Like Amoco, those support companies will make expansion decisions based on their available investment capital. Extending NAFTA status to Trinidad would no doubt influence the investment direction of these scarce resources to the benefit of the US as well as the people of Trinidad and Tobago.

Thank you for the opportunity to present my company's views on this important issue. It is our hope that HR 553 or some other suitable vehicle will indeed extend the benefits of NAFTA beyond its current scope, to include our deserving trade partners in the Caribbean.

AACCLA
ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA
1615 H Street, N.W. • Washington, D.C. 20062-2000 • (202) 463-5485 • Fax: (202) 463-3126

STATEMENT OF
DAVID E. IVY
PRESIDENT
ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE
IN LATIN AMERICA (AACCLA)
FAVORING PASSAGE OF
THE CARIBBEAN BASIN TRADE SECURITY ACT
February 9, 1995

The Association of American Chambers of Commerce in Latin America (AACCLA) strongly supports the Caribbean Basin Security Trade Act (HR 553) as proposed by Trade Subcommittee Chairman Phil Crane and cosponsored by ranking Ways and Means Committee member Sam Gibbons and Congressmen Clay Shaw and Charles Rangel.

AACCLA is well placed to reflect the interests of American and regional business in the Caribbean basin and in terms of regional integration generally. AACCLA is comprised of 22 American Chambers of Commerce in 20 Latin American and Caribbean nations, and represents some 16,500 members. Like the Amchams throughout the hemisphere, each of the eight American Chambers located in the Caribbean Basin consists both of American companies doing business and producing in the region and local businessmen with interests in expanding contacts with the United States. There is no other group more qualified to speak for the diverse private sector interests involved in U.S. - Caribbean economic relations.

AACCLA urges the prompt passage of HR 553 by the 104th Congress. The bill is necessary to avoid irreparable and unintended harm arising from enactment of NAFTA to businesses and workers in the U.S. who rely on coproduction arrangements with the Caribbean Basin. This is because many important exports, including non-traditional exports, are excluded from CBI duty free benefits but are subject to NAFTA preferences, giving investors a strong incentive to shift production to Mexico. Industrial dislocation is already occurring in some sectors.

The issue is particularly pressing today as a result of the Mexican peso devaluation, which will magnify the competitive disadvantage to the region initially caused by the tariff advantages accruing to Mexico from the NAFTA.

Apparel is among the sectors most adversely impacted. Over 60 percent of Mexican imports currently enter the United States duty and quota free and the remaining 40 percent will have their duties phased out by the year 2000. This exerts a powerful attraction on producers currently operating in the Caribbean Basin and subject to full duties and, in many cases, quotas as well.

It is not surprising that for the first nine months following NAFTA enactment in January 1994, growth in apparel imports from the Caribbean slowed from rates ranging between twenty and thirty percent to single digit growth rates. During the same period, imports from Mexico soared by more than 45 percent. AACCLA member chambers in the region inform us that this trend will intensify if NAFTA parity is not enacted in the near future.

A major reason for seeking to preserve the Caribbean basin-U.S. trading relationship is that the chief beneficiary is the United States. Despite the generous market access provided to the region by CBI I and CBI II, or perhaps as an offshoot of that access, the American trade surplus with the Basin has increased significantly over the past few years. On a per capita basis, the American surplus with the Caribbean as a region has consistently outpaced its surplus with any other country.

The Crane bill differs from the Clinton Administration's Interim Trade Program in a number of ways. AACCLA favors the strongest possible measures to counter investment diversion arising from NAFTA and to help the region prepare for FTAA.

H.R. 553 covers all manufactured products currently excluded from the CBI. Most U.S. imports of these excluded products come from companies based in the Far East, including China, and the Indian Subcontinent, with the Caribbean Basin only supplying a small percentage of these goods. Due in part to this extensive import competition from Asia, there is currently little or no U.S. production of these goods. Hence, any measure to promote CBI production will come at the expense of these other regions, not the United States. In fact, to the degree Caribbean production displaces Asian exports, American manufacturers and workers are liable to benefit. Goods from the Caribbean Basin are much more likely to contain American components and to be produced using American machinery. Furthermore, many American companies take advantage of Caribbean production to complement their higher valued lines produced in the United States and successfully meet Asian competition.

The bill will urge CBI beneficiaries in their efforts to prepare for NAFTA by continuing to liberalize and reform their own economies. Provisions in the bill require meetings between the USTR and regional trade ministers, and reports on economic development, and market oriented reforms in the region all of which will contribute to maintaining momentum toward NAFTA accession. They will focus attention on the need for the United States to integrate Central America and the Caribbean into NAFTA as part of the effort to fulfill the Miami summit's objective of completion of negotiations for a Free Trade Agreement of the Americas (FTAA) by the year 2005, if not earlier.

The only aspect of the bill which we favor modifying would be to make the program permanent, expiring only when countries are ready to graduate to NAFTA accession. We strongly endorse and support the intent of the bill to promote NAFTA accession for the beneficiaries at the end of a six year period. However, despite the best intentions on the part of the U.S. Administration and regional governments, no one can be certain that negotiations would take place and be approved by that time. Timing should be studied carefully to ensure that it fits in with the actual pace of integration. A permanent program would reduce investor uncertainty and the possibility of trade distortions caused by an impending "deadline."

The United States is indeed fortunate in that every neighboring CBI beneficiary country is now peaceful, ruled by a democratic government and an advocate of market economies and continued reform. There is deepening cooperation in matters of common concern ranging from pursuing common goals in international trade to controlling the illicit movement of narcotics. Passage of the Caribbean Basin Security Trade Act will contribute to the maintenance and even acceleration of these trends.

As Congressman Crane so forthrightly stated in announcing the hearing "If the consequences of NAFTA on the Caribbean are not addressed, the resulting economic instability on the region threatens the future of democratic governments there." Prompt enactment of HR 553 would be the best way to avoid this problem and safeguard democratic governments in the region, while promoting the interests of U.S. companies and workers benefiting from shared production and trade with this region.

CARTER FOOTWEAR, INC. 1107 N. Washington St. / Wilkes-Barre, PA 18705 / 717 824-2434

February 24, 1995

The Honorable Philip M. Crane
Chairman, Trade Subcommittee
House Ways and Means Committee
1136 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Crane:

Carter Footwear wishes to commend you and the Trade Subcommittee for your continued support for the CBI program. H.R. 553 is an important step towards assuring that the Caribbean is not economically harmed by the NAFTA.

As the Subcommittee considers this legislation, we want to emphasize the importance of maintaining all existing CBI benefits during the period that NAFTA-equivalent benefits are phased in. This is particularly true with regard to footwear.

H.R. 553 would result in little or no benefit for most footwear produced in the Caribbean for at least 10 to 15 years. However, under a provision of the current program, finished footwear from the Caribbean can be imported duty-free, subject to strict rules of origin requiring that **all** materials and components be of U.S. origin. It is vital to many U.S. footwear producers that these benefits be continued unchanged.

Carter Footwear, located in Wilkes-Barre, Pennsylvania, produces affordable, casual "sneakers." Over the past decade, our industry has been besieged by a flood of imports from the Far East -- primarily China -- to the point that it became almost impossible to compete. As our market share dropped, factories were closed and jobs in the U.S. lost. This is an unfortunate fact of life for our industry.

As Carter Footwear struggled to survive in this environment, the CBI program proved to be a critical lifeline, enabling us to remain viable in a market dominated by low-priced Chinese imports. Today, although the CBI has given us the tools to compete, it is still an uphill climb as we fight to regain the market share lost to Chinese imports.

Unlike imports from China, footwear imports from the Caribbean have a positive impact on U.S. jobs:

- Because the Caribbean-made footwear must be made entirely of U.S. materials, it creates jobs in industries that supply the footwear industry. Foam insoles, laces, eyelets, thread, rubber, cloth, stiffening compounds -- all must be produced in the U.S.

- For Carter, the jobs in our Wilkes-Barre, Pennsylvania plant are directly dependent on and necessary to the Caribbean production. There is a vital synergy between these two operations, with the people in Wilkes-Barre preparing the materials, cutting the fabrics to shape, mixing the rubber formulations and a number of other essential functions. As Carter Footwear's production levels increase in the Caribbean, it will have a corresponding benefit to the Wilkes-Barre operation.

By contrast, if this same footwear production were to be performed in China, zero U.S. jobs would be created since the materials and components would be sourced from and processed in that region.

Statement for The Record - H.R. 553
Carter Footwear, Inc.
February 24, 1995

During the February 10 hearing, the Subcommittee heard testimony from the Rubber and Plastic Footwear Manufacturers Association, which criticized the CBI program's footwear benefits. The witness provided an array of figures to demonstrate that footwear imports from the Caribbean have increased substantially in recent years. That is true. In 1993, the total footwear from the Caribbean was 4,555,000 pairs -- compared to 2,593,000 the previous year.

What is missing from the witness' testimony, however, is the fact that CBI imports are dwarfed by the imports from China -- which totalled 176,266,000 pairs of shoes. In reality, footwear from the Caribbean represented a mere 2% of the total footwear imports into the U.S. in 1993. Chinese imports, on the other hand, constituted 69% of the footwear imports. And this trend is continuing. An International Trade Commission report issued this month reported that imports from China increased in 1994, with footwear identified as one of two products that experienced the greatest increase in imports.

The Rubber and Footwear Manufacturers' concern about the U.S. industry is a valid one, but they are looking in the wrong direction for the culprit. The Rubber and Plastic Manufacturers' unrelenting and singleminded focus on the Caribbean clearly seems out of proportion. Perhaps this orientation can be better understood, however, when you consider that some of the Association's largest members are themselves significant importers from the Far East. For example, it is our understanding that Converse may import from the Far East as much as five times the number of shoes that they manufacture in the U.S.

This is not a simple case of domestic manufacturers fighting against offshore producers. In many respects, this is about U.S. companies who import from the Far East trying to protect their competitive position against other U.S. companies who are involved in the Caribbean. While it may have more appeal for opponents of the CBI to characterize it in other terms, this is the underlying reality.

The Section 222 benefits in the Caribbean have been in effect since 1990. Our company and others have made significant investment decisions based on this provision of the CBI program. I am sure this Subcommittee recognizes that it would be counterproductive to the goals of the CBI program, and a serious injustice to companies like Carter, to turn the clock back now.

Again, Carter Footwear appreciates your leadership in supporting the CBI program.

Sincerely,

Howard Gonchar
President



Costa Rican - American Chamber of Commerce ®
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The Costa Rican-American Chamber of Commerce (AmCham) position on H.R. 553, The Caribbean Basin Trade Security Act
February 22, 1995

The Costa Rican-American Chamber of Commerce and its members welcome the introduction of H.R. 553, the Caribbean Basin Trade Security Act. We compliment the drafter of this legislation, Congressman Philip Crane and co-sponsors, Reps. Clay Shaw, Sam Gibbons and Charles Rangel for their decision to submit this urgently needed initiative to stem the diversion of trade and investment from Costa Rica and the other CBI nations as a result of NAFTA, particularly in light of the recent peso devaluation.

While AmCham Costa Rica lobbied for the ratification of NAFTA, our support was contingent upon the prompt implementation of an interim program which would enable the CBI region to remain competitive with Mexico. The announcement of the Interim Trade Program by Vice President Al Gore provided a window of opportunity which, to our utter dismay, was abruptly closed when the ITP was excluded from the GATT implementing legislation.

Of the nearly 300 companies which constitute our Chamber, many are U.S. companies which have settled in Costa Rica and have developed strategic alliances and co-production activities. The Caribbean Basin Initiative has been a determining factor in promoting this kind of investment which in turn has been a major factor in the development of Costa Rica's economy.

It is no surprise that since the implementation of NAFTA, many of these companies have postponed plans for expansion, as is the case with Wrangler, Inc. This company held back on a projected expansion of its facilities in Costa Rica as NAFTA was in the negotiation stages in 1992! Since that time the company has opened a 400 operator plant in Mexico. Other companies have curtailed their exports, or shut down altogether.

In July 1993, Costa Rica had 123 sewing/exporting plants. By June of 1994 that number had dropped by 14% to 106 operating/exporting plants. Of the 17 plants that stopped operations, 5 stopped exporting and 12 more closed down their operations completely.

During the first semester of 1994-the first semester of NAFTA implementation-Costa Rica registered its first negative export growth in 10 years. A comparison of the value added figures reveals a drop from the $163.5 million registered during the 12 months ending in June 1993 when compared to the $154.7 million registered during the same period in June 1994-a decrease of 5.38%.

Further complicating this already unlevel playing field is Mexico's peso crisis. Costa Rica's exports will suffer a double negative impact as a result of the devalued peso and NAFTA's superior tariff advantages. In short, the very program which has contributed so much to the social stability and economic growth in the region is now in jeopardy and, without HR 553, headed for disaster.

The "Caribbean Basin Security Act" is consistent with the "Declaration of Principles" signed by the elected Heads of State and Government of the Americas in the recently held Summit of the Americas. The prompt passage of HR 553 will indeed help to safeguard the CBI achievements in Costa Rica and the rest of the region through incentives for economic integration and free trade.

Although AmCham Costa Rica applauds the more generous provisions affored by HR 553, our Chamber strongly recommends that the program be a permanent one, rather than be limited to a 6 year time frame. Conditioning the program to NAFTA accession after 6 years is an admirable and ambitious goal but possibly an unrealistic one, especially for many of the smaller countries in the Caribbean Basin Region.

The Costa Rican American Chamber of Commerce urges the prompt passage and implementation of the Caribbean Basin Trade Security Act by the 104th Congress. As Congressman Sam Gibbons recently remarked, "the time to act is now, before Caribbean countries suffer from the impact of the North American Free Trade Agreement."

Sincerely,

Humberto Pacheco A., M.C.L.
President

[BY PERMISSION OF THE CHAIRMAN]

STATEMENT OF DR. GABRIEL BIGURIA, PRESIDENT OF GUATEMALA'S "NON-TRADITIONAL PRODUCTS EXPORTERS ASSOCIATION", IN SUPPORT OF "H.R. 553", "THE CARIBBEAN BASIN TRADE SECURITY ACT", BEFORE THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS & MEANS COMMITTEE

MY NAME IS GABRIEL BIGURIA AND I AM THE PRESIDENT OF GUATEMALA'S "NON-TRADITIONAL PRODUCTS EXPORTERS ASSOCIATION" COMMONLY KNOWN BY THE ACRONYM GEXPRONT. I APPRECIATE THE OPPORTUNITY TO SUBMIT A WRITTEN STATEMENT IN SUPPORT OF "H.R. 553", "THE CARIBBEAN BASIN TRADE SECURITY ACT", WHICH IS OF PARAMOUNT IMPORTANCE FOR OUR SECTOR TO MAINTAIN ITS COMPETITIVENESS IN LIGHT OF NAFTA'S IMPACT.

GUATEMALA'S "NON-TRADITIONAL PRODUCTS EXPORTERS ASSOCIATION", REFERED TO FROM NOW ON AS GEXPRONT, WAS FOUNDED IN 1982 BY A BOLD GROUP OF ENTREPRENEURS TO PROMOTE EXPORTS OF PRODUCTS OUTSIDE OF THE TRADITIONAL COMMODITIES LIKE COFFEE, SUGAR, BEEF AND COTTON. OUR INITIAL MEMBERSHIP OF 55 BUSINESSES HAS BLOSSOMED TO INCLUDE 837 COMPANIES IN 1994, REPRESENTING A WIDE GAMUT OF SECTORS SUCH AS FRUITS & VEGETABLES, TEXTILES & APPAREL, WOOD PRODUCTS, SEAFOOD, HANDICRAFTS, ORNAMENTAL PLANTS AND CERAMICS AMONG THE MOST IMPORTANT. OUR ORGANIZATION COMPRISES LARGE CORPORATIONS AS WELL AS SMALL AND MEDIUM-SIZED COMPANIES, INCLUDING RURAL INDIGENOUS COOPERATIVES THAT HAVE PROSPERED CONSIDERABLY AS A RESULT OF A GROWING DEMAND FOR THEIR EXPORTS IN CONSUMER MARKETS. WE ARE STRUCTURED TO EFFICIENTLY RESPOND TO OUR MEMBERS' NEEDS, PROVIDING SUPPORT AND TRAINING THROUGH THE COMMISSIONS REPRESENTING EACH SECTOR, ARTICULATING AND PROMOTING ESTRATEGIES & POLICIES TO ASSIST THE EXPORT INDUSTRY, AND COORDINATING THE RELATED SERVICES REQUIRED FOR OUR PRODUCTS TO REACH THEIR DESTINATARY MARKETS. OUR GOAL IS TO PROMOTE QUALITY AND COMPETITIVENESS, KEEPING UP WITH THE LATEST INNOVATIONS AND CONSTANTLY SEEKING NEW OPPORTUNITIES FOR OUR GOODS THAT ARE CONDUCIVE TO STRENGTHENING OUR COUNTRY'S PRODUCTIVE CAPACITY AND GENERATING EMPLOYMENT. WE ARE ALWAYS DIVERSIFYING OUR POTENTIAL AND OUR SERVICES IN ORDER TO HAVE THE FLEXIBILITY TO ADAPT TO RAPIDLY CHANGING CIRCUMSTANCES WORLDWIDE, UNDER THE FIRM CONVICTION THAT INCREASED TRADE WILL LEAD TO PROSPERITY AND GROWTH.

IN THE PAST, GUATEMALA, LIKE MANY OTHER NATIONS IN THE REGION, RELIED HEAVILY ON A FEW COMMODITIES THAT ARE OFTEN SUBJECT TO UNPREDICTABLE VARIATIONS IN WORLD MARKETS; OUR ECONOMY DEPENDED ON THE INTERNATIONAL SITUATION OF PRODUCTS LIKE COFFEE, SUGAR, BEEF AND COTTON, AND ANY CHANGE IN THOSE ITEMS HAD PROFOUND EFFECTS ON OUR CHANCES FOR PROGRESS. WITH THE IMPLEMENTATION OF THE "CARIBBEAN BASIN INITIATIVE" (CBI) IN 1984, GUATEMALA REALIZED THAT IT HAD THE GOLDEN OPPORTUNITY TO TAP ITS ABUNDANT RESOURCES AND DEVELOP PRODUCTS FOR EXPORT, GIVEN THE OPEN MARKET ACCESS THAT THE PROGRAM ESTABLISHED. THIS HAS ENABLED US TO DIVERSIFY OUR PRODUCTION AND MITIGATE THE IMPACT OF WORLD PRICES IN TRADITIONAL COMMODITIES, WHICH HAVE FLUCTUATED WILDLY DURING PAST YEARS, STRENGTHENING OUR CAPACITY TO COMPETE IN THE WORLD MARKET AND PROVIDING A WINDOW OF OPPORTUNITY TO COUNTLESS PEOPLE WHO PREVIOUSLY HAD NO PERSPECTIVES FOR HOPE AND PROSPERITY. OUR COUNTRY WILL SIGNIFICANTLY BENEFIT FROM THIS CHANGE FOR MANY YEARS TO COME, AS IT HAS BROUGHT ABOUT A CULTURE OF QUALITY AND THE DEVELOPMENT OF A PRODUCTIVE CAPACITY THAT WE CAN BUILD ON TO FURTHER SOLIDIFY OUR POSITION WITHIN GUATEMALA'S ECONOMY.

THE TREATMENT GRANTED BY THE CBI HAS BEEN A KEY FACTOR IN SPAWNING THE SIGNIFICANT GROWTH OF GUATEMALA'S NON-TRADITIONAL SECTOR, AS IT CREATED OPPORTUNITIES AND DEMAND FOR A WIDE VARIETY OF PRODUCTS THAT WE'RE CAPABLE OR EXPORTING BUT WHOSE POTENTIAL WE HAD SCARCELY TAPPED. THE CBI ALLOWED FOR GUATEMALA TO TAKE ADVANTAGE OF THE CLIMATE AND RESOURCES IT HAS BEEN BLESSED WITH, GENERATING CONSIDERABLE EMPLOYMENT AND BRINGING THE KNOW-HOW THAT LEADS TO EFFICIENCY. FROM 1984 TO 1994 GUATEMALA'S NON-TRADITIONAL EXPORTS EXPANDED OVER FIVE-FOLD, THE ENCLOSED CHARTS ILLUSTRATE THE RATE OF GROWTH AND PINPOINT OF THOSE SECTORS IN WHICH WE HAVE ADVANCED THE MOST. IN 1984, THE NON-TRADITIONAL SECTOR ACCOUNTED FOR 18,800 JOBS, CONTRASTED WITH 1994 WHERE DIRECT EMPLOYMENT IS SURPASSING 250,000 WORKERS, IN ADDITION TO THE RELATED INDIRECT BENEFITS THAT OUR EXPORT SECTOR BRINGS TO AREAS LIKE TRANSPORTATION, PACKAGING & LABELLING, PROCESSING, COMPUTER SUPPORT SERVICES AND FINANCIAL INSTITUTIONS.

IN THE AGRICULTURAL AREA, GUATEMALA HAS BECOME ONE OF THE LARGEST EXPORTERS OF FRUITS & VEGETABLES IN THE WORLD, TAKING ADVANTAGE OF DEMAND IN THE UNITED STATES AND EUROPE. OUR PRODUCTION OF SNO-PEAS, BROCCOLI, CAULIFLOWER, FRENCH BEANS AND BERRIES HAS CAPTURED MARKETS ABROAD, THANKS TO THEIR QUALITY AND YEAR-ROUND SUPPLY; INTERNALLY, IT HAS PROVIDED SMALL RURAL FARMERS WITH THE CHANCE TO CULTIVATE CROPS THAT BRING CONSIDERABLY GREATER INCOME THAN SUBSISTENCE AGRICULTURE BASED ON GROWING CORN & BEANS FOR LOCAL CONSUMPTION. IF ONE TRAVELS THROUGHOUT THE GUATEMALAN WESTERN HIGHLANDS, ONE CAN SEE THE IMPROVEMENT IN THE STANDARD OF LIVING AMONG ITS INHABITANTS DUE TO THE GROWTH OF NON-TRADITIONAL EXPORTS; USUALLY OPERATING UNDER A COOPERATIVE STRUCTURE, THESE PEOPLE HAVE BETTER SCHOOLS, IMPROVED ACCESS TO HEALTH CARE AND LIVING CONDITIONS THAT REPRESENT A SIGNIFICANT STEP ABOVE THEIR PREVIOUS SITUATION. GREAT EMPHASIS HAS BEEN PLACED IN TEACHING THEM MARKETING SKILLS AND TECHNICAL ABILITIES, SO THAT THEY CAN DEAL DIRECTLY WITH FOREIGN BUYERS AND COMPLEMENT THEIR AGRICULTURAL SAVVY. YOU WILL NOTE IN MANY OF YOUR SUPERMARKETS THAT, DURING THESE COLD WINTER MONTHS, YOU CAN ENJOY FRESH GUATEMALAN PRODUCE IN A SEASON WHERE FRESH PRODUCTS USED TO BE UNAVAILABLE; THE CBI HAS CONTRIBUTED TO THIS BY ALLOWING THE ACCESS FOR OUR PRODUCTS TO ENTER THE UNITED STATES WITHOUT ANY BARRIERS. OUR PRODUCTION OF MELONS, RASPBERRIES, BLACKBERRIES AND TROPICAL FRUITS HAS INCREASED SUBSTANTIALLY AS THE QUALITY IDENTIFIED WITH OUR GOODS GATHERS MORE CONSUMERS THAT WISH TO FLAVOR THE JUICE OF CANTALOUPES, TASTE THE TEXTURE OF HONEYDEWS AND BAKE PIES WITH OUR BERRIES IN MONTHS WHEN THEY PREVIOUSLY WERE NOT AVAILABLE.

ANOTHER SECTOR THAT HAS EXPERIENCED GROWTH IS THE SEAFOOD INDUSTRY WHICH IN THE PAST WAS LIMITED TO SMALL FISHERMEN IN COASTAL VILLAGES THAT ACCOUNTED FOR LIMITED VOLUME. IN THE PAST 10 YEARS, GUATEMALA'S PRODUCTION OF CULTIVATED SHRIMP AND VARIOUS TYPES OF FISH HAS BLOSSOMED THANKS TO THE OPPORTUNITIES BROUGHT ABOUT BY THE CBI; IN 1986, EXPORT EARNINGS FROM THIS SECTOR REACHED A MEAGER $8 MILLION, COMPARED TO 1993 WHERE THEY ACCOUNTED FOR AN IMPRESSIVE $31.2 MILLION; EXPECTATIONS ARE THAT THERE IS STILL ROOM TO EXPAND AND GENERATE ADDITIONAL JOB OPPORTUNITIES WITH THE ACQUISITION OF SKILLS OF BENEFIT TO A WORKER'S PRODUCTIVE OUTPUT.

SOME SECTORS, SUCH AS WOOD PRODUCTS AND HANDICRAFTS HAVE AL GAINED FROM CBI TREATMENT IN THE PAST DECADE; GUATEMALA HAS A RI ENDOWMENT OF FINE WOODS, LIKE MAHOGANY AND PINE, WHICH WE SOUGHT RATIONALLY EXPLOIT FOR THE MANUFACTURE OF HIGH-QUALITY FURNITU AND OTHER ITEMS THAT ARE POPULAR IN CONSUMER MARKETS.

THE APPEAL OF GUATEMALA'S COLORFUL AND RICH TRADITION HAS CAPTUR THE ATTENTION OF MANY CONSUMERS IN THE UNITED STATES AND EUROP WHO NOW VALUE GUATEMALAN TYPICAL CLOTHING AS SOMETHING UNIQUE A COMFORTABLE TO WEAR. OUR WEAVERS HAVE MANY YEARS OF DEDICATI THEMSELVES TO THIS ART, AND NOW THEY HAVE FOUND A WAY TO MAKE GOOD LIVING BY EXPORTING THEIR CRAFTS AND APPAREL ABROAD, IMPROVI THEIR LIVELIHOOD WHILE PRESERVING THEIR HERITAGE. THE MAJORI HAVE FORMED COOPERATIVES OR CREATED MECHANISMS THAT PERMIT JOI MARKETING, THEREBY INCREASING THEIR LEVERAGE WHEN DEALING WI FOREIGN IMPORTERS WHILE POOLING THEIR INDIVIDUAL RESOURCES STRENGTHEN THEIR ABILITY TO MAKE THE GOODS REACH THEIR DESTINATIO VARIATIONS IN STYLE AND PATTERN HAVE BEEN CLEVERLY INTRODUCED KEEP UP WITH CHANGES IN FASHION AND TARGET CLOTHING DESI ACCORDING TO THE SEASONS.

BUT PERHAPS THE SECTOR THAT HAS PROSPERED THE MOST, DESPITE NO ENJOYING CBI DUTY-FREE TREATMENT, IS THE TEXTILE AND APPARE INDUSTRY WHICH HAS BECOME ONE OF THE MOST IMPORTANT COMPONENTS FO THE GUATEMALAN ECONOMY SINCE THE MID-1980S. IN 1986, GUATEMAL EXPORTED $19.5 MILLION TO THE UNITED STATES, COMPARED WITH $545. MILLION IN 1993; ANNUAL GROWTH RATES HAVE CLIMBED SIGNIFICANTL UNTIL RECENTLY WHERE, AS WE WILL LATER EXAMINE, NAFTA HAS HAD PROFOUND ADVERSE IMPACT. ONE OF THE MAIN CONTRIBUTIONS OF TH TEXTILE & APPAREL INDUSTRY TO THE LOCAL ECONOMY HAS BEEN EMPLOYMEN GENERATION; IN 1986, JOBS IN THIS SECTOR BARELY REACHED 15,000 COMPARED TO 1993 WHERE 80,000 PEOPLE WERE DIRECTLY EMPLOYED BY TH INDUSTRY WITH WAGES ABOVE THE AVERAGE AND VALUABLE TRAINING AN EDUCATION OPPORTUNITIES AVAILABLE TO ALL. THE IMPACT OF NEW JOB HAS BEEN SPECIALLY STRONG IN THE IMPROVEMENT OF THE QUALITY O LIFE THAT POOR WOMEN IN THE HIGHLANDS HAVE HAD WORKING IN TH APPAREL INDUSTRY. A KEY BENEFIT FOR THE CBI REGION'S TEXTILE APPAREL INDUSTRY HAS BEEN THE SPECIAL ACCESS PROGRAM KNOWN A "807A" WHICH ESTABLISHES "GUARANTEED ACCESS LEVELS" (GALS) FO APPAREL MANUFACTURED WITH U.S. CUT AND FORMED FABRIC, THU PROVIDING FOR INCREASED MARKETS FOR U.S. EXPORTS OF RAW MATERIALS IN 1994 ALONE, GUATEMALA IMPORTED OVER $280 MILLION OF U.S COMPONENTS FOR ITS TEXTILE AND APPAREL INDUSTRY, A FIGURE THA SHOULD CONTINUE TO GROW IF CBI BENEFICIARIES RECEIVE EQUIVALEN TREATMENT WITH NAFTA.

WITH NAFTA TAKING EFFECT IN 1994, GUATEMALA'S NON-TRADITIONA EXPORTS HAVE SUFFERED THE IMPACT OF THE ADDITIONAL BENEFIT OBTAINED BY MEXICO WHICH ERODE OUR COMPETITIVENESS TO THE U.S MARKET AND THREATEN TO CANCEL THE PROGRESS MADE TO DATE. MANY O THE SECTORS MENTIONED BEFORE ARE IN DANGER OF LOSING THE PROGRES MADE TO DATE, WITH THE SEVERE SOCIAL AND ECONOMIC REPERCUSSION THAT UNDERMINE OUR COUNTRY'S WELL-BEING AND QUESTION OUR EFFORTS T PROMOTE TRADE LIBERALIZATION. THE CBI REGION IS CURRENTLY UNDE THE OMINOUS SHADOW OF LOSING ITS COMPETITIVE ADVANTAGE AND SEEIN ITS WINDOW OF OPPORTUNITY CLOSE AFTER YEARS OF SUSTAINED GROWTH. ITS IMPORTANT TO STRESS THE FACT THAT THE CBI HAS IMPROVED THE

TRADE BALANCE BETWEEN THE REGION AND THE UNITED STATES SINCE ITS INCEPTION. IN 1983, GUATEMALA EXPORTED $374.6 MILLION TO THE UNITED STATES AND IMPORTED $315.3 MILLION; WITH CBI THE DRIVING FORCE, OUR EXPORTS TO THE UNITED STATES REACHED $1.2 BILLION IN 1993 AND U.S. EXPORTS TO OUR COUNTRY INCREASED SUBSTANTIALLY TO $1.3 BILLION. ITS KEY TO KEEP IN MIND THAT, FOR EVERY DOLLAR WE EARN FROM EXPORTS WORLDWIDE, APPROXIMATELY 75 CENTS GOES TO PURCHASING U.S. GOODS; THIS CLEARLY DEMONSTRATES THAT THE CBI IS A "WIN-WIN" SITUATION FOR ALL PARTIES INVOLVED PROMOTING GROWTH THROUGH TRADE AND BRINGING ABOUT THE PROSPERITY THAT OUR PEOPLE YEARN FOR, SIGNIFICANTLY BENEFITTING THE POTENTIAL FOR THE PRODUCTS AND SERVICES WE HAVE TO OFFER.

THE IMPACT OF NAFTA THREATENS THIS BRIGHT OUTLOOK AS SOME SECTORS STAND TO DISAPPEAR IF PROMPT AND DECISIVE ACTION IS NOT TAKEN. IN THE CASE OF THE APPAREL INDUSTRY, THE EFFECT HAS BEEN THE MOST DRAMATIC AS COMPANIES FLEE TO MEXICO LOOKING TO TAKE ADVANTAGE OF THE ADDITIONAL ACCESS ESTABLISHED BY NAFTA. IN 1994, GUATEMALA HAS SUFFERED THE CLOSING OF 72 PRODUCTION FACILITIES WITH THE LOSS OF OVER 8,000 JOBS THAT OUR SMALL ECONOMY CAN HARDLY ABSORB; THE TENDENCY SEEMS TO BE FOR THE WORSE, AS MANY OPERATORS HAVE REPORTED THE LOSS OF MANUFACTURING CONTRACTS THAT HAVE BEEN RELLOCATED TO MEXICO. THIS IS NOT ONLY HARMFUL TO GUATEMALA, AS IT HAS A DIRECT EFFECT ON THE SALES OF U.S. RAW MATERIALS TO A SECTOR THAT HAD CONTINUED TO GROW; WITH THE LOSS OF MANUFACTURING OPERATIONS, WE ARE PURCHASING LESS AMOUNTS OF U.S. FABRIC, A TREND THAT WILL CONTINUE IN DECLINE IF CONCRETE MEASURES ARE NOT TAKEN.

OTHER SECTORS HAVE ALSO BEEN HIT BY NAFTA, MAINLY IN AGRICULTURAL COMMODITIES WHERE THE LOSS OF CBI ADVANTAGES ARE PRODUCING LOSSES IN MARKET SHARE GIVEN THE BENEFITS OBTAINED BY MEXICO AND ITS PROXIMITY TO THE UNITED STATES. IN ADDITION TO THE TARIFF IMPACT, MANY OF OUR EXPORTERS EXPRESS THEIR SURPRISE WHEN MEXICO HAS VIRTUALLY NO PROBLEM IN ENTERING THE UNITED STATES WITH THE FITOSANITARY REGULATIONS, CUSTOMS PROCEDURES AND QUALITY STANDARDS, WHILE THEY FACE A NEVER-ENDING MAZE OF PAPERWORK AND OBSTACLES.

IN THE AREA OF INVESTMENT, THERE SEEMS TO BE A WIDESPREAD PERCEPTION THAT MEXICO IS A MUCH BETTER PLACE TO GO AS A RESULT OF NAFTA, IN DETRIMENT OF THE CBI REGION WHO HAS WORK SO DILIGENTLY IN MAKING THE NECESSARY SACRIFICES TO ATTRACT INVESTORS. GUATEMALA'S PRIVATE SECTOR HAS CONSISTENTLY LOBBIED FOR ECONOMIC LIBERALIZATION, PROMOTING THE ELIMINATION OF TARIFF AND NON-TARIFF BARRIERS THAT DISTORT COMMERCE AND THE SIMPLIFICATION OF THE LEGAL FRAMEWORKS THAT GOVERN TRADE. IT BECOMES DIFFICULT TO CONTINUE PREACHING THE BENEFITS OF REMOVING SUBSIDIES AND REDUCING BUREAUCRATIC INTERVENTION IF ONE CANNOT SHOW TANGIBLE RESULTS THAT EVIDENCE THE VALIDITY OF THE STEPS TAKEN. ONCE AGAIN, ACTION IS A MUST IF THE CBI REGION IS TO MAINTAIN ITS RATE OF GROWTH AND ATTRACT THE INVESTMENT NECESSARY TO TAKE FULL ADVANTAGE OF ITS RESOURCES AND THE TECHNOLOGY REQUIRED TO TAP OUR POTENTIAL.

FOR THESE REASONS, GUATEMALA'S "NON-TRADITIONAL PRODUCTS EXPORTERS ASSOCIATION" (GEXPRONT) STAUNCHLY SUPPORTS "THE CARIBBEAN BASIN TRADE SECURITY ACT" AS INTRODUCED IN THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS & MEANS COMMITTEE. WE FIRMLY BELIEVE THAT THIS LEGISLATION WILL CONTRIBUTE TO RESTORING GUATEMALA'S

COMPETITIVENESS AS A CBI BENEFICIARY AND LESSEN THE IMPACT OF NAFTA ON KEY SECTORS OF OUR ECONOMY. IT WILL PROVIDE THE PRIVATE SECTOR WITH THE CONFIDENCE AND MOTIVATION TO STRIVE FOR CONSISTENT IMPROVEMENT, PUTTING OUR BEST EFFORT WITH THE ASSURANCE OF HAVING ACCESS TO THE MARKETS THAT DEMAND OUR PRODUCTS. THIS BILL WILL ENABLE GUATEMALA'S NON-TRADITIONAL SECTOR TO CONTINUE GROWING AT A HEALTHY PACE, CREATING NEW JOBS AND STRENGTHENING ITS IMPORTANT ROLE FOR THE COUNTRY'S ECONOMY.

THE MOST IMPORTANT PROVISION IN THE LEGISLATION CALLS FOR EQUIVALENT TREATMENT TO NAFTA THAT COVERS THOSE PRODUCTS EXCLUDED FROM CBI BENEFITS, INCLUDING THE ABOVE-MENTIONED TEXTILES & APPAREL INDUSTRY AS WELL AS OTHER IMPORTANT GOODS LIKE FOOTWEAR, LEATHER ARTICLES THAT WOULD GIVE OUR COUNTRY SIGNIFICANT OPPORTUNITIES. THE NAFTA-LIKE TREATMENT FOR THE FABRIC & GARMENT SECTOR WOULD MITIGATE THE DAMAGE SUFFERED THAT I PREVIOUSLY ALLUDED TO AND KEEP PRODUCTION AND EMPLOYMENT BUOYING. GUATEMALA HAS A HIGH-QUALITY FABRIC PRODUCTION INDUSTRY, THAT CURRENTLY SUPPLIES NOT ONLY THE LOCAL AND REGIONAL MARKETS BUT ALSO EXPORTS TO THE UNITED STATES AND EUROPE. THE BILL WOULD GIVE THEM A BOOST AND ENHANCE THEIR COMPETIVENESS THROUGHOUT THE CARIBBEAN BASIN, AS THEIR PRODUCTS FULLY COMPLY WITH NAFTA RULES OF ORIGIN. THE ESTABLISHMENT OF EQUAL TREATMENT WOULD ALSO HELP U.S. EXPORTS OF RAW MATERIALS FOR THE MANUFACTURE OF APPAREL, WITH PRELIMINARY ESTIMATES INDICATING THAT THERE WOULD BE AN INCREASE OF $15 MILLION IN SALES TO GUATEMALA ALONE, DURING THE FIRST YEAR OF EQUIVALENT TREATMENT.

THE LEGISLATION WOULD ALSO GIVE EQUAL TREATMENT TO OTHER PRODUCTS THAT THE CBI HAS POTENTIAL TO EXPORT, CONTRIBUTING TO ITS ECONOMIC PROGRESS; GUATEMALA WISHES TO EXPLORE INCREASING ITS EXPORTS OF FOOTWEAR, HANDBAGS AND FLAT GOODS, WHICH WOULD HAVE A CHANGE IF THE BILL IS PASSED.

A PROVISION OF PARTICULAR RELEVANCE TO GUATEMALA IS THE TREATMENT SET FOR HANDICRAFTS & FOLKLORIC ARTICLES, AN ISSUE THAT HAS BEEN PURSUED WITH THE UNITED STATES ON A BILATERAL BASIS FOR SOME YEARS. MANY OF OUR PEOPLE ARE DESCENDANTS OF THE MAYA AND HAVE A RICH & ANCIENT TRADITION OF WEAVING AND CREATING UNIQUE ITEMS THAT ARE RECOGNIZED AROUND THE GLOBE FOR THEIR COLOR AND BEAUTY. THIS HERITAGE IS ALIVE TODAY WITH THE PRODUCTION OF APPAREL, RUGS, HOUSEHOLD GOODS AND DECORATIVE ARTICLES THAT HAVE SIGNIFICANT DEMAND IN THE UNITED STATES. THEY DO NOT COMPETE WITH U.S. MADE PRODUCTS AND POSE NO THREAT OF MARKET DISRUPTION. AS SUCH, THEY DESERVE UNIMPEDED ACCESS TO THE U.S. MARKET AND WOULD PROVIDE A TREMENDOUS OPPORTUNITY FOR OUR COTTAGE INDUSTRY AND COOPERATIVES TO EARN INCOME WHILE PRESERVING THEIR CULTURE. MANY ARTISANS WHO LIVE IN RURAL AREAS WOULD CONSIDERABLY BENEFIT FROM THIS TREATMENT AS ENVISIONED BY THE BILL, BRINGING THEM HOPE FOR A BETTER FUTURE AND THE CHANCE TO PROSPER WHILE TAPPING THEIR INHERENT STRENGTH.

IN ADDITION, THE LEGISLATION DRAWS THE PARAMETERS FOR GUATEMALA AND ITS CARIBBEAN BASIN NEIGHBORS TO BEGIN THE PROCESS OF NEGOTIATIONS CONDUCIVE TO OUR FULL PARTICIPATION IN NAFTA. IN THIS SENSE AND CLOSELY RELATED TO MY PREVIOUS COMMENTS, GUATEMALA'S PRIVATE SECTOR IS FULLY SUPPORTIVE OF ITS GOVERNMENT AND SEEKS TO COMMENCE WITH SECTORIAL NEGOTIATIONS AS SOON AS POSSIBLE. OUR NON-TRADITIONAL AGRICULTURAL EXPORTS WOULD BENEFIT FROM A FITOSANITARY AGREEMENT

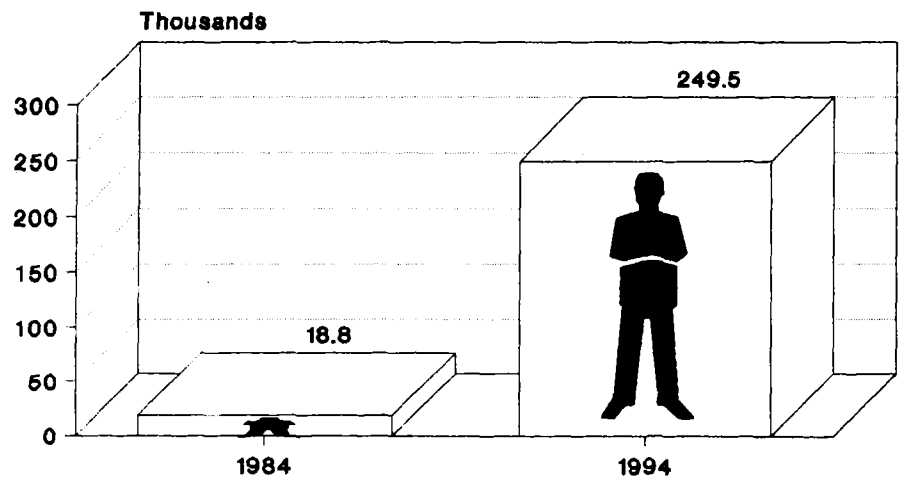
WITH THE UNITED STATES THAT ESTABLISHES CLEAR, TRANSPARENT AND AGILE MECHANISMS FOR THE ENTRY OF OUR PRODUCTS INTO YOUR COUNTRY; WE ARE PREPARED TO DO OUR PART AND INVEST IN THE TECHNOLOGY AND KNOW-HOW NECESSARY TO GUARANTEE THAT OUR EXPORTS MEET WITH THE HIGHEST QUALITY STANDARDS. THE REMOVAL OF NON-TARIFF OBSTACLES TO THE FREE FLOW OF GOODS & SERVICES IS A GOAL THAT WE ALL SHARE AND ONE THAT WE MUST ALL STRIVE FOR IN ORDER TO MAKE FREE TRADE A REALITY.

SIMILAR CONSULTATIONS COULD BE HELD IN AREAS SUCH AS CUSTOMS PROCEDURES, INVESTMENT, INTELLECTUAL PROPERTY AND OTHERS, WITH THE VIEW OF FACILITATING THINGS FOR BUSINESSMEN TO CARRY OUT THEIR ENTREPRENURIAL ACTIVITIES. NAFTA CAN PLAY A VITAL ROLE AND SERVE AS THE FRAMEWORK IN MAY OF THESE MATTERS, IN ADDITION TO ENSURING CONSISTENCY WITH APPLICABLE TO PROVISIONS.

MANY OF US BUSINESSPEOPLE WHO ATTENDED THE MIAMI SUMMIT WERE PLEASED AND ENCOURAGED THAT THE DEMOCRATICALLY-ELECTED GOVERNMENTS OF THE HEMISPHERE REACHED A CONSENSUS TO PROMOTE FREE TRADE, RECOGNIZING THE KEY ROLE OF PRIVATE ENTERPRISE IN DEVELOPMENT. NOW ITS IMPORTANT TO FOLLOW UP THE DECLARATIONS WITH CONCRETE ACTIONS THAT SEEK TO IMPLEMENT THE VARIOUS DISCIPLINES OUTLINED IN THE "PLAN OF ACTION"; FOR THIS PURPOSE, THE MEETING OF CARIBBEAN BASIN TRADE MINISTERS WITH THE UNITED STATES TRADE REPRESENTATIVE THAT THE BILL CALLS FOR IS A TIMELY RECOMMENDATION AND DESERVES THE SERIOUS CONSIDERATION OF OUR GOVERNMENTS. TIME IS OF ESSENCE AND WE MUST ACT NOW!! GUATEMALA'S NON-TRADITIONAL SECTOR IS READY TO DO ITS PART, AND LOOKS FORWARD TO JOINING FORCES WITH ALL PARTIES WHO GENUINELY BELIEVE IN FREE TRADE TO MAKE "THE CARIBBEAN BASIN TRADE SECURITY ACT" A REALITY DURING 1995. THE LEGISLATION HAS BIPARTISAN SUPPORT AND REQUIRES THAT IT BE ACTED UPON EXPEDITIOUSLY, SEEKING THE APPROPRIATE MECHANISMS FOR ITS SWIFT PASSAGE. PRESIDENT CLINTON GAVE THOSE OF US IN THE PRIVATE SECTOR CONFIDENCE WHEN HE CATEGORICALLY REITERATED HIS ADMINISTRATION'S SUPPORT FOR THE CBI AT THE MIAMI SUMMIT. WE FEEL THAT THIS BILL REPRESENTS THE GOLDEN OPPORTUNITY TO FULFILL THIS COMMITMENT AND ARE CONFIDENT THAT THE UNITED STATES GOVERNMENT WILL GIVE ITS FULL SUPPORT AND ACTIVELY LOBBY FOR ITS APPROVAL. THE IMPLEMENTATION OF "H.R. 553" WILL RESTORE OUR COMPETITIVENESS IN KEY AREAS AND LESSEN THE IMPACT OF NAFTA, WHILE SETTING THE GROUNDWORK FOR GUATEMALA'S INSERTION INTO THE ECONOMIC LIBERALIZATION PROCESS.

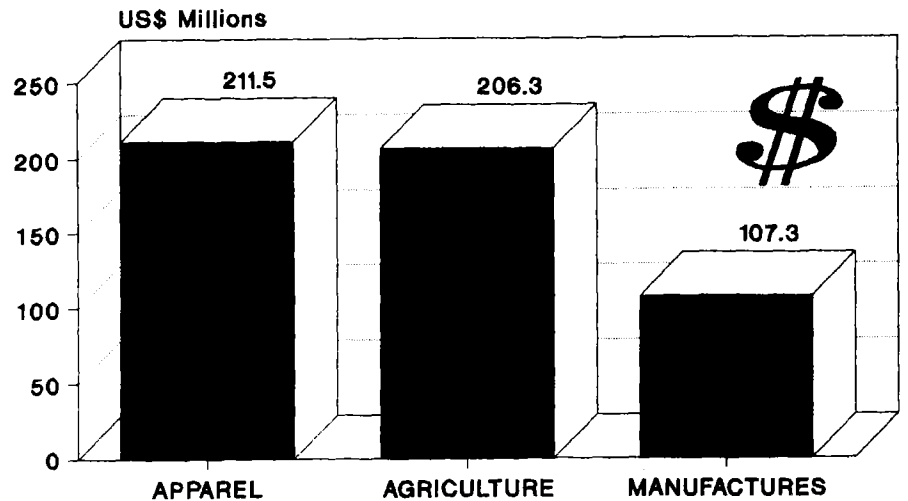
I THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS STATEMENT IN SUPPORT OF "H.R. 553" AND TRUST THAT YOU WILL BACK THIS LEGISLATION WHICH WILL SEND A CLEAR MESSAGE FOR GROWTH THROUGH TRADE.

JOBS CREATED BY NON-TRADITIONAL EXPORTS 1984-1994

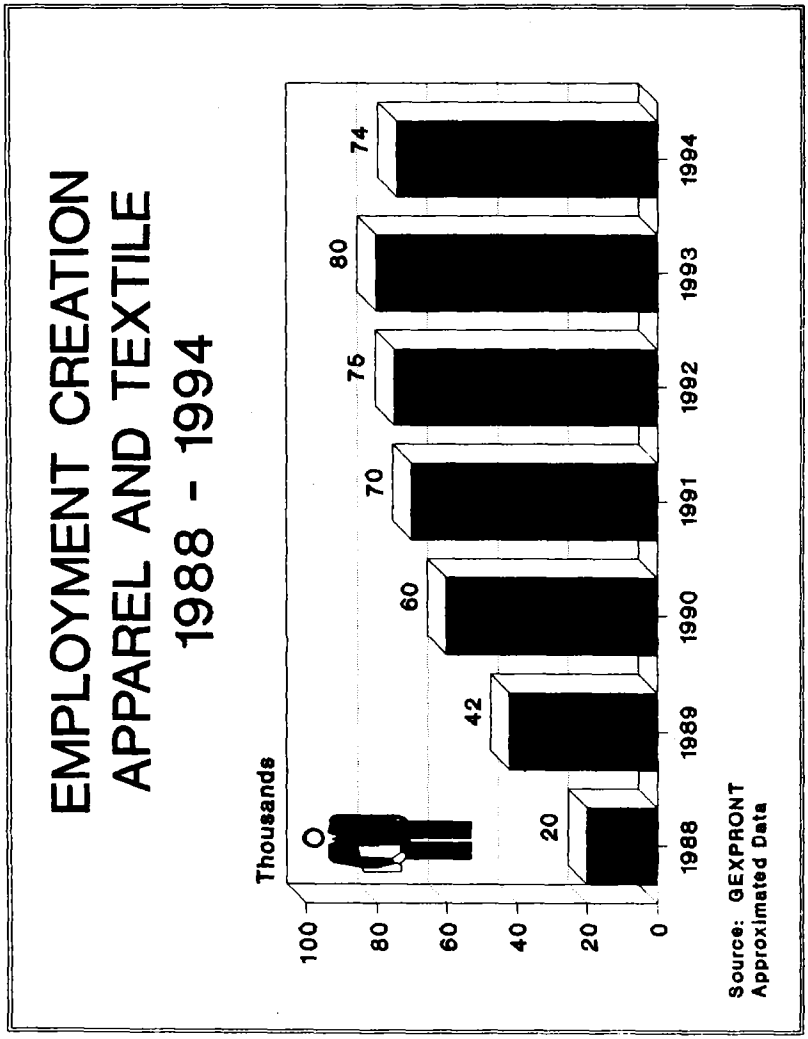


Source: GEXPRONT

FOREIGN EXCHANGE EARNINGS
PRINCIPAL NON-TRADITIONAL EXPORTS
1993 - 1994

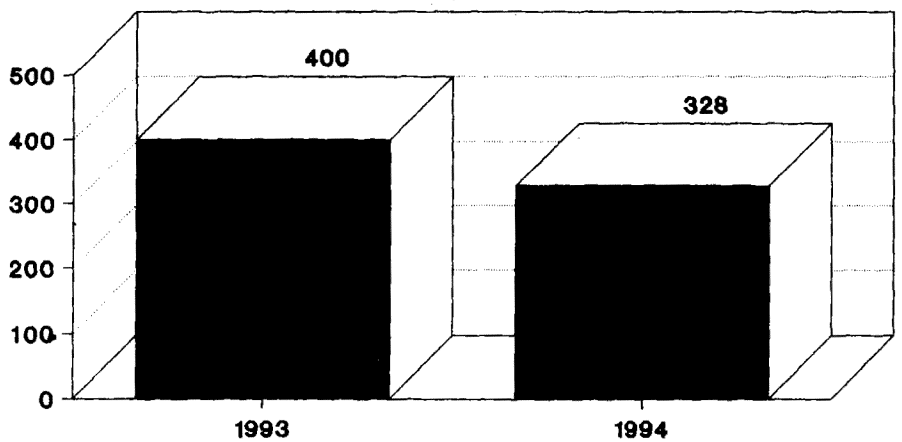


Source: Bank of Guatemala


EMPLOYMENT CREATION
APPAREL AND TEXTILE
1988 - 1994
Thousands
100
80
60
40
20
0
20
42
60
70
75
80
74
1988
1989
1990
1991
1992
1993
1994
Source: GEXPRONT
Approximated Data

APPAREL AND TEXTILE INDUSTRY

(Number of Companies)



Source: GEXPRONT
Approximated Data

STATEMENT OF
GLADYS M. COUPET
PRESIDENT
HAITIAN-AMERICAN CHAMBER OF COMMERCE AND INDUSTRY

THE HAITIAN-AMERICAN CHAMBER OF COMMERCE AND INDUSTRY
Complexe 384, Apt. #6
Delmas, Haiti
PHONE: 509-46-3164

STATEMENT OF THE HAITIAN AMERICAN CHAMBER OF COMMERCE
FAVORING THE PASSAGE OF THE
CARIBBEAN BASIN SECURITY ACT (H.R. 553)

Port-au-Prince, February 24, 1995

The Haitian-American Chamber of Commerce (HAMCHAM) would like to hereby express its full support for the proposed "Caribbean Trade Security Act of 1995" (H.R. 553), introduced by Representative Phil Crane (R-IL), Chairman of the Trade Sub-Committee of the House Ways and Means Committee, and co-sponsored by Representative Sam Gibbons (D-FL) and Representative Charles Rangel (D-NY).

The Haitian-American Chamber has only recently been reactivated in Haiti, in the wake of the resolution of the political crisis, marked by the return of President Jean-Bertrand Aristide in Haiti. With a membership of 53 companies, representing both Haitian and American business interests in Haiti, HAMCHAM's main objective, as stated in its by-laws, remains the promotion of trade and commerce between Haiti and the United States of America.

Although HAMCHAM is only now in the process of seeking formal membership in AACCLA (Association of American Chambers of Commerce of Latin America), we fully support the statement made by Mr. David Ivy, President of AACCLA, before this subcommittee on February 9, 1995. We believe that AACCLA's position clearly supports economic development in the region and is in line with the fundamental economic interests of both Haiti and the Caribbean Basin.

In the aftermath of the political crisis of the past three years, Haiti is today in a state of economic and social emergency. Its export assembly industry has been particularly devastated by the embargo, and employment in this sector dropped from 44,000 in September 1991 to around 8,000 by May 1994. Today, more than four months after the restoration of democracy in Haiti, employment in this sector is still believed to be lower than 10,000.

Passage of the above bill would be essential to restore Haiti's competitiveness and to allow us to quickly create new and permanent employment, which is badly needed in the country. In addition, we believe that this measure would be beneficial for the United States, as the bulk of raw materials used will originate form that country.

The creation of employment in Haiti would also have a positive impact on illegal immigration to the United States and would prevent the Haitian people from continuing to risk their lives on small and unfit boats to try and reach the United States.

In conclusion, we believe that the passage of H.R. 553 would be an important step in helping to stimulate the development of Haiti and the Caribbean Basin as a whole, while also having a positive impact on the United States. We thus urge the U.S. Congress to listen to our plea and to move forward with this important piece of legislation.

International Intellectual Property Alliance

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March 2, 1995

The Honorable Philip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth
Washington, D.C. 20515

Re: H.R. 553, The "Caribbean Basin Trade Security Act"

Dear Chairman Crane:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to comment on H.R. 553, the "Caribbean Basin Trade Security Act." While IIPA supports the principal objectives of this bill, we urge that it include provisions which ensure that Caribbean Basin Initiative (CBI)-eligible countries raise their now-inadequate protection of intellectual property rights to levels consistent with the requirements of NAFTA.

IIPA and the Copyright Industries

The International Intellectual Property Alliance ("IIPA" or "Alliance") consists of eight trade associations, each of which, in turn, represents a significant segment of the copyright industries in the U.S. These associations are the American Film Marketing Association (AFMA), the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Information Technology Industry Council (ITI), the Information Technology Association of America (ITAA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA). The IIPA represents more than 1,500 companies that produce and distribute computers and computer software, motion pictures, television programs and home videocassettes; music and sound recordings; textbooks, tradebooks, reference and professional publications and journals.

Copyright-based industries play a crucial and growing role in the U.S. economy. The core copyright industries contributed an estimated $238.6 billion to the U.S. economy in 1993, or approximately 3.74% of the Gross Domestic Product (GDP). According to February 1995 report prepared for IIPA by Economists, Inc. entitled Copyright Industries in the U.S. Economy: 1977-1993, the core industries grew more than twice as fast as the economy as a whole (5.6% vs. 2.7%) between 1991 and 1993. Employment in the core copyright industries grew some four times than the annual rate of the whole economy (2.6% vs. 0.7%) between 1988 and 1993. Foreign sales support an increasing proportion of U.S. jobs. The core copyright industries compiled an estimated $45.8 billion in foreign sales in 1993, an increase of 11.7% over 1992.

The CBI and H.R. 553

The Caribbean Basin Economic Recovery Act (also known as the Caribbean Basin Initiative (CBI)) was the first legislation passed by Congress which explicitly linked trade benefits to intellectual property protection.[1] The President makes his determinations regarding countries' CBI beneficiary status based on certain criteria; importantly, intellectual property rights (IPR) provisions are included in both the mandatory[2] and discretionary[3] criteria.

H.R. 553 would grant preferential tariff treatment equivalent to that accorded NAFTA members for certain products to CBI beneficiary countries for up to six years, pending their accession to NAFTA. However, as introduced, H.R. 553 would not require, nor even provide any incentives for, these countries to improve their protection of copyrighted works, including reducing existing piracy of motion pictures, computer software, music and sound recordings and books.

As discussed above, CBI countries are already obligated to provide adequate and effective copyright protection and enforcement in order to benefit from the CBI program. In our February 13, 1995 submission on "Special 301" to the U.S. Trade Representative, IIPA reported that estimated trade losses experienced by the motion picture, recording, music, computer software and book publishing industries in just four Central American countries covered by CBI totaled at least $35.2 million in 1994.

El Salvador	$15.5 million
Guatemala	$ 9.5 million
Nicaragua	$ 5.3 million
Honduras	$ 4.9 million

While IIPA does not have estimates for losses in all the remaining 20 beneficiary countries, it estimated 1993 losses in three other CBI countries (Panama, Costa Rica and the Dominican Republic) amounting to an additional $25.1 million. Assuming these 1993 losses were constant for 1994, then the losses for 1994 in these seven CBI countries alone totalled approximately $60 million.

1/ See Section 212 of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67 (codified at 19 U.S.C. 2702).

2/ Mandatory criteria which would deny a country CBI beneficiary country status include the expropriation of intellectual property (19 U.S.C. 2702(b)(2)(A) and (B)), and unauthorized broadcast of U.S. copyrighted material by a government-owned entity (19 U.S.C. 2702(b)(5)).

3/ Discretionary criteria for CBI beneficiary designation include the extent to which a country provides "adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property ..." (19 U.S.C. 2702(c)(9)) and the extent to which a country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent (19 U.S.C. 2702(c)(10)) (emphasis added).

IIPA believes that most of the countries in this region have not met their CBI IPR obligations. IIPA and its members have petitioned to remove the most serious offenders from eligibility for CBI benefits under the existing program.[4]

IIPA is greatly concerned that H.R. 553, as currently drafted, would extend additional and significant trade benefits under NAFTA to countries which may not even be complying with existing CBI IPR criteria. Even those few countries currently in compliance with CBI standards should not receive these additional NAFTA benefits without shouldering additional IPR obligations, as Mexico has done. We believe these countries are prepared to bring their copyright obligations up to the standards provided in the NAFTA and that they should be required to do so.

Accordingly, IIPA would strongly support H.R. 553 with changes to mandate that these countries enter into an agreement with the U.S. to improve their current levels of protection to NAFTA-level IPR standards before they become eligible for these NAFTA-level benefits.

This could be accomplished by amending the current CBERA to empower the President to declare that, upon meeting certain conditions, these countries would become eligible for NAFTA benefits. These IPR-related criteria could be either set out in the amended CBERA or be specified in legislative history. These criteria would be as follows:

- As a condition to the President declaring that a country is eligible for the additional NAFTA benefits provided in the bill, each CBI beneficiary country would be required to enter into a binding agreement with the United States to implement the following within one year after the Presidential declaration:

  -- an IPR regime (that is, an adequate and effective copyright law, including enforcement) meeting the standards of the GATT TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement without subscribing to the transition periods for developing countries, as well as protection of encrypted program-carrying satellite signals, and full national treatment with regard to the protection and enforcement of all intellectual property rights; and

  -- successful negotiation of all issues raised under "Special 301" or pending CBI and GSP petitions.

- If the country wishes to continue to receive preferential benefits under this program, it must conclude the following with the U.S. within two years following the Presidential declaration:

4/ In June 1993, IIPA petitioned that El Salvador be subject to an IPR review under both the CBI and the Generalized System of Preferences (GSP) programs. USTR accepted our petition and El Salvador's IPR practices are currently under review. MPAA, an IIPA member, filed a GSP/CBI petition against Honduras in 1992 which is also under review. MPAA also petitioned for GSP/CBI reviews against both the Dominican Republic in 1992 and Guatemala in 1991; after improvements were made by both governments to improve cable piracy in their respective countries, MPAA withdrew its petitions. On February 13, 1995, IIPA recommended that USTR initiate an investigation into whether Nicaragua's IPR practices meet CBI standards.

-- a bilateral investment treaty and IPR agreement (based on the most current U.S. model IPR agreement), both to be implemented within eighteen months.

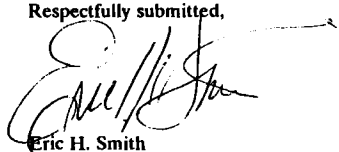
This means that a CBI country which wants to receive NAFTA-level benefits will have implemented higher levels of IPR protection within one year and the bilateral treaty and the IPR agreement within three and one-half years. If the country does not meet these deadlines, its participation in the program would cease and its additional NAFTA benefits would be terminated.

Conclusion

IIPA believes that these criteria are reasonable and can be accomplished by CBI beneficiary countries and urges that they be included in H.R. 553. In order for these countries to accede to NAFTA at some future date, they must meet the IPR obligations of NAFTA. If we are to grant such important additional preferential trade treatment even on an interim basis, it is just and reasonable that these requirements be met.

Thank you for the opportunity to comment on H.R. 553. We look forward to working with you and members of the Subcommittee on this important legislation to assist not only in the economic growth and development of the Caribbean Basin countries, but in the elimination of piracy throughout the region.

Respectfully submitted,



Eric H. Smith
President

cc: The Honorable Sam Gibbons

[BY PERMISSION OF THE CHAIRMAN]

BEFORE THE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT
OF THE
INTERNATIONAL SUGAR POLICY COORDINATING COMMISSION
OF THE DOMINICAN REPUBLIC
ON
H. R. 553

February 24, 1995

Introduction

The International Sugar Policy Coordinating Commission of the Dominican Republic (Dominican Sugar Policy Commission)[1] welcomes the opportunity to submit this statement in response to the Subcommittee on Trade's request for comments on H.R. 553, the "Caribbean Basin Trade Security Act", which was introduced by Congressmen Crane, Shaw, Gibbons, and Rangel on January 18, 1995.

The Dominican Sugar Policy Commission supports the thrust of the bill, particularly the provisions designed to ameliorate the effects of the North American Free Trade Agreement (NAFTA) on sugar imports from beneficiary countries of the Caribbean Basin Initiative (CBI).[2]

Under NAFTA Mexico, which never supplied sugar to the United States in significant amounts, has been given substantially increased duty-free access to the U.S. market--up to 250,000 tons during the first fifteen years, and unlimited access thereafter. While Mexico is not a "net surplus producer"[3] now, it will achieve this status soon according to USDA. This could have disastrous consequences for the traditional off-shore suppliers, especially sugar producers in the Dominican Republic, who reliably provided sugar to the United States at times when we could have received higher prices elsewhere. This NAFTA preference in favor of Mexico is of particular significance for the Dominican Republic whose economy, despite significant strides

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[1] The International Sugar Policy Coordinating Commission of the Dominican Republic is a quasi-governmental agency comprised of both public and private sector members under the chairmanship of the Secretary of State for Foreign Relations of the Dominican Republic.

[2] Section 102 of the bill is, except for the use of abbreviations, identical with section 102 of H.R. 1403, introduced on March 18, 1993, in the 103rd Congress. The Dominican Sugar Policy Commission submitted comments on H.R. 1403 on April 30, 1993, pointing out the problems in the sugar provisions in the NAFTA, which at that time had been negotiated, but not yet enacted into law.

[3] "Net surplus production" is defined as projected production minus projected domestic consumption. If this formula yields a positive number, Mexico would be a "net surplus producer."

in diversification, remains heavily dependent on sugar.

While a side agreement to NAFTA was reached which makes it harder for Mexico to be considered a net surplus producer and thereby qualify for 250,000 ton-access to the U.S. sugar market during the first fifteen years, there is still a very real danger that the Dominican Republic and other traditional suppliers in the Caribbean and Central America will be shut out of the U.S. market entirely after year fifteen, and Mexican sugar imports eventually could completely fill the "guaranteed minimum quota" established by the 1990 Farm Act, leaving no room for imports from traditional suppliers. Moreover, failure to address these problems in an effective manner also would have serious adverse consequences for the U.S. domestic industry.

Parity in the treatment of sugar should be restored. Changes should be made to the sugar provisions in section 102 of H.R. 553 for the bill to ensure that the CBI is not adversely affected by the implementation of NAFTA, and in particular to prevent any erosion in CBI sugar exporters' traditional access to the U.S. market. Section 102 should be amended to protect the CBI countries' traditional share of the guaranteed minimum quota. Furthermore, in the interests of fairness and parity, Mexico should impose marketing controls on its producers whenever marketing allocations are in effect in the United States. The "monitoring and consultation" provisions in Section 102 need to be amended because, by the time Mexico becomes eligible to ship 250,000 tons in exportable surplus to the United States, it will be too late to prevent irreparable harm to the CBI countries.

Purpose of H.R. 553

The underlying purpose of H.R. 553 is to prevent NAFTA from undermining the benefits of the Caribbean Basin Initiative. The bill proposes to accomplish this by giving CBI beneficiaries temporary parity with benefits Mexico receives under NAFTA (including favorable treatment for textile and apparel articles and other articles ineligible for duty-free treatment under CBI); by encouraging the twenty-four CBI countries to enter into Free Trade Agreements (FTAs) with the United States; and, in the case of sugar, by requiring the President to monitor the effects of increased sugar imports from Mexico and mandating that he take action or propose legislation to Congress to ameliorate any adverse effects.

The Dominican Sugar Policy Commission believes that passage of the bill, with the modifications we have described below, is crucial to protect the access of traditional off-shore suppliers' to the U.S. market and to prevent NAFTA from "nullifying and impairing" the benefits bestowed on CBI sugar producers by the CBI and related legislation, including the "guaranteed minimum quota" established by the 1990 Farm Act.

Caribbean Basin Initiative

The Dominican Republic has been a strong supporter of the Caribbean Basin Initiative from its beginning, regarding it as one of the United States Government's most-important foreign policy initiatives undertaken in the 1980's, and the catalyst to generating increased foreign exchange earnings for the Dominican Republic which could be used to finance new industries and more varied agriculture in the region.

Unfortunately, in spite of the efforts of the public and private sectors in the United States and the twenty-four beneficiary countries, the program has not achieved all the positive results which were intended, namely, "to promote economic revitalization and facilitate expansion of economic opportunity in the Caribbean Basin."

Instead, the program has been only a modest success. There are a number of reasons for this, including changing market conditions and generally depressed commodity prices, and especially in the case of the Dominican Republic, the loss of foreign exchange earnings from substantially-decreased sugar exports to the United States.

Loss of Foreign Exchange Earnings

Representatives of the Dominican Republic have emphasized the importance of sugar to the economy of the Dominican Republic in numerous earlier statements and appearances before the Ways and Means Committee. Historically, the sugar industry has been the nation's largest employer and the main source of the country's export earnings. From 1978-1987, sugar exports provided roughly 30 percent of the Dominican Republic's foreign exchange, which is needed to finance the purchase of the many essential imports that cannot be produced in the Dominican Republic. (The great bulk of manufactured items that the Dominican Republic imports are of U.S.-origin.) For example, the Dominican Republic's sugar exports to the United States averaged 805,000 tons per year during the 1975-1981 period, and under the Caribbean Basin Initiative it was contemplated that the Dominican Republic could export 859,794 tons (780,000 metric tons) per year duty-free.

Because of the operation of the U.S. sugar quota program, the Dominican's sugar quota has steadily eroded. It is currently 219,404 metric tons for fourteen months (207,300 p.a.). Over the past decade the Dominican Republic has failed to realize more than $2 billion in potential sales to the United States due to the shrinkage in its U.S. sugar quota.

This is a huge sum for a developing country, and as a result, the economy of the Dominican Republic has been in a precarious position for several years. Foreign debt service has been draining a large portion of the limited foreign exchange earnings, and the bilateral and commercial debt have had to be rescheduled to prevent default. While other off-shore suppliers have not suffered as severely, their losses, too, have been significant.

The Dominican Republic has put forth tremendous effort to diversify its economy away from its traditional dependence on sugar, including significant expansion of free zone operations, but a revitalization of its sugar industry would be extremely helpful in enabling the country to take full advantage of CBI. These benefits were made permanent by the "CBI-II" legislation, the "Caribbean Basin Economic Recovery Expansion Act of 1989." Any further damage to the Dominican sugar industry, as threatened by the implementation of NAFTA, would be disastrous to the country.

Food, Agriculture, Conservation, and Trade Act of 1990

In addition to CBI-I and CBI-II, there is another law which is extremely important for Dominican sugar exporters, Title IX of P.L. 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Act), which amended the Agriculture Adjustment Act of 1938 (the 1938 Act) in two significant aspects. The 1990 Farm Act established a guaranteed minimum import quota of 1.25 million tons for traditional off-shore suppliers, and, in addition, it provides that marketing controls will be imposed on domestic cane and beet sugar and on crystalline fructose manufactured from corn if anticipated fiscal year imports for consumption are less than 1.25 million tons.

Underlying the adoption of these two provisions was Congress's concern about traditional off-shore suppliers' loss of

access to the U.S. sugar market during the 1980's and the resulting harm to their economies, especially countries such as the Dominican Republic where sugar had been the engine of economic growth.

Congressional action in the 1990 Farm Act was an express recognition both of the importance of the guaranteed minimum quota to the economies of the traditional sugar suppliers and of the need to have marketing controls in the United States to assure the continued operation of the domestic sugar price support program at no net cost, and without forfeitures of pledged sugar to the Commodity Credit Corporation. The size of the guaranteed minimum quota (but not its allocation) was "bound" in the Uruguay Round Agreements.

Mexican Sugar Imports under NAFTA

The Dominican Sugar Policy Commission is strongly opposed to the provisions in NAFTA which provide Mexican sugar exporters with increased preferential access to the U.S. market because of the threats to the "no net cost" sugar program and the guaranteed minimum quota for traditional off-shore suppliers.[4]

The Dominican Sugar Policy Commission is concerned about the preferential treatment of Mexican sugar imports because the increased imports presumably would count against the over-all sugar quota, and with a lack of appropriate marketing and distribution restrictions in Mexico, the integrity of the "no net cost" program and the guaranteed minimum quota for traditional suppliers could be compromised.

Increased Preferential Access

Although as we have said, Mexico had not been a significant exporter of sugar to the United States, when NAFTA was negotiated, Mexico was given significantly increased access to the U.S. sugar market. After the negotiations had been completed, it became apparent that there were a number of flaws in the original language which had to be corrected, and furthermore, the Bush Administration's original assumption that Mexico would not become a "net surplus producer" was contradicted by a USDA study that Mexico would have tremendous exportable surpluses within a few years.

Side Agreement on Sugar

After a "side agreement" with Mexico was reached, NAFTA was signed into law on December 8, 1993 and became effective on January 1, 1994 (P.L. 103-182). The side agreement was necessary because the original NAFTA language would have allowed serious problems to arise regarding "substitution," e.g., high fructose corn syrup (HFCS) and other nutritive sweeteners could have been substituted for sugar in domestic applications in Mexico. The displaced sugar could then have been exported to the United States duty-free.

The side agreement stipulates that, for purposes of the net surplus producer formula, HFCS will be considered on the consumption side only, so that Mexican sugar production will have to exceed Mexican consumption of both sugar and HFCS for Mexico to be considered a net surplus producer.

The side agreement also eliminated the so-called "two-year

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[4] The Dominican Sugar Policy Commission has raised these issues before in detailed submissions to the Secretary of Agriculture and in its April 5, 1993 statement to the Trade Subcommittee on NAFTA supplemental agreements and its April 30, 1993 statement on H.R. 1403.

provision" in the original NAFTA language. This provision would have allowed Mexico duty-free access after year seven for its total net production surplus, provided that it had previously achieved a net production surplus for two years in a row.

Thus, in phase one (years one through six) Mexico now will have duty-free access for sugar exports to the United States for the amount of its net surplus production up to a maximum of 25,000 metric tons raw value. Even if Mexico is not a net surplus producer, it will still have duty-free access for 7,258 tons, or the "minimum boatload amount" authorized under the U.S. tariff-rate quota.

In phase two (years seven through fourteen), Mexico will have duty-free access to the U.S. market for the amount of its surplus as measured by the formula, up to a maximum of 250,000 tons with a minimum duty-free access still at the minimum boatload amount. After year fifteen, there would be no limits on Mexican exports to the United States.

Fundamental Problem

The fundamental problem is that, as a result of NAFTA, Mexico, which has never been a traditional exporter of sugar to the United States, has been given an advantage over the traditional suppliers such as the Dominican Republic. Under NAFTA Mexico's traditional volume of exports to the United States could be tripled in phase one, rising from 7,258 tons to 25,000 tons, and could be increased thirty-five fold, to 250,000 tons in phase two. This would give Mexico fully 20 percent of the entire guaranteed minimum quota of 1.25 million tons, and of course, the CBI countries' share of the quota would shrink. The Dominican Republic's share could shrink from 220,000 tons to 176,000 tons per year, causing a loss of approximately $50 million by year fifteen. The twenty-four CBI countries are collectively allocated 37.9 percent of the overall quota. By year fifteen, they could fail to realize a total of $100 million in foreign exchange earnings at projected prices, based on a loss of 94,750 tons a year.

This is unfair because, when the quota allocations were determined in 1982, they were based upon export levels to the United States over a representative period (as required by GATT Article XIII). Traditional suppliers received quota allocations determined by their traditional levels of exports. The Dominican Republic received the largest share of the allocated quota, 17.6 percent of the total. Mexico's traditional level was a "minimum boatload."

However, Mexico's potential access to the U.S. market has been increased substantially, since GATT Article XXIV provides an exception to Article XIII for FTAs. Thus, sugar imports from Mexico can fill the largest part of the guaranteed minimum quota during the first fifteen years, and thereafter leave no quota at all for traditional suppliers.

"Parity" for CBI Sugar

There are two primary areas where Congress should take action to restore "parity" in the treatment of sugar: (1) CBI countries' traditional sugar quota allocations should be protected against erosion by increased Mexican sugar imports, and (2) Mexican sugar producers should be subject to "substantially equivalent" marketing controls as U.S. producers. With regard to quota allocations, if Mexican sugar imports are counted against the over-all quota, the CBI countries' quota allocations should be maintained at traditional levels and the shares of non-CBI countries must, of necessity, be reduced to accommodate Mexican imports.

Lack of Marketing and Distribution Restrictions

One of the stated objectives of the NAFTA negotiations was to establish the framework for free trade throughout North America. Under this philosophy of creating a North American "common market" in sugar, Mexican sugar growers should not object to being subject to substantially the same marketing controls as U.S. producers. To do otherwise would undermine the express intent of Congress in the 1990 Farm Act, namely to provide traditional off-shore suppliers with guaranteed minimum access to the U.S. market while preserving a viable domestic sugar industry.

Increased domestic production (or decreased consumption) could trigger marketing controls on U.S. sugar producers. This would lead to the anomalous situation where Mexican producers could produce as much sugar as desired while U.S. producers would be subject to marketing controls. To prevent this, Mexican producers should be subject to the same or "substantially equivalent" marketing controls as those imposed on U.S. growers.

Suggested Amendments to H.R. 553

The need for legislation to protect against surges of Mexican sugar imports is obvious. According to an April 1993 Department of Agriculture (USDA) study on the Mexican sugar industry entitled "Mexico's Sugar Industry--Current and Future Situation", prepared by officials of USDA's Economic Research Service and Foreign Agricultural Service, Mexico is expected to have exportable sugar surpluses reaching 800,000 tons by year fourteen of the agreement.

Furthermore, as a result of $2 billion new investment in the Mexican sugar industry, total annual production is expected to increase by over 1 million tons by year fourteen. While this investment may be delayed by the collapse of the peso, it would be wise to have a specific mechanism to protect against import surges from Mexico.

As drafted, Section 102 of H.R. 553 contains some provisions to protect off-shore suppliers. It requires the President to (1) monitor NAFTA's effects on the access of traditional suppliers to the U.S. market, and (2) take action or recommend appropriate legislation to Congress to ameliorate any adverse effects.

These provisions need strengthening to take into account future increased imports of Mexican sugar. It is a virtual certainty that Mexico will become a net surplus producer because of the increased investment described above. By that time it will be too late for any monitoring and consultation measures to have any effect. Therefore, the language of Section 102 should be amended as follows:

(1) Protection of CBI Sugar Quotas. The legislation should provide that, if Mexico's increased imports are counted against the "guaranteed minimum quota," the allocated shares of CBI countries may not be reduced. For example, the Dominican Republic's allocated share of the U.S. sugar quota is 17.6 percent and its share of the guaranteed minimum quota is 220,000 tons, i.e., 17.6 percent of 1.25 million tons. The bill should hold sacrosanct such percentage allocations (and volumes) for all the CBI countries.

(2) Trigger for Presidential Action. Congress has already established a threshold for determining when irreparable injury will occur to traditional off-shore suppliers, that is, whenever total imports are projected to be less than 1.25 million tons, i.e., the "guaranteed minimum quota" established in the 1990 Farm Act. This should be used in Section 102 to specify when the President must act, since in addition, marketing controls will be

in effect in the United States.

(3) Required Presidential Action. Since the second tier duty under the tariff rate quota is the only effective control on imports, the President should be required under Section 102 to reimpose the duty on all Mexican sugar imports whenever the access of traditional suppliers is threatened as described above. However, Mexico would be allowed to avoid a "snap-back" if Mexico imposes stand-by marketing controls on Mexican producers after year six (when the import quota rises to 250,000 tons) similar to those imposed on U.S. producers under USDA's marketing allocating regulations. Thus, Section 102 should mandate a "snap-back" of the second tier tariff on all Mexican sugar imports unless "substantially equivalent" marketing controls are in effect in Mexico whenever marketing allocations are in effect in the United States after year six.

Conclusion

It is extremely important to the Dominican Republic that its sugar exports retain at least the minimum level of access to the U.S. market established by the 1990 Farm Act. Congress has recognized this and in order to accomplish this, it is necessary to enact H.R. 553, with the several amendments set forth herein. This would afford meaningful protections to Dominican sugar exporters and other traditional off-shore suppliers, and would prevent further damage to their economies.

It is fundamentally unfair to give preferential treatment to Mexico for its sugar imports at the expense of the CBI countries. Parity needs to be restored.



Robert W. Johnson II
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International Sugar Policy
Coordinating Commission of the
Dominican Republic

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[BY PERMISSION OF THE CHAIRMAN]

JAMAICA SETS THE STAGE FOR THE TWENTY-FIRST CENTURY

"Jamaica is now a private sector-led, market-driven economy, having successfully completed a quiet economic revolution. Strategic global repositioning of the economy has established Jamaica as the business center of the Caribbean in the 21st century."

Ambassador Dr. Richard L. Bernal

After several years of economic difficulties, Jamaica is now poised to become a major economic powerhouse in the Caribbean. This "quiet revolution" currently underway is the result of the present government's firm commitment to a market-driven, private sector-led economy.

Since the late 1980s, Jamaica has taken several bold steps in a number of areas, resulting in changes not only in its internal economic structure, but also in its external trade relations. Through a coordinated process of structural adjustment and trade liberalization, a new more vibrant economy has emerged.

Economic growth has been positive, increasing from approximately 0.3% in 1991 to an estimated 2% in 1993 and 1994. Production of bauxite, the major export, has increased 11.9 million metric tons, the highest level since 1980. Tourism, another major foreign exchange earner, continues to see strong growth, with Jamaica being named top Caribbean destination by the International Travel Trade Gazette, supported by travel agents worldwide. With respect to agriculture, banana exports have grown significantly, with 78,577 tons exported in 1994, an increase of 1,800 tons over 1993. Finally, in the area of non-traditional exports, apparel exports from Jamaica to the U.S. have increased by 60% since 1989. This includes products from Jamaican subsidiaries of U.S. companies such as Hanes, Jockey, Fruit of the Loom and Polo.

Net International Reserves (NIR) have grown steadily, turning positive at the end of 1993 for the first time since 1976. As of December 1994, NIR stood at J$400 million, compared to minus J$830 million in 1984. This has improved Jamaica's creditworthiness in terms of the government's ability to attract commercial loans and trade credits. Jamaica is once again being viewed favorably by the financial markets, receiving a Bear Stearns rating (lower BB) for the first time in September 1994. This ranking is higher than Brazil, Turkey, Ecuador, Venezuela, Peru and the Dominican Republic. Jamaica's rating with Institutional Investor has also improved.

Major aspects of the "quiet economic revolution" include the following:

A. Trade Liberalization

Jamaica is fully committed to trade liberalization and is a signatory to the recently concluded Uruguay Round Agreement culminating in the formation of the new World Trade Organization (WTO). Jamaica is also a member of the Caribbean Common Market (CARICOM), which is a regional trading bloc consisting of the twelve English-speaking Caribbean countries with Haiti and Suriname as observers. In June of 1994, Jamaica was one of almost forty countries who signed the treaty forming the Association of Caribbean States (ACS) which includes such regional trading giants as Mexico and Colombia. Jamaica's membership in these trade groupings is indicative of the country's continued thrust towards overall trade liberalization and global free trade.

Moreover, Jamaica actively participates in several regional trade-liberalization arrangements with the United States (the Caribbean Basin Initiative - CBI), Europe (the Lomé Convention), Canada (CARIBCAN), and the other English-speaking countries in the Caribbean - the Caribbean Common Market [CARICOM])

The CBI, which allows duty free access of goods from the region to the US market has not only benefitted Jamaica and other countries in the region, but has resulted in increased US trade with CBI countries. In the past decade, two-way trade has grown rapidly exceeding $21 billion in 1993. It has also been estimated that US exports to the Latin American and Caribbean region will exceed those to Western Europe by the year 2000.

The process of trade liberalization which began in Jamaica in 1987 is essentially complete. By December 1991, the average tariff for the economy as a whole was 20.3%, having been reduced from an average tarriff of 49.9% in 1989. The current tariff range is 0% to 45%, but the majority of products carry rates of 10% or less, i.e. 58% of the tariff positions in the Harmonized System Classification bear a tariff of 10% or less. In April 1994, the government acted to further reduce duties on imported raw materials to 0%-5%, down from 5%-25% in 1993. Non-competing raw materials are now duty free, while non-competing capital goods carry a tariff rate of 5%. Duties on competing goods now range from 15%-25%, down from 20%-30%. Two additional phases of tariff reduction are scheduled for 1997 and 1998.

At the present time, import licenses are only required on certain hazardous chemicals, arms and ammunition. Hence, the United States has free access to the Jamaican market, and enjoys most-favored nation status. Tariffs apply to all countries, with CARICOM member countries enjoying some tariff concessions.

There are no non-tariff barriers and there have been no cases of restrictions on U.S. exports by standards, testing, labelling and certification. Government procurement practices allow U.S. firms and goods to compete freely. The Jamaica customs administration,

while still attempting to improve its efficiency, has not and is not an impediment to U.S. exports or investors requiring imported inputs.

Jamaica has also signed a Bilateral Textiles Agreement with the United States, and was the first country to include provisions for anti-circumvention in the accord. The textile and apparel industry has played a crucial role in the development of Jamaica's economy in the last ten years. This industry is the single largest employer of labor in the country and generates almost $400 million in foreign exchange earnings annually. Significantly, roughly 80% of the cost of a finished garment assembled in Jamaica consists of US labor, fabric or other inputs, confirming that trade with Jamaica is actually beneficial to US industry. The Jamaican textiles and apparel industry is competitive in terms of labor cost and production and is a sound investment for foreign firms.

B. Investment Incentives

In keeping with its commitment to trade liberalization, and an open investment regime, Jamaica has indicated an interest in acceding to the North American Free Trade Agreement (NAFTA). Jamaica can now meet all the reciprocity requirements necessary for membership in the NAFTA, having signed a Bilateral Investment Treaty (BIT), and an Intellectual Property Rights Agreement (IPR).

The BIT provides a stable and predictable framework for US investment in Jamaica. The agreement allows US investors virtually free and open access to the Jamaican market and also provides for unlimited repatriation of profits from investment. Jamaica has signed similar agreements with several other countries, including the U.K., Holland, Switzerland and is currently in negotiations with China.

Adequate protection of intellectual property rights is critical to the global competitiveness of firms and service industries worldwide. Under the IPR agreement, Jamaica will accord such protection to firms and industries thus paving the way for increased trade and investment between Jamaican and US firms. Both agreements go beyond the requirements for the NAFTA.

C. Privatisation

In the context of market reforms, the government has undertaken a comprehensive privatization program. To date, the national airline (Air Jamaica), telecommunications, several hotels and all government-owned sugar companies have been privatized. Negotiations are currently underway for the privatization of PETROJAM, the state-owned petroleum corporation, and the Jamaica Railway Corporation. As part of the privatization initiative, Jamaica also has in place a debt-equity program.

D. Market-determined Exchange Rate

As of September 1991, the foreign exchange market has been completely liberalized, with firms and individuals free to hold as much foreign exchange as needed. All exchange controls have been abolished and the government has introduced a "cambio system" of licensed foreign exchange dealers which includes local hotels. As a result of this as well as fiscal and monetary policy changes, the Jamaican dollar has remained stable relative to the U.S. dollar at 33:1 since February 1994. This stability in the exchange rate has had a positive impact on inflation, which fell to 22% on an annualized basis in August 1994, down from 37% in March. Rates for October and November 1994 registered 1.3% and 0.7% respectively.

E. Fiscal Discipline

The government has curbed public spending considerably over the last few years. In 1991/92 the public sector saw a deficit equivalent to 0.4% of GDP. By 1992/93, this has moved to a surplus of 2.2% of GDP, and to 2% of GDP in 1993/94. In tandem with fiscal restraint, steps have been taken to rationalize the civil service to limit costs and improve efficiency. The government work force has been reduced by more than 20%, and the number of government departments has also fallen. Further restructuring of government agencies is underway.

F. Tax Measures

Tax reform has been one of the key components of the government's reform program. Recent initiatives include: raising consumption taxes with the introduction of a value-added tax (the GCT) in 1991; improving tax enforcement; broadening the tax base for withholding taxes on wages and interest income and increasing licensing fees as well as property taxes. As of 1993, the upper ceiling on personal income tax rates was lowered from 33 1/3% to 25%. In addition, the personal income tax threshold has been increased to J$35,000, effective January 1, 1995. As of January 1995, income tax waivers are being granted to investments in the private sector venture capital company, Jamaica Production Fund. This in effect will broaden the range of financial services available to local companies.

Finally, import tax rates have been lowered and stamp duties abolished. Most significantly for American firms operating in Jamaica, the government has also signed a double taxation agreement with the U.S.

G. Financial Intermediation

Commercial bank credit ceilings have been abolished. Open market operations and changes in reserve requirements for the commercial

banks now control credit. Interest rates are also determined by the free market.

Steps are also being taken to strengthen the institutional capacity of the Bank of Jamaica. The Bank has begun to turn over to commercial banks many of its responsibilities as a bank for the public sector. The government has begun to take over its own liabilities, thus reducing Bank of Jamaica losses.

The Jamaican stock market is once again on an upswing, with the Bank's tight liquidity policies and a more stable exchange rate. The stock market index gained 27% in 1994, and advanced by 18% in the first two days of 1995. The stock market is the largest in the Caribbean, both in terms of the number of companies listed (45) and capitalization (US$1.5 billion as of December 1994). It was rated the top-performer for 1992 by the International Finance Corporation, registering growth of 202% in real terms. It is also part of a larger Caribbean stock market network.

H. Human Resources

Government wage guidelines for the private sector have been eliminated. At the present time, only the minimum wage is set by government. Jamaica has a highly literate work force from which semi-skilled, technical and managerial personnel can be sourced. Existing labor laws and institutions are in place to protect the interests of both employees and employers.

I. Price Liberalization

Price liberalization has accelerated since 1989. Price controls are now limited to a few items and general food subsidies have been replaced by targeted subsidies aimed at the poor.

In the final analysis, Jamaica recognizes that ongoing adaptation to global trends via structural transformation of the domestic economy is vital for long-term development and prosperity. Jamaica stands ready to take advantage of the current global environment to achieve sustained growth into the twenty-first century.

Embassy of Jamaica, Washington D.C.
February 3, 1995

STATEMENT OF THE LUGGAGE AND LEATHER GOODS MANUFACTURERS OF AMERICA, INC.

ON THE

CARIBBEAN BASIN ECONOMIC SECURITY ACT, H.R. 553

TO THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

FEBRUARY 24, 1995

This statement is submitted by the Luggage and Leather Goods Manufacturers of America, Inc. (LLGMA). The LLGMA is an association whose several hundred member companies represent the luggage and flat goods industry in the United States and its suppliers. Products made by LLGMA members are made from a variety of materials, including textiles, leather, and plastic. LLGMA member companies account for the vast majority of all sales of luggage, business cases, and flat goods in the United States. The products of our industry are largely excluded from duty-free treatment under the CBI program.

LLGMA's comments on H.R. 553 are directed to the one-sided manner in which trade benefits are conferred under the bill's provisions. The bill before the Committee would offer NAFTA equivalent tariff benefits to CBI countries for six years before these countries were even asked to consider negotiations to open their markets to U.S. goods.

In her remarks before the Subcommittee on February 10, Deputy U.S. Trade Representative Charlene Barshefsky made the following comments about H.R. 553:

> *'..with a six year grace period in H.R. 553, there may be a temptation to delay reforms in some CBI nations. For example, a current government may see this as something for their successor government to implement -- thus allowing them to take the glory of gaining the NAFTA benefits but postponing the NAFTA obligations for his/her successor to handle.*
>
> *This prospect could lead us to a situation in which benefits are perpetuated with little or no reform in the CBI nations, which is not the direction we want to take [in] U.S. trade policy. U.S. firms that invest in the region as a result of duty-free entry into the United States will argue strongly that such preferences must be continued. And, of course, the countries themselves will want to maintain these new trade preferences.*
>
> *This six-year grace period would also establish an unfortunate precedent for any future FTA negotiations. Other countries would come to expect to receive full NAFTA benefits before beginning to assume NAFTA obligations.*

LLGMA believes that Ambassador Barshefsky has zeroed in on a major defect and primary weakness in the approach taken by H.R. 553: The preferences are given up front without exacting any commitments whatsoever from these countries that they will liberalize their trade regimes. This is not good trade policy and it sets an unfortunate and irreversible precedent for future free trade agreements. For example, what would prevent Chile or other Latin countries -- like the Andean countries with which we have a preferential trade agreement similar to the CBI -- from asking for the same treatment that is proposed for CBI countries under the provisions of H.R. 553?

LLGMA would not oppose this bill if it bound CBI countries to a specific set of actions that would result in reciprocal tariff and trade benefits. Unfortunately, H.R. 553 falls short of this important goal.

Embassy of the Republic of Mauritius

[BY PERMISSION OF THE CHAIRMAN]

Feb 22nd 1995

Congressman Philip Crane
Chairman of the Trade Sub-Committee
House Ways and Means Committee
US House of Representatives
1102 Longworth House Office Building
Washington DC 20515-6348

Dear Chairman Crane:

We understand that the Subcommittee on Trade is currently considering the Caribbean Basin Trade Security Act, H.R. 553. We are writing to present the concerns of the Government of Mauritius regarding H.R. 553, which we fear may result in the diversion of trade opportunities from the African continent to the countries of the Caribbean Basin.

For several years the countries of the African continent have asked the developed countries to provide greater access to their markets for "trade" rather than offering "aid." The response, including from the United States, has not been encouraging, Senior U.S. officials have stated repeatedly during recent visits to African countries that aid to our continent will diminish. At the same time, the U.S. Congress is considering measures that would reduce the opportunities for trade, thereby further disadvantaging the African economies and frustrating attempts to improve the standard of living .

A major source of concern is H.R. 553, the so-called Caribbean Parity Bill, which would extent to the CBI beneficiary countries during a transition period the same advantages that Mexico benefits from under NAFTA, in preparation for full membership in NAFTA. This legislation threatens to undermine seriously access to the U.S. market for several major exports from the African continent, including sugar and textiles/apparel.

Since Mauritius is a major exporter of sugar and textiles/apparel to the United States, our country will be directly affected by the passage of this particular legislation. Since this particular industry is not only a provider of employment to our countrymen and women but also a main source of important foreign currency, we view with alarm any attempts that would disadvantage our exports and thus undermine our economy.

Regarding sugar, Section 102 of HR 533 authorizes the President to monitor the effect, if any, of NAFTA on the CBI beneficiary countries' access to the US sugar market. If the President determines that NAFTA is adversely affecting such access, Section 102 authorizes the President to propose legislation or to take action to ameliorate such adverse affect. Thus, Section 102 seems to contemplate preferntial access to the US sugar market for the CBI sugar exporters, eg. by reallocation of the first tier of the of the US tariff rate quota on sugar.

Any such reallocation in favor of the CBI countries, would, however, reduce and perhaps eliminate access to the US sugar market for the ten African sugar-exporting countries: Congo, Cote d'Ivoire, Gabon, Madagascar, Malawi, Mauritius, Mozambique, South Africa, Swaziland and Zimbabwe. Any such discrimination in access to the US sugar market would violate the United States' obligations under the GATT and the World Trade Organization, as recognized by Ambassador Barchefsky in her testimony before the Trade Sub-Committee of the House Ways and Means Committee on February 10th 1995. Moreover, any such discrimination would also violate the terms of the waiver granted by the GATT to the United States on February 15th 1985, to allow implementation of the original CBI program.

In the case of textiles and apparel H.R. 553 would advantage the CBI beneficiary countries over African countries in three ways.
First, the reinforcing of the 807 programme, which allows the duty-free entry of apparel made from U.S. fabric, gives an unfair advantage to the CBI beneficiary countries, which by their proximity to the United States can feasibly carry out such a programme, compared to the African countries which would face insurmountable freight charges were they to attempt to use this programme.

Second, the extension of the preferential tariff rates which Mexico enjoys under NAFTA to those apparel categories under bilateral textile agreement restraints will mean that the CBI beneficiary countries will benefit from duty-free entry for almost all these categories, compared with African countries which will continue to pay 15-20% tariff rates for the next ten years under the phase-out of the Multi-Fiber Agreement.

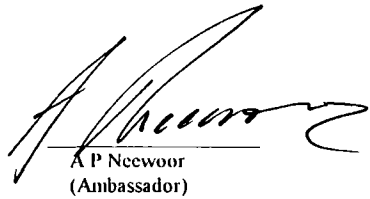
Third, the instructions to the USTR to seek preferential tariff rates for apparel coming from the CBI beneficiary counties and which does not originate in North America, will also prejudice the african exporters. Together, these preferences will almost certainly result in the diversion of apparel trade opportunities from the African countries to the CBI beneficiaries.

While assisting the countries of the Caribbean Basin is a worthwhile goal, it should not be done at the expense of the African countries. HR 553 threatens two of the main categories of exports from the African countries to the United States. We trust that the bill was not intended to have this result and that the Subcommittee will take appropriate steps to avoid unintentionally harming the African countries.

Therefore, we strongly urge that your Committee consider extending to the African countries the same conditions that you are proposing to give to the Caribbean countries under the provisions of the Caribbean Basin Trade Security Act. This would not only uphold equal trading opportunities as proposed under the provisions of the new World Trade Organisation, but would also be of great assistance and encouragement to the emerging industrialization process in the African continent.

Finally, a variety of products exported by the African countries to the United States benefit from the Generalized System of Preferences (GSP), which will expire in July of this year. We urge the subcommittee to give due consideration to renewal of the GSP programme and to maintaining standards of eligibility that will allow the African countries to continue to benefit from this valuable programme.

Sincerely,



A P Neewoor
(Ambassador)

BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

COMMENTS OF
THE MAURITIUS SUGAR SYNDICATE
ON H.R. 553

The Mauritius Sugar Syndicate (MSS) respectfully submits the following comments on H.R. 553, the Caribbean Basin Trade Security Act. The MSS is a private sector organization that represents all sugar millers and planters in Mauritius and is responsible for exporting and marketing Mauritian sugar, including sales to the United States under the tariff-rate quota. The views set forth below are presented on behalf of the entire sugar industry of Mauritius.

The MSS's comments are directed solely to Section 102 of H.R. 553, which concerns the effect of the North American Free Trade Agreement (NAFTA) on sugar imports from the beneficiary countries under the Caribbean Basin Economic Recovery Act, also known as the Caribbean Basin Initiative (CBI). Section 102 authorizes the President to monitor the effect, if any, of NAFTA on the CBI beneficiary countries' access to the U.S. sugar market. If the President considers that NAFTA is having an adverse effect on such access, Section 102 authorizes the President to propose legislation or take action to ameliorate such adverse effect.

As the Subcommittee is aware, the sugar provision of NAFTA provides Mexico with preferential access to the U.S. sugar market in the event it becomes a "net exporter" of sugar during the 15-year transition period. Thereafter, Mexico will have unlimited access to the U.S. sugar market. Contrary to the position taken in the United States' submissions in the Uruguay Round negotiations, the Administration has now modified the U.S. Harmonized Tariff Schedule to include sugar imports from Mexico within the first-tier quota of the U.S. tariff-rate quota. *See* Presidential Proclamation No. 6763, 60 Fed. Reg. 1007 (Jan. 4, 1995). Accordingly, any increase in sugar imports from Mexico as a result of NAFTA would necessarily diminish the volume of sugar that could be imported from the other countries that hold allocations under the U.S. tariff-rate quota. While Section 102 of H.R. 553 is intended to protect the CBI beneficiary countries against the threat of reduced access to the U.S. sugar market as a result of NAFTA, the CBI beneficiary countries are not the only countries that would be adversely affected by the sugar provision of NAFTA. Rather, 25 other countries hold allocations under the U.S. tariff-rate quota. Most of these quota holders are developing countries for which sugar exports to the United States constitute a significant source of revenue to fund their economic development. For example, ten developing African countries export sugar to the United States under the tariff-rate quota: Congo, Cote D'Ivoire, Gabon, Madagascar, Malawi, Mauritius, Mozambique, South Africa, Swaziland and Zimbabwe. As a group, these developing African sugar-exporting countries are more dependent upon sugar exports than are the CBI beneficiary countries.

Section 102 could have the unintended consequence of actually compounding the injury to the African sugar-exporting countries caused by the sugar provision of NAFTA. For example, as demonstrated by the attached table, if

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the President were to extend to the CBI beneficiary countries the same sugar access rights granted to Mexico in NAFTA, the CBI beneficiary countries — most of whom are already substantial net exporters — could by themselves supply more than the entire U.S. sugar quota of 1,117,195 metric tons. In other words, Section 102 could result in the complete elimination of access to the U.S. sugar market by the African countries and all other quota holders.

Such discrimination is clearly inconsistent with the fundamental tenet of most-favored-nation treatment (*see* GATT Article 1, section 1), and with the United States' commitment in the Uruguay Round to maintain current market access opportunities. Indeed, Ambassador Charlene Barshefsky testified before this Subcommittee on February 10, 1995:

> We are concerned about the possible implications of the sugar provisions in Section 102, which directs the President to take action if the NAFTA is adversely affecting Caribbean Basin countries. Within the constraints of the existing domestic sugar program and our obligations under the NAFTA and World Trade Organization (WTO), the President has very little discretion to increase sugar access levels or reallocate market shares. *Our WTO obligations prevent the United States from discriminating among countries in allocating the overall reductions in access to the U.S. market.* We ask that this provision [Section 102] be reviewed in light of U.S. commitments.

(Statement by Ambassador Charlene Barshefsky on H.R. 553, February 10, 1995, p. 10 (emphasis added).)

Moreover, because the original CBI program granted preferential trade priviliges to the beneficiary countries, the United States had to obtain a special waiver from the GATT. In granting permission to depart from the standard of nondiscrimination, the GATT expressly required that the U.S. sugar quota continue to be allocated on a nondiscriminatory basis: "The Government of the United States shall ensure that this waiver will not be used to contravene the principle of non-discriminatory allocations of sugar quotas." (GATT Decision of February 15, 1985, para. 4(i).) As recognized by Ambassador Barshefsky, however, Section 102 would violate the GATT waiver upon which the entire CBI program is premised.

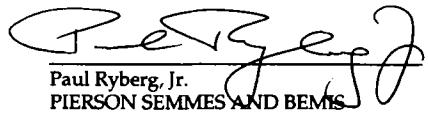
Finally, Section 102 is inconsistent with the spirit of Section 134 of the Uruguay Round Agreements Act of 1994, Pub. L. No. 103-465, § 134, 108 Stat. 4809, 4840 (Dec. 8, 1994), which calls upon the President to "develop and implement a comprehensive trade and development policy for the countries of Africa." Rather than encouraging trade and development in Africa, Section 102 would divert U.S. sugar trade from Africa to the CBI beneficiary countries.

In summary, Section 102 of H.R. 553 recognizes that the sugar provision of NAFTA threatens future access to the U.S. sugar market for numerous developing countries around the world. Unfortunately, as currently drafted Section 102 compounds the risk posed by NAFTA for the African sugar-exporting countries. It is respectfully suggested, therefore, that Section 102 should be either: (1) deleted; (2) modified to extend its protection to all countries that currently hold allocations under the U.S. tariff-rate quota on sugar; or (3) modified to specify that preferential reallocation of the tariff-rate quota on sugar is not authorized as a means of ameliorating any harm caused by the sugar provision of NAFTA. While

any of the foregoing steps would ensure that H.R. 553 does not cause unintended harm to the numerous developing countries that rely upon access to the U.S. sugar market for their economic well-being, the second alternative — *i.e.*, extending Seciton 102 to include all quota holders — would be the preferred result because it would be consistent with the principle of nondiscrimination.

The MSS appreciates the opportunity to submit its views on this important issue and would be happy to provide any further information that may be useful to the Subcommittee in its consideration of H.R. 553.

Respectfully submitted,



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Counsel to the Mauritius Sugar Syndicate

February 15, 1995

Potential Impact of CBI Parity Bill on the U.S. Sugar Quota

Barbados	36,000	8,726	25,000	36,000	36,000
Belize	95,942	13,713	25,000	95,942	95,942
Costa Rica	100,000	18,699	25,000	100,000	100,000
Dominican Republic	326,120	219,404	219,404	250,000	326,120
El Salvador	40,000	32,412	32,412	40,000	40,000
Guatemala	721,386	59,831	59,831	250,000	721,386
Guyana	240,948	14,959	25,000	240,948	240,948
Haiti	(49,000)	8,468	8,468[1]	0	0
Honduras	11,800	12,466	12,466	11,800	11,800
Jamaica	100,751	13,713	25,000	100,751	100,751
Nicaragua	41,800	26,179	26,179	41,800	41,800
Panama	44,500	36,152	36,152	44,500	44,500
St. Kitts/Nevis	22,000	8,468	22,000	22,000	22,000
	45,317	8,726	25,000	45,317	45,317
	1,826,564	481,916	566,912	1,279,058	1,826,564
Mexico	(75,000)	8,468	25,000[2]	25,000	25,000
	1,826,564	**490,384**	**591,912**	**1,304,058**	**1,851,564**

	626,811	**525,283**	**(186,863)**	**(733,369)**

Assumptions:

1. **Haiti fails to qualify as a net exporter.**
2. **Mexico becomes a net exporter in 1996, but does not exceed 25,000 MT net exportable surplus.**
3. **CBI quota holders maintain current net surplus.**
4. **The global quota remains at 1,117,195 MT, the bound level under the Uruguay Round.**

Figures in Metric Tons ("MT").

MILLICOM INTERNATIONAL
Walter L. Threadgill
Vice President, External Affairs

I. INTRODUCTION.

Mr. Chairman, I am Walter L. Threadgill, Vice President for External Affairs for Millicom International, a diversified publicly owned international telecommunications company. We appreciate the opportunity to submit this statement for the record on H.R. 553, the Caribbean Basin Trade Security Act. As further discussed below, we propose that H.R. 553 be amended so that Costa Rica will not be granted "NAFTA parity" unless there is a satisfactory resolution of the expropriation by the government of Costa Rica of the cellular telephone network developed and owned and operated by Millicom in that country. In addition, the Subcommittee should consider amending the underlying the Caribbean Basin Initiative ("CBI") law so that an expropriation finding will result in the immediate termination of CBI beneficiary country designation, as well as denial or termination of NAFTA parity.

Mr. Chairman, while Millicom understands and supports the goals of H.R. 553 to ensure that the countries of the Caribbean Basin are not adversely affected by the implementation of the North American Free Trade Agreement ("NAFTA"), we believe that the benefits provided by H.R. 553 should be enjoyed only by those Caribbean nations which do not engage in expropriation, repudiate contracts or commercial obligations or otherwise seize control of property owned by U.S. persons or businesses beneficially owned by U.S. persons.

As you are undoubtedly aware, Mr. Chairman, the above-cited principles are contained in the Caribbean Basin Economic Recovery Act which established the CBI program in 1983. Costa Rica has received CBI beneficiary country designation and under H.R. 553 would be offered tariff and quota treatment equivalent to that accorded to the U.S., Mexico and Canada under NAFTA. However, regrettably, Millicom is suffering the unfair and unwarranted nullification of cellular telephone service contract rights which it was granted by the Government of Costa Rica in 1989.

Mr. Chairman, Millicom has attempted to resolve this situation through dialogue with Costa Rica, to no avail. In this regard, we have presented the facts of this case to U.S. Government officials who have been supportive. However, we believe the unfair actions of Costa Rica will be rectified only if this Subcommittee and the Congress reaffirm in the strongest terms that CBI beneficiary status and NAFTA parity opportunities will be denied to Costa Rica, and any other CBI nation which engages in expropriation or does not live up to its commercial obligations.

II. BACKGROUND.

A unit of Millicom International, Millicom International Cellular S.A. ("MI Cellular"), operates cellular telephone networks in fifteen countries in Europe, Asia, Africa and Latin America. As you may know, a cellular telephone network is a communications system that allows mobile units to communicate with a central switch via radio frequencies, and through that switch, with the public telephone network, thus enabling the mobile units to make and receive calls. Through a subsidiary, Millicom Costa Rica, S.A. (MCR), MI Cellular developed the first state-of-the-art cellular telephone network for Costa Rica.

In March 1989, through its national telephone monopoly (ICE), Costa Rica contracted with MCR to develop and operate a cellular telephone network to the country. The contract was entered into only after MCR sought and received the government's designation of and authorization to use radio frequencies for network operations. In addition, MCR received written assurances that no restrictions existed which would prejudice MCR's ability to own and operate the network.

In April 1989, MCR began cellular telephone service for the Central Valley region (later expanded to cover both coasts and the north of the country) and has assets of more than $6.2 million. At present the network has approximately 4,000 subscribers with projected growth over the next ten years to more than 50,000 subscribers. Projected revenues are also promising and we believe within the near term the network will have a going concern value of approximately $100 million. In fact, MCR has plans to make additional investments in order to expand cellular telephone service to other parts of Costa Rica. MCR is also a large client of ICE, the Costa Rican telephone monopoly. MCR makes substantial payment for services related to calls generated by its customers and also pays substantial fixed monthly ICE charges.

MCR has fulfilled all of its contractual obligations to provide the people of Costa Rica with the benefits of Information Age technology. MCR's reward has been Costa Rica's unilateral nullification of its contract rights and expropriation, effective May 10, 1995, of the network which the company developed and operates.

III. EXPROPRIATION OF MCR'S BUSINESS.

After MCR had completed the introduction of its valuable cellular telephone technology to Costa Rica during 1989, various Costa Rican authorities began a concerted four-year campaign to expropriate the network and MCR's technology for the national telephone monopoly. The authorities (with the apparent or tacit approval of the government) began restricting MCR's technology, by strangling MCR's access to the local cellular market and destroying the value of its contract rights. This campaign was culminated by a political judicial decree nullifying MCR's operating rights. This campaign has been well-reported and is thus well-documented by the Costa Rican press (See Chronology of Events, Attachment 1).

Costa Rica has not used outright force. Instead, the government has employed more subtle but equally insidious techniques of regulatory expropriation to nullify MCR's property rights. The panoply of administrative, legislative, judicial and extra-legal measures used in Costa Rica and ICE to expropriate MCR's business include:

1. Costa Rica has retroactively retracted its pre-contract assurances that MCR's business operation satisfied local legal requirements.

2. ICE deliberately stunted MCR's business expansion by refusing to grant permits for additional trunk line interconnections essential for that expansion.

3. ICE established a competing cellular network and engaged in unfair marketing and business tactics. For example, ICE raided MCR's customer base, after MCR had opened up and educated the market, by offering below-market subsidized prices (including free subscriptions to government ministries and legislators).

4. ICE unions instigated newspaper and other attacks upon MCR to intimidate MCR and scare away potential customers and orchestrated judicial activity culminating in a ruling abrogating MCR's contract rights, and ordering closure of MCR's operations by May 10, 1995.

The provisions in the CBI authorizing statute anticipate and condemn the kind of actions inflicted upon MCR by Costa Rica (See 19 U.S.C. §2701(b)(2), Attachment 2). In fact, if the expropriation of MCR's business had occurred before Costa Rica was designated as a CBI beneficiary country, that designation would have been denied unless the expropriation were satisfactorily resolved, or the condition was waived by the President based on

U.S. national security or economic interest. Clearly there is no such interest in this case and H.R. 553 should be amended to deny NAFTA parity to Costa Rica (and any other nation) which engages in expropriation.

IV. CONCLUSION

Costa Rica's expropriation of MCR's business is the most egregious case in a distressing pattern of flagrant disregard for the property rights of U.S. investors in Costa Rica in particular, and in CBI beneficiary countries in general as documented by the Senate Foreign Relations Committee Republican Staff.

A March 1994 Senate Foreign Relations Committee Republican Staff Report, "Confiscated Property of American Citizens Overseas: Cases in Honduras, Costa Rica, and Nicaragua" (Senate Print 103-77), highlights examples of 1,603 cases the Republican Staff had learned about in Costa Rica and the two other CBI beneficiary countries. The Republican Staff found expropriations in Latin America to be widespread. The report clearly indicates that the issue of expropriations by CBI beneficiary countries should be revisited by Congress.

Illustrative of the Costa Rica's cavalier attitude is President Figueres' statement in April 1994 that the expropriation of MCR's $100 million business is merely a "pebble in the shoe" ("piedrita en el zapato") of Costa Rica-U.S. relations.

We believe that the legislation to grant NAFTA parity to CBI beneficiary countries must be used as the opportunity to redress the expropriation of MCR's business. The granting of NAFTA parity to Costa Rica must be conditional. We propose that:

- H.R. 553 be amended to re-apply with respect to MCR's case the expropriation condition for CBI beneficiary country designation as a condition for the granting of NAFTA parity to Costa Rica.

- An amendment be considered to H.R. 553 to re-apply the expropriation condition for CBI beneficiary country designation to other Costa Rican cases, and expropriation by other CBI beneficiary countries.

- An amendment be considered to H.R. 553 to add the expropriation condition to the list of CBI beneficiary country designation conditions that cannot be waived by the President, in the context of the re-application of the conditions for the granting of NAFTA parity.

- Consideration be given to amending the CBI law to specify that an egregious expropriation, like MCR by Costa Rica, or a pattern of expropriation, shall result in termination of CBI beneficiary country designation (and NAFTA parity).

ATTACHMENT 1

CHRONOLOGY OF EVENTS

PHASE I--THE GOVERNMENT OF COSTA RICA AUTHORIZES MCR BUSINESS OPERATION IN COSTA RICA

March 18, 1987 -- COMCEL presents application to Oficina de Control Nacional de Radio (CNR) for assignment of frequencies to establish a cellular telephone system.

June 1, 1987 -- CNR directs Notice 690 to the Executive President of ICE requesting information about the frequencies being used by ICE, as COMCEL has applied for such frequencies as ICE is not using.

June 25, 1987 -- Ing. Armando Bonilla of ICE responds to CNR stating the frequencies which ICE is using at that time and in the near future.

August 11, 1987 -- CNR officially authorizes COMCEL to use frequencies of 830-833 Mhz and 875-878 Mhz (and later authorizes COMCEL to use additional frequencies of 834-835 Mhz and 879-880 Mhz).

Feb. 17, 1988 -- Minister of Government and Police publishes agreement for assignment of frequencies to COMCEL.

October 20, 1988 -- Ing. Alvaro Soto Mora, Director General of Industries of Ministry of Economy and Commerce, states in letter to Ann Toby, Commercial Attache of United States Embassy:

> "se ha determinado que no existen en el pais restricciones para que empresas se instalen a desarrollar la telefonia celular. Por consiguiente, nuestro gobierno no tiene objección alguna a la inversión propuesta..."
>
> "it has been determined that there are no restrictions in the country for establishing companies to develop cellular telephony. Hence, our Government has no objection to the proposed investment."

March 17, 1989 -- ICE, which is the government of Costa Rica's national telephone monopoly, through Ing. Nestor Calderon Aguirre, Chief of Commercial Section of Metropolitan Area of ICE, sends written offer to MCR detailing the administrative and contractual aspects of the ICE-MCR relationship.

March 18, 1989 -- MCR accepts ICE offer and 15 Telephone Service Contracts for interconnecting trunk lines.

April 27, 1989 -- MCR cellular telephone system is officially inaugurated; first subscribers sign onto system on May 27.

May-Dec. 1989 -- MCR installs cellular system in Costa Rica. MCR system has state-of-the-art hardware and software, including a NovAtel MMC with one SMC which controls 6 cell sites with a total of 100 voice channels. The system uses AMPS

technology, and has 60 trunks to interconnect with ICE's public telephone network. The links between cell sites and the SMC are microwave hops of 8 GHz. Links to ICE are 15 GHz (one of the highest frequency microwave hops in Costa Rica). MCR's initial coverage area comprises the Central Valley (including the capital, San Juan) and the main towns of Puntarenas, Limon and the San Carlos region.

PHASE II--THE GOVERNMENT OF COSTA RICA ACTS TO DESTROY MCR'S BUSINESS FOR ITS OWN BENEFIT

Feb. 5, 1990 -- Costa Rica's Attorney General Office (Procuraduria General de la Republica) issues non-binding opinion, in response to request from National Assembly Deputy Clinton Cruishank, that MCR needs approval from National Assembly (Asamblea Legislativa) in order to operate, allegedly because the Radio and TV Law does not allow the Radio Office to grant usage of frequencies in the cellular range. MCR sales fall in half for several months after opinion.

Jan. 17, 1991 -- Costa Rica's Contraloria (Comptroller Office), in response to request from National Assembly Deputy Ricardo Araya on MCR operation, states that it will not interfere with Attorney General Office and will not proceed any further in this matter.

Feb. 25, 1991 -- The Attorney General Office issues a second non-binding opinion, in response to request from National Assembly question "How to proceed in order to take the frequencies away from Millicom," that MCR contract is illegal. The rationale has changed from February 1990 opinion; now it is that ICE has monopoly for cellular service in Costa Rica.

May 27, 1991 -- Controlaria, notwithstanding its January 1991 statement that it would take no further action, declares void a contract to provide cellular services between MCR and Cempro (a government office), thereby making it impossible for public offices to contract services with MCR.

June 20, 1991 -- The government's Servicio Nacional de Electricidad (SNE) issues a statement, out of its area of competence, declaring MCR's operation to be unconstitutional.

Sept. 3, 1991 -- Rumbo, a weekly publication, states that "within a year ICE will be offering a cellular service that will cost 25% less than Millicom's".

Sept. 7, 1991 -- ICE engineers union requests that "Millicom be stripped of the frequencies it uses for the cellular system".

Sept. 28, 1991 -- Newspapers headline that "Contraloria gives ultimatum to Minister Fishman" concerning shutdown of MCR operation.

October 2, 1991 -- National Assembly Deputy Marcos Gonzalez files an unconstitutionality action against MCR's cellular operations.

October 3, 1991 -- Minister Fishman states that MCR "cellular operation is legal".

October 6, 1991 -- ICE engineers union denounces "political pressures in the cellular issue" which would avoid shutdown of MCR operation.

October 25, 1991 -- ICE engineers union files an unconstitutionality action against the MCR cellular concession, which will be consolidated with action filed by Deputy Gonzalez.

Feb. 1992 to August 1993 -- Committee of "Diputados" of the National Assembly review work of ICE and issue report that MCR has acted in good faith, but that ICE has been negligent in the dealings with MCR.

Nov. 22, 1992 -- MCR requests new block of 1000 cellular phone numbers in order to serve additional customers.

Feb. 12, 1993 -- MCR runs out of cellular phone numbers and must stop servicing new customer subscriptions because ICE has delayed in acting on outstanding November 1992 request.

April 2, 1993 -- ICE finally assigns a block of 1000 new numbers to MCR.

May 10, 1993 -- MCR requests additional cellular numbers to service ever-increasing customer demand.

July 1993 -- MCR runs out of cellular phone numbers again (so that no new subscribers can enter its system). Since then, ICE has refused to grant MCR any more numbers or trunk lines (needed to handle the extra traffic) notwithstanding the outstanding MCR request of May 1993.

October 26, 1993 -- Constitutional Court rules that the grant of frequencies to COMCEL was unconstitutional but gives MCR a one-year stay before having to close its operation. On May 10, 1994, the full sentence is published in the Judicial Bulletin, thereby giving MCR until May 10, 1995 to cease operation. Although at least 15 companies, offering commercial services such as paging, trunking and two way radio services, could be affected by the ruling, they are not mentioned in the sentence nor have they suffered any consequences.

Nov. 22 & 29, 1993 -- ICE unions stage work stoppages to prevent the government from sending bill to the National Assembly to resolve MCR's situation. They also seek written agreement from the heads of the political parties represented in the National Assembly that they will not pass a "Millicom" law in the event the government presents it.

April 2, 1994 -- ICE announces that it will enter cellular telephone market.

April 25, 1994 -- SNE publishes tariffs for ICE's cellular system.

April 27, 1994 -- President-elect Jose Figueres states that MCR's plight is mere "piedrita en el zapato" ("pebble in the shoe") of Costa Rica - U.S. relations and refuses to authorize legislative relief for MCR.

May 4, 1994 -- ICE starts offering its cellular system to the general public. The ICE system is justified as a system for servicing rural areas (where MCR wanted to expand service but was prevented from doing so by ICE). However, the first ICE cell sites are located in San Jose and adjacent cities, and it soon becomes apparent that the ICE system is in direct competition with MCR. ICE's tariffs are below market and among the lowest in the world ($.20 per minute during peak hours). ICE also offers free subscriptions to government Ministers and National Assembly Deputies.

July 19, 1994 -- ICE publishes a "Licitacion Privada", a request for bids by invitation only, to "lease with option to buy" a cellular system with a final capacity of 50,000 subscribers.

May 10, 1995 -- MCR has been ordered to cease all business in Costa Rica.

ATTACHMENT 2

The Caribbean Basin Economic Recovery Act listed countries eligible for CBI beneficiary country designation. 19 U.S.C. §2702(b)(2) states that any country shall not be designated if such country --

> (A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,
>
> (B) has taken steps to repudiate or nullify --
>
> (i) any existing contract or agreement with, or
>
> (ii) any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or
>
> (C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that --
>
> (i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,
>
> (ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or
>
> (iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and
>
> promptly furnishes a copy of such determination to the Senate and House of Representatives.

[BY PERMISSION OF THE CHAIRMAN]

COMMENTS ON H.R. 553,
THE CARIBBEAN BASIN TRADE SECURITY ACT

ON BEHALF OF

WEST INDIA RUM REFINERY, LTD.,
A MEMBER OF WIRSPA

West India Rum Refinery, Ltd., a Member of The West Indies Rum and Spirits Producers Association ("WIRSPA"), appreciates the opportunity to provide the Subcommittee on Trade with its views on H.R. 553, the Caribbean Basin Trade Security Act.

WIRSPA and its members fully support the Subcommittee's efforts to ensure that the North American Free Trade Agreement ("NAFTA") does not damage the special relationship which the United States has established under the Caribbean Basin Initiative ("CBI") with the island nations of the Caribbean and the small countries of Central America. By providing "NAFTA parity" for products currently excluded from the CBI program and establishing a framework for free trade in the future, H.R. 553 would make important contributions to efforts to coordinate the NAFTA and the CBI.

We support not only the concept of NAFTA parity but also the most rapid possible enactment of H.R. 553. Our statement addresses, however, only one section of this important bill: section 103, designed to resolve an anomalous situation impeding the access of Caribbean rum to the U.S. market. The problem is a technical one but is significant to Caribbean rum producers.

A Rule-of-Origin Anomaly

The problem addressed by section 103 is that liqueurs and alcohol-based coolers exported from Canada to the United States cannot use Caribbean rum as a base without sacrificing the duty-free treatment they would otherwise receive. (Caribbean rum in this discussion includes rum from the U.S. Virgin Islands as well as rum from CBI beneficiary countries.)

Caribbean rum entering Canada is classified under HTS 2208.40. When that rum is then used to produce another product such as a rum cooler, the finished product is typically classified under HTSUS 2208.90 upon exportation to the United States, the Canadian processing having rendered the finished product a product of Canada for general customs purposes. (According to the Customs Service, either HTSUS 2208.90.45 or HTSUS 2208.90.80 could apply.) Under the CFTA/NAFTA rules of origin governing availability of duty-free treatment, however, a change between subheadings 2208.40 and 2208.90 is not sufficient to confer a change of origin for the input (rum). Thus, the finished rum-based beverage in the above scenario would not be eligible for preferential CFTA/NAFTA tariff treatment. Rather, as a product

of Canada deemed ineligible for preferential treatment, the finished product would be dutiable under HTSUS 2208.90.

The explanation for this result is complicated and involves General Note 3(c)(vii)(R)(4)(gg) of the Harmonized Tariff Schedule and NAFTA Annex 401-10. Special CFTA/NAFTA rules designed to cover such anomalous cases do not, for various reasons, apply in this particular situation. For example, within certain tariff headings, a finished product with sufficient value-added in Canada will automatically have Canadian origin for CFTA/NAFTA purposes. This value rule does not apply to Caribbean rum in the scenario described above, however, as there must be a specific provision for the value rule to operate and neither the CFTA nor the NAFTA contains such provision for headings 2207 through 2209. Similarly, while the NAFTA contains a de minimis rule allowing a product to qualify for NAFTA benefits so long as components of non-North American origin account for no more than seven percent of its total value, NAFTA Art. 405, headings 2207 through 2208 are specifically excluded from the de minimis rule. See NAFTA Art. 405(h).

At present, then, such Caribbean rum used in Canada cannot enter the United States duty-free even though (1) most Caribbean producers can ship rum directly to the United States (or to Canada) duty-free and (2) components added to the Caribbean rum in Canada would otherwise be entitled to CFTA/NAFTA duty-free treatment. This is a clearly unintentional outcome resulting from the interplay of various CFTA rules of origin that were, in relevant part, carried forward in the NAFTA. It adversely impacts both Caribbean rum production and Canadian processors and is inconsistent with the spirit of market access that underlies the CFTA, the NAFTA, and the CBI.

Proposed Solutions

A first step to resolve the problem was taken by Rep. Gibbons in 1993, when he introduced H.R. 2885 to allow Canadian producers to use Caribbean rum as an input without incurring the penalty of the loss of CFTA treatment. Specifically, the bill provided that Caribbean rum shall be treated as a product of the United States for purposes of determining whether a Canadian product incorporating that rum qualifies for CFTA treatment when entering the United States. After the bill was introduced, rum producers in the U.S. Virgin Islands discovered that they faced the same problem as producers in CBI beneficiary countries and asked that they be included in future legislative drafts (which has in fact happened).

A second proposal contemplated administrative, rather than legislative, action to solve the problem by proclaiming a change in the NAFTA rules of origin under Section 201(b) of the NAFTA Implementation Act. While principally used for accelerated tariff reductions, the Section 201(b) authority appears suffi-

ciently broad to permit the necessary change -- essentially the same change that would have been effected by H.R. 2885 -- to be proclaimed by the President after consultation and layover. WIRSPA filed a petition -- endorsed in a letter to Ambassador Kantor from Rep. Gibbons -- and pursued the 201(b) approach until notified by officials at the Office of the U.S. Trade Representative ("USTR") that the Administration preferred to include an appropriate Caribbean Basin Economic Recovery Act ("CBERA") amendment in the Caribbean trade provisions it hoped to attach to the Uruguay Round Agreements Act.

WIRSPA worked with USTR on a revised legislative draft (this time structured as a CBERA amendment) which was subsequently modified in minor respects as a result of discussions with Customs and other Treasury officials. The resulting provision -- which now appears as section 103 of H.R. 553 -- adds the rum-based beverages in question to the list of "eligible articles" set out in 19 U.S.C. § 2703(a). Specifically, it provides that CBERA duty-free treatment applies to "liqueurs and spirituous beverages produced in Canada from rum" provided that:

- the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands and is imported directly into Canada;
- the liqueurs and spirituous beverages are imported directly into the United States, entering under particular tariff subheadings; and
- the rum accounts for at least 90 percent by volume of the alcoholic content of the liqueurs and spirituous beverages.

This CBERA amendment was included in the Administration and House versions of the Uruguay Round implementing legislation. While dropped for procedural reasons from the final bill, it encountered no opposition on substantive grounds in the Congress. Indeed, there has been no opposition, domestic or otherwise, to WIRSPA's effort to solve this problem or to the specific CBERA amendment developed in consultation with USTR. Initial concerns voiced by the U.S. Virgin Islands have been fully met. In preparing a formal report on the Gibbons bill in 1993, the International Trade Commission staff contacted other potentially interested parties and identified no opposition.

The Rum Cooler Rule-of-Origin Problem is Unique

As the discussion above makes clear, the situation addressed by section 103 is an utterly anomalous and unintended result of NAFTA and CBI rules of origin drafted at different times and now interacting in unforeseeable ways. There is no basis for concern that this provision will lead to, or set a precedent for, other legislated changes to generally sound and time-tested CBI rules.

While other ways to solve the rum anomaly have been explored, the approach reflected in section 103 is the most concise and appropriate available. We are grateful for section 103's inclusion in the bill and urge that it be enacted at the earliest possible opportunity.

Rum is a CBI Success Story That Should Be Sustained

Rum is a product of special importance for many CBI countries, having been produced in the Caribbean for centuries and occupying a significant place in local cultures and economies. Under the CBI, Caribbean producers have obtained a foothold in the large U.S. rum market, earning much needed foreign currency and creating new jobs in the region. The International Trade Commission has identified rum as one of a limited number of products benefitting most from the CBI.

As we and others have cautioned this Subcommittee in the past, however, the NAFTA threatens to overwhelm those hard-won gains by extending the preference enjoyed by Caribbean rum to Mexican rum which already enjoys huge advantages in energy costs and other factors. It is particularly appropriate, then, that a bill designed to curb the NAFTA's ill-effects on the CBI include a remedy for the anomalous and unintended situation addressed by section 103.

* * * * *

This Subcommittee has long been in the forefront of efforts to protect and promote the interests of governments throughout the Caribbean region. We look forward to working with you to ensure that these important interests can be reconciled with the equally important objectives of the NAFTA.

February 24, 1995

TELEPHONE (202) 332-7100

[BY PERMISSION OF THE CHAIRMAN]

EMBASSY OF THE REPUBLIC OF ZIMBABWE
1608 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D. C. 20009

YOUR REF.:

February 23 1995

Chairman Phillip Crane
Subcommittee on Trade
Committee On Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C 20515-6348

Dear Mr Chairman,

We understand that the Subcommittee on Trade is currently considering the Caribbean Basin Trade Security Act, H.R. 553. We are writing to present the concerns of the Government of Zimbabwe regarding H.R. 553, which we fear may result in the diversion of trade opportunities from the African continent to the countries of the Caribbean Basin. We feel this will have a negative impact on Zimbabwe's access to the United States market for products like sugar, textiles and apparel.

For several years the countries of the African continent have asked the developed countries to provide greater access to their markets for "trade" rather than offering "aid." The response, including from the United States, has not been encouraging, senior U.S. officials have stated repeatedly during recent visits to African countries that aid to our continent will diminish. At the same time, the US Congress is considering measures that would reduce the opportunities for trade, thereby further disadvantaging the African economies and frustrating attempts to improve the standard of living.

A major source of concern is H.R. 553, the so called Caribbean Parity Bill, which would extend to the CBI beneficiary countries during a transition period the same advantages that Mexico benefits from under NAFTA, in

period the same advantages that Mexico benefits from under NAFTA, in preparation for full membership in NAFTA. This legislation threatens to undermine seriously access to the U.S. market for several major exports from the African continent, including textiles/apparel.

Since Zimbabwe is a major exporter of textiles and/or apparel to the United States, our country will be directly affected by the passage of this particular legislation. This particular industry is not only a provider of employment to our countrymen and women but also a main source of the much needed foreign currency. We view with alarm and grave concern any attempts that would disadvantage our exports and thus undermine our economy. Economic stability and political stability are inextricably linked, Direct foreign investment which has proven to be the engine of growth for most developed and emerging markets will be adversely affected if there is no economic or political stability.

In the case of textiles and apparel H.R. 553 would advantage the CBI beneficiary countries over African countries in three ways.
First, the reinforcing of the 807 programme, which allows the duty-free entry of apparel made from U.S. fabric, gives an unfair advantage to the CBI beneficiary countries, which by their proximity to the United States can feasibly carry out such a programme, compared to the African countries which would face insurmountable freight charges were they to attempt to use such a programme.

Second, the extension of the preferential tariff rates which Mexico enjoys under NAFTA to those apparel categories under bilateral textile agreement restraints will mean that the CBI countries will benefit from duty-free entry for almost all these categories, compared with African countries which will continue to pay 15-20% tariff rates for the next ten years under the phase-out Multi-Fibre Agreement.

Third, the instructions to the USTR to seek preferential tariff rates for apparel coming from the CBI beneficiaries countries and which do not originate in North America, will also prejudice the African exports. Together, these preferences will almost certainly result in the diversion of apparel trade opportunities from the African countries to the CBI beneficiaries.

While assisting the countries of the Caribbean Basin is a worthwhile goal, it should not be done at the expense of the African countries. HR 553 threatens two of the main categories of export from the African countries to the United States. We trust that the bill was not intended to have this

result and that the subcommittee will take appropriate steps to avoid harming the African countries including Zimbabwe.

We strongly urge that your committee consider extending to the African countries the same conditions that you are proposing to give to the Caribbean countries under the provisions of the Caribbean Basin Trade Security Act. This would not only uphold equal trading opportunities as proposed under the provisions of the new World Trade Organisation, but would also be of great assistance and encouragement to the emerging industrialization process in the African continent.

Finally, a variety of products we export from Zimbabwe benefit from the Generalized System of Preferences (GSP), which will expire in July of this year. We urge the subcommittee to give due consideration to the renewal of the GSP programme and to maintaining standards of eligibility that will allow the African countries to continue to benefit from this valuable programme.

Yours Sincerely,

Amos B.M. Midzi
Ambassador

SELECT FISCAL YEAR 1996 BUDGET PROPOSALS AND POSSIBLE GSP EXTENSION

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

FEBRUARY 27, 1995

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SELECT FISCAL YEAR 1996 BUDGET PROPOSALS AND POSSIBLE GSP EXTENSION

MONDAY, FEBRUARY 27, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:05 p.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
February 14, 1995
No. TR-3

CONTACT: (202) 225-1721

CRANE ANNOUNCES HEARING ON SELECT FISCAL YEAR 1996 BUDGET PROPOSALS AND POSSIBLE GSP EXTENSION

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Administration's fiscal year 1996 budget proposals that are under the jurisdiction of this Subcommittee, including the U.S. Customs Service, the International Trade Commission and the Office of the United States Trade Representative. In addition, the Subcommittee will also consider a possible extension of the Generalized System of Preferences (GSP) program. **The hearing will take place on Monday, February 27, 1995, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

BACKGROUND:

On February 6, President Clinton submitted his fiscal year 1996 budget to the Congress. The FY96 budget includes proposals for the U.S. Customs Service, the International Trade Commission and the Office of the United States Trade Representative, which are within the jurisdiction of the Committee on Ways and Means. The Subcommittee will hear testimony from Administration witnesses from each of the aforementioned agencies.

The Subcommittee also will receive testimony on the possible extension of GSP, a trade program which promotes economic development and creates markets for U.S. exports in developing countries through tariff preferences. Title V of the Trade Act of 1974 grants the President authority to provide duty-free treatment on imports of any eligible article from beneficiary developing countries, subject to various statutory criteria for country and product eligibility. The authority, which was extended in the Uruguay Round Agreements Act (P.L. 103-465), expires July 31, 1995.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Tuesday, February 21, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE MINUTE RULE WILL BE STRICTLY ENFORCED.** The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Thursday, February 23, 1995. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Monday, March 13, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * * *

Chairman CRANE. Our distinguished minority leader is en route. He is caught in the air, and he will be here just a few minutes late. But we will commence.

We are at one of the most critical economic junctures in our Nation's history, and we in the Congress and the administration have spent a great deal of time talking about reducing the deficit and controlling spending. There have been modest attempts. Aside from all the talk, however, our annual deficits continue to hover in the $200 billion range as Federal spending continues to increase. We all agree that government must be smaller, more efficient and less intrusive. Where we disagree, however, is on how we get there.

Today, we are going to hear from administration officials with ITC, Customs and USTR on their 1996 budgets. And I am interested in hearing their statements, for the time is now for us to work together to make sure we are using the taxpayers' money most effectively. The public demands it. I believe this subcommittee is committed to searching for every reasonable savings possible, and certainly I know I am.

Today, we will also receive testimony on proposals for extending the Generalized System of Preferences Program which expires on July 31 of this year. For over 25 years, the President has been authorized to grant tariff preferences to developing countries under GSP. Congress extended the program on a short-term basis in the 1993 budget reconciliation bill and again in the Uruguay Round Act.

I am concerned that those stopgap extensions are disruptive to companies that are using the program. USTR uses the GSP statute as a trade policy tool, and many U.S. businesses depend on GSP treatment to help reduce costs. The problem has been one of finding adequate revenue to offset the tariffs, which are forgone. We welcome the administration's suggestions in this regard.

I thank the witnesses for appearing today and look forward to their testimony on these important issues. Any statement will be included in the record, but if you could summarize your presentations in 5 minutes we would appreciate it.

We will open up then with our—excuse me. We do have the other side to be heard from with an opening statement. I yield.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I am pleased that the subcommittee is taking this opportunity to oversee the operations of the major trade agencies in our jurisdiction and to review their budget requests. It is important that the Committee on Ways and Means authorize appropriation levels that will enable these agencies to fulfill their important responsibilities for conducting and administering U.S. trade policies while operating within budgetary constraints.

I particularly welcome this hearing on possible extension of the GSP Program. For the past 20 years this program has promoted economic development through trade rather than aid which has provided a useful trade policy to promote worker rights, intellectual property protection and market access in developing countries. I would hope that funding will be available to enable extension of this program for a longer term than has been possible in the past 2 years and that the subcommittee will consider possible reforms

such as those proposed by the administration last year so that this program can operate most effectively.

I look forward to working with you, Mr. Chairman, for early legislative action.

Chairman CRANE. Thank you.

Hon. Peter Watson, Chairman of the U.S. International Trade Commission.

STATEMENT OF HON. PETER S. WATSON, CHAIRMAN, U.S. INTERNATIONAL TRADE COMMISSION

Mr. WATSON. Thank you, Mr. Chairman and members of the subcommittee. Mr. Chairman, we would like to congratulate you on your appointment, and that of the members to the subcommittee.

I would briefly like to identify some of my colleagues here: Vice Chairman Nuzum, Commissioners Crawford and Bragg, and members of our senior staff.

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to meet with you today to discuss the activities of the U.S. International Trade Commission for the fiscal year 1996. As you suggest, Mr. Chairman, my full statement has been submitted; and we will have a brief summary for you.

Mr. Chairman, the Commission sincerely appreciates the committee's previous support for the ITC's programs and its continued strong interest in our work. As the subcommittee is well aware of the functions of the ITC, I will not dwell on these except to speak to recent upcoming developments in our activities. Following this, I will briefly address the related budget issues.

Mr. Chairman, obviously the most major activity of the subcommittee over the last year was the passage of the Uruguay round, and we congratulate you and the subcommittee on your work in this regard. We at the Commission are pleased to play our part in the administration of the new codes, and we anticipate that the Uruguay round Agreements Act will involve the assumption of substantial new responsibilities by the ITC which will indeed increase over several years as various additional responsibilities devolve to our agency.

For example, on January 1 of this year the Commission became responsible for conducting a new class of injury review investigations, known as black hole cases, of certain industries benefiting from countervailing duty orders, with the first case likely to be conducted during the second half of this fiscal year.

Other expected new responsibilities include assisting Commerce and USTR in the pursuit of remedies and the World Trade Organization in regard to certain subsidies, increased litigation as a result of the new legislative language and providing USTR with advisory opinions in connection with the WTO dispute settlement process. We expect as a result of these new responsibilities, Mr. Chairman, to be having about a 10- to 15-percent increase in our workload this year.

During a transition period beginning in 1998 the Commission will be faced with conducting an injury review of all outstanding antidumping and CVD duty orders as to which the domestic industry expresses interest, the so-called sunset cases. Beginning in the

year 2000, the Commission will be required to conduct a review of all 5-year-old orders.

To perform these new responsibilities the Commission will likely have to increase its FTE base and nonpersonnel expenditures by mid-1998, with the overall increase in our sunset reviews almost doubling the historic title VII workload in fiscal years 1999 and 2000.

Let me now turn to budget issues. Perhaps I can say, most emphatically, I do not enjoy coming before this subcommittee suggesting that I want its support in asking for an increase in funds over last year's no matter how minimal. We want to assume our share of reduction to government and bureaucratic expense, and we will operate at whatever level Congress funds us. However, the record of our 1996 request should be clear to the subcommittee.

As the members will see, the budget request of the Commission for fiscal year 1996 is for $47.177 million. This would, at least at first blush, appear to be a not insignificant increase over the designated appropriation of $42.5 million received by the ITC for fiscal year 1995. However, for completeness, let me clarify that the real appropriation last year was actually $44.5 million as the conference committee factored into its final allocation of approximately a $2 million carryover that the ITC had at that time. We currently project actual expenditures of approximately $44.5 million for fiscal year 1995 and do not expect any carryover for fiscal year 1996.

Mr. Chairman, at the risk of the appearance of special pleading, I would like to emphasize that our fiscal year 1996 budget request is extremely moderate when one considers that the fiscal year 1996 request, if met, would essentially allow the Commission to function as it is currently structured at fiscal year 1995 levels, despite the fact that we anticipate a 10- to 15-percent increase in our workload.

Although the fiscal year 1996 budget request is approximately $2.5 million above projected Commission expenditures for fiscal year 1995, that is a 5.7-percent increase. Approximately 85 percent of that amount is accounted for by mandatory salary increases and rent over which we have no control. In essence we are asking for only what the Commission minimally needs to continue to do its job as currently structured. In short, the Commission's fiscal year 1996 budget contains no fat.

Despite no decline in its workload the Commission has accomplished a significant amount of downsizing during the last 4 years. Notably, we have been successful in reducing our FTE levels from 487 at the end of fiscal year 1992 to the projected level of 455 at the end of fiscal year 1995. This represents approximately a 6-percent decline.

In that regard, the Commission has already achieved OMB's recommended staffing levels for fiscal year 1996. This downsizing of our FTE levels is particularly relevant because, historically, approximately 70 percent of the Commission's budget has expanded for personnel compensation and benefits.

Should the Commission not receive its full fiscal year 1996 request for appropriation from Congress, we will have to make appropriate adjustments. That may include a possible reduction in force, significant changes to the manner in which the Commission cur-

rently conducts all of its studies and investigations, and elimination of agency details. Such adjustments, if necessary, will likely impact on the Commission's work product.

The majority of the Commission's activities are controlled by legislation, and there are real limits as to the structural changes the Commission can make without corresponding changes to our controlling statutes. New fiscal realities present an opportunity, however, to reexamine what our organization does and how it does it. We want to work with you, Mr. Chairman, and the members to seriously examine if there are ways to reduce our expenditures.

Mr. Chairman, I share the belief in the need to rethink and restructure government and fundamentally change the way that it operates. I know that the leadership and yourself are also advocates of downsizing the bureaucracy to create a more efficient and responsive government for the people.

I applaud the efforts that are being made by the leadership and the other proponents of various reform initiatives. In furtherance of those efforts, we will continue to actively participate to accomplish these initiatives and will keep the subcommittee fully apprised of our activities.

Mr. Chairman and members of the subcommittee, I thank you for the opportunity to appear here today. I would be happy to answer any questions that the subcommittee might have at this time.

[The prepared statement follows:]

UNITED STATES INTERNATIONAL TRADE COMMISSION

STATEMENT OF PETER S. WATSON, CHAIRMAN
BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS
February 27, 1995

Mr. Chairman and members of the Subcommittee, I am pleased to have this opportunity to meet with you today to discuss the budget request of the United States International Trade Commission for fiscal year 1996. The Commission appreciates the Committee's previous support for the Commission's programs, and its continued strong interest in its work.

Overview of the Commission's role in U.S. International Affairs

The U.S. International Trade Commission is an independent, nonpartisan, quasi-judicial agency created by an Act of Congress. Its six Commissioners are appointed by the President and confirmed by the Senate for terms of nine years. As provided by statute, the ITC has unique independent budget authority. 19 U.S.C. section 2232 provides that the Commission's proposed allocations be "transmitted to the President . . . and included by him in the Budget without revision . . .". Each year, the Chairman appears before the Congress on behalf of the Commission to justify its budget request for the preceding year.

The Commission plays an important role in assisting U.S. trade policy. In its adjudicative role, the ITC determines whether certain imports injure or threaten to injure U.S. industry (Title VII - antidumping and countervailing duty investigations); and whether unfair methods of competition or unfair acts are occurring in the importation of articles into the United States (section 337 - unfair practices in import trade such as patent infringement). The Commission also makes recommendations to the President regarding whether domestic industries are being seriously injured by increasing imports (section 201 - escape clause investigations); whether agricultural imports are interfering with USDA farm programs (section 22 investigations)[1]; and whether imports from Communist countries are causing market disruption in the United States (section 406 investigations).

At the request of the President or the Congress, the Commission undertakes comprehensive studies on key issues relating to international trade and economic policy matters. Detailed reports on its factfinding investigations (section 332 investigations) are provided to the President and Congress and become part of the information upon which U.S. trade policy is based. The Commission, upon request, also monitors import levels and provides other information and technical

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[1] The Uruguay Round Agreements Act amended section 22 to prohibit the application of quantitative import limitations or fees on products from World Trade Organization member countries.

advice to the President and Congress on tariff and trade matters and proposed legislation.

Other responsibilities of the ITC include providing the Congress and the President with independent, expert technical advice to assist in the development and implementation of U.S. trade policy; responding to requests for information from the Congress and the President on various matters affecting international trade; and maintaining the Harmonized Tariff Schedule of the United States. To carry out these responsibilities, the Commission has to maintain a high degree of expertise and readiness in its work force.

The Commission's Projected Future Workload

The Commission projects a future workload increase of 10-15% in FY 96. The Commission anticipates that the Uruguay Round Agreements Act will impose substantial new burdens on the Commission which will increase over several years as various additional responsibilities devolve on the agency. For example, on January 1, 1995, the Commission became responsible for conducting a new class of injury review investigations ("black hole" cases) of certain industries benefitting from countervailing duty orders, although the first cases are not likely to be conducted before the last quarter of FY 1995. If consolidated, there are approximately 27 of those cases that may be brought by petitioners beginning in FY 95.

The Uruguay Round implementing legislation made a number of changes in laws which the Commission administers. As these changes in the trade relief laws take effect, the Commission anticipates an increase in court litigation and WTO dispute settlement as parties and countries seek clarification of new statutory terms and international obligations, respectively.

The Commission also expects to receive requests to evaluate expansion of and various aspects of trade under the North American Free Trade Agreement (NAFTA), or to provide advice as to the probable economic effect of immediate or accelerated elimination of duties on imports from Mexico under NAFTA.

The Commission's workload is not expected to increase again substantially until mid-1998 when the Commission will have to begin handling sunset review cases called for by the new GATT implementing legislation. During a transition period beginning in 1998, the Commission will be faced with conducting an injury review of all outstanding antidumping and countervailing duty orders as to which the domestic industry expresses interest. There are approximately 400 outstanding orders eligible for review in the transition period.[2] Beginning in the year 2000, the

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[2] The amount of work involved in each of these reviews will roughly correspond to that in a final injury investigation. In FY 94, the Commission

Commission will be required to conduct a review of all five year old orders. To perform these new responsibilities, the Commission will likely have to increase its FTE base and non-personnel expenditures substantially by mid-1998.

The Commission's FY 96 Budget Request

The budget request of the United States International Trade Commission (Commission) for fiscal year (FY) 1996 is for $47,177,000. The Commission is requesting a funding level of 458 full-time equivalents (FTEs) for FY 1996. The FY 96 staffing plan (449.5 full time permanent positions) does show an increase of two full time permanent positions as compared to the Commission's FY 95 staffing levels (447.5 full time permanent positions) which are needed to handle the projected increased workload as a result of the passage of the Uruguay Round legislation. The total number of positions allocated by the Commission in FY 96 is, however, 6.5 positions below the number of positions allocated by the Commission in FY 94.

The proposed budget for FY 1996 reflects the beginning of a very modest buildup in resources in order to allow the Commission to assume the substantial new obligations imposed by the Uruguay Round legislation. I believe that the Commission's FY 96 request is moderate for a number of reasons.

First, our requested appropriation is tailored to allow the Commission, as it is currently structured, to continue to operate at FY 95 levels. Although the Commission's FY 96 budget request of $47,177,000 is approximately $2,500,000 or 5.7% above net projected expenditures in FY 95, approximately 85% of that amount is accounted for by mandatory increases to its salary levels and an increase in the Commission's rent.[3]

Second, in contrast to previous years, the Commission will not have the benefit of a carryover. In FY 94, the Commission spent less than its appropriation and had a sizable carryover of funds for use in FY 95. The Commission's FY 95 appropriation, however, was far less than expected.[4] In order for the Commission to continue to operate at FY 94 levels in FY 95 and meet mandatory increases to base pay, all FY 94 carryover funds are expected to be expended in FY 95.

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completed approximately 130 final injury investigations, each being approximately one year in length.

[3] In FY 95 and FY 96 the Commission expects to expend approximately 70% of its available resources on personnel compensation and benefits.

[4] The Commission's revised FY 95 budget request was $44,657,000. The House Appropriations Committee recommended that the ITC's FY 95 funding level be set at $44,200,000 and the Senate Appropriations Committee recommended $43,500,000. Ultimately, the appropriation received by the Commission was $42,500,000, which amount was recommended by the conference committee.

Third, although there have been some fluctuations in the Commission's workload (i.e., flat-rolled steel cases) in recent years, the Commission's workload has remained relatively flat from 1991 on. Nonetheless, the Commission has already accomplished a significant amount of streamlining and downsizing. For example, in FY 93 the Commission expended funds for 470 FTEs, however, our FY 96 request anticipates only 458 FTEs. In that regard, the Commission has achieved or surpassed OMB's recommended staffing levels for FY 96. I remain committed to continue the Commission's streamlining process as well as to examine all options for downsizing the agency.

Fourth, as discussed above, the Commission expects to see an immediate 10% to 15% increase in its workload in FY 96 as a result of the Uruguay Round Agreements Act. The Commission has not, however, asked for a corresponding increase in resources. The Commission's requested FY 96 appropriation is merely sufficient to keep the Commission operating at FY 95 levels.

The Impact of a Reduction in our Requested Appropriation

Let me say most emphatically that I do not enjoy coming before this Committee suggesting that I want its support in asking for an increase in funds over last year. We do want to assume our share of the reduction to government and bureaucratic expense and we will operate at whatever level the Congress funds us.

Should the Commission not receive its full FY 96 requested appropriation from Congress, we will make appropriate adjustments. That may include a possible reduction in work force, significant changes to the manner in which the Commission currently conducts all of its studies and investigations, and an elimination of all agency details.[5] Such adjustments, if necessary, will likely impact on the Commission's work product. The majority of the Commission's principal activities are, however, controlled by legislation and there are limits to the structural changes the Commission can make without corresponding changes to our controlling statutes.

The Conference Report accompanying the Act which reports the Commission's FY 95 appropriation indicates that "(t)he conferees agree that any program reductions should be taken from the amounts requested for section 332 studies".[6] In response, the Commission has already begun to take steps to identify ways of further streamlining the section 332 process, including an audit of the 332 process by the Commission Inspector General. In addition, the Commission is

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[5] Currently, the Commission provides 6 FTEs to USTR each year pursuant to a Memorandum of Understanding.

[6] Currently, it is estimated that the Commission commits approximately 15% to 20% of its resources to conducting 332 studies each year.

reviewing its recurring reports and other services to determine if reductions can be made in these areas. We believe that there are real savings to be made in this regard. Beyond this, however, changes to the section 332 process caused by a reduction in the Commission's appropriation this FY will affect the Commission's ability to respond to the requests of the Congress and the President in this area and dilutes the extremely valuable analytical resources of the agency.

Mr. Chairman and members of the Subcommittee, new fiscal realities present an opportunity to reexamine what our organization does and how it does it. We want to work with you to seriously examine if there are ways to reduce our expenditures.

Chairman CRANE. Thank you, Mr. Watson.

One result of the Uruguay round was the requirement that the ITC conduct sunset reviews of existing dumping orders. How are you preparing to address these additional demands on your resources?

Mr. WATSON. That is a very important objective which we are addressing, Mr. Chairman. We are starting to, in fact, identify what our personnel needs are going to be.

We will have approximately 400 cases to review for the interim series which we call the transition sunset cases, and so we are aggressively and actively identifying where they are going to come from and how we are to address those needs. I am obliged to say that the increase in those cases will, in fact, involve almost a doubling in the traditional title VII workload in the fiscal years 1999 to 2001.

Chairman CRANE. I notice your budget includes an increase for section 332 studies, the ones requested by the Congress and the President. What is the reason for the projected increase and how much of your resources are used to do these studies? And are there any recurring reports that could be terminated?

Mr. WATSON. Thank you, Mr. Chairman.

Particularly as to the last question, I believe, in fact, over the years what we have seen is a significant number of recurring reports that have been added on without any particular sense of their natural longevity and what their relevance might be in the future. I would like to work very closely with members of this subcommittee and—as well as our colleagues on the Senate side to eliminate recurring reports that have perhaps served their natural life, and we would like to try and eliminate those.

We will be anticipating some increase in section 332 studies shortly with respect to, I think, implementation issues for the World Trade Organization and the like, that we could possibly expect from USTR and others, but we hope to keep those to a minimum. Particularly we want to stay focused on what one might call value-added 332s, whereby we can really identify analytical support to, say, the House Ways and Means Committee, the Senate Finance Committee, and USTR rather than rote pro forma studies that are generated perhaps historically.

Chairman CRANE. Thank you.

Mr. Payne.

Mr. PAYNE. Thank you very much. Thank you, Mr. Watson.

To follow up on the last question concerning the section 332 studies, I understand that now 10 percent of the ITC personnel are involved in these 332 studies. You mentioned that you are looking at a way of narrowing that to value added. Do you think that is the best way that we can confine these or do you have any other ideas or suggestions about how we might reduce the numbers of these 322 studies?

Mr. WATSON. Mr. Payne, I think we have to be careful not to attempt to too closely restrict the prerogative of this committee and Senate Finance and USTR. We are very much in a responsive mode, if you will, and I would not want to try and suggest that we limit your jurisdiction in that regard.

Having said that, I think one can say that over the years there have been a number of 332 requests which perhaps may have benefited from additional examination by our clients, if you will, the requesters of these, to see whether or not they serve any fundamental and real purpose in terms of the U.S. economy and benefit to it. I don't know if one can say that some requests are essentially special interest pleadings or not, but it is clear that many of these requests could use a better examination going in.

Having said that, the value of the 332 staff that we have is to provide some outstanding analytical advice and counsel both to Congress and to the White House, and it is very important to retain the ability to provide that. The same people involved in 332s are not limited to that because many are highly qualified economists that add real value to our title VII investigations as well. So I don't mean to suggest that those individuals are exclusively involved in 332s. They are involved in a broad range of our work, Mr. Payne.

Mr. PAYNE. Thank you. I also wanted to commend you on the answer concerning the recurring reports. I think if we can find a way to work within our budgetary constraints in that area it will certainly benefit us all.

Mr. WATSON. Thank you.

Mr. PAYNE. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Mr. Watson, good to see you. I know you do great work, and I know you have a great reputation. However, I would like to ask you a question.

Suppose I said to you that there was an agency, whose name I will not mention, whose caseload had been going down for the last 3 years and wanted a 6 percent increase in its budget while, at the same time, two other agencies closely associated, the budget was either flat or going down. What would you say to that?

Mr. WATSON. I would say that, if that agency was indeed the ITC, I would have some particular comments. Mr. Houghton, I think we all understand we have to look to reductions in expenses where we can. Let me just say that, in fact, if one was referring to the ITC, we have seen somewhat of a decline this last year; but fiscal year 1995 we do expect to see a 10- to 15-percent increase in our workload—due to the additional WTO responsibilities and the so-called black hole cases.

The figures also for the caseload tend to get skewed by virtue of the fact that, for example, in fiscal year 1993 we had 72 cases, depending on how you calculate them, that were related to one piece of litigation, that is the steel cases.

So the fact of the matter is that, in real terms, although it is somewhat cyclical because of the economy in general, our workload has, in real terms, seen little major change. But, again, I would point out that in this fiscal year 1995 and going into 1998 and 2000, we will see a significant increase in our caseload as a result of the World Trade Organization. Indeed during 1998 to 2000 we will handle up to 400 cases—more than double historic title VII caseload—by virtue of the sunset review cases.

So we are in an interim period before we really see a major ramp up in our expenses, but in fiscal year 1995 we expect to see a 10- to 15-percent workload increase.

Mr. HOUGHTON. That is interesting, but all I have to do is go on history. Those are the facts. The other is conjecture. I see the total caseload going down from 1992 to 1993, 1993 to 1994; and also I see a group that has 450, 460 people in it, as contrasted to USTR which has maybe 160 or 170. It makes me uneasy, particularly when we are trying to scrunch down all the costs we can.

Mr. WATSON. We share that objective, Congressman.

I would like to submit for the record a total summary of our investigative caseloads. And I think there was a high in 1993; but, in fact, in 1994 we will see an increase and again this year, in 1995.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Hancock.

Mr. HANCOCK. Thank you, Mr. Chairman. I have no questions, Mr. Chairman.

Chairman CRANE. Mr. Camp. Mr. Ramstad.

Mr. RAMSTAD. I don't have any questions at this time, Mr. Chairman.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman.

Mr. Watson, the ITC provides assistance to small businesses through its Trade Remedy Assistance Office. In fiscal year 1994 that office responded to 309 inquiries from the public concerning trade remedies. Could you identify the number of these inquiries which resulted in actual investigations?

Mr. WATSON. I can't immediately, Congressman, but I would be pleased to get back to you for the record.

Mr. ZIMMER. Can you tell us what the annual budget of that office is?

Mr. WATSON. I think I can. It is the salary associated—the budget associated is about 1.5 FTEs and whatever expenses they need overall within the organization, Congressman.

Mr. ZIMMER. And you are telling me also that there are only 1.5 FTEs assigned to that office?

Mr. WATSON. As currently structured, that is correct. The individuals who serve that office are, however, able to take advantage of the work products and activities of the overall organization so that is somewhat of an artificial amount.

Mr. ZIMMER. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

Mr. Watson, you are requesting a 5.7-percent increase in your budget for 1996 and you say that 85 percent of that amount is accounted for by mandatory increases to the salary levels and an increase in the Commission's rent. What is the reason for the mandatory increases in the salary levels?

Mr. WATSON. It is purely legislative. The COLA is mandated by generally applicable law and the increase in rent having been negotiated by SSA as set out in our underlying lease.

Ms. DUNN. Thank you. You detail six FTEs to the USTR.

Mr. WATSON. That is correct.

Ms. DUNN. What is the reason you have those folks on your payroll and those are not listed on the payroll of the USTR?

Mr. WATSON. There has been a tradition of support to USTR in specialized areas when they recognize them. There are, over periods of time, specialized needs and support that we provide to USTR. We do it in the macrosense pursuant to the formal 332 study process. We do it in the informal sense providing them staff analytical support. And, consistent with that, we assist in technical advice and support to them sometimes on a dedicated basis with details when they need us.

Sometimes on an informal basis, for example, when we have general counsel staff traveling with USTR on negotiations. It is within the rubric of providing technical support to the executive branch.

Ms. DUNN. Working along the philosophical line that it would be neater and cleaner for a budget to list the number of FTEs that work for an agency, how do you think USTR would fare if those six FTEs were requested in the salary line item for the USTR?

Mr. WATSON. I am sure they would appreciate that.

Ms. DUNN. Do they not have the experience and expertise under USTR to provide that service?

Mr. WATSON. I am sure that they could if they maintained a consistently higher level of career professionals, but the history of USTR suggests that they maintain a case group of specialists and they add on additional people as and when their workload needs.

Let me say that I agree that we are going to have difficulty sustaining and being able to justify details to that agency under a stripped-down budget. We are going to have to examine that as well as our other staff expenditures should that need arise.

I don't think there is any suggestion that by use of those detailees, however, there is in any way an intention or desire to mislead authorization or appropriations committees. It has been a practice that has been long standing, and we have always been up front about the resources that we had to detail.

I think USTR, in fact, has its own budget request consistent with the type of assistance they are getting from around the rest of the government. I suppose that if they needed those additional people on a dedicated full-time basis, they would have to request it.

Ms. DUNN. Mr. Chairman, may I have one more question?

Chairman CRANE. Certainly.

Ms. DUNN. The ITC budget request for 1996 reflects an effort at downsizing and streamlining your commission. Could you elaborate on your efforts, please?

Mr. WATSON. Certainly. The reality is that our downsizing efforts have been long standing, but it has been accentuated I would say in the last year. It has been long standing in the sense that, as I pointed out, since fiscal year 1992 we have effected a reduction of FTEs of about 6 percent. Totally we have, for at least 2 or 3 years, been rationalizing and reorganizing our agency along functional lines.

In response to—or should I say in conjunction with, the Vice President's initiative on Reinventing Government and the National

Performance Review, we at the Commission have undertaken an analysis of the way we do business.

Let me just say that I share the analysis of Peter Drucker in the latest Atlantic Monthly where he asks three questions for government agencies—and I think we need to continue to examine these ourselves. They are as follows: What is your mission? Is it still worth doing? And, third, if we were not already doing this would we now go into it?

I think that these are very profound questions, and those are the questions we will be asking ourselves as we go through this current National Performance Review and other related activities. We are very conscious of the need to ensure that our agency acts consistent with that type of analysis.

Ms. DUNN. Thank you.

Chairman CRANE. Thank you, Mr. Watson. We look forward to a continuing working relationship with you and appreciate your input. Thank you for testifying today.

Mr. WATSON. Thank you. We also look forward to a close working cooperation.

Chairman CRANE. Very good.

[The following was subsequently received:]

CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 3, 1995

Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways Means
1104 LHOB
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to appear before the Subcommittee hearing on February 27, 1995. Enclosed, please find my responses to your letter of March 6, 1995. Please contact me if you or any other Member of the Committee should have any additional questions.

Sincerely,

Peter S. Watson
Chairman

Enclosure

U.S INTERNATIONAL TRADE COMMISSION

Questions for the Record
Hearing on FY 96 Budget
February 27, 1995

Question No. 1:

Does your FY 96 budget proposal include any adjustment in current resource allocations to meet the expected workload increase resulting from the implementation of NAFTA and the Uruguay Round, as well as the overall increase in trade activity?

Response:

The Commission anticipates that the Uruguay Round Agreements Act will impose significant new burdens on the Commission beginning in the last quarter of FY 95. As a result, the Commission estimates that there will be an overall 10-15% increase in its workload in FY 96 as compared with FY 95. This increase, as explained more fully below in the response to Question No. 3, results in part from the new class of CVD investigations that the Commission became responsible for on January 1, 1995. Other expected new responsibilities include assisting Commerce and USTR in the pursuit of remedies in the WTO in regard to certain subsidies, increased litigation as a result of the new legislative language, and providing USTR with advisory opinions in connection with the WTO dispute settlement process. For a three year period beginning in FY 1998, the Commission's title VII caseload will almost double as it becomes responsible for transition sunset investigations. Thereafter, the Commission will be responsible for conducting normal sunset investigations.

Despite this projected increase in the Commission's workload, the Commission has not requested a corresponding increase in resources. The Commission's requested FY 96 appropriation is merely sufficient to keep the Commission operating at FY 95 levels. In order to help it meet the workload increase, the Commission did make certain minor adjustments to its resource allocations which can be found on page 40 of the Commission's Budget Justification. Notably, it has increased its allocations for travel and printing. The Commission's FY 96 staffing plan also includes a total of two additional permanent positions over FY 95. (In FY 96 one position was added in the Office of the General Counsel, Investigations and in Economics; one position was eliminated in the Office of Personnel). The Commission anticipates the necessity for a buildup of personnel resources in FY 98 in order to meet demands caused by the sunset investigations.

Question No. 2:

How many antidumping and countervailing duty cases have you investigated in the last year? How does this number compare to previous years? Do you expect that this level is likely to increase, decrease, or stay the same in future years? If you expect a change, please explain your reasoning.

Response:

The Commission normally combines all title VII investigations involving the same product from multiple countries that are filed concurrently as one "packaged" case. We believe that counting Title VII cases on a "packaged" basis is a more accurate reflection of workload than counting each product/country combination separately since it combines investigations involving the same product from multiple countries. On this basis, the Commission instituted a total of 50 antidumping and countervailing duty investigations in FY 1994, 54 in FY 1993, and 58 in FY 1992.

We have estimated that there will be a 15 percent increase in the Title VII caseload resulting in 57 cases in both FY 1995 and FY 1996. This increase results from the legislation implementing the Uruguay Round subsidies agreement which requires immediate injury reviews of countervailing duty orders where no injury test had previously been afforded. Our estimate is that there are 45 such orders (24 on a "packaged" basis) and we will conduct approximately half of the investigations in FY 1995 and half in FY 1996. Between 1998 and 2001, the Commission must conduct injury reviews of 334 "transition" antidumping and countervailing duty orders which are five years or older. Beginning in 2000, the Commission is permanently charged with conducting injury reviews of all antidumping and countervailing duty orders which are five years old. We estimate that each review will involve work equivalent to a final injury investigation. As a result, the Commission anticipates that its title VII workload will double during the transition period, and at a minimum, increase the Commission's workload by at least 30% in the non-transition period after the year 2001.

Question No. 3:

As a result of the implementation of the Uruguay Round, the ITC became responsible for conducting a new class of injury investigations on January 1st. In FY 98, the ITC will also be required to begin conducting "sunset reviews" of existing dumping orders. How are you preparing to address these additional demands on the Commission?

Response:

INJURY INVESTIGATIONS OF CERTAIN OUTSTANDING CVD ORDERS

On January 1, the Commission became responsible for conducting a new class of injury investigations for countervailing duty (CVD) orders which did not originally receive injury determinations. Such orders will be revoked unless, within 6 months of the subject country's joining the WTO, a domestic interested party requests an injury investigation. If a request is received the Commission must conduct an injury investigation and complete that investigation within one year of initiation. The Commission, however, has some discretion to schedule the initiation of such investigations to maximize the efficient utilization of government resources.

Since domestic interested parties have no incentive to file early, we do not expect to begin receiving requests until the end of the applicable 6 month period for any order. Thus the first cases should not begin until June of this year at the earliest.

The Commission has taken the following actions to prepare for these cases:

* On January 3, the Commission published in the Federal Register interim regulations to govern these cases.

* Commission staff have consulted with Commerce Department officials on which orders are subject to this procedure, scheduling, and procedural matters, to assure maximum coordination and efficiency.

* Initiation will be coordinated with Commerce Department administrative reviews to facilitate both agencies processes and minimize the burden on the parties of possible simultaneous DOC and ITC investigations.

* The Commission plans to maximize consolidation of cases from different countries involving the same or similar products and to spread the investigations out over approximately a two year period so as to address the additional work with existing staff and to ensure that all cases are completed prior to the beginning of sunset reviews.

There are currently 46 orders potentially eligible for these injury investigations. Assuming maximum consolidation of orders involving the same or similar products from multiple countries, the number of potential separate investigations would be 27. It is likely that the actual number of investigations could be further reduced if domestic interested parties choose not to request investigations due to the small volume of imports from particular countries or the age of the orders.

Since these investigations require the same kinds of information

and, generally, the same procedures as a final CVD injury investigation, we assume that each case will be the workload equivalent of a final 120 day investigation. We estimate 10 additional injury investigations per year in FY 96 and 97 to account for these cases.

SUNSET REVIEWS

The sunset cases will result in a significant and largely permanent increase in Title VII caseload. The Commission has two tasks: 1) beginning in FY 1998, it will conduct injury reviews of the currently outstanding "transition" antidumping and countervailing duty orders; and 2) beginning in FY 2000, it will undertake the continuing task of conducting injury reviews of all antidumping and countervailing duty orders every five years. We assume that a sunset review will be the workload equivalent of a final 120 day investigation.

We have been informed by Commerce that there are currently 334 transition orders. Using the most optimistic consolidation estimates, the Commission would have to conduct 128 consolidated transition sunset investigations between July 1, 1998 and June 30, 2001. Thus, over a three year period the Commission will likely have to conduct an average of 42 additional consolidated investigations per year. Over the last few years the Commission has conducted on average 45 preliminary investigations and 20 final investigation each year.

As the transition cases begin to wind down, the Commission will have to begin conducting normal sunset reviews in calendar year 2000. Thus, the caseload will not return to 1995 levels but will stabilize at a higher level due to the ongoing sunset review requirements.

The Commission has taken a number of preliminary steps to prepare for these reviews:

* The Commission's Director of Operations established a GATT Implementation and Personnel Planning Committee composed of senior staff from the Offices of the Investigations, Economics, and General Counsel to begin planning for sunset review in general and the initial flood of transition cases in particular. The first task of the Committee was to develop manpower estimates for addressing the added transition and permanent caseload.

* Budgetary constraints will certainly require that some portion of the increased workload must be absorbed by existing personnel. The Planning Committee is

developing proposals for flexible staffing and cross training of existing staff to allow the Commission to shift resources efficiently to deal with the cyclical nature of the transition cases and the change in the Commission's workload generated by sunset review.

* Staff of the Commission and the Department of Commerce have had informal discussions on means to coordinate consolidation and scheduling of transition cases. Prior to July 1998, the Department, coordinating with the Commission, must issue a comprehensive schedule for hearing the transition cases.

* The substantive and procedural issues in the new countervailing duty injury investigations are similar to those that the Commission and Commerce will encounter in sunset review. Thus, both agencies hope to use their experience in these cases as a means for preparing for the more voluminous sunset process and further developing means to coordinate scheduling and procedures to reduce the burden on participating parties and the agencies.

* The Chairman has recently established an Investigations Working Group to review and make recommendations on streamlining the Commission's Title VII investigative processes. The agency's goal is to further increase staff productivity and efficiency of all Title VII investigative procedures prior to the beginning of sunset reviews.

The Planning Committee and the Investigations Working Group will consider possible procedural changes that should result in increased productivity. Nonetheless it is likely that there will still be a need for a significant increase in personnel assigned to these investigations. Procedural changes are constrained by the requirements of the statute with regard to the data that must be collected and the depth of explanation required of the Commission, including consideration of arguments of the parties. Moreover, these proceedings are subject to judicial review, which also limits the ability of the Commission to adopt any radical procedural innovations.

Question No. 4:

The ITC budget request for FY 96 notes that it reflects significant downsizing and streamlining efforts. Would you elaborate on your efforts in this area?

Response:

The ITC, as an independent and bipartisan agency, has voluntarily been responsive to the requirements of the National Performance Review and the President through the development of a Streamlining Plan, Customer Service Standards, and a Strategic Plan. It has also been responsive to the President's September 11, 1994 memorandum and E.O. 12839 for FTE reductions as outlined by OMB. In that regard, the Commission has surpassed OMB's recommended staffing levels for FY 96.

We are in the process of finalizing a Strategic Plan which will be completed by March 30, 1995. This Strategic Plan and agency Action Plans will incorporate goals from our Streamlining Plan. We have already begun the process of studying agency processes and have conducted several reorganizations to reduce supervisory to employee ratios. Our FTE staffing level has been decreasing steadily over the past three years, from 486 in FY 1993 to 458 for FY 1996, and have already exceeded the reductions proposed by OMB through FY 1996.

ORGANIZATIONAL STREAMLINING:

The following illustrates some of the ITC's organizational streamlining:

- The Office of Industries was reduced from 7 to 3 divisions. The reasons for the new structure were to reduce the number of middle managers and consolidate some of the support functions in light of reductions in staffing. In summary, the office has dropped one SES position, three GS-15 division chief positions, and one GS-14 branch chief position (a 22% decline in overall management). Over the same period of time the total office has gone from an authorized level of 144 in FY 1992, 136.5 in FY 1993 and currently stands at 125.

- The Office of Tariff Affairs and Trade Agreements has undergone substantial organizational and personnel changes. The staff allocation was reduced over a period of years from 24 in FY 1990 to 16 in 1995. This has required a streamlining of work processes. One Division was abolished and the employees were reassigned to another Division, eliminating a Division Director position and increasing the employee to supervisor ratio. There is another reorganization proposal under consideration that would eliminate the remaining divisions of the office, thereby resulting in a further reduction of middle management.

- The Office of Unfair Import Investigations has been reduced in staff from 18 in FY 1992 to 15 in FY 1995. As a result they have continually looked for ways to

streamline processes.

- In the Office of Information Services there have been several reorganizations. The first was in 1993 when the Office of Information Services was transferred to the Office of Operations. In 1994 the Office of Information Services was combined with the Library and Statistical Services Division. We are currently in the process of eliminating two out of three supervisory positions in the Library. From 1992 to the present the Library has had a one third reduction in staff with no decrease in workload. Over the next months we will be studying what functions might be contracted out. More recently the Editorial staff was transferred to this organization, eliminating a supervisor. This action consolidated all functions concerned with information.

  We are in the process of studying the overall Office of Information Services to determine what is most efficient and cost effective. We have recently moved two Divisions together and eliminated one management position thereby increasing the employee to supervisor ratio to 1 to 18.

- The Office of the General Counsel has reduced staff by four attorneys and one paralegal since 1993 while services have expanded. They, however, are in an area where we have projected growth because of the Uruguay Round legislation.

- The Director of Administration was reduced by one position (GS-15); Office of Finance and Budget was reduced from 12 positions in FY 1993 to 9 in FY 1996; The Office of Personnel was reduced from 11 positions in FY 1993 to 7 for FY 1995; and the Office of Management Services was reduced from 39 positions in FY 1993 to 31 for FY 1995.

PROCESS STREAMLINING:

The following illustrate some of the streamlining efforts in ITC's programs:

- When a request for an investigation under section 332(g) is anticipated from Ways & Means, Finance, the President, or USTR, the Commission staff always seeks an opportunity to comment on the draft requests; staff works with requestors to ensure that the studies are as focused as possible so that the Commission can provide the needed information in the most cost effective manner. Staff also seeks to have sunset dates included

in all requests likely to require recurring reports.

- Commission staff seeks whenever possible to provide information to the USTR and Congress on an informal staff-to-staff basis without the institution of a formal 332 investigation. This approach is used particularly when the turn-around time for the information is short and no formal proceeding and report are desired. This approach also avoids the costs associated with a formal section 332 investigation and possible published report.

- The Commission has sought to develop specialized expertise in specific individuals in a variety of aspects of competitiveness which should in the long run provide efficiencies in the production of 332 studies. Specifically, the Commission has built and continues to build, expertise in antitrust/competition policy, intellectual property rights, labor standards, market access barriers, and the environment. It has also sought to enhance its in-house capability to assess economy-wide consequences of changes in trade policies and industry performance.

- Section 332 staff has a long history of streamlining efforts to present study findings in the most concise and user-friendly format for the requestor and in a manner that minimizes publication and other costs. For example, when feasible, staff, with the assistance of the requestor, has developed standardized or tabular formats in lieu of lengthy text.

- Where necessary and on a limited basis, we have purchased databases in order to meet the needs of the requester. This has been done only where staff either could not recreate the database or would have to expend extensive Commission resources to do so.

- When legislation for specific section 332 studies is introduced in Congress, the Commission reviews the proposal to ensure that it accurately describes the product that the drafter seeks and that it is within the Commission's ability to complete. This helps ensure the most efficient use of Commission resources.

- Staff periodically communicates with USTR and Congressional staff regarding ongoing recurring reports to determine whether such reports continue to be needed.

- In fiscal year 1993, a radical streamlining of the coverage of the Operation of the Trade Agreements

Program (OTAP) report was proposed, approved, and implemented.

- o A 1/3 reduction in OTAP's length was accomplished by eliminating redundant material, unnecessary "boilerplate" and coverage of marginal and "no action" issues.

- o Nearly 1,000 fewer work hours was spent annually on producing the 1992 and 1993 editions of the OTAP report than was spent on the 1991 edition (issued prior to the change).

- Since 1991, the Commission has made several important modifications to the East-West report to reflect the rapid political and economic changes occurring in these countries, resulting in continuous streamlining of the report. Most recently, the Commission scaled back the content of the East-West report to what we regard as the minimum required by law. Text analysis was removed and the reports became statistical reports.

  - o Costs of producing the report have been halved as a result of the latest change.

Research methods

- The Commission has changed the way it approaches the requirement to report annually on the Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Preference Act (ATPA). A single team has been assigned to draft both reports, whose coverage will be harmonized and streamlined. Some immediate cost savings will be possible this year, while longer-term savings are anticipated once the changeover is firmly in place:

  - o CBERA and Andean travel were combined, in order to economize on the major element of travel cost: the round-trip from Washington.
  - o A staggered multi-year travel schedule was adopted, reducing the number of countries visited in each region each year.

  - o The Commission is working closely with the Department of State to improve coordination on fieldwork and the responsiveness of Embassy reports, both primary inputs into our analysis.

  - o Review layers have been combined or eliminated for the CBERA/Andean, OTAP, and East-West reports.

Production and Distribution

- In an effort to reduce printing and mailing costs:

  - Increased attention has been given to re-validation of mailing lists to ensure excess reports are not printed or mailed. To further reduce distribution costs, the Superintendent of Documents now sells those Commission reports that meet the Superintendent's public demand criteria. Although the Commission pays for the printing of the sold reports and no part of the proceeds received by the Superintendent are given to the Commission, such sales reduce Commission mailing costs and provides revenue to the government as a whole.

  - The Commission is currently examining the feasibility of making reports available to the public electronically via the GPO Federal Bulletin Board, the National Trade Data Base, ITC bulletin boards, Internet, and other electronic modes. Use of such modes should eventually make reports more quickly available to a wider audience and may also reduce Commission printing and mailing costs.

- New publishing technology has been acquired which allows us to print reports based on actual demand, rather than by estimate. This has resulted in a reduction of three positions in the printing operations, and has allowed the Office of Administration to reduce middle management by 32%.

- Consideration is being given to purchasing and designing an imaging system. This would probably result in the elimination of part-time or temporary personnel to maintain a research data base of materials and should make research efforts more efficient and reduce the paper handled and stored. The Office of the Secretary, the Office of Unfair Import Investigation, the Office of the General Counsel and the Office of Administration will benefit from this system, if obtained.

OTHER STREAMLINING:

- The Office of General Counsel has created automated systems to increase productivity and accomplish cost efficiencies. The Office is reorganizing support staff functions and providing cross-training to law librarians, secretaries, and paralegals to assure that full service can be maintained with reduced resources

and that tasks can be allocated in the most cost-efficient manner to support the productivity of legal personnel.

- The Office of Information Services is in the midst of downsizing the agency's present mainframe-based international trade database to a client-server system that will save significant costs over the 5-year lifecycle while providing better, faster and more reliable statistics to agency analysts. We are working with other agencies on the NPR's IT-06 initiative (Develop an International Trade Database) to deliver this information to the public and reduce redundancy across the Federal government in developing and reporting these key data.

- The Office of Finance and Budget is in the midst of consolidating all financial systems currently operated on three separate systems at three separate locations to a single system in one location to be more efficient and cost effective. This will also provide the added benefits of "paperless" systems and improved information.

- While the ITC staffing levels are being reduced, the agency is also taking positive action to downsize related support costs. One example of this is the removal of telephone lines, resulting in a projected cost savings of approximately $100,000 in FY 1995.

Question No. 5:

The ITC budget request for FY 96 proposes an appropriation increase of $4.667 million, the bulk of which would be used for salary increases. What is the current average salary of an ITC employee? What will this average be in FY 96?

Response:

The Commission's "real" appropriation increase from FY 1995 to FY 1996 is $2.677 million. The Conference Committee was aware that the Commission had for use a carry-over of approximately $2.000 million from the FY 1994 appropriation. This carry-over should be added to the Commission's $42.500 million FY 1995 appropriation for a total funding availability of $44.500 million.

As of January 31, 1995, the Commission's average salary was $57,946. It is expected that this average salary will be maintained in FY 1996.

Question No. 6:

The ITC currently details 6 full-time equivalent (FTE) staff to USTR. How long are these employees detailed and to which offices?

Response:

An important part of the ITC's mission is to develop and maintain a staff unparalleled in its trade expertise. To broaden the expertise of our staff in trade and competitiveness issues, the ITC has a policy of supporting mutually beneficial activities at USTR with professional personnel detailed for extended periods of time. These employees are selected through a formal developmental personnel detail program that balances the benefits to the agency and the employee with the needs of USTR. The total number of details under this program is limited to six.

As of April 3, 1995, ITC staff will be detailed to the following offices at USTR:

Office of Agricultural Affairs
Office of Economic Affairs
Office of GATT/WTO Affairs
Office of Industry
Office of Textiles
Office of Trade and Development/GSP

Details are approximately one year in duration. All current details expire on December 31, 1995.

Question No. 7.

Please discuss the steps you have taken to streamline the Section 332 process. Are the results of the Inspector General's audit of the process publicly available? If so, please provide a summary of the major findings.

Response:

The Commission continuously monitors its section 332 process in an effort to produce quality reports in a cost effective manner. The following describes some of the issues surrounding section 332 streamlining and Commission efforts.

- There is considerable demand for Commission industry and trade analyses from the trade community, other agencies, individual members of Congress, and domestic industries. This demand is contained, however, by the fact that we are not required to undertake studies except at the request of the President, the USTR, the

House Committee on Ways and Means, or the Senate Committee on Finance.

- When a request for an investigation under section 332(g) is received from Ways & Means, Finance, the President, or USTR, the Commission has no discretion regarding institution--the Commission must conduct the requested investigation and to the best of its ability provide the requested information. Requestors generally provide the Commission with an opportunity to comment on draft requests; staff will continue to work with requestors to ensure that the studies are as focused as possible so that the Commission can provide the needed information in the most cost effective manner possible. Staff already has been instructed to seek to have sunset dates included in all requests likely to require recurring reports.

- While the Commission has authority to self-initiate investigations under section 332 (under section 332(b)), in recent years it has rarely done so. The Commission has not self-initiated any new analytical section 332 investigations since 1985, although it should be noted that the Commission, at the suggestion of the Inspector General, converted two ongoing trade monitoring efforts into 332 investigations in 1993. Also, in 1991, the Commission self-initiated a 332 study to do background work in anticipation of a FTA probable economic effects request from the USTR under section 131 of the Trade Act of 1974, with the intention of folding the section 332 investigation into the section 131 investigation.

- Commission staff receives numerous requests to provide information to the USTR and Congress on an informal staff-to-staff basis without the institution of a formal 332 investigation. This approach is used particularly when the turn-around time for the information is short and no formal proceeding and report are desired. This approach also avoids the costs associated with a formal section 332 investigation and possible published report. Informal staff responses generally are not an option when the nature of the request is such as to require extensive staff research involving the need for public input, hearings, and questionnaires.

- As part of the Commission's effort to streamline agency personnel, the office that prepares the majority of section 332 reports, has been reduced by almost 20 persons during the past several years, a reduction of 13 percent (from 144 in 1992 to 125 in 1995). It

should be noted, however, that this unit is the core of Commission industry/commodity expertise and cannot sustain continuing cuts if the Commission is to maintain its operational readiness.

- The Commission has sought to develop specialized expertise in specific individuals in a variety of aspects of competitiveness which should in the long run provide efficiencies in the production of 332 studies. Specifically, the Commission has built and continues to build, expertise in antitrust/competition policy, intellectual property rights, labor standards, market access barriers, and the environment. It has also sought to enhance its in-house capability to assess economy-wide consequences of changes in trade policies and industry performance.

- Section 332 staff has a long history of streamlining efforts to present study findings in the most concise and user-friendly format for the requestor and in a manner that minimizes publication and other costs. For example, when feasible, staff, with the assistance of the requestor, has developed standardized or tabular formats in lieu of lengthy text. This has been particularly true in many of the probable effects reports and Generalized System of Preferences (GSP) studies which often involve the analysis of hundreds and sometimes thousands of products. Two recent examples of major studies for Congress incorporating such techniques are the NAFTA analysis (1993) and the GATT URA analysis (1994), each meeting the extensive needs of the Congress but done within a matter of months.

- Where necessary and on a limited basis, we have purchased databases in order to meet the needs of the requester. This has been done only where staff either could not recreate the database or would have to expend extensive Commission resources to do so.

- When legislation for specific section 332 studies is introduced in Congress, the Commission reviews the proposal to ensure that it accurately describes the product that the drafter seeks and that it is within the Commission's ability to complete. This helps ensure the most efficient use of Commission resources.

- Staff periodically communicates with USTR and Congressional staff regarding ongoing recurring reports to determine whether such reports continue to be needed.

- Increased attention has been given to re-validation of mailing lists to ensure excess reports are not printed or mailed. To further reduce distribution costs, the Superintendent of Documents now sells those Commission reports that meet the Superintendent's public demand criteria (principally recurring reports). Although the Commission pays for the printing of the sold reports and no part of the proceeds received by the Superintendent are given to the Commission, such sales reduce Commission mailing costs.

- The Commission is currently examining the feasibility of making reports available to the public electronically via the GPO Federal Bulletin Board, the National Trade Data Base, ITC bulletin boards, Internet, and other electronic modes. Use of such modes should eventually make reports more quickly available to a wider audience and may also reduce Commission printing and mailing costs.

The Inspector General has reviewed the Commission's role in the preparation of one type of Section 332, that being the "recurring reports". A summary of that audit is contained in Audit Report IG-01-93, Evaluation of the Commission's Role in Preparing Recurring Reports, which is attached (See Exhibit A).

Question No. 8:

Please provide a status report on the Section 332 dumping/CVD study

Response:

This study is due to USTR on June 30, 1995. It is on schedule and is presently undergoing the typical Commission review process. The economic effects of unfair trade practices and remedies have been estimated using public and questionnaire data. The Offices of Industries, Economics and Investigations as well as the office of the General Counsel have been involved in preparing this study.

Question No. 9:

Do you anticipate a substantial increase in your workload due to the recent changes in the Section 337 statute? If so, please explain the nature of these projected increases and how it will affect your allocation of resources.

Response:

At the present time, we do not anticipate a substantial increase in workload at the present time as a result of the amendments to

Section 337.

Question No. 10:

The ITC provides assistance to small businesses through its Trade Remedy Assistance Office. In FY94, the TRAO responded to 309 inquiries from the public concerning trade remedies. Please identify the number of these inquiries which resulted in actual investigations. What is the annual budget of the TRAO and how many FTEs are currently assigned to the office?

Response:

The aforementioned statement that TRAO responded to 309 inquiries from the public concerning trade remedies needs clarification in order to provide an accurate response to Question 10. Not all of TRAO's FY 94 recorded inquiries reflect members of the public seeking "trade remedies". In fact, many inquiries do not pertain to TRAO's relevant trade laws enumerated in 19 U.S.C. § 1339(c)(2).

To date, one investigation involves a TRAO FY 94 recorded inquiry.[1] The investigation is Audible Alarm Devices for Divers, Investigation No. 337-TA-365. For the particular inquirer involved, TRAO provided assistance in the preparation of a complaint and with post-filing proceedings until the inquirer retained legal counsel.

TRAO's operating needs are drawn upon the Office of Operations' overall operating budget on an as needed basis. TRAO also draws upon the budgeted resources of various Commission offices, including the Office of Investigations, the Office of Unfair Import Investigations, the Office of Industries and the General Counsel's Office.

Two employees are assigned to the TRAO-one part-time,[2] GS-14, step 2 and one full-time,[3] GS-11, step 6.

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[1] The 309 FY 94 recorded inquiries do not reflect inquirers who actively sought assistance from TRAO in FY 94, but who are recorded as first time inquirers in FY 93. To date, three investigations involve active FY 94 inquirers who are not reflected in the 309 FY 94 inquiries because they were logged as first time TRAO inquirers in FY 93. Such investigations are Certain Partial Extension Drawer Slides with Rollers, Investigation No. 731-TA-723, Manganese Sulfate from the People's Republic of China, Investigation No. 731-TA-725 and a § 301 investigation initiated on October 17, 1994 on behalf of the U.S. banana industry.

TRAO's involvement with these investigations is as follows. TRAO assisted the Drawer Slides petitioner in the preparation and filing of a petition, as well as during post-filing proceedings. TRAO provided brief post-filing assistance to the Manganese Sulfate petitioners until they retained legal counsel. Senator Inouye's office contacted TRAO concerning dumping relief for the U.S. banana industry. To date, the U.S. banana industry has pursued an investigation under § 301 to address difficulties in accessing the E.U. market. TRAO provided no assistance with this investigation.

[2] 24 hours a week, equalling 3 work days a week.

[3] 40 hours a week, equalling 5 work days a week.

Question No. 11:

Does the ITC plan to hire any consultants or experts as permitted under 5 U.S.C. 3109 for FY 96? Does the ITC currently have any such consultants or experts? If so, what are their functions?

Response:
5 U.S.C. provides for the head of an agency to temporarily or intermittently hire experts or consultants for a time not to exceed one year. Other than the types of consultants/experts used this year, the Commission anticipates limited use of consultants and experts for FY 1996. For FY 1995, the Commission has currently obtained services from the following consultants/experts:

Brown & Company - to audit the Commission's FY 1993 and 1994 financial statements as requested by the IG.

International Food Policy Research Institute (Sherman Robinson) - to expand the capacity of the Commission to model and analyze options on trade arrangements with Latin American countries using multi-country computable general equilibrium.

Question No. 12:

What inflationary factor was used in the calculation of your budget request?

Response:

Based on the OMB policy pay raise assumption provided by the Commission's OMB Budget Examiner on December 23, 1994, the Commission used 2.4% for its FY 1996 pay raise assumption. For nonpersonnel categories, the Commission's inflation factor varied for an average inflation factor of 4.0%.

RESPONSES TO QUESTIONS FROM CONGRESSMAN THOMAS

Question No. 1:

The Commission has a number of regular "332" reports on autos, steel and other trade matters that it issues on a regular basis. Some of these reports are issued quarterly or even monthly. What reduction in cost would occur if all such reports were limited to annual publication?

Response:

The following tabulation shows actual FY-94 costs and estimated cost savings assuming only annual reports are produced. The overall cost reduction on these particular reports would be approximately $99,000 or a 24% reduction.

332	FY-94 cost	Estimated "annual only" savings
#135--SOC(ann. and qty)	$271,214	$ 33,200
#191--Footwear (qty) .	11,757	8,800
#207--Autos (monthly) .	17,328	14,700
#327--Steel (semi-ann.)	107,310	42,000
Total	$407,609	$ 98,700

Question No. 2:

I have frequently been able to obtain import and export data from the Commission by making a request and wonder if the Commission might find that it can serve others' needs without publishing reports that in some cases were started over a decade ago for political reasons. Please list any data or analyses which would be unavailable to the public if the Commission ceased publishing the following reports: steel, rum, footwear, autos, production sharing, ethyl alcohol, and the multi-fiber arrangement.

Response:

Steel.--Our data gathering activities for this report yield product line specific data that are not available from other sources, although some sources exist for more general data.[4]

[4]In instances where analogous data is available, sources would include the American Iron and Steel Institute, the Environmental Protection Agency, and the US Department of Commerce. Most of (continued...)

Specifically, product line information on capital expenditures, research and development expenditures, environmental expenditures, capacity, production, and capacity utilization, and profit and loss, as well as more general information on export activities, are all unique to this report. Although the Commission's coverage of the industry is generally superior to other sources and enables an objective assessment of industry developments, compilation of raw steel production, product line shipments, and the income statement data are available from other sources.

Rum.--Discontinuation of the Rum Report will result in information becoming unavailable to the public in several areas. (a) The Rum Report provides rum production and value data on a calendar year basis, and such calendar year data are not otherwise available to the public. (b) The Rum Report is the only conveniently-available source of reliable rum production data adjusted for production levels of the U.S. Virgin Islands and Puerto Rico. (c) The Rum Report is the only public information source which provides accurate production data adjusted for possible double-counting from production-sharing operations, places much of the rum production data into consistent units, and provides production data adjusted for changes in stocks.

Footwear.--The footwear report includes data from the Commerce and Labor Departments which are otherwise available to the public if one is willing to gather the information from a number of different offices in these agencies. The only data that are unavailable to the public is the plant closings and openings which we source from Footwear Industries of America, a trade association for U.S. footwear producers.

Although almost all data used to generate footwear reports are available to the public, they are not available in the format provided in our report. Our report incorporates all revisions to official data and provides a historical five-year annual data series and the current 2-year quarterly data.

Autos.--The breakdown of trade data by product (autos and light trucks) and the detail on import sources and export markets are the key elements of the report. These data could also be requested in a similar form from the Department of Commerce. In addition, to reproduce the bulk of the rest of the report, a researcher would have to search the latest weekly editions of Automotive News for sales, production, and certain price data; and call the Department of Labor for current employment

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[4](...continued)
these sources would yield proxy data or more general data from which estimates would have to be made to replicate our data.

information and consumer and producer price data.

Production sharing.--The Harmonized Tariff Schedule (HTS) requires importers to report the value of the U.S.-origin content of imports separately from the dutiable value (or foreign value added). No other Government or private organization provides a periodic analysis of imports under the production sharing tariff provisions. These statistics are not available to subscribers or purchasers of standard data tapes (or CDs) from the Bureau of the Census. Such data are available only from special tapes that show imports under "secondary reporting codes." However, considerable programing is required by the Commission to cross-reference production sharing trade with data for total trade, to produce the country- and commodity-specific data needed to analyze issues of importance to the trade community.

This report contains analysis and data particularly important for parties tracking the following issues:

(a) Imports from the maquiladora industry in Mexico.
(b) The effects of NAFTA on U.S.-Mexico trade.
(c) The role and nature of U.S. companies in the growth of export-oriented industries in the Caribbean Basin.
(d) A comparison of the use of U.S.-made components in the manufacturing operations of various trading partners.
(e) Likely economic effects of free-trade agreements.

Ethyl alcohol.--The size of the U.S. domestic market for ethyl alcohol is used to determine the local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The base quantity to be used by the U.S. Customs service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. This calculated import quantity of ethyl alcohol would be unavailable should the Commission cease publishing the report.

For an individual to calculate the information currently supplied by the Commission, he or she would need to obtain, from the Department of Energy, the supply of ethyl alcohol and adjust for domestic consumption and export quantities. The necessary export information may be obtained from the Department of Commerce or the Department of Agriculture.

Multi-fiber arrangement.--The data in the report are not available to the public through any other source. We get the raw data used to compile the report from the Department of Commerce on electronic tapes. Commerce produces reports for use by OTEXA (Office of Textiles and Apparel) containing some of the data on a product basis, but this report is not generally available to the public. The value of our report is that it provides the data on a country basis and shows both quantity and value. Not only have

many customers, both domestic and foreign, asked to be put on our mailing list to receive the report annually, but we additionally get many requests for the type of data in the report.

Question No. 3:

If all the reports listed in the second question were immediately eliminated, how much would the Commission save during the current and 1996 fiscal years? Over the next five years?

Response:

The total FY-94 cost of the seven reports listed was $262,000, involving approximately 5.2 work-years of direct staff time. A significant amount of the work in these reports (particularly steel, autos, production sharing, and the MFA) is basic research required to maintain a proficient level of expertise which the Commission has found useful in apprising USTR, the Congress, other government agencies, and diverse private sector organizations of global industry trends and competitiveness issues. Even if the reports are cut or eliminated, much of this work must still be done. Eliminating these reports could actually have the effect of increasing costs, in that these reports provide an efficient way to respond to the many questions we receive on these issues.

Question from Mr. Houghton:

How many antidumping and countervailing duty cases have you investigated in the last year? How does this number compare to previous years? Do you expect that this level is likely to increase, decrease, or stay the same in future years? If you expect a change, please explain your reasoning.

Response:

The Commission normally combines all title VII investigations involving the same product from multiple countries that are filed concurrently as one "packaged" case. We believe that counting Title VII cases on a "packaged" basis is a more accurate reflection of workload than counting each product/country combination separately since it combines investigations involving the same product from multiple countries. On this basis, the Commission instituted a total of 50 antidumping and countervailing duty investigations in FY 1994, 54 in FY 1993, and 58 in FY 1992.

We have estimated that there will be a 15 percent increase in the Title VII caseload resulting in 57 cases in both FY 1995 and FY 1996. This increase results from the legislation implementing the Uruguay Round subsidies agreement which requires immediate injury reviews of countervailing duty orders where no injury test had previously been afforded. Our estimate is that there are 45 such orders (24 on a "packaged" basis) and we will conduct approximately half of the investigations in FY 1995 and half in FY 1996. Between 1998 and 2001, the Commission must conduct injury reviews of 334 "transition" antidumping and countervailing duty orders which are five years or older. Beginning in 2000, the Commission is permanently charged with conducting injury reviews of all antidumping and countervailing duty orders which are five years old. We estimate that each review will involve work equivalent to a final injury investigation. As a result, the Commission anticipates that its title VII workload will double during the transition period, and at a minimum, increase the Commission's workload by at least 30% in the non-transition period after the year 2001.

RESPONSE TO QUESTIONS FROM THE MINORITY

Question No. 1:

The International Trade Commission's (ITC) request of $47.177 million for FY 1996 is approximately 5.7 percent above its expenditures for FY 1995. Both USTR and the Customs Service, the other trade agencies within the jurisdiction of this Committee, have budget authorization requests at or below FY 1995 levels. While recognizing that the ITC is statutorily given the authority to present its budget estimates in the President's budget without revision by OMB, what is the most compelling reason for the ITC's budget while the budget for these other trade agencies has no proposed increase?

Response:

There are two essential reasons underlying the Commission's FY 1996 budget request: 1) the need to maintain non-discretionary programs and services at existing, already reduced levels; and 2) the additional functions assigned to the Commission under the Uruguay Round Agreements Act. The Commission has streamlined its activities and significantly reduced its personnel over the last three years. The increased funding request is largely driven by mandatory pay increases for the existing, reduced level of personnel.

We have been asked to contrast the Commission's FY 1996 budget request with those of other trade agencies. We do so in part, by contrasting the nature of Commission operations to those of the other agencies. The Departments of Commerce and Treasury (which includes the Customs Service), are multi-functional executive agencies which perform a broad range of mandatory and discretionary functions. Given the breadth of those agencies' activities, they have flexibility to reduce costs by cutting non-essential activities. Moreover, given their personnel resources, they have the ability to shift personnel from program to program to meet needs as they arise. Likewise, the United States Trade Representative has significant flexibility to supplement its personnel resources through its ability to draw personnel from other agencies through formal details and informal working groups. Indeed, the Commission currently has six professional employees on non-reimbursed detail to USTR.

The Commission, by contrast lacks that budget and personnel flexibility which comes with size and discretionary activities, or personnel supplementation. The ITC is a small independent agency that performs only those functions assigned by law and 70 percent of its budget consists of personnel costs; it has no discretionary programs to phase out or disbursements to reduce.

Because it is small, most Commission employees already work on multiple agency programs, rather than address a single need. Rather than an ability to shift personnel in-house or borrow from other agencies, ITC supplements the personnel resources of congressional staff and executive agencies.

Notwithstanding these constraints on its ability to reduce personnel costs, over the last three years, the Commission has moved aggressively to streamline its operations and reduce staff, and has done so during a period in which its workload was very demanding. Indeed, the Flat-Rolled Steel Cases imposed a significant additional burden on its investigative resources in FY 1993 and its litigation resources in FY 1994; the Commission met this challenge while reducing its FTE staffing level from 470 in FY 1993 to 455 in FY 1995 and without requesting additional funding from Congress.

The ITC has already met its 1996 OMB FTE goal. It has done so ahead of schedule while maintaining essential programs and service to its congressional and executive customers. Eighty-five percent of the Commission's budget is committed to personnel costs and rent. The FY 1996 budget request would permit the Commission to maintain existing functions at the level of efficiency and productivity it has achieved over the last three years of staff reductions.

But the Commission's essential functions will not remain static in 1996 and beyond. The Uruguay Round Agreements Act has imposed on the Commission significant and, for the most part, permanent increases in its Title VII workload:

* The Commission is responsible for conducting a new class of injury investigations of countervailing duty orders originally entered without an industry test. The Commission expects to conduct the these investigations in 1996 and 1997.

* The new WTO binding dispute settlement mechanism for antidumping and countervailing duty cases, coupled with the new obligations of those agreements, are likely to result in a significant increase in WTO disputes. While USTR represents the United States in these disputes, Commission attorneys prepare draft pleadings, and support USTR personnel before WTO panels.

* Between 1998 and 2001, the Commission must conduct injury reviews of 334 "transition" antidumping and countervailing duty orders which are five years or older. Beginning in 2000, the Commission is permanently charged with conducting injury reviews of all antidumping and countervailing duty orders which are five years old. We estimate that each review will

involve work equivalent to a final injury investigation.

The Commission's 1996 budget was carefully crafted to maintain existing programs and service, absorb the immediate additional tasks imposed by the Uruguay Round, and prepare for the major impact of the sunset reviews.

When the Department of Commerce was assigned a task similar to the Commission's new sunset reviews in the 1979 Trade Agreements Act, Import Administration created its Offices of Antidumping and Countervailing Duty Compliance, offices which now employ approximately 150 people. In the current budget climate, the Commission recognizes that it will not be able to engage in a staff buildup of similar proportions, especially for the three year transition cycle. Therefore, the Commission intends to redirect existing resources, assigning many of its highly-trained and expert Office of Industries and Office of Economics personnel to the transition sunset investigations. These personnel are already experts in industry analysis, fully-trained in Commission information gathering techniques, and likely to be far more efficient than any new staff which might be hired in 1988. The Commission's FY 1996-97 budgets reflect the retention of these skilled personnel.

Question No. 2:

Some have suggested that one way to better utilize the ITC's resources is to reduce the number of Section 332 studies. Currently, more than 10 percent of the ITC's personnel resources (57 FTEs out of 458 FTEs) are devoted to producing these studies, which sometimes cover extremely narrow segments of the economy. Do you have any suggestions as to how we could cut down on the number of Section 332 studies performed by the ITC?

Response:

In responding to this question, it is first important to note that when the Commission receives a request for a section 332 investigation from the Congress or the President, we must respond to the request. Over the past three years the Commission has instituted 41 section 332 investigations, 21 requested by the Congress and 18 requested by the President. The Commission has only instituted 2 on its own motion.

In addition, the conduct of 332 studies enables the development of core competencies and expertise that enable the Commission to be responsive in addressing inquiries related to emerging and complex trade and economic issues. This multidisciplinary knowledge related to industry/commodity expertise; geographic developments; economic, financial, and legal analysis; and environmental and other competitive issues is maintained by

undertaking 332 studies for which there usually are no investigative precedents. The work of individual staff members is of a multidimensional nature; there are no offices or staff assigned exclusively to 332 investigations. The conduct of 332 studies allows the Commission to develop needed expertise and maintain our ability to be responsive in providing objective and in-depth analysis.

Three suggestions arise as to how we could cut down on the number of Section 332 studies. First, reductions, if any, should first be in those requested 332s considered "recurring reports," rather than the more substantive fact-finding investigations. Examples include Congressionally requested or mandated reports on footwear ($11,757 in FY-94), autos ($17,328), steel ($107,310), synthetic organic chemicals ($271,214), tomatoes ($74,172), peppers ($39,172), CBERA ($134,835), or the Andean Trade Preference Act ($126,643). These reports were initiated as a direct result of Congressional requests or legislative mandate.

Second, there is an opportunity for Congress and the President to seek Commission assistance on industry and regional trade issues through avenues other than a formal section 332 investigation. In particular, as part of the Commission's strategic planning process, we are attempting to increase assistance in the form of "quick response" research and analyses through staff-to-staff assistance. There may be many instances where a full 332 investigation, with public notice, hearings, and questionnaires are not required, but for which our analysts and economists can provide the required information and analysis based on the Commission's resident expertise and our extensive contacts in the trade community. Not only would such responses be much quicker, they would be less expensive as well. Informal staff responses generally are not an option when the nature of the request is such as to require extensive staff research and public input.

And finally, while not cutting down on the <u>number</u> of 332s, we are attempting to cut down on the costs of 332s, through such means as--

- Working closely with the requestor in the formulation of the scope of the request to keep it as focused as possible.
- Putting sunset dates on all 332 requests calling for a series of reports.
- Maintaining specialized staff expertise on industry and trade issues which provide efficiencies in the production of 332 studies.
- Continue to streamline Commission reports to provide responses in the most concise and user-friendly format for the requestor and in a manner that minimizes publication and other costs.
- Purchase specialized databases and consultants in the limited instances where this would be more cost efficient than developing the data/expertise in-house.

Question No. 3:

In your written statement, you indicate that the Commission expects an increase in your agency's workload as a result of passage of the Uruguay Round Agreements Act last year. Could you please discuss where such additional work will be required. Did the Commission experience an increase in its workload from the passage of the NAFTA?

Response:

The Commission expects an increase in its workload as the result of the passage of the Uruguay Round Agreements Act principally in its implementation of the requirement for sunset review for antidumping and countervailing duty orders every five years. This means that every investigation that leads to an order will also lead to at least one sunset review five years after it is imposed (and every five years thereafter until it is revoked). Moreover, the 334 outstanding antidumping and countervailing duty orders will have to be reviewed as part of a transition process. The Commission is also required to conduct, upon request of domestic interested parties, injury investigations in FY 1996 and 1997 for the 46 outstanding countervailing duty orders that were originally imposed without an injury finding.

The implementation of the NAFTA did not involve the creation of any new Commission investigative responsibilities of this order of magnitude. That agreement involves imports from only two countries and the post-NAFTA investigative requirements are limited to special NAFTA safeguard provisions which have yet to be invoked. The Uruguay Round implementation will almost double the Commission's title VII workload during the three year transition period beginning in FY 1998 and, at a minimum, increase the Commission's title VII caseload by at least 30 percent in non-transition periods.

Moreover, the Commission anticipates an immediate increase in the appellate workload for its General Counsel staff. As with passage of any major amendments to the law, the number of determinations appealed is likely to increase until the interpretation of the new statutory provisions becomes more settled. Likewise, with the new WTO agreements, the Commission believes that there may be an increase in the number of WTO disputes involving Commission determinations. While USTR represents the Government in these disputes, the Commission's Office of General Counsel provides substantial technical support to USTR in defending Commission action.

The CFTA (and, subsequently, NAFTA) dispute settlement procedures resulted in little increase in litigation work for the Commission; appeals involving Canada (and subsequently Mexico)

that were previously heard in the US courts are now heard by bi-national panels. In contrast, all WTO members may file disputes challenging agency action. Moreover, these disputes do not replace but are in addition to appeals hear by the US courts. Therefore, they involve substantial additional work.

Question No. 4:

The Commission is currently required to produce a number of recurring reports. Indeed, 72 FTEs and over $7 million are allocated for this purpose. Are all of these recurring reports still necessary? For example, 7 FTEs are dedicated to producing synthetic organic chemicals reports. Should not this activity be done by the industry itself and not financed by the taxpayer?

Response:

Under the budget activity "recurring reports and services," the Commission provides a wide range of reports and services to the Congress, the President, and the trade community. Included in this activity are 20 recurring report series; the attached document provides for each series a brief profile of the reports, including origin, purpose, and the loss of information, if any, that would occur if the series were discontinued.

It is recommended that the first reductions be made in those requested 332 studies that are considered "recurring reports". Several of those reports such as the Caribbean Basin Economic Recovery Act: Annual Report and the East-West Trade Report could be eliminated immediately or sunset. Other recurring reports such as the Economic Impact of the Andean Trade Preference Act, the U.S. Auto Industry Monthly Reports and the Commission's Industry and Trade Summaries could be produced less frequently.

Many of the recurring reports produced by the Commission clearly benefit special interests and could be produced by the industry itself. Such reports as Synthetic Organic Chemicals, Rum, Nonrubber Footwear, U.S. Auto Industry, and Steel have been requested by either Ways and Means or Finance and can only be discontinued if the Commission is so directed. Other special interest reports such as Monitoring of U.S. Imports of Tomatoes and Peppers, and Ethyl Alcohol for Fuel Use are statutory.

The Commission believes that resources to continue producing its technical and analytical reports such as the Economic Effects of Significant U.S. Import Restraints; the Operation of the Trade Agreements Program (OTAP); Industry, Trade and Technology Review; and Trade Shifts in Selected Industries should be preserved. These reports embody state-of-the-art economic research and are widely used by the Administration and trade policy experts.

it is important to note that a significant amount of the work in recurring reports is basic research required to maintain a proficient level of trade expertise which the Commission has found essential in its statutory investigative roles and in apprising USTR, the Congress, other government agencies, and diverse private sector organizations of global industry trends, regional developments, and competitiveness issues.

Question No. 5:

What programs, if any, has the ITC instituted in recent years to make itself a more productive and cost effective organization.

The ITC, as an independent and bipartisan agency, has voluntarily been responsive to the requirements of the National Performance Review and the President through the development of a Streamlining Plan, Customer Service Standards, and a Strategic Plan. It has also been responsive to the President's September 11, 1994 memorandum and E.O. 12839 for FTE reductions as outlined by OMB.

We are in the process of finalizing a Strategic Plan which will be completed by March 30, 1995. This Strategic Plan and agency Action Plans will incorporate goals from our Streamlining Plan. We have already begun the process of studying agency processes and have conducted several reorganizations to reduce supervisory to employee ratios. Our FTE staffing level has been decreasing steadily over the past three years, from 486 in FY 1993 to 458 for FY 1996, and have already exceeded the reductions proposed by OMB through FY 1996.

ORGANIZATIONAL STREAMLINING:

The following illustrates some of the ITC's organizational streamlining:

- The Office of Industries was reduced from 7 to 4 divisions. The reasons for the new structure were to reduce the number of middle managers and consolidate some of the support functions in light of reductions in staffing. In summary, the office has dropped one SES position, three GS-15 division chief positions, and one GS-14 branch chief position (a 22% decline in overall management). Over the same period of time the total office has gone from an authorized level of 144 to 125 persons, (a 13% reduction in staff).

- The Office of Tariff Affairs and Trade Agreements has undergone substantial organizational and personnel changes. The staff was reduced over a period of years from 24 in FY 1990 to 16 in 1995. This has required a streamlining of work processes. One Division was

abolished and the employees were reassigned to another Division, eliminating a Division Director position and increasing the employee to supervisor ratio. There is another reorganization proposal under consideration that would eliminate the remaining divisions of the office, thereby resulting in a further reduction of middle management.

- The Office of Unfair Import Investigations has been reduced in staff from 18 in FY 1992 to 15 in FY 1995. As a result they have continually looked for ways to streamline processes.

- In the Office of Information Services there have been several reorganizations. The first was in 1993 when the Office of Information Services was transferred to the Office of Operations. In 1994 the Office of Information Services was combined with the Library and Statistical Services Division. We are currently in the process of eliminating two out of three supervisory positions in the Library. From 1992 to the present the Library has had a one third reduction in staff with no decrease in workload. Over the next months we will be studying what functions might be contracted out. More recently the Editorial staff was transferred to this organization, eliminating a supervisor. This action consolidated all functions concerned with information.

  We are in the process of studying the overall Office of Information Services to determine what is most efficient and cost effective. We have recently moved two Divisions together and eliminated one management position thereby increasing the employee to supervisor ratio to 1 to 18.

- The Office of the General Counsel has reduced staff by four attorneys and one paralegal since 1993 while services have expanded. They, however, are in an area where we have projected growth because of the Uruguay Round legislation.

PROCESS STREAMLINING:

The following illustrate some of the streamlining efforts in ITC's programs:

- When a request for an investigation under section 332(g) is anticipated from Ways & Means, Finance, the President, or USTR, the Commission staff always seeks an opportunity to comment on the draft requests; staff works with requestors to ensure that the studies are as

focused as possible so that the Commission can provide the needed information in the most cost effective manner. Staff also seeks to have sunset dates included in all requests likely to require recurring reports.

- Commission staff seeks whenever possible to provide information to the USTR and Congress on an informal staff-to-staff basis without the institution of a formal 332 investigation. This approach is used particularly when the turn-around time for the information is short and no formal proceeding and report are desired. This approach also avoids the costs associated with a formal section 332 investigation and possible published report.

- The Commission has sought to develop specialized expertise in specific individuals in a variety of aspects of competitiveness which should in the long run provide efficiencies in the production of 332 studies. Specifically, the Commission has built and continues to build, expertise in antitrust/competition policy, intellectual property rights, labor standards, market access barriers, and the environment. It has also sought to enhance its in-house capability to assess economy-wide consequences of changes in trade policies and industry performance.

- Section 332 staff has a long history of streamlining efforts to present study findings in the most concise and user-friendly format for the requestor and in a manner that minimizes publication and other costs. For example, when feasible, staff, with the assistance of the requestor, has developed standardized or tabular formats in lieu of lengthy text.

- Where necessary and on a limited basis, we have purchased databases in order to meet the needs of the requester. This has been done only where staff either could not recreate the database or would have to expend extensive Commission resources to do so.

- When legislation for specific section 332 studies is introduced in Congress, the Commission reviews the proposal to ensure that it accurately describes the product that the drafter seeks and that it is within the Commission's ability to complete. This helps ensure the most efficient use of Commission resources.

- Staff periodically communicates with USTR and Congressional staff regarding ongoing recurring reports to determine whether such reports continue to be needed..

- In fiscal year 1993, a radical streamlining of the coverage of the Operation of the Trade Agreements Program (OTAP) report was proposed, approved, and implemented.

  o A 1/3 reduction in OTAP's length was accomplished by eliminating redundant material, unnecessary "boilerplate" and coverage of marginal and "no action" issues.

  o Nearly 1,000 fewer work hours was spent annually on producing the 1992 and 1993 editions of the OTAP report than was spent on the 1991 edition (issued prior to the change).

- Since 1991, the Commission has made several important modifications to the East-West report to reflect the rapid political and economic changes occurring in these countries, resulting in continuous streamlining of the report. Most recently, the Commission scaled back the content of the East-West report to what we regard as the minimum required by law. Text analysis was removed and the reports became statistical reports.

  o Costs of producing the report have been halved as a result of the latest change.

Research methods

- The Commission has changed the way it approaches the requirement to report annually on the Caribbean Basin Economic Recovery Act (CBERA) and Andean Trade Preference Act (ATPA). A single team has been assigned to draft both reports, whose coverage will be harmonized and streamlined. Some immediate cost savings will be possible this year, while longer-term savings are anticipated once the changeover is firmly in place:

  o CBERA and Andean travel were combined, in order to economize on the major element of travel cost: the round-trip from Washington.

  o A staggered multi-year travel schedule was adopted, reducing the number of countries visited in each region each year.

  o The Commission is working closely with the Department of State to improve coordination on fieldwork and the responsiveness of Embassy reports, both primary inputs into our analysis.

o Review layers have been combined or eliminated for the CBERA/Andean, OTAP, and East-West reports.

Production and Distribution

- In an effort to reduce printing and mailing costs:

  o Increased attention has been given to re-validation of mailing lists to ensure excess reports are not printed or mailed. To further reduce distribution costs, the Superintendent of Documents now sells those Commission reports that meet the Superintendent's public demand criteria. Although the Commission pays for the printing of the sold reports and no part of the proceeds received by the Superintendent are given to the Commission, such sales reduce Commission mailing costs and provides revenue to the government as a whole.

  o The Commission is currently examining the feasibility of making reports available to the public electronically via the GPO Federal Bulletin Board, the National Trade Data Base, ITC bulletin boards, Internet, and other electronic modes. Use of such modes should eventually make reports more quickly available to a wider audience and may also reduce Commission printing and mailing costs.

- New publishing technology has been acquired which allows us to print reports based on actual demand, rather than by estimate. This has resulted in a reduction of three positions in the printing operations, and has allowed the Office of Administration to reduce middle management by 32%.

- Consideration is being given to purchasing and designing an imaging system. This would probably result in the elimination of part-time or temporary personnel to maintain a research data base of materials and should make research efforts more efficient and reduce the paper handled and stored. The Office of the Secretary, the Office of Unfair Import Investigation, the Office of the General Counsel and the Office of Administration will benefit from this system, if obtained.

OTHER STREAMLINING:

- The Office of General Counsel has created automated systems to increase productivity and accomplish cost

efficiencies. The Office is reorganizing support staff functions and providing cross-training to law librarians, secretaries, and paralegals to assure that full service can be maintained with reduced resources and that tasks can be allocated in the most cost-efficient manner to support the productivity of legal personnel.

- The Office of Information Services is in the midst of downsizing the agency's present mainframe-based international trade database to a client-server system that will save significant costs over the 5-year lifecycle while providing better, faster and more reliable statistics to agency analysts. We are working with other agencies on the NPR's IT-06 initiative (Develop an International Trade Database) to deliver this information to the public and reduce redundancy across the Federal government in developing and reporting these key data.

- The Office of Finance and Budget is in the midst of consolidating all financial systems currently operated on three separate systems at three separate locations to a single system in one location to be more efficient and cost effective. This will also provide the added benefits of "paperless" systems and improved information.

- While the ITC staffing levels are being reduced, the agency is also taking positive action to downsize related support costs. One example of this is the removal of telephone lines, resulting in a projected cost savings of approximately $100,000 in FY 1995.

Exhibit A

USITC RECURRING REPORTS UNDER SECTION 332 AND OTHER PERIODIC COMMISSION REPORTS

The Commission produces a wide variety of recurring reports formally requested by the President or the Congress, or required by statute. In addition the Commission produces a number of periodic monitoring and technical trade reports undertaken on its own initiative, in large part because of Congressional and general public interest in these issues.

A significant amount of the work in recurring reports is basic research required to maintain a proficient level of trade expertise which the Commission has found essential in its statutory investigative roles and in apprising USTR, the Congress, other government agencies, and diverse private sector organizations of global industry trends, regional developments, and competitiveness issues. These reports, particularly the self-initiated reports, are generally a by-product of the investigative and monitoring activities of the Commission's economists and industry analysts. Even if the reports are cut or eliminated, much of this work must still be done to maintain our readiness/capability to respond to the short investigative deadlines we must meet by law. Eliminating these reports could actually have the effect of increasing costs, in that these reports provide an efficient way to respond to the many questions we receive on trade issues.

A summary of each report follows. For convenience in examining the reports, they have been grouped into four categories.

Statutory	Special interest	USTR assistance	Monitoring/Technical
CBERA	SOC	Import Restraints	Production Sharing
Ethyl Alcohol	Rum	GATS Services	Multifiber Agreement
Tomatoes	Footwear		Trade Shifts
Peppers	Autos		Industry Summaries
Andean Trade	Steel		ITTR's
OTAP			IER's
East-West Trade			

Reports that could be produced less frequently
East-West Trade
SOC
Footwear
Autos
Steel
Import Restraints
Industry Summaries
ITTR's
IER's

Reports with sunset provisions
Tomatoes (2009)
Peppers (2009)
Steel (April 1995)

STATUTORY REPORTS

TITLE: **Caribbean Basin Economic Recovery Act: Annual Report (332-227)**

FREQUENCY: Annual (no sunset)
REQUESTOR: CBERA
INITIATION: 3/21/86
FY-94 COST: $134,835
NO. PRINTED IN FY-94: 1,833

ORIGIN/PURPOSE.--This report series was mandated by the Caribbean Basin Economic Recovery Act (CBERA) [Public Law 98-67, title II]. The law set up a series of one-time duty reductions for certain Caribbean and Central American countries. The reductions were nonreciprocal and were to last for 10 years. The law contained no sunset provision, and when the CBERA was modified in 1990[1] to eliminate the scheduled 1993 termination date, both the duty reductions and the reporting requirement became permanent.

The annual report analyzes trade with the Caribbean Basin focusing on imports entering under CBERA tariff provisions. It also addresses the statutory mandates of analyzing the impact of the CBERA on U.S. industries and consumers, and estimating the probable future effects of the Act on the U.S. economy. The ninth report, issued September 1994, contained a retrospective on CBERA's first ten years of operation.

INFORMATION LOSS IF DISCONTINUED.--The report is the only U.S. Government source that analyzes the effect of the CBERA program on U.S. industries, consumers, and trade. Its particular service lies in its potential to identify any U.S. industry/product that might be threatened by CBERA tariff preferences. In the absence of this report, the objective analysis of the effects of the CBERA program provided by the Commission would be unavailable. The Department of Labor is required by the statute to report annually on the impact of the CBERA on U.S. employment. The Office of the U.S. Trade Representative was required by the 1990 Act to report triennially on the CBERA program. However, only the ITC compiles and systematically presents data on U.S. imports under the CBERA program, assesses their impact on U.S. industries and consumers, and identifies prospective imports. The USTR report does include a chapter on trade between the United States and CBERA countries, but it draws largely upon the annual reports of the ITC. The ITC report also contains a unique survey of CBERA-related investment that helps us flag potential imports under the program. (Commerce no longer collects such data.)

COMMENT.--A sunset provision could be added to the statute.

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[1] Customs and Trade Act of 1990, Public Law 101-382, title II, 104 Stat. 629, 19 U.S.C. 2101 note.

TITLE: **Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports (332-288)**

FREQUENCY: Annual (no sunset)
REQUESTOR: Steel Trade Liberalization Act
INITIATION: 3/9/90
FY-94 COST: $5,324
NO. PRINTED IN FY-94: 10

ORIGIN/PURPOSE.--This report is required by the Steel Trade Liberalization Act, which requires the USITC to determine annually the U.S. domestic market for fuel ethyl alcohol. The report is provided to the U.S. Customs Service which uses the number generated in the report to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement.

INFORMATION LOSS IF DISCONTINUED.--The data for this report are from published sources: the Department of Energy and the Department of Commerce. The report is, however, very low cost.

TITLE: **Monitoring of U.S. Imports of Tomatoes (332-350) and Peppers (332-351)**

FREQUENCY: Annual (sunset in 2009)
REQUESTOR: NAFTA
INITIATION: 12/30/93
FY-94 COST: $74,172 (Tomatoes) $39,172 (Peppers)
NO. PRINTED IN FY-94: 1,182 (Tomatoes) 1,182 (Peppers)

ORIGIN/PURPOSE.--Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act) requires the Commission to monitor imports of fresh tomatoes and fresh peppers until January 1, 2009, for purposes of expediting a request for provisional relief from imports of a perishable agricultural commodity. Section 316 of the NAFTA Implementation Act was added to get Florida Congressional support for the passage of the NAFTA Implementation Act. (The producers of tomatoes and peppers in Florida are not the originators of section 316.) Although the statute does not require the Commission to publish reports on the monitoring, the Commission issued reports after the first year of monitoring stating ". . . it would be useful to inform the Congress and the public of the progress we are having in implementing section 316." The reports are statistical and costs associated with publishing the data are minimal.

INFORMATION LOSS IF DISCONTINUED.--The reports covering the first year of monitoring included data on responses to Commission questionnaires. The methodology has been modified so that questionnaires are no longer being used, thus greatly reducing the costs of the monitoring. All of the data currently being used in the monitoring are public data from a variety of sources. A cessation of the monitoring would preclude the domestic industry producing fresh tomatoes or fresh peppers from filing a petition (under section 202 of the Trade Act of 1974 or section 302 of the NAFTA Implementation Act) for provisional relief from imports. The provisions for provisional import relief require the Commission to make a preliminary injury determination within 21 days of the receipt of a petition for relief, and if that determination is affirmative, to recommend the appropriate provisional relief. The regular section 201 relief from imports would be too late to provide meaningful relief for producers of perishable agricultural products during the current year.

The monitoring reports prepared by USITC staff show the progress the staff makes every year on collecting the data required under the NAFTA Implementation Act for monitoring purposes. The reports are sent to industry representatives, Congressional Committees, and the USTR.

TITLE: **Economic Impact of the Andean Trade Preference Act (332-352)**

FREQUENCY: Annual (no sunset)
REQUESTOR: Andean Trade Preference Act
INITIATION: 2/17/94
FY-94 COST: $126,643
NO. PRINTED IN FY-94: 786

ORIGIN/PURPOSE.--Report series was mandated by the Andean Trade Preference Act (ATPA) [Public Law 102-182, title II Stat. 1236, 19 U.S.C. 3201 et seq.] The law authorized the President to proclaim preferential duty treatment for certain articles from Bolivia, Colombia, Ecuador, and Peru. The preferential treatment is scheduled to expire on December 4, 2001. There is no sunset provision included in the law. If the duty treatment were to be extended or made permanent, as happened with the CBERA, the annual reporting requirement would likely continue. The USITC has submitted only one report in this series. The second report is scheduled to be transmitted to the Congress on September 30, 1995.

The annual report analyzes trade with the ATPA beneficiary countries in the year under review. It also addresses the statutory mandates of reporting on the impact of the ATPA on U.S. industries and consumers, and estimates the probable future effects of the Act on the U.S. economy. In addition, the Act requires the Commission to report on the ATPA's "effectiveness ... in promoting drug-related crop eradication and crop substitution efforts" in the region.

INFORMATION LOSS IF DISCONTINUED.--The report is the only U.S. Government source that analyzes the effect of the ATPA program on eligible U.S. industries and trade. Its particular service lies in its potential to identify any U.S. industry/product that might be threatened by ATPA tariff preferences. In the absence of this report, the objective analysis provided by the Commission would be unavailable. The imports under the ATPA program are fully identified, examined, analyzed, and published by the ITC. The Office of the U.S. Trade Representative completed its first triennial report on the operation of the ATPA, as required by section 203 (f) of the statute, in February 1995. The USTR report focuses on different aspects of the program, specifically, factors affecting the designation of countries and limitations on the designation as well as consideration of the certification criteria regarding narcotics cooperation. The statistical tables in the USTR report are drawn directly/duplicated from those contained in the annual USITC report.

COMMENT.--A sunset provision could be added to the statute.

TITLE: **Operation of the Trade Agreements Program (OTAP) Report (also known as Year in Trade)**

FREQUENCY: Annual (no sunset)
REQUESTOR: Section 163(b) of the Trade Act of 1974 (current authority).
INITIATION: 1947
FY-94 COST: $192,000 (represents personnel costs only).
NO. PRINTED IN FY-94: 1,591

ORIGIN/PURPOSE.--Since 1947, the ITC has been required to annually report on the operation of the trade agreements program; present authority is found in Section 163(b) of the Trade Act of 1974.

OTAP provides a factual record of U.S. bilateral, regional, and multilateral trade agreements, and the administration of U.S. trade laws, regulations, and programs. It assesses the progress of the trade agreements program launched in 1934 and serves as a principal reference tool to Congress, the President, and the trade policy community generally.

The 1994 OTAP will cover WTO implementation, NAFTA's first year, the APEC Ministerial and Summit of the Americas, the peso crisis, GATT accession talks with China, the U.S.-Japan Framework Agreement, CBERA and ATPA, and similar topics.

INFORMATION LOSS IF DISCONTINUED.--Since passage of the Trade Expansion Act of 1962, the President has also been required to annually report on the operation of the trade agreements program. However, owing to the Commission's non-partisan structure, the ITC report is an independent account of U.S. trade activities. The comprehensive coverage and detailed documentation of the ITC report is also unique. For example, the ITC report includes statistical tables on U.S. imports under trade preference programs (GSP, CBERA, Andean) as well as complete listings of antidumping, countervailing-duty, intellectual property right infringement, and Section 301 cases. In addition it lists countries that have ratified the WTO, members of GATT non-tariff barrier codes, countries with which the United States has textile agreements and quota levels, antidumping actions by other nations, and important disputes accepted by the GATT for resolution. These are not included in the USTR report or readily available elsewhere.

Other USG reports provide some bilateral trade and economic information:

- USTR, "National Trade Estimate Report on Foreign Trade Barriers"
- Dept. of State, "Country Reports on Economic Policy and Trade Practices"
- ITA/DOC, "Country Commercial Guides"

These reports focus on cataloging foreign barriers to U.S. commerce, whereas the ITC report describes issues under negotiation, U.S. and foreign positions and actual agreements achieved each year. The ITC report provides full cites to primary and valid secondary sources. This historical record permits tracking of progress and important documents (e.g., the trade agreements reached with Japan) over a number of years.

COMMENT.--The ITC OTAP report provides in-depth and objective coverage, making it a "one-stop" reference source for the most sought after and difficult to find information on U.S. trade and trade agreements. Over the last two years, steps have been taken to streamline the report and improve its usefulness, making it one-third shorter. We continue to evaluate coverage to identify further economies.

TITLE: **East-West Trade Report**

FREQUENCY: Quarterly (no sunset)
REQUESTOR: Title IV, section 410 of the Trade Act of 1974
INITIATION: 1974
FY-94 COST: $77,000 (represents personnel costs only).
NO. PRINTED IN FY-94: 530/quarterly report

ORIGIN/PURPOSE.--Title IV, section 410 of the Trade Act of 1974, requires the Commission to monitor the flow of imports and exports between the United States and "nonmarket economy" countries and to publish a detailed summary of the data collected each calendar quarter. In addition, Title IV specifies that the Commission monitor the effect of imports from these countries on output and employment in the United States. To fulfill this requirement, the Commission developed an automated trade-monitoring system to identify rapidly growing imports of manufactured goods from the countries covered by these reports and to measure the penetration of such imports in U.S. markets.

Each quarterly report provides detailed trade data on the following countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, China, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Moldova, Mongolia, North Korea, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

INFORMATION LOSS IF DISCONTINUED.--Trade data published by this series of reports are available from the U.S. Bureau of the Census. However, to the best of our knowledge, the Commission is unique in maintaining and running a trade monitoring system to flag rapid growth of imports from the countries covered by these reports and to compare the results with data on output and employment in domestic industries. The monitoring system is run once a year; an annual East-West report identifies changes in output and employment in U.S. industries where the monitoring system indicates rapid growth of imports.

COMMENT.--Since 1991, the Commission has made several important modifications to the East-West report to reflect the rapid political and economic changes occurring in these countries, resulting in continuous streamlining of the report. In 1993, the Commission supported a move by the House Ways and Means Committee and the Senate Committee on Finance to consider legislation that would repeal the requirement that the Commission continue producing this report series. No final action was taken on this legislation, however. Because the Commission's oversight committees are seeking to repeal the requirement, the Commission scaled back the content of the reports to what we regard as the minimum required by law. In essence, text analysis was removed and the reports were converted to statistical reports.

SPECIAL INTEREST REPORTS

TITLE: **Synthetic Organic Chemicals (332-135)**

FREQUENCY: Quarterly and Annual (no sunset)
REQUESTOR: Ways & Means
INITIATION: 2/1/82
FY-94 COST: $271,214
NO. PRINTED IN FY-94: 2,150 (annual) 550/quarterly report

ORIGIN/PURPOSE.–The Synthetic Organic Chemicals (SOC) Reports, an annual report and 4 quarterly reports, were requested by the Committee on Ways and Means (Sam M. Gibbons) on April 27, 1988. The reports are used by the public and private sectors. When previously questioned, the production of the reports was supported by phone calls and written correspondence from individual companies, particularly chemical companies, industry trade associations, and various Government agencies including: OMB, EPA, Interior, Labor, Commerce, and Treasury. The data are also included in UN publications.

INFORMATION LOSS IF DISCONTINUED.–The chemical production and sales data in the reports are the result of a primary data collection effort wherein the data are secured from manufacturers by questionnaires. No other Government agency collects or is authorized to collect such primary chemical data. The Census Department does not collect such chemical data in its "Survey of Manufacturers", but instead uses the data published in the SOC Reports. The primary data are presented in the reports in aggregated eo nominee form for approximately 1200 individual chemicals and for another 4800 chemicals in grouped form to avoid the divulgence of confidential business information. Without the SOC Reports production and sales data for approximately 6000 chemicals would be unavailable to public or private users.

COMMENT.–The frequency of the quarterly reports could be reduced to twice per year. While this periodicity is not preferred, it would still provide users with a bench mark indicator of the state of the chemical industry over the course of the year.

TITLE: **Rum: Annual Report on Selected Economic Indicators (332-175)**

FREQUENCY: Annual (no sunset)
REQUESTOR: Senate Finance
INITIATION: 1/13/84
FY-94 COST: $2,853
NO. PRINTED IN FY-94: 237

ORIGIN/PURPOSE.–On December 21, 1983, Senator Bob Dole, then Chairman of the U.S. Senate Committee on Finance, sent a request to prepare and publish an annual report evaluating the effects of the Caribbean Basin Initiative (CBI) on conditions of competition for rum in the U.S. market. The report is distributed to rum producers primarily in the US Virgin Islands and Puerto Rico, rum bottlers and wholesalers, and industry representatives who use the report to monitor developments under the CBI.

INFORMATION LOSS IF DISCONTINUED.–Discontinuation of the Rum Report will result in information becoming unavailable to the public in several areas. The Rum Report is the only conveniently-available source of reliable rum production data on a calendar year basis; adjusted for production levels of the U.S. Virgin Islands (USVI) and Puerto Rico; adjusted for possible double-counting from production-sharing operations; converted into consistent units of measurement; and adjusted for changes in stocks.

COMMENT.–Senator Dole's 1983 letter requested that the Rum Reports should continue annually for as long as duty-free treatment for rum is accorded to members of the Caribbean Basin Recovery Act.

TITLE: **Nonrubber Footwear: Quarterly Statistical Reports (332-191)**

FREQUENCY: Quarterly (no sunset)
REQUESTOR: Senate Finance
INITIATION: 8/28/84
FY-94 COST: $11,757
NO. PRINTED IN FY-94: 260/quarterly report

ORIGIN/PURPOSE.--These quarterly reports are published under section 332 in response to a request from the Senate Finance Committee to monitor footwear. The Footwear Industries of America were behind the request and are strongly in favor of keeping the report. Mitch Cooper, counsel for rubber footwear producers, is also a strong supporter of the report.

INFORMATION LOSS IF DISCONTINUED.--Almost all the raw data used to generate these reports are already available to the public. However, the data are for the most part unusable in their raw state and must be massaged together to facilitate comprehension of conditions in the footwear industry. Moreover, the data are gathered from different agencies and also from different offices within a given agency. For example, one has to call different offices within BLS for data on employment, unemployment, producer prices, and consumer prices. The only data in the ITC report that are not readily available to the general public are plant closings and openings that we obtain from Footwear Industries of America, a trade association for U.S. footwear firms. Data on plant closings/openings are published only on an annual basis and are included in the reports covering the fourth quarter of each year.

COMMENT.--This report is already low cost. In order to cut costs further the quarterly footwear report could be converted to an annual report and published in March or April of each year.

TITLE: **U.S. Auto Industry: Monthly Reports (332-207)**

FREQUENCY: Monthly (no sunset)
REQUESTOR: Ways & Means
INITIATION: 3/6/85
FY-94 COST: $17,328
NO. PRINTED IN FY-94: 460/monthly report

ORIGIN/PURPOSE.--On February 12, 1985, the Commission received a request from the Subcommittee on Trade to conduct monthly monitoring reports of the U.S. automobile industry. The primary purpose of the request was to monitor the rising import share of the U.S. market for automobiles.

INFORMATION LOSS IF DISCONTINUED.--The breakdown of trade data by product (passenger autos and light trucks) and the detail on import sources and export markets are the key elements of the report. These data should also be available in a similar form from the Department of Commerce; however, many requestors have indicated that this is not an option if their need is immediate. In addition, to reproduce the bulk of the rest of the report, one would have to search the latest weekly editions of Automotive News for sales, production, and certain price data; and call the Department of Labor for current employment information and consumer and producer price data.

COMMENT.--The report is the most efficient way to distribute the aforementioned trade data to the public and other government agencies. Recipients of the report have stated a strong preference for continuing to receive it on a monthly basis, however, the frequency of the reports could be reduced. The cost of the report can be reduced significantly by limiting its content to trade data.

TITLE: **Steel: Semi-Annual Monitoring Reports (332-327)**

FREQUENCY: Semi-annual (sunset in April 1995)
REQUESTOR: Ways & Means
INITIATION: 7/9/92
FY-94 COST: $107,310
NO. PRINTED IN FY-94: 800/semi-annual report

ORIGIN/PURPOSE.--The Committee on Ways and Means, in conjunction with interest by the House and Senate Steel Caucuses, and the steel industry, requested concise, objective analysis of global industry trends and topical competitive issues in the aftermath of the expiration of the Voluntary Restraint Agreements and the collapse of negotiations for a Multilateral Steel Agreement. A sunset date of April 1995 was established for the semiannual series, scaled back from the prior quarterly reports. The ITC is in the process of contacting requestors for advice on the desirability of extending, modifying, or concluding the semiannual report.

INFORMATION LOSS IF DISCONTINUED.--The principal industry users have told us that this impartial assessment in areas of technology and operating performance, and factors affecting the steel industry's competitive standing, is not available elsewhere, and that the industry data and international comparisons are more readily accessible than other sources. Specifically, data generated by ITC questionnaires provides unique product line information on capital expenditures, research and development, environmental expenditures, capacity, production, capacity utilization, profit and loss, and general information on export activities. Although the Commission's compilation of raw steel production, product line shipments, environmental costs, and the income statement data are available from other sources,[2] our coverage of the industry is generally superior and enables an objective assessment of industry developments.

COMMENT.--These reports could be converted to an annual report. These reports facilitate a quick turnaround in addressing diverse Congressional, Executive agency, and public inquiries that otherwise might go unmet or would require significantly more time and effort when such requests are received.

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[2] Sources of similar data include the American Iron and Steel Institute, the Environmental Protection Agency, and the US Department of Commerce. Most of these sources provide proxy data or more general data from which estimates would have to be made to replicate our data.

USTR ASSISTANCE REPORTS

TITLE: **The Economic Effects of Significant U.S. Import Restraints (332-325)**

FREQUENCY: Bi-annual (no sunset)
REQUESTOR: USTR
INITIATION: 6/5/92
COST: Approx. $200,000/year [The first biannual report had a total cost of $399,000 and spanned parts of FY-92,-93,&-94.]
NO. PRINTED IN FY-94: 1,456

ORIGIN/PURPOSE.--This report series began in 1989 as three individual studies--manufacturing, agriculture, and services--performed in response to a request of the Senate Finance Committee made under section 332(g) of the Tariff Act of 1930. The United States Trade Representative (USTR) found the original studies extremely useful and consequently requested in 1993 that the ITC consolidate and update the three studies and accomplish this biannually thereafter. There is no sunset provision in the USTR request. The next Import Restraints Report is scheduled to be delivered in November 1995.

The biannual report quantifies the impact of U.S. import restraints on the domestic economy utilizing a computable general equilibrium (CGE) model of the United States that was developed and is maintained in-house by ITC economists. The report analyses the inter-industry relationships among U.S. economic sectors. It provides estimates of the effects on production, employment, exports, imports, and real consumer incomes of current U.S. tariffs, quotas, and other import restraints on an industry-by-industry basis. This modeling framework provides for a consistent, comprehensive analysis of import restraints.

INFORMATION LOSS IF DISCONTINUED.--The Import Restraints Report is the only recurring, bipartisan U.S. Government analysis of the effect of U.S. import restraints on the domestic economy that embodies state-of-the-art economic research. The ITC CGE model is entirely unique, and its accompanying database provides the greatest U.S. sectoral detail that is available anywhere. The comprehensive nature of the model provides an economy-wide context for the analysis of pending trade issues. The ITC CGE model includes a U.S. component representing a 500 sector depiction of the domestic economy, and a global component that emphasizes U.S. trading relationships with Latin American countries and countries of the Asian Pacific Economic Cooperation (APEC) region. The results of this analytical work are used on a regular basis by the Congress and by the Office of the President. For example, USTR uses the ITC model results in preparing for trade negotiations, in evaluating the tariff equivalents of the agricultural quotas for the Uruguay Round, and in analyzing the potential impact of accession of countries to the North American Free Trade Area. In addition, the Council of Economic Advisors has used the ITC modelers' expertise in providing the basis for U.S. Government contributions to the OECD experts' working group on market access barriers.

COMMENT.--The original Import Restraints Report was a phased study--each phase completed sequentially, on an annual basis, over a three-year reporting cycle. This schedule was modified in 1993 so as to improve the quality of the report, and achieve production efficiencies--there is now a single, consolidated report done on a biannual basis.

TITLE: **Services: U.S. Schedule of Service Commitments under GATS (332-354)**

FREQUENCY: Update as required (no sunset)
REQUESTOR: USTR
INITIATION: 5/13/94
FY-94 COST: $72,630
NO. PRINTED IN FY-94: Hard copies produced by GPO; Commission distributes electronically.

ORIGIN/PURPOSE.--Investigation No. 332-354, Program to Maintain U.S. Schedule of Services Commitments, was initiated at the request of the U.S. Trade Representative in 1994. As a signatory to the General Agreement on Trade in Services (GATS), negotiated under the GATT, the U.S. Government is obligated to maintain and update the U.S. Schedule of Commitments, just as it is obligated to maintain and update the Harmonized Tariff System (HTS). The U.S. Schedule specifies market access, national treatment, MFN treatment, and other commitments regarding specific service industries.

INFORMATION LOSS IF DISCONTINUED.--If maintenance of the U.S. Schedule ceased, there would be no up-to-date list of the United States' commitments, and the United States would be in violation of the GATS. If the Commission eliminated this program, USTR would have to maintain the Schedule itself, or request that another agency maintain it. Eliminating this program would be analogous to eliminating the program to maintain the HTS.

COMMENT.--The cost of this report is expected to decrease by 20 percent over the next several years. The first year of the program required staff to construct an electronic database in which to store the U.S. Schedule and to learn new software packages with which to search and manipulate the Schedule.

MONITORING/TECHNICAL REPORTS

TITLE: **Production Sharing under HTS Items 9802.0060 & .80 (332-237)**

FREQUENCY: Annual (Commission reviews annually)
REQUESTOR: USITC
INITIATION: 8/19/86
FY-94 COST: $113,491
NO. PRINTED IN FY-94: 2,541

ORIGIN/PURPOSE.--This report, initially requested by the Congress, has been continued by the Commission on its own motion after periodic reviews of self-imposed sunset provisions. There is significant interest, based on Congressional and public inquiries, for this unique analysis of data that explains the use of U.S.-made components and materials in foreign assembly operations; such production sharing is an important strategy for many U.S. firms competing in the domestic market with labor-intensive products made by Asian producers.

INFORMATION LOSS IF DISCONTINUED.--The ITC provides data and analysis that would be absent without this report, including compilation of imports from the maquiladora industry in Mexico, the effects of NAFTA on U.S.-Mexico trade, the role of U.S. companies in the growth of export-oriented industries in the Caribbean Basin, and parity with NAFTA for textile and apparel imports from CBI countries. No other Government or private organization provides a periodic analysis, and the statistics are not available to subscribers or purchasers of standard data tapes (or CDs) from the Bureau of the Census. Such data are available only from special tapes that show imports under "secondary reporting codes." However, considerable programming is required by the Commission to cross-reference production sharing trade with data for total trade, to produce the country- and commodity-specific data needed to analyze issues of importance to the trade community.

TITLE: **Multifiber Agreement: Annual Report (332-343)**

FREQUENCY: Annual (Commission reviews annually)
REQUESTOR: USITC
INITIATION: 6/15/93
FY-94 COST: $3,738
NO. PRINTED IN FY-94: 289

ORIGIN/PURPOSE.--ID originally prepared the annual reports so as to respond quickly to numerous requests for data from congressional staff, other agencies, and the public in the 1980s when textile quota legislation and MFA renewal were under consideration. The report has since become an important research tool for researchers in both the public and private sector.

INFORMATION LOSS IF DISCONTINUED.--The ITC report is unique among the reports available on US trade in MFA goods. The user friendly report was tailored to meet the needs of the congressional staff and other agencies that called most often for textile and apparel import data. The report contains 4 years of quantity data, and also corresponding value data not readily available from other sources, for each of the nearly 150 product categories used by Commerce to administer the quota program. Without the ITC report, the public would not have ready access to quantity and value data covering imports by source country and by MFA product category.

COMMENT.--Continuation of the report for at least another 3 years will allow the Commission to monitor changes in trade patterns resulting from (1) the new rules of origin for textiles and apparel created by the Congress and contained in the Uruguay Round implementing legislation and (2) the 10-year phaseout of the MFA quota program contained in the same legislation.

TITLE: **Trade Shifts in Selected Industries (332-345)**

FREQUENCY: Annual (Commission reviews annually)
REQUESTOR: USITC
INITIATION: 8/27/93 (originally started in early 1980s as non-332 report)
FY-94 COST: $154,671
NO. PRINTED IN FY-94: 1,434

ORIGIN/PURPOSE.--This report was developed by the Commission in response to Congressional interest in establishing a systematic means of examining and reporting on the significance of major trade shifts, by product and with leading U.S. trading partners, in the services sector and in all agricultural and manufacturing industries.

INFORMATION LOSS IF DISCONTINUED.--The ITC is uniquely qualified to maintain comparable import, export, trade balance, and industry profile data (domestic consumption, production, employment, and import penetration) in recent 5-year periods for nearly 300 major commodity groups examined in this report. The report was expanded in 1994 to examine U.S. services trade performance using limited data compiled by the U.S. Bureau of Economic Analysis, and to provide a baseline assessment of common factors affecting long-term trends in selected sectors. This capability cannot be replicated in the Government and reflects trade monitoring activity that is essential to maintaining the expertise enabling the ITC to respond quickly to diverse inquiries from the public, the Congress, and other agencies.

TITLE: **Industry and Trade Summaries**

FREQUENCY: Periodic industry-specific reports (no sunset)
REQUESTOR: USITC
INITIATION: 1920s
FY-94 COST: $1,296,400[3]
NO. PRINTED IN FY-94: Approx. 800 copies/summary

ORIGIN/PURPOSE.--The Commission has periodically produced "Summaries" throughout its existence as a principal mode of developing trade expertise and maintaining its readiness to fulfill its statutory investigative responsibilities in the time frames allowed by law. These reports are a by-product of the monitoring activities of the Commission's industry analysts and provide the public at large and the U.S. Government with a reliable, systematic, and uniform source of information on domestic and foreign trade in the articles enumerated in the tariff structure of the United States. The current series (started in 1991) has published over 100 reports that analyze the competitive situation of U.S. industry.

INFORMATION LOSS IF DISCONTINUED.--A consolidated breakdown and analysis of industry trade, production, financial, employment, and related data would not be readily available elsewhere for many U.S. industries if the Commission were to cease publishing summaries.

COMMENT.--This program will decline in size as resources are increasingly devoted to Title VII investigations and staff levels are reduced. The program can be cut back by combining and/or eliminating summaries on certain industries, based on criteria of topicality, customer interest, and staff workload. The Commission published 28 summaries in FY-93 and 30 in FY-94.

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[3] This number represents 70% of the FY-94 actual amount as set forth on page 11 of the budget justification.

TITLE: **Industry, Trade, and Technology Review**

FREQUENCY: Quarterly (no sunset)
REQUESTOR: USITC
INITIATION: 1992
FY-94 COST: $251,000 (represents personnel costs only).
NO. PRINTED IN FY-94: 2300/quarterly report

ORIGIN/PURPOSE.--The Commission instituted the quarterly ITTR in October 1992 in response to Congressional and Administration interest in receiving periodic, timely analysis of issues affecting the global position of U.S. industries and the technological competitiveness of the United States.

INFORMATION LOSS IF DISCONTINUED.--The unique trade perspective provided by the ITC's industry analysts on such topical issues as high-tech emerging industries, advanced materials, new technologies, intellectual property protection, environmental regulation, NAFTA and GATT impacts, new manufacturing processes for materials, and industry globalization--to name only a few--would not be readily available without its publication. These in-depth, yet concise articles are a means of ensuring timely analysis of emerging issues and also facilitate the development of the expertise maintained by the ITC.

COMMENT.--Although timely access to analysis of unfolding issues by policymakers would be significantly reduced, the Commission could limit the frequency to semiannual.

TITLE: **International Economic Review**

FREQUENCY: 11 reports per year (no sunset)
REQUESTOR: USITC
INITIATION: 1980
FY-94 COST: $114,000 (represents personnel costs only).
NO. PRINTED IN FY-94: 850/issue

ORIGIN/PURPOSE.--This series was self-initiated by the Commission in 1980 in an effort to speed transmission to Congress, the Executive Branch, and the public of information already gathered in the course of preparing statutory studies or in monitoring emerging developments in multilateral, bilateral, and regional forums. Ten regular issues of the IER are issued annually. In addition, an annual chartbook containing statistics and graphs that depict U.S. trade with major regions and countries is issued shortly after year-end trade statistics are released.

Each issue includes four major sections: International Economic Comparisons, (comparing actual and projected U.S. economic performance to that of other major developed economies), U.S. trade performance (most recent data by country and commodity), International Trade Developments (articles on recent trade policy developments); and Statistical Tables. In addition, half of the issues contain a "Special Focus" feature that treats timely topics in a more in-depth fashion. Recent "Special Focus" articles have covered Trade and the Environment and the New Trade Agenda.

INFORMATION LOSS IF DISCONTINUED.--IER compiles in one source a variety of important trade-related information of interest to policymakers. In addition, it contains analysis of key economic and trade developments such as the dramatic growth of foreign investment in China, the peso crisis, etc. It serves as a mechanism for our country and regional experts to independently assess trade-agreement activity (e.g., the APEC Ministerial, subregional integration initiatives, Chile's trade agreements). It also is a vehicle for quick-response requests to USTR and the Hill regarding particular issue areas, such as economic reform in Latin America, export controls, countertrade, etc. Whereas a variety of publicly available sources report on trade policy developments or present U.S. policy positions, few sources actually analyze them in an independent manner.

COMMENT.--This report is important given the variety of trade initiatives currently being pursued by the United States, and the need for timely, concise information. We expect to continue using IER as a vehicle for developing and presenting research on emerging trade issues that will be helpful to policymakers. Current practice gives the Commission flexibility to modify coverage and determine periodicity in light of Congress' and the President's changing needs.

Chairman CRANE. Our next witness is Michael Lane, Deputy Commissioner of the U.S. Customs Service, and George Weise is vacationing on the border.

You may proceed, Mr. Lane. If you can try and summarize in 5 minutes or less, that is ideal. Any further written testimony will be submitted for the record.

STATEMENT OF MICHAEL H. LANE, DEPUTY COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. LANE. Thank you, Mr. Chairman.

With me today on my right is Vincette Goerl, our CFO; on my immediate right, Wayne Hamilton, our Budget Director; and on my left, Sam Banks, Assistant Commissioner for Field Operations.

As you know, the Commissioner is on the Southwest border. He announced Operation Hard Line together with Dr. Lee Brown, Director of the Office of National Drug Control Policy, this weekend. The Commissioner is now traveling the Southwest border to kick off the implementation of that operation.

Customs is pleased to make a budget request for fiscal year 1996 of $1.4 billion and 17,133 FTE. This represents a reduction of $39 million and 116 FTE. We believe this is a budget request that is both responsive and responsible.

As you know, Mr. Chairman, Customs has concluded a decade in which there has been tremendous growth in world trade and in almost every area of Customs' workload and responsibility. The increase in our workload has ranged from 50 to 75 percent, and sometimes 100 percent, over the past 10 years. We are approaching a decade where those same increases—that is, workload and activity increases of 50 to 75 percent—are expected.

As you know, over the past decade staffing and budget did not keep pace. We had to find other means to keep up with that workload.

In trying to be responsive to the administration, the Vice President's National Performance Review, the Congress, this committee, the public and the challenges posed by our Commissioner, we are trying to make a Customs Service that works better and costs less. We are proposing a budget that relies less and less on FTE and budget increases and more and more on technology improved business techniques from the private sector and becoming a more information- and knowledge-based agency.

We think that this strategy is working. In fiscal year 1994, Customs collected a record $23 billion in revenue. We increased our effectiveness and efficiency in narcotics enforcement domestically and internationally. We successfully implemented NAFTA and the GATT Uruguay round. We provided worldwide leadership in automation and training of other Customs Services. We replaced adversarial relationships with partnerships with other agencies, our customers, and employees, to provide the service and oversight of 1 trillion dollars' worth of goods which cross our border each year and almost 1 billion passengers and pedestrians that cross our border every year. We began an implementation of our reorganization to better serve the Nation in the future.

In summary, we accept the challenge and stretched goals to be more effective with larger workloads and decreasing budgets. The

NPR, the Congress, this committee and our Commissioner have posed the challenge and provided the inspiration. The Customs Service intends to deliver.

That concludes my remarks, Mr. Chairman. We would be glad to take questions.

[The prepared statement follows:]

Statement of Michael H. Lane

Deputy Commissioner of Customs

Authorization Hearing with the U.S. Customs Service
Before the House Committee on Ways and Means
Subcommittee on Trade
February 27, 1995

Mr. Chairman and Members of the Committee, it is indeed a pleasure to be here this afternoon to discuss the activities of the Customs Service and to present our authorization request. Accompanying me are members of Customs executive management team.

On behalf of the Customs Service, I want to express our appreciation to the Committee for its guidance and leadership, which continue to help Customs achieve its vision and full potential for service to the Nation and to U.S. industry.

My statement will be brief today, since Commissioner Weise, when he appeared before this Subcommittee on January 30, 1995, had the opportunity to discuss our reorganization in detail. On this occasion, I would like to summarize the role of the Customs Service and our contributions to this Nation and to the Executive Branch of Government, and to articulate Customs approach to its mission. Finally, I will outline Customs strategy for handling increased workload in an efficient, effective manner.

Customs Budget Request for FY 1996

Customs FY 1996 budget request, which totals $1.4 billion and 17,133 FTE, is a net reduction of $39 million and 116 FTE from FY 1995. Our budget request for FY 1996 recognizes the need for a Government that works smarter and costs less. In this time of shrinking resources and budgets, Customs cannot expect to receive continuous additions to enhance operations, despite the likelihood of substantial annual increases in international trade, travel, and tourism. Instead, the Agency is using innovative technological and organizational approaches, such as the Automated Commercial Environment and the reinvestment of resources freed up by restructuring our operations, to meet the substantial challenges of its mission.

The Mission of the Customs Service

As the Nation's primary border agency, the Customs Service has a complex and varied mission, with tremendous responsibilities in both revenue collection and law enforcement. This means Customs must:

- Assess and collect revenue in the form of duties, taxes, and fees on imported merchandise;

- Enforce U.S. laws intended to prevent illegal trade practices;

- Protect the American public and environment from the introduction of prohibited hazardous and noxious products;

- Regulate the movement of persons, carriers, merchandise, and commodities between the United States and other nations, while facilitating the movement of all legitimate cargo, carriers, travelers, and mail;

- Interdict narcotics and other contraband; and

- Enforce certain provisions of the export control laws of the United States.

Workload

To carry out this mission, Customs processes an incredible workload. Two statistics provide a general indication of Customs work: we processed over 450 million passengers in FY 1994, and collected $22.9 billion in revenue, making us the second largest revenue producer in the Federal Government.

In FY 1994, our inspectors processed 389 million land passengers, over 58 million air passengers and over 7 million sea passengers. In addition, they processed 131 million vehicles, 807,000 aircraft and 277,000 vessels. We expect that these numbers will continue to rise as we approach the year 2000. Our inspectors also carried out 223,200 intensive examinations on passengers in FY 1994.

The work of inspectors and agents yielded narcotics seizures amounting to 204,000 pounds of cocaine, 2,600 pounds of heroin and 559,000 pounds of marijuana. In addition, our increased focus on outbound passengers and merchandise prevented $50 million in illegal currency exports, which are often associated with laundering the profits from illegal narcotics transactions. We also made 507 seizures of illegally exported arms and munitions and 77 seizures of sensitive technology. Customs has helped to enforce the sanctions which the Administration has increasingly been using as a foreign policy tool. To that end, we made 57 seizures of material under sanctions administered by the Office of Foreign Assets Control.

In FY 1994, Customs processed nearly 12 million formal commercial entries. Our inspectors carried out 365,000 intensive exams of merchandise, resulting in $213 million worth of merchandise seizures and collection of $10.5 million in penalties on merchandise which violated Customs regulations.

Customs enforcement of hundreds of laws, while processing passengers, carriers, and merchandise, results in investigative cases in a number of different areas, including trade fraud, narcotics smuggling, money laundering and outbound enforcement. Our investigative activity in FY 1994 involved over 40,000 cases, resulting in 4,340 Class I arrests and 3,040 Class I convictions. (Class I cases are defined as those involving criminal or civil financial violations of Title 18 USC, exceeding $250,000 or violations of the Bank Secrecy Act.)

Enforcing Laws Covering Carriers, Cargo, and Persons Entering and Departing the United States

Customs enforces laws and regulations covering carriers, cargo, and persons entering and departing the United States, concentrating on improving levels of compliance through detection and interception in areas such as trade agreement violations, public health and safety issues, intellectual property rights, narcotics trafficking, unreported currency transactions, national security concerns, and child pornography. Customs is dedicated to the concept of informed compliance through education and outreach programs to ensure that violations are not committed through ignorance or a lack of understanding of the law.

Through its national strategies for trade enforcement, narcotics, outbound, and money laundering, Customs has placed a particular

emphasis on improving targeting efforts at the Nation's airports, seaports, and land borders to ensure optimum enforcement and facilitation results. Expanded use of automated systems, selectivity, compliance measurement, and innovative processing and inspection techniques have replaced traditional labor-intensive processes and have improved overall efficiency. Major inspectional methods are: a) use of automation and refined observational and questioning techniques which allow Customs to focus its attention on high-risk passengers and flights, as outlined in the Air Passenger Master Plan for the 1990's; b) ACS selectivity, which allows for low-risk merchandise shipments to be identified for expeditious release and high-risk shipments to be selected for intensive examination; and c) compliance measurement, which uses statistically valid sampling techniques to select shipments for intensive inspection in order to measure the trade community's compliance with laws and regulations.

Investigating Violations of Laws and Trade Regulations

Customs investigates violations of U.S. laws and trade regulations, including violations of currency, neutrality, fraud, smuggling, exports of arms and critical technology, cargo theft, and child pornography laws. These investigations support our priority enforcement efforts against narcotics smuggling, economic crime, and other domestic violations.

Major enforcement investigative areas currently emphasized include:

- Smuggling (focused on investigations and interdiction of narcotics smuggling, international trafficking in stolen motor vehicles, and child pornography);

- Financial (focused on the identification, disruption, and dismantlement of the systems and organizations that launder the proceeds generated by smuggling, trade fraud and export violations).

- Trade fraud (focused on violations that are most critical to the protection of U.S. health and safety, as well as the economic and industrial viability of the United States, including the under-valuation of goods, dumping, intellectual property rights infringement, and quota restrictions);

- Strategic (focused on illegal export of material and technology which threaten U.S. national and economic security and U.S. foreign policy);

- Special (focused on aggressive undercover and special operations programs supporting all major investigative and interdiction priorities, in which special agents

establish covert "business enterprises" sought by felons and criminal organizations to give the appearance of legitimacy for their criminal enterprises);

- Foreign (focused on management of investigations worldwide through foreign Customs offices); and

- Air and marine (focused on narcotics interdiction and support functions, with an emphasis on narcotics smuggling by private aircraft and vessels from South America to staging areas and/or U.S. landfalls).

Two priority areas merit special mention: narcotics smuggling and trade fraud.

Narcotics Smuggling

Customs maintains a deterrent to narcotics smuggling between ports of entry through its air and marine interdiction program and active investigative activity aimed at disrupting the criminal organizations that smuggle narcotics. Customs approach to enforcement at and between the ports continues to be the targeting of complex and sophisticated commercial drug smuggling, distribution, and money laundering organizations in air, land, and sea Southwest border environments. This strategy combines

all-source intelligence and technology, such as aerostats and other detection and surveillance technologies, with pre- and post-seizure intelligence, analysis, and investigations with a determined focus to disrupt and dismantle smuggling organizations through prosecution and asset removal.

During FY 1994, Customs agents worked 14,705 active narcotics cases. The most important of these are "impact" cases, investigations focused on the highest levels of the smuggling organization. The execution of these cases has the greatest debilitating effect on the criminal organization. Customs investigated 260 active "impact" narcotics cases in FY 1994.

Operation HARD LINE

Current estimates are that 70 percent of the cocaine smuggled into the United States crosses our common border with Mexico. In addition to the terrible toll the use of cocaine takes on our country, this illegal activity has generated a number of related problems, including disturbing trends of escalating violence at ports of entry which jeopardize the safety of Customs personnel and endanger the public.

In response to the massive narcotics threat, the Customs Service is implementing Operation HARD LINE to focus on permanently hardening our anti-smuggling efforts at the ports of entry. HARD

LINE will build upon the successful United States Border Patrol operations between the ports of entry, including HOLD THE LINE and GATEKEEPER, and the successful efforts of Customs Air Program, in the air space above the border, to create a comprehensive and unified Southwest border enforcement system.

In order to enhance port enforcement and officer safety, Customs has identified various capital improvements, such as barriers and bollards, to greatly diminish, or totally eliminate, the problem of port running. The problem of narcotics smuggled in commercial conveyances and cargo will also be addressed through improved targeting and interdiction procedures, expanded use of full-container x-ray equipment, proactive investigative support by means of intense source development, and intelligence gathering and assessment. HARD LINE also proposes the staging of Customs Black Hawk helicopters in the United States to ferry Mexican counter-drug forces to arrest traffickers and seize narcotics in Mexico.

This operation is a high priority of the Customs Service. We believe that it is important to build on the present success of our work force and continue to focus on the critical problems of border violence, port running, smuggling in commercial conveyances and cargo through the development and implementation of Operation HARD LINE.

Trade Fraud

Our efforts against trade fraud become increasingly important as international trade grows more complex and new technologies are developed. Customs multi-disciplined teams investigate cases in which laws that regulate the importation of merchandise are violated. Through ongoing interaction with the Department of Justice, Customs aids in the prosecution of those who willfully violate U.S. trade laws. Customs supports its enforcement efforts by the collection of commercial intelligence from members of the intelligence community, as well as improved interaction with domestic industry to obtain all available enforcement information. The continued emphasis on trade enforcement priorities, issues, and threats will aid trade enforcement investigations and help increase prosecutions and major penalty collections.

Serving the Nation and the Trade Community/Protecting Domestic Industry

Customs implements U.S. trade policy by collecting duties, taxes and fees; enforcing international codes and agreements; ensuring uniformity in trade procedures; accurately collecting and reporting import/export statistics; and providing efficient commercial services to the trade community. The dramatic growth in international trade and in sophisticated trade programs has

complicated the implementation of the Nation's trade policy. Currently, Customs enforces a long list of agreements covering specific countries and products. These agreements and other programs include:

- Textile visa agreements with 40 countries.
- Uruguay Round tariff rate quotas on a variety of agricultural products.
- The International Sugar Agreement.
- The European Community (EC) Pasta Agreement.
- Trade embargoes and sanctions such as the China munitions embargo, yellowfin tuna embargo, and the embargoes on most imports/exports to Cuba, Iran, and Iraq.
- Trade restrictions on Canada, the European Community, and Japan, as well as individual companies.
- Monitoring of semiconductors coming from Japan.

The Customs Service also effectively and efficiently administers trade enhancement programs. These consist of the Automotive

Products Trade Act, the Agreement on Civil Aircraft, the Caribbean Basin Economic Recovery Act, the United States-Israel Free Trade Area, and the Andean Trade Preference Act.

NAFTA

Of the trade agreements that Customs helps to administer, the North American Free Trade Agreement (NAFTA) is probably the most well known. Because NAFTA is a preferential trade agreement, not a free trade agreement, only those goods that satisfy the NAFTA rules of origin are entitled to preferential benefits. Because of the benefits the agreement provides, there is substantial motivation to claim NAFTA preferential treatment when there is none. The strategic approach now being coordinated by Customs Office of Strategic Trade is to ensure that the rules are being followed and that a level playing field is being maintained. Customs is conducting research and analyzing trends to anticipate potential problems before they become significant.

Customs intends to:

- Conduct complex regulatory audits that focus on multinational corporations,

- Increase the resources devoted to registering intellectual property rights (IPR) merchandise and tracking IPR violations,

- Increase the resources devoted to laboratory, intelligence, and trend analyses; and

- Emphasize the use of Jump Teams to identify transshipment, verify country of origin, and assure compliance with respect to textile and apparel articles for which NAFTA preference is claimed.

GATT

The Uruguay Round Tariff Reductions and related agreements will, along with NAFTA, have a number of effects on Customs. Extensive new requirements are being placed on Customs to support more refined international trade programs. New systems of determining origin, substitution of tariff-rate for absolute quotas, various snap-back provisions and increased use of unfair trade practice cases will require a much more sophisticated approach. Because of these changes and the demands of NAFTA, we believe that our reorganization plan to emphasize strategic trade has been created just in time.

Also, changes in Intellectual Property Rights (IPR) legislation will tighten up enforcement procedures. Shorter deadlines for liquidation and administrative reviews of anti-dumping and countervailing duty cases will have a significant operational impact. Changes will occur in origin rules internationally, especially for Congressionally-mandated textile rules of origin.

Trade Compliance

To coordinate Customs activities in the face of the increasing volume and complexity of international trade over the last decade, and in anticipation of the changes from NAFTA and GATT, Customs developed its Trade Enforcement Strategy to better confront the major requirements in the enforcement of trade laws, trade agreements, and trade sanctions. While trade compliance has always been an essential part of Customs effort to protect domestic industry from predatory trade practices and unfair competition, the rapid growth of these practices has required constant improvements to maintain a unified, comprehensive strategy. Customs Trade Enforcement Strategy coordinates the full range of Customs expertise to address a variety of trade problems. It attacks such illegal trade practices as false valuation and misdescription, transshipment, dumping, forced labor, infringements of intellectual property rights and attempted importation of goods which do not meet U.S. health and safety standards.

Customs seeks the trade community's "informed compliance" with all Federal laws and regulations relating to importation of goods. The Modernization Act has imposed greater responsibilities on the importing community for record keeping and for filing accurate entries. Our view of the future calls for shifting our resource allocation away from the current heavy emphasis on the verification of entries through inspection and review of importation paperwork toward greater emphasis on working with major importers so that we can rely on their internal control processes. In this way, we will minimize the costly and time-consuming inspection of individual transactions. This is essential for Customs to keep up with expected growth in trade.

Assuring compliance is the role of Customs regulatory audit function. This extremely effective program is a key element in Customs multi-disciplined approach to controlling commercial activities. The Customs Service has professional auditors located in 30 cities nationwide. In the coming months, regulatory audit will focus on NAFTA audits, increased scrutiny of transfer pricing, and heightened interest in priority industries. Our Trade Enforcement Strategy will depend heavily not only on staff with unique skills, such as auditors, but also on new automated technology, which will improve productivity and effectiveness.

The Automated Commercial Environment (ACE)

Using innovative technological approaches for trade compliance purposes--as well as in many other areas of Customs work--is crucial to maintaining Customs capability to absorb projected workload increases without proportionate increases in resources. As I mentioned at the outset, Customs Automated Commercial Environment will help us meet the increasingly complex challenges of our mission. The Automated Commercial Environment is our name for an overall redesign of Customs automated processes. This redesign is structured to be the "next generation" for commercial processing, using many current systems, as well as off-the-shelf software, as feasible. When fully implemented, ACE will establish a seamless, interactive automated process providing information sharing among all Government participants. The investment represented by the development of ACE will enhance the quality of virtually every area of Customs processing and benefit the Government as a whole.

One of the most beneficial enhancements provided by ACE will be the establishment of an international trade database, as advocated by the National Performance Review (NPR), that will allow a wide range of trade information generated or collected by Customs to be accessed by numerous other Federal agencies. The information in the database will provide accurate information for trade negotiations and monitoring compliance with international

trade agreements. The database will be expanded to include both import and export information invaluable to many public and private sector entities. Users will be provided with more flexible data retrieval and greater analysis and reporting capabilities.

Significant quality improvements will be manifested through improved international trade controls, greater precision in revenue collections, and greater facilitation for legitimate international business. The Automated Commercial Environment strongly bolsters Customs trade enforcement and financial enforcement strategies through more sophisticated targeting techniques.

ACE will fully implement the automation initiatives of the Modernization Act such as importer activity summary statements (IASS), remote filing, reconciliation entries, and periodic filing. Also, it will include concepts such as account-based processing.

ACE will facilitate adherence to the provisions of the Chief Financial Officers (CFO) Act, and will address Congressional and Executive Branch recommendations for system improvements to internal controls and core financial operations. The selectivity improvements promoted by ACE include an updated targeting system

and compliance measurement utilities that will help foster voluntary compliance with established regulations.

Since Customs is taking a comprehensive, integrated approach with ACE, it will take some time to do it right. The ACE Development Team completed its first deliverable, the Strategic Information Management Plan, in December 1994. Currently, the Team is developing requirements for the system in coordination with the Trade Compliance Process Improvement Teams and the trade community. This phase is scheduled to be completed this fiscal year. In FY 1996, the ACE Team will do system design, with development and testing to follow in FY 1997 and FY 1998. We plan to have ACE fully implemented in FY 1999.

Restructuring the Customs Service

Technology alone will not be enough. Basic organizational and managerial change will be needed too.

Less than a month ago, Commissioner Weise appeared before this Subcommittee to participate in a hearing on our proposed reorganization. On that occasion, he discussed in detail the origin of the reorganization study team, along with its findings and recommendations. While being reluctant to repeat what has already been stated and discussed in great detail, I believe it is important, nevertheless, to mention Customs reorganization and

reinvestment plan, which will allow the Agency to keep its commitments to the Nation and to the American people in the face of record workload levels and the prospect of relatively static budgetary resources.

Sixteen months ago, with a mandate to work smarter and cost less, and with the freedom from prohibitions on studying a restructuring, Customs set about to re-examine the way it did business. A 20-person inter-disciplinary reorganization study team, which included representatives from the National Treasury Employees Union (NTEU) and a representative from the Immigration and Naturalization Service (INS), was assembled to determine if and how the Customs Service should change. Given a simple but broad mandate--design an organizational structure for the Customs Service that would prepare it to meet the challenges of the Nation at our borders in the 21st century--the team received extensive support and information from persons within the Customs Service, the Treasury Department, the Customs Operations Advisory Committee, the trade community, other Federal agencies, and congressional committees.

People, Processes, and Partnerships

While many of the resulting proposals are directed at Customs organizational structure, the real heart of our effort involves fundamental change in the management culture of the Customs

Service. Critical to this culture change were the goals of the National Performance Review and the clear direction from former Secretary Bentsen for all Treasury agencies to focus on more efficient operations and improved service for customers. These concepts are all embodied in the slogan "People, Processes, and Partnerships." By this we mean an organization characterized by:

- Greater attention to our people,
- Managing essential core processes, and
- Forming partnerships with our many customers as a means of improving our mission performance.

The Promise of Our Vision

The study team's analysis resulted in a set of recommendations providing specific benefits to the American public. These recommendations fell within four broad categories:

- Restructured Operations,
- Enhanced Customer Service,
- Informed Compliance, and

- More Integrated, Coordinated Operations.

Customs has existed as an agency for over 205 years. During that time it has developed a rich and sometimes complicated culture. Changing an institution that has developed over more than two centuries is no easy task. With the help of this Committee, we can restructure our core processes and reinvest in field operations to meet the challenges of the 21st century. We are well aware that changing the culture of the Customs Service will require a long-term effort, but this is one of the most important and lasting changes which we can hope to make.

Conclusion

With the leadership and support of the President, the Vice President, Secretary Rubin, and this Committee, we at the Customs Service are proceeding in the right direction. We know that achieving our vision will not come easily, and we face many difficult challenges. But we are guided by a simple goal: to leave the Customs Service a better agency than when we found it. We welcome this Committee's assistance in making this goal a reality.

Mr. Chairman, we would be happy to answer any questions you may have.

Chairman CRANE. I see from recent press reports—and apparently the networks have picked on it, too—that your line release program is under fire. What is your assessment of this situation? And can you explain how the line release works—the prescreening process, for example—and what the experience has been to date?

Mr. LANE. As you know, Mr. Chairman, there has been a tremendous increase in trade, as I talked about in my opening statement. We have initiated a number of programs to ensure that we can provide the facilitation that is needed on the border and maintain our enforcement effectiveness.

Line release allows us to look at low-risk carriers, investigate their application for facilitated treatment, do background investigations on their history, sometimes visit their premises, and query all of our investigative files. Then if we find that this commodity and this company is low risk, we can provide expedited service.

I think the attacks of recent weeks on line release are born of the fact that people are looking at it as an enforcement program for everything, which it is not. It is one of a series of systems that Customs uses to screen importers and imported goods when they come into the country. Some of those systems are geared more toward enforcement, some toward narcotics, some toward commercial shipments. And you have to take a look at our system in the full context. Otherwise, you are chasing a red herring on line release.

Chairman CRANE. I notice that you propose transferring some resources, both people and dollars, to a new account called the Treasury foreign law enforcement account. Can you tell me the reasoning behind this transfer and what it gets you in terms of increased efficiency and streamlining?

Mr. LANE. I can only answer that partially. That was a proposal from the Office of Management and Budget, and I think it would have to be answered between OMB and Treasury. We have been assured that, whatever happens with the proposal, the effectiveness of our international programs will not be impacted, and that the proposal is just a mechanism to improve the oversight of all the Treasury overseas enforcement activities.

Chairman CRANE. Would any of your agents be under someone else's supervision?

Mr. LANE. No, sir. What this proposal would do is provide some joint training of all overseas Customs and Treasury enforcement personnel so Customs could handle routine referrals and transactions from Treasury, and they could do the same for us. That could provide some efficiencies.

Chairman CRANE. While we are on the subject, how many outside budget accounts does Customs receive money from during the fiscal year?

Mr. LANE. I would say something like 13 or 12. Could we provide that for the record?

Chairman CRANE. If you would please. That was my next request.

Thank you for your testimony.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Thank you, Mr. Lane, for your testimony.

I understand that the funding requested by Customs this year for drug control activities or for fiscal year 1996 is roughly $420 million, and the requested permanent levels are roughly 4,900 FTEs. This is a reduction, as I understand, from 1994 when we actually appropriated $466 million and there were 5,100 FTEs at that time.

Contrasting this, during the same period of time, Customs' funding has increased 10 percent and personnel levels have increased 4 percent. Why has Customs then increased its resources for commercial operations and decreased them for combating drug smuggling? And does this mean that we are less able than we have been before to carry out the mission of the Customs as relates to drug matters?

Mr. LANE. I think there are a variety of reasons for that, Congressman.

One of the things that has happened has been a reduction in our air and marine area. We have reduced FTE in this area and mothballed some of our vessels. Part of the reason for this reduction is in recognition of other agencies coming in and helping us in the area of our air resources as well as marine, by the Coast Guard and DOD. That is pretty much why we have been able to make some reductions in that area.

Mr. PAYNE. So you think the reductions being made are offset by others who are coming in to perform those same functions?

Mr. LANE. Yes.

Mr. PAYNE. So we are equally able to combat drugs or will be in 1996 as we were in fiscal year——

Mr. LANE. I know there is a lot of emphasis and focus on what is wrong with the drug program, but I think that Customs has an extraordinary record in preventing air smuggling into the United States, which was the preferred method in the seventies and eighties. We don't have that significant threat anymore.

Similarly, Customs and the Coast Guard put together programs in the Caribbean and in the gulf and in the Bahamas that virtually shut down the fast boat trafficking between the United States and the Bahamas. We are making adjustments in those areas to reflect those successes.

Mr. PAYNE. The proposed budget for fiscal year 1996 devotes roughly 60 percent of the resources to commercial operations and 40 percent to noncommercial operations such as drug enforcement, controlling illegal exports, control of child pornography, support of enforcement efforts of other agencies like USDA. Could you tell us how this compares with the historical trends of the Customs in terms of its allocation of resources in those two broad groups?

Mr. LANE. I don't think that those numbers are significantly different than what they have been in the past. I have one concern about the numbers. The largest portion of the Customs Service is our inspection and control area, which has about half our staffing in it. Those are our most flexible responsive resources. And, depending on the need, can be allocated within the fiscal year to emphasize a particular area almost immediately. If we have a drug problem in a particular area we can devote much more of the inspectional time to it. I would make the same statement with regard to investigative resources as well.

Mr. PAYNE. Could you look into that trend over the past 5 years in those two broad categories so we can look at how those resources are being allocated?

Mr. LANE. Yes.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. In looking at your budget for 1996, I guess I have a question in terms of what do you do in 1997. Let me ask you a question here. What you do is you take $20 million from prior years' unobligated balances and bring them into 1996 from 1995.

Mr. LANE. Yes.

Mr. HOUGHTON. Then you use $3 million from the Harbor Maintenance Trust, so that is $23 million which you are going to have to make up for in 1997. At the same time, you reduce costs not funded by GSA by $5 million and also request a little less than $5 million from the Crime Bill Trust Fund. Maybe that is $10 million. So maybe that is a net of $13 million. Not the end of the world for an agency your size, but how do you plan to make that up?

Because when you borrow from 1 year to pay into another—I have seen this happen so many times in New York State—is that you really come a cropper in the following years. What are your plans to handle that?

Mr. LANE. That is a concern, Congressman. The $20 million which is the largest amount you mentioned there, is from unobligated balances that we are putting into our air program to keep at a level of $80 million. So the base there this year which appears to be $60 million is really an operating level of $80 million.

We will have, by the end of 1996, expended all of those unobligated balances, meaning that in fiscal year 1997 we will be looking like we are making a $20 million request for increases in the air program. That is not the case. We will need to maintain our base level of $80 million at a minimum and maybe more, depending on what happens with the drug threat.

The other items are just adjustments that we are trying to make to keep the budget down and to operate more efficiently and use things like the carryover provision that the Congress has provided in this year's budget.

Mr. HOUGHTON. One other question. You know your mission. You know what has to be done. You know the cost constraints. Are there things which we are doing to restrain you in the flexibility you need in order to fulfill your mission?

Mr. LANE. That the Congress is doing? Well, Congressman, the Commissioner of Customs and the Customs Service are working to get onboard and out in front with the sentiments of the National Performance Review and the Contract With America and to reduce government bureaucracy. I think that our reorganization effort which the Commissioner testified on before you several weeks ago, and our modernization act are a reflection of Customs initiatives.

It was recommended in our House Appropriations hearing that the Commissioner read "The Death of Common Sense." We have been reading it, and I think it might provide a framework for changing our regulatory approaches.

In the past, Customs has been hamstrung by staffing ceilings and floors. Anything that can be done to take those restrictions off

and give us more flexibility on being able to move money around and move between categories of personnel and equipment would probably be helpful.

Mr. HOUGHTON. So you are saying that there are restrictions that you would like to see—no more money but fewer restrictions to help you accomplish your mission?

Mr. LANE. That is half right. If you wanted to provide more money that would be OK; but, yes, we do want the restrictions off.

Mr. HOUGHTON. Maybe you could break that down.

I think, Mr. Chairman, that it might be worthwhile to see where we might more closely work together. Because we are all after the same thing. And if there are things that we consider important that you don't like, that is too bad; but if there are things which are not really that important which we have superimposed upon your operation we ought to look at those things. I would suggest maybe we could get a report.

Mr. LANE. We would appreciate the opportunity to have input on that.

[At the time of printing no information was received.]

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. Mr. Lane, as a result of what has been going on with the devaluation of the peso in Mexico, has that created any additional problems for you along that border? Has it created problems for Customs?

Mr. LANE. No, sir. We haven't had any problems so far. In the local community along the border where the local economies are tied in, transborder shopping is probably down. We don't have the statistics on it, but some of the passenger traffic may have decreased. I don't think that there is any big problem there.

Mr. HANCOCK. You don't think there is any problem with the attempted misshipment of goods? Do you have to watch a little closer as a result of the differential in the value of the dollar and the peso?

Mr. LANE. As you would expect, the amount of exports is reduced substantially. Customs doesn't spend a lot of resources on exports, so that hasn't really impacted us. I would say that the level of readiness and vigilance on the border is very high for a variety of reasons, which include narcotics trafficking and border violence. Already we are very attentive to what is going on down there.

Mr. HANCOCK. I have been asking questions for several years about the disposal of forfeited and seized assets. Has there been any type of an effort made to take a look at what is happening to those assets when forfeited, and what valuation we get for them? I have been frustrated for 6 years with trying to even get anybody that can really tell me how that operates.

Mr. LANE. Well, Congressman, I would say, very much as a result of the work of this committee, Customs has given a tremendous amount of attention to problems with seized assets. In fact, as a result of a series of hearings over the years, Customs has completely reengineered its approach to the handling of seized property.

We have also outsourced it, and substantially improved our oversight of the second contractor that we have had doing this. We are now in our third generation of improvements of that area. We have

had, historically, some problems there. I think we have corrected them. We have been very responsive to the committee and would be glad to brief you on our progress in that regard.

Mr. HANCOCK. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Good to see you again, Mr. Lane.

How much of your seizures, what percentage roughly, are based on intelligence information gathered—I am talking about at the border as opposed to the random sampling. Half? One-and-a-half?

Mr. LANE. It is hard to say, Mr. Rangel. On the border it is very difficult, in that we have such a flow of traffic and not as much advance time and information as we have in terms of——

Mr. RANGEL. I am not framing my question correctly. What I am trying to find out is, based on intelligence, when you know someone is coming to the border and you are looking for them and waiting for them because someone has already told you what they intend to do, what percentage of the seizures at that border check do you already know is coming across? Do you have any seizures at the border based on information that is gathered?

Let me move on.

Mr. LANE. Yes, we do.

Mr. RANGEL. You might want to share with me, because with all this sophisticated equipment—and I laud this effort that is being made, if indeed it is as bad as it used to be in terms of potluck, what you get across the border—it would seem to me that one might be concentrating on developing those types of cases that go deeper into where the drugs are coming from in the first place. Even if you were doing that, it is my understanding that after you develop the intelligence and track down the carrier and report it to the Mexican Government, that many times corruption causes no arrests to be made even then. Is that so?

Mr. LANE. To some extent. More often DEA, FBI, our agents, as well as the intelligence community, are providing more and more information. And part of the efforts that the Commissioner is on the border kicking off right now will include more foreign intelligence in Mexico on commercial commodities that might have drugs.

Mr. RANGEL. What happens when you, as a result of successful penetration into the narcotic trafficking, through the Customs agent, are aware of planeloads of cocaine heading toward the United States but are stopped in Mexico and the Mexican Government is notified? It is my understanding that many times the planes are emptied out before the soldiers get there or nothing, in fact, is done. What do you do then?

Mr. LANE. We go on, Mr. Rangel. We have had instances like that.

We have also had some substantial successes in spotting aircraft with our resources, providing that information to the Mexicans, and having successful interdictions in Mexico with our assets assisting them in the apprehensions.

Mr. RANGEL. When you find that due to corruption, negligence or whatever reason that the information you provided on the identification of the cocaine, or whatever the substance, that there is not

a positive response through this information, what do you do? I know you move on, but do you report it to anybody——

Mr. LANE. We report it to the State Department. And the State Department and other officials that work in the Embassy in Mexico pressure them.

Mr. RANGEL. Have you ever known any action taken by the U.S. State Department, as a result of information you furnished them, that would lead you to believe that the Mexicans fouled what could have been a substantial seizure and arrest?

Mr. LANE. Well, I do know of examples when we have believed that there was corruption and have had information that a seizure was lost. An interdiction was interrupted because of what we provided to the State Department. They have aggressively pursued that with the Mexicans. We also know of some instances where it has resulted in changes, the State Department following up on it——

Mr. RANGEL. That is not unusual. Is it customary that many of your investigations are aborted because of lack of cooperation by the Mexican authorities?

Mr. LANE. I don't—It is not so much an investigation——

Mr. RANGEL. You are not with the State Department. They never like to say anything——

Mr. LANE. As you know, Mr. Rangel, we have been trying for the last 20 years to deal cooperatively with the Mexicans, first with getting P–3 flights over. We do have that now. Second, with getting Citation training going. We have that now. We have many cooperative initiatives going with the Mexicans.

Mr. RANGEL. Are you satisfied with the state of cooperation between Customs and the Mexican Government?

Mr. LANE. I think that there are other areas that we are working on that will be important steps forward in joint cooperative efforts, and I think we are getting close. I think we will get there, as we did with the P–3s and Citations.

Mr. RANGEL. Who is your point person in the State Department?

Mr. LANE. Ambassador Gelbard.

Mr. RANGEL. Did you already answer about why you had such a traumatic reduction in the budget of the air enforcement program?

Mr. LANE. Yes, sir. We are proposing the use of some unobligated funds that are available, at an amount of $20 million to add to an appropriation of $60 million, bringing us up to $80 million.

Mr. RANGEL. Let me thank Customs for the delicate line that you have to travel between expediting commercial travel and at the same time stopping this poison from coming into the United States. I hope you continue to vigorously do that job and not have it damaged sometimes by the diplomacy of the State Department. If you do find impediments, please report them to me.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you. I can't help but think, listening to the exchange between you and the distinguished ranking member, you have to feel like the guy with his finger in the proverbial dike most of the time. Is any real progress being made in combating illegal transshipments of drugs?

Mr. LANE. Through Mexico?

Mr. RAMSTAD. Yes.

Mr. LANE. I think a great deal. When I came into Customs in 1970, starting with Operation Intercept, through the violent period on the border of the seventies and the very disruptive period in the eighties when trafficking moved from south Florida over again into the Southwest border, we have made a great deal of progress.

We have essentially closed the border to air trafficking. We have established the aerostat network. Our system of planes supported by other agencies has stopped air trafficking into the United States. We have very good cooperative agreements with the Mexicans on air smuggling. And the border patrol is substantially filling the gap between the ports of entry.

So over the past 2 or 3 years, in particular, we have made great strides. The Mexicans have established some enforcement groups at the major areas on their side, and those are starting to get much more effective.

Mr. RAMSTAD. Well, we all know—and I am not questioning what you just said—but we all know the drug problem continues to accelerate in this country, and certainly it is not because of a shortage of supply.

I see from your recent budget request a $5 million item there from the Crime Bill Trust Fund which many of us worked last year to put together for developing technology to prevent the export of stolen vehicles. I know nobody likes to have his or her car stolen, but it doesn't seem to me that $5 million should be put into stolen cars when we have this drug crisis in America. It seems to me that should be a much higher priority. How do you justify $5 million for developing technology to deal with stolen cars?

Mr. LANE. I agree. We are working with Treasury, OMB and the Drug Czar's Office to get that reprogrammed into drug enforcement for the Southwest border.

Mr. RAMSTAD. That is the kind of responsiveness we love to see. We need more of that not only from the agencies but from the Hill here as well.

Thank you, Mr. Chairman.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

I would like to move back to the administrative side and ask you how you are doing on your reorganization plan that would cut back by 600 employees in your headquarters staff and how the ratio of midmanagerial folks to other employees is going, and is that reflected in your budget which has an aggregate cutback of 116 FTEs?

Mr. LANE. Ms. Dunn, we are proceeding very aggressively with our reorganization and all that is involved with it. We set a goal of reducing our headquarters by a third, and that would be 600 people. We have already reduced about 150 FTE.

But we are sort of slacking off on the timeframe, trying to slow down a little bit, because we are abolishing our regions and districts effective October 1 of this year. We are trying to give those employees first priority in placement in frontline positions at the ports of entry. We will have 450 people over the next 2 or 3 years that we would like to place and take out of headquarters.

We are also establishing our targets on the supervisor/employee ratio, trying to get from where we are now, which I think is about

1 to 6, to get it up to 1 to 15. We are going to try to get there because that is the goal that has been established. In Customs there are a lot of ports where there are only two or three people and there has to be a supervisor onboard to be in charge of the situation.

So 1 to 15 is a stretched goal, although we are definitely flattening the organization, eliminating 7 regions and 45 districts and area offices, and replacing them with only one intermediate level of 20 Customs Management Centers.

Ms. DUNN. So you are satisfied with the trend toward that cutback?

Mr. LANE. We are never satisfied. We want to establish for ourselves, in conjunction with the NPR and the desires of the public and the new Congress, a government that is leaner. We have been on the forefront of this and think we can take our fair share of the cuts and still handle a 50- or 75-percent workload increase in the coming decade.

We are pushing as hard as we can. We are accepting the challenges and the stretched goals, and we are determined to meet them and still increase the level of effectiveness of the agency.

Ms. DUNN. Thank you, Mr. Lane.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you for your testimony, Mr. Lane. We look forward to working with you, too, over the course of this next year and satisfactorily resolving Customs problems. If we can be of assistance, let us know. Thank you for your testimony.

[The following was subsequently received:]

QUESTIONS SUBMITTED FOR THE RECORD BY THE COMMITTEE

FY 1996 BUDGET PROPOSAL

Question. Your budget proposal identifies a $37.7 million reduction from the FY 1995 appropriation. How true are these savings, given the increases in new funding sources such as the Crime Bill Trust Fund, the Harbor Maintenance Fee Account, and carryovers from prior years?

Answer. I can assure you, Mr. Chairman, that the reductions in our FY 1996 budget proposal are real. The FY 1996 request is a responsible budget, in keeping with the Administration's goal of reducing the deficit. It recognizes the need for a Government that works smarter and costs less.

The proposed Harbor Maintenance Fee Collection account and the Foreign Law Enforcement appropriation would neither give nor take away funding for Customs operations. These proposed new accounts would reimburse Customs for existing operations currently funded by the Salaries and Expenses account. Customs use of carryover balances from prior years to supplement the air and marine programs' Operation and Maintenance Appropriation in FY 1996 is a one-time source of funding. It is an offset to the base funding for the program and additional funds would be required in the future to maintain operations at the current level. The Violent Crime Control and Law Enforcement Trust Fund is the only one of these accounts for which we are requesting an amount higher than the FY 1995 budget.

Question. How are proposed funding transfers, such as to the Treasury overseas enforcement account, handled?

Answer. Transfers to Customs may be made in a number of ways. If the transfer is a budgeted transfer of resources, and Congress approves the transfer, then the transfer is effected through the appropriation process.

The transfer of resources does not necessarily have to be done through the appropriation process, but direction could come from the appropriation language or Committee reports. In that case, the agency transferring the funds to Customs could:

- prepare a Non-expenditure Transfer (SF 1151), which transfers the funds directly to a Customs appropriation, or

- prepare a Memorandum of Understanding and a Reimbursable Agreement, whereby the agency is billed as services are performed.

Question. Has Customs made any progress in thinning its mid-managerial ranks, i.e., reducing its supervisor to employee ratio? Does the FY 1996 reduction help move toward this goal?

Answer. One of the primary goals of the National Performance Review (NPR) is to reduce the size of Headquarters offices, reduce GS-14s and above, and reduce the number of administrative positions, particularly those in the areas of personnel, budget, procurement, and management control. Also, the NPR calls for the current supervisor/employee ratio to be reduced by half within 5 years, with a long-term goal of achieving a 1:15 ratio.

The current Customs supervisor/employee ratio is about 1:6. This is due, in part, to our many small ports, where there are only two or three people total, one of whom is a supervisor. It is important to note that many of our field supervisors are directly involved in the processing of passengers, conveyances and cargo. Under our reorganization, we are working to achieve an Agency-wide ratio of 1:15 within five years.

Question. As part of your reorganization, you have committed to reducing headquarters staff by one-third or 600 positions. How close are you to this goal?

Answer. Our staffing policy has been to maintain a freeze on headquarters (regional and national) positions and allow the filling of front line and field positions. This freeze has permitted us to meet the Executive Order reductions and reductions in FTE resulting from mandated absorptions. Between April 1993 and January 1995, we have reduced headquarters by 153 full-time positions and 20 part-time positions.

We will continue to follow a policy of reducing headquarters and support positions over several years, while investing as many staff resources in the field as possible.

Question. Does the FY 1996 budget proposal move Customs any closer? If so, how is it reflected in the budget?

Answer. Our FY 1996 budget request includes a further FTE reduction, mostly as a result of National Performance Review streamlining requirements. This reduction will decrease the size of the Customs Service in administrative and support positions; however, the ability to reinvest in line positions is critical for us to be able to handle the increased workload that we expect in the next few years.

PRESIDENTIALLY-MANDATED CUTS

Question. How will Government-wide cuts in administrative costs and personnel ordered by the President affect Customs?

Answer. The executive orders which mandated administrative and personnel cuts were signed in FY 1993. During the FY 1993-FY 1996 budget cycles, the administrative cuts totaled 14 percent. The FY 1996 budget includes the final reduction of 5 percent, completing the required administrative reductions. With the FY 1996 budget, these cuts have resulted in an aggregate reduction of Customs administrative resources totaling $37 million. The reductions have been, and will continue to be, spread over all categories of administrative costs, except GSA rent. Reductions in FTE taken as a consequence of the President's executive order have also occurred over this period.

Because Customs has laid a solid foundation with effective technology and automated systems, it is able to perform its basic enforcement and trade facilitation missions despite these cuts. But the cumulative effect of these reductions is to take away Customs flexibility to absorb any further cost increases, with the end result being that future absorptions could immediately equate in a loss of FTE.

For example, the President's Budget for FY 1995 contained resources for a pay increase of approximately 1.6 percent. The actual pay increase, including cost of living adjustments and locality pay, was an average of 2.6 percent. The cost in excess of the amount provided in the appropriation had to be absorbed, i.e., 1 percent. For the Customs Service, this absorption totalled $6 million, requiring a reduction of 133 FTE.

Furthermore, the FY 1996 President's Budget proposes an additional reduction of 200 FTE as a result of a variety of absorptions in previous years. The funding related to this action is $9 million.

Question. Aren't these offset to some extent by built-in increases for inflation?

Answer. Yes, but the net effect is still a significant reduction in resources. Allowances for inflation have not kept pace with the cuts.

SOURCES OF FUNDING

Question. According to the FY 1996 budget proposal, Customs receives funds from a number of outside sources including ONDCP, the Crime Bill Trust Fund, various user fee accounts, and the Treasury Forfeiture Fund. Please identify all funding sources and the amounts received for FY 1995 and FY 1996.

Answer. The information follows.

UNITED STATES CUSTOMS SERVICE
SOURCES OF FUNDING

RESOURCE	AUTHORIZED BY	FY 1995 LEVEL ($000's)	FTE	FY 1996 LEVEL ($000's)	FTE	PURPOSE
ANNUAL APPROPRIATIONS						
SALARIES & EXPENSES ACCOUNT - funding available from annual appropriation	19 U.S.C. 2075	1,392,651	17,209	1,381,550	17,093	For salaries, benefits and other costs associated with the basic mission of the Customs Service.
OPERATIONS & MAINTENANCE ACCOUNT - funding available from annual appropriation	Annual Appropriation	88,283	0	60,993	0	For expenses, not otherwise provided for, associated with the operation of the Air and Marine programs.
FACILITIES, CONSTRUCTION & IMPROVEMENTS ACCOUNT - funding available from annual appropriation	P.L. 102-141, 105 Stat. 838	1,000	0	0	0	For acquisition of real property, facilities, construction, improvements and related expenses of Customs.
SMALL AIRPORTS ACCOUNT - receipt account, whose funding is currently available through annual appropriation	19 U.S.C. 58b(e)	1,406	30	1,406	30	For the provision of Customs services at certain small airports or other facilities.
INDEFINITE APPROPRIATIONS						
MISCELLANEOUS PERMANENT (PUERTO RICO) - funding available from Customs collections in Puerto Rico	48 U.S.C. 740	178,412	365	188,112	365	Customs duties and fees collected in Puerto Rico are deposited in this account which are transferred to the Treasurer of Puerto Rico after covering cost of Customs services.
COBRA - funding available from collection of user fees, part of which can be used by Customs	19 U.S.C. 58c	364,936	1,141	376,249	1,266	To facilitate inspections of air and sea passengers by covering expenses of inspectional overtime and other preclearance activities.

RESOURCE	AUTHORIZED BY	FY 1995 LEVEL ($000's)	FTE	FY 1996 LEVEL ($000's)	FTE	PURPOSE
REIMBURSABLES/TRANSFERS						
REFUNDS, TRANSFERS, & EXPENSES, UNCLAIMED AND ABANDONED GOODS - funding available from public auctions; excess is transferred to general fund	19 U.S.C. 1613	3,111	0	3,204	0	To reimburse Customs for expenses related to disposition of goods at auction
OCDETF - funding available from Department of Justice reimbursement	P.L. 100-690, 102 Stat. 4181	28,133	318	28,560	318	To reimburse a portion of Customs expenses for drug enforcement activities
ONDCP - HIDTA - funding available from Office of National Drug Control Policy transfer	P.L. 100-690	4,196	0	*	0	To offset expenses Customs incurs in its drug interdiction activities.
TREASURY FORFEITURE FUND - funding available from Department of Treasury transfer	31 U.S.C. 9703(a)	41,131	149	41,131	149	To reimburse expenses related to seizures of property involved in criminal activity
VIOLENT CRIME TRUST FUND - funding available from Department of Treasury transfer	42 U.S.C. 14211	4,000	10	4,685	10	To fund a portion of Customs violent crime fighting activities.
BORDER SERVICES USER FEE - funding would be shared equally between INS and Customs	Proposed	0	0	100,000	*	To fund improved border management.
INTERNATIONAL LAW ENFORCEMENT - funding would be available from Department of Treasury transfer	Proposed	0	0	8,280	36	To fund salaries and expenses related to Customs overseas enforcement activities.
HARBOR MAINTENANCE FEE COLLECTION - funding would be available from annual appropriation	26 U.S.C. 9505(c)	0	0	3,000	0	For administrative expenses related to the collection of the Harbor Maintenance Fee.

RESOURCE	AUTHORIZED BY	FY 1995 LEVEL ($000's)	FTE	FY 1996 LEVEL ($000's)	FTE	PURPOSE
OTHER REIMBURSABLE - funding available from federal and private reimbursement agreements	Miscellaneous	261,367	654	270,745	729	To provide various reimbursable programs, such as those services provided to air courier hubs and Customs training.
SELECTED FEES COLLECTED MERCHANDISE PROCESSING FEE - fee collections offset Treasury general fund, and are then used to fund Customs direct appropriation	19 U.S.C. 58c	659,751	0	672,946	0	To offset the general Treasury fund for a portion of Customs commercial costs.

* Estimates are not available as the levels will be determined during the FY 1996 budget process.

AUTOMATED EXPORT SYSTEM (AES)

Question. Please provide additional details on your plans for the Automated Export System (AES). How do you plan to address industry concerns regarding confidentiality?

Answer. AES is being designed to provide access to data on a need-to-know basis, based on an agency's regulations and/or statutes. Census laws on disclosure remain in effect and we will continue to be guided by the Privacy Act laws (P.L. 96-275, June 17, 1980). We are researching the legality of establishing a disclosure code for AES participants.

Manifest data will continue to be downloaded to Port Authorities and to tape. The data will, of course, first be run against the confidentiality database currently used on the import side, and established privacy data will be taken out before dissemination.

Question. What role will other agencies, such as Commerce's Bureau of Export Administration, play in the development of the AES?

Answer. For the July 1995 Phase One Implementation, two licensing agencies, the Department of Commerce's Bureau of Export Administration (BXA) and the Department of State's Office of Defense Trade Controls (ODTC), will be participating through an electronic interface with Customs AES. The third partnership agency for Phase One will be Commerce's Bureau of the Census for statistical and analysis purposes.

For the first phase, Customs will collect and transmit to BXA data on all export transactions. This will include the license number for approved individual validated licenses and special licenses. The license number will be validated against our file of licenses currently being provided by BXA.

For ODTC, a similar process will be developed for export transactions related to munitions shipments. In addition, a program for electronically decrementing the ODTC licenses will be included.

For BXA, their participation will allow for receipt of licensing data on shipments in real time for verification purposes. The ultimate goal is to eliminate the manual process

of providing a paper Shipper's Export Declaration (SED) and approved license at time of shipment.

MEMORANDA OF UNDERSTANDING

Question. Please provide additional details on the recent memoranda of understanding concluded with the Commerce Department and the Drug Enforcement Administration (DEA).

Answer. On August 8, 1994, Customs and DEA entered into a new Memorandum of Understanding (MOU) which set forth a revised set of policies and procedures in an effort to maximize coordination of the Title 21 cross-designation program. The continuation of this program, which was established under a previous 1990 agreement, is critical for Customs to better protect our borders and ports of entry from drug smuggling violators. Approximately 1,250 Customs Special Agents are cross-designated to investigate drug smuggling organizations. The current MOU has been in effect for several months and we are continuously analyzing its impact, in an effort to identify potential improvements.

The MOU between Customs and Commerce has created standardized procedures for coordinating export enforcement activities, resulting in a significantly improved interagency relationship. The MOU is functioning well.

FY 1996 CRIME BILL REQUEST

Question. Your budget includes a request for $4,685,000 from the Crime Bill Trust Fund to continue the development of technology to prevent the export of stolen vehicles. Given all the focus on the need for tough drug enforcement, why was this activity chosen for Crime Bill funding? Why are stolen vehicles such a high priority?

Answer. The Crime Bill funding that was originally requested for this program is now proposed to be redirected into Operation HARD LINE. We intend to proceed with the stolen vehicle program as a Customs research and development project. Notwithstanding the diversion of the funding, the following background is provided for the purposes of thoroughly responding to the complete question.

Title XXXI of the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill) provided funds to the Department of the Treasury and its bureaus for violent crime initiatives. Based upon existing Customs export border enforcement responsibilities, in conjunction with increased congressional interest resulting in the passage of the "Anti-Car Theft Act of 1992," the Customs Service proposed a motor vehicle theft program. The Customs Service, by virtue of its role as the principal border law enforcement agency, has traditionally been involved in combatting the illegal export of stolen vehicles. Pursuant to 18 U.S.C. 553, Customs has statutory jurisdiction to investigate these violations.

Customs proposal included funding for slight personnel increases, as well as technology to enhance the motor vehicle export program. Specifically, Customs is attempting to develop prototype vapor detection equipment, which if successfully developed, would facilitate and increase our number of inspections by allowing for the collection and analysis of routine motor vehicle vapors from stolen vehicles concealed inside cargo containers. Additionally, Customs requested automated data processing (ADP) equipment which would improve efficiency by allowing field personnel to scan vehicle identification numbers and down load them directly into the Treasury Enforcement Communication System (TECS), and subsequently into the National Crime Information Center (NCIC) for immediate inquiry. The acquisition of the ADP equipment would eliminate incorrect number transpositions of the 17 character vehicle identification numbers.

Approximately 200,000 stolen motor vehicles are illegally exported from the United States every year, at a cost to their owners of approximately $900 million. Automobile thefts in this country have become increasingly more violent--thefts of parked unoccupied cars have been supplanted by violent "carjackings." Notwithstanding Customs unparalleled commitment to drug smuggling enforcement, the Crime Bill afforded agencies with multifaceted responsibilities the opportunity to propose and request funding for "violent crime" related programs.

OPERATION HARD LINE

Question. What is Operation Hard Line? How much will it cost, and how is it reflected in the budget proposal?

Answer. On February 25, 1995, the Director of the Office of National Drug Control Policy, Dr. Lee Brown, and I announced a new initiative, Operation HARD LINE.

Current estimates are that 70 percent of the cocaine smuggled into the United States crosses our common border with Mexico. In addition to the terrible toll the use of cocaine takes on our country, this illegal activity has generated a number of related problems, including disturbing trends of escalating violence at ports of entry which jeopardize the safety of Customs personnel and endanger the public.

In response to the massive narcotics threat, the Customs Service is implementing Operation HARD LINE to focus on permanently hardening our anti-smuggling efforts at the ports of entry. HARD LINE will build upon the successful United States Border Patrol operations between the ports of entry, including HOLD THE LINE and GATEKEEPER, and the successful efforts of Customs Air Program, in the air space above the border, to create a comprehensive and unified Southwest border enforcement system.

In order to enhance port enforcement and officer safety, Customs has identified various capital improvements, such as concrete barriers and hydraulic and pneumatic bollards, to greatly diminish, or totally eliminate, the problem of port running. Rather than hiding drugs in false gas tanks or spare tires, port runners load their car's trunk with drugs, and, if confronted by an inspector, accelerate out of the inspection lane, often careening wildly. Several inspectors and local citizens have been nearly run over by port runners. Some cases resulted in shootings. Port running incidents jumped three-fold in 1994, to 795 reported cases.

The problem of narcotics smuggled in commercial conveyances and cargo will also be addressed through improved targeting and interdiction procedures, expanded use of full-container x-ray equipment, proactive investigative support by means of intense source development, and intelligence gathering and assessment. HARD LINE also proposes the staging of Customs Black Hawk helicopters in the United States to ferry Mexican counter-drug forces to arrest traffickers and seize narcotics in Mexico.

It is not included in the FY 1996 budget request.

Question. Will Customs employees be transferred to the border area? If so, what will the effect be on other Customs districts?

Answer. Up to 28 Special Agents and up to 21 Customs Patrol Officers will be transferred to the Southwest Border. This is part of the Customs Service effort to transfer Office of Investigations staff from low impact areas to high impact areas.

Question. Will any of the funding received from ONDCP be used for this purpose?

Answer. No.

CARGO PROCESSING ALONG THE MEXICAN BORDER

Question. Please describe your plans for augmenting cargo processing along the U.S. Mexico border.

Answer. The U.S. Customs Service has launched several initiatives to improve our systems in the area of narcotics interdiction along the southern border. We will be commencing a Southwest Border Gate-to-Gate review, in which we will be looking at all existing cargo clearing procedures, the use of high-tech equipment, and special operations conducted in cargo facilities.

We are establishing cross-functional targeting units at our major ports of entry with inspectors, agents, intelligence analysts, and operational analysis staff personnel as the core team. We have developed and will soon be testing an automated targeting system designed to increase the efficiency and effectiveness of our narcotics and commercial compliance targeting units. This expert weighted rule-based system will help facilitate the flow of low-risk cargo and concentrate our inspectional enforcement assets on the cargo with the highest risk.

The largest elective training initiative in FY 1994 was the training of over 300 southern border officers in cargo narcotic interdiction techniques. This training, developed by southern border officers, was designed specifically to address the unique situation that the U.S.-Mexican border presents in narcotic smuggling. These officers spent seven days in an intensive program in which they were trained in targeting and examination techniques, and in the proper use of the high-tech equipment

available along the southern border for the interdiction of narcotics. In FY 1995, another 240 southern border cargo officers are scheduled to attend the training.

We have also spent $11,000,000 over several years to support special High Intensity Drug Trafficking Areas (HIDTA) narcotic interdiction operations along our southern ports of entry and to purchase high-tech equipment whose main purpose is the discovering of narcotics in cargo conveyances and merchandise. Customs goal is to conduct more intensive, less intrusive cargo inspections through the use of high technology.

The Commissioner has authorized the expenditure of $1.3 million to upgrade the performance of the Line Release program. Over a dozen specific system enhancements have been identified to improve enforcement capabilities. These enhancements were identified by field officers from both the northern and southern border, and will be phased in over the next two years.

The Customs Service has always performed intensive examinations of cargo for the identification of commercial trade violations, as well as for the interdiction of narcotics. Compliance measurement will determine statistically valid rates of compliance with import laws, rules, and regulations. A Service-wide commodity driven compliance measurement is being performed at a 4-digit Harmonized Tariff Schedule (HTS) level. The examination will be selected using the statistically valid random selection used in the compliance measurement program.

NAFTA AND GATT

Question. With the recent passage of NAFTA and the Uruguay Round, how do you plan to handle an increased volume of trade and the likely increase in Customs fraud, while facilitating trade?

Answer. Customs is aware that all economic projections foresee a tremendous increase in the volume of trade for the next several years. In fact, we are compiling statistics on projected trade patterns and revenue implications for analysis of their impact on Customs in both the short and long terms. We intend to utilize the results of this analysis for many reasons, including the continued maintenance of a national trade enforcement strategy. For the past few years, Customs, where possible, has been using a targeted, selective approach to fraud enforcement

rather than a transaction by transaction approach. We have been encouraging our field personnel to use available software to manipulate data to look for trade aberrations rather than to review each and every import transaction. We couple this broad approach with a compliance review measurement program in which individual transactions are randomly selected for in-depth review. Results from this program are also used to direct Customs enforcement efforts. Customs is also in the process of integrating the provisions of the Customs Modernization Act (the Mod Act) into our agency. The Mod Act places the burden for compliance on the importer and gives Customs the responsibility for informing the importer of its obligations. Given all of the above, we believe that Customs is eminently capable of facilitating increased volumes of legitimate trade while intercepting that which is fraudulent.

Question. Please describe in greater detail the role of the Office of Strategic Trade in the implementation of the NAFTA rule of origin provisions. What is Customs doing to ensure that the rules are being properly implemented? How are you measuring the success of these efforts?

Answer. Many elements in the Customs Service are working collectively to ensure the enforcement of NAFTA. The Office of Strategic Trade (OST), just recently established, has designated NAFTA as one of its top priorities and is placing heavy emphasis on this subject as part of Customs "Trade Enforcement Action Plan." We recently concluded a conference of various entities within Customs to identify those merchandise areas that have the greatest likelihood of violating the requirements stipulated under the Agreement, and to draft a plan of action to address these areas.

OST is helping to assure the 1200 NAFTA verifications Customs committed to undertaking are completed in 1995. We have already begun interventions in certain industrial sectors suspected of circumventing NAFTA rules and regulations. In addition, our auditors are aggressively pursuing several agricultural sectors, with results that appear to be promising.

In order to gauge the success of our endeavors, we have a compliance measurement system which provides a comprehensive measurement of the compliance of importations across the entire spectrum of the Harmonized Tariff Schedule (HTS) in FY 1995. This system provides a statistically sound method of measuring

compliance levels from cargo examination through Entry Summary liquidation. We are using this compliance measurement system with a particular emphasis on NAFTA, since the system provides a baseline from which future progress can be measured. As a means of securing compliance under the NAFTA requirements OST is working cooperatively with all other Customs offices to assure that this is a successful joint effort.

MONEY LAUNDERING AND ASSET REMOVAL PROGRAM

Question. How successful have your efforts been in targeting suspected money laundering and implementing the nationwide asset identification and removal program?

Answer. As part of our financial enforcement strategy, Customs has developed Asset Identification and Removal Groups (AIRGs), which are interdisciplinary groups composed of agents, forensic auditors, intelligence research specialists, and asset identification specialists. AIRGs target for seizure the assets of people and organizations suspected of laundering the proceeds of illegal enterprise. While parallel criminal charges are investigated and cases are developed against suspected violators, AIRGs investigate compliance with currency statutes. Before AIRGs, the investigation of violations took place after the arrests had occurred. By that time, it was often too late to locate and seize the currency and assets of criminal enterprises. Many times, these individuals and organizations had taken "corrective" legal action to protect their assets. With AIRGs, the investigation of an individual or an organization involved in multiple criminal enterprises is pursued as a "single proceeding," making it more difficult for criminals to evade law enforcement officials and protect their assets.

Customs has implemented AIRGs in twelve Special Agent in Charge offices in the United States. The agents selected for the groups are formally trained in asset identification and forfeiture at the Federal Law Enforcement Training Center (FLETC) by the Enforcement Training Staff and experienced senior special agents from field locations.

Customs is fully committed to using asset seizure and removal as a mechanism for destroying well organized criminal organizations. To measure the success of our efforts, one can look to the value of seizures which have resulted from outbound financial investigations conducted by Customs. In FY 1993,

Customs opened 1,171 investigations which resulted in the seizure of approximately $62 million in currency and negotiable instruments. By comparison, Customs opened 1,516 investigations in FY 1994 which resulted in approximately $144 million in currency and negotiable instruments.

TRANSSHIPMENT

Question. Has Customs made any progress in combatting illegal transshipments?

Answer. We feel we have made great strides in combatting illegal transshipment. "Jump teams" continue to be an important part of our effort to identify illegal textile transshipment. Since October, Customs has sent jump teams to ten countries, identifying a number of factories involved or suspected of being involved in textile transshipment. One jump team visit identified over $8 million worth of completed garments (three containers) that were in the process of being transshipped through a third country. The three containers were seized by local authorities. U.S. Customs has identified 27 additional countries to be visited by the end of June, resulting in a total of 37 countries visited from October to June--with several countries visited twice.

In addition, based on Section 333(a), Subtitle D, of Public Law 103-465, Treasury will begin publishing the names of those manufacturers, exporters, and sellers involved in textile transshipment. United States importers entering products that were directly or indirectly processed by one of the foreign entities named on the list will be required to show to the satisfaction of U.S. Customs that they exercised reasonable care that the origin of the imported product is accurate. Once implemented, this should be an incentive for foreign entities not to become involved in textile transshipment.

U.S. Customs has created a new office, the Office of Strategic Trade, which has identified those commodities that are to be a primary focus for our activities. Textiles has been identified as one of those commodities. The Strategic Trade Textile Industry Team is currently working on nine intervention projects, five of which involve transshipment. This group is also instrumental in identifying countries to be visited by jump teams.

Finally, given the continuing financial incentives to transship, and that jump teams are most effective in countries with small to medium production capabilities, additional methods of scrutiny are being developed. Statistical data from larger, more developed countries displaying their imports and exports of textile merchandise, domestic production, and local consumption capacity are being analyzed. This will allow action to be taken on a broader range of transshipment sources than previous methods.

TREASURY FORFEITURE FUND

Question. Please detail how Treasury allocates funds to the various agencies which contribute to the Treasury Forfeiture Fund. How does Customs allocation compare to its contributions in FY 1996? In FY 1995?

The decisions on the distribution of resources from the Treasury Forfeiture Fund are made by the Treasury Under Secretary for Enforcement, based on recommendations of the Executive Office of Asset Forfeiture. The allocations of resources from the fund are based on the amount needed for equitable sharing payments to local governments for their participation in asset sharing cases, as well as the support needed for certain permanent expenses, such as property management contracts and administration of the fund and seized assets. Funds are also allocated for expenses related to the payment of information/payment of evidence and equipment.

The allocation process can be illustrated by examining what occurred in FY 1994. In FY 1994, Customs contributed $140 million to the Fund, the largest contribution from participating bureaus. Customs was allocated a total of $131 million, which was comprised of $102 million in discretionary funds and $29 million in funds for asset-related contract services. Customs expenditures for asset-related contract services benefit all bureaus participating in the Fund.

Allocations for FY 1995 are estimates.

	Customs Contribution	Allocated to Customs for Discretionary Purposes	Allocated to Customs for Contract Services
FY 1994	$140 million	$102 million	$29 million
FY 1995 est.	$133 million	$99 million	$35 million

Allocations for FY 1996 will not be made until this summer.

HIDTA TRANSFERS

Question. Customs received a transfer of $4.196 million in FY 1995 from the ONDCP. Provide a detailed breakdown of how and where these funds are being used. How do you plan to use ONDCP funds in FY 1996?

Answer. The tables on the next five pages contain information which detail the location, purpose, and amount of the original $4.196 million transferred from the Office of National Drug Control Policy (ONDCP) which has been distributed nationwide for drug control purposes. Because the FY 1996 HIDTA planning process will not be initiated until June, there is no comparable information available for FY 1996.

USE OF FY 1995 HIDTA FUNDS

San Diego Int'l Airport	A 9-member drug interdiction, investigative, intelligence gathering and prosecutorial task force.	$3,000
Operation Alliance, Joint Task Force, San Ysidro, CA	A 59-member task force which conducts follow-up investigations of seizures made by both the Border Patrol and Customs Inspections between and at the ports of entry.	$230,000

USE OF FY 1995 HIDTA FUNDS

Imperial Valley Multi-Agency Interdiction	Conducts multi-agency interdiction operations with all major Federal, State, and local agencies, including JTF-6.	$330,000
San Diego Financial Task Force	A 42-member financial task force.	$163,000
Operation Alliance, HIDTA Intelligence Group	An 8-member intelligence group on the border which identifies co-conspirators, assets, and determines interrelationships between members and organizations.	$60,000
OIP-Wagon Train	Contributes to the dismantling of major drug conspiracies by using state of the art tracking and electronic surveillance equipment in the execution of controlled deliveries.	$388,000
Predictive Analysis Team (New initiative)	Will assemble predictive intelligence to be utilized by all participating agencies, including those agencies which are affected by narcotics smuggling corridors within the West Texas-New Mexico HIDTA. Includes Wagon Train joint controlled deliveries.	$240,000
Financial Task Force, El Paso, TX	An 11-member financial task force which is collocated with the Financial Disruption Task Force, which is focusing on an organization which specializes in money laundering.	$138,000

USE OF FY 1995 HIDTA FUNDS

Aranda-Rodriquez, Presidio, TX	A 4-member task force which focuses on dismantling organizations which smuggle narcotics.	$39,000
Border Response, El Paso, TX	Initiative to address port running.	$84,000
West Texas HIDTA Executive Committee (New initiative)	Will administer the West Texas HIDTA.	$27,000
Las Cruces HIDTA Task Force	A 22-member task force located in Southern New Mexico which focuses on dismantling organizations which smuggle narcotics.	$18,000
Joint Intelligence Center	Responsible for providing analysis and data.	$57,000
Bernalillo, New Mexico	A 14-member task force which focuses on disrupting and dismantling narcotics distribution networks.	$17,000
New Mexico Money Laundering Task Force (New Initiative)	Located in Albuquerque and Las Cruces. Has the objective of disrupting money laundering organizations.	$370,000
San Antonio Financial Task Force	A 16-member financial task force which conducts phased investigations of Mexican and Colombian smuggling organizations.	$73,000

USE OF FY 1995 HIDTA FUNDS

Operation Plague, Brownsville, TX	A 22-member multi-agency special operation focusing on drug-smuggling, money laundering, and intelligence.	$93,000
McAllen Financial Task Force (Texas)	A 13-member joint financial task force which conducts global money laundering investigations.	$80,000
Northern Exposure (Laredo)	An undercover operation which focuses on the dismantling of organizations which smuggle narcotics and launder money.	$21,000
Del Rio Task Force	A 10-member joint task force which has targeted over 32 corporations and individuals for money laundering violations.	$47,000
Tucson Financial Task Force	A 15-member financial task force which focuses on international narcotics smuggling and money laundering.	$61,000
Santa Cruz County Drug Enforcement Unit	A 15-member task force located in Santa Cruz County which focuses on the disruption and dismantling of organizations which smuggle narcotics and launder money.	$67,000
Drug-Related Public Corruption Initiative (DRECOIN)	A 7-member integrity task force which investigates corruption at the Federal, State, and local levels.	$38,000
Phoenix Financial Task Force	A 3-agency effort in two locations. Task force focuses on the disruption and dismantling of organizations which smuggle narcotics and launder money.	$145,000

USE OF FY 1995 HIDTA FUNDS

SW Border Alliance Yuma, AZ	A 20-member task force which uses a multi-faceted investigative approach to address drug-trafficking and money laundering.	$42,000
Arizona Alliance Law Enforcement Response Team (AALERT)	A 21-member response team which provides a linkage between interdiction and investigations through the use of controlled deliveries.	$40,000
Cochise Border Alliance (Arizona)	The goal of the Cochise County HIDTA effort is to dismantle and disrupt significant drug trafficking and drug money laundering organizations.	$43,000
"Eagle Eyes"	The primary objective will be to provide volunteer inspectors from different ports of entry (POEs) in the El Paso District to work at POEs at Columbus, Antelope Wells, and Santa Teresa.	$11,000
Los Angeles (Metro HIDTA)	A 137-member joint task force involved in the dismantling of major international drug smuggling organizations.	$49,270
Houston (Metro HIDTA)	A 95-member money laundering task force which traces illegal drug proceeds and identifies money launderers.	$320,000
New York-Gangs (Metro HIDTA)	NYPD--A 35-member NYPD-NYSP-DEA Gang Task Force which targets gangs involved in the trafficking of narcotics.	$25,000

USE OF FY 1995 HIDTA FUNDS

New York-El Dorado (Metro HIDTA)	El Dorado--A 140-member financial task force with satellite offices in Nassau and Suffolk Counties.	$760,000
Miami (Metro HIDTA)	A 250-member task force composed of 26 agencies which focuses on money laundering at the international, domestic, and regional levels.	$116,480
TOTAL		$4,195,750

USER FEE ACCOUNTS

Question. What is the current cumulative surplus/deficit (excess of collections over expenses) in the Merchandise Processing user fee account, and the COBRA user fee account, respectively.

Answer. Merchandise Processing Fee collections, as of February 28, 1995, total $263 million. This does not represent a surplus or a deficit, as no expenses are paid out of the Merchandise Processing user fee account. These funds go into the Treasury general fund, and are then used to offset Customs commercial costs.

As of February 28, 1995, the COBRA user fee account has a surplus, or unobligated balance, of $374 million.

FY 1996 BUDGET PROPOSAL

Question. What is the budget increase the Customs Service is requesting in FY 1996?

Answer. The only proposed increase in any of Customs accounts is an additional $685,000 from the Violent Crime Control and Law Enforcement Trust Fund. This addition would be used to enhance Customs activities in border enforcement measures.

Overall, Customs budget request represents a decrease of $38.7 million from FY 1995 levels.

RECENT ALLEGATIONS

Question. Do you plan to use any of these resources in the FY 1996 budget to investigate into the recent allegations of corruption in the U.S. Customs Service which include a pattern of collaboration between drug traffickers and Customs agents?

Answer. Within the Customs Service, the Office of Internal Affairs has been authorized to investigate any allegation of corruption and criminal misconduct of Customs employees related to the performance of their official duties. Thorough investigations support honest employees while identifying the occasional unscrupulous employee, who can then be removed from his or her position within the Customs Service.

The Office of Internal Affairs has already begun looking into the recent allegations of corruption. It will continue to look into any allegations of corruption which arise in FY 1996, FY 1997, and beyond. Resources for the Office of Internal Affairs are provided on an ongoing basis. No additional funds are being proposed as part of the FY 1996 budget request.

Question. Is the Customs Service planning to restructure their department to respond to recent allegations of poor performance at the Southwestern border?

Answer. Customs is not restructuring its operations because of the allegations made in the L.A. Times or on the Dateline television program. The information and allegations used by the reporters were either incorrect or distorted. The Customs Service has had considerable success along the Southwest border over the past 12 years by being flexible and addressing the real threats for drug smuggling. For instance, it was Customs air program that stopped the widespread use of private aircraft to smuggle drugs across the border with Mexico.

The threats today are two-fold. The first is in the passenger vehicle area, as witnessed by the surge in violent incidents involving smugglers driving through ports at a high rate of speed. The second is in the cargo area. To address those threats, Customs has begun a long-term operation called HARD LINE. This operation focuses our resources on disrupting

and eventually reducing drug smuggling through our ports of entry. Approximately 50 special agents and patrol officers will be transferred to offices along the southern border to provide investigative support, participate in cross-functional intelligence teams, and provide a uniformed presence at the ports of entry. To deter port running and lessen the probability of violence against officers and innocent bystanders, modifications to the ports of entry will include the purchase and installation of jersey barriers, fixed and hydraulic bollards, improved lighting and communications, stop-sticks (controlled deflation of tires), and security cameras.

Question. Will any increased funds be used in the distribution of agents at the three ports of entry?

Answer. No.

OPERATION HARD LINE

Question. How much of the FY 1996 budget will be used to fund "Operation Hard Line"?

Answer. No funding for Operation Hard Line is included in the regular FY 1996 budget request.

Question. If funds come from FY 1995 obligations, where are these funds transferred from?

Answer. The present plan is to use $4 million from the 1995 Crime Bill and $1 million from the Treasury Forfeiture Fund. In addition, the Administration is considering a possible supplemental request if a funding source can be determined to offset the increased cost.

Question. With increased budgets, do you expect a greater success rate at apprehending drug smugglers at the southwestern border?

Answer. HARD LINE complements the successful efforts of the United States Border Patrol between the ports of entry, including Operations HOLD THE LINE and GATEKEEPER, as well as the activities of the Customs Air Program, in the air space above the border, to create a unified Southwest border enforcement system.

Operation Hard Line is a creative and innovative response to a national problem. The smuggling of illegal narcotics generates enormous illegal activity and violence, which affects all of us. Customs strategy is aimed at reducing the flow of drugs into the United States and protecting the general public, as well as our law enforcement personnel, from the effects of the drug trade.

MEASURES TO PREVENT CORRUPTION

Question. What additional measures should be taken to ensure Congress that corruption within the Customs Service will be curbed?

Answer. The unsupported broad-brush allegations made in the newspaper article and television piece are easily made and difficult to counter. Many of the allegations made in the San Diego area were the same ones made more than three years ago by a disgruntled former employee. They were investigated by our Office of Internal Affairs, the Treasury Inspector General, or the U.S. Attorney for San Diego. All were found to be unsubstantiated.

As a matter of policy, Customs already takes a number of steps to prevent incidents of corruption within the Customs Service. We have random drug testing of inspectors, agents, and canine officers. We conduct random cross-cutting enforcement operations in front of the regular primary inspection lanes to make it difficult for a smuggling organization to predict when the best time is to send a loaded vehicle to a potentially corrupt officer. Finally, our Office of Internal Affairs vigorously investigates any specific allegation of corruption.

THE FY 1994 BUDGET

Question. What was the budget increase between FY 1993 to FY 1994?

Answer. In FY 1993, Customs Service appropriations (P.L. 102-393) totaled $1,469,433,000. In FY 1994, Customs Service appropriations (P.L. 103-123) totaled $1,454,030,000. This represents an overall decrease of $15,403,000, or a little over one percent, from FY 1993 to FY 1994.

Question. If there was an increase in resources between FY 1993 and FY 1994, what percentage of funds went towards drug interdictions at the southwestern border?

Answer. There was a decrease in Customs budget from FY 1993 to FY 1994; however, Customs maintained its drug interdiction efforts on the Southwest border. In total, the Customs Service devotes about 35 percent of its budget to drug interdiction.

OPERATION HARD LINE

Question. Last Saturday, Commissioner Weise and National Drug Control Policy Director Brown announced a new initiative called "Operation Hard Line" to strengthen efforts to combat drug smuggling along the Southwest border. This new initiative is in response to changing trends in drug smuggling and a surge of violent confrontations with drug runners in ports. The proposed budget for this new initiative is $12 million. Could you please describe this new initiative and indicate if the money to fund the initiative is already included in the President's FY 1996 budget or constitutes an addition to the President's budget.

Answer. Current estimates are that 70 percent of the cocaine smuggled into the United States crosses our common border with Mexico. In addition to the terrible toll the use of cocaine takes on our country, this illegal activity has generated a number of related problems, including disturbing trends of escalating violence at ports of entry which jeopardize the safety of Customs personnel and endanger the public.

In response to the massive narcotics threat, the Customs Service is implementing Operation HARD LINE to focus on permanently hardening our anti-smuggling efforts at the ports of entry. HARD LINE will build upon the successful United States Border Patrol operations between the ports of entry, including HOLD THE LINE and GATEKEEPER, and the successful efforts of Customs Air Program, in the air space above the border, to create a comprehensive and unified Southwest border enforcement system.

In order to enhance port enforcement and officer safety, Customs has identified various capital improvements, such as concrete barriers and hydraulic and pneumatic bollards, to greatly diminish, or totally eliminate, the problem of port

running. Rather than hiding drugs in false gas tanks or spare tires, port runners load their car's trunk with drugs, and, if confronted by an inspector, accelerate out of the inspection lane, often careening wildly. Several inspectors and local citizens have been nearly run over by port runners. Some cases resulted in shootings. Port running incidents jumped three-fold in 1994, to 795 reported cases.

The problem of narcotics smuggled in commercial conveyances and cargo will also be addressed through improved targeting and interdiction procedures, expanded use of full-container x-ray equipment, proactive investigative support by means of intense source development, and intelligence gathering and assessment. HARD LINE also proposes the staging of Customs Black Hawk helicopters in the United States to ferry Mexican counter-drug forces to arrest traffickers and seize narcotics in Mexico.

It is not included in the FY 1996 budget request.

REQUESTED FUNDING IN FY 1996 FOR DRUG CONTROL ACTIVITIES

Question. Requested funding by Customs for drug control activities for FY 1996 is roughly $420 million. Requested personnel levels are 4,924 FTEs. This is a reduction from the $466 million and 5,113 FTEs budgeted by Customs for drug control activities in FY 1994. By contrast, during that same time, Customs funding for commercial operations has increased nearly 10 percent and personnel levels have increased by 4 percent. Why has Customs increased its resources for commercial operations and decreased them for combatting drug smuggling? Is this impeding Customs ability to carry out its drug enforcement functions?

Answer. The 200 FTE decrease in drug enforcement FTE between FY 1994 and FY 1996 is actually a reflection of the success of Customs air and marine programs in deterring airborne and seaborne deliveries of illegal narcotics. These programs were reduced in FY 1995, in part as a result of reduction in the threat of deliveries of illegal narcotics by these means. The increases in commercial programs reflect Congressional support of Customs role in American commerce.

REDUCTION IN AIR PROGRAM FUNDING

Question. Since FY 1994, Customs budget for the air enforcement program against drugs has fallen from $177 million to $112 million, a decrease of nearly 36 percent. It appears that no other part of the Customs budget has been reduced so dramatically. Please explain why this is the case. Is our air program still funded at a level that makes it an effective enforcement operation?

Answer. The Aviation Program, like most other Federal programs, has to operate under greater fiscal constraints in FY 1995. The FY 1995 air program budget was reduced by approximately $45 million. Customs placed 22 aircraft into long-term storage, redeployed aircraft, and reduced flight hours by approximately 30 percent.

Because of its success in reducing airborne smuggling directly into the United States, it is believed that the present threat is being adequately addressed with the remaining resources. Customs has streamlined its program and operations to achieve the types of economies and efficiencies which would maintain a viable interdiction capability. Moreover, Customs has placed a high priority on maintaining the infrastructure to include retaining all operating locations, aircrew, interceptor/ tracker and enforcement/bust aircraft in order to flex back to an increased domestic interdiction response posture.

The proposed reductions in the FY 1996 operating level will be absorbed in the same manner of reducing flight hours and scaling back the Customs Citation interceptor training program in Mexico. The proposed FY 1996 base budget of $60.993 million will be supplemented with $20.1 million in funding from unobligated carryover balances. This additional funding from unobligated balances will not be available for FY 1997.

RESOURCES SPLIT BETWEEN COMMERCIAL AND NON-COMMERCIAL USES

Question. The proposed Customs budget for FY 1996 devotes approximately 60 percent to commercial operations and 40 percent to non-commercial operations (such as drug enforcement, control of illegal exports, control of child pornography, and support of the enforcement efforts of other agencies like USDA). How does

this compare with historical trends in Customs allocation of resources?

Answer. As you can see from the table below, Customs has maintained this split in the allocation of resources for some time.

U.S. CUSTOMS SERVICE

SALARIES & EXPENSES

Resources Split Between Commercial and Non-Commercial Use

	Commercial		Non-Commercial		Total		
	FTE	$000	FTE	$000	FTE	$000	
1990	10,076	618,246	6,430	436,633	16,506	1,054,879	1/
1991	10,069	668,110	5,977	486,864	16046	1,154,974	2/
1992	10,871	754,581	6,540	511,724	17411	1,266,305	3/
1993	10,130	733,428	7,077	591,616	17207	1,331,420	4/
1994	10,361	769,915	6,605	584,406	16966	1,354,321	5/
1995	10,841	847,674	6,368	544,977	17209	1,392,651	6/

FOOTNOTES:

DATA

1/ - FY 1990 Actual FTE Level; FY 1990 Actual Obligation Level

2/ - FY 1991 Actual FTE Level; FY 1991 Actual Obligation Level

3/ - FY 1992 Appropriated FTE Level; FY 1992 Appropriated Funding Level

4/ - FY 1993 Actual FTE Level; FY 1993 Actual Obligation Level

5/ - FY 1994 Actual FTE Level; FY 1994 Actual Obligation Level

6/ - FY 1995 Appropriated FTE Level; FY 1995 Appropriated Funding Level

Chairman CRANE. I would now like to invite Mr. Shapiro to come forward.

Mr. Shapiro, actually, we are going to give you a double assignment. You might address first the question of USTR and then if you would be so kind, after having completed that, get into the question of GSP extension.

STATEMENT OF IRA SHAPIRO, SENIOR COUNSEL AND NEGOTIATOR, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. SHAPIRO. Thank you, Mr. Chairman.

If I may, Mr. Chairman, this is my first time here with you in the chair, and I simply wanted to add on the record what I said before, which was that any of our success in trade policy in the last couple of years has been because of bipartisan support. We have worked very hard in this committee with both Republicans and Democrats at the member level and staff level, and we have always been grateful for the working relationship. I know Ambassador Kantor and the rest of us intend to continue it to the best of our ability.

Mr. Chairman, it is a great pleasure to be here to present USTR's budget authorization request and also to discuss the administration's strong support for extending the GSP Program. I will try to keep my remarks brief and hope that my full statement can appear in the record.

Mr. Chairman, the administration is proposing a 2-year extension of the authorization for appropriations for USTR. For fiscal year 1996, we are recommending an authorization of $20,949,000. For fiscal year 1997, we are recommending an authorization of such sums as may be necessary.

The 1996 authorization request would match the President's budget request for that year, and the such sums language for fiscal year 1997 is intended to leave maximum flexibility in setting USTR's appropriation level for the fiscal year that begins 19 months from today.

For both years, Mr. Chairman, we would propose to retain the existing limitation of $98,000 for representation activities and $2.5 million for the amount that can be carried over from one fiscal year to the next.

Mr. Chairman, essentially, the authorization level we are asking for is a no-growth level. These are levels that we believe will consistently challenge us to economize and to try to find ways to continue to operate efficiently.

Mr. Chairman, I believe that we can all take some pride in the accomplishments of the past 2 years in trade that USTR has been involved in. We were involved in the creation of the largest hemispheric free trade zone in the world, the completion of the negotiations and the congressional approval of the broadest global trade agreement in history, and, beyond that, by our count 71 trade agreements and investment agreements in the past 24 months.

From our standpoint, the record doesn't end there because we have also worked hard to set the stage for more expansion of trade and more jobs for American workers in the future by reaching agreements and setting realistic and achievable goals to reduce trade barriers with countries in APEC, the Asia-Pacific Economic

Cooperation forum, and with the 34 nations of Latin America. As you know, these are the fastest growing markets in the world and they will be in the future significant opportunities for U.S. exports, and nothing that we have accomplished to date could have been accomplished without the bipartisan support of Congress.

But if I could leave one message with the subcommittee today, it would simply be to say that our work is far from done. In fact, the conclusion of NAFTA and the Uruguay round opens the door to a whole new phase of work for us in the years to come.

Ambassador Kantor has set two priorities for the agency. The first is to implement and enforce our existing trade agreements and the second is to expand trade for the increase of U.S. products and services around the world.

I just want to say a word about this implementation issue, because we take it very seriously, and I want to try to convey simply how important it is and that it is resource intensive as well.

Mr. Chairman, recently, one of our staff indicated to me that she had spent 90 percent of her time 1 year in the implementation and carrying out of the semiconductor agreement several years ago that we entered into between the United States and Japan. And I think that is indicative of the fact that trade agreements are important and we have worked hard for them, but that is only the first step.

And with respect to all the agreements—from the WTO to NAFTA to our 14 bilateral agreements with Japan to the intellectual property agreement that we are quite pleased about that we entered into just yesterday with China—the enforcement and implementation of these agreements is very serious, and it requires a commitment of staff that we intend to make with the committee's support.

The other thing that I will mention is that we have a number of ongoing 301 cases, investigations which require considerable effort on our part, ranging from the European Union's import regime on bananas to Japan's practices in the aftermarket for auto parts, to Korea's barriers to our beef exports.

We will continue to use our trade laws and to carry out the law as Congress has told us to to aggressively try to open markets and make these agreements work for U.S. companies and, most important, for U.S. workers.

Mr. Chairman, Ambassador Kantor has often said there is nothing that is academic about what we are doing here. This is part of an economic agenda designed to create jobs and expand opportunities for our workers around the country, and that is what we intend, with your support, to continue doing.

Let me just add 2 or 3 minutes on GSP and then, of course, respond to any questions you have.

The GSP Program expired on September 30, 1994, but in the Uruguay round implementing legislation, Congress reauthorized the program, extended essentially without modifications through July 31, 1995. The administration supports the reauthorization of the GSP Program and continues to believe that it is an important program.

It is a program that, by eliminating import duties in certain product areas, provides a market-based incentive for trade and development. Congress since 1974 has been supportive of the view

that developing through trade rather than aid was an appropriate course, and we think GSP is still an important tool in that regard.

It has also been over the years a flexible and effective mechanism for furthering our trade policy agenda in the areas of market access, asking other countries to assume their responsibility for open markets and joining the trading system, in the area of intellectual property, and also in the area of workers' rights.

Mr. Chairman, last year, you will recall that the subcommittee approved some program reforms which I think are fairly described as relatively modest, but constructive reforms that we think will make the program work better. Those reforms included putting into statute the so-called 3-year rule so that products would only be added or could only be added once every 3 years.

You would not have to go through the process of reviewing individual products each year. We also in that reform proposal had included a change in the competitive need limit, lowering that competitive need limit, which is the limit at which trade can occur in a product line and still be eligible for GSP—we had lowered it from $108 million, I believe, to $75 million, and kept in effect the notion of a waiver for appropriate cases.

We had also recommended, and the subcommittee had endorsed last year, the idea of a reduction in the per capita income level of countries that would be eligible for GSP from $11,000 to $7,000 per capita.

And finally, we had added provisions to make sure that additional benefits would be available for the least of the less-developed nations, because I think a review that we have had of the GSP Program suggests that the LDCs were not getting as much support and encouragement through removal of tariffs as we would have liked.

We have looked at that proposal again, Mr. Chairman, and we would recommend to the subcommittee that the administration support those reforms as approved by the subcommittee last year. We would support GSP and the reforms in the program, as such.

On the difficult area of funding, we are prepared to work with the Congress to try to figure out the funding for the program and put it on a somewhat more stable basis. There is no question, as you commented, and as I believe Mr. Payne commented before he left, that this program will be stronger if it is funded on a multiyear basis, and the last 2 years, when we have had 12-month extensions or 10-month extensions, have created a good deal of uncertainty.

We are aware, obviously, as you are, of the fiscal constraints. We can only say that we would like to work with you to see if between USTR, OMB and the committees that we can find a way to fund this program more securely.

Mr. Chairman, that concludes my remarks. I am happy to respond to any questions about our authorization or the GSP Program.

[The prepared statement follows:]

Testimony of Ira Shapiro
Senior Counsel and Negotiator
Office of the United States Trade Representative
Before the Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives
February 27, 1995

Mr. Chairman:

It is my pleasure to appear before the Subcommittee today to present the budget authorization request for the Office of the United States Trade Representative and to discuss the Administration's support for extending the Generalized System of Preferences program. This morning, I would also like to highlight some of the enforcement actions taken by the Administration in the last two years, and describe our commitment to enforcing trade agreements in the next two years.

As members of the Subcommittee know, the Office of the United States Trade Representative has an enormous mission: to develop and coordinate U.S. international trade, commodity, and trade-related direct investment policy, to articulate trade policy for the Administration, and to lead negotiations with other countries on these matters.

This is a mission that USTR tackles with great enthusiasm and dedication. The agency gets the job done with a small, but highly motivated, professional staff that is dedicated to promoting U.S. economic interests. The 166 FTEs proposed for FY 1996 is complemented by personnel support from other Federal agencies and by students and interns. Together, these staff have helped produce remarkable results, and will continue to be challenged in carrying out the tasks that lie ahead.

Two-Year Authorization

We are proposing a two-year extension of USTR's authorization of appropriations, for fiscal years 1996 and 1997. The Administration's request recommends an FY 1996 authorization level of $20,949,000, the same as the level appropriated for FY 1995 and the amount requested in the President's Budget for FY 1996. The authorization request for FY 1997 is such sums as may be necessary.

For each fiscal year, the Representation fund authority would remain at $98,000, and the amount available to be carried over from one fiscal year to the next would remain at $2,500,000.

In short, Mr. Chairman, the Administration is recommending straightforward extensions of existing authorizations.

Recent Accomplishments

The Administration and the Congress can take pride in what has been accomplished on trade since President Clinton took office two years ago. The Clinton Administration, in tandem with a bipartisan coalition in Congress, has achieved the most important two years in trade in history.

Working together, we created the largest hemispheric trade zone in the world, through enactment of NAFTA; we concluded and approved the broadest trade agreement in history, the Uruguay Round; we negotiated 38 agreements on Textiles, 14 agreements with Japan; 15 bilateral investment treaties, and four intellectual property rights agreements. We also negotiated an agreement covering 80 percent of global shipbuilding.

In the last two years, the Administration has also set the stage for future trade expansion with Asia and Latin America.

At the 1993 Leaders meeting in Seattle, the President reached agreement with countries of the Asia Pacific Economic Cooperation forum to eliminate trade barriers by the year 2010 for developed countries and by 2020 for non-developed nations.

Last December, at the Summit of the Americas, President Clinton hosted an historic meeting of 34 nations of Latin America. The democratically-elected leaders of those nations enthusiastically endorsed the U.S. proposal to construct "The Free Trade Agreement of the Americas" by the year 2005.

Full Agenda for the Future

The work that lies ahead in the next two years will be every bit as important as what has been accomplished in the last two years. With completion of some 71 agreements since January 1993, our trade agenda is now entering a new phase. We will implement the agreements we have reached, and lay the groundwork for future opportunities to open markets and expand trade.

The Administration's efforts will fall under two broad goals: first, implementation and enforcement of existing agreements; and second, expansion of trade to increase exports.

Implementation
Ensuring that the World Trade Organization is constructed with U.S. interests in mind is a high priority for USTR and the Administration. This goes beyond selection of a new Director General. Councils must be set up and agreements need to be interpreted. We also need to make sure that other countries live up to their commitments under the WTO. Finally, we need to be sure that an effective, efficient and strong dispute settlement

system is in place. All of this will require close monitoring.

Enforcement

Enforcement of both international trade agreements and U.S. trade laws underpins the Administration's approach to trade and will remain high on USTR's work agenda in the next two years. We will use every enforcement mechanism available to us to make sure that others live up to trade agreements. These enforcement mechanisms include: Section 301, our principal tool for addressing foreign unfair trade practices; Special 301 used for enforcing violations of intellectual property agreements; the Antidumping and Countervailing Duty laws, which we will use under both NAFTA and the Uruguay Round; Title VII for enforcement of procurement agreements; and Section 1377 of the Omnibus Trade and Competitiveness of 1988 for enforcement of telecommunications agreements.

The policy of this Administration is to remain tough in vigorously enforcing trade agreements. Those agreements are only as good as our commitment to enforce them. Monitoring and enforcement activities will be priority activities for this agency through FY 1997.

FY 1996 Budget Request

The FY 1996 budget request for USTR will support USTR's work agenda for that year. This request represents the right resource level for allowing USTR to carry out the ambitious work agenda that lies ahead, and for ensuring that we do our small part in the President's broader effort to reduce the size of Government and to make it work more efficiently.

Our request for FY 1996 provides the same funding level as FY 1995, and reduces employment by 2 FTEs. We are confident that we can sustain the current operations at the President's budget request level. We will absorb nearly $500,000 during FY 1996 from the rising cost of doing business by reducing administrative costs and continuing to make the agency operate more efficiently.

As you know, the President's FY 1996 Budget requested $20,949,000 for USTR. At the same time, as part of the President's Reinventing Government Initiative, all Federal agencies are re-examining their mission. This includes: addressing the mission based on "customer" input; asking whether the mission could be accomplished as well or better without Federal involvement; looking for ways to cut cost or improve performance through competition; and ways to put customers first, cut red tape, and empower employees. We are actively participating in this effort and will be keeping the Committee fully apprised of our review.

Generalized System of Preferences

I would now like to turn to the GSP program. The Generalized System of Preferences program, GSP, is authorized by Title V of the Trade Act of 1974. The GSP program expired on September 30, 1994. Due to the bipartisan leadership of this committee, the Uruguay Round Agreements Act reauthorized the program, without modification, until July 31, 1995.

Let me briefly describe the GSP program and explain why the Administration supports its reauthorization.

The GSP program offers duty-free access to the U.S. market for specified products that are imported from designated developing countries and territories. By granting tariff preferences, the GSP program reflects the U.S. commitment to an open world trading system.

The program has three broad goals:

one, to promote economic development in developing and transitioning economies through increased trade, rather than foreign aid;

two, to reinforce our trade policy agenda by encouraging beneficiaries to open their markets, to comply more fully with international trading rules, and to assume greater responsibility for the international trading system; and

three, to help maintain U.S. international competitiveness by lowering costs for U.S. business, as well as lowering prices for American consumers.

By eliminating import duties -- that is, cutting "taxes" -- the GSP program provides a market-based incentive for trade and development. The GSP program fosters development, and this, in turn, creates growing markets for American exports and American workers.

The GSP program is an important aspect of our support for democratic and market reform in Central and Eastern Europe and the former Soviet Union. Favorable access to our market offers an opportunity for entrepreneurs in these emerging democracies to earn hard currency. In this way, the GSP program supports the political and economic reform in the former Soviet Bloc.

The GSP program is important to the U.S. business community because it eliminates duties on imported parts and components. This enables U.S. business to maintain its global competitiveness. The GSP program is valuable to retailers and American consumers because it effectively lowers prices on consumer products. Finally, it is a flexible and effective means

of furthering our trade policy agenda.

For these reasons, the Administration believes that the program should be renewed.

At present, more than 140 developing countries and territories are eligible for duty-free treatment on about 4,400 of the 9,400 product categories in the Harmonized Tariff Schedule of the United States.

In 1994, there were $18.4 billion in duty-free imports under the GSP program, accounting for approximately 16 percent of total U.S. imports from GSP beneficiary countries and 3 percent of total U.S. imports. Some of the leading product categories are consumer electronics, computers (i.e. ADP machines), auto parts, and toys and dolls. In 1993, Mexico was the single largest beneficiary, accounting for $5 billion of the total, but it became ineligible for GSP benefits on January 1, 1994, with the implementation of the North American Free Trade Agreement. Current leading GSP beneficiaries include: Malaysia, Thailand, Brazil, The Philippines, Indonesia, India, Argentina, Venezuela, Russia, Chile and Turkey.

To qualify for GSP privileges, each beneficiary must meet various eligibility requirements. These include market access, worker rights and intellectual property rights. The products that are eligible for the GSP program are products that are not considered "import sensitive". In addition, the GSP statute excludes certain products from the GSP program altogether -- for example, footwear, textiles and apparel. Each year, USTR conducts a review process in which products can be added to, or removed from, the GSP program, or in which a beneficiary's compliance with the eligibility requirements can be reviewed.

Each review of a beneficiary's compliance with the eligibility requirements requires extensive fact-finding and analysis of a beneficiary's law and practice. In most cases, the GSP review process encourages the reform of a country's labor or IPR law, or a firm commitment to take steps to adhere more fully with applicable international standards and practices.

Let me now briefly describe the efforts last year to have the GSP program renewed by the Congress.

In 1994, the Administration, working in close cooperation with this Subcommittee, sought to have the GSP program reauthorized by Congress as part of the Uruguay Round implementing bill. The Administration's proposal would have made some modest reforms to the GSP program. The proposal was modified and approved by this Subcommittee.

The proposal would have made a number of technical changes to the

GSP statute and regulations. These changes would have simplified and improved the administration and operation of the GSP program. For example, the proposal would have codified the so-called three-year rule, by providing that products may only be considered for addition to the GSP program every third year. The proposal would have reduced the per capita GNP limit in the GSP statute from about $11 thousand per capita to about $7 thousand per capita. The proposal also would have reduced the so-called Competitive Need Limit (CNL) from about $108 million to $75 million, but it would have retained the authority to waive the CNLs under certain circumstances. Finally, the proposal would have authorized additional GSP benefits for the least-developed developing countries.

Let me conclude my remarks on GSP by noting that the Administration believes that the GSP program has been effective in encouraging trade and development in beneficiary countries and that the GSP program has contributed to the competitiveness of many U.S. companies. We recognize that continued support for unilateral tariff concessions depends, at least in part, on the extent to which GSP beneficiaries assume greater responsibility for the world trading system by, for example, opening their markets and adhering fully and promptly to the Uruguay Round agreements. This is particularly true for the more advanced beneficiaries. Indeed, the Administration expects that, with the progressive development of their economies, such beneficiaries would participate more fully in the framework of rights and obligations under the GATT/WTO.

In fact, we believe that the GSP program has operated as an effective incentive, or "carrot", for beneficiary countries to assume greater responsibility for the world trading system by, for example, taking commensurate steps to protect intellectual property rights and to provide basic worker rights.

The Administration supports the GSP program and we are prepared to work with you, Mr. Chairman, and the Members of this Subcommittee to secure the longer-term renewal of the GSP program. We believe that longer-term renewal is necessary in order to preserve the program's strengths, but are cognizant of fiscal constraints. We have carefully re-examined the GSP reform proposal that was approved by this Subcommittee last year. The Administration supports that proposal, and we believe that it merits full and serious consideration.

Thanks you, Mr. Chairman and Members of the Subcommittee. I would be happy to answer any questions that you may have.

Chairman CRANE. Thank you.

Inasmuch as our economy over the past several years has grown, thanks to increased trade, the importance of looking to future expanded trade opportunities becomes clear, and that includes free trade agreements, hopefully, down the line with Pacific rim countries, but most immediately, this year with Chile. Will you and your staff be able to work at the same level to open new markets with the requests that you are making for a cutback, admittedly modest, but a cutback in personnel and without a funding increase?

Mr. SHAPIRO. Mr. Chairman, I think that we have essentially requested a level budget. We are down, I believe, two FTEs in this request, and we think that this is adequate for us to do the important work we have got, and at the same time to participate in the effort that the administration and Congress are making to keep the size and cost of government down.

Obviously, we have in the past 2 years devoted a considerable amount of resources to finishing the Uruguay round, and we will be reallocating resources, but we think that we can do the job with what we have asked for.

Chairman CRANE. Do you have a timeframe that you would like to see implemented for CBI parity?

Mr. SHAPIRO. Mr. Chairman, Ambassador Barshefsky testified some weeks ago before you, and I can't add much to what she said with respect to CBI parity. We support the program, want to work through this, but I don't have a specific timeframe today.

Chairman CRANE. When do you plan to begin negotiations with Chile over the Chilean free trade agreement?

Mr. SHAPIRO. We have begun consultations with our NAFTA partners and with the Chileans at certain levels. Our first step was to review the whole NAFTA to analyze what steps would have to be taken for Chile to accede. We have a group going down to Mexico City next week to meet with our NAFTA partners and to talk about this. I think realistically we are hoping to begin formal negotiations some time in May.

Chairman CRANE. Have you got a target for the successful completion of the negotiations?

Mr. SHAPIRO. I don't want to tie the hands of those who are negotiating it, and I don't have responsibility for it, but I am hoping that we could complete this some time later this year.

Chairman CRANE. I hope so, too. I think it is vital that we get it completed before the year is out.

Thank you.

Mr. Hancock.

Mr. HANCOCK. No questions.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Let me thank you for the fantastic agreement that was reached over the weekend. It was 2 years of hard work, and from what I read and heard, it was a real win-win for the United States of America. Do you have any idea as to what will be, in dollars or in taxes, the increase in U.S. exports in movies, videos, books, music, and computer software?

Mr. SHAPIRO. Mr. Rangel, I would have difficulty quantifying it. We believed that the piracy that was rampant and has been rampant, was costing us, our industries, at least $1 billion a year. Part

of this agreement that we are pleased about, not only addresses the piracy, but also opens the market for legitimate U.S. copyrighted and trademarked works.

But the market in China is such and the difficulties of predicting it are such, that I wouldn't want to venture much of a guess. I think that we will benefit considerably by billions of dollars in the coming years, but I do think we are all going to have to work very hard to ensure that the agreement is implemented.

If I could add one thing that I know Ambassador Kantor and Ambassador Barshefsky feel strongly about; I believe the success of this agreement owes a great deal to the strong support we had from Congress and from the private sector. And when I say the private sector, while I have great appreciation for what our copyright industries did and the support they gave us, a lot of the other U.S. industries that have interests in China, including some that stood to lose if we got into an exchange of retaliation, were also very strongly supportive, and it made a great deal of difference.

Mr. RANGEL. On another subject, in Florida it appeared as though your shop and the President made a commitment to the Caribbean countries as relates to parity to NAFTA. Could you tell me the depth of that commitment because some of the Caribbean countries don't know where we are now on this?

Mr. SHAPIRO. We have made that commitment and we are going to be pursuing the legislation through the interim trade program during this year. That commitment stands. While I am not working on it personally, Ambassador Barshefsky is.

It is a commitment that I felt strongly about because I had occasion last year to go to a gathering of the heads of States of the Caribbean basin and state our support for it, and it was a disappointment that circumstances were such that we didn't get it done last year.

Mr. RANGEL. I note that while our diplomats discuss legal trade, I assume that there are some countries as it relates to narcotics, that you are never aware of?

Mr. SHAPIRO. I am sorry, I couldn't hear that.

Mr. RANGEL. Knowing how difficult it is to get language in NAFTA and other agreements as it relates to narcotics, I assume that in your negotiation over these positive things that the question never reaches your table at all; is that correct?

Mr. SHAPIRO. No, actually the Justice Department has been taking the lead in that. That hasn't been something we have been involved in. I am sorry, I couldn't hear you.

Mr. RANGEL. It would really be out of protocol for you to raise these things—is there a restriction other than Justice?

Mr. SHAPIRO. No, Mr. Rangel, there isn't a restriction, and over the years, we have on occasion talked about things that go beyond our mandate. But I know that in terms of the work that was done recently with respect to the financial package for Mexico, there was a considerable amount of emphasis placed on law enforcement issues, and, obviously, Justice took the lead in that.

Mr. RANGEL. After the administration changed the methods of guaranteeing the loans, what happened to those agreements? Are they still valid? The side agreements?

Mr. SHAPIRO. My understanding, and I am skidding onto thin ice here, because I haven't been that involved in the package, but my understanding is there are understandings or side letters between the Department of Justice—the U.S. Government through the Department of Justice and the Mexican Government.

Mr. RANGEL. Does that mean these letters are secret?

Mr. SHAPIRO. I may have to fall back on this. If not above my pay grade, it is at least to the sides of my pay grade.

Mr. RANGEL. Will you find out?

Mr. SHAPIRO. Yes.

[The following was subsequently received:]

Although the Department of Treasury is the lead administration agency on the Mexican financial support package, I understand that the agreements were financial in nature and in particular, there are no side letters on law enforcement and narcotics. As the President and the Secretary of Treasury and State have stated, the United States has an enormous stake in helping Mexico restore prosperity over time.

Our relationship with Mexico goes well beyond the financial and economic, of course. We work closely with Mexico through various mechanisms to address our concerns in such areas as immigration, narcotics, law enforcement, labor and the environment. The financial support package, by stabilizing the Mexican economy, also sustains reforms in those areas.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Two questions. One is sort of a technical question. The question is about denied petitions. Do you think there should be an enforceable time period for resubmission of technical petitions?

Mr. SHAPIRO. I can't tell if it is the acoustics or my hearing today, but I had trouble with that question. Could you repeat it?

Mr. HOUGHTON. Should there be a readily enforceable time period for resubmission of denied petitions?

Mr. SHAPIRO. Denied petitions in the GSP area?

Mr. HOUGHTON. Yes.

Mr. SHAPIRO. Mr. Houghton, the reference I made to the so-called 3-year rule pertained to that question, so that if a petition was made with respect to a particular product and it was denied, it would not come up again for a period of 3 years. You couldn't bring it up each year. Beyond that, it is on the merits.

Mr. HOUGHTON. OK. I may want to follow that up a little later. Let me go on to the more general question.

We have known each other over the past a little bit, and I hope I am a follower of free trade and a believer in this, but I also think that there has to be proper enforcement mechanisms, and you know there are various things that I worry about in terms of some of the macronegotiations, and also particularly in negotiations with Canada and Mexico. I just hope we are not going to retreat on some of these things which have permitted free trade and fair trade as we go forward with certain of the negotiations and loosening up on some of our approaches to trade between these two countries?

Mr. SHAPIRO. Well, Mr. Houghton, in 1993 in Geneva and in 1994 here on Capitol Hill, I was one of the people who was greatly involved in trying to keep our trade laws strong and felt that that was consistent with what we were doing in our trade agreements.

I believe that opening markets, expanding trade on the export side is important, but I also believe that our trade laws, such as the dumping law that you have taken such an interest in over the years, is an important part of keeping trade both free and fair.

In terms of anything that we are doing, and you may be referring to our work with the Trade Remedy Working Group with respect to Canada and Mexico, we will keep very much in mind the importance of our strong trade laws. We had a commitment, CFTA and NAFTA and subsequent to that, that we would discuss with our trading partners some of the implications of an integrated North American market, but we have indicated when we talked with them that we start out a considerable distance apart. They sometimes see our laws as the problem, and we sometimes see their practices as the problem.

Mr. HOUGHTON. But the administration has no intention of relaxing our trade remedies; is that right?

Mr. SHAPIRO. That is correct. That is correct. We are and will continue to talk with our partners about what if any implications there are in terms of the North American market but that is consistent with maintaining trade laws that are strong.

Mr. HOUGHTON [presiding]. Thank you very much.

Since I guess I am in the chair at the moment, then I would like to ask Mr. Ramstad if he would like to inquire.

Mr. RAMSTAD. Thank you.

Mr. Shapiro, I am not certain you are the right person to answer this. I am asking it on behalf of my colleague Ms. Dunn. Currently, USTR has 6 FTEs on detail in the ITC. What impact would rescission of these detailees have on your agency?

Mr. SHAPIRO. It would have a significant impact, Mr. Ramstad. I know Ms. Dunn had raised a question with the ITC. We are actually quite reliant on detailees, not just from the ITC but from around the government. Over the years, the State Department has been particularly helpful.

The philosophy that we have tried to follow is basically to keep the core personnel of USTR small and then to add detailees in particular areas that are hot at any given time. We think it is far better to, say, to keep us at 168 or 166 FTEs and then add some detailees, than it would be to take on the costs of additional permanent employment, and so the flexibility of working the way we have I think has been successful.

Mr. RAMSTAD. Do you presently have detailees from other agencies as well?

Mr. SHAPIRO. Yes, we do.

Mr. RAMSTAD. Could you, for the record, provide the name of the sponsoring agencies, the position, grade level and proposed length of assignment for each detailee?

Mr. SHAPIRO. We will provide that.

Generally, we fluctuate between 35 and 45 detailees at any given time, and the rundown at the moment indicates that we have 10 from State, 6 from ITC, 5 from Agriculture and then a spattering from around other agencies.

[The following was subsequently received:]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
Questions for the Record
Hearing on Select FY96 Budgets
February 27, 1995

FY96 Budget Proposal

Question 1:
Will additional staff be required to meet trade liberalization goals laid out last year at the APEC meeting in Indonesia and at the Summit of the Americas? How do you plan to reallocate resources to meet these goals?

Answer:
Expanding trade with countries of the Asia Pacific Economic Cooperation (APEC) and with nations of Latin America is one of USTR's highest priorities. However, we will not require new resources in FY 1996 to meet these trade expansion goals. USTR is committed to manage priorities within budget, and will mobilize every resource needed to meet our goals.

We have already taken several steps to reallocate resources on these priorities. First, we are adding new staff in each area. Earlier this year, we hired a new trade policy expert to help manage trade activities with APEC countries. In March, we are hiring an international economist dedicated to Mercosur and the trade initiatives in Latin America. In addition to the new staff, we will also redirect the efforts of our sectoral offices (e.g. Industry, Services, Environment) and our support offices (e.g. General Counsel) on APEC and Latin America. In this way, the collective experience and energies of USTR's personnel will be directed to these priority regions.

With respect to Latin America, this year we combined USTR's North America and Latin America offices into a single Office of Western Hemisphere, under the day-to-day direction of one of our most accomplished career employees. The combination of these offices allows USTR to coordinate the experience gained from the NAFTA agreement with the challenges presented by potential agreements with Chile and other Latin America nations.

Question 2:
USTR currently has 6 FTE on detail from the ITC. What impact would a rescission of these detailees have on your agency? Does USTR have any detailees from other agencies? If so, please provide the name of the sponsoring agency, the position and grade level, and proposed length of assignment for each detail.

Answer:
Rescinding the six details from the International Trade Commission would have a substantial adverse effect on USTR operations. USTR relies heavily on all of its personnel details, and especially those from the ITC, to carry out its mission.

The ITC detail program provides benefits to both USTR and ITC. USTR obtains high calibre expertise in international economics and trade, which we target in areas of greatest need. For ITC, the detail program offers an excellent training and career advancement opportunity. A one year assignment at USTR offers an ITC employee the chance to participate in negotiations with other countries, or to assist in formulating or coordinating the development of U.S. trade policy. Consistently, ITC employees detailed have described the experience as challenging, rewarding and career-enriching.

The concept of rotating personnel details at USTR offers one other important benefit. It gives USTR the added flexibility match priority program needs in a given year with the pool of specialized economic and trade job skills that employees possess in agencies like the ITC. This match of program priorities with specialized job skills represents an efficient and effective way to respond to changing trade issues, without building a large bureaucracy at USTR.

USTR has other personnel details, aside from those received from the ITC. A summary of details follows.

Personnel Details to USTR as of March 1995

Sponsoring Agency (duration of detail)	Position (Salary)*
Department of State (6/94-6/95)	Senior Economist ($50,000)
Department of State (6/94-6/95)	Senior Advisor on Latin America ($61,470)
Department of State (6/93-6/95)	Director, European Free Trade Area ($43,700)
Department of State (6/93-6/95)	Deputy Director for APEC Affairs ($70,000)
Department of State (7/94-7/95)	Deputy Director for Mexican Affairs ($55,592)
Department of State (7/94-7/95)	Director of Services ($66,380)

Department of State (7/94-7/95)	Director, European Industry and Technology ($66,698)
Department of State (8/92-8/95)	Attache (Geneva) ($76,698)
Department of State (7/94-8/95)	Director, Intellectual Property ($86,589)
Department of State ((8/94-8/95)	Director, Commercial Space ($66,380)
Department of State (9/94-9/95)	Director, Commodity Policy & Non-Ferrous Metals ($79,535)
Department of Defense (9/94-8/95)	White House Fellow** ($70,000)
Cambridge Fellow (9/94-8/95)	Cambridge Fellow*** ($22,000)
Department of Agriculture (8/92-8/95)	Attache (Geneva) ($74,711)
Department of Agriculture (10/94-undetermined)	Attache (Geneva) ($48,745)
Department of Agriculture (11/93-11/95)	Secretary (Geneva) ($33,169)
Department of Agriculture (1986-indefinite)	Senior Economist ($73,124)
Department of Agriculture (1980-indefinite)	Secretary ($26,572)
International Trade Comm. (6/94-3/95)	Assistant Director for Steel Trade Policy ($35,045)
International Trade Comm. (12/94-12/95)	Assistant to AUSTR for GATT Affairs ($37,383)
International Trade Comm. (1/94-12/95)	Deputy Director, GSP ($64,926)
International Trade Comm. (1/95-1/96)	Trade Analyst (Textiles) ($46,242)
International Trade Comm. (2/95-2/96)	Trade Analyst (Agriculture) ($36,171)
International Trade Comm. (3/95-3/96)	International Economist ($51,552)
Fed. Communications Comm. (10/94-4/95)	Attorney-Advisor ($85,624)
Fed. Communications Comm. (2/95-2/96)	Presidential Management Intern ($29,895)
Department of Interior (12/92-4/95)	Assistant Director for Trade Policy ($53,276)
Department of Commerce (10/94-10/95)	Attache (Geneva) ($76,468)
U.S. Information Agency (6/93-12/95)	Director for APEC Affairs ($75,000)
EPA (2/95-2/96)	Policy Analyst (Environment) ($78,832)

* salaries for some details reflect level at time of assignment.
** assigned to Office of Europe/Mediterranean.
*** assigned to Office of GATT/WTO Affairs.

Question 3:
How many USTR employees are stationed in Washington, D.C.? How many are detailed to the office in Geneva, Switzerland? Have these staffing levels changed at all since the conclusion of the Uruguay Round? Do you believe they will change?

Answer:
USTR's permanent staff is divided between its Washington and Geneva offices. Currently, 150 permanent staff are on-board in Washington and 7 permanent staff are assigned to the Geneva office. Since the conclusion of the Uruguay Round negotiations in December 1993 staff levels have changed as follows: Washington staff level has increased by 4 and the Geneva office has remained level. (These staffing levels exclude student employees which are part of the FTE count.)

Our FY 1996 budget request is for 166 FTEs, a decrease of 2 from the current authorized level. We plan to make the reduction in Washington. For at least the next year, we will keep the Geneva office at about its current strength. The office will be busy through FY 1996 in helping to negotiate with countries seeking accession to the WTO and implementing the Round agreement.

Question 4:
What is the current average salary at USTR and what is the projected average salary in FY96?

Answer:
The average FY 1995 salary is projected at $70,880. The average FY 1996 salary is estimated at $72,679. these averages exclude overtime, terminal leave, awards, students and benefit costs.

Question 5:
Please provide the positions and salaries for all political appointees/schedule C personnel currently employed by USTR. Please provide the same information for calendar year 1992.

Answer:
The information follows.

Political Appointees/Schedule C Personnel -- Current

Position	Salary
United States Trade Representative	$148,400
Chief of Staff	122,040
Senior Counsel and Negotiator	122,040
Senior Policy Advisor	90,000
Senior Counselor to the USTR	85,000
Special Assistant	61,000
Confidential Assistant	74,053

Confidential Assistant	32,926
Confidential Assistant	40,000
Confidential Assistant	25,000
Deputy U.S. Trade Representative (two positions)	123,100
Senior Advisor to the USTR	115,700
Confidential Assistant	53,275
Confidential Assistant	40,000
Confidential Assistant	31,215
Deputy General Counsel	104,230
Special Assistant -- Attorney	85,000
Confidential Assistant (two positions)	43,356
Counselor to the USTR	115,700
Speechwriter	46,904
Chief Textile Negotiator	107,379
Special Counsel for Finance and Investment	115,700
Assistant USTR for Congressional Affairs	113,180
Deputy Assistant USTR for Congressional Affairs	71,664
Congressional Affairs Specialist (two positions)	36,174
Congressional Affairs Specialist	24,441
Assistant USTR for Public Affairs	111,839
Deputy Assistant USTR for Public Affairs	71,664
Public Affairs Specialist	36,174
Public Affairs Specialist	24,441
Assistant USTR for Intergovernmental Affairs	115,700
Director, Intergovernmental Affairs	44,802
Private Sector Liaison	29,898
Confidential Assistant	29,898
Program Assistant	20,000

Political Appointees/Schedule C Personnel -- 1992

Position	Salary
United States Trade Representative	$143,800
Chief of Staff	112,100
Confidential Assistant	61,887
Confidential Assistant (2 positions)	26,798
Deputy U.S. Trade Representative (3 positions)	119,300
Confidential Assistant	38,861
Confidential Assistant	40,156
Confidential Assistant	32,463
General Counsel	112,100
Deputy General Counsel	96,556
Confidential Assistant	40,298
Speechwriter	72,798
Chief Textile Negotiator	112,100
Confidential Secretary	25,071
Assistant USTR for Congressional Affairs	108,300
Deputy Assistant USTR for Congressional Affairs	70,656
Congressional Affairs Specialist	49,290
Assistant USTR for Public Affairs	104,000
Deputy Assistant USTR for Public Affairs	54,607
Director, Private Sector	66,374
Director, Intergovernmental Affairs	40,156

Question 6:
What portion of USTR's budget for the current fiscal year is being used for Section 301 investigations? Do you expect this allocation to rise, fall or remain the same in FY 1996?

Answer:
USTR does not have a "line item" for Section 301 investigations. Section 301 activities are coordinated in USTR's Office of General Counsel. However, we typically manage activities like Section 301 investigations by combining efforts of staff from our support offices (e.g. General Counsel), geographic offices (e.g. Japan/China) and sectoral offices (e.g. Industry).

The total amounts that are spent on Section 301 investigations are a combination of the salaries and expenses of the employees in these offices. How much we spend in a given fiscal year depends on how many investigations are initiated, how complex those investigations are, and how much time and expense they consume. These expenses include not only employees' salary and benefit costs, but also telecommunications, travel, meeting costs, and the printing of documents.

We expect the allocation of resources in FY 1996 to remain about the same as the FY 1995 level. Precisely how much we spend on Section 301 in FY 1996 depends on how many investigations are conducted, how many USTR staff members are needed to complete the investigations, how much travel is required, and how long the investigations take.

Question 7:
How many Section 301 investigations have you conducted to date in FY95? Do you anticipate conducting more, less, or about the same amount in FY96?

Answer:
Since June of 1994, the United States Trade Representative has initiated seven Section 301 investigations. Of these, six investigations were initiated during Fiscal Year 1995. Our investigation of intellectual property rights in China was started in June of 1994. These other investigations have focused on the European Union's import regime for bananas, Costa Rica's and Columbia's practices regarding banana exports to the EU, Japan's practices regarding after-market auto parts, Korea's barriers to imports of certain agricultural products and Canada's communications practices.

It is difficult to predict the number that will be done a year from now in FY 1996, since that in large measure depends on the trade practices in other countries. You can be sure, however, that throughout FY 1996, USTR will aggressively enforce U.S. trade agreements, using laws like Section 301, and other tools at

our disposal, for enforcement.

Question 8:
USTR's budget request for FY96 estimates that the office's travel expenses will decrease by $75,000 next year through increased use of frequent flyer programs and enhanced coordination and planning of trips. Specifically, how do you plan to achieve this savings? Do you believe the nature of trade issues in FY96 will make travel less erratic than it has been in the current fiscal year?

Answer:
USTR plans to achieve savings in the travel area through a combination of three actions. First, we project savings by limiting the number of travelers attending negotiation sessions. Second, additional emphasis will be placed on travelers combining trips to the same location: each time this is don, airfare costs will be saved. Third, we will continue to encourage the use of Frequent Flyer coupons. Between FY 1993 and FY 1995, airfare savings realized from the use of coupons will total more than $160,000: in FY 1996, we expect to increase Frequent Flyer savings above the average achieved during the last three years.

Question 9:
Does USTR plan to hire any consultants or experts under 5 U.S.C. 3109 in FY96? Are there any consultants or experts currently under contract at USTR? If so, what are their functions?

Answer:
USTR makes infrequent use of consultants or experts under 5 U.S.C. 3109. To date this fiscal year, USTR has not entered into any arrangements for expert services. We have budgeted $10,000 for such services this year and for FY 1996 in case a need arises. Examples of expert services procured in past years include: individuals to translate legal documents into English, and computer database experts in support of NAFTA negotiations.

Minority Questions

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Authorization Request:

-- Your budget request for fiscal year 1997 is "such sums as may be necessary." The Committee on Ways and Means has never legislated an open-ended authorization for USTR or other trade agencies. Briefing materials provided by USTR before the hearing included a FY 1997 request of $20,320,000, representing a 3 percent decrease from FY 1996. Recognizing that this figure is a projected estimate at this time, I would hope that USTR would work with us to provide a specific level for FY 1997, if I am correct that the Subcommittee will again legislate a two-year authorization as it has in previous years. Presumably this figure could be revisited next year if circumstances warrant.

Answer:
USTR is always pleased to work with the Committee, and will continue to do so on the authorization request.

-- You mention in your testimony that while USTR will reduce its full-time staff level in FY 1996 from 168 to 166 positions, you receive personnel support from other Federal agencies and from students and interns. How many personnel do you expect to be detailed full-time from other agencies to USTR in FY 1996, are they reimbursable or paid for by the other agencies, and is this support an increase or decrease from previous years?

Answer:
For FY 1996, we expect to have about 40 personnel details from other agencies, the same number as we have in FY 1995. As is the case in FY 1995, the salaries and benefits for these details would be paid by the lending agency, while USTR would pay for travel, equipment and supplies.

Questions for the Record
Generalized System of Preferences Program
February 27, 1995

Question 1:

The GSP program was amended in 1984 to make GSP benefits conditional on compliance with certain trade-related and non-trade country practice conditions. Which of the existing eligibility conditions tend to be the most controversial with beneficiary countries?

Answer:

The worker rights and intellectual property protection eligibility requirements have been controversial with some GSP beneficiaries.

When the GSP program was enacted in the Trade Act of 1974, it had a number of eligibility requirements regarding, for example, reverse preferences, expropriation, international arbitration and narcotics. In 1984, the GSP program was reauthorized by the Congress, and a number of new eligibility requirements were added to the statute. These include intellectual property rights, worker rights, trade in services and investment practices.

In order for a country or territory to qualify for GSP privileges, USTR conducts a so-called eligibility review to determine whether the country or territory complies with each of the eligibility requirements. In addition, each year USTR conducts a review process in which a beneficiary's continuing compliance with the eligibility requirements can be reviewed.

These reviews normally are conducted in a cooperative manner with the beneficiary concerned. In most cases, the GSP review process encourages the reform of a country's law, the improved enforcement of and compliance with existing law, or a firm commitment to take steps to adhere more fully with applicable international standards and practices. In some cases, the beneficiaries are found to no longer meet the requirements of the law and, as a result, lose some or all of their GSP privileges.

Question 2:

Is it the Administration's view that adding new conditions to the program would reduce the leverage USTR has to achieve country practice objectives listed in the existing GSP statute?

Answer:

The leverage offered by the GSP program to encourage a greater degree of compliance with international standards and practices regarding the various eligibility requirements has been effective. However, the leverage is limited, and the Administration believes that the addition of new eligibility requirements would undermine the ability to make progress on the existing requirements.

This view is supported by the General Accounting Office (GAO) in its report on the GSP program, "Assessment of the Generalized System of Preferences Program" (November 1994), which states: "GAO noted that adding new provisions would reduce the leverage of existing provisions by diluting them with other requirements, and the cumulative obligations might be a greater burden than beneficiary countries would be willing to bear for the received benefits."

Question 3:

We have heard complaints from labor groups that USTR failed to conduct an annual review this year. I assume this decision had to do with the uncertainty surrounding extension of the program. Please explain.

Answer:

Each year, USTR conducts an annual GSP review, which usually begins in June and concludes in April of the following year. The 1994 GSP Review, which would have begun in June 1994 and concluded in the spring of 1995, was delayed since the program was due to expire on September 30, 1994. In May 1994, the Administration submitted a proposal to the Congress that would have reformed and renewed the GSP program. The Administration's GSP renewal proposal was approved, with some modifications, by the House Ways and Means Committee and included in the House bill to implement the Uruguay Round Agreements.

The reform proposal was not accepted by the Senate, and it was eventually dropped from the Uruguay Round bill. On September 30, 1994, the GSP program expired. The Uruguay Round bill, which Congress finally approved in December 1994, extended the current GSP program, without modification, until July 31, 1995. When the program was reauthorized, the Administration concluded that it would not be feasible to conduct an annual review process that would have had to been initiated during the holiday season and concluded in only six or seven months, when the program's authorization again expires.

Question 4:

Please describe what procedures USTR follows to ensure that GSP status is not granted to imports which would adversely affect the competitiveness of U.S. industries.

Answer:

The annual GSP review process offers an opportunity for interested parties to petition to have a product added to the GSP program. Petitions can also be filed to remove a product from the program for all GSP beneficiaries, or just for one GSP beneficiary.

The GSP Subcommittee of the Trade Policy Staff Committee is responsible for conducting the review process. The GSP Subcommittee is chaired by USTR and includes representatives from a number of agencies, including the Departments of Agriculture, Commerce, Interior, Labor, State and Treasury.

During the review process, the GSP Subcommittee solicits public comments repeatedly and holds a public hearing. It also seeks independent economic advice from the International Trade Commission (ITC), the same kind of advice that is rendered by the ITC in connection with bilateral and multilateral trade negotiations. The GSP Subcommittee also seeks and receives analysis from industry experts in the various agencies, including, in particular, the Departments of Agriculture and Commerce, as well as private sector industry experts.

The process of determining whether or not a domestic industry is sensitive to duty-free imports of a product from GSP beneficiaries is very thorough. The Administration has a good record of judging "import sensitivity" under the GSP program. In fact, each year there are only one or two petitions to remove products from the program, and such petitions tend to be granted.

Question 5:

Last year Congressman Thomas proposed an amendment to establish a three-year rule to provide that products could only be considered for addition to the GSP program every third year. Would the Administration consider the limiting of worker rights petitions against countries which have recently been the subject of petitions that have been investigated and resolved in favor of the country. I would suggest limiting petitions to remove countries every two years.

Answer:

The current GSP regulations provide that, if a petition to add a product to the GSP program is accepted for review and, following that review, the petition is denied, then that product may not be reconsidered for three years (see 15 C.F.R. 2007.0(a)(1)). Congressman Thomas has suggested that the so-called "three-year rule" be provided for in the GSP statute. The Administration supports the codification of the three-year rule for product additions, as suggested by Congressman Thomas. We agree with Congressman Thomas that it is a burden for domestic interests to have to defend their interests each year.

As for so-called "country practice" reviews, the current regulations and practice minimizes the possibility of a GSP beneficiary being subjected to a new review on the same criterion immediately following the favorable conclusion of a GSP review.

Petitions that request a review of a beneficiary's continuing compliance with the eligibility requirements may, in principle, be filed every year (i.e., they are not subject to a "three-year" rule). However, once such a review has been conducted and the country has been found to be in compliance with the eligibility requirement that is being reviewed, then subsequent petitions must include "substantial new information" (15 C.F.R. 2007(b)). This minimizes the possibility that beneficiaries will be subject to repeated unnecessary reviews of the same "country practice" immediately following the favorable termination of a GSP review. At the same time, if a beneficiary's practices deteriorate substantially, or it fails to follow through with its commitments and obligations fully and effectively, then the Administration could consider whether to initiate a new review.

Question 6:

Private sector testimony suggested that GSP rules of origin should be modified to allow U.S. content to count toward the 35% minimum value added rule for GSP eligibility. Would the Administration support such a change?

Answer:

The Administration does not agree with the proposal to count U.S. content toward the current 35 percent value requirement in the GSP statute. The development incentive provided by the GSP program would be reduced significantly if a beneficiary country does not have to contribute the full 35 percent value.

Question 7:

Is it equitable to use GSP benefits as negotiating leverage to achieve market access in sectors that are excluded from being eligible for GSP in the statute?

Answer:

Yes. GSP benefits are preferences granted on a unilateral basis. We do not seek preferences - or equity - in return. However, we do believe that our products should have market access in beneficiary countries.

Question 8:

Are a large percentage of GSP imports used as components in U.S. manufacturing?

Answer:

The GSP program applies to a broad range of agricultural, primary, semi-manufactured and manufactured products. A large share of GSP imports are upstream products and components that are used by U.S. companies to manufacture finished products.

Question 9:

What is the percentage of GSP imports that is purchased by small businesses in the United States?

Answer:

We do not know the percentage of GSP imports that are purchased by small businesses in the United States. However, the GSP program applies to more than 4,600 products and categories of products that are used throughout U.S. commerce. It is fair to say that many small businesses are undoubtedly involved in importing and distributing products that are eligible for the GSP program, as well as using GSP products to manufacture finished products.

Generalized System of Preferences

Question:

You state that the Administration supports "longer-term" renewal of the GSP program, as well as the reforms you proposed and the Subcommittee approved last year. For what specific length of time does the Administration believe GSP extension is warranted and useful, particularly in view of the one-third reductions overall in preference margins as a result of the Uruguay Round tariff cuts.

Answer:

The Administration supports longer-term renewal because the GSP program has lapsed twice in recent years and been followed by short-term extentions. This has imposed costs on U.S. business, created uncertainty and undermined the various goals of the GSP program. Specifically, short-term renewal limits the ability of the U.S. business community to do any longer-range business planning, especially with respect to sourcing and pricing. It also has undermined the objective of encouraging development in GSP beneficiaries, and it has limited the effectiveness of the program to be used as leverage to encourage a greater degree of compliance with the various eligibility requirements.

Therefore, the Administration believes that long-term extension of the GSP program is warranted, but recognizes that there are fiscal constraints. We want to work with Congress to determine the best and most-feasible approach to reauthorization.

While the Uruguay Round tariff cuts, when fully implemented, will reduce preference margins, many GSP eligible products still will face fairly substantial MFN duty rates.

Question:

As you point out in your testimony, GSP is a useful U.S. trade policy tool, particularly to achieve worker rights and intellectual property protection in developing countries. However, because of short-term extensions of the program the past two years, there have not been annual reviews initiated of private sector petitions concerning these and other country practices since 1993. We will also hear testimony later today from the General Accounting Office and a labor rights organization suggesting that reviews of country practices should be conducted on a more flexible and shorter time frame that is more responsive to changing conditions in developing countries. Would you comment on these concerns? Has the Administration ever self-initiated reviews of worker rights or intellectual property practices, or would it do so if there is a further short-term program extension, in order ensure that the statutory criteria are met?

Answer:

We have missed only one annual review, the one that normally would have begun in June 1994. The reason for this situation is explained in the answer to a previous question.

It is interesting to note that a previous question suggested that country eligibility reviews be done every two years. This question suggests that we consider more frequent and shorter reviews. More frequent and shorter reviews would be difficult, if not impossible, to administer in a fair and efficient manner. We believe the current annual review period should be retained, although, as in last year's recommendations for administrative changes which we have retained, some relatively minor modifications in the review procedures are planned.

The Administration has not self-initiated formal reviews of worker rights or intellectual property practices but has used GSP to deal with these issues nevertheless. In trying to influence beneficiaries, the duration of GSP is important. Short-term program extension reduces the incentive provided by the program to obtain trade policy reforms. However should it be necessary - and whether program extension is short-term or longer-term - the Administration is both willing and able to self-initiate cases in order to ensure that statutory criteria are met. In the past though serious situations have been brought to our attention through the petition process.

Question:

The Statement of Administrative Action accompanying the Uruguay Round implementing legislation included an administrative procedure and timetable for review of the "reverse preferences" criteria to ensure that U.S. exports are not significantly harmed by preferential treatment granted by developing countries to developed, such as by Eastern European countries to the European Union in association agreements. Would you describe the status of this effort and the results so far.

Answer:

As required in the SAA, we solicited public comment over a 30-day period and requested input from our embassies. We received six submissions, of which three alleged that reverse preferences were having an adverse effect on specific U.S. exports. We then reviewed and analyzed data provided by various U.S. Government agencies.

We have concluded that at present reverse preferences due to association agreements are having an adverse effect on only a small number of U.S. exports to Central and Eastern Europe. In addition, these problems are restricted to two or three countries.

Given the very limited scope of this problem we do not plan to continue the comprehensive reverse preferences review. We do plan, however, to pursue remedies for the concrete problems that do exist and are prepared to withdraw individual GSP benefits if necessary to accomplish this. We also plan to remain vigilant in order to be certain that beneficiaries comply in the future with the "reverse preferences" eligibility requirement of the GSP statute.

Mr. RAMSTAD. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. We appreciate your testimony and look forward to working with you.

I would now like to invite Allan Mendelowitz, Managing Director of International Trade, Finance, and Competitiveness with the U.S. GAO.

STATEMENT OF ALLAN I. MENDELOWITZ, MANAGING DIRECTOR, INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. MENDELOWITZ. Thank you, Mr. Chairman.

I am pleased to be here today to testify on our recent report evaluating the operation of the Generalized System of Preferences. Before I begin, I would like to recognize my able staff who are with me today. Directly behind me is Curt Turnbow, the Assistant Director responsible for the study of the Generalized System of Preferences. Next to him is Leyla Kazaz, who was Evaluator in Charge, and to my left is Herb Dunn, our Senior Attorney Advisor.

When witnesses from the executive branch come before you, they have to check with the leadership of their agency to make sure that what they are going to say is consistent with what the official policy of the agency is. At GAO, I have to check with my staff to make sure I have the data and analysis right. I am always happy to recognize my staff, because it is their good work that I am representing.

In 1994 under the Generalized System of Preferences, over $18 billion of duty-free imports entered the United States. That is about 3 percent of all U.S. imports. This amount reflects the fact that the program has a number of limits on it that restrict the benefits that are provided. The data analyzed relate to 1992, however, we think it is still representative of the program and we determined that only about one-half of the eligible products that could technically receive duty-free status under the program, in fact, entered the United States without duties. The other half weren't eligible because of restrictions related to administrative exclusions and competitive need limits.

While the government officials of beneficiary countries who have received access to the U.S. market duty free under GSP are not able to precisely measure the contribution of GSP to their development, they did tell us that they have realized increased economic development as a result of the program. They tend to validate the view that GSP, which is trade and not aid, is a viable approach to economic development.

In reviewing the operation of the program, we found that the GSP Program has a generally well-structured administrative process for consideration of petitions to add products to or remove products from GSP coverage. However, we did identify opportunities to improve program administration; for example, making public the guidelines used in analyzing product petitions and in determining matters such as "import sensitivity" and "sufficiently competitive."

Another proposal involves requiring a mandatory core of information that would be required on product petitions before they are accepted for consideration.

The program's country eligibility requirements, including protection of intellectual property rights and taking steps to observe internationally recognized worker rights, have been contentious. We found that administering these country practice provisions within the annual review process designed for product petitions resulted in certain administrative problems, and we recommended specific ways to improve their administration; for example, having a separate, more flexible timeframe, making public guidelines used when deciding whether to accept such petitions, and expanding the range of sanctions that can be used in response to violation of, for example, intellectual property rights.

Under the current process, a country either loses all of its benefits or has all of its benefits. We suggest that a more flexible approach which would allow us to modulate retaliation or punishment by providing only partial benefits might give the government more flexibility and be more successful in getting compliance with these types of country practice provisions.

Because GSP benefits are limited and declining, the program provides only modest leverage to encourage governments to change a country's practices. Adding new provisions would reduce the leverage of GSP in achieving the existing objectives. In addition, the Uruguay round tariff reductions are expected to decrease the value of GSP duty-free benefits by an estimated 40 percent, and this will further reduce U.S. leverage to demand compliance with GSP country practice requirements.

If too many conditions are imposed on this program, beneficiary countries may feel the compliance burden is just too great for them to bear relative to the benefits they receive.

In addition to proposals for improving the administration of the program, we have raised three matters for congressional consideration during GSP Program reauthorization.

First, Congress may wish to consider altering the competitive need limit process that caps allowable imports by, for example, extending the amount of time before exclusions are implemented, to allow for more thorough assessments and provide affected industries more time to adjust.

We believe that a better analysis of competitiveness will lead to better decisions. We looked at a whole set of products that have been eliminated from GSP coverage based on the competitive need limit restriction and found that two-thirds of those items declined in terms of their imports into the United States from the beneficiary countries when they lost their benefits.

Just because a country's exports exceed a competitive need limit doesn't mean that they are truly competitive without the GSP benefit. We believe that the fact that two-thirds of these GSP exports to the United States fell when they lost benefits, is an indication that a more thorough analysis of competitiveness is needed.

Second, the way the competitive need limit is applied proved to be very disruptive to U.S. retailers. They would benefit from more time to make adjustments to the loss of the beneficiary status of the items in question.

Third, Congress may wish to consider whether to alter the GSP rule of origin so that items are not penalized for having U.S. content. Under the current rule of origin, to be eligible for GSP, a product has to have 35 percent of its value originating in the developing country. If, for example, there is a substantial amount of U.S. content in parts and components of an item that a country wants to ship to the United States, but the value added in the beneficiary country doesn't reach 35 percent, that item will not receive the duty-free benefit.

Fourth, if Congress considers whether or not to incorporate the 3-year rule restricting product reviews and a provision disallowing its waiver is added to the GSP statute, Congress should be aware that the current ability of the trade policy staff committee to self-initiate cases could have the same effect as waiving the 3-year rule, and Congress may wish to consider stipulating whether or not self-initiating cases should be allowed where it would have the effect of waiving the 3-year rule.

This completes my summary comments.

I will be happy to respond to any questions.

[The prepared statement follows:]

STATEMENT OF ALLAN I. MENDELOWITZ
MANAGING DIRECTOR, INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS,
GENERAL GOVERNMENT DIVISION
U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to testify on our evaluation of the Generalized System of Preferences (GSP) Program and several matters for your consideration during your deliberation on the program's reauthorization. My statement is based on our recent report on the program, International Trade: Assessment of the Generalized System of Preferences Program (GAO/GGD-95-9, Nov. 9, 1994).

BACKGROUND

The GSP Program eliminates tariffs on certain imports from 145 eligible developing countries in order to promote development through trade rather than through traditional aid programs. In 1992, $16.7 billion,[1] or about 3 percent of total U.S. imports, entered duty free under GSP. U.S. duties foregone on these imports were almost $900 million. However, the cost to the U.S. government was estimated at 75 percent of this amount due to certain tax revenue offsets, according to the Congressional Budget Office. The value of duties foregone is expected to decrease with full implementation of the estimated 40-percent tariff reductions negotiated under the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) for products eligible under GSP. Reauthorization of the program, due to expire on July 31, 1995, provides an opportunity to consider the need for changes.

GSP DUTY-FREE BENEFITS DOMINATED BY RELATIVELY FEW BENEFICIARY COUNTRIES

Government officials and business representatives from the six beneficiary countries that we visited--Brazil, the Dominican Republic, Hungary, Malaysia, Thailand, and Turkey--told us that they have realized increased economic development as a result of GSP benefits, even though the level of development attributable to GSP cannot be precisely measured. Further, we found that most GSP benefits have gone to the relatively small number of more advanced or larger developing countries that can produce and export items that meet U.S. market demands.

In 1992, 85 percent of duty-free imports under the GSP Program were from 10 countries. Mexico accounted for 29 percent of GSP duty-free imports, but was graduated from the program when the North American Free Trade Agreement was implemented on January 1, 1994. Other top shippers included Malaysia, Thailand, Brazil, and the Philippines. Most of the GSP-eligible and duty-free goods by value were industrial goods (such as electrical machinery and equipment), rather than agricultural goods.

Other duty preference options exist for some beneficiary countries, such as the Caribbean Basin Economic Recovery Act, that reduce duty-free shipments under the GSP Program. In 1992, $2.9 billion (8 percent) of all GSP-eligible imports entered the United States under a duty preference provision other than GSP. Together with the $16.7 billion that entered duty free under GSP, 55 percent of all GSP-eligible goods received duty-free entry.

LIMITATIONS ON GSP BENEFITS ARE SIGNIFICANT

Not all products that are eligible to enter the United States under GSP actually enter duty free, due to several program provisions that limit benefits. In 1992, while $35.7 billion in imports were eligible under the program, $16.7 billion, or 47

[1]During our study, 1992 data were the most recent available for analysis. In 1993, $19.5 billion in imports entered GSP duty-free, while $41.1 billion in imports were eligible. In 1994, after graduation of Mexico from the program, $18.4 billion entered duty-free, while $29.2 billion in imports were eligible.

percent, actually received duty-free entry into the United States under GSP. About $16 billion, or 45 percent, of GSP-eligible imports entered with duties. (Another 8 percent of GSP-eligible imports entered duty free under other tariff preference programs.) "Administrative exclusions" (discussed below) accounted for 56 percent of these imports that entered with duties. "Competitive need limit exclusions" (imposed because U.S. imports of a country's product exceeded a limit on U.S. import levels for that product) accounted for about 42 percent, and "product graduations" (exclusions from GSP because the country is competitive in shipping that product to the U.S. market) accounted for 2 percent. The relative importance of administrative exclusions should diminish with Mexico's graduation from GSP, since 67 percent of these administrative exclusions were attributable to Mexico. Also, competitive need limit exclusions have been growing quickly for other beneficiary countries such as Malaysia and Thailand.

Administrative exclusions can result when products fail to meet U.S. requirements that (1) the beneficiary country's export contain at least 35-percent domestic content and (2) the product be shipped directly from the beneficiary country. Some trade experts have criticized the beneficiary country domestic content, or "rule of origin," requirement for GSP for lack of predictability because beneficiary country exporters often have no way of knowing whether their exports will meet the rule of origin requirements until U.S. Customs makes a determination. The U.S. Customs Service was considering, in 1994, changing the rule of origin system to one that would be more predictable and simpler to administer. It would use a "change of tariff classification" system such as that adopted in the North American Free Trade Agreement. This system confers country origin when imported materials, parts, and components are used to make a new product that would fall under a new tariff heading. Although more predictable, such a new rule of origin approach could be more difficult for beneficiary countries to comply with due to the extensive documentation requirements necessary to establish change of tariff classification, according to an International Trade Commission official.

In addition, importers have criticized the current rule of origin, which requires that at least 35 percent of the product must originate or be substantially transformed within the beneficiary country, because it does not allow U.S.-source material to count in any way in meeting the domestic content requirements. Importers have suggested that U.S. components be allowed to apply toward the 35-percent requirement. We agree that GSP items should not be penalized for having U.S. content. Congress may wish to consider whether to alter the GSP rule of origin so that items are not penalized for having U.S. content. For example, any U.S.-origin value of a shipped item could be subtracted from the total value of the item before the 35-percent beneficiary country origin value added is calculated.

Other program limitations involve competitive need limits and product graduations. Competitive need limit exclusions are automatically triggered for a country's product when a legislative ceiling on either the dollar value or share of U.S. imports from a country is exceeded in a calendar year. These exclusions accounted for $6.7 billion, or 42 percent, of all exclusions in 1992 and grew rapidly for top shippers like Malaysia and Thailand. Competitive need limit exclusions are based on the assumption that a country's export competitiveness has been demonstrated. However, external factors that may have little to do with the competitiveness of a particular beneficiary country's industry can affect U.S. import levels during the 1-year period used to trigger an exclusion. We found that in 37 of the 57 cases examined, a loss of GSP status due to a competitive need limit exclusion was immediately followed by a loss of import market share. In addition, the schedule for implementing these

exclusions allows beneficiary country exporters and U.S. importers only a few months' notice to adjust business plans before losing GSP benefits. In considering whether to reauthorize the GSP Program, Congress may wish to consider altering the competitive need limit process by, for example, extending the amount of time before exclusions under competitive need limits are implemented. This would allow for a more thorough assessment of the competitiveness of the affected imports and allow affected industries more time to adjust.

As for product graduations, in 1992, 2 percent of all exclusions, valued at $276 million, were due to permanent product graduations from the program. Product graduations are discretionary and are implemented after assessing a beneficiary country's competitiveness for a particular product, usually at the request of U.S. producers.

PROCESS TO REVIEW PRODUCT PETITIONS GENERALLY WELL STRUCTURED, BUT SPECIFIC CONCERNS REMAIN

The GSP Program has a generally well-structured administrative process for consideration of petitions to add products to or remove products from GSP coverage. The interagency structure of the GSP Subcommittee[2] (a working group of the Trade Policy Staff Committee) and its consensus decision-making process are designed to ensure that the program's goals are balanced to provide benefits to beneficiary countries while taking care not to unduly harm domestic interests. The annual review process provides for transparency and consideration of all interested parties' views. However, we have identified some specific opportunities to promote better program administration such as (1) by disseminating more information on the decision-making process, including guidelines for analysis, and (2) by strengthening information requirements for acceptance of product petitions.

Among the information that petitioners said they would find useful are definitions of key statutory criteria used in making decisions on whether to add products to or remove products from GSP coverage. The GSP statute does not define key decision-making criteria such as "import sensitivity" or "sufficient competitiveness." This has led some petitioners to complain that the criteria allow subjective decision-making on product additions and removals. However, we believe these criteria would be difficult to quantify for use in every case because they are highly qualitative and judgmental. Most observers we talked with said that an attempt to define these criteria statutorily would result in overly rigid definitions that could hamper achievement of program objectives. The GSP Subcommittee has developed some informal guidelines but has not published them. We recommended that USTR make public the guidelines the GSP Subcommittee uses in analyzing product petitions, with the stipulation that the guidelines provide a framework for, but do not limit the extent of, the Subcommittee's analysis.

We found, based on a review of the decision-making process in 45 case studies, interagency decision documents, and interviews with GSP Subcommittee members, that most petitions have not been controversial and have been routinely decided based on their economic merit. However, we also found that the more controversial the case and the higher in the trade policy structure the case was elevated in order to reach consensus, the more other policy factors became determinative. Fifteen percent of the cases we reviewed had been identified by the Subcommittee as controversial and had been elevated for resolution.

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[2]The GSP Subcommittee is chaired by the Office of the U.S. Trade Representative and consists of members from the Departments of Agriculture, Commerce, the Interior, Labor, State, and the Treasury.

The GSP Subcommittee has not issued public explanations of program decisions, although by regulation it will respond to a written request for information from petitioners. However, foreign and domestic participants told us that many parties were unaware of their right to request and receive such explanations. We recommended that USTR indicate clearly in Federal Register notices of final decisions on GSP petitions that petitioners can write to request a written explanation of any decision.

The GSP Subcommittee has on occasion accepted for review product-addition petitions that did not provide all required information, if the Subcommittee believed the petition might have had merit and the petitioner had made a good faith effort to obtain the information. Although this practice was allowed by the regulations, it placed domestic producers at a disadvantage in raising objections. Domestic producers complained that acceptance of incomplete petitions effectively shifted the burden of proof on whether to accept a product from the petitioner to those opposing the petition. A new product in the program may be shipped by any beneficiary country, and there may be few sources of information on potential suppliers among beneficiary countries. GSP product-addition petitions were required to provide detailed information, such as (1) actual production figures and capacity utilization and their estimated increase with GSP and (2) exports to the United States in terms of quantity, value, and price, and considerations that affect the competitiveness of these exports relative to exports by other beneficiary countries. We recommended that USTR modify GSP regulations to specify a mandatory core of information required for acceptance of product petitions.

Also related to the process of administering product-addition petitions is the "3-year rule." GSP's 3-year rule, prohibiting rejected product-addition petitions from being refiled until 3 years have passed, protects U.S. industry from repeatedly having to come to the defense of their products in program proceedings. Representatives of affected domestic industries told us that waiver of this rule during the 1991 Special Review for Central and Eastern Europe initiated by the administration undermined the credibility of the program. The representatives said the waiver caused an unfair burden on them by reconsidering the addition of products that had just been denied. USTR has noted that the Trade Policy Staff Committee has the right to waive the 3-year rule since it is the committee's own procedural rule, and the rule did not vest a right in any party. Further, the GSP Director pointed out that the regulations allow the Trade Policy Staff Committee to self-initiate cases "at any time," which can have the same effect. Domestic industries have argued for codifying the 3-year rule with no possibility of a waiver in the GSP statute. However, codifying the 3-year rule alone may not necessarily guarantee strict application of the 3-year rule if the administration still retains the ability by regulation to self-initiate cases. Therefore, if Congress considers whether or not to incorporate the 3-year rule, and a provision disallowing its waiver, in the GSP statute, it should recognize that the Trade Policy Staff Committee's regulatory authority to self-initiate cases can have the same effect. Congress may wish to consider stipulating whether or not self-initiation of cases should be allowed where it would have the effect of waiving the 3-year rule.

A major issue raised by the requesters of our report was whether it is legal to offer different benefits to the various beneficiary countries under a generalized system, which in spirit is like the most-favored-nation principle[3] central to the GATT

[3]The most-favored-nation principle is embodied in article 1 of GATT and provides that countries grant each other treatment as favorable as they give to any country in the application and

system. Program benefits are generally extended equally to all beneficiary countries due to this principle. In some circumstances, however, when a beneficiary country is considered to be sufficiently competitive for a particular product without the GSP benefit, the benefit may be removed. Such permanent product graduations are made at the discretion of the President. We concur with the position taken by USTR that the GSP statute gives the President authority to make such decisions for differential treatment.

COUNTRY PRACTICE PETITIONS ENGENDER CONTROVERSY

When the GSP Program was reauthorized in 1984, new "country practice" eligibility criteria were added. These criteria included requirements that beneficiary countries provide adequate and effective protection of intellectual property rights (IPR) and take steps to observe internationally recognized worker rights. IPR refers to legal rights and enforcement associated with patents, copyrights, and trademarks. Petitions to suspend benefits to beneficiary countries that do not meet these criteria for country practices can be filed as part of the annual review process for GSP eligibility.

There is a split in opinion about the desirability of country practice provisions. Beneficiary countries and many trade experts we talked with objected to the presence of country practice provisions in the GSP Program. They said that these conditions contravene the original spirit of GSP, which was to be a trade assistance program that required no reciprocity on the part of the recipient country. Other countries' GSP programs do not have such conditions. While United Nations officials, beneficiary country officials, and many trade experts we talked with acknowledged that IPR and worker rights are important issues, they said they should be addressed in other forums. However, advocates of these provisions maintained that the GSP Program's objective of aiding economic development should not be carried out without parallel development of adequate IPR and worker rights standards. They argued that promotion of these rights is important to sustainable economic growth in developing countries.

Administrative difficulties have resulted from adding consideration of country practice petitions to the existing annual review process designed for product petitions. Country practice cases are fundamentally different from product cases, since they involve adherence to international standards of behavior rather than evaluation of trade flows. The rigidity of the annual review cycle, where all petitions must be filed by the June 1 deadline or wait until the next review, is not well suited to dealing with IPR- or worker rights-related events. These events can precipitate crises at any time during the year. We recommended that USTR review country practice petitions on a separate and more flexible time frame from product petitions that better fits their different dynamics. Further, acceptance of emergency petitions for review out of cycle when events warrant such action, as well as for expedited review, could improve the timely consideration of and, potentially, the more effective responsiveness to these provisions. Therefore, we recommended that USTR accept emergency petitions for expedited review out of cycle, when warranted by events.

In addition, the GSP law and regulations do not specify the program's policies and standards for accepting country practice petitions for review. The GSP Subcommittee has internal policy guidelines, but few of these have been made public. We recommended that USTR make public the guidelines used in deciding

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administration of import duties.

whether or not to accept country practice petitions for full review.

Worker rights advocates have said they disagree with GSP policies (1) classifying certain offenses as human rights issues outside GSP purview and (2) requiring presentation of substantially new information for reconsideration of denied petitions. As currently administered, this "new information" standard has prevented further review of worker rights cases in which a beneficiary country's promised progress in improving worker rights stopped after the GSP review was concluded with a finding favorable to the country. We recommended that USTR clarify the "new information" standard in the GSP regulations to indicate that failure of a beneficiary country to fulfill the promises of progress that were instrumental in the decision to deny a petition would constitute substantial new information that could be the basis for acceptance of a petition.

Finally, the only sanction available in GSP country practice cases is suspension from all GSP benefits. A policy of graduated sanctions, such as suspension of one or more industry sectors rather than the entire country, would provide greater flexibility and could improve the effectiveness of these provisions in encouraging changes in country behavior. We recommended that USTR take all steps necessary to expand the range of sanctions that can be taken when beneficiary countries have not met GSP country practice standards to include partial sanctions when appropriate.

The differing expectations held by GSP officials and IPR and worker rights advocates are at the root of much of the controversy over administration of country practice provisions. GSP officials generally said that these provisions have been used and have leveraged results from beneficiary countries to the extent possible, given other trade and foreign policy concerns. However, IPR and worker rights advocates said they wanted country practice cases more vigorously prosecuted and sanctions more frequently exercised. Worker rights advocates were particularly concerned. While IPR advocates have more powerful trade law remedies they can pursue, worker rights advocates must depend on the GSP provisions to trigger actions under most of the worker rights provisions in U.S. trade law.

Because of its limited benefits, the GSP Program provides only a modest degree of leverage to encourage beneficiary country governments to change their country practices. Proposals to add new country practice provisions during program reauthorization, particularly for environmental protection purposes where there are no international standards, were opposed by most GSP trade experts and program participants we interviewed. Because it was beyond the scope of this review, we did not interview representatives of environmental groups. However, we believe that adding new provisions during program renewal would reduce the leverage of GSP in achieving the objectives of the existing provisions. Furthermore, if too many conditions are imposed, beneficiary countries may feel the compliance burden is too great. They may then be willing to forgo all benefits, thereby eliminating the existing leverage in the program. In addition, the tariff reductions negotiated in GATT are expected to reduce the value of the GSP's tariff preference by an estimated 40 percent and, therefore, the incentive for beneficiary countries to participate in the GSP program.

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Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I will be pleased to try to answer any questions you may have.

(280123)

Chairman CRANE. Thank you for your testimony.

On your second point dealing with U.S. content, what changes would you propose?

Mr. MENDELOWITZ. There are several ways of addressing the issue. One way would be to deduct U.S. content from the value of the item and then just require that 30 or 35 percent of the remaining value come from the developing country. An alternative way of attaining the same objective would be to add U.S. content to the beneficiary country's content and stipulate that together they had to reach a certain minimum requirement, such as 35 or 45 percent.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Mr. Mendelowitz, it was really too bad that the GSP couldn't have been part of GATT, and now there is an extension, this will go on and on. At some point, we are going to have to face up to this and whether we want to continue to extend it or include it in some other ancillary program with GATT or what. If we were to rewrite this law and to make it applicable to the current conditions, what are some of the changes you might make in it?

Mr. MENDELOWITZ. I think that the essence and structure of the program is in a sense a halfway house to bring developing countries into the world trading system, to begin to tie their economies to the major market economies of the world, and to encourage them to build the institutions that they are going to need to be successful functioning market economies, such as protection of intellectual property rights.

When we looked at the program, we found it reasonably well administered and, therefore, the suggestions we have for improving the program really relate to ways of providing a better understanding of how the interagency committees that make GSP determinations arrive at their decisions so that petitions can be prepared better; and, providing somewhat more reasonable time periods when items are excluded from coverage, so that the change won't be terribly disruptive for the exporting country and will not be terribly disruptive for U.S. retailers.

We have a list of both administrative changes and matters for congressional consideration that would, in fact, achieve this. Based on the comments expressed to us from the developing countries that we visited in the course of this work, the original goal of trying to promote economic development through trade rather than aid and linking these developing countries to the world market seems to be reasonably successful.

Mr. HOUGHTON. All right. That is helpful.

I have one other question about the 3-year rule for refiling petitions. You may like to comment on that, whether that is a good time or whether it is not, should it be 4 or 5. It imposes quite a burden, particularly if the 3-year rule were enforced on American industry.

Mr. MENDELOWITZ. The 3-year rule is part of the interagency rules for running the program. The rationale behind the 3-year rule was that if petitioners were allowed to constantly refile petitions to put given products under the program, U.S. interests who felt injured or felt they would be injured if this product were given duty-

free status under the program, would have to constantly defend itself in one administrative procedure after the other.

The 3-year rule was adopted as a way of providing a reasonable time interval within which events could change and it would be worthwhile to reconsider petitions for the addition of the same products without unduly burdening U.S. industry. One of the things that this program always tried to do was to balance the benefits to developing countries, the benefits to U.S. consumers and minimize the cost and disruption to U.S. industry, and the 3-year rule is a reflection of that effort to try to balance all those interests.

The reason why the 3-year rule became an issue of contention is that back in 1991 there was an administratively triggered special review to try to identify additional items that could be put under GSP for the benefit of the countries of Eastern Europe who had just emerged from domination by the Warsaw Pact. Several very sensitive products that several months before had been rejected for coverage in the program were now on the table again. And, U.S. industry felt they had made their case and they had succeeded, they were supposed to have a 3-year window within which the issue would not be brought up again. And here they were only several months later, having to defend why these particular products shouldn't be included in the program. The 3-year time period is a reasonable time period. However, it is only a judgment call. There is nothing that says it must be 3 years rather than some other reasonable interval. It is just what the program has used. What has created the tension is the fact that the interagency review group that has responsibility for administering the program does have authority under program rules to self-initiate and they have the authority to self-initiate irrespective of what was determined in an annual product review, and they, in effect, can nullify the 3-year rule.

If Congress does feel that the 3-year rule is important and represents a balance between consumer interests, producer interests, developing country interests, and they want to codify that in law rather than regulation, what we wanted to point out was that leaving the review committee that administers the program with authority to self-initiate could in practice nullify that 3-year rule. You may want to place into law, if you think it is important, that self-initiated cases had to abide by the same 3-year interval.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. No questions.

Chairman CRANE. We thank you for your testimony and appreciate your appearing here today.

Now, I would like to invite our private sector panel, Mr. Robin Lanier, Mr. Bruce Shulman, Mr. David Weiser and Mr. Benjamin Davis.

Chairman CRANE. My apologies, Ms. Lanier.

Ms. LANIER. I am Robin Lanier, and I am vice president——

Chairman CRANE. Before you start your testimony, I would like to defer to my distinguished colleague from Minnesota, who would like to tender a special welcome to Mr. Weiser, who is a constituent.

Mr. RAMSTAD. Thank you, Mr. Chairman.

I want to welcome all the members of this distinguished panel. We appreciate your patience and look forward to your testimony.

I do want to extend a special welcome to my friend and constituent David Weiser who is vice president and general counsel, Department 56. I look forward to your testimony.

Department 56 is a real Minnesota success story. The company is located in the heart of the Third District in Eden Prairie, Minn., and is a leading importer, designer and distributor of specialty ceramic and porcelain products, those Christmas ornaments that the Chairman and his wife like so much that have become collectibles to over 200,000 Americans.

We will hear from Mr. Weiser what the discontinuation of the GSP Program would mean, not only to the 200 employees in our district, but to hundreds, I dare say, thousands of independent service businesses in this country as well.

So welcome, David. We appreciate your coming to help us on this, and I look forward to the testimony of all the witnesses.

Thank you, Mr. Chairman.

Chairman CRANE. And now ladies first.

STATEMENT OF ROBIN W. LANIER, VICE PRESIDENT, INTERNATIONAL TRADE AND ENVIRONMENT, INTERNATIONAL MASS RETAIL ASSOCIATION, ON BEHALF OF THE COALITION FOR GSP

Ms. LANIER. Thank you, Mr. Chairman.

My name is Robin Lanier, and I am vice president for International Trade and Environment at the International Mass Retail Association.

I am pleased to have this opportunity to appear before you to seek a long-term extension of the GSP Program. I have submitted my written comments, and I hope to summarize my key points.

The Coalition for GSP was founded in December 1992, and is composed of literally hundreds of members representing a wide variety of American producers, importers, retailers, consumers and their workers. The International Mass Retail Association is a trade association representing 170 mass retail companies in the United States.

You have already heard a lot about GSP and all of you know much about the program, so rather than summarizing the program for you yet again, I will point out that I think from the U.S. private sector point of view this program represents a kind of partnership. The program is not merely a foreign aid giveaway but instead relies upon the private sector to help develop stable market economies around the world. It is a tax incentive first and foremost.

I would like to talk a little bit about three ways in which GSP benefits U.S. private sector companies. First of all, it keeps jobs in America. Benefits are provided on many, many inputs to production.

I will give a few examples: Automobile parts, raw cane sugar, many chemicals, refrigerator compressors, copper cathodes, leather upholstery, thermostats, furniture parts, zinc, printed circuits and hundreds of other inputs to production are used by U.S. manufacturers to reduce the cost of products here. By substituting duty-free

inputs of production, U.S. companies can keep prices low and keep production here in the United States.

The program also helps many, many small businesses, principally importers all across the country. You will hear one story today, but let me tell you another story about a fellow named Mike Kapica who runs a little company called Charming Shark Tropical Accessories, Inc. He imports earrings and magnets under the GSP Program.

Two years ago, his company which is located in Sarasota, Fla., was profiled in a Journal of Commerce article. He said at the time that if GSP benefits were eliminated, that the price of his earrings would go up by about 5 cents a pair. That doesn't sound like a lot, but for him that meant $5,000 of additional cash duty due on every $50,000 shipment.

This is a man who has a company founded with $200 of family savings. He employs about six part-time employees in Sarasota, and for him to find the cash to pay the duty he had to find a loan. He remained in business after the 1993 lapse of the program, I am happy to say, and while he got his duty back, he did not get the interest on the loan that he had to float. Once again, he and thousands of other small businesses across the country are facing a lapse and having to come up with cash to pay their duties.

From my one industry's point of view, the GSP Program has a direct impact on the prices that consumers pay at the checkout. Let me give you a few examples of how prices might go up if GSP were to lapse. Ceramic tile could go up perhaps by 10 percent, Christmas lights by 8 percent, fishing rods by 9.2 percent, ceiling fans by 4.7 percent, baby corn by a whopping 17.5 percent.

GSP needs to be extended for more than just a few months. You have heard today how the few month rollover of this program really limits the ability of businesses to plan for the future. We hope you will extend this program. It is good for America in many different ways.

Thank you.

[The prepared statement follows:]

STATEMENT OF ROBIN W. LANIER
VICE PRESIDENT, INTERNATIONAL TRADE & ENVIRONMENT,
INTERNATIONAL MASS RETAIL ASSOCIATION
ON BEHALF OF THE
COALITION FOR GSP

I am pleased to have this opportunity to appear before on behalf of the Coalition for GSP you in support of a long-term extension of the Generalized System of Preferences (GSP). My name is Robin Lanier and I am Vice President for International Trade and Environment for the International Mass Retail Association, a member of the Coalition for GSP.

The International Mass Retail Association, represents more than 700 members--170 mass retailers that include discount department stores, home centers, catalogue showrooms, dollar stores, variety stores, warehouse clubs, deep discount drugstores, specialty discounters and off-price stores, as well as 570 other businesses that supply consumer products for sale in our member stores. Collectively, IMRA retail members operate more than 54,000 stores in the U.S. and abroad and employ over a million people. The retail members represent the overwhelming majority of the $245 billion mass retail industry.

The Coalition for GSP was formed in December 1992, and is composed of many companies representing a wide variety of American producers, importers, retailers and their workers. They include sectors of the economy that benefit most from GSP: electronics, wood products, sporting goods, food processors, and other consumer product companies.

OVERVIEW OF THE GSP PROGRAM

The Generalized System of Preferences is a recognized part of the legal framework of the General Agreement on Tariffs and Trade (GATT) 1994. It allows industrialized nations to provide preferential tariff treatment for the exports of lesser developed nations. The program is designed to promote economic growth and industrialization through international trade.

The United States first implemented a GSP program in 1976. The program lasted for 10 years and was renewed for 8 and a half years in 1985. In 1993, Congress extended the program for 18 months, to September 30, 1994. In 1994, the program was extended, once again for a short period of months. The current GSP program expires on July 31, 1995.

The U.S. GSP program provides duty-free treatment for more than 4,000 products imported from more than 140 eligible countries. The largest beneficiary countries are Malaysia, Thailand, Brazil and the Philippines. In 1994, U.S. duty-free imports under GSP were valued at $18 billion, 3 percent of total U.S. imports.

The major product categories that benefit from U.S. GSP duty free treatment are consumer electronics, electrical machinery, manufactured products, food products, non-electrical machinery, metal products, and telephones.

The program protects domestic industry in several ways. First, by statute, import-sensitive products such as clothing and footwear are not granted GSP benefits. In addition, the program also includes provisions designed to limit GSP benefits to those lesser developed nations that truly need a helping hand. Products that are imported in large quantities can been "graduated" from the program, and entire countries can be "graduated" when they reach a per-capita income threshold. Finally, the program gives the President wide latitude to summarily graduate competitive countries from the program.

Finally, and perhaps most important of all, the United States has successfully used GSP benefits as negotiating leverage to induce beneficiary countries to make improvements to intellectual property rights and worker rights protections, and to provide enhanced market access for U.S. exports.

The Coalition for GSP supports a long-term, five-year renewal of the current GSP program without any major changes to its structure. This long-term extension is needed to help the American businesses that rely on GSP plan for the future. The on-again, off-again, short-term extensions of this program serve no one's purposes--not the businesses who rely on GSP, nor the government that uses GSP as leverage to gain improvements in foreign market access, and protection of workers and intellectual property. We are wary of making changes to the current program because we fear that changes will delay renewal of the program beyond July 31, 1995.

BENEFITS OF THE PROGRAM

GSP is one of those modest programs that actually accomplishes what it set out to accomplish. GSP has proved to be a rational tax incentive policy that *has* spurred foreign investment and economic development in lesser developed countries. It does so, not by giving away money, but by providing trading opportunities here in the United States. Because GSP benefits are tied to beneficiary countries' progress on worker rights and protection of intellectual property rights, GSP has also proved to be one of the most useful and flexible negotiating tools in the U.S. arsenal on those key international trade issues. Most important, GSP gets the private sector involved in helping less developed countries move toward stable market economies. It does so while helping American companies remain competitive, creating American jobs, and giving consumers a price break at the check out.

I would like to focus the coalition's comments on how this program benefits American businesses and consumers.

KEEPING JOBS IN AMERICA

GSP duty free imports help American producers keep manufacturing jobs in America. U.S. companies keep their production costs down by importing raw materials under the GSP program. Automobile parts, raw cane sugar, many chemicals, refrigerator compressors, copper cathodes, leather upholstery, thermostats, furniture parts, unwrought zinc, printed circuits and hundreds of other inputs to production are currently granted GSP duty-free benefits. By lowering the cost of these raw materials, U.S. manufacturers can afford to use more expensive U.S. labor for production, and remain competitive. Losing GSP benefits could well tip the scales for some of these manufacturers, forcing them to move their production entirely offshore.

HELPING SMALL BUSINESSES

GSP directly helps small, and family-owned importing businesses. These business *also* create and support American jobs--jobs that could be jeopardized by the loss of GSP benefits this coming July. To give you an idea of the impact of this program on smaller business, I'd like to tell you about one of the members of the Coalition for GSP. Mike Kapica runs a little Sarasota Florida company--Charming Shark Tropical Accessories Inc.--that imports earrings and magnets under the GSP program. Two years ago, Mr. Kapica's company was profiled in the *Journal of Commerce*, right after the GSP program had lapsed. At that time, Mr. Kapica estimated that the wholesale price for his imported earrings would increase by about five cents a pair without the GSP tariff break. That doesn't sound like much, but for Mr. Kapica, who founded his little company with $200 of his own money and employs a half-dozen part-time employees, it amounted to an additional $5,000 on every $50,000 shipment--money he did not have on hand, and had to borrow at an additional interest cost. Mr. Kapica weathered the storm back in 1993, but now two

years later, he faces the same expensive disruption to his small business. GSP helps him to stay in business and to provide jobs in Florida.

KEEPING PRICES LOW

Finally, GSP helps American consumers make ends meet. Obviously for the many retail companies that I represent, GSP has a direct impact on our prices. Whether the GSP benefit applies to an input of production, or a finished consumer product, GSP duty-free treatment inures directly to any American who shops at any one of IMRA's 170 member companies.

If Congress fails to act, on July 31, 1995, duties as high as 17.5 percent could be imposed on some imported consumer goods and parts. At retail, those additional border taxes translate into significant *retail price* increases for average Americans. For example, ceramic tiles from Turkey are one of many GSP products that home centers all across the country sell at reasonable consumer prices. The MFN duty rate for these products is 10 percent. If GSP lapses, the cost to consumers of these products could jump by 10 percent. Some retailers can, and will, absorb some of these price increases, but with average after-tax profits of only 2 percent of sales--and even less than this in the mass retail sector--retail industry margins are simply not sufficient to absorb *all* of the price increases that could be expected if GSP ends on July 31. Some retail formats, like dollar stores or variety stores that sell merchandise at a fixed price of a $1.00 or less, will have no flexibility to pass on price increases. All it takes is a very small increase in the wholesale price of a product before a retailer of this type decides to drop a product from its merchandise mix.

The potential price increases are significant. The duty on Christmas tree lights is 8 percent. The duty on fishing rods is 9.2 percent. The duty on ceiling fans is 4.7 percent. The duty on baby corn is 17.5 percent. All of these products, and hundreds of other, non-import-sensitive products are now being imported at zero duty from a many of less developed nations.

GSP IS NOT A WASTEFUL SPENDING PROGRAM

I'd like to leave you with this one final thought. GSP is not a wasteful spending program, nor a give-away to foreign governments. It is, instead, a well-thought-out, modest tax break designed to effect good policy goals. Unlike many other tax incentives, however, GSP works. It stabilizes market economies, advances worker rights, protects intellectual property, opens new markets for U.S. exports, helps U.S. firms stay competitive, creates American jobs, and keeps prices low. All Congress has to do to avoid imposing a new, unneeded tax on business and consumers is to extend this program for at least another five years.

Chairman CRANE. Thank you.
Mr. Shulman.

STATEMENT OF BRUCE N. SHULMAN, ON BEHALF OF THE AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Mr. SHULMAN. Mr. Chairman, members of the committee, my name is Bruce Shulman. I am currently the senior attorney in the Washington office of Stein Shostak Shostak & O'Hara. Prior to becoming a member of the private sector, I was employed from 1975 to 1987 as a senior attorney in the Office of Regulations and Rulings at the Customs Service.

I greatly appreciate the opportunity to testify today on behalf of the American Association of Exporters & Importers. AAEI is a national organization of approximately 1,200 U.S. firms active in importing and exporting a broad range of products, including chemicals, machinery, electronics, footwear, foodstuffs, and textiles and apparel. The association's members also include customhouse brokers, freight forwarders, banks, attorneys and insurance carriers.

AAEI appreciates the opportunity to address the fiscal year 1996 budget proposals for the Customs Service and the need to renew the GSP Program which is due to expire on July 31, 1995.

AAEI has always supported the Customs Service being provided with enough appropriations to perform its important functions of raising revenue, enforcing our trade laws and facilitating commerce. As the committee is aware, Customs is currently undergoing a major reorganization, as well as being required to administer at least three new major programs—the Customs Modernization Act, the North American Free Trade Agreement and the changes resulting from the Uruguay round of multilateral trade negotiations.

Customs has already cut or frozen numerous positions in attempting to be responsive to the budgetary problems which face the government. Under these circumstances, further cuts in the Customs budget beyond those which have already been made would be extremely harmful to the agency. Accordingly, AAEI recommends that further cuts in Customs' proposed budget be deferred at least until the agency has had an opportunity to reorganize and to ascertain what resources it will be needing to administer all of the new programs for which it has now been made responsible.

For nearly 20 years, GSP has given developing countries access to the world marketplace by allowing exportations to industrialized countries at preferential rates of duty. Its philosophy of promoting trade is clearly a more effective, cost-efficient means of promoting sustained economic growth than direct foreign aid.

As a result, over 20 other industrialized countries have adopted the GSP concept and continue to import goods at preferential rates of duty from developing countries. The United States must continue this program to remain competitive in international trade and to foster development in the Third World.

For the above reasons, AAEI has consistently supported a strong GSP Program and continues to do so. The imminent expiration of the U.S. GSP Program on July 31, 1995 is of great concern to AAEI and its members. It is difficult to plan an import strategy with the knowledge that a program on which importers rely is going to expire within the next 5 months. Accordingly, AAEI urges Congress

to renew the U.S. Generalized System of Preferences for a minimum of 10 years.

GSP should be renewed for three main reasons: First, GSP is important to beneficiary developing countries and to U.S. producers and consumers. Duty-free sourcing of materials and components is important to U.S. industries which use them in the production of finished products.

If U.S. manufacturers can only obtain these materials and components at prices which include the payment of duty, increases in the price of finished products will inevitably be passed to U.S. consumers.

For example, a substantial volume of electrical products, such as outlets and switches, are imported from BDC countries under GSP to be used in the housing industry. Likewise, a large volume of components is imported from BDC countries which are used in U.S.-made automobiles. If such products are not available at prices which do not include duty, whatever increased costs are involved will be paid by purchasers of new homes and automobiles.

Additionally, some people have the perception that the GSP Program is not important now that Mexico and Israel are no longer beneficiary developing countries. Nothing could be further from the truth. Countries like the Philippines, Malaysia, Indonesia and Thailand are heavily dependent on the GSP Program, and numerous U.S. importers depend on sourcing duty-free products from such countries in order to remain competitive.

And most importantly, in the future, GSP can and should play an important role in assisting the economies of, and strengthening democracy in countries such as Russia, where trade and not aid should be the first order of business.

Second, continuation of the GSP Program will result in the protection or improvement of intellectual property rights in beneficiary developing countries and other important objectives.

In the past, the existence of the GSP Program has resulted in beneficiary developing countries either protecting or improving intellectual property rights and living up to other international obligations. It is obvious that if the GSP Program is not renewed, countries which have previously protected or improved these rights will have no future incentive for doing so.

Third, the Generalized System of Preferences is one of the most cost-effective and efficient foreign aid or trade programs administered by the United States. It is estimated that the renewal of the GSP Program will cost the United States approximately $500 million per year. This cost is relatively minor when compared with the cost of other trade and foreign aid programs, such as NAFTA, the Uruguay round, et cetera.

Moreover, the GSP Program has a proven track record of helping beneficiary developing countries improve their economies, after which they have been graduated. Congress need only look to such countries as South Korea, Hong Kong, Singapore and Taiwan as examples.

In addition to supporting an extension of GSP, AAEI has included several suggestions in its written submission for improvements which should be made in the GSP Program. We trust that

the committee will give full consideration to these written suggestions.

In summary, AAEI strongly supports renewal of the GSP Program for at least 10 years. The GSP Program has historically encouraged trade with underdeveloped nations and has led to substantial economic gains for both these countries and the United States.

Again, thank you for the opportunity to testify concerning a matter which is of the utmost importance to the importing community.

I am ready to answer any questions which the committee may have.

[The prepared statement follows:]

STATEMENT OF
BRUCE N. SHULMAN
ON BEHALF OF THE
AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS (AAEI)

Introduction

AAEI is a national organization of approximately 1,200 U.S. firms active in importing and exporting a broad range of products, including chemicals, machinery, electronics, footwear, foodstuffs, and textiles and apparel. The Association's members also include customhouse brokers, freight forwarders, banks, attorneys and insurance carriers.

AAEI appreciates the opportunity to address the need to renew the GSP program which is due to expire on July 31, 1995. For nearly twenty years, GSP has given developing countries access to the world marketplace by allowing exportations to industrialized countries at preferential rates of duty. Its philosophy of promoting trade is clearly a more effective, cost-efficient means of fostering sustained economic growth than direct foreign aid. For this reason, AAEI has consistently supported a strong GSP program and continues to do so. The imminent expiration of the U.S. GSP program is of great concern to AAEI and its members. It is difficult to plan an import strategy with the knowledge that a program on which importers rely is going to expire on July 31 of this year.

AAEI Supports Renewal of the Generalized System of Preferences

1. GSP is Important to Beneficiary Developing Countries and to U.S. Producers and Consumers.

AAEI urges Congress to renew the U.S. Generalized System of Preferences for a minimum of ten years. The GSP program is currently due to expire on July 31, 1995. For nearly twenty years, GSP has given developing countries access to the world marketplace by allowing them to export products to the many industrialized countries which have adopted such a program. Over twenty other industrialized countries have adopted the GSP concept and continue to import goods at preferential rates of duty from developing countries. The United States must continue this program to remain competitive in international trade and to foster development in the Third World.

Additionally, duty-free sourcing of materials and components is important to U.S. industries which use them in the production of finished products. If U.S. manufacturers can only obtain these materials and components at prices which include the payment of duty, increases in the price of finished products will inevitably be passed to U.S. consumers. For example, a substantial volume of electrical products, such as outlets and switches, are imported from Beneficiary Developing Countries under GSP to be used in the housing industry. If such products are not available at prices which do not include duty, whatever increased costs are involved will be paid by purchasers of new homes.

Finally, some people have the perception that the GSP program is not important now that Mexico and Israel are no longer Beneficiary Developing Countries. Nothing could be further from the truth. Countries like the Philippines, Malaysia, Indonesia and Thailand are heavily dependent on the GSP program, and numerous U.S. importers depend on sourcing duty-free products from such countries in order to remain competitive. Moreover, in the future, GSP can and should play an important role in assisting the economies of and fostering democracy in countries such as Russia, where trade and not aid should be the first order of business.

2. Continuation of the GSP Program will Result in the Protection or Improvement of Intellectual Property Rights in Beneficiary Developing Countries and Other Important Objectives.

In the past, the existence of the GSP program has resulted in Beneficiary Developing Countries either protecting or improving intellectual property rights and living up to other international obligations. It is obvious that if the GSP program is not renewed, countries which have previously protected or improved these rights will have no further incentive for doing so.

3. The Generalized System of Preferences is One of the Most Cost-Effective and Efficient Foreign Aid or Trade Programs Administered by the United States.

It is estimated that the renewal of the GSP program will cost the U.S. approximately $500 million per year. This cost is relatively minor when compared with the cost of the other trade and foreign aid programs, such as NAFTA, the Uruguay Round, etc. Moreover, the GSP has a proven track record of helping Beneficiary Developing Countries improve their economies, after which they have been graduated. Congress need only look to such countries as South Korea, Hong Kong, Singapore and Taiwan as examples.

AAEI Supports Improvements in the GSP Program

AAEI supports the current Presidential authority to waive statutory limits on a particular GSP import commodity from any beneficiary country when the President receives advice from the International Trade Commission [ITC] that no United States industry is likely to be adversely affected by such a waiver, and he determines that such a waiver is in the national economic interest of the United States. [19 U.S.C. 2464(c)(3)(A)]. This general waiver authority has allowed the Administration to conduct the review process in an intelligent manner, without subjecting the flow of trade to otherwise potentially disruptive automatic mechanisms which would deny duty-free benefits to products needed for U.S. domestic production.

The Annual Review process has also enabled the U.S. to use the waiver for gaining leverage in negotiations to assure market and commodity access and to enforce intellectual property rights. [19 U.S.C. 2464(c)(3)(B)].

AAEI also proposes a redefinition of the rules of origin under the GSP program. The existing rules of origin require, inter alia, that eligible articles be imported directly from beneficiary countries to the United States and that the sum of the cost or value of the materials produced in beneficiary countries plus the direct costs of processing operations performed therein must equal at least the thirty-five percent of the appraised value of eligible articles upon their entry into the United States. [19 U.S.C. 2464(b)(1)].

AAEI proposes allowing U.S. component input tc count toward the 35% minimum value rule for GSP. While rewarding U.S. value content input would not adhere to the express purpose of GSP, allowing such input to count toward the 35% would be a boon to U.S. domestic manufacturers, importers and consumers. It should be noted that other countries, including Canada and Japan, make a similar allowance in their GSP programs. The inclusion of U.S. value content input would also be consistent with other trade programs which allow a donor country content rule, such as the Caribbean Basin Initiative Act. [19 U.S.C. 2702].

Strengthening of American competitiveness abroad necessitates GSP renewal since more than twenty other industrialized countries grant duty-free benefits to developing countries. Because a considerable amount of duty-free goods are being used as components in U.S. manufacturing, loss of GSP would be a severe blow to these sectors of the U.S. economy, as well as the economies of developing nations.

Adoption of the above changes would enhance realization of the purpose of the GSP program, benefitting not only developing countries, but also U.S. economic interests.

In summary, AAEI strongly supports renewal of the GSP program for at least ten years. The GSP program has historically encouraged trade with underdeveloped nations and has led to substantial economic gains for both these countries and the United States.

Chairman CRANE. Mr. Weiser.

STATEMENT OF DAVID H. WEISER, VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY, DEPARTMENT 56, INC.

Mr. WEISER. Thank you, Mr. Chairman.

I am here to provide the comments of Department 56, Inc., in support of a possible extension of the GSP Program.

As Congressman Ramstad noted, Department 56 is a leading designer, importer and wholesale distributor of better quality, reasonably priced Christmas ornaments, collectibles and best known products. We are best known for our village products—handcrafted miniature ceramic and porcelain houses, buildings and coordinating accessories. Just two of our products that are imported from the Philippines are placed on the table next to me.

Since their introduction nearly 20 years ago, our products have developed broad consumer appeal due to their fine detail, high quality and reasonable price. Thanks to these features, many of our products have achieved collectible status, and it is estimated, as the Congressman noted, that roughly 200,000 avid collectors exist.

Beyond the avid collectors, our consumers represent a broad demographic spectrum. The interactive nature of our products attract both male and female consumers, with 50 percent under 45 years of age and having household incomes of between $35,000 and $75,000.

A key to our competitive ability to deliver these products with their high level of detail and quality at affordable prices lies within our proven vendor relationships.

We do not actually manufacture the products we sell. Instead, we have organized a network of Pacific rim suppliers who produce to our design specifications. Many of these relationships with producers in GSP beneficiary countries date back over 5 years, and we have often purchased a supplier's entire annual output.

Our large buying volumes and our long presence in the Far East have built a level of expertise that allows us to design increasingly intricate and detailed pieces. When you consider that one piece can require 30 separate attachments, hundreds of modeling cuts and several handbrushed finishes, or the crafting and assembly of various art media into a single product, it becomes clear that the designers and factory must have coordination, knowledge and skill to produce consistent, high-quality pieces.

Over the past 5 years, we have developed vendors in India, Thailand and the Philippines which are principally led by indigenous artisans. These persons have raised and committed their private capital to the construction of factories and to the training of both supervisory and artisan personnel.

Department 56's import history with the Philippines provides some illustration of the longer term effects of GSP. Our Philippine procurement began in the late eighties at relatively insignificant levels and now represents 11 percent of our import purchases. Department 56 imports from the Philippines doubled in absolute dollars in the past 2 years alone.

Since the early nineties, we have observed employment in our Philippine vendor facilities increased from approximately 750 workers to nearly 3,000 individuals. Imports from Thailand and India

are currently insignificant in relative terms for Department 56, but our 1995 Thai imports should be at least 20 times greater in dollars than 1992 levels and India imports are expected to be nearly 200 times greater than 1992 amounts. These dramatic increases are due to the development of these industries rather than a movement of jobs from the United States.

Revocation or expiration of the GSP Program would be felt soon by us for two principal reasons. First, this craft production is specialized and it takes a long lead time to establish a productive facility. For our Philippine mixed-media merchandise, such as the piece to my left, there are no available alternative sources at present.

Second, modern inventory management is a version of just-in-time purchasing, so there is little warehoused surplus available to meet customer orders. We would be faced with passing a duty surcharge into our wholesale prices, and this would impact our employees and sales force, our 19,000 trade customers in the United States, our cargo haulers and import brokers, our royalty artists, our public investors and all their various constituencies.

I would like to note that better quality resin ceramic and porcelain products, particularly those of mixed media, are not produced in commercial quantities in the United States. We therefore believe that there are no substantial private U.S. interests that would directly benefit or be protected by discontinuing the GSP Program. Rather, the interests that would be benefited and protected would be those of countries such as China and Vietnam who in recent years have largely abandoned their central economic planning and vigorously adopted free market practices.

With that change, they are able to compete with their immense resources and, to some extent, it is the historically developing states, such as the Philippines, and long-term gains that GSP has achieved in those countries that are affected. While we do not reject the recent advances of China, indeed a substantial portion of our goods are made there, we understand and adopt the management principles of vendor diversification and encourage our production sourcing to avoid dependency on any one particular economic, political, geographic, or cultural setting. In this context, GSP can stabilize the trading environment and help business diversify its import portfolio.

In addition, relocation of production facilities out of current GSP beneficiary countries would, of course, shrink foreign local investment in these countries and would reduce the opportunities for those countries to diversify their export base.

In closing, I would like to note that while Department 56 is not involved in heavy industries such as automotive manufacturing or power plant construction, as persons experienced in international trade we can well imagine that being able to extend GSP treatment to countries where U.S. businesses are bidding on major capital works is a useful tool to our Nation's commercial diplomacy and ultimately the balance of trade.

Thank you for allowing Department 56 to provide its remarks on the possible extension of the Generalized System of Preferences, and I would now be pleased to answer any questions from members of the committee.

[The prepared statement follows:]

**COMMENTS OF DEPARTMENT 56, INC.
TO THE SUBCOMMITTEE ON TRADE
ON THE EXTENSION OF THE GSP PROGRAM**

This statement is submitted on behalf of Department 56, Inc., One Village Place, 6436 City West Parkway, Eden Prairie, MN 55344, concerning the possible extension of the Generalized System of Preferences ("GSP") program which promotes economic development and creates markets for U.S. exports in developing countries through tariff preferences. Department 56 urges the Subcommittee on Trade to fully support the extension of the GSP program.

Department 56 is a leading designer, importer and wholesale distributor of better quality, reasonably priced Christmas ornaments, collectibles, and specialty giftware products. The company is best known for their village products, handcrafted miniature ceramic and porcelain houses, buildings, and coordinating accessories. Since their introduction 19 years ago, these village products have developed broad consumer appeal due to their fine detail, high quality, and reasonable price. Because of these features, Department 56 village products have achieved collectible status, with approximately 200,000 avid collectors and, additionally, a broad demographic spectrum of consumers.

A key to Department 56's competitive ability to deliver these products with their high level of detail and quality at affordable prices lies within their long-standing vendor relationships. Department 56 has an organized network of Pacific-rim suppliers who produce to their design specifications. A significant number of these production facilities are located in India, Thailand, and the Philippines, all GSP beneficiary countries.

Many of the relationships with producers in GSP beneficiary countries date back over 5 years and Department 56 often purchases a supplier's entire annual output. Department 56's large buying volumes and long presence in the Far East have built a level of expertise that allows them to design increasingly intricate and detailed pieces. This expertise is critical because each piece may often require 30 separate attachments, hundreds of modelling cuts, and several hand-brushed finishes, or the crafting and assembly of various art media into a single product.

The vendors in India, Thailand, and the Philippines are principally led by indigenous artisans and their private capital has been committed to the construction of factories in these countries and to the training of both supervisory and artisan personnel.

Department 56's import history with the Philippines provides some illustration of the longer-term effects of GSP. Our Philippine procurement began in the late 1980's at relatively insignificant levels and now represents 11 percent of our import purchases. Department 56 imports from the Philippines doubled in absolute dollars in the past 2 years alone. Since the early 1990's, we have observed employment in our Philippine vendor facilities increase from approximately 750 workers to nearly 3,000 individuals. Imports from Thailand and India are currently insignificant in relative terms for Department 56, but our 1995 Thai imports should be at least 20 times greater in dollars than 1992 levels and India imports are expected to be nearly 200 times greater than 1992 amounts. These dramatic increases are due to the development of these industries rather than a movement of jobs from the United States.

Because of the specialized nature of this production and the long lead time necessary to develop an appropriate supplier, there is no other source available at present for these products. Relocation of these production facilities would shrink foreign investment in these three GSP beneficiary countries and would reduce the opportunities for these three countries to diversify their export base.

Here in the United States, Department 56 will also be injured if the GSP program is allowed to lapse. Department 56 employs approximately 190 workers in the United States and 200 worldwide. Additionally, independent sales organizations which sell our products to the retail trade employ another 100 Americans. These U.S. jobs will be directly affected by the expiration of the GSP program. Other workers immediately affected by the expiration of the GSP program will also include cargo haulers, import brokers, royalty artists, public investors, and all their various constituencies.

Current U.S. production of these collectable and giftware items is negligible. Accordingly, any disruption in the flow of these items from GSP beneficiaries will not benefit U.S. manufacturers. The removal of GSP preferential benefits will be counterproductive and detrimental to U.S. consumers.

Granted, there are some immediate budgetary reservations about extending the GSP program. However, the long-term benefits of the GSP program more than compensate for any immediate budgetary outlays. The GSP system is designed to extend benefits to sectors of developing countries which were not competitive internationally. According temporary preferential treatment to these developing nations would enable them to develop their infant industries in order to compete with developed countries on an international scale. Long term benefits of GSP treatment include increased exports and foreign exchange earnings, a diversified economy, and reduced dependence on foreign aid.

Correspondingly, U.S. companies and workers benefit from the GSP program because they are able to produce consumer goods in greater quantity and at cheaper prices by sourcing their product in GSP beneficiary countries where they can benefit substantially from preferential tariff rates. Lower tariff rates are passed on to U.S. consumers in the form of lower prices which translate into increased sales. Accordingly, more sales and administrative staff are hired to handle increased demand. Independent service operators, such as shipping companies, cargo haulers, and import brokers, also directly benefit from the increase in demand for these products.

Termination of the GSP program would impede the further growth and development of artisan industries, such as ours, in India, Thailand, and the Philippines, and in other developing industries benefitting from the GSP program. Manufacturers in these countries would be unable to expand their capacity and production, and unemployment would increase. Such an outcome would undermine the benefits which the GSP program has provided to date.

We urge the Congress to put aside short-term budgetary concerns and permanently extend the GSP program. GSP is a long-term investment that has done much to foster trade and development in the past and should continue to do so into the future.

Chairman CRANE. Thank you.
Mr. Davis.

STATEMENT OF BENJAMIN N. DAVIS, ON BEHALF OF THE INTERNATIONAL LABOR RIGHTS EDUCATION AND RESEARCH FUND

Mr. DAVIS. Thank you, Mr. Chairman.

We appreciate the opportunity to testify before you on behalf of the International Labor Rights Education and Research Fund. The fund has filed numerous country practice petitions with USTR over the past decade and my comments will principally address some of the administrative issues raised in the GSP report.

We support the extension of GSP. We believe that it is a crucial element of our Nation's commitment to equitable and sustainable development. We believe that the worker rights provisions of GSP are also crucial to maintain that development as equitable and sustainable.

We generally endorse the observations, the suggestions made by GAO in its report concerning the worker rights aspects of the country practice petitions, and I will just highlight some areas of agreement and a couple of areas where we disagree with the administration proposals made last year.

Specifically, first, the GAO recommends that review of country practice petitions be placed on a more flexible time schedule. We endorse that suggestion. However, we do not agree with the administration's proposed two-phase system. We think that would make review more cumbersome and that it would not be consistent with the flexibility that the GAO recommends in their report.

We support the recommendation that guidelines that are used in deciding whether or not to accept country practice petitions be made public.

We think that USTR ought to be required to accept any petition that is not frivolous, and I think the experience that we have had bears out that in general petitions that are submitted by worker rights advocates are not found to be frivolous petitions.

We strongly support the recommendation that the new information standard be clarified to prevent a situation where a country can avoid continuing review simply by indicating—by giving lip service to the idea of compliance with the worker rights provisions of the statute and not actually making substantive compliance.

We also strongly endorse the recommendation that the range of potential sanctions be expanded to give additional flexibility. It is true that it often becomes problematic when you have a country that is a significant GSP beneficiary and you are faced with a situation of the only alternative being cutting off all benefits or not continuing the review. We think that there is room for more creativity with the sanctions in that area.

We also believe, in addition to the recommendations made by GAO, that two other recommendations we would make would be to eliminate the taking steps language that is, in fact, inconsistent generally with the recommendations of the GAO report for flexibility in terms of both the kind of sanctions available and the timeframe in which they are to be applied. And we also would hope that

the issue of petitioner standing to seek judicial review would be clarified in any extension legislation.

In summary, the fund believes that the GSP can be both a vehicle for promoting global development through trade rather than aid and a means of stimulating democratic political participation in developing countries by guaranteeing respect for internationally recognized worker rights.

Thank you.

[The prepared statement follows:]

STATEMENT OF BENJAMIN DAVIS,
INTERNATIONAL LABOR RIGHTS EDUCATION AND RESEARCH FUND,
BEFORE THE SUBCOMMITTEE ON TRADE,
COMMITTEE ON WAYS AND MEANS,
UNITED STATES HOUSE OF REPRESENTATIVES,
FEBRUARY 27, 1995.

The International Labor Rights Education & Research Fund appreciates the opportunity to appear before the subcommittee today in support of extension of the Generalized System of Preferences program.

The Fund is a non-profit organization dedicated to assuring that all workers labor under reasonable conditions and are free to exercise their rights to associate, organize and bargain collectively. Since 1987, the Fund has filed more than 20 country practice petitions under the GSP statute.

GSP is an important component of the United States' commitment to equitable and sustainable global development. While the Uruguay Round Agreements will reduce tariff barriers over the next decade, the least-developed economies still need protected access to United States markets. It is true that the current GSP program is skewed towards a relatively small number of beneficiaries. We believe, however, that a redistribution of benefits is preferable to elimination of the entire program.

The worker rights provisions of GSP are crucial to ensure both that workers in the U.S. are not threatened by an artificial competitive advantage that violates fundamental international labor standards, and that the basic rights of workers in beneficiary countries are not trampled in the rush to join the global economy.

The current worker rights provisions have been modestly successful in curbing egregious worker rights violations. However, several factors have prevented the law from being used to its full effect. The Fund supports the principal recommendations of the General Accounting Office[1] to improve the administration of the worker rights provisions of GSP:

1. Review country practice petitions on a separate and more flexible time frame from product petitions that better fits their different dynamics.

The annual petition cycle should be made more flexible to accommodate rapidly changing events in beneficiary countries. The administration has proposed a two-stage review process which lengthens the review cycle.[2] Under this proposal, USTR would conduct a preliminary review, during which it would seek comments from the beneficiary country and conduct an interagency investigation. If the petition were accepted for "full formal review," USTR would hold hearings and issue a decision within one year of the filing of the petition. The proposal does not state what criteria would be used to distinguish a full formal review from a preliminary review. On balance, the administration's proposal should be rejected because it increases the duration and reduces the flexibility of the review process, and because it gives USTR the kind of discretion to reject petitions that has been susceptible to political pressure in the past. Instead, USTR should accept all non-frivolous petitions on a flexible schedule, and act on them promptly.

2. Make public the guidelines used in deciding whether or not to accept country practice petitions for full review.

USTR should be required to accept any non-frivolous complaint. The administration's reform proposal would require

USTR to accept any petition containing allegations that are "factually correct and of a serious nature" with respect to any enumerated worker rights criterion. This language is acceptable, provided that petitions are given a presumption of correctness. Otherwise, USTR will continue to have broad discretion to accept or reject a petition, which has been employed in the past to serve political ends.

> 3. Clarify the "new information" standard in the GSP regulations to indicate that failure of a BDC to fulfill the promised of progress that were instrumental in the decision to deny a petition would constitute substantial new information that could be the basis for acceptance of a petition.

The current "no new information" standard has no basis in the statute. Furthermore, the standard is illogical: because "the concept of making progress to meet international standards is at the heart of GSP country practice provisions," it is contradictory to reject petitions on the grounds that the worker rights situation in the beneficiary country is not getting worse.

> 4. Take all steps necessary to expand the range of sanctions that can be taken when BDCs have not met GSP country practice standards to include partial sanctions when appropriate

To balance the requirement that reviews be of finite duration, petitioners and USTR should have the option of targeting particular products from industries that violate worker rights. Partial sanctions would give worker rights advocates greater strategic flexibility, allowing pressure to be applied on a beneficiary country without requiring a complete revocation of its GSP benefits.

In addition to the GAO recommendations, the Fund believes that Congress should strengthen the substantive worker rights criteria of the GSP law. The "taking steps" language should be deleted, at least with respect to fundamental freedoms of association, organization, non-discrimination, and non-coercion. This language is not only unenforceably vague; it thwarts the intent of the statute by permitting regimes that violate worker rights to avoid sanctions with token reforms. Linking labor standards, such as wages, to a country's level of development is acceptable. But rights that are essential to democratic participation, such as the freedom of association, cannot be subordinated to the self-interests of national elites. Further, the statute should clarify petitioners' standing to seek judicial review of USTR decisions.

In summary, GSP can be both a vehicle for promoting global development through trade rather than aid, and a means of stimulating democratic political participation in developing countries by guaranteeing respect for internationally-recognized worker rights.

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1. United States General Accounting Office, International Trade: Assessment of the Generalized System of Preferences Program, GAO/GGD-95-9, November, 1994, at 123.

2. Administration Proposal on Renewal of the Generalized System of Preferences (GSP) Program, May 16, 1994, Annex at 4-5.

Chairman CRANE. Thank you, Mr. Davis.

Mr. Rangel.

Mr. RANGEL. I have no questions, Mr. Chairman.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

I would like to direct this question to any or all of the witnesses. Recently, we have enacted several temporary extensions, as you know, of the GSP Program, and I would like to inquire as to whether these temporary extensions of the program have led to any disruptions for beneficiary countries or for your respective businesses who use the program?

Ms. LANIER. Well, Mr. Ramstad, the temporary nature of the program, since it has expired actually twice and then was retroactively passed, has had huge implications for importers all over the country. I think you were out of the room when we were talking about some of the smaller importers that are members of our coalition, many of whom have very small importing operations, maybe 10 to 12 employees, where they have been doing GSP for awhile, and suddenly they have a cash duty due on a certain date, July 31, now, 1995, and may not have the money to cover the duty.

I talked about a case of a company in Sarasota, Fla., where for this particular company the $5,000 duty that was due required the owner of the company to go out and get a loan. For some smaller businesses that may not even be an option.

A couple of years ago when I was the secretariat for this coalition, I had an importer on the phone crying to me the day before the program expired, "I can't get a loan. I can't enter my merchandise." So it is hugely disruptive.

Mr. WEISER. If I may follow on that remark. There are additional considerations for a business beyond cash flow. Obviously, there is a matter of long-term strategic business planning, seeing where a business can develop and source its production and try to strengthen through diversification where it is sourcing product both within a country and within an arena of countries.

So, to that extent, having the stop-and-start-again nature of the GSP extension has been something that Department 56 continues to grapple with. I can well imagine that for the beneficiary countries' internal planning, as well, there is little guidance that they can take from seeing a long-term program turn on and off and be held in some question as to whether it will be continued for a meaningful period of time—in a town that is on the outskirts of Manila, we have seen over the past several years funding for public projects by the Philippine Government increase and then at times turned off and at later times been renewed. We are not certain whether that is in response to GSP and whether funding for these projects is going to be renewed or not.

What we are seeing is that the community there has been strengthening, nevertheless, because thanks to those infrastructure developments, the private vendor facilities for our vendors and for other giftware distributors, have been able to take hold. And we are seeing as a result, a general improvement, from what businesspersons can see, in the quality of life for people in that township.

Mr. SHULMAN. In addition to those considerations, there are several others. For example, in some instances, if GSP is jeopardized, it poses hazards for U.S. consumers in the area of safety. For example, my firm represents one client that manufactures a substantial volume of electric components that are used in the building industry, many of which are required to be placed in houses according to building codes. A substantial percentage of the total is built and imported from GSP countries and obtain GSP benefits.

If those products are not imported, and available at reasonable prices, the price of housing, obviously, will go up; and people may try to cut corners and use cheaper products or no products at all in building their houses.

Second, we have heard Robin and Mr. Weiser talk about the adverse effects on small business if GSP is abolished. So, too, is the case with larger businesses. For example, a substantial number of electronic components which go into U.S.-made automobiles are imported from countries such as Brazil. We know, for example, that the sticker price of new automobiles has increased dramatically in the past 5 years. I am in the market for replacing my automobile now and it has gone from $17,000 in 1989 up to $24,000 for the exact same automobile in 1995.

Third, as a Customs attorney, I would be remiss in not mentioning some of the difficulties which the Customs Service has had in the past as a result of this on-again-off-again approach to GSP. In the past, when GSP has expired, entries have been kept open or they have been liquidated and then Customs has to go back and reliquidate them, which causes them an immense amount of trouble and administrative burden as well as difficulties, as Ms. Lanier and Mr. Weiser already stated. So it is not only a burden on trade, it is a burden on government administering the program as well.

Mr. RAMSTAD. You four witnesses have done an eloquent job of articulating the merit of the GSP Program. I think all of us understand, certainly from a microeconomic standpoint, as well as a macroeconomic standpoint, the importance of the program in terms of our businesses here.

From a geopolitical standpoint, the stated intent of the program is to promote economic growth and political stability in the developing nations. Have any of you in your trade dealings witnessed this broader policy objective being accomplished? Are we making progress on these fronts?

Mr. SHULMAN. I sort of anticipated that question. I hope I don't risk overstating my case in my rather personal response. My dad was born in 1920. He just turned 75 on February 2. He is a child of the Depression, and a child of World War II. In 1942 he voluntarily enlisted in the military and was stationed in Scotland, France, Belgium, Germany, the Philippines and Japan. I was born in 1948.

I am a child of the cold war. During my childhood, I remember ducking under desks every week for air raid practice, and I remember the Cuban missile crisis when my mom stocked up in the basement with numerous provisions. It seems to me that more than any other reason for extending GSP, and we have mentioned most of the important ones here, national security may be the most important one.

It seems to me, even though I can't prove it, that in the past, if we had not supported the economies of places like South Korea and Taiwan and Hong Kong with this program, and now those places have been graduated, and I think rightfully so, there may have been more problems in those places than we had. We just don't know.

In the future, if we don't support countries like Russia and all the other former members of the Soviet Union, we don't know what sorts of problems we can get ourselves into. We do know that after World War I, the Allies substantially weakened the economy of Germany, and we know what the result of that was. So the only thing I can say to you is, yes, it is true that extending this program may not help, that is anybody's call, but if we don't try, then the consequences will be our fault.

Mr. RAMSTAD. Thank you very much, Mr. Chairman, and all of you.

Chairman CRANE. Mr. Weiser, did you want to comment?

Mr. WEISER. If I could.

In addition to the creation of jobs, which our statement indicated with respect to our industries, we have also seen over the past several years an improvement in intellectual property protections in Thailand, a beneficiary country for which I understand several years ago there was considerable concern over whether the United States and other countries were achieving the benefits of modern intellectual property protection. We at least have not been experiencing any difficulty of that type among our products that are generated in Thailand. And those that are coming out of Thailand are some of the most distinctive in our line.

Mr. DAVIS. Could I respond, also?

I think from the perspective of a worker rights advocate, the premise of GSP, which is that we can promote democratic political development through trade, gives us a mixed result. Clearly, there has been some—the worker rights provisions attached to GSP since 1984 have had some effectiveness. They have created some leverage with political regimes that have a record and have a history of violating worker rights.

We think, and in part it is due to some of the administrative obstacles that I outlined, in part perhaps due to some other political factors and to the limits of the program itself, that the progress so far has been mixed. We have not seen the type of response that we would like to see in that area. But it does seem that democratic political development—I will stop there.

Chairman CRANE. I want to thank you all for giving of your time so generously, and also for your input on GSP extension, and look forward to guaranteeing that come in July we are going for it.

I thank you for your testimony.

The subcommittee is adjourned.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Before the
Ways and Means Trade Subcommitte
U.S. House of Representatives

Statement of
The American Chamber of Commerce of the Dominican Republic
Supporting Extension of the General System of Preferences

March 13, 1995

The American Chamber of Commerce of the Dominican Republic strongly supports the extension of the GSP program for a minimum period of ten years, as was initially provided in Title V of the Trade Act of 1974. This additional period of time will give industries in the Dominican Republic the proper time to plan and continue expansion of their operations.

Since its implementation in 1975, the GSP program has been essential in furthering the economic development and social advancement of the Dominican Republic. This program has allowed the country to increase exports and foreign exchange earnings, needed to diversify the economy and reduce dependence on traditional sectors and on foreign aid.

The Dominican Republic has become the sixth most important trading partner of the United States in the hemisphere, and the largest among CBI countries. Bilateral trade has climbed to approximately $6 billion and of the forty-seven nations comprising Latin America and the Caribbean, the Dominican Republic's trade with the United States is surpassed only by Mexico, Brazil, Venezuela, Colombia and Argentina. The GSP and CBI programs played an important role in which is now an impressive reality. A true example of this, is the tremendous growth experienced in the Dominican free zone operations.

Free zones are the fastest growing sector of the Dominican economy. At present 476 companies operate in the country's thirty-one free trade zones, employing more than 176,000 workers. Most of businesses are either subsidiaries of U.S. companies, or affiliated with U.S. companies in one way or another. Free zone companies account for approximately one-third of the Dominican Republic's exports, and ninety-six percent of these exports go to the United States.

The GSP program has been of significant benefit to the United States because of many "production-sharing" arrangements between businesses in our country and in the United States. Significantly, since 1986 the United States has had a consistent surplus in merchandise trade with the Caribbean Basin countries. Now that NAFTA has gone into effect, extension of the GSP program is essential for businesses in our country and elsewhere in the region, in order to maintain their competitiveness with suppliers in Mexico, and to help us compete with Far Eastern suppliers.

The continuation of the GSP program will also enable CBI countries to attract foreign investment, an essential ingredient for their continued economic development consistent with the pro-free trade declarations made at the Summit of the Americas.

In conclusion, the American Chamber of Commerce of the Dominican Republic strongly urges Congress to extend this vital program for a minimum ten-year period.

95-7

SUBMITTED STATEMENT OF MARK A. ANDERSON, DIRECTOR, TASK FORCE ON TRADE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS TO THE COMMITTEE ON WAYS AND MEANS, SUBCOMMITTEE ON TRADE U.S. HOUSE OF REPRESENTATIVES ON THE GENERALIZED SYSTEM OF PREFERENCES

February 27, 1995

The AFL-CIO appreciates the opportunity to present its views on the possible extension of the Generalized System of Preferences (GSP) and particularly on the worker rights conditionality contained in the statute.

The linkage of worker rights to trade benefits under the GSP can be a powerful instrument to encourage the adoption of internationally recognized labor rights and standards, and thus support the basic premise of this government program to promote equitable economic growth and social progress in the less developed world. We are concerned however, that the program is often operated as an expensive foreign aid program to support short-term foreign policy objectives and to provide financial benefits for U.S. and foreign multinational corporations through the granting of zero tariffs for their products entering the U.S. market.

Any extension of GSP should include improvements in the implementation of worker rights conditionality, the graduation of participant countries that are successful exporters, the exclusion of import sensitive items, the elimination of competitive need limit waivers, and a prohibition on the addition of China to the program.

The Generalized System of Preferences, enacted by Congress in 1974, provides duty-free treatment for eligible articles exported to the U.S. from "beneficiary developing countries" ("BDCs"). The guiding principle of the program, reflected in the original legislative history, is that giving BDCs a temporary trading advantage through duty-free treatment of exports would encourage long-term, sustainable development, thereby reducing the need for unilateral U.S. aid and increasing demand for U.S. products. The initial program failed to accomplish any measurable development goals. As Congress expressed in the legislative history to the first renewal of GSP in 1984, the benefits of the program were largely restricted to the "privileged elites" in the developing countries. To solve this problem, Congress amended GSP in 1984 by adding a new requirement for eligibility as a BDC -- now a country must be "taking steps" to comply with "internationally recognized worker rights." This provision was designed to improve the situation for workers in BDCs, who could be expected to gain a greater share of the economic benefits flowing from the GSP program. In addition, Congress was concerned that the lack of worker rights acted as an inducement for U.S.-based firms to transfer production to BDCs, thereby displacing U.S. workers.

The AFL-CIO believes that the 1984 amendments have not been as effective as intended in achieving the development goals of GSP. Since 1985, there have been a total of 95 petitions concerning worker right's eligibility under GSP. Of this number, 34 were summarily rejected by the Administration, and therefore not subject to any review. Thirty-nine were accepted for review and the other 22 were petitions on cases already accepted but continued over multiple petition periods.

As a result of eight years of activity, seven countries experienced a withdrawal of benefits on worker rights grounds. Another three saw these benefits withdrawn as a result of the Executive Branch's general review in 1987. Today only five countries--Burma, Mauritania, Liberia, Sudan, and Syria continue to be denied preferential access.

The AFL-CIO believes that a far greater number of countries are not adhering to internationally recognized worker rights and their continued eligibility is due to a failure to apply clear standards, and a review process that is opaque and inconsistent.

Amendments are necessary to ensure appropriate enforcement of the worker rights provision and to implement the intent of Congress in passing the original GSP program.

Clarifying the Standard of "Internationally Recognized Worker Rights."

The discretion to determine whether a country has been "taking steps" has been used by the Executive Branch to avoid implementation of the worker rights provision. This has allowed countries who abuse worker rights to continue receiving millions of dollars in GSP benefits without fulfilling the requirements of the statute. For example, two countries--Indonesia and Malaysia--currently subject to worker rights petitions--have been found over the years to be "taking steps," while still denying workers their basic rights.

The worker rights provision is the only condition to GSP eligibility that includes the "taking steps" language. The "taking steps" language should be deleted and the phrase, "has adopted and is enforcing laws" that protect internationally recognized worker rights be substituted. This change will provide a clear standard upon which judgements can be made, and still leave the President with discretion to continue GSP benefits, notwithstanding a country's failure to meet the requirements, after the President reports to the Congress his determination that it is in the economic interests of the U.S. to do so.

Improving the Procedures of the GSP Review Process

There is general agreement that the present GSP review has suffered from arbitrary determinations, largely due to the lack of clear rules. The AFL-CIO believes that new regulations are needed to make the review process more transparent, predictable and consistent. We are particularly concerned that more than one-third of the worker rights petitions submitted over the last eight years were not even reviewed.

At minimum, new regulations should include the following elements:

* Any petition filed shall be accepted for review unless there is a specific finding that the petition is frivolous.

* Any person may file a petition seeking the withdrawal of the designation as a beneficiary developing country for failing to meet the worker rights criteria of the statute.

* Failure to meet the worker rights criteria in specific sectors can result in a partial withdrawal of benefits.

This last point is particularly important. The U.S. should be able to address specific problem areas without penalizing the entire country.

General Review

The best way to judge whether any nation meets or fails to meet the eligibility requirements of this statute is through continued review. Most nations which are currently judged to be eligible to receive GSP benefits have not been subject to a comprehensive review. The AFL-CIO believes that a review of conditions in beneficiary developing countries should be required every three years.

Country Graduation

One intention of GSP was to improve the economic condition of developing countries by temporarily helping them to increase exports to the U.S. Today, the majority of GSP duty-free imports are accounted for by just three of the more than 120 BDC's. Those countries, Malaysia, Thailand, and Brazil are successful and substantial exporters, and are no longer in need of preferential treatment. All enjoy bilateral trade surpluses with the U.S. Their graduation would reallocate GSP benefits to countries that have greater need.

There is ample precedent for such an action. President Reagan, when he announced in 1988 his intention to graduate Singapore, Korea, Taiwan, and Hong Kong from the GSP program, stated that these countries had "achieved an impressive level of economic development and competitiveness, which can be sustained without the preferences provided by the program." The same, particularly with regard to their international competitiveness, can be said for Malaysia, Thailand, and Brazil. Finally, graduation would also substantially reduce the cost to the federal budget of this program, and make a multi-year extension feasible.

Import Sensitive Products

Current statute excludes from duty-free treatment certain import sensitive items, including textile and apparel articles, watches, footwear, handbags, luggage, flat goods, work gloves, leather apparel, and certain electronics, steel, and glass products. The AFL-CIO believes these exclusions must be maintained. At a time when the U.S. is experiencing record merchandise trade deficits, the country can ill afford to further harm those domestic industries and workers that have been negatively impacted by imports.

Competitive Need Limits

Competitive need limits were originally legislated to spread GSP benefits among beneficiary developing countries and to prevent undue harm to domestic industries from competitive products receiving duty-free treatment. Under competitive need limits, if imports of a product from a BDC exceed a certain dollar amount, or represent more than half of total U.S. imports of that product in a calendar year period, GSP treatment must be removed and the normal rate of duty restored. Under certain circumstances, however, the President can waive the dollar and import share competitive need limits, thereby continuing duty-free treatment.

The AFL-CIO believes that the waiver authority has been abused in the past, and should be eliminated.

CHINA AND GSP

Under current law, the President is prohibited from designating as a BDC a country which is communist, unless its goods receive MFN treatment, is a GATT contracting Party and a member of the IMF, and is not controlled by international communism. It is possible that China may soon fulfill these criteria and therefore be eligible for GSP designation. To ensure that this possibility does not occur, the AFL-CIO urges that China be added to the list of GSP ineligible countries found in Sec. 502.

The GSP continues to hold out the promise of promoting equitable social and economic development. These needed changes will bring us closer to realizing that goal.

March 13, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

In response to the Trade Subcommittee's request for written comments on an extension of the U.S. Generalized System of Preferences (GSP), Apple Computer, Inc. wishes to express its strong support for legislation to renew the program beyond its July 31 expiration date. In particular, Apple urges the Subcommittee to ensure that the GSP is renewed on a long-term basis and that Malaysia's status as a beneficiary country is preserved.

Headquartered in Cupertino, California, Apple is one of the world's largest personal computer manufacturers with sales of $9.2 billion in 1994 and employment of 15,000. Almost 10 percent of Apple's total worldwide revenues are reinvested in its research and development base, and 90 percent of the workforce dedicated to this base is located here in the United States.

Apple relies on the GSP program to import personal computers and components from Malaysia free of duty. A failure by Congress to renew the GSP automatically would result in the imposition of a 3.5 percent duty to these products, forcing Apple to bear substantial additional duty costs annually.

The GSP, by helping Apple contain costs, makes an important contribution to our U.S. operations and workers. The GSP's duty savings apply both to finished personal computers and to the logic boards we import from Malaysia for further processing and incorporation into our U.S.-made computers. Holding down the cost of this key component strengthens the competitiveness of the finished product, and directly benefits the Apple workers in California and Colorado engaged in related manufacturing and assembly operations.

We wish to stress the importance of extending GSP benefits with respect to Malaysia in particular. Apple and most other major U.S. electronics manufacturers maintain strong manufacturing interrelationships with Malaysia, with duty-free GSP treatment undergirding much of this activity. Notwithstanding Malaysia's ranking as the top GSP supplier, a continuation of its GSP status is warranted by Malaysia's still modest level of economic development and is necessitated by U.S. manufacturers' strong reliance on Malaysian sourcing.

In conclusion, Apple strongly supports legislation renewing the GSP program on a long-term basis and the maintenance of full GSP benefits for Malaysia.

Sincerely,

William P. Fasig
Corporate Manager, International
Government Affairs

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Apple Government Affairs
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Embassy of the Argentine Republic

The Embassy of the Argentine Republic presents its compliments to the US House of Representatives - Ways & Means Committee, and has the honor to submit written comments in favor of the reauthorization of the Generalized System of Preferences (GSP).

1. The macroeconomics reform program in place in Argentina has allowed and helped the private sectors' efforts to join the global market. The GSP allows the industrial sectors covered by the system to be more competitive vis a vis products manufactured by companies in developed countries that receive "Most Favorable Nation" (MFN) duty status.

2. The possibility of greater exports increases the installed capacity utilization, promotes new investments, the adoption of advanced technologies, and creates jobs. Many investment opportunities and the supply of capital goods have been utilized by American companies: USA exports to Argentina jumped from U$S 1.2 billons to U$S 4.5 billions between 1990 and 1994 (+ 279 %). In 1994, 50 % of total American exports to Argentina were capital goods. This relationship is also experienced in other GSP beneficiary countries.

3. Strategic planning by enterprises requires a long term stable environment. The Argentine exporting firms, as well as the American importing ones, that trade in eligible GSP products need the System to be reauthorized for several years, i.e. 10 years. If the reauthorization is for the short term, it will generate uncertainty eroding the benefits that inspired the introduction of the program.

4. The Argentine Republic shares with the United States of America the application and philosophy of open markets and gives its full support to the reauthorization of GSP which promotes economic development through trade rather than through foreign aid.

The Embassy of the Argentine Republic avails itself of this opportunity to renew to the US House of Representatives - Ways and Means Committee - the assurances of its highest consideration.

Washington DC, March 13th., 1995.

TO THE US HOUSE OF REPRESENTATIVES
-WAYS & MEANS COMMITTEE-
WASHINGTON, DC

CONSUMERS FOR WORLD TRADE

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MICHAEL A. SAMUELS
President, Samuels International Associates, Inc.

March 17, 1995

The Honorable Philip M. Crane
233 Cannon House Office Building
Washington, DC 20515

Dear Congressman Crane:

I am writing to urge you to renew for at least five more years the Generalized System of Preferences (GSP) program before it expires July 31, 1995.

Consumers for World Trade (CWT), a national, non-profit, non-partisan organization which focuses on the consumers' interest in international trade policy, strongly supports GSP renewal in order to lower the costs of goods of importance to many Americans. Many consumer products are imported duty-free under GSP, including electronics, sporting goods, wood furniture, and food products. GSP only provides duty free-benefits to non-import sensitive products, so the consumer can pay lower prices without harming U.S. workers.

I understand that some believe, now that the Uruguay Round is reducing tariffs and Mexico has duty-free access to the United States under NAFTA, that GSP does not matter any more. Let me assure you that this is not the case. GSP matters a great deal to American purchasers of goods and services. I strongly urge you to find a way to renew this important program before it expires on July 31.

Sincerely,

Doreen L. Brown
President

STATEMENT
ON BEHALF OF THE COPPER AND BRASS FABRICATORS COUNCIL, INC.

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

EXTENSION OF THE GENERALIZED SYSTEM OF PREFERENCES

March 13, 1995

This statement is submitted on behalf of the Copper and Brass Fabricators Council, Inc. (the Council) and its 22 member companies (see Appendix A for a list of the Council's members). The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more than 85 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

The U.S. brass mill industry is an extremely import sensitive industry as evidenced by the antidumping and countervailing duty orders resulting from cases filed by Council member companies in the mid-1980's and their effects on the U.S. market. These cases resulted in 13 antidumping and countervailing duty orders against 11 countries involving imports of brass sheet and strip and low fuming brazing rod. These orders continue today. Since the orders went into effect, the industry has experienced a marked decrease in imports from targeted countries. The industry also requested that the Department of Commerce monitor imports of brass sheet and strip from seven additional supplier countries, which had no presence in the market when the antidumping and countervailing duty cases were initiated, but whose import levels increased dramatically after the antidumping and countervailing duty orders became effective. Several of the antidumping and countervailing duty orders and monitoring requests were against GSP eligible countries.

As the Subcommittee deliberates on the merits of extending the Generalized System of Preferences (GSP) program, the Council urges the Subcommittee to consider the following two issues; (1) lowering the threshold for the competitive needs limit test for articles, and (2) lowering the per capita gross national product (GNP) threshold for GSP eligibility for countries.

Under the current statute, if exports from a GSP eligible country exceed the threshold set forth in the statute, either in dollars or percentage of total export value to the U.S. for an article, the country is not treated as a beneficiary country for that article. In 1994, the threshold dollar amount is expected to be approximately $110 million calculated using U.S. GNP for 1974 as

the base. The percentage threshold as outlined in the statute is 50 percent of the total appraised value of total U.S. imports for an article for developing countries and 25 percent for more developed countries.

For industries such as the brass mill industry where total world imports of all brass mill products total only $600 - 800 million dollars per year, it would be difficult for any one country to meet the dollar threshold. It would be even more difficult or impossible to meet the percentage threshold when measured against U.S. imports from more than 55 countries worldwide. Having a threshold so high basically allows a GSP eligible country to export to the U.S. without having its eligibility threatened. More developed countries such as Malaysia and Brazil are just as competitive in the brass mill industry as countries like Germany and Japan yet they enjoy the benefits of GSP for brass mill products.

The current statute also sets a per capita GNP threshold for more developed countries to "graduate" from the GSP program. For 1993, the per capita GNP threshold was set at approximately $11,300, and for 1994, the threshold is expected to be approximately $11,800. The idea of GSP is to accord benefits to less developed countries until the countries are able to compete in the world market place sufficiently, not until they are fully developed. There are countries that are not GSP eligible but have less than $11,300 in 1993 GNP such as S. Korea. Very few would argue that S. Korea is a less developed country that needs GSP benefits even though its GNP was far less than the threshold amount.

The Council opposes any extension of the GSP program with the existing competitive needs limit and the per capita GNP thresholds. Both are too generous given the enormous U.S. trade deficit and the highly industrialized character of many so-called developing countries. Such high ceilings benefit those countries whose exports to the U.S. are competitive with U.S. producers and with imports from developed countries. Maintaining the thresholds at the present level results in real costs in the form of lost revenue to the U.S. Government. At a time when the U.S. Government is cutting benefits for its own people, it cannot and should not "give away" benefits to foreign countries which no longer need them.

As the Subcommittee formulates extension language on GSP, the Council requests that it look very carefully at the current statute dealing with these issues. The thresholds set forth in the current statute benefits countries that are sufficiently developed to export to the U.S. without GSP treatment. As a recent General Accounting Office study shows, GSP program benefits go to more developed countries rather than less developed countries.

In summary, the Subcommittee should carefully address these issues before extending the GSP program. Any extension should be faithful to the basic premise of the GSP program; that is assistance to less developed countries, not subsidies to developed countries' exports into the U.S. The Council urges the Subcommittee to not permit a reauthorization of the program before making these critical changes in eligibility standards.

Respectfully submitted,

Joseph L. Mayer
Mi-Yong Kim

Attachment

COPPER & BRASS FABRICATORS COUNCIL, INC.
MEMBERSHIP LIST
February 16, 1995

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CERRO COPPER PRODUCTS COMPANY
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(618) 337-6000

CERRO METAL PRODUCTS COMPANY
(A member of The Marmon Group of companies)
P.O. Box 388
Bellefonte, PA 16823
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CHASE BRASS & COPPER CO., INC.
P.O. Box 152
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CHICAGO EXTRUDED METALS CO.
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EXTRUDED METALS
302 Ashfield Street
Belding, MI 48809
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HALSTEAD INDUSTRIES
300 North Greene Street
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HEYCO METALS, INC.
Stinson Drive, Rd. 9160
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(215) 926-4131

HUSSEY COPPER LTD.
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KOBE COPPER PRODUCTS, INC.
P.O. Box 160
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METALS AMERICA
135 Old Boiling Springs Road
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THE MILLER COMPANY
290 Pratt Street
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MUELLER INDUSTRIES, INC.
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OLIN CORPORATION-BRASS GROUP
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OUTOKUMPU AMERICAN BRASS
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PMX INDUSTRIES, INC.
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(319) 368-7700

REVERE COPPER PRODUCTS, INC.
P.O. Box 300
Rome, NY 13442-0300
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ULLRICH COPPER, INC.
2 Mark Road
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WATERBURY ROLLING MILLS, INC.
P.O. Box 550
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WESTERN RESERVE MANUFACTURING COMPANY, INC.
5311 West River Road, North
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WIELAND METALS SERVICE CENTER
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WOLVERINE TUBE, INC.
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CYPRUS
Foote Mineral

Cyprus Foote Mineral Company
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STATEMENT OF
CYPRUS AMAX MINERALS COMPANY
REGARDING THE RENEWAL OF THE
UNITED STATES GENERALIZED
SYSTEM OF PREFERENCES PROGRAM

I. Introduction

We are writing to support the renewal of the United States Generalized System of Preferences ("GSP") Program. Cyprus Amax supports the renewal of the program in its current form.

Cyprus Amax owns and operates lithium mining and lithium chemical processing facilities at Kings Mountain, North Carolina and Silver Peak, Nevada. In addition, Cyprus Amax owns and operates lithium chemical processing facilities at Sunbright, Virginia, and New Johnsonville, Tennessee. Cyprus Amax also imports lithium carbonate duty free from Chile under the GSP program. Lithium carbonate has enjoyed duty free treatment under this program since 1987.[1] As a result of a petition filed by Cyprus Foote Mineral Company in the 1991 Annual Review, lithium carbonate from Chile was granted a waiver of the program's competitive need limit.

II. Cyprus Amax's Experience with the Program

The United States is the world's leading producer, consumer and exporter of lithium and lithium products, including lithium carbonate. From 1986 through 1991, the United States exported approximately 2200 metric tons of lithium and lithium products per year, while imports during the same period averaged approximately 740 metric tons per year.

The primary commercial markets for lithium carbonate are the production of primary aluminum metal, glass, ceramics, frit and porcelain enamel. Lithium carbonate is also the primary raw material for the production of other important compounds used in certain lubricants and greases, air conditioning systems, lithium metal production, naval submarine air purification systems, and synthetic rubber production. Additionally, lithium metal is used in commercial and military batteries, and other high-tech applications such as heart pace-makers and various military weaponry and hardware. It is clear that duty free access to this input product is beneficial to many U.S. industries.

If lithium carbonate became dutiable upon importation into the United States, Chilean exports may be diverted directly to U.S. export markets, thus depriving the U.S. producers of important value-added revenue on downstream lithium products such as lithium hydroxide, lithium chloride and lithium metal. For this reason, we submit that continued duty free treatment under the GSP program is in the best interests of the U.S. lithium industry. We note that imports of this product from Chile are

[1] There was a brief time period when Chile was suspended from beneficiary developing country status. However, Chile was reinstated in the program effective February 1, 1991.

granted duty free treatment into other developed countries such as Japan and the European Union.

Despite duty free treatment of lithium carbonate from Chile (which accounts for approximately 99 percent of all imports of lithium carbonate into the United States), the United States has remained a net exporter of lithium and lithium products.

As noted above, duty free treatment for lithium carbonate encourages exports to the United States for value added processing. However, imports from Chile also allow Cyprus Amax to extract and utilize its U.S. lithium reserves in the most resource-conservative manner possible. Without GSP, this benefit could also be lost.

The GSP program has enhanced the growth of the economies of the beneficiary developing countries in the program. For example, the mining of lithium carbonate is a relatively new industry for Chile, the development and construction of which infused approximately 50 million dollars in 1983 and 2 million dollars per year in capital improvements over the last 10 years into the Chilean economy. In Chile, the development of this industry has helped to diversify the economy and reduce its dependence upon the fluctuating worldwide copper markets. Exports of lithium carbonate and other products under the GSP program also help provide the necessary foreign currency to meet the foreign interest payments on Chile's external debt. Exports of lithium carbonate have had a positive effect on production and employment in Chile.

The GSP program has worked in the case of lithium carbonate from Chile. It has benefitted both the United States and Chile. Renewal of the program should continue this trend. We submit that the experiences that Cyprus has witnessed with imports from lithium carbonate from Chile are not unique. Duty free treatment, particularly for products that are subject to value added processing in the United States, provides benefits for both the United States and its developing trading partners. The program should be renewed with the goal of continued enhancement of the economic development of these countries, particularly in those sectors where the developing countries are not competitive internationally. The benefits to the United States include access to less expensive input products that make the U.S. downstream industries more competitive.

Additionally, increased exports from these countries make the countries more stable, creating export markets for U.S. products. The United States is a principal supplier of goods and services to Chile, maintaining approximately one-fourth of the Chilean import market. Major U.S. export products to Chile include machinery and equipment for mining, earth-moving, food processing and packaging, agriculture, chemicals, forestry, woodworking and pulp and paper.

Finally, with the enactment of the North American Free Trade Agreement ("NAFTA") and the preferential treatment now afforded to Mexico, it is crucial that other developing countries in the hemisphere can maintain economic growth. The United States has expressed an interest in the future expansion of NAFTA to other countries in the hemisphere. We submit that the continuation of the GSP program, along with other trade measures, will assist in the economic development of these countries so that they will be able to participate in an extended NAFTA when that time comes.

III. Procedural Issues

In 1992 the United States Trade Representative's office approved a waiver of the competitive need limit for lithium carbonate from Chile. This waiver was sought because, while 1991 imports of lithium carbonate were less than 10 percent of the competitive need dollar limit, almost all of the imports were from Chile, thus exceeding the 50 percent competitive need limit. We submit that if the program is reinstated, as we believe it should, the waiver provisions and existing waivers be kept in place so that for instances such as those described herein, relatively small volumes of imports that happen to account for more than 50 percent of all imports remain eligible under the program.

Under the current GSP program, once a waiver is granted it remains in effect unless challenged by an interested party. The waiver does not have to be requested each year. This feature of the GSP program should also be reinstated. Absent a petition by a domestic party, an annual renewal procedure is an unnecessary administrative burden for both the government and the party seeking the waiver.

The program currently contains sufficient safeguards, in the graduation provisions and competitive need limitations to ensure that countries and particular sectors that no longer require assistance are removed from the program. We submit that a renewed GSP program should contain similar safeguards.

IV. Conclusion

The United States has realized benefits from the GSP program in terms of access to inputs and developing stable export markets. The program has benefitted our developing trade partners by assisting them to become more competitive in certain sectors where they were not competitive. The program should be renewed with these goals in mind. The procedural safeguards in the program should remain. Specifically where relatively small volumes of input products are imported from one or two countries, so that they exceed the 50 percent competitive need limit, they should remain duty free within the program.

Cyprus Amax would be happy to answer questions regarding its experience with this program.

Embassy of the Czech Republic
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Washington, D.C. 20008

Attn:
Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S.House of Representatives
1102 Longworth House Office Building
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Written Statement for the Record of the Hearing of the
Subcommittee on Trade of the Committee on Ways and Means of the
U.S. House of Representatives, held on February 27, 1995

The Czech Republic confirms its interest in the GSP renewal.

The Czech Republic wishes hereby to confirm its interest in the renewal of the Generalized System of Preferences by the U.S.Congress upon its expiration, which is due on July 31, 1995. The Czech Republic is one of the two successor states of the former Czechoslovakia. The former Czechoslovakia became eligible for the GSP effective May 29, 1991.

The Czech Republic welcomed its designation as a beneficiary of the United States GSP scheme as a recognition of the radical political and economic transformation it has undertaken since 1989. The Czech Government shares the view expressed in the testimony of Mr.Ira Shapiro, USTR Senior Counsel at the hearing on February 27, 1995, that: " the GSP program is an important aspect of ... support for the democratic and market reform in Central and Eastern Europe ...". The U.S. GSP scheme provides for an expanded window of opportunity for the Czech businesses, an instrument for better access to the U.S. market and - last but not least - it also translates into lower prices for U.S. consumers.

GSP has become an important component of Czech trade with the United States. Each year approximately 50% of all Czech exports (i.e. some $ 130 million) enter the U.S. market under the GSP. Czech exporters count upon the GSP duty - free access in their business plans and decisions. Renewal of the GSP system for several years would significantly add to the predictability of the environment in the U.S. market - a necessary component for market decisions for Czech producers and exporters. At the same time the Czech Government recognizes the importance of the GSP as a market access instrument against the background of continued U.S. trade surplus in trade with the Czech Republic ($ 148 mil. in 1993, according to Czech data).

Even though the relative weight of the imports from the Czech Republic to the U.S. under GSP represents a marginal amount as compared to all the U.S. annual GSP imports (some $ 16 billion), the Czech Republic wishes to add its voice to those who advocate the GSP renewal by the U.S. Congress as of August 1, 1995.

Washington, D.C., March 10,1995

Michael ŽANTOVSKÝ
Ambassador

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Before the
Committee on Ways and Means
Subcommittee on Trade
U.S. House of Representatives

Statement of

Asociación Dominicana de Zonas Francas
- ADOZONA -
Dominican Association of Free Zones

on

Extension of the GSP Program

Introduction

The Dominican private sector[1] has been an enthusiastic supporter of the GSP program since its inception in 1975, and strongly urges the Trade Subcommittee to vote for a ten year extension of the program with the changes recommended below.

Suggested Changes

The Dominican private sector believes that certain changes are needed to improve the administration of the program and enhance its effectiveness in achieving the desired foreign policy and economic development goals and other objectives. In particular, the Dominican private sector supports the adoption of the following:

- a five-year "safe harbor" rule for countries whose worker rights or intellectual property protection practices have been investigated and covered by a favorable decision, and

- the replacement of the "substantial new information" test with a stricter standard, a "compelling new information" test during the safe harbor period.

These two elements will serve to protect a beneficiary country against harmful premature reinvestigations after thorough GSP investigations have produced favorable decisions concerning a country's worker rights or intellectual property practices.

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[1] The private sector consists of companies operating in the Dominican Republic and its free zones (zonas francas) as well as the umbrella organizations representing private sector companies and individuals. These organizations are the Dominican Association of Free Zones (Asociación Dominicana de Zonas Francas, Inc. or ADOZONA), the National Council of Businessmen (Consejo Nacional de Hombres de Empresas, or CNHE), and the U.S. Chamber of Commerce of the Dominican Republic (AmCham). (Hereinafter these companies and organizations will be referred to collectively as "the Dominican private sector".)

Background

For the last twenty years, the GSP program has been of immense importance to the economy of the Dominican Republic. The Dominican Republic was designated a "beneficiary developing country" (BDC) for purposes of eligibility for duty-free treatment under GSP on March 26, 1975 (Executive Order No. 11844, 40 F.R. 13295). This eligibility has continued without interruption since that time. According to U.S. International Trade Commission (USITC) statistics, imports of GSP articles from the Dominican Republic totalled $135,168,000 in 1994 (Customs valuation basis). GSP imports in 1993 were $119,196,000. CBI imports for 1994 totalled $751,028,000 and $657,673,000 in 1993.

To understand the importance of the GSP program for the Dominican Republic, it is essential to keep in mind that the Dominican Republic is a poor country slowly emerging from its dependence on the sugar industry.

1. Political/Economic Setting. The Dominican Republic is a small tropical nation, about the size of Vermont and New Hampshire combined. It occupies the eastern two-thirds of the island of Hispaniola, which it shares with Haiti. It is a functioning democracy and is the largest democracy in the Caribbean, with a population estimated at approximately 7.5 million people. The Dominican Republic has a mixed economy based primarily on agriculture, services, and light manufacturing. Sugar has been a cornerstone of the economy of the Dominican Republic and remains so today. Historically ten percent of the population of the Dominican Republic has been dependent on the sugar industry for its livelihood and over the last decade sugar exports have accounted for thirty percent of the country's total export earnings.

Over the last few years, however, the importance of the sugar industry has decreased and tourism, free trade zones, and remittances from Dominicans living abroad now generate more foreign exchange than sugar. The Government of the Dominican Republic accounts for nearly twenty-five percent of the domestic product and controls several major industries, including sugar, electricity, and the national airline, among others.

2. CBI Benefits. Various Dominican products are excluded from duty-free treatment under GSP, but are eligible for duty-free entry under the CBI.[2] The most important of these products is sugar. Due to duty-free treatment under CBI, Dominican sugar is spared duties of $13.78/metric ton. The Dominican Republic's sugar quota for FY 1995 is currently 219,404 metric tons for fourteen months (207,300 p.a.). Thus Dominican sugar exporters save $3 million per year at existing quota levels. In addition, CBI eligibility makes Dominican textiles and apparel eligible for increased access to the U.S. market under the Guaranteed Access Program. CBI eligibility permits the investment of Internal Revenue Code Section 936 funds in the Dominican Republic, a feature which is just beginning to take hold in the Dominican Republic.

3. Importance of Free Zones to the Dominican Economy. The free trade zones are extremely important to the Dominican Republic. They are the fastest growing sector of the Dominican

[2] Except for small quota years, Dominican sugar imports exceed the "competitive need" limitations for duty-free entry under GSP.

economy. At present, 476 companies operate in the country's thirty-one free trade zones, and they employ roughly 175,000 workers. Most of the businesses are either subsidiaries of U.S. companies, or affiliated with U.S. companies in one way or another.

Dominican law encourages companies to establish operations in free zones and provides significant tax and other benefits for doing so. Likewise, there are a number of tax and tariff benefits available under U.S. law for U.S. companies that set up "production-sharing" operations in the Dominican Republic. In addition to the duty-free treatment available under the GSP and CBI programs, U.S. companies are attracted by the duty-savings available under HTS heading 9802 (formerly TSUS items 806 and 807); the ability to use tax-deferred Section 936 funds for investment; and the ability to use U.S.-origin materials toward meeting the thirty-five percent "value added" test for duty-free treatment under the CBI. (Materials or components produced in the United States may be applied toward meeting fifteen percent of the thirty-five percent CBI local content requirement.) The benefits described above, the Guaranteed Access Level Program for textiles, and the significant investments made by the Dominican Government, and, since 1984, by Dominican entrepreneurs,[3] have combined to develop the facilities in the free zones and have brought about the huge increase in light manufacturing operations in Dominican free zones over the last decade.

Now free zone companies account for approximately one-third of the Dominican Republic's exports, ninety-six percent of which go to the United States. The Dominican private sector views free zones, particularly privately financed free zones, as an important vehicle for attracting foreign investment and creating new employment and foreign exchange. Moreover, increased development in free zones will only work to create and preserve more export-related jobs in the United States because of the "production-sharing" aspects of companies' operations in the Dominican free zones.[4]

4. U.S.-Dominican Trade Relations. The Dominican Republic is now the United States' biggest trading partner among the thirty-six countries of the Caribbean and Central American region. In 1994 the Dominican Republic imported almost $2.8 billion from the United States; bilateral trade reached approximately $6 billion, or twenty-six percent of the region's trade with the United States. Of the forty-seven nations in Latin America and the Caribbean, the Dominican Republic is the fifth largest U.S. trading partner, behind only Mexico, Venezuela, Brazil, and Colombia.[5]

Foreign Policy and Other Benefits of the GSP Program

Over the years the GSP program has proven its effectiveness as a tool to achieve significant results in foreign policy and economic development, and in furthering social advancement in

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[3] About one-half of the industrial parks where the free zones operate are Government-owned. The rest are private.

[4] For an analysis of the benefits of "production-sharing" to the United States, See "Production Sharing: U.S. Imports under Harmonized Tariff Schedule Subheadings 9802.00.60 and 9802.00.80, 1986-1989, 1987-1990, 1988-1991, and 1989-1992," USITC Publications 2365, 2469, 2592, and 2729, March and December 1991, February 1993, and February 1994 respectively.

[5] Source: 1994 U.S. Department of Commerce statistics.

beneficiary countries. Starting in 1975, statistics prove beyond doubt that the GSP program has accelerated economic growth and development in the less-developed countries that are beneficiaries of the program, by enabling them to increase their exports and foreign exchange earnings needed to diversify their economies and reduce dependence on foreign aid. At the same time, through the annual review process and associated mechanisms, the United States has been able to influence beneficiary countries' attitudes and actions toward improving social conditions in the countries such as improvements in worker rights.

This aspect of the program has been somewhat controversial because assorted interest groups in the United States have, on occasion, used the petition process to target selected countries and assail their qualifications as beneficiary countries under the various eligibility criteria. Nevertheless, the program has worked remarkably well overall, to spur economic development in beneficiary countries, and at the same time, to protect import-sensitive U.S. industries and particular industry sectors. In addition, the program has shown itself to be extremely flexible, able to adjust to changing international market conditions through the "graduation" and "competitive need" mechanisms.

On the other hand, a failure to continue the GSP program at the very time the United States is in the early stages of implementing NAFTA could be interpreted by many of the other BDCs, particularly in the Northern Hemisphere, as a discriminatory decision. This action could not only adversely affect future efforts to carry out positive foreign policy, but also could erode any benefits gained as a result of the use of GSP in the past.

Program Administration

As private sector representatives testified to the GSP Subcommittee at its 1993 hearings, the Dominican free zones and individual companies have made significant efforts to be "corporate good citizens" in the Dominican Republic, and have made many efforts to improve working conditions at plants in the various free zones and to improve living conditions and health and educational levels in the neighboring community.

Over the past six years since 1989, the Dominican Republic's eligibility to participate in the GSP program has been investigated three separate times with respect to worker rights and intellectual property protection practices. In fact, the only time when the Dominican Republic was not being investigated during this period was from mid-1991 to mid-1993. All of these investigations were ultimately resolved favorably for the Dominican Republic.

These investigations have been a tremendous disincentive to increased investment in the Dominican Republic. Therefore, the Dominican private sector urges the Subcommittee to consider carefully whether the criteria used by USTR to accept petitions calling for the revocation of a country's GSP (and CBI) eligibility should not be made more stringent when a country has already been investigated and a favorable decision has previously been made on the same subject.

For example, the Dominican Republic's worker rights practices, including those related to unionization in its free zones were investigated and cleared in April 1991. Two years later, in the spring of 1993, the AFL-CIO filed a complaint on the same subject, in spite of the numerous positive steps taken by the Dominican Government since the 1991 favorable decision to enhance the protections afforded to workers in the free zones,

especially workers engaged in unionization activities.

According to the AFL-CIO's petition, even though the Dominican Government had enacted a new Labor Code, promulgated implementing regulations, and adopted a new system of Labor Courts, the country was not enforcing its labor laws vigorously enough allegedly because there were not enough "functioning" unions or not enough collective bargaining agreements. Surely, these are not valid indicia of how well a country is affording internationally recognized worker rights to workers in the country as specified in the GSP statute. After all, barely 16 percent of American workers are unionized (a figure comparable to the number of union workers in the Dominican Republic). Does this mean that only 16 percent of American workers have their rights protected? Obviously not. In any case, this complaint was withdrawn by the AFL-CIO and the Administration issued a favorable decision on December 20, 1994.

The problem is that it is entirely too easy for an interest group to get USTR immediately to reinvestigate a country's worker rights practices after the country has been investigated once and cleared. Early reinvestigations discourage investment in a beneficiary country and thwart the country's efforts at economic development, self-sufficiency, and social change.

It must be recognized that the fact a country is under investigation and could lose its GSP or CBI benefits has a tremendous chilling effect on increased investment in the country, and while the investigation is underway, it is almost a total bar to investment.

Since mid-1989 the Dominican Republic has been subjected to three full investigations into its worker rights and intellectual property protection practices. These investigations and the attendant publicity have had measurable adverse effects on investment, and trade and tourism as well. While the Dominican private sector does not wish to address the merits of the 1989 Americas Watch petition or the 1992 MPEAA intellectual property petition, it does believe strongly that the 1993 AFL-CIO worker rights petition was designed by the AFL-CIO as a "sword" to hinder the further establishment of production-sharing operations by U.S. companies in the free zones in the Dominican Republic and elsewhere, rather than to be used as a "shield" to protect worker rights as contemplated by Congress.

The basis of this belief is that the AFL-CIO's petition presented a distorted picture of working conditions in the free zones as well as failing to describe accurately the progress of unionization in the Dominican Republic and neglecting to point out the significant steps taken by the Government of the Dominican Republic, in concert with business and labor, to ensure that the Dominican system of labor laws and regulations is modern and progressive in its outlook, and is enforced effectively and fairly throughout the country, including in the country's free zones. The significant steps taken since the previous worker rights investigation included:

- the adoption of a New Labor Code in June 1993 (and implementing regulations in October 1993),

- the establishment of significant new protections for union organizers (fuero sindical),

- the formation of new Labor Courts,

- the formation of a tripartite (Government, business, and labor) Oversight Commission for the free zones, and

- the appointment of a new, reform-minded Minister of Labor.

The Dominican private sector believes that Dominican free zones have been specifically targeted by the AFL-CIO because of their importance in production-sharing operations rather than for any unfair or wrongful opposition to unionization activities. On this point, it is important to keep in mind that the Dominican free zones are the most important in the region except for Mexico's. There are a number of reasons for this, including the Dominican Republic's proximity to Puerto Rico and its ability to engage in "twin plant" operations.[6]

It seems then that the 1993 AFL-CIO petition was designed to pressure the Administration into revoking the Dominican Republic's GSP and CBI eligibility merely to recapture jobs generated in the free zones in the Dominican Republic. This is a wrong-headed approach because production-sharing operations benefit U.S. workers. For example, in the textile and apparel industry, it is estimated that for every 100 jobs created in apparel manufacturing operations off-shore in free zones such as those in the Dominican Republic, 15 jobs are generated in the United States and thousands more are maintained in the United States, in the textile, transportation, and other industries.[7] In any event, if GSP and CBI eligibility were to be removed, the jobs in Dominican free zones would not go to the United States; they would go to Mexico and the Far East.

Suggested Corrections

Why then did USTR accept the AFL-CIO's June 1, 1993, petition? Although it has been speculated that the petition was accepted for reasons related to the AFL-CIO's position on the North American Free Trade Agreement, a discussion of this theory would not be useful to the Trade Subcommittee. Rather, the purpose of this statement is to suggest technical corrections

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[6] "An unusual feature of free zone exports is the large proportion that are shipped to Puerto Rico instead of the United States mainland. This reflects the existence of numerous twin plants, or more appropriately, 'complementary plants,' established in the Dominican Republic and Puerto Rico to take advantage of section 936 of the U.S. Internal Revenue Code. This section effectively exempts corporations from taxes on income from their Puerto Rican operations. They retain this exemption even if part of the processing of a good is carried out in an approved Caribbean Basin country. A minimum of 65% of the product's labor value must be added in Puerto Rico; this condition is easy to fulfill as labor in Puerto Rico is subject to the U.S. minimum wage legislation, thus relatively expensive.

The free zones of the Dominican Republic, because of their proximity to Puerto Rico, are the location of choice for establishing twin plants. More than forty U.S. companies including Westinghouse, Bristol-Myers, Hanes, and Timberland have established production sharing arrangements in the Dominican Republic for such products as electrical components, pharmaceutical products, clothing, and shoes. In the clothing industry alone, eight corporations operate twin plants that employ a total of 297 persons in Puerto Rico and 2,895 in the Dominican Republic. In this industry, however, the goods are not re-exported to Puerto Rico; the cloth is cut in Puerto Rico, then shipped to the Dominican Republic for sewing, finishing, and export directly to the United States." Larry Willmore, "Export Processing in the Dominican Republic: Ownership, Linkages, and Transfer of Technology". United Nations Economic Commission for Latin America and the Caribbean, Subregional Headquarters for the Caribbean, September 14, 1993, at p. 8.

[7] Source: American Apparel Manufacturers Association.

that would protect against the very real harm to foreign countries caused by ill-founded or premature investigations.

The Dominican private sector submits that changes need to be made regarding when a country's worker rights or intellectual property protection practices can be reinvestigated after a favorable decision has been made in a previous investigation on the same subject matter.

The problem of ill-founded or premature petitions is a result of the criteria set out in the implementing regulations. As stated above, the pertinent provisions are found in 15 C.F.R. 2007.0(b) which provides:

> If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue. [Emphasis added]

While the language of the regulation appears to be well-drawn at first glance, it is open to abuse where a petition is politically motivated or otherwise designed to omit or obscure critical facts that would become apparent during the course of the investigation. Of course, investment, trade, and tourism with the investigated country will be harmed during the investigation--which sometimes is the main intent of the petitioning group. This motive may be difficult to discern with an initial petition, but a second petition into the same subject matter should be carefully vetted before acceptance.

The Dominican private sector believes that the "substantial new information" test needs to be changed to afford more protections to beneficiary countries that have already been investigated and cleared.

The Dominican private sector has two recommendations in this area.

1. Safe Harbor. The regulations should be changed to provide a five-year "safe harbor" for countries whose worker rights or intellectual property protection practices have been investigated and a favorable decision has been made. Not only is this "safe harbor" needed for obvious reasons of fairness, it is also necessary to allow remedial measures that a country may have taken during a previous investigation, or thereafter, to develop and mature. For example, after the first investigation that covered unionization issues, the Dominican Republic developed a new Labor Code, adopted implementing regulations, and set up a completely new system of Labor Courts with specific jurisdiction over labor disputes, including unionization matters. The operation of this system should not be judged too soon after it has gone into effect. It needs a reasonable time to develop and function smoothly before being investigated. A five-year "safe harbor" would give remedial measures and new laws sufficient time to work and also allow new investment which can only have salutary effects.

2. Criteria During Safe Harbor Period. The test for instituting an investigation during the five-year "safe harbor" period should be the existence of "compelling new information", a stricter standard than "substantial new information." That is, there should be no reinvestigation of the same issue for at least five years from the date of a prior favorable decision, absent "compelling new information." Under this new test, there would have to be "new" information, but it would also have to be more than "substantial." It would have to be "compelling," and of such a nature that an investigation would seem imperative to any reasonable person. Failure of a foreign country to fulfill

commitments made to resolve a prior investigation would satisfy the "compelling new information" test.

Conclusion

The Dominican private sector believes that the program should be continued for a ten year period as was initially structured in Title V of the Trade Act of 1974. An extension this long is needed to give businesses certainty and stability in planning the continuation of their operations in BDCs. If a shorter extension is dictated by budgetary considerations, the Administration and Congress should make a clear declaration of their intent to extend the program for an extended period--ten years--at the earliest possible time so that investment in beneficiary countries will not be harmed by the uncertainty over the program's future.

The Dominican private sector strongly urges the Subcommittee to recommend or mandate the adoption of the "safe harbor" and "compelling new information" changes to the regulations for the GSP program. These changes would prevent abusive or ill-conceived petitions that have a chilling effect on investment in beneficiary countries--either deliberately or inadvertently--and thwart the very intention of Congress to foster economic development in designated beneficiary countries and thereby increase their ability to purchase U.S.-made products.

Finally, although not addressed here, the Dominican private sector supports allowing the value of U.S.-origin components to count toward the thirty-five percent "value added" requirements.

Respectfully submitted,

Robert W. Johnson II

Robert W. Johnson II
For ADOZONA

FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA

900 WILSHIRE BOULEVARD
Suite 1434
Los Angeles, CA 90017

STATEMENT OF THE FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA ON SELECT FISCAL YEAR 1996 BUDGET PROPOSALS AND POSSIBLE GSP EXTENSION

This statement is submitted on behalf of the Foreign Trade Association of Southern California (FTA), a non-profit organization with over 400 members, representing a cross section of the international trade community in Southern California, in response to Release No. TR-3 of February 14, 1995, for inclusion in the printed record of the hearings held by the Subcommittee on Trade on February 27, 1995. Consideration by the Subcommittee of our written comments on the extension of the Generalized System of Preferences will be greatly appreciated.

FTA is the oldest and most widely recognized trade organization in California serving the international trade community. Its membership includes importers, exporters and manufacturers, international bankers, attorneys, customhouse brokers and freight forwarders who are leaders in the international business community in Southern California.

FTA SUPPORTS AN EXTENSION OF THE GSP PROGRAM:

GSP has permitted developing countries access to the world marketplace for almost twenty years by allowing exportations to industrialized countries at preferential rates of duty. GSP has also clearly been more successful in promoting trade and sustaining economic growth in developing countries than other programs, such as direct foreign aid.

In the last several years some countries, such as Taiwan, South Korea, Hong Kong, Mexico and Israel, have been graduated or removed from the U.S. GSP Program. However, it continues to be extremely important to other developing countries, such as the Philippines, Thailand, Malaysia and Indonesia, as well as to the numerous newly-emerging democracies with fragile economies which have come into existence (e.g. Russia, the countries of Eastern Europe), all of which require the type of assistance which GSP can provide to prevent them from slipping back into the totalitarian forms of government from which they escaped. FTA continues to support a strong GSP program for the above reasons and urges that Congress approve its extension for a ten year period.

Members of the U.S. international trade community are also concerned about the expiration of the U.S. GSP program because it is difficult to plan an import strategy with the knowledge that a program on which importers rely will expire in less than four months, on July 31, 1995. In fact, while all importing firms which rely on GSP will be adversely affected if it is not renewed, some small importers will become so noncompetitive that they may be forced out of business.

Congress should consider that GSP benefits both importers and consumers in this country, since U.S. industry incorporates large quantities of duty-free materials and components into finished products in the United States, often after adding substantial value to them in this country. Not only are U.S. consumer prices moderated by the use of foreign materials and components, but also U.S. workers benefit from the work generated. Expiration of the GSP program will result in component and material cost increases in some industries which are extremely important to the U.S. economy, such as housing and autos. Such increases will cause prices to rise and workers to be laid off. This would be especially hard on the economically depressed California job market, where one out of ten jobs is tied to international trade.

In the past, the existence of the GSP program has resulted in Beneficiary Developing Countries (BDC's) either protecting or improving intellectual property rights and living up to other international obligations. It is obvious that if the GSP program is not renewed, the U.S. will lose leverage over countries which have previously protected or improved these rights and which will have no future incentive for doing so.

FTA SUGGESTS TECHNICAL IMPROVEMENTS IN THE GSP PROGRAM:

On January 8, 1991, the Customs Service issued Treasury Decision 91-7, which, inter alia, adopted a position denying GSP eligibility to sets, mixtures and composite goods containing components which are not "products of" the beneficiary developing country in which the set, mixture or composite good was manufactured. This policy leads to the absurd result that sets, mixtures and composite goods containing only one minor component sourced from a non-beneficiary developing country cannot qualify for GSP, even though that component may comprise less than one percent of the total value of the entire set, mixture or composite good.

FTA believes that this policy position adopted in T.D. 91-7 (copy enclosed) has little or no legal support. More importantly, however, the policy clearly results in denying GSP duty-free treatment to products having large percentages of value added in Beneficiary Developing Countries, because some minor component cannot be sourced in a particular country. Such a policy is clearly contrary to the philosophy on which GSP is based, and denies duty-free treatment to products of Beneficiary Developing Countries which would otherwise be eligible under the GSP program. For these reasons, FTA suggests that the GSP statute should be amended to permit the inclusion of minor non-BDC components in sets, mixtures and composite goods, or alternatively, that language should be included in the Report accompanying the legislation extending the GSP Program, disapproving the policy set out in T.D 91-7 and clarifying the Congressional intent to grant duty-free treatment to imported eligible articles which meet the statutory criteria of 35% BDC content, notwithstanding the presence of some foreign component.

FTA also proposes, in agreement with the views previously expressed by the Government Accounting Office, in GAO Report GAO/GGD-95-9 of November 1994 (at pp. 47-50 and 70-71), allowing U.S. component input to count toward the 35% minimum value rule for GSP. Allowing such input to count toward the 35% would be a boon to U.S. domestic manufacturers, importers and consumers. Other countries, including Canada and Japan, currently make a similar allowance in their GSP programs. The inclusion of U.S. value content input would also be consistent with other trade programs, such as the Caribbean Basin Initiative Act, which allow a donor country content rule.

In addition to the foregoing, FTA urges that the Committee disapprove of and reject any suggestion to entirely eliminate the current GSP rules of origin based on the concept of "substantial transformation" and to substitute therefor rules of origin like those in the North American Free Trade Agreement. The current GSP rules of origin have been in place for close to twenty years and are well understood by exporters and importers. Additionally, while in theory, rules of origin similar to those in NAFTA appear objective and simple to administer, in practice many importers and exporters are currently intentionally opting not to claim NAFTA eligibility for their goods because of difficulties in interpreting the NAFTA rules of origin and in complying with the regulations which have been promulgated thereunder.

In summary, FTA strongly supports renewal of the GSP program for a ten year period. The GSP program has historically encouraged trade with underdeveloped nations and has led to substantial economic gains for both these countries and the United States.

Your courtesy in including our statement in the printed record of the hearings held in Washington, D.C. on February 27, 1995 will be greatly appreciated.

Respectfully submitted,

FOREIGN TRADE ASSOCIATION
OF SOUTHERN CALIFORNIA

Fermin Cuza

Fermin Cuza
President

(T.D. 91-7)

TARIFF TREATMENT AND COUNTRY OF ORIGIN MARKING OF SETS, MIXTURES, AND COMPOSITE GOODS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interpretative rule.

SUMMARY: This document sets forth the position of the U.S. Customs Service regarding certain issues that have arisen concerning the tariff treatment and country of origin marking of sets, mixtures, and composite goods. Specifically, these issues are: (1) the dutiable status of such collections where a portion of the goods consists of American-made goods returned to the U.S. and/or articles assembled abroad in whole or in part of U.S. components; (2) the manner in which eligibility for the special tariff treatment programs (*e.g.*, Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI)) is determined for sets, mixtures and composite goods; and (3) the proper application of country of origin marking requirements to such collections.

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ISSUE II. Eligibility of sets, mixtures and composite goods for special tariff treatment programs.

This issue concerns the manner in which eligibility for special duty treatment under one or more of the tariff preference programs is determined for mixtures, composite goods, and sets. General Note 3(C)(i)(A), HTSUS, lists the following programs under which special tariff treatment may be provided: CBI, GSP, Automotive Products Trade Act, Agreement on Trade in Civil Aircraft, U.S.-Canada Free Trade Agreement, and U.S.-Israel Free Trade Area. General Note 3(a)(iii), HTSUS, states that special rates of duty under one or more of these programs apply to those products which are properly classified under a provision for which a special rate is indicated in the "Special" subcolumn and for which all of the legal requirements for eligibility for such program(s) have been met.

Thus, as is true in regard to all imported articles, the first step in determining whether sets or mixed or composite goods are entitled to special duty treatment under one or more of the tariff preference programs is to ascertain the proper classification of the article pursuant to the GRI's. If, for example, a particular set is classified by reference to GRI 3(b), the item of the set which imparts its essential character determines the classification of the entire set. If the "Special" subcolumn opposite the subheading under which the set is classified contains a special duty

rate, then the entire set would be entitled to that special rate, assuming compliance with the program's legal requirements. In this regard, *see* HRL 084709 dated August 24, 1989, involving composite goods and GSP eligibility. However, where no such duty rate is indicated for that subheading, the entire set would be ineligible for the tariff preference program, even though items in the set (not imparting the set's essential character) would be eligible if classified separately.

One of the requirements for duty-free treatment under the CBI, GSP and U.S.-Israel Free Trade Area programs is that the eligible article must satisfy the 35 percent value-content requirement. That is, the sum of the cost or value of the materials produced in the beneficiary country, plus the direct costs of processing operations performed in the beneficiary country, must equal or exceed 35 percent of the appraised value of the imported article. In determining whether this requirement has been satisfied with respect to sets or mixed or composite goods which are classifiable under one subheading pursuant to the GRI's, the includable material and direct costs must be compared to the appraised value of the entire collection of materials or components (*e.g.*, the entire set).

Prior to August 20, 1990, the GSP program differed from the CBI and U.S.-Israel FTA programs in that the latter programs included a "product of" requirement, while the GSP did not. This requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the beneficiary country or, if made of materials from a non-beneficiary country, those materials must be substantially transformed in the beneficiary country into a new or different article of commerce. In *Madison Galleries, Ltd. v. United States*, 688 F.Supp. 1544 (CIT 1988), *aff'd* 870 F.2d 627 (Fed. Cir. 1989), the court concluded that, under the GSP statute, it is unnecessary for an article to be a "product of" a GSP country to be eligible for duty-free treatment under that program. However, section 226 of the recently enacted Customs and Trade Act of 1990 (Public Law 101-382) includes an amendment to the GSP statute requiring an article to be a "product of" a GSP country for it to receive duty-free treatment. This amendment was effective for articles entered, or withdrawn from warehouse for consumption, on or after August 20, 1990.

Therefore, for articles entered, or withdrawn from warehouse for consumption, *before* August 20, 1990, the above-described difference between the GSP and the CBI and U.S.-Israel FTA remains. To illustrate how this difference impacts upon sets and mixed and composite goods, consider again the example of the hairdressing set from Mexico (a GSP country). Assume for purposes of this discussion that the comb, brush, and scissors are manufactured in Mexico from materials originating in Mexico. However, the electric hair clippers are manufactured in Taiwan (a non-GSP country), imported into Mexico, and merely packaged with the other items in the set prior to the set's direct shipment to the U.S. Pursuant to GRI 3(b), the set is classified in subheading 8510.20.0000,

HTSUS ("Hair clippers"), which is a GSP-eligible provision. The mere packaging of the Taiwanese-origin hair clippers with the other items clearly will not substantially transform the clippers into a "product of" Mexico. However, this will not, in and of itself, preclude GSP treatment for the set (assuming it was entered before August 20, 1990). Nevertheless, no costs relating to the hair clippers may be counted toward the 35 percent requirement. Therefore, to satisfy this requirement, the cost or value of the materials from which the comb, brush and scissors are made, plus the direct costs involved in manufacturing those three items, must equal or exceed 35 percent of the appraised value of the entire set (including the hair clippers).

The next question concerns whether the same hairdressing set would be entitled to CBI treatment, assuming that the comb, brush, and scissors are made in Jamaica from Jamaican materials and the hair clippers are manufactured in Taiwan and imported into Jamaica for packaging with the other items of the set. Again, the set would be classified in subheading 8510.20.0000, HTSUS, which is a CBI-eligible provision. However, because the entire imported entity (the set) is not the "product of" Jamaica, as required by the CBI statute, neither the set nor any part thereof would be entitled to duty-free treatment under this program. As a general rule, a collection classifiable in one subheading pursuant to the GRI's will receive CBI treatment only if all of the items or components in the collection are considered "products of" the beneficiary country. The same is now true under the GSP with respect to articles entered on or after August 20, 1990.

* * * * * *

Dated: January 8, 1991.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.



GE Appliances

General Electric Company
Appliance Park, Louisville, KY 40225

Louisville, Kentucky
March 3, 1995

United States Congress
House Ways and Means Committee
Subcommittee on Trade
1104 Longworth
Washington, DC 20515

RE: Extension of the Generalized System of Preferences (GSP)

Dear Committee Chairman:

As you know, the Generalized System of Preferences (GSP) as provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*), is scheduled to expire on July 31, 1995. This legislation by Congress authorizes the duty-free importing of goods from designated beneficiary developing countries.

Representing the Appliances Division of the General Electric Company located in Louisville, Kentucky, I would like to stress to you the vital importance of the renewal of this program. GE Appliances, as you know, is in an extremely competitive industry where we must take advantage of every possible opportunity for reducing the cost of our purchased parts and sourced products. GSP currently permits us to enjoy duty savings of several million dollars on numerous imported products. If GSP is allowed to expire, either temporarily or permanently, it would certainly cause our costs to increase which would have a negative impact on sales which in turn could cause lost jobs and lower profits to our company.

Please use all your influence as our representative in Washington to insure that the GSP program is renewed. It is important to GE and to the citizens of Kentucky.

Yours truly,

John H. Nininger

John H. Nininger
Program Manager, Import Administration
General Electric Appliances
Appliance Park AP4-116
(502) 452-3923

International Intellectual Property Alliance

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March 13, 1995

The Honorable Philip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth
Washington, D.C. 20515

Re: Renewal of the Generalized System of Preferences (GSP) Program

Dear Mr. Chairman:

The International Intellectual Property Alliance strongly supports the renewal of the Generalized System of Preferences (GSP) Program. A particularly important aspect of the GSP Program requires that GSP beneficiary countries provide "adequate and effective protection" for U.S. intellectual property, including copyrighted computer programs, films, videos, music, recordings, books and journals.

The International Intellectual Property Alliance ("IIPA" or "Alliance") consists of eight trade associations, each of which, in turn, represents a significant segment of the copyright industries in the U.S. The copyright-based industries play a crucial and growing role in the U.S. economy. The core copyright industries contributed an estimated $238.6 billion to the U.S. economy in 1993, or approximately 3.74% of the Gross Domestic Product (GDP). Employment in the core copyright industries grew some four times faster than the annual rate of the whole economy (2.6% vs. 0.7%) between 1988 and 1993. Foreign sales support an increasing proportion of U.S. jobs, with the core copyright industries compiling an estimated $45.8 billion in foreign sales in 1993.

The U.S. copyright-based industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. Inexpensive and accessible reproduction technologies, however, have made it easy for U.S. copyrighted works to be pirated in other countries. In addition to the worldwide problem of piracy, many foreign countries have erected market access barriers to U.S. copyrighted products.

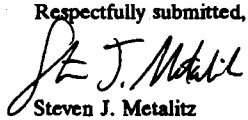
The GSP Program has been a key trade tool to address piracy of U.S. copyrighted works. The prospect of the U.S. halting or limiting GSP privileges has provided powerful leverage on those beneficiary countries which refuse to stem illegal piracy or open their markets to U.S. copyrighted products and services. Retaining GSP benefits has figured prominently in the decisions by a number of countries (such as Singapore, Indonesia, Thailand and Cyprus) to improve their intellectual property rights (IPR) protection and enforcement efforts.

IIPA uses the GSP petition process as a means to encourage countries with high levels of piracy and market access barriers to U.S. copyrighted products to improve their copyright protection, enforcement and market access schemes. Presently under GSP IPR review before USTR are El Salvador, Honduras, Poland and Turkey. IIPA has also urged USTR to initiate GSP IPR reviews of Bulgaria, the Philippines, the Russian Federation, Bolivia and Peru this year, assuming that the GSP Program is timely renewed.

Although GSP has played a critical role over the past decade in improving protection and access for U.S. copyright-based exports, the leverage of GSP benefits is still needed to encourage some of our trading partners to open their markets and crack down on piracy. As you know, the GSP Program is fully compatible with the World Trade Organization (WTO) multilateral regime. IIPA strongly urges that the GSP Program be renewed for an extended period.

Please include this letter in the record of the February 27 hearing on GSP renewal. We appreciate this opportunity to provide these comments and look forward to providing you and the entire Subcommittee with additional information regarding the urgent need to renew this important trade program.

Respectfully submitted,



Steven J. Metalitz
Vice President and General Counsel

Before the
Subcommittee on Trade
Committee on Ways and Means
U. S. House of Representatives

STATEMENT ON EXTENSION OF THE GENERAL SYSTEM OF PREFERENCES

SUBMITTED BY
JAY MAZUR, PRESIDENT
INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO
MARCH 13, 1995

My statement deals primarily with extension of the General System of Preferences program, which expires July 31, 1995. In stressing GSP, I am aware that the hearing also deals with the President's budget proposals for three trade-related government agencies. I do not underestimate the importance of these budgets. However, it is equally crucial that these agencies receive the proper policy guidance from the Congress in the areas referred to below.

In turn, USTR should be required to report annually to the Congress on the status of petitions related to its statutory authority and the extent to which progress has been made or not made to resolve them. GSP is a major element of U. S. trade policy.

The GSP program is based on Title V of the Trade Act of 1974. It grants duty-free treatment to imports from developing countries under certain clearly specified conditions. Last year $18.4 billion in imports entered duty-free under the program. Apparel is a major exception to the program. Current GSP authority expires July 31, 1995 as provided for in last year's Uruguay Round implementing legislation. Congress must now determine whether and under what conditions to extend the program.

In announcing these hearings, the Committee speaks of the program as one "which promotes economic development and creates markets for U. S. exports in developing countries through tariff preferences." It is precisely the circumstances under which this should be done in the extension of GSP that forms the basis for my testimony.

My comments are made in behalf of the 155,000 members of the International Ladies' Garment Workers' Union who are employed in the production of women's and children's apparel, accessories and related products. They live and work in more than two-thirds of the nation's fifty states.

In principle, the ILGWU supports extension of GSP. We believe that the program and its beneficiaries -- abroad and in the U. S. -- can truly gain from GSP if the enforcement parts of the Act are made stronger in any extension of the legislation. Briefly stated, I would propose:

* strengthening the sections of the current GSP legislation dealing with worker rights and standards and providing for their more effective enforcement by USTR. GSP should be denied to the worst offenders, while at the same time encouraging them to improve their records. As stated earlier, real steps to correct abuses should be reported annually to the Congress.

* tighter enforcement of the graduation requirements of the present law so that truly underdeveloped countries benefit, while the more industrialized countries are phased out of GSP benefits.

* continued exemption of apparel from the duty free provision of the current law.

Before elaborating on these points, I would like to make a general comment on one aspect of how GSP has been functioning. Data on GSP imports show that the benefits go to a small domestic elite in the

beneficiary countries and to the multinational companies that make use of the program.

Much of the product that enters the U. S. under GSP is assembled by low-wage workers in a few countries. The parts they assemble are rarely of their own making and many of the products had formerly been made here. In 1994, the top six GSP-using countries accounted for 72.1 percent of GSP imports, while the remaining 116 GSP beneficiaries, including the most underdeveloped countries, shipped 27.9 percent of total GSP imports.

With respect to my specific suggestions, Section 502(c)(7) of the Trade Act of 1974, as amended, requires that, when designating a GSP beneficiary country, the President take into account "whether or not such country has taken or is taking steps to afford workers in that country ... internationally recognized worker rights."

Such rights are clearly defined in Section 502(a)(4) of the Act, which includes:

> "(A) the right of association;
> (B) the right to bargain and organize collectively;
> (C) a prohibition on the use of any form of forced or compulsory labor;
> (D) a minimum age for the employment of children; and
> (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

Relatively few GSP beneficiary countries are currently in compliance with these provisions, although there is no quantitative test for these conditions in the Act. We and the AFL-CIO have repeatedly asked the United States Trade Representative to make use of its statutory responsibilities in a number of specific cases. With few exceptions, USTR has failed to do so and even the most egregious violators of the Act have been granted or continued to enjoy GSP status.

That the cited provisions can be used to help improve worker rights in GSP-favored countries has been made clear in the case of the Dominican Republic. Repeated petitions to USTR to pressure that country to agree to observe the worker's rights provisions of GSP finally led to important changes in how labor is treated.

The Dominican Republic has now begun to enforce its own labor code more effectively and, while problems still exist, unions are now allowed to function more openly than ever before and to represent the needs of workers in free trade zones. This shows clearly that USTR can use the Act to insure that workers are allowed to exercise their rights. Unfortunately, the same situation has not prevailed in the case of a number of other Caribbean countries, notably in Honduras and Guatemala, because of an apparent reluctance by USTR to use the powers entrusted to it to enforce the Act's provisions.

What is involved here, in addition to using GSP to advance democratic practices in beneficiary countries, is an important economic aspect. Talk of reciprocal market opening by countries that benefit from U. S. trade policy can only be meaningful to the export of U. S.-produced products to these countries if their people have the wherewithal to purchase U. S. products.

This can only occur if the income of the workers of these countries permit them to purchase U. S. products. The best way for this to occur, as history has shown, is when workers have the right to organize and to bargain collectively in their own interests. Otherwise, the policy becomes a sham that hides the perpetuation of these countries as low-wage suppliers.

With respect to apparel products, since its inception more than twenty years ago GSP has included two key provisions that exclude

most apparel products from duty-free entry. Section 503(c)(1) says that articles eligible for GSP cannot include one "within the following categories of import sensitive articles:

("A) textile apparel articles which are subject to textile agreements....

"(G) any other articles which the President determines to be import-sensitive in the context of the General System of Preferences."

Under provision (A), apparel products covered by the Multifiber Arrangement (MFA) have been exempt from GSP eligibility. These include garments made of cotton wool, man-made, vegetable fibers or silk blends. While there is little doubt that apparel is highly import-sensitive, given the 65 percent import penetration level, until now use of section (G) was unnecessary. Attention must now be directed at this section because of the Uruguay Round decision to end MFA coverage in ten years.

In the past, attempts have been made to remove from GSP legislation language specifically referring to apparel. We urge your Subcommittee not to accept such changes if and when it proposes renewal of GSP. Given the high level of import penetration, this Committee should seek to preserve the remaining U. S. apparel jobs.

As my testimony makes clear, the ILGWU supports extension of GSP. We believe that this must be accompanied by tighter enforcement of its existing provisions. Graduation of countries as their economies develop should be enforced. My proposals aim to make GSP a more effective weapon to promote democracy and higher living standards in beneficiary countries. GSP benefits should be denied to countries that ignore labor rights and standards.

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March 17, 1995



The Honorable Philip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1104 Longworth House Office Building
Washington, DC 20515

Dear Representative Crane:

I am writing on behalf of Inter-Tel, Incorporated to advise you of our concern that the Generalized System of Preferences (GSP) program may expire, yet again, in the very near future if the Administration does not take action soon to introduce a reauthorization proposal to Congress, and ensure its enactment. As you know, the Administration committed in the Statement of Administration Action to the Uruguay Round implementing legislation that it would introduce such a reauthorization "early in 1995." The program is scheduled to expire July 21.

I want to assure you, on behalf of Inter-Tel, Incorporated, that the GSP program remains consequential to our business. Inter-Tel designs, produces and markets business telephone systems, voice processing software, and application software on an international basis. We are a twenty-five year old company based in Chandler and currently employ over 760 people. Inter-Tel is proud to manufacture the majority of our products in Arizona. However, roughly forty percent of the products we sell are manufactured to our specifications in the Philippines, and these goods are **an integral part of products which we manufacture in Arizona**. If the GSP program is allowed to lapse again, our costs on products manufactured in the Philippines will increase at an estimated rate of 8½%.

Telecommunications is a rapidly changing, highly competitive industry, with market shares changing daily. This level of increase could potentially be devastating to a company of our size. **With foreign competitors** such as Northern Telecom, Toshiba, NEC and Panasonic it is imperative that we don't find ourselves at a serious disadvantage when the GSP program is allowed to lapse. We make recurrent use of this program, and our company's future is greatly influenced by it.

The stop-and-start nature, characterized by the GSP renewal efforts in the past, is disruptive and costly to our business. It is important to us, to our workers, and to our competitiveness that the GSP program is renewed, especially since **the jobs of employees in our nationwide offices and dealerships are at stake** if GSP is terminated. It is with this perspective in mind that I strongly urge you to offer renewal legislation immediately. It must not be allowed to lapse or to expire altogether.

Sincerely,

INTER-TEL, INCORPORATED

Steven G. Mihaylo
Chairman and Chief Executive Officer

INTEGRATED SYSTEMS

March 17, 1995

The Honorable Philip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1104 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

I am writing on behalf of Inter-Tel Incorporated to advise you of our concern that the Generalized System of Preferences (GSP) program may expire, yet again, in the very near future if the Administration does not take action soon to introduce a reauthorization proposal to Congress, and ensure its enactment. As you know, the Administration committed in the Statement of Administration Action to the Uruguay Round implementing legislation that it would introduce such a reauthorization "early in 1995." The program is scheduled to expire July 21.

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The stop-and-start nature, characterized by the GSP renewal efforts in the past, is disruptive and costly to our business. It is important to us, to our workers, and to our competitiveness that the GSP program is renewed, especially since **the jobs of Arizona employees are at stake** if GSP is terminated. **It is with this perspective in mind that I strongly urge you to offer renewal legislation immediately. It must not be allowed to lapse or to expire altogether.**

Sincerely,

INTER-TEL, INCORPORATED

Carolyn S. Sinclair

Carolyn S. Sinclair
Secretary, Technical Support

Quality First...
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Statement by Richard L. Bernal
Ambassador of Jamaica to the United States
Submitted to the House Ways and Means Subcommittee on Trade
on Renewal of the Generalized System of Preferences (GSP)
March 13, 1995

The Government of Jamaica strongly supports Congressional reauthorization of the Generalized System of Preferences (GSP) this year.

The GSP program establishes important tangible and symbolic mechanisms that support trade-based growth and economic reform throughout the Caribbean and the developing world. The GSP provides developing countries market access to the United States for many non-traditional exports, generating a critical source of foreign exchange. These earnings, in turn, help finance future imports or investment in productive capacity, stimulating job creation and advancing the cause of trade liberalization.

Moreover, the US commitment to trade-based growth, through such programs as the GSP, sends an unmistakable signal of US support for this process of economic growth and trade liberalization throughout the developing world. As Caribbean countries have sought to restructure their economies to take advantage of the benefits of increased US trade links, they have undertaken policies to reduce tariff and other import barriers, privatize state-owned entities, eliminate controls on prices and exchange rates, and lessen the hand of the government in the economy. They have also undertaken to establish fair labor codes, strengthen intellectual property protection, and establish sound environmental policies. The resulting policy mix has allowed the private sector to become an engine of sustainable development and economic growth throughout the region.

Ultimately, economic growth in the Caribbean region and throughout the developing world is important for US interests. The Caribbean Basin's experience with trade-based development provides an instructive model for the United States. As the Caribbean Basin economy has developed, for example, so too has its ability to import US goods and services. ***From 1985 to 1994, US exports to the Caribbean have expanded by more than 125 percent. Throughout the Caribbean, such trade-based growth has led to the creation of close to 17,000 US jobs a year for the past decade.*** Finally, US consumers benefit from greater access to the products of the developing world.

As Congress continues to address its trade agenda this year, part of its attention must center on the mechanisms that enable foreign countries to remain healthy and vigorous trading partners of the United States. The Subcommittee has already taken the lead on this through timely consideration of the Caribbean Basin Trade Security Act, a measure that will significantly benefit US/Caribbean trade links. Another sure mechanism to help promote stronger trade-based growth throughout the Caribbean is the Generalized System of Preferences (GSP).

US/CBI Trade Statistics (1985 - 1994)
(Millions of US Dollars)

Year	US Imports	US Exports	Annual Export Growth	Trade Balance
1985	6687	5942	--	-745
1986	6065	6362	7.1%	297
1987	6039	6906	8.6%	867
1988	6061	7690	11.4%	1629
1989	6637	8290	7.8%	1653
1990	7525	9569	15.4%	2044
1991	8372	10013	4.6%	1641
1992	9627	11263	12.5%	1516
1993	10378	12428	10.3%	2026
1994	11495	13441	8.1%	1946

Average Annual U.S. Export Growth: 9.5%

Note: 1994 marked the 9th straight year of U.S. trade surpluses

---

Number of US Workers Dependent on
Trade with the Caribbean Basin Nations

Year	Total Number of US Workers*	Number of New U.S. Jobs Created Per Year
1985	118,840	--
1986	127,240	8,400
1987	138,120	10,880
1988	153,800	15,680
1989	165,800	12,000
1990	191,380	25,580
1991	200,260	8,880
1992	225,262	25,002
1993	248,552	23,290
1994	268,814	20,292

Average Annual Job Creation: 16,667

* Assuming that $1 billion in US exports creates 20,000 US trade-related jobs.

Source: US Department of Commerce, US International Trade Commission

Statement Submitted on Behalf of The Lackawanna Leather Company in Support of the Timely Renewal of the United States Generalized System of Preferences ("GSP") Program

This written statement is submitted on behalf of The Lackawanna Leather Company ("Lackawanna Leather") in support of the timely renewal of the United States Generalized System of Preferences ("GSP") Program. Lackawanna Leather has utilized the GSP Program since its inception in 1975 to import leather hides into the United States from a variety of Beneficiary Developing Countries. The GSP Program has been instrumental on allowing Lackawanna Leather to import hides and to sell them to the U.S. leather furniture industry at prices which permit U.S.-made leather furniture to compete against moderately priced leather furniture imported into the United States from primarily Italy in the highly competitive, lower end of the U.S. leather furniture market.

Lackawanna Leather urges not only that the GSP Program be renewed, but that it be renewed for a minimum period of five years, and preferably for a period of ten years. The business community needs to operate in an environment of certainty in order to make rational long-term planning and investment decisions. The uncertainty over whether the GSP Program will be renewed by the United States, and whether products will be able to enter the United States duty-free under the GSP Program over the long-term, has made it very difficult to develop and adopt business plans for the future. A five to ten year renewal of the GSP Program will remove much of the uncertainty which has surrounded the GSP Program during the past two years.

Business decisions and plans are made with the expectation that goods will or will not be subject to import duties, not on the basis that at some times they will be subject to import duties, and at other times they will not be. At times, a change in the duty status of a product can go to the very heart of a business plan, and seriously impact its overall viability. The recent series of short-term (15 months or less) extensions of the GSP Program, followed by GSP "gap periods" during which goods which had been duty-free under the GSP Program were suddenly subject to import duties, has been extremely disruptive to business. Additionally, the GSP "gap periods" have presented short-term cash flow problems for Lackawanna Leather and other companies which were suddenly required to pay import duties on articles which had been duty-free. Although all import duties paid on goods entered during the GSP "gap periods" are eventually refunded to the importer, the need to pay import duties on goods generally subject to duty-free treatment created short-term liquidity problems.

For this reason, Lackawanna Leather not only urges a long-term renewal of the GSP Program, but also a timely renewal of the GSP Program, to prevent the creation of any further GSP "gap periods" during which legal authority to permit otherwise GSP eligible goods to enter into the United States duty-free lapses. The disruption to business resulting from past GSP "gap periods" should not be underestimated. The avoidance of any further GSP "gap periods" should be a major goal both for Congress and the Administration in enacting GSP renewal legislation this year.

Although the GSP Program was initially enacted primarily to promote the economic development efforts of developing countries, over the past two decades it has also become very important to U.S. businesses. Lackawanna Leather's awareness of the importance of the GSP Program to its own operations was heightened by the loss of GSP eligibility in 1991 for buffalo leather from Thailand. Lackawanna Leather had spent a great deal of time and money in the late 1980's developing a market for buffalo leather as a low-cost upholstery for use on moderately-priced leather furniture (as an alternative to the more expensive cow leather or less expensive vinyl). U.S. leather furniture manufacturers used buffalo leather in an effort to combat the significant surge in imports of moderately-priced leather furniture from Italy.

Thailand was the only country from which buffalo hides were available in commercial quantities in the early 1990's, and the loss of GSP eligibility for this product, and imposition of the 3.7% duty rate, immediately minimized the competitive price advantage provided to U.S. furniture manufacturers by buffalo leather. While Lackawanna Leather initially absorbed this duty cost (3.7%), it eventually had to pass it along to its customers, who would then pass it along to U.S. consumers. Lackawanna Leather attempted to restore buffalo leather from Thailand to GSP eligibility in the 1992 GSP Annual Product Review. This effort did not succeed, despite the showing made by Lackawanna Leather that the continued loss of GSP eligibility for this product not only adversely affected its own operations, but also those of many U.S. producers of moderately-priced leather furniture, who relied on buffalo leather from Thailand to compete with imports from Italy. Arguments in support of the effort to restore buffalo leather from Thailand to GSP eligibility, and the evidence showing that the continued loss of GSP eligibility for buffalo leather from Thailand not only adversely affect Lackawanna Leather and its 600 plus employees in North Carolina and Nebraska, but also the thousands of employees employed by its customers, were deemed not legally cognizable by the Administration as the effect of the loss of GSP eligibility on a U.S. businesses or industries who relied on the Program was not a factor listed in the GSP law to be considered by the President in making a GSP product removal or product add determinations.

Citing continued intellectual property concerns with Thailand, the petition filed by Lackawanna Leather to restore GSP eligibility to buffalo leather from Thailand was denied. While Lackawanna Leather certainly applauds and supports this Administration's and past Administration's efforts to improve intellectual property protection in Thailand and in other Beneficiary Developing Countries, it questions why it, and its customers in the United States, were the ones forced to pay the price for this effort.

Lackawanna Leather has learned a number of lessons from its experience with buffalo leather from Thailand. The first is that the GSP Program is extremely important to its economic and financial well-being. The loss of GSP eligibility for only one product line caused the Company significant economic and financial hardship. Should the GSP Program not be renewed, the loss of duty-free status for all of its products which are otherwise GSP eligible would severely affect the financial well-being of the Company.

Second, Lackawanna Leather learned that the GSP Program has evolved significantly since its creation. The Program was initially supposed to be a unilateral extension of benefits by the United States to developing countries to encourage the development of economic infrastructure by providing a competitive advantage to products from Beneficiary Developing Countries shipped to the United States. Over the past 20 years, however, the Program has evolved into a tool of U.S. trade policy and has been used to force Beneficiary Developing Countries to make changes in their intellectual property worker rights regimes in order to maintain their Beneficiary Development Country status. While the goals of U.S. policy in these areas are laudable, under current law, the companies or industries in the United States who often pay the price for these efforts are often unrelated to those who would benefit most from such efforts. This is exactly what happened to Lackawanna Leather, and the U.S. leather furniture industry, in the case of buffalo leather from Thailand.

As the Administration and Congress consider amendments to the GSP law, Lackawanna Leather would strongly suggest that a provision be added to the law which would allow the Administration to take into account the impact that the removal of GSP benefits, or the addition of GSP benefits (at least in cases where a request has been made to restore GSP eligibility to a product which had previously lost its GSP eligibility), may have on a U.S. industry and its employees. Especially in the former case, where U.S. businesses may have been built around the GSP eligibility of the goods that they may import, such concerns are not unreasonable. To deny GSP benefits to U.S. companies because of intellectual property or worker rights concerns in a Beneficiary Developing Country can unjustly punish U.S. businesses and workers who are not responsible for a Beneficiary Developing Country's intellectual property, worker rights, or other objectional practices and policies, and who would not benefit from any improvements in such policies. While

understanding that the purpose of the GSP Program is not to provide benefits to U.S. businesses, the Program should not be administered in a way which is detrimental (or blind) to the interests of U.S. businesses and workers. As discussed earlier, the GSP Program has evolved significantly from its origins, and no longer has as its primary purpose the extension of unilateral trade benefits to developing countries. Given the other purposes for which the GSP Program is now being utilized, the GSP law should be amended to allow the Administration to take into the account the effect of any actions with respect to the termination or restoration of GSP eligibility on U.S. businesses and workers who have benefitted from the GSP Program.

For all the reasons discussed above, Lackawanna Leather strongly urges that the Congress enact legislation renewing the GSP Program for a period of ten years (or at a minimum, for no less than five years). Lackawanna Leather also urges that the legislation extending or renewing the GSP Program be enacted by Congress, and signed by the President, prior to July 31, 1995, the date on which the current GSP Program is to expire. The avoidance of another GSP "gap period" should be a major objective of both the Administration and the Congress. Finally, we would urge that legal authority be given to the Administration to take into account the affect of the termination of GSP benefits, or the failure to restore GSP benefits, on U.S. businesses and U.S. workers who have or would benefit from the GSP Program.

Your consideration of these points is greatly appreciated by the Lackawanna Leather Company, and its 600 plus employees in North Carolina and Nebraska.

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Before The

Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives

SELECT FISCAL YEAR 1996 BUDGET PROPOSALS
AND POSSIBLE GSP EXTENSION

Written Comments of Libbey Inc.

March 13, 1994

These comments on possible extension of the Generalized System of Preferences (GSP) are filed on behalf of Libbey Inc., a U.S. producer of glassware products. Imported glassware like and directly competitive with the U.S. products (e.g., drinking glasses and stemware, dishes, bowls, cups, saucers, stovetop ware and ovenware, vases, ashtrays, candle holders, canisters, salt and pepper shakers, figurines) are classified under various subheadings of heading 7013 of the Harmonized Tariff Schedules of the United States (HTS).

The U.S. glassware sector has long been recognized as highly import sensitive. Congress, accordingly, excluded "import-sensitive semimanufactured and manufactured glass products" from GSP eligibility from the outset. 19 U.S.C. § 2463(c)(1)(F), section 503(c)(1)(F) of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2070 (emphasis added); see, also, Statement of the Glass Workers' Protective Leagues of Illinois-Wisconsin, Indiana, Ohio, Pennsylvania, and West Virginia in The Trade Reform Act of 1973: Hearings Before the Senate Committee on Finance on H.R. 10710, 93d Cong., 2d Sess., Part 6 at 2349 (1974).

Since enactment of the GSP, the condition of the U.S. industry has worsened. The following list of factors confronting the U.S. industry combine to highlight the industry's growing import sensitivity:

- extensive plant closings and reduction of employment in the pressed and blown glass sector by about 16,000 workers since 1978 (Attachment 2);
- stagnant U.S. glassware demand and consumption (Attachment 3);
- reductions of total U.S. producer production and shipments (id.), and depression of U.S. prices;
- imports from both GSP and non-GSP countries surging and capturing an increasing share of stagnant U.S. consumption (penetration presently in excess of 40%) (Attachments 3 and 4);
- an increased range of countries whose exports of glassware to the United States are or will become duty-free under the Caribbean Basin Economic Recovery Act (CBI), U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Andean Initiative;

- existing import sensitivity is shown by pre-Uruguay Round tariffs on glassware as high as 38%, when the U.S. average tariff was about 4%;

- increased imports and increased U.S. producer sensitivity will follow the Uruguay Round's 25% cut of all U.S. glassware tariffs over 15%, the higher (or "peak") tariffs reflecting products where the industry has the greatest import sensitivity;

- general world oversupply of glassware and continuous additions of production capacity by other industrialized and less-industrialized countries despite this oversupply;

- other countries' producers' focus upon the United States as the target for their glassware exports, the U.S. exceeding other countries' glassware imports by any measure (i.e., in absolute terms, on a per capita basis, and even when adjusted to take account of development level differences).

1. Possible Legislative Corrections of Present Approach to GSP Petitions on Glassware

Notwithstanding the condition of the industry and the intent of Congress that import-sensitive semimanufactured and manufactured glass products not be GSP eligible, U.S. glassware manufacturers and their workers have had to respond to a barrage of petitions requesting GSP treatment for glassware articles: every eight-digit item under HTS heading 7013 has been the subject of at least one petition since 1989; several have been the subject of petitions in four separate reviews. See Attachment 1 (summary of petitions under HTS 7013 since 1989).

Petitions are allowed because administrations have interpreted the words "import-sensitive" at part (F) of 19 U.S.C. § 2463(c)(1) as requiring a case-by-case finding of import sensitivity before a GSP request will be denied. That, however, is not a reasonable interpretation. The sponsors of the amendment that added glass products to the list of exclusions at section 2463 clearly understood that "semimanufactured and manufactured glass products" are import sensitive. The legislative history suggests that the words "import-sensitive," which were added in conference, were not intended to limit the types of glass products to be excluded but to describe the condition of the U.S. industry. See, e.g., 120 Cong. Rec. S. 21396-98 (daily ed. Dec. 13, 1974); H.R. Rep. No. 1644, 93d Cong., 2d. Sess. at 53 (Amendment 411)(1974); 120 Cong. Rec. S 22508 (daily ed. Dec. 20, 1974).

Moreover, the same "import-sensitive" inquiry is required by a separate provision of section 2463(c)(1) for all products; i.e., any article found to be import sensitive in the GSP context is to be denied GSP designation. 19 U.S.C. § 2463(c)(1)(G). With that general requirement, no purpose is served by the exclusion of glass products from GSP only when the same, general, import-sensitivity inquiry applicable to all products is met. That is, interpreting the words "import-sensitive" at 19 U.S.C. § 2463(c)(1)(F) to require the case-by-case import sensitivity inquiry already required for all products renders the exclusion for glass products meaningless; it is at loggerheads with the rule of statutory construction that Congress intends to give meaning to each part of a statutory provision.

One legislative solution in this regard would be to achieve the original intent of Congress to exclude glass products from GSP treatment by deleting the words "import-sensitive" which presently precede the words "semimanufactured and manufactured glass products" in the exclusion at 19 U.S.C. § 2463(c)(1)(F). From a budgetary perspective, that approach would lead to increased revenues through imposition of duties on the few products under HTS 7013 that are presently designated GSP.

It would assure no further loss of revenues through GSP designation of additional glassware products and would also eliminate administrative/personnel costs associated with the government's interagency administration of GSP petitions on glassware. From the industry's perspective, it will remove the costly distraction from achieving domestic and international competitiveness.

As an alternative, 19 U.S.C. § 2463(c)(1)(F) could be amended by inserting a definition of "import-sensitive" as including products on which petitions have been previously rejected or denied, acknowledging that the rejection/denial represents a finding of import sensitivity. That approach would continue the GSP designation of articles that are already GSP while preventing addition of ones already found to be import sensitive.

2. Continue Exclusion of Glass Also for Least Developed Developing Countries

The proposal put forth by the Administration on GSP renewal when Uruguay Round implementation was at issue would permit giving GSP benefits for a particular product to least developed developing countries (LDDCs) only. Sec. 3(a)(4) of Administration Proposal on Renewal of the Generalized System of Preferences (GSP) Program (May 16, 1994). This Subcommittee's draft proposal of June 29, 1994, adopted that approach as well. Uruguay Round Trade Agreements Draft Implementing Proposal, As Amended and Recommended by The Subcommittee on Trade, Committee on Ways and Means (June 29, 1994) at 185. Although the substantive changes of those proposals were not made part of the law when GSP was extended unchanged through July 31, 1995, they likely will become the basis for draft GSP legislation this year.

Libbey's concern with those drafts is that they would prevent GSP designation for the LDDCs only of certain of the products presently exempted under § 2463(c)(1); "import-sensitive semimanufactured and manufactured glass products" is not one of the excepted products. The LDDC exemption in those drafts would be limited to textiles and apparel, watches, and footwear and related articles; i.e. those specified in subparagraphs (A), (B) and (E) of 19 U.S.C. § 2463(c)(1). Libbey requests that "import-sensitive semimanufactured and manufactured glass products," subparagraphs (F) of 19 U.S.C. § 2463(c)(1), also be exempted from GSP designation in the LDDC context. Although the LDDCs do not presently account for a significant portion of total imports, major international producers can easily establish facilities in other countries when there is a reason to do so. The potential savings of tariffs as high as 38% would provide that incentive. Moreover, this would be only one among many programs under which glassware enters, or will in the future enter, the United States free of duties (e.g., NAFTA, U.S.-Israel, CBI, Andean) or under which tariffs will be reduced (Uruguay Round). For an industry as import sensitive as glassware, each new program granting duty-free or reduced-duty access to this market adds to the cumulative dislocating effects already being felt. Accordingly, glass products should continue to be excluded from GSP designation; an exception should not be made for the LDDCs.

3. Inclusion of the regulation's three-year rule in the statute itself and its extension to instances in which the President has declined to initiate a review

Under USTR's current regulations, an interested party may submit a request to designate additional articles as GSP eligible, "provided that the article has not been

accepted for review within the three preceding calendar years." 19 CFR 2007.0(a)(1). Thus, where a party petitions to add a product to the list of eligible products and the petition is denied, no new petition regarding the same product may be accepted for review for a period of three years. The three-year rule was established to prevent needless reargueing of petitions where a product has already been found to be import-sensitive. See, e.g., Possible Renewal of the Generalized System of Preferences--Part 1, Hearings Before the Subcommittee on Trade of the Committee on Ways and Means, 98th Cong., 1st. Sess., Serial 46 at 140 (Statement of James J. Whitsett, President, Anti-Friction Bearing Manufacturers Association, Inc.) (1984); Possible Renewal of the Generalized System of Preferences-Part 2, Hearing Before the Subcommittee on Trade of the House Committee on Ways and Means, Serial 59 (February 8 and 9, 1984) at 8 (Statement of Bobby F. McKown).

In practice, however, USTR has, in the context of the "special" GSP review for Central and Eastern Europe, waived the three-year requirement and accepted for review petitions that had been rejected within the three-year time period. 56 Fed. Reg. 37,758 (August 8, 1991).

In addition, in its current form, the three-year rule does not appear to apply where a petition was, for whatever reason, rejected before review. The rationale of the three-year rule applies equally where a petition was rejected prior to review, provided the rejection was for reasons other than a technical deficiency in the petition. Thus, where a petition was rejected prior to review because of the clearly import-sensitive nature of the product, new argument on the same issue should not occur before three years have elapsed.

To achieve this, Libbey proposes that the statute incorporate an amended version of the present three year rule (modeled, with amendments underscored, on 19 C.F.R. 2007.0(a)(1) and 19 CFR 2007.1(a)(4)) as follows:

> An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review or rejected prior to review for reasons other than a technical deficiency in the petition within the three preceding calendar years;
>
> If it is a request for a product addition, the previous request must not have been formally accepted for review or rejected prior to review for reasons other than a technical deficiency in the petition within the preceding three calendar year period ....

Although the administration indicates that it intends through regulation to cause reviews for product additions to occur only every third year, it would be prudent to include the three-year rule in the statute itself, and to indicate in the statute or related reports (e.g., statement of administrative action) that exceptions to the three year rule will not occur.

Of course, the exclusion of glass products from GSP eligibility would make codification of the three year rule irrelevant from Libbey's perspective.

4. Conclusion

Notwithstanding the prohibition against designating "import-sensitive semimanufactured and manufactured glass products" as GSP eligible, the U.S. glassware industry and its workers have been repeatedly put to the cost and burden of responding to foreign entities' petitions requesting that individual glassware articles be designated GSP

eligible. Each glassware tariff item under heading 7013 of the Harmonized Tariff Schedules of the United States (HTS) which is not designated GSP eligible has been the subject of at least one GSP petition that was rejected or denied since 1989. Against that background, permitting new GSP petitions on glassware would be unfair to the U.S. industry and its workers. It would also be unfair to partially eliminate the exclusion by limiting the number of GSP beneficiary countries to which it would apply. Accordingly, Libbey asks:

(1) that the statutory exclusion of "import-sensitive semimanufactured and manufactured glass products" from GSP eligibility be amended, either: (a) by deleting the words "import-sensitive" which presently precede "semimanufactured and manufactured glass products" at 19 U.S.C. § 2463(c)(1)(F) to more clearly reflect the original intent of Congress to exclude glass products from GSP designation, or (b) by adding a definition of the term "import-sensitive," as it appears at section 2463(c)(1)(F), to include "glass products not presently designated GSP eligible which have been since 1989 the subject of one or more rejected or denied petitions for additions to the list of GSP eligible products";

(2) that no countries be exempted from the exclusion of glass from GSP eligibility (i.e., that the glass product exclusion also be applied to LDDCs); and

(3) that the three year rule be added to the statute as part of the renewal process, that it not be subject to exception, and that the same significance attach to a refusal to initiate a review as attaches to a denial of a petition which is reviewed.

Respectfully submitted,

STEWART AND STEWART
Special Counsel for Libbey Inc.

Terence P. Stewart
Charles A. St. Charles

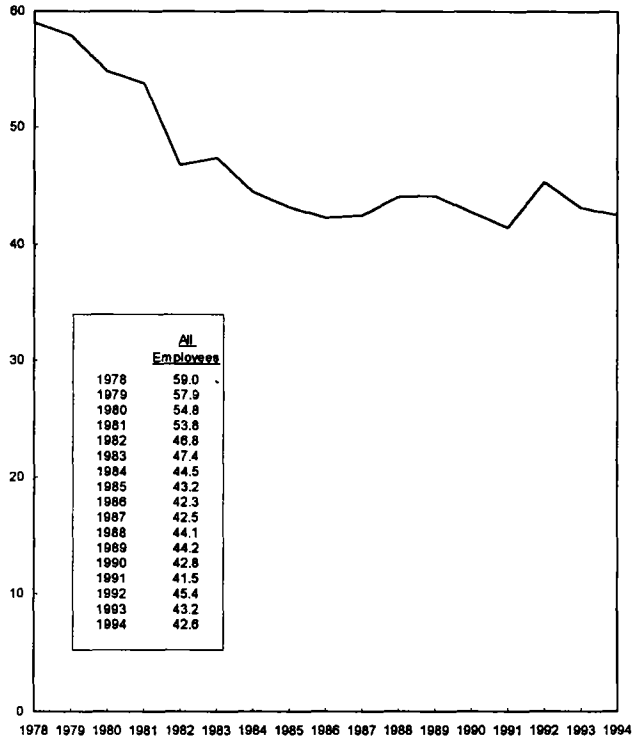
ATTACHMENT 1

GSP PETITIONS ON GLASSWARE CLASSIFIABLE UNDER HTS 7013
1988 - 1992

	Number of Petitions	Accepted / Rejected for Review	GSP Status Granted / Denied	Number of Petitions	Accepted / Rejected for Review	GSP Status Granted / Denied	Number of Petitions	Accepted / Rejected for Review	GSP Status Granted / Denied	Number of Petitions	Accepted / Rejected for Review	GSP Status Granted / Denied	Number of Petitions	Accepted / Rejected for Review	GSP Status Granted / Denied
7013.21.1000							3	Rejected		1	Accepted	Denied			
7013.21.2000							5	Rejected							
7013.21.3000							3	Rejected					1	Rejected	
7013.21.5000															
7013.29.0500															
7013.29.1000	1	Rejected		1	Accepted	Denied	6	Rejected		2	Rejected				
7013.29.2500															
7013.29.3000				1	Accepted	Denied	4	Rejected			Rejected				
7013.29.4000										1					
7013.29.5000				1	Accepted	Denied	6	Rejected		1	Rejected				
7013.29.6000															
7013.31.1000							5	Rejected							
7013.31.2000															
7013.31.3000							5	Accepted	Granted						
7013.31.5000															
7013.32.1000	1	Rejected					1	Rejected							
7013.32.2000															
7013.32.3000							1	Rejected							
7013.32.4000															
7013.38.1000															
7013.38.2000				1	Accepted	Denied	4	Rejected		2	Rejected				
7013.38.3000															
7013.38.4000				1	Accepted	Denied	2	Rejected		1	Rejected				
7013.38.5000															
7013.38.6000				1	Accepted	Denied	4	Rejected		1	Rejected				
7013.91.1000															
7013.91.2000							3	Rejected							
7013.91.3000															
7013.91.5000							3	Accepted	Granted						
7013.99.1000															
7013.99.2000							1	Rejected							
7013.99.4000															
7013.99.5000	1	Accepted	Denied	1	Accepted	Denied	4	Rejected							
7013.99.6000															
7013.99.7000				1	Accepted	Denied	1	Rejected							
7013.99.9000				1	Accepted	Denied	3	Rejected							

ATTACHMENT 2

Employment in the Pressed and Blown Glass Industry
SIC 3229
1978 -1994



	All Employees
1978	59.0
1979	57.9
1980	54.8
1981	53.8
1982	46.8
1983	47.4
1984	44.5
1985	43.2
1986	42.3
1987	42.5
1988	44.1
1989	44.2
1990	42.8
1991	41.5
1992	45.4
1993	43.2
1994	42.6

Source: Employment, Hours, and Earnings, U.S. 1909-1990, Vol. 1; US Dep't of Labor at 20, March 1991 Supplement to Employment and Earnings; at pp 119-121; July 1991; Data for 1992, 1993 from March 93 and 94 EH&E respectively. Data for 1994 compiled from March, June, August, October, December 1994, and February 1995 EH&E.

ATTACHMENT 3A

In Current Dollars

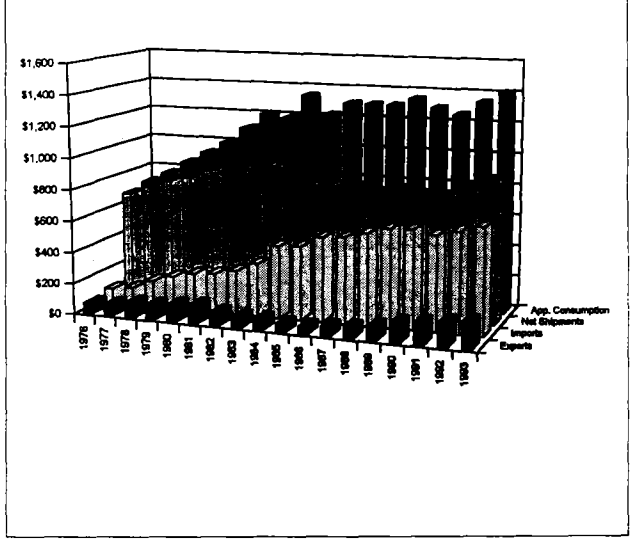
Glassware Classifiable Under HTS 7013 and TSUS 546: Apparent Consumption, Imports, and Imports as a Percentage of Apparent Consumption

(Millions of U.S. Dollars)

	A Domestic Producers' Shipments From MA32E	B Interplant Transfers From MA32E	C Net Domestic Producers' Shipments [A - B]	D Exports	E Imports	U.S. Cons. [C - D + E]	Imports % of Total U.S. Cons.
1976	$730	$55	$675	$64	$94	$705	13.3%
1977	$785	$55	$729	$69	$113	$773	14.6%
1978	$865	$86	$779	$90	$168	$857	19.6%
1979	$912	$106	$806	$89	$210	$927	22.6%
1980	$1,030	$166	$864	$103	$240	$1,001	24.0%
1981	$1,150	$180	$970	$114	$252	$1,108	22.7%
1982	$1,152	$143	$1,009	$83	$282	$1,209	23.4%
1983	$1,183	$272	$912	$63	$339	$1,188	28.5%
1984	$1,307	$361	$946	$85	$463	$1,343	34.5%
1985	$1,215	$415	$800	$48	$472	$1,223	38.6%
1986	$1,278	$465	$813	$46	$537	$1,304	41.2%
1987	$1,264	$453	$811	$59	$550	$1,301	42.3%
1988	$1,362	$575	$787	$67	$581	$1,301	44.7%
1989	$1,360	$548	$811	$86	$622	$1,348	46.2%
1990	$1,397	$608	$791	$123	$627	$1,295	48.4%
1991	$1,452	$659	$792	$137	$601	$1,256	47.8%
1992	$1,575	$718	$858	$151	$635	$1,342	47.3%
1993	$1,600	$894	$906	$168	$672	$1,411	47.7%

Source:
Domestic shipments, interplant transfers, and exports are from Department of Commerce, 1977- 1988 Current Industrial Reports for Consumer Domestic, Technical, and Industrial Glassware: product codes 32291 (1977) and 32291 and 32317 (1978 and subsequent reports), both covering "Table kitchen, art, and novelty glassware," covering all, and only, merchandise classifiable under the TSUS 546 items and HTS 7013 items (excluding ceramic of HTS 7013.10.10 & 10.90, which is not here at issue and was not part of TSUS 546. Revised data for each year taken from the following year's issue for shipments and interplant transfers (e.g., 1978 issue for 1977 data, etc.). Net domestic producer shipments is Domestic Producer Shipments less interplant transfers. Imports are aggregate landed costs from U.S. Department of Commerce Import Statistics. (1976 - 1993)

Note: Data for 1988-93 includes data for Class Ceramics, HTS 7013.10, which was not included in the precedent TSUS provision (TSUS 546) nor therefor in the data for 1976 - 1988.



ATTACHMENT 3B

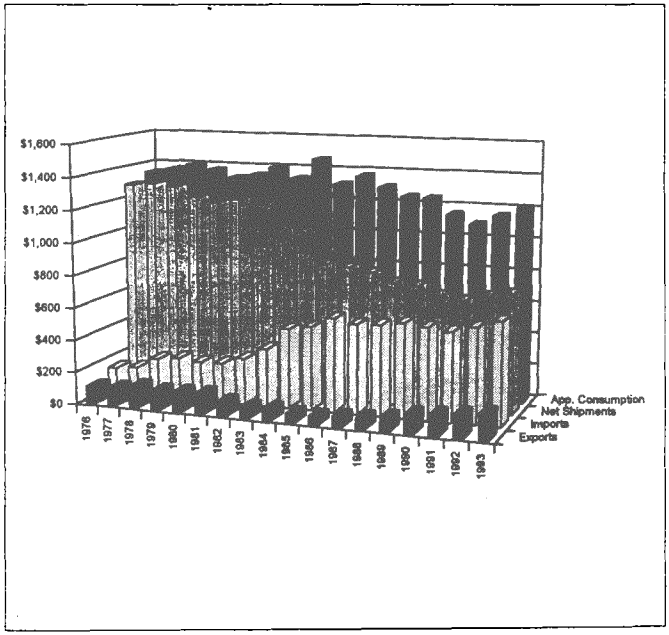
In Constant 1987 Dollars

Glassware Classifiable Under HTS 7013 and TSUS 546: Apparent Consumption, Imports, and Imports as a Percentage of Apparent Consumption

(Millions of U.S. Dollars)

	A Domestic Producers' Shipments From MA32E	B Interplant Transfers From MA32E	C Net Domestic Producers' Shipments [A - B]	D Exports	E Imports	U.S. Cons. [C - D + E]	Imports % of Total U.S. Cons.
1976	$1,396	$105	$1,291	$104	$155	$1,342	11.6%
1977	$1,404	$99	$1,305	$107	$170	$1,367	12.4%
1978	$1,435	$143	$1,292	$130	$238	$1,399	17.0%
1979	$1,392	$162	$1,231	$114	$252	$1,369	18.4%
1980	$1,437	$232	$1,205	$118	$237	$1,324	17.9%
1981	$1,457	$228	$1,229	$122	$241	$1,347	17.9%
1982	$1,374	$170	$1,204	$87	$283	$1,400	20.2%
1983	$1,357	$312	$1,045	$85	$353	$1,534	26.5%
1984	$1,436	$397	$1,039	$66	$489	$1,462	33.5%
1985	$1,287	$440	$847	$50	$513	$1,311	39.2%
1986	$1,318	$480	$839	$47	$576	$1,368	42.1%
1987	$1,264	$453	$811	$59	$550	$1,301	42.3%
1988	$1,311	$553	$757	$64	$553	$1,247	44.4%
1989	$1,253	$506	$748	$80	$577	$1,245	46.4%
1990	$1,233	$535	$698	$112	$564	$1,150	49.0%
1991	$1,235	$560	$674	$124	$544	$1,095	49.7%
1992	$1,303	$593	$710	$137	$581	$1,153	50.3%
1993	$1,296	$562	$734	$154	$628	$1,208	52.0%

Sources:
Domestic shipments, interplant transfers, and exports are from Department of Commerce, 1977-1993 Current Industrial Reports for Consumer, Scientific, Technical, and Industrial Glassware: product codes 32291 (1977) and 32291 and 32317 (1978 and subsequent reports), both covering "Table kitchen, art, and novelty glassware," covering all, and only, merchandise classifiable under the TSUS 546 items and HTS 7013 items (excluding ceramic at HTS 7013.10.10 & 10.50, which is not made at issue and was not part of TSUS 546. Revised data for each year taken from the following year's issue for shipments and interplant transfers (e.g., 1978 issue for 1977 data, etc.). Net domestic producer shipments is Domestic Producer Shipments less interplant transfers. Imports are aggregate landed costs from U.S. Department of Commerce import Statistics. (1976 - 1993)
Data deflated to constant 1987 dollars using Implicit Price Deflators for GDP. Exports & Imports as found in the Economic Report of the President 1994, at Table B-3.
Note: Data for 1988-93 includes data for Glass Ceramics, HTS 7013.10, which was not included in the precedent TSUS provision (TSUS 546) nor therefor in the data for 1976 - 1988.



U.S. IMPORTS OF GLASSWARE: 1989-1994

FAS Value in $000s: Ranked on 1994 Value

	1989	1990	1991	1992	1993	1994	% Chg 89-94
NON-GSP COUNTRIES							
FRANCE	$112,621	$120,374	$110,275	$97,863	$101,407	$115,475	2.53%
GERMANY	$88,856	$84,772	$81,500	$82,365	$73,934	$84,076	22.10%
IRELAND	$73,062	$55,109	$51,411	$49,251	$55,675	$64,752	-11.37%
ITALY	$27,586	$32,413	$31,612	$34,619	$32,060	$38,753	40.48%
AUSTRIA	$16,585	$15,780	$16,587	$20,914	$28,358	$35,003	111.31%
CHINA (MAINLAND)	$4,936	$6,725	$8,847	$15,356	$22,924	$34,869	606.47%
JAPAN	$24,976	$23,139	$28,942	$34,337	$37,512	$33,163	32.78%
MEXICO	$21,174	$18,771	$18,672	$21,672	$24,230	$27,504	29.90%
CHINA (TAIWAN)	$27,886	$28,951	$28,778	$32,584	$29,423	$26,639	-4.48%
SWEDEN	$14,337	$13,000	$10,085	$10,268	$12,550	$12,160	-15.18%
SPAIN	$6,071	$5,027	$4,614	$6,316	$6,578	$12,105	99.39%
CANADA	$3,593	$3,626	$3,797	$6,106	$8,938	$11,269	213.64%
UNITED KINGDOM	$8,660	$9,064	$7,209	$8,232	$8,421	$9,669	11.74%
KOREA, REPUBLIC OF	$5,532	$5,098	$8,030	$5,800	$5,834	$4,910	-11.25%
PORTUGAL	$6,649	$7,803	$6,553	$4,384	$4,334	$3,969	-40.00%
SWITZERLAND	$525	$2,599	$1,366	$1,664	$2,622	$3,576	581.21%
NETHERLANDS	$1,575	$1,175	$1,474	$2,607	$2,537	$3,522	123.63%
BELGIUM	$3,544	$5,574	$3,949	$3,357	$2,929	$3,330	-6.04%
HONG KONG	$1,656	$1,550	$1,399	$1,152	$1,774	$1,239	-25.17%
DENMARK	$654	$440	$3,172	$718	$629	$1,034	58.25%
FINLAND	$1,852	$716	$1,119	$1,121	$891	$859	-53.64%
NORWAY	$170	$182	$207	$178	$102	$355	109.88%
AUSTRALIA	$640	$457	$387	$345	$383	$89	-86.13%
ICELAND						$73	
GREECE	$151	$166	$115	$61	$74	$68	-55.09%
LUXEMBOURG	$85	$76	$49	$406	$70	$27	-67.78%
ARMENIA						$14	
VATICAN CITY						$9	
MONACO	$0	$7	$145	$90	$0	$7	
BERMUDA	$0	$0	$0	$4	$8	$3	
SINGAPORE	$21	$8	$20	$11	$15	$3	-86.49%
SYRIAN ARAB REPUBLIC						$3	
LIECHTENSTEIN	$4	$27	$0	$3	$23	$2	-35.80%
NEW ZEALAND	$0	$0	$2	$0	$2	$2	
GUADELOUPE	$1	$0	$0	$4	$0		
GERMAN DEM. REP.	$5,016	$3,611	$0	$0	$0		
SAN MARINO	$0	$0	$0	$27	$83		
FR SO.-ANTARTIC LANDS	$5	$0	$0	$0	$0		
MARTINIQUE	$0	$0	$9	$0	$0		
UNITED ARAB EMIRATES	$16	$0	$0	$0	$0		
FED. ST. MICRONESIA	$0	$0	$0	$10	$0		
IRAN	$0	$0	$38	$0	$0		
IRAQ	$0	$28	$0	$0	$0		
NON-GSP COUNTRIES	$436,449	$446,392	$429,344	$441,899	$462,826	$535,594	22.66%
Percent of Total:	*86.02%*	*86.08%*	*84.74%*	*83.56%*	*81.74%*	*82.61%*	
GSP COUNTRIES							
LDDC GSP							
HAITI	$59	$35	$442	$311	$226	$216	262.84%
SIERRA LEONE	$0	$0	$0	$8	$458	$116	
BANGLADESH						$1	
MOZAMBIQUE	$2	$0	$2	$0	$0		
RWANDA	$25	$0	$0	$0	$0		
OTHER GSP							
POLAND	$11,457	$15,873	$19,461	$22,369	$27,259	$33,417	191.66%
SLOVENIA	$0	$0	$0	$10,770	$26,833	$23,961	
THE CZECH REPUBLIC	$0	$0	$0	$0	$12,622	$12,626	
HUNGARY	$3,708	$3,593	$4,882	$5,290	$6,055	$6,153	65.92%

Source: U.S. Dept of Commerce, Bureau of Census. Excludes data for items classified under HTS 7013.10 - Glass Ceramics.

	1988	1989	1991	1992	1993	1994	% Chg 89-94
ROMANIA	$7,086	$5,113	$3,882	$2,035	$1,798	$5,145	-27.39%
INDONESIA	$2,146	$3,261	$4,092	$8,446	$7,320	$5,039	134.84%
TURKEY	$7,706	$6,942	$5,268	$5,313	$5,704	$4,931	-36.01%
THAILAND	$1,915	$2,153	$1,885	$1,964	$2,577	$3,102	62.00%
MALAYSIA	$573	$613	$1,040	$2,568	$2,755	$3,039	430.13%
CROATIA	$0	$0	$0	$1,386	$2,742	$2,491	
SLOVAKIA	$0	$0	$0	$0	$1,971	$2,001	
BRAZIL	$1,817	$1,890	$1,915	$1,238	$1,822	$1,875	3.18%
DOMINICAN REPUBLIC	$0	$2	$13	$230	$809	$1,261	
PHILIPPINES	$0	$5	$8	$85	$236	$632	
EGYPT	$19	$26	$253	$242	$341	$803	4135.19%
BOSNIA-HERCEGOVINA	$0	$0	$0	$0	$17	$670	
INDIA	$61	$61	$75	$117	$287	$600	887.84%
ARGENTINA	$938	$1,372	$575	$241	$138	$483	-50.67%
ISRAEL	$455	$398	$180	$219	$275	$393	-13.08%
COLOMBIA	$335	$217	$198	$149	$292	$382	14.01%
RUSSIA	$746	$678	$308	$403	$368	$352	-52.79%
BELARUS	$0	$0	$0	$0	$159	$291	
GUATEMALA	$62	$22	$5	$30	$20	$248	298.32%
BULGARIA	$117	$216	$28	$14	$53	$181	54.33%
ECUADOR	$6	$0	$50	$0	$10	$127	2173.10%
UKRAINE						$121	
TUNISIA	$0	$1	$0	$1	$0	$110	
VENEZUELA	$60	$274	$158	$121	$99	$108	78.68%
PANAMA	$37	$42	$50	$8	$75	$45	21.66%
URUGUAY	$37	$9	$0	$44	$35	$38	4.34%
PAKISTAN	$16	$0	$7	$0	$0	$33	102.68%
MACAO	$0	$0	$0	$2	$0	$18	
REP. OF SO. AFRICA	$0	$0	$0	$6	$0	$17	
COSTA RICA	$0	$0	$0	$5	$0	$15	
PERU	$34	$58	$14	$10	$10	$12	-63.97%
BURUNDI						$12	
SWAZILAND	$0	$0	$0	$0	$1	$11	
LEBANON	$4	$0	$0	$4	$0	$9	107.91%
BARBADOS						$3	
LITHUANIA						$3	
MOROCCO	$0	$0	$0	$3	$43	$3	
MALTA AND GOZO	$14	$6	$4	$0	$0	$3	-81.43%
SURINAME						$2	
CHILE	$34	$59	$95	$0	$2	$1	-95.76%
FRENCH POLYNESIA						$0	
CAYMAN ISLANDS	$6	$1	$1	$6	$0		
ARUBA	$0	$0	$0	$13	$0		
BAHAMAS	$6	$1	$0	$18	$0		
MAURITIUS	$0	$0	$37	$3	$9		
YUGOSLAVIA	$26,982	$24,942	$25,699	$12,980	$102		
TRINIDAD AND TOBAGO	$451	$73	$69	$0	$0		
TONGA	$0	$1	$0	$0	$0		
TOKELAU ISLANDS	$0	$0	$0	$0	$29		
SRI LANKA	$0	$4	$0	$0	$0		
SEYCHELLES	$0	$0	$0	$0	$4		
JAMAICA	$0	$7	$0	$0	$0		
MONTSERRAT	$0	$0	$0	$0	$9		
COCOS ISLANDS	$0	$0	$0	$0	$82		
KYRGYZSTAN	$0	$0	$0	$3	$0		
ZAIRE	$0	$4	$0	$0	$0		
JORDAN	$0	$0	$0	$0	$2		
ANTIGUA	$4	$24	$0	$0	$0		
HONDURAS	$0	$0	$3	$0	$0		
GUYANA	$0	$3	$0	$0	$0		
GHANA	$2	$0	$0	$0	$0		
DOMINICA	$22	$0	$43	$15	$11		
CZECHOSLOVAKIA	$4,302	$4,211	$6,534	$10,151	$0		
NETHERLANDS ANTILLES	$2	$0	$0	$0	$3		
GSP COUNTRIES	$71,229	$72,212	$77,304	$80,940	$103,294	$111,303	56.36%
Percent of Total:	*13.99%*	*13.92%*	*15.20%*	*16.42%*	*16.26%*	*17.39%*	
Total All Countries:	**$509,089**	**$518,604**	**$508,642**	**$528,730**	**$666,821**	**$639,887**	**25.56%**

Source: U.S. Dept of Commerce, Bureau of Census. Excludes data for items classified under HTS 7013.10 - Glass Ceramics.

March 7, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

In response to the Trade Subcommittee's request for written comments on an extension of the U.S. Generalized System of Preferences (GSP), Mattel, Inc. wishes to express its strong support for legislation to renew the program beyond its July 31 expiration date. Mattel is the world's largest toy company, with sales in over 140 countries. Headquartered in El Segundo, California, our company has manufacturing, distribution or sales operations in four states and 34 foreign countries, including the GSP beneficiary countries of Malaysia and Indonesia.

Mattel strongly endorses a renewal of the GSP program. Even though U.S. most-favored-nation rates of duty on all traditional toy categories were eliminated on January 1 as a result of the Uruguay Round agreement, meaning that these products are now removed from GSP eligibility, Mattel continues to have a major stake in the program's continuation for the reasons outlined below.

First, renewal of the U.S. GSP program is important to Mattel because imports of several products in Mattel's line are classified outside the scope of the Uruguay Round tariff eliminations and remain eligible for GSP treatment. Examples of such products include our Fisher-Price nursery monitors (HTS 8527.90.80) and school and art supply sets (HTS 9610.00.00).

Second, the GSP schemes maintained by the European Union, Japan and all other industrialized countries continue to play an important role in Mattel's access to those markets. For example, even though it participated in the Uruguay Round's zero-for-zero tariff deal on toys, the European Union is taking ten years to phase out its tariffs on most toys and has completely exempted several important toy categories from duty eliminations.

There is little doubt that these other GSP donor countries would come under strong pressure to terminate their GSP programs if Congress fails to extend the U.S. program, particularly given the multilaterally-agreed principle that industrialized countries should share among each other the burden of extending GSP tariff preferences. This would pose a competitive disadvantage to Mattel and other major U.S. toy companies which, in keeping with their global leadership position in this sector, have better optimized their manufacturing structures to reflect cost of production advantages and, as a result, tend to source more heavily from GSP beneficiary countries.

Finally, we would like to take advantage of this opportunity to bring to the Trade Subcommittee's attention a customs-related matter that has impaired the ability of Mattel and other U.S. toy companies to take full advantage of the GSP program for certain products. In 1991, the U.S. Customs Service issued an interpretive rule (T.D.91-7) stating that articles entered as a set can only qualify for GSP treatment if each of the items or components in the set are of beneficiary country origin. given the prevalent use of sets in the toy sector, this ruling has posed a significant problem and has led to situations where toy sets having only de minimis non-beneficiary country input are denied GSP eligibility.

In conclusion, Mattel urges the Trade Subcommittee to support a long-term extension of the U.S. GSP program. We also urge the Subcommittee to take appropriate steps to ensure that, under the renewed program, GSP-eligible imports of toys in sets containing de minimis non-beneficiary content are accorded GSP treatment.

Sincerely,

Fermin Cuza
Vice President, International Trade
and Government Affairs

MBI, Inc. 47 Richards Avenue, Norwalk, Conn. 06857 (203) 853-2000

Danbury Mint
Easton Press
Postal Commemorative Society

March 21, 1995

The Honorable Phil Crane
Chairman, House Committee on Ways and Means
Subcommittee on Trade
1104 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Crane:

I am writing to urge you to renew for at least five more years the Generalized System of Preferences (GSP) program before it expires on July 31, 1995.

The GSP program provides duty free treatment for certain goods from developing countries. It is based on the premise that trade, not aid, is the most effective means for promoting the economic growth of these countries. Favorable duty treatment under the GSP program has allowed our company to provide products to our customers at a reasonable cost. The result is that our business has grown significantly over the last few years and we have been able to create many new jobs. Renewal of this new legislation will help us sustain this growth.

In your capacity as Chairman of the House Committee on Ways and Means, Subcommittee on Trade, I strongly urge you to find a way to renew this important program before it expires on July 31.

Sincerely,

Steve B. Gordon
Vice-President



NATIONAL RETAIL FEDERATION

TRACY MULLIN
President

March 10, 1995

The Honorable Bill Archer
Chairman
Ways and Means Committee
U.S. House of Representatives
1104 Longworth Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing on behalf of the nation's retailers to express the strong support of our industry for the continuation of the Generalized System of Preferences (GSP) program. As you know, the GSP program's authority expires on July 31, 1995.

America's retailers sell many products that receive duty-free treatment under the GSP program. These items include electronics, computers, sports equipment, furniture, household goods and other important price-sensitive products. This program has allowed American consumers to enjoy high quality, imported goods at relatively low prices. It remains important for many products, despite the tariff reductions of the Uruguay Round and the incorporation of Mexico into the NAFTA.

Unfortunately, if the GSP program is not extended, these benefits will be lost. Prices for products would increase as our members are forced to pay duties on a host of products. American manufacturers that now use inputs imported duty-free under GSP would be equally disadvantaged.

In addition to offering significant benefits to U.S. consumers and workers, the GSP program also affords the U.S. an opportunity to support important foreign and trade policy goals. These include incentives for developing countries to protect intellectual property rights and workers' rights, and the eventual opening of new markets for U.S. goods and services.

The Federation also believes that the GSP program provides the most effective means for promoting the economic growth and development of developing countries. It has become increasingly difficult for the United States to provide the kinds of financial assistance that has promoted these goals in the past, and therefore a program like GSP is more important than

The World's Largest Retail Trade Association
◆
Liberty Place, 325 7th Street NW, Suite 1000
Washington, DC 20004
202.783.7971 Fax: 202.737.2849

ever to fostering economic -- and consequently, political -- stability in important areas of the world.

While the Clinton administration has expressed support for a renewal of the GSP program, some Administration officials have expressed the view that the GSP program should be limited in scope to focus on least-developed countries, thus eliminating or reducing the participation of currently-eligible nations that may be stronger exporters. The Federation opposes any such limitations. Under the current program, the U.S. annually places "competitive need" limits on GSP shipments; once GSP beneficiaries become truly competitive in a product or product line, they no longer receive GSP benefits. Likewise, the U.S. has "graduated" entire countries from the GSP program -- most notably, Hong Kong, Singapore, South Korea and Taiwan -- when it is clear that low per capita income levels belie true competitiveness. Clearly, the current process provides sufficient review to ensure that only qualified countries participate.

Perhaps most crucial at this point is the need to renew GSP for at least five years before the program expires on July 31. The stop-and-start nature of the past two extensions has been highly disruptive to American companies using the program. Our members cannot plan with any confidence that GSP benefits will be available to them. Most of our members place their orders up to 18 months ahead of importation, and the on-again, off-again nature of the extension process so far has been costly. We therefore strongly urge the Committee to ensure that GSP is renewed before July 31.

By way of background, the Federation represents the entire spectrum of retailing, including the nation's leading department, chain, discount, specialty and independent stores, several dozen national retail associations and all 50 state retail associations. Our membership represents an industry that encompasses over 1.5 million retail establishments, employs over 20 million people --or 1 in 5 working Americans-- and registered sales in excess of $2 trillion last year.

Thank you for your attention to this important matter. If you should need any further information, please contact me or Robert Hall, NRF's Vice President, Government Affairs Counsel at (202) 783-7971.

Sincerely,

Tracy Mullin

Tracy Mullin

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF THE
OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR (OCITA)
ON

RENEWAL OF THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM
March 13, 1995

I. INTRODUCTION

The Office of the Chemical Industry Trade Advisor (OCITA) is pleased to submit this statement on the Generalized System of Preferences (GSP) program. OCITA believes that several changes must be made to assure that the GSP program operates efficiently, with a minimal impact on U.S. exporters. In particular, GSP beneficiaries should show that they have provided "equitable and reasonable" access to their markets for U.S. exports, by adopting such multilateral agreements as the Chemical Tariff Harmonization Agreement, before receiving GSP benefits.

OCITA is a coalition of seven national chemical trade associations: The Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), the Society of the Plastics Industry (SPI), the Fertilizer Institute (TFI), the National Paint and Coatings Association (NPCA), the Chemical Specialty Manufacturers Association (CSMA), and the American Crop Protection Association (ACPA).

OCITA's role is to provide a unique chemical industry perspective on trade policy issues affecting the chemical industry. The industry is the largest exporting sector in the United States. Chemical industry exports totaled $51 billion in 1994, returning an $18 billion trade surplus that year. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion, and bettered aircraft exports by $23 billion. OCITA provides some 2,600 companies nationwide with a voice on trade policy issues, like the GSP program, that may affect their competitiveness in the global market.

In OCITA's view, Congress should consider several changes in the GSP program. The changes, detailed in this statement, should help assure that the program does not create a negative economic or competitive impact for U.S. industries.

The GSP program has been implemented to prevent economic harm to U.S. industrial interests, while affording some preferences to developing countries. Since the last time the GSP program was reauthorized in 1984, however, a number of problems have caused economic harm to U.S. interests. Most of these problems arise from the lack of specific criteria or sufficient guidelines for the program. For example, participation in the Chemical Tariff Harmonization Agreement (CTHA) negotiated in the Uruguay Round is not a condition for GSP eligibility. Enhanced enforcement of existing GSP law, administrative improvements in the operation of the program, and more explicit conditions for extending and eliminating GSP benefits will improve the program.

II. STATUTORY CONDITIONS ON GSP ELIGIBILITY

A. Participation in the Uruguay Round Agreements

In order to assure that eligible GSP beneficiaries provide the "equitable and reasonable" market access to U.S. exports required under existing law, the Office of the United States Trade Representative (USTR) should give significant weight to participation in the Uruguay Round Agreements. The failure of some GSP beneficiaries to offer reciprocal tariff benefits consistent with the CTHA adopted in the Round is of particular concern to the chemical industry.

U.S. chemical exporters have already expressed their frustration and disappointment over the inadequate tariff concessions made by major chemical producing countries which also benefit from the GSP program. Countries such as Argentina, Brazil, India, Indonesia, Malaysia, Thailand and Venezuela have not joined the CTHA. In OCITA's view, the failure to grant reciprocal tariff benefits violates Section 502(c)(4) of the GSP statute, as there can be no doubt that chemical exporters are not receiving "equitable and reasonable" market access.

OCITA urges the Subcommittee to consider the following amendment to the GSP statutes to address non-reciprocal chemical tariff concessions:

> Section 504(a) of the Trade Act of 1974 (19 U.S.C. § 2464(A)) is amended by adding at the end thereof the following new paragraph:
>
> (3) The President shall not apply duty-free treatment under section 501 with respect to any chemical article classified under chapters 28 through 39 of the Harmonized Tariff Schedule of the United States originating (as determined under section 503(b)) in a country which has not reduced and bound its tariff rates in a manner comparable to those agreed to by Canada, the European Union, Japan and the United States in the Uruguay Round of Multilateral Trade Negotiations.

In addition, the GSP statute should also be amended to include a country's adherence to the other Uruguay Round Agreements, particularly a country's adherence to the Agreement on Trade-Related Intellectual Property (TRIPs), as a criteria for GSP eligibility. These conditions can be added very simply to the existing conditions in the GSP statute.

B. Automatic Termination of GSP Eligibility

The GSP legislation should provide for automatic termination of GSP eligibility for any country entering into a free trade agreement with the United States. A free trade relationship is generally inconsistent with the preferences provided under the GSP program.

C. High Import Penetration Requirement

In listing the factors which the President must take into account in awarding GSP status, §2461 lists:

> "(3) the anticipated impact of such action on United States producers or like or directly competitive products."

However, the TPSC and the International Trade Commission (ITC) hold such a rigid definition of what they consider injurious import penetration that due regard is not given to the anticipated impact of GSP status on key U.S. chemical industry segments.

Both the TPSC and the ITC refuse to recognize that with fungible commodity chemicals, even a 1% import penetration can bring down the entire price structure for a chemical throughout the entire U.S. market. Certainly, import penetration thresholds are important, but assuming low penetration is not injurious is not consistent with either the statute or reality.

Means must be found to assure that a more flexible definition of injurious import penetration will be used when considering requests to terminate duty-free GSP status on products of U.S. industry members.

D. Injury and Threat of Injury

There is no clear TPSC definition of injury or threat of injury. In fact, internally, there appears to be a view that the test is "significant injury or threat thereof". There should, therefore, be a set of clearly defined standards and criteria applied by both the ITC and the TPSC.

Where U.S. industry petitions to remove a product, or opposes adding a product, on grounds of injury or threatened injury, the ITC Commissioners should be required to prepare a brief opinion justifying their support or opposition to the petition. Currently, it is the ITC staff that prepares the assessments; review by the full Commission is entirely pro forma.

E. "Basket" Decisions/Classification Considerations

While not the same problem that it was prior to adoption of the Harmonized Tariff System, there is evidence that the USTR and the TPSC still sometimes grant GSP status to multiple products, rather than just the specific product requested by a petitioning country. This problem is caused when many separate products are included under the same tariff category or "basket." This may result in products being considered eligible for GSP treatment, often without the knowledge of U.S. manufacturers. As a result, the domestic market for import sensitive products may be harmed. At a minimum, U.S. companies will incur unnecessary expenses in petitioning for the withdrawal of eligibility for those products.

Reauthorization of the GSP program should stipulate that benefits will be limited to the individual product for which a petition is filed.

Another concern is the inadvertent inclusion or exclusion of a specific product because of misclassification, reclassification (TSUS to HTS) or U.S. Customs Ruling. An expedited process outside the Annual Review process is needed for inadvertent exclusion problems.

F. Timeliness of Response to Concerns of U.S. Industry

There is need for more timely responses to the interests of domestic producers. Petitions are currently accepted once a year for extension or withdrawal of benefits. Petitions are accepted for review in June and actions on these petitions are taken as late as the following April. Because the competitive positions of entire industrial sectors can be affected in very short periods of time, it is critical that petitions receive timely responses.

The existing expedited petition procedures are seldom, if ever, granted. The GSP program must have a useful emergency petition process to suspend or eliminate GSP benefits. The GSP rules should allow the petition of a domestic industry to be given immediate consideration by the USTR upon a showing of special need.

G. ITC Consideration of Most Recent Data Available

In a number of instances, the data developed by the ITC during its analysis of possible impact has been irrelevant, while other information which was pertinent to the case was disregarded. In other circumstances, the ITC has failed to consider the most recent data available. In part, the data problem is related to the timeliness of responses to petitions. However, with so much weight given to the ITC report and recommendation, an adequate and meaningful analysis, including all available data and recent changes, should be provided.

The reauthorization law and/or annual instructions to the ITC from USTR should include specific requirements for the ITC's use of data, and provide for opportunities for U.S. industry to challenge and suggest more appropriate data. USTR/TPSC should be open to requesting that the ITC review specific points even after their report has been submitted.

H. Competitive Need Limitations

Provisions are needed to allow special consideration for specific product(s) imports that do not exceed limitations, but comprise sufficient import penetration to injure U.S. industry.

I. Indications of Necessary Criteria to Withdraw Eligibility

There is still considerable confusion within the U.S. Government and the business community on whether individual products can be selectively removed for other than competitive need reasons. Many GSP practitioners believe that a request to remove a product entirely from the duty-free GSP program is more difficult than removal of the product from one or perhaps two GSP countries where the benefit is no longer necessary. The ability to selectively petition for withdrawal of GSP eligibility is necessary in order to prevent negative economic effects to U.S. industries.

Further, sometimes petitioners will (for the above reason) petition to have one or perhaps two major suppliers removed only to find that when the petition is accepted, the TPSC converted the petition to a total product removal.

Other helpful indications of necessary criteria for withdrawing product eligibility that USTR and the TPSC could provide U.S. industry include:

(1) Import-Penetration-History, Current, Future (likely range)
(2) Important injury factors (percent range, trends)
(3) Threat factors (must imports have started, history, forecast, precedents, more emphasis on intent of law)

III. THE GSP PROGRAM CAN BE MADE MORE EFFECTIVE BY BETTER APPLYING EXISTING LAW

A. Foreign Market Access and Export Practices of Beneficiaries

A significant purpose of the 1984 GSP Renewal Act was to encourage developing countries to eliminate or reduce significant barriers to trade. To fulfill this purpose, the Act listed the factors to be applied in designating GSP eligible countries. Among the most important of the eligibility criteria are the extent to which reasonable market access is provided, and unreasonable export practices are prevented.

It is the all-too common experience of OCITA companies that these factors are not adequately considered in the GSP Annual Review process. GSP status has been granted to countries such as Brazil and India, even in the light of evidence that they apply high tariffs, and other non-tariff barriers. These barriers severely restrain imports of chemicals for which they have requested GSP status from the United States. Furthermore, many GSP eligible countries have an elaborate collection of export subsidies and facilitating export practices. These market access and export practices need to be given significant weight in the TPSC deliberations, if the eligibility criteria is to be given any meaning at all. Simply, it is not clear that the U.S. government is complying with the statutory requirement that eligibility determinations must take into account the domestic impact of granting GSP treatment, and the degree to which market access is provided.

The public does not have access to the TPSC's internal decision making documents, but there are no indications that the law is being complied with. For example, seldom, if ever, do TPSC (or GSP Subcommittee) members even make inquiries at the public hearings or through other communications with U.S. industry relevant to "country practices".

TPSC enforcement of the law is particularly important where the petitioner has evidence that the same article produced in the United States is subject to such constraints as market access barriers, patent infringement, and domestic subsidiaries to competitive local producers in the GSP beneficiary country being considered for removal.

Additional changes are needed such that:

(1) GSP policy gives "great weight" to whether the product under review faces one or more of the conditions set forth in Section 2463 (c);

(2) the TPSC should be required to provide U.S. industry seeking a removal of a product the reasons for adding or keeping the product on the list, including its assessment of factors identified above; and

(3) a legal opinion from USTR's General Counsel's office should be prepared and forwarded to all TPSC and GSP Subcommittee members explaining the law in this area.

B. Competitiveness Considerations

OCITA companies have found that the TPSC and the ITC do not give much, if any, consideration to the worldwide competitiveness of a particular GSP country's subject industry. As a result, foreign producers with world-scale plants, state-of-the art technology, worldwide exports, and substantial productive capability have been given duty-free access to U.S. markets. Graduation of industries (products(s)) within GSP eligible countries must be given more attention. The law requires that the President "shall have due regard" to the extent of the GSP country's competitiveness in any particular article, and measures should be taken to demonstrate compliance with the law.

It makes no sense to grant a preferential benefit to an industry that has already shown itself fully capable of competing in world markets, and consideration commensurate with the law on this factor must be included in future deliberations.

C. Coordinating Trade Policy Actions

There is clear evidence that decisions in the GSP program are not being coordinated with other trade policy activities of the U.S. government. For example, of the twelve chemical product petitions filed in the 1991 annual review, eight were on the USTR's list of import sensitive products in the Uruguay Round tariff negotiations. In another example, the ITC has ruled favorably in an anti-dumping case, only to have the GSP process soon thereafter grant GSP status to the same product.

The reauthorization law should contain provisions to automatically exclude from GSP eligibility products considered import sensitive, as well as other provisions to harmonize the GSP program with other trade decisions of the U.S. government.

In particular, rules concerning submission and marking of business confidential information should be harmonized among the relevant government agencies to simplify, expedite and ensure equal treatment be afforded by all of the agencies.

D. Duties of TPSC Members

GSP guidelines and instructions should be annually reviewed with all relevant government personnel to ensure consistency and fairness in analysis and recommendations. This is important because staff members change from year-to-year.

The TPSC members who are expected to rule impartially on GSP petitions are in some cases the same government representatives who visit foreign countries to promote the program. The reauthorization should delegate the responsibility for promoting the GSP program to others outside the TPSC.

The private sector should be advised at the beginning of the review process as to which particular inter-agency representative has been assigned to each petition. Similarly, the names of the TPSC members or designates should be made available to the private sector at the beginning of the annual process.

E. Sufficiency of Petitions

Accurate and complete information must be provided by petitioners to assure the timely consideration of GSP petitions. An important element of every petition should

be a full discussion of how the requested action would provide benefits to the developing countries without an adverse impact on affected U.S. industries.

IV. CONCLUSION AND POSITION

OCITA suggests that several statutory and administrative changes in the GSP program are necessary to assure that effective assistance to developing countries is provided with minimal negative impacts on U.S. industry. OCITA looks forward to working with the Trade Subcommittee as discussions on the future of the GSP program continue.



PHILIPS

Philips Electronics

Thomas B. Patton
Vice President
Government Relations

March 13, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In response to the Trade Subcommittee's request for written comments on an extension of the U.S. Generalized System of Preferences (GSP), Philips Electronics North America Corporation wishes to express its strong support for legislation to renew the program beyond its July 31 expiration date. Philips Electronics North America is a major U.S. manufacturer of a wide range of consumer electronics, electrical and electronic components, and professional equipment. In 1994, we had $6.3 billion in sales and employed 25,000 U.S. workers.

Philips imports several articles under the U.S. GSP program, most of which serve as components for products manufactured by Philips in the United States. As a result, the GSP plays a crucial role in supporting the competitiveness of our U.S.-made products.

Television tuners, a product added to the GSP list in response to a petition filed by Philips in the annual GSP review process administered by the Office of the U.S. Trade Representative, are a prime example of this relationship. Because of the GSP program, Philips is able to import the tuners from its Indonesian affiliate free of duty, rather than paying the otherwise applicable 4.6 percent most-favored-nation duty.

The GSP duty savings on television tuners, which are not produced in the United States, contribute importantly to the competitiveness of the color televisions manufactured by Philips in Greeneville, Tennessee. Together with related operations in five states, these facilities and their over 8,000 U.S. workers represent the most extensive color television manufacturing operations in the United States.

In evaluating the importance to U.S. economic interests of maintaining GSP treatment for television tuners, it should also be noted that the color televisions manufactured by Philips in Tennessee comprise over 75 percent domestic content. This high level of U.S. content has been attained not only by conducting final assembly operations in the United States, but also by manufacturing domestically all of the televisions' major components, including the printed circuit board, chassis, picture tube and cabinet.

The other products imported by Philips under the GSP program range from VCRs, which are not manufactured in the United States, to glass and other components utilized in Philips' major U.S. electric light manufacturing facilities. Most of Philips' GSP imports are from Malaysia, Indonesia, Brazil and Hungary, and we strongly support a continuation of these countries' beneficiary status under a renewed GSP program.

In conclusion, Philips Electronics North America strongly supports legislation to renew the GSP program's statutory authority. We hope that you and other members of the Trade Subcommittee will not hesitate to contact us if you would like further information on the importance of the GSP program to our company.

Sincerely,



Shrieve Chemical Products, Inc.
1717 Woodstead Court
The Woodlands, Texas 77380

(713) 367-4226 FAX 713 292-2014

March 7, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman Crane:

Pursuant to the Trade Subcommittee's request for written comments on an extension of the U.S. Generalized System of Preferences (GSP), Shrieve Chemical Products wishes to express its strong support for legislation to extend the program on a long-term basis. As outlined below, Shrieve is a good example of how the GSP program serves to strengthen U.S. manufacturing operations.

Headquartered in Houston, Texas, Shrieve is a processor of specialty oils sold primarily to manufacturers of refrigeration compressors. Shrieve imports the primary material, branched alkylbenzenes, from Indonesia and other developing countries free of duty under the GSP program. The availability of GSP treatment is critical to Shrieve given the high (roughly 18 percent) most-favored-nation rate of duty applicable to this product.

These important cost savings realized by Shrieve through the GSP program are essential to the competitiveness of our final product, which has over half its value added through processing and other operations performed in the United States. In short, the GSP directly supports the jobs of all Shrieve workers, located in Texas, California, Utah and Florida, and employees at other U.S. processors supporting Shrieve's operations in Texas and elsewhere around the country.

At the same time, it is important to note that this GSP benefit to U.S. manufacturing interests has no negative side-effects. There is no U.S. production whatsoever of branched alkylbenzenes.

In conclusion, Shrieve strongly supports a long-term extension of the GSP program. Please let us know if the Trade Subcommittee would like any further background regarding our company's utilization of this important program.

Sincerely,

Steve Pohlman

Steve Pohlman
President

STATEMENT OF RONALD L. PARRISH
VICE PRESIDENT OF CORPORATE DEVELOPMENT
TANDY CORP.

Opening Statement:
Thank you Mr. Chairman for allowing Tandy Corporation to testify on the appropriateness of reauthorizing the Generalized Systems of Preferences program.

Background Information on Tandy Corporation:
Tandy Corporation is one of America's largest retailers of consumer electronics products and personal computers. Tandy is, and has always been American owned and operated. Our U.S. retail sales during 1994 approached $5 billion and our U.S. retail employment exceeds 40,000 persons.

Tandy is best known as the parent company of Radio Shack, with over 6,600 company owned and dealer operated stores throughout the United States. Each Radio Shack store stocks around 3,000 Stock Keeping Units, including many products not found in any other retail chain.

Tandy is also the parent of two of the fastest growing chains in American retailing history. Computer City Supercenters sell major brands of personal computers, software, peripherals and accessories in 69 stores in the U.S., Canada and Scandinavia. Computer City had retail sales exceeding $1 billion in 1994, in its third year of existence. A newer chain, Incredible Universe, operates 9 consumer electronics and computer superstores averaging 185,000 square feet of selling space each. In addition to electronics and computers, Incredible Universe carries a very large selection of home appliances and music software.

Reauthorization of Generalized System of Preferences
Tandy has participated in GSP since its inception in 1976 and imports more than 150 consumer electronics products for Radio Shack, ranging from tape recorders, transceivers and toys from such developing countries as the Philippines, Malaysia, Thailand and Indonesia. On an annual basis, Tandy imports in excess of $150 million worth of products which qualify for GSP. Our retail prices on these items are kept competitive due to the exclusion of duties resulting from the program.

As the committee is well aware, the GSP program has been extended by Congress each year since 1977, with authorization for extension coming later and later in recent years. With lead times between our buyers' determination to buy a product and its actual shipment extending up to 12 months, Tandy often finds itself making purchasing decisions without knowing if the program will be renewed. Specifically, if GSP expires on July 31, 1995, the exposure to Tandy will be an estimated $6 million. This cost will have to be passed on to consumers in the form of higher retail prices.

In addition, GSP has allowed Tandy to stock marginally priced products, where the duty itself determines if we can afford to stock the item. Some low priced electronic products may appear attractive to customers at $19.95, but

they won't buy them at $24.95; the increase reflecting the amount required to cover increased duties.

Vendors in these developing economies are able to compete with the giant electronics firms in developed countries only because their goods qualify for GSP. If the program is discontinued, many of these smaller vendors will simply go out of business as importers such as Tandy no longer find it feasible to purchase their goods. Also likely to end are investments made by manufacturers allocated for research, development and production which are essential for these developing nations to achieve market economies. The program's built-in graduation scale assures that only economies most in need are granted benefits. As Korea, Taiwan, Hong Kong and Singapore have graduated out of the program, countries like Malaysia, Thailand, and the Philippines have increased exporting activity. GSP develops market economies and distributes technology such that one or two powerful countries do not possess undue control over production.

Finally, GSP affords the U.S. government with leverage in assuring that developing countries live up to international trade agreements. Enforcing intellectual property laws and assuring that countries maintain open markets is important to US economic interests.

Notwithstanding the historical importance to Tandy, it is the uncertainty of its renewal which causes us more problems than the preference itself. If Tandy knew for sure that the GSP program was going to be discontinued at some point in the future, we would make our plans accordingly. Preparations are currently underway to publish the 1996 Radio Shack catalog, which will feature the 150 products and their prices.

Should Congress determine that GSP must be ended, it is very important to our customers and stores that the authorization be continued at least through 1996, to allow time for us to make alternative merchandising decisions.

Tandy appreciates the opportunity to place its remarks favoring the extension of GSP in the Committee record. We will be pleased to assist the Committee in its further determination of this important subject.

United States House of Representatives
Committee on Ways and Means
Subcommittee on Trade

Hearings on the Proposals to Renew the
Generalized System of Preferences

Statement in Support of a Long Term Extension
of the Generalized System of Preferences
Submitted on Behalf of Teksid, Inc.

March 13, 1995

Mr. Chairman:

Mr. Chairman and Members of the of the Subcommittee on Trade of the House Committee on Ways and Means. My name is Leslie Alan Glick, and I am a partner in the law firm of Porter, Wright, Morris & Arthur in Washington, D.C. I am submitting this statement today on behalf of my client Teksid, Inc., a corporation located in Farmington Hills, Michigan. Teksid has 19 full time employees located in Michigan. We respectfully request that this statement be included in the printed record of the hearing held on February 27, 1995. Teksid is engaged in the importation of certain aluminum cylinder heads from Brazil that are essential to its operations. Teksid strongly supports the long term continuation of the Generalized System of Preferences ("GSP") program past its current expiration date of July 31, 1995.

Teksid also manufactures aluminum cylinder heads in its plant in Tennessee and employs over 400 workers there. Thus Teksid, although an importer from Brazil, is also a U.S. producer and employer. In the case of aluminum cylinder heads the U.S. production cannot meet the demand as the auto industry is switching to more and more aluminum. Therefore, imports are essential to meet the needs of the U.S. automotive manufacturers themselves for these parts and the GSP program could help keep their costs down.

Teksid believes that the GSP program is beneficial to the U.S. as well as the developing countries that benefit from it. Brazil, particularly with its significant social and economic problems, needs to be continued on the GSP program. It would be a grave mistake to eliminate Brazil and some of the larger GSP beneficiary countries in the misguided effort to give more benefits to smaller countries. Most smaller countries are already receiving duty free benefits in the U.S. through various regional preference programs such as the Caribbean Basin Initiative, that covers most of the Caribbean and Central American countries, and the Andean Trade Preference Act that covers the Andean countries. Mexico, a significant competitor of Brazil recently received special preferences under the North American Free Trade Agreement that go beyond those previously available under the Generalized System of Preferences.

If Brazil is to maintain its already fragile position in the world economy, it cannot afford to lose the benefits of the Generalized System of Preferences. Brazil has very high unemployment and underemployment. Inflation in 1993 was 1,592% up from 1,149% in 1992. The World Bank estimate for 1994 inflation is 1,048%. Brazil has had a decline in real growth of Gross Domestic Product in two out the past five years. Former Brazilian President Jose Sarney was quoted in the Wall Street Journal to the effect that "The national crisis has exceeded all limits. It requires heroic decisions." (Wall Street Journal, October 28, 1993 at A8).

The GSP program is a market based incentive to trade and development of beneficiary countries. The impact on Brazil of the recent emerging market financial instability which began with Mexico's devaluation crisis last December underscores the importance of GSP to continued growth and stability in Brazil. Long term renewal of the GSP program would contribute to stability and predictability, which are important for business planning, both in the beneficiary countries and in the United States. Although, it was of course better than no extension at all, the recent one year extensions of the program - along with gaps during which the program had expired - caused significant uncertainties and disruptions in the market. For example, it is very expensive for U.S. companies such as Teksid to post cash payments to

cover import duties when the program temporarily expires. Long term extension will eliminate such situations.

In view of these facts, we strongly urge you both to renew the GSP program long term, without significant changes, and particularly to continue the status of Brazil as a GSP eligible country. One additional comment we wish to submit concerns the so-called "3 year rule." Current USTR practice does not allow resubmission of a product addition submission if it has been accepted for review and then denied after a full review (hearings, briefs, etc.). If this regulation is codified into law it should be careful to continue the same policy of applying the 3 year exclusion policy only to products that have been accepted for review, given full consideration on the merits, and then rejected. Products that have petitioned for review but not been accepted for consideration (e.g., because the information was incomplete) should not be barred from applying the next year.



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OFFICE OF COMMERCIAL AFFAIRS
ROYAL THAI EMBASSY
1024 Wisconsin Avenue, NW
Washington, D.C. 20007

No. 0204(W)/ 402

March 9, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Crane:

Pursuant to the Trade Subcommittee's request for written comments on an extension of the U.S. Generalized System of Preferences (GSP), we are pleased to submit the views of the Government of Thailand regarding this important program.

The U.S. GSP program has played an important role in helping Thailand diversify and expand its exports to the U.S. market. This is an important objective for our country, since export earnings constitute Thailand's primary source of investment and financing for needed imports of foods and other basic commodities. Also, without the GSP's tariff preferences, many Thai infant industries unable to maintain their price competitiveness could be forced out of the U.S. market altogether.

While the standard of living in Thailand continues to make modest improvement, most Thai people are still poor. Approximately 85 percent of our population resides in rural areas relying on the agriculture sector.

For these reasons, the Thai Government strongly urges the Trade Subcommittee to approve legislation authorizing an extension of the GSP program beyond its current expiration date of July 31. Of particular importance to our Government is that this reauthorization be on a long term basis, preferably for the 10-year period employed originally by the United States and other GSP donor countries.

Short-term extensions of the type enacted by Congress over the past two years undermine the GSP's effectiveness in furthering its developmental objectives. Importers, unsure of whether GSP-eligible products from Thailand and other beneficiaries will still be eligible for tariff preferences the following year, tend to discount the importance of GSP benefits in there sourcing decisions and become more likely to source from more developed non-beneficiary competitors.

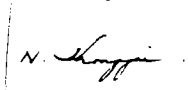
Through the years, Thailand has been a major beneficiary under the U.S. GSP program. With the U.S. government's removal of the program's leading beneficiaries in recent years, Thailand has moved up to become the second largest beneficiary, with duty-free GSP exports of approximately $2.5 billion in 1994.

In evaluating this performance, however, it is important to recognize that Thailand's share of the U.S imports of GSP-eligible products remains only 1.5 percent. In fact, industrialized and other countries ineligible for GSP benefits accounted for 89 percent of total U.S. imports of products on the GSP list during the first ten months of last year, well above the 76 percent share they recorded during the program's first year of operation nearly twenty years ago.

Finally, we wish to note that the Office of the U.S. Trade Representative is currently conducting a review to consider lifting certain GSP restrictions imposed on Thailand in 1989. The restrictions were the result of a determination under the GSP statute at that time that Thailand was not providing adequate protection of intellectual property rights. Since then, Thailand has taken major additional steps to afford strong IPR protection, as reflected by the Trade Representative's decision to launch the ongoing review.

We appreciate the opportunity to present these remarks for the Trade Subcommittee's consideration, and want to assure you of our best wishes in your important endeavor.

Yours sincerely,



M.R. Nabthong Thongyai
Minister (Commercial)

NTH:nl



U.S./CHINA INTELLECTUAL PROPERTY AGREEMENT AND ACCESSION TO THE WORLD TRADE ORGANIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

TESTIMONY OF HON. MICHAEL KANTOR, U.S. TRADE REPRESENTATIVE

MARCH 9, 1995

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U.S./CHINA INTELLECTUAL PROPERTY AGREEMENT AND ACCESSION TO THE WORLD TRADE ORGANIZATION

THURSDAY, MARCH 9, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:36 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
March 2, 1995
No. TR-5

CONTACT: (202) 225-6649

CRANE ANNOUNCES AMBASSADOR KANTOR TESTIMONY ON CHINA ISSUES

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways & Means, today announced that Ambassador Michael Kantor, the United States Trade Representative, will testify before the Subcommittee concerning the recent intellectual property agreement signed with the People's Republic of China and the prospects for China's accession to the World Trade Organization (WTO). **The hearing will take place on Thursday, March 9, 1995, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

No other witnesses will testify on March 9, and an opportunity to present oral and written testimony on China-related issues will be provided at a later time.

BACKGROUND:

After an eight-month investigation, the Office of the United States Trade Representative (USTR) found on February 4, 1995, that China failed to protect intellectual property rights, and that many U.S. industries, including computer software, pharmaceuticals, agricultural and chemical products, audiovisual works, books and periodicals, and trademarks, had been adversely affected. Consequently, USTR ordered the automatic imposition of 100% tariffs on over $1 billion of imports of Chinese products beginning February 26 if an acceptable agreement could not be reached by that date. On February 26, USTR announced that the United States and China had reached agreement to provide for the protection of intellectual property rights for U.S. companies and provide market access for U.S. intellectual property-based products. USTR's action was taken under the Special 301 provision of the Trade Act of 1974, as amended, concerning the protection of intellectual property rights.

In addition, China has been seeking membership in the WTO for the past eight years. Although it had been a member of the 1947 General Agreement on Tariffs and Trade, China had abandoned its membership after the communist takeover in 1949. In December 1994, China's efforts to join the WTO were blocked, and it did not become one of the founding members. Some of the concerns about China's membership include its non-tariff trade barriers, the non-convertibility of its currency, its massive state-run sector, and its closed services market. Another issue relates to whether China may join the WTO as a developing country member or whether it must meet the obligations of a more advanced economy.

In announcing Ambassador's Kantor's appearance before the Committee, Chairman Crane said: "I am pleased that the United States and China have reached agreement to assure the protection of U.S. intellectual property rights in China. Now, we should aggressively enforce the agreement we have reached in order to make sure that China will in fact respect intellectual property rights within its borders. In addition, we must assure that China is complying with the rules of the multilateral trade regime before it can become a member of the World Trade Organization."

*****

Chairman CRANE. The committee will come to order. We are most pleased that we have Ambassador Kantor and his delightful Deputy Ambassador, Charlene Barshefsky, with us today. I know that the Ambassador is on a tight time constraint because he has to catch a plane to China and bask in the sunshine over there on the beautiful beaches around Shanghai. It's because of our weather here that he made the decision to make the trip.

But I want to welcome you, Ambassador Kantor, to the committee. And I want to congratulate you with regard to the concluded agreement between the United States and China on intellectual property rights protection and on the prospects for Chinese accession to the World Trade Organization. We plan to hold another hearing at a later time where we'll provide an opportunity to the public to present oral and written testimony on China-related issues.

I'm very pleased that we've reached an agreement to assure the protection of U.S. intellectual property rights in China and I commend you and Ambassador Barshefsky and your staff on the results of these difficult negotiations. Because of this agreement we can avoid imposing trade sanctions on imports of Chinese products and any possible counterretaliation against our exports. Trade sanctions are a powerful weapon that we should use when necessary, but it's far better for all concerned to reach agreement instead to remove the cause of the trade friction. The integration of the world economy means that we'll all suffer when we're forced to take retaliatory action.

The fact that we've reached an agreement does not mean that the intellectual property issue is closed. Now we must aggressively enforce the agreement in order to make sure that China will in fact respect intellectual property rights within its borders. This subcommittee intends to keep a watchful eye on developments in this area.

This agreement will also improve the negotiating environment for China as it works toward acceding to the World Trade Organization. However, I believe, Ambassador Kantor, that the agreement alone should not cause us to back down on our demands for accession. Economic reforms in China have substantially transformed their centrally planned economy toward a market-oriented economy. However, if China wishes to become a member of the World Trade Organization it must go further and show that it can fully comply with the rules in the multilateral trade regime.

As Chairman Archer, Mr. Gibbons, Mr. Matsui, and I stated to you in our letter of December 15, 1994, we believe that China's eventual entry into the GATT WTO system would be beneficial for all concerned given the size of the Chinese economy. However, I support China's entry into the WTO under conditions that are commercially sound and fully demonstrate China's acceptance of the obligations of being a WTO member. If China were to compete within the WTO framework on a less-than-equal footing it would create serious imbalance and a dangerous precedent. We set forth our specific concerns in our letters to you of April 12 and December 15.

Finally, we should take whatever time is necessary to ensure that any Chinese accession is done properly. China's accession to

the WTO would be beneficial only if it carries out its obligations as a full-fledged member in good standing.

Ambassador Kantor, and Ambassador Barshefsky, we're very pleased to have you both here today. We look forward to your testimony and to continuing to work with you and your staff on these critical issues.

Now I would like to yield to my distinguished colleague, Mr. Matsui, for an opening statement.

Mr. MATSUI. Thank you very much, Mr. Chairman. What I'd like to do with unanimous consent is to actually introduce a statement into the record by Mr. Rangel, the ranking member, if I may.

Chairman CRANE. Absolutely. Without objection.

[The opening statement of Mr. Rangel follows:]

OPENING STATEMENT OF HON. CHARLES B. RANGEL

Thank you, Mr. Chairman, for scheduling this morning's hearing with Ambassador Kantor to review the status of our trade relations with China. Our trading relationship with China is rapidly becoming one of the most important and complex of all our trading relationships and involves a number of key issues that will require careful consideration by this subcommittee.

Clearly, the economic stakes with China are high. The United States exported nearly $9 billion to China in 1994, while importing $38 billion from China during that same time. Unfortunately, this left us with a bilateral trade deficit of nearly $30 billion, which is clearly unsustainable over the longer run. Therefore, we must do our utmost to improve our access to China's market of 1.2 billion people. I understand Ambassador Kantor will be continuing the USTR's efforts in this direction during his upcoming trip to China over the weekend.

Let me also commend Ambassador Kantor and his negotiating team for their outstanding efforts in concluding a comprehensive intellectual property agreement with China. This agreement should help to reduce dramatically the rampant piracy of U.S. intellectual property-based products in China and improve the ability of U.S. intellectual property-based industries to sell their legitimate products to Chinese consumers. This agreement's ultimate success, however, will depend on our vigilance and our followup efforts to ensure that the agreement is properly implemented.

Finally, with respect to the ongoing negotiations concerning China's accession to the World Trade Organization, let me state for the record my support for the position taken by Ambassador Kantor in these negotiations and set forth in two bipartisan letters sent last year by the leadership of the Committee on Ways and Means to Ambassador Kantor. The United States should support Chinese accession to the WTO provided it is done on commercially sound terms and with full acceptance by China of the basic obligations of the WTO system. No WTO accession negotiation will be as commercially significant as that of China. Therefore, I urge Ambassador Kantor and the administration to take whatever time is necessary and pursue whatever negotiating positions are appropriate to ensure that this negotiation is done properly.

Thank you, Mr. Chairman.

Mr. MATSUI. Thank you. I would also just very briefly like to congratulate both Ambassador Kantor and Ambassador Barshefsky for the tremendous job they did on the issue of intellectual property with the Chinese. I know that it was a long drawn out process and certainly we all appreciate your efforts on behalf of particularly California industries with high tech semiconductors and obviously the motion picture industry.

I might just like to reiterate, if I might, the words of the Chairman in terms of the accession into the WTO. I think it's very important that we allow the Chinese that opportunity, but they must understand that we don't look upon that as a less-developed power. They in fact are a strong industrial power, and that being the case, it's my belief that they must understand that whatever accession

they get to the WTO will have to be on terms that other industrialized countries participate as well.

Thank you, Mr. Chairman.

Chairman CRANE. Now Mr. Payne I think has an opening statement.

Mr. PAYNE. I'd just ask unanimous consent to have my statement entered into the record, Mr. Chairman.

Chairman CRANE. Yes.

Mr. PAYNE. I too wanted to thank Ambassador Kantor and Ambassador Barshefsky for the remarkable job that they have recently done, and in the interest of time I have no further opening statement. Thank you.

[The prepared statement follows:]

OPENING STATEMENT OF HON. L.F. PAYNE

Thank you, Mr. Chairman. Mr. Ambassador, thank you for appearing here this morning to bring us up to date on the status of negotiations on China's accession to the World Trade Organization and to review with us the recently concluded agreement on intellectual property protection.

Last December, I was pleased to see U.S. negotiators stand firm in insisting that China's accession to the WTO proceed only on a sound commercial basis. Our trade with China must be on an equitable basis and must be governed by the same rules respected by our other trading partners. If China wishes to enjoy the benefits of WTO membership, it must also be willing to meet the obligations and responsibilities of WTO membership.

China has already agreed to improve enforcement of intellectual property rights protections and I congratulate you and your deputy, Charlene Barshefsky, for your tremendous efforts in this area. However, there are a number of other areas in which China must make improvements before it becomes a member of the WTO. China must improve market access for American goods and services. Existing trade agreements must be fully implemented. Chinese trade law must be made fully transparent and consistent with Uruguay round disciplines.

China's past performance and its current insistence on special status in the WTO makes extending the benefits of the phaseout of the Multi-Fiber Arrangement particularly problematic. China's apparel imports doubled between 1989 and 1993, yet U.S. apparel exports to China amount to some $40 million in used clothing. Before receiving MFA benefits, China must provide effective market access by lowering tariffs, removing nontariff measures and establish a transparent regime of import laws and regulations. During and after the phaseout, the United States should insist on maintaining the ability to impose unilateral safeguards, without compensation, in order to prevent a massive flood of Chinese imports.

Mr. Ambassador, I want to thank you again for the hard work you have done on behalf of American workers and industry, especially in the intellectual property agreement concluded in February. I look forward to your testimony and to working with you on these important issues in the future.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Thank you. Obviously I want to congratulate you and thank you, not just for solving this immediate problem. All of us realize China, in joining the rest of the world, is obviously going to have to be dealt with. You've added to our storehouse of knowledge and technique in terms of learning how to work with the Chinese, and I compliment you on that. We're going to need this experience over time. Thanks for helping us.

[The opening statement of Mr. Ramstad follows:]

OPENING STATEMENT OF HON. JIM RAMSTAD

Mr. Chairman, thank you for calling today's hearing to give Ambassador Kantor an opportunity to discuss the agreement the United States recently reached concerning China's protection of intellectual property rights.

I also want to thank Ambassador Kantor, and everyone at the U.S. Trade Representative's office, for their hard work on the agreement.

Like everyone else on the committee, I had several constituents who were very concerned about certain items listed on the possible retaliation list. The USTR was extremely receptive to our input and concerns and very responsive to many of my constituent companies.

I am extremely pleased the retaliation effort was unnecessary and I applaud the USTR's tenacity in this regard.

I look forward to hearing from Ambassador Kantor today and to discussing the details of the agreement reached.

Thank you again, Mr. Chairman, for calling this hearing. And thank you, Mr. Kantor, for your testimony.

Chairman CRANE. Now, Mr. Ambassador, if you'll make your presentation.

STATEMENT OF HON. MICHAEL KANTOR, UNITED STATES TRADE REPRESENTATIVE, ACCOMPANIED BY CHARLENE BARSHEFSKY, DEPUTY AMBASSADOR, UNITED STATES TRADE REPRESENTATIVE

Ambassador KANTOR. Thank you very much, Mr. Chairman, and members of the committee, for the opportunity to appear here today. With your permission, the committee's permission, Mr. Chairman, I'd like to submit my whole testimony for the record and summarize it in order not to take too much of the committee's time.

Chairman CRANE. It shall be.

Ambassador KANTOR. Thank you very much. As you noted, Ambassador Barshefsky is here with me today, and if the committee wishes to go longer she can stay after I have left to catch an airplane to China to take, as you said, that relaxing weekend in Beijing.

Let me say that Ambassador Barshefsky along with Lee Sands, Deborah Lehr, and Kathy Field, who are also here today, did a magnificent job on behalf of our country in these negotiations. Too many times some of us in these exalted positions get too much credit, and those who have done the hard work and have shown great resolve, and who have fashioned the position don't get the credit. This is a case where Ambassador Barshefsky and Lee Sands, Deborah Lehr, and Kathy Field deserve tremendous credit for what they have done. That's not to say their Chinese colleagues and counterparts don't deserve some credit as well. But I'd just like to take note of the fact that too many times some of us get the limelight and the glory and it's deserved in this case by those that I've referred to.

We faced with China, as this committee knows, historic concern over a failure to enforce intellectual property rights which was having a pernicious effect on U.S. industries ranging everywhere from agricultural chemicals and pharmaceuticals, to computer software, to Jeep Cherokees, to the misuse of trademarks including Kongaloo flakes which were a substitute for Kellogg's Corn Flakes and Del Monte corn, to of course, the pirating of compact discs and other products including tapes for movies. Piracy is rampant in China and continues in fact today.

The failure to enforce these laws, which were passed by the way and implemented by China under a 1992 agreement with the United States had cost us, we estimated in 1 year alone in lost sales in China, about $1 billion. That of course, led to the United States

invoking proposed sanctions of 100-percent tariffs on 1 billion dollars' worth of imports from China which was a forerunner to this agreement.

Not only has China in the past allowed for the pirating of these goods and for the spoilation of trademarks and the failure to protect patents, they've also, of course, restricted if not eliminated market access for U.S. products in this category that are protected by intellectual property rights by using quotas and licensing arrangements.

Just to give you one indication, there are 29 compact disc and laser disc factories operating illegally in China today, or were operating in China today—7 have been closed—which produced last year 75 million compact and laser discs, only 5 million of which were absorbed in China, 70 million of which were exported to third countries including to Mexico, the United States, and Canada. We didn't calculate, for the purposes of our proposed sanctions, the enormous impact that would have had or was having on U.S. industry. So you can imagine, Mr. Chairman, and members of the committee, what magnitude of damages we have been suffering over the last number of years if we had calculated both the internal damage, the lost sales in China as well as, of course, the export of pirated goods into third country markets.

This new agreement does a number of things which I think are enormously important. One, it sets up new rules to protect intellectual property. It provides for enforcement. It provides for court access and reform, and provides for technical assistance on the part of the United States to China by our Patent and Trademark Office, by our Justice Department including the FBI, and also by our Customs Service.

Also, Mr. Chairman, it leads to, I think, a new respect for law on the part of the Chinese. Last year, as you know, the President, with overwhelming support in the Congress, separated in his MFN decision, trade from human rights. There has been some criticism of the President for that decision.

Nothing could support his decision more and the decision made by a great majority of Members of this committee and Congress to support that separation, than what's happened here. Because by building a respect for law for China, by in fact reforming the court system and providing more access to the courts, what we are doing, of course, is affecting all rights in China. So I think the President's decision, much of which was supported by the members sitting in front of me here today, is to be praised by all of us because I think that what we have shown here is by operating successfully in the trade or economic area we can affect other areas as well.

It's also important in fact to the Chinese, this agreement. What it will do, of course, by allowing market access, by protecting intellectual property, will encourage more investment in China. Clearly, not only U.S. investors but others are reluctant to go into China under the old system where the laws were on the books but weren't enforced and you couldn't protect your property.

So I think this is an agreement that is a win-win situation. We appreciate the support we have received in the administration. Without the bipartisan support of the Congress, both on this side

and in the other body, and the unanimous support of the American business community, there would have been no agreement.

Frankly, in the past, especially in the business community, there has been some split of authority you might say when we have tried to negotiate certain agreements. The 100-percent support by the American business community including, Mr. Chairman, companies that might have been somehow hurt in the short run by a failure to reach agreement, was enormously important for our reaching this agreement. The Chinese were unable in this situation to divide Republican from Democrat, House from Senate, industrial interests in the United States from, let's say, other interests. Not being able to do that I think gave Ambassador Barshefsky and her team tremendous support as they completed these negotiations.

We have attempted in the 2 years of this administration to support open and fair trading, as this committee has. We have believed in rights and responsibilities. We have believed that the only way we're going to ever achieve global growth, raising the standard of living, creating more jobs here at home, raising our own standard of living is by open markets and free trade and fair trade. What has happened here with this agreement is we have taken a step in the right direction.

What I'd like to do here today as we go over this agreement, Mr. Chairman, is not engage in inflated hyperbole. I think we have to be somewhat cautious, not only in terms of the impact of the agreement—it is a step forward—but in terms of what it means for the future. Both in terms of making sure the agreement is carried out and carried out correctly as it has been executed by both sides and will be formally executed in Beijing this weekend, but especially as it relates to other negotiations that we will carry out.

As you know, we have a 1992 agreement with the Chinese on market access. For the most part that agreement has worked. I would note that last year alone about 800 tariff lines in industrial products have opened up for U.S. companies in the Chinese market. But that doesn't mean it has been perfect or that everything in that agreement has been carried out. In fact some of our discussions this weekend that I will carry on with my Chinese counterparts will involve that agreement.

Whether it's in computers or heavy capital equipment or in the area of agriculture, we have not had full compliance with that agreement. Now we have substantial compliance which we welcome, but we insist on full compliance and those negotiations will continue. I think reaching this agreement on intellectual property rights, or IPR, helps. But let me say again, it doesn't mean that we're going to reach agreement on that and we will continue to insist that, of course, the Chinese live up to their commitments under that agreement as well.

Let me mention four or five areas that I think are the most important in this intellectual property rights agreement then, of course, I will be pleased, and so will Ambassador Barshefsky, to answer any questions you might have on this or any other aspect of our trade relations with China or, of course, any other questions you might have.

First on enforcement. There's going to be an intensified inspection system set up with specific time periods where these inspec-

tions will take place. This agreement provides for copyright and trademark recordation, provides for comprehensive enforcement mechanisms. We establish representative offices in China under this agreement for our various trade associations including for the movie industry and the record industry and for the computer software industry in order to try to monitor this agreement.

There's technical assistance, as I mentioned before, that China has accepted and welcomes from this country. In fact, representatives from Customs, Patent and Trademark, the Justice Department and FBI will be going with me this afternoon to China to begin those discussions.

In the short term, all factories, all offending factories in China will be inspected and closed if offending by July 1, 1995. I think the Chinese, to be fair, have shown good faith in this area by closing 7 already and destroying over 2 million compact and laser discs. They also have agreed in these inspections, and in the long run to destroy the equipment making these products, which is a giant step forward from where they were, of course, in the past.

They've also agreed to investigate firms that are distributing audiovisual products which are violating their copyright laws. They've also agreed to intervene at the retail level.

In the court reform or administrative action area they've agreed to expeditious handling of cases that have been or will be filed on behalf of foreign entities, which has not happened before. They've agreed to national treatment—in other words, foreign entities will be treated in their courts as are local entities in terms of filing fees. That has been a major problem in the past. Exorbitant filing fees were required of non-Chinese entities filing in their courts in the past, and they have agreed now to provide national treatment.

They've also agreed, which is the most critical of all, to preserve both prehearing or pretrial, and trial and posttrial, the evidence which is necessary to show there have been offenses against the laws in China. They've also agreed to an exchange of information, statistics, and to monitor the implementation of this agreement, and to consultations, every quarter I think it is, on each of these levels of statistics.

Let me finish with market access. Nothing is more important in this agreement than allowing market access. Without that, Mr. Chairman, just enforcing the law is of no moment. The desire for U.S. products in this area, whether it be computer software or pharmaceuticals or agricultural chemicals or movies or music, or any other items covered by intellectual property rights, or for U.S. products such as Del Monte or Kellogg's or other products in these areas is huge. Without market access we're creating the atmosphere which almost requires piracy or the violation of trademark protection.

So what the Chinese have agreed to is, number one, no more quotas, no more import licensing restrictions. That's an enormous step forward.

Number two, that we can now, for instance in the music industry, market their entire catalog of CDs and other products they will have available in the Chinese market.

Number three, in the film area we can now collect royalties or enter into joint ventures, enter into licensing agreements. Next,

joint ventures in the computer software and other industries will be allowed and a nationwide distribution system will be put into place, and in fact, by the year 2000 will cover the 13 largest cities in China.

Last but not least, we'll have the right of establishment of U.S. companies in China to operating there independently. So everything from royalties, to licensing, to joint ventures, to the right of establishment are called for under this agreement and can be enforced. That is an enormous step forward. We've been restricted prior to this time and I can't tell you how much good that's going to do.

Let me just briefly address—and then I'll, of course, be delighted to take questions—references both the Chairman and Mr. Matsui made with regard to the World Trade Organization and China's potential accession. The United States has always said we support China's accession to the World Trade Organization. However, it must be done on a commercially reasonable basis.

China is the third largest economic power in the world. They're growing anywhere from 10 to 14 percent a year. They're both an enormous potential market for the United States and other of our trading partners, but they also have an enormous potential effect for good or for bad on world markets. We have got to be resolute as we potentially engage in new negotiations with China over WTO accession.

Let me make it clear, it's up to China whether or not they want to come back to the table. We had negotiations through December of 1994 in Geneva, and China left the table not agreeing to the criteria that had been laid out, not only by the chairman of the committee but by almost every country engaged in those negotiations. This is not just a U.S. position. This is a position widely supported throughout the membership of the WTO. And I'd be happy to go into some of those details if the committee wishes.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY BEFORE THE
HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE
AMBASSADOR MICHAEL KANTOR
UNITED STATES TRADE REPRESENTATIVE
MARCH 9, 1995

Mr. Chairman, it is a pleasure to appear before this subcommittee today to bring you up to date on our recent agreement with China which will provide for strong enforcement of copyrights, trademarks, trade secrets and other intellectual property rights in China. Our computer software, motion picture, sound recording, and publishing industries will also benefit from new, improved access to the Chinese market.

Until now, China's failure to provide effective enforcement of intellectual property laws has caused substantial damage to U.S. industries in what is one of the fastest growing markets in the world. Theft of copyrighted products (computer software, motion pictures, videos, sound recordings, books and periodicals) has reached epidemic proportions. The failure to enforce intellectual property rights (IPRs) combined with quotas and other market access barriers have kept our legitimate products out of China and pirate copies have displaced sales in third-country markets. Some of our most famous trademarks, Kelloggs, Del Monte, M&M, have been copied and applied to fake goods. Our announced estimate of the burden or restriction on U.S. trade was over $1 billion.

The recently completed IPR Agreement protects U.S. industries that are consistent export earners from the flagrant piracy of their products, and provides new markets for the products of U.S. workers in these industries. Through full implementation of this Agreement, China will demonstrate that it can play by international rules on a matter of importance to its own development and economic interests as well as its trading partners. China will also have access to high quality products from the United States and assistance in the implementation of this Agreement. In addiiton, this enhanced protection will attract new investment to China.

Let me express my appreciation for the support that the Administration has received from the members of this subcommittee as we have negotiated with China. It was critical to our success in reaching this agreement that the Chinese government understand that there was strong support from both the Congress and the business community for remaining resolute in the face of the Chinese government's tolerance for piracy of U.S. intellectual property.

President Clinton believes that increased trade is critical to our efforts to create jobs and raise standards of living in this country. The importance of trade to our economy and the rest of the world demands that the global trading system be based upon a set of rights and responsibilities that all countries must accept. The Clinton Administration, with bipartisan support in Congress, has pursued this goal of an open and fair trading system through multilateral agreements like the Uruguay Round, regional initiatives like the NAFTA, and bilateral negotiations like our current agreement with China. All of these initiatives share a common purpose of opening markets, expanding trade, creating jobs and strengthening the U.S. economy.

Mr. Chairman, on February 26, we took the latest step in that effort, when the Administration announced that the United States and China had reached an agreement that will provide for both immediate and longer term improvements in enforcement of intellectual property rights (IPR) owned by U.S. individuals and companies and market access for industries that rely on IPRs to protect their products. As President Clinton said, "This is a strong agreement for American companies and American workers...we

have used every tool at our disposal to fight foreign barriers against competitive U.S. exports."

The importance of this Agreement is bolstered by the fact that it sets the stage for achieving solutions to other trade issues on our agenda with China. Full implementation of the October 1992 agreement on market access is being discussed now. Barriers to exports of U.S. computers, textiles, heavy machinery and other products must be eliminated if the U.S. market is to remain open to accelerating exports from China.

We are also discussing market access for agricultural products. China maintains a number of non-science based quarantine measures which restrict access for U.S. agricultural products. We are asking China to adopt Sanitary and Phytosanitary (S&P) measures which comply with the Uruguay Round Agreement standards and base all S&P measures on scientific principles. China's quarantine restrictions on certain U.S. fruit exports (grapes and apples) because of med fly concerns is one of several S&P issues under discussion. We have also targeted Chinese S&P measures limiting U.S. exports of wheat, tobacco, live cattle, bovine embryos and bovine semen.

China's services markets must also be opened to U.S. companies. We have asked that China commit to substantial liberalization of its insurance, distribution, advertising, travel, communications and service sectors. We have also initiated discussions on telecommunications services in the context of China's accession to the World Trade Organization.

We believe that these issues should also be addressed in a positive manner. But for now, allow me to summarize the major aspects of our agreement with China on IPR enforcement and market access for our audio-visual and computer software industries.

I. Major Industries Benefitting

- Computer software producers, including producers of CD-ROMs and video games, will benefit from increased action against manufacturers and retailers to eradicate piracy in China, including a ban on infringing exports and improved market access.

- Motion picture and video producers will benefit from enforcement of their copyrights, in particular against producers of pirated Laser Discs (LDs) and tapes, elimination of quotas, import licensing requirements and more transparent rules on censorship and faster implementation of censorship rules.

- Sound recording producers of compact discs (CDs) and tapes will immediately benefit by enforcement actions against CD pirate factories and enforcement against exports to third countries, the right to exploit a company's entire catalogue and other market access provisions.

- U.S. trademark owners in all categories of goods and services that must enforce rights in China and, especially companies that have well-known marks, like Del Monte, 3M, and Kellogg, will benefit from expedited and improved procedures to permit enforcement of trademarks. Protection against unfair competition, through copying of trade dress and other actions that could mislead or confuse consumers will also provide benefits for a wide range of U.S. industries that trade with China.

II. Immediate Benefits--Enforcement

- Export and import of pirated CDs, LDs, CD-ROMs and counterfeit trademark goods will be prohibited and infringements strictly punished, through:

  -- intensified inspections and commitments to detain suspected goods for investigation, and when infringement is found, pirated CDs, LDs CD-ROMs and other infringing goods will be seized, forfeited and destroyed and the machinery and implements directly and predominantly used to make the infringing goods will be seized and destroyed.

  -- Establishment of a copyright and trademark recordation system modeled on the U.S. Customs system.

- Creation of a comprehensive enforcement mechanism that is empowered to investigate, prosecute and punish infringing activities throughout China.

This will be accomplished through:

  -- A State Council working conference on intellectual property rights (IPRs) that will issue directions and coordinate IPR policies.

  -- Establishment of sub-central (provincial, regional and local) intellectual property working conferences in at least 22 provinces, regions and major cities and special enforcement task forces.

  -- Cross-jurisdictional enforcement efforts will be specifically authorized, coordinated and carried out by enforcement task forces.

  -- Enforcement task forces in which all relevant departments, including the police and customs, will participate so that the task force has authority to search premises, preserve evidence of infringement and take action to shut down production of infringing goods, impose fines and revoke operating permits and business licenses.

  -- An intensified enforcement effort over the next six months with possible extensions of this time period for specific areas depending on success in eradicating infringement.

  -- Establishment of a copyright verification system and use of unique identifiers (special codes stamped on the molds) on CDs, LDs and CD-ROMs that will help identify infringers and ensure that only firms with permission from the copyright holder will be authorized to reproduce, import or export these products.

  -- Associations of right owners (the Motion Picture Association, and Software Publishers Association) will be permitted to establish representative offices in China to assist in this verification process and engage in other activities that representative offices are permitted to undertake in China.

  -- Technical assistance from the U.S. Customs Service, Department of Justice and the Patent and Trademark Office to ensure effective implementation of these programs and mechanisms.

Short term efforts by the Enforcement Task Forces will focus on:

CDs, LDs and CD-ROMs. This will be done through:

-- investigation of all factories producing CDs, LDs and CD-ROMs to determine whether they are producing authorized products will be completed by July 1, 1995.

-- investigation of firms engaged in distribution, leasing or public performance of audio-visual products (CDs, LDs, video tapes, motion pictures, audio tapes, video games) during the special enforcement period.

-- establishment of an inventory check system at the retail level to ensure that only authorized product is being sold.

-- revocation of operating permits belonging to those who infringe more than one time and revocation of business licenses for serious repeat offenders with a commitment not to grant a business license in the same field of activity for a period of three years.

Computer Software

-- investigation of all entities, including public (government), private and not-for-profit entities that engage in commercial reproduction, wholesale, retail or rental of computer software.

-- establishment of an inventory check system for software under which any product that is not distributed by a licensed firm will be seized and destroyed. Business licenses for dealing with computer software will be required and those firms found to deal in infringing or unauthorized product repeatedly will lose their business license for three years. Normal administrative and judicial remedies will also be available.

-- All entities (including public entities) must provide resources sufficient to purchase legitimate software.

Books and other Published Material

-- intensified investigation of publishing houses and revocation of business licenses of those engaged in piracy.

-- verification that printers have authorization from the right holder to print the book or other material. Printing houses operating without a license will be shut down.

Trademark

-- Pursuit of "model" cases to provide a deterrent effect on other counterfeiters

-- Immediate access to all trademark agents operating in China, and for the purposes of enforcement, joint-ventures, wholly owned subsidiaries, and licensees in China will be permitted to act on behalf of the U.S. owner of a trademark.

To date, the Chinese have raided and closed seven factories, including the most notorious of the pirating factories, the Shenfei Laser Optical Systems Company outside of Hong Kong. Over 2 million CDs and LDs have been seized and destroyed in recent weeks. As I outlined the Chinese government is committed to take further steps necessary to discover any other infringing factories and move against them within the next three months.

seize and destroy infringing products and seize and destroy any machinery directly and predominantly used to produce infringing products.

III. Other Enforcement and Administrative Actions

- Improved access to effective administrative and judicial relief, including expeditious handling of intellectual property cases involving foreigners, the right to investigate alleged infringement and present evidence, and to request preservation of evidence of infringement while the case is pending.

- Establishment and publication of standards to govern the registration and renewal of trademarks in China, including standards on the key issues of determining likelihood of confusion, descriptiveness, rules for cancellation and opposition procedures.

- Enhanced protection against unfair competition, including abuse of trade dress, trade names and other actions that mislead the public as to the relevant goods and services.

- Exchange of information and statistics on Chinese enforcement efforts and regular consultations to discuss the adequacy of enforcement efforts. The United States will also provide information on intellectual property enforcement actions in this country.

- Enhanced training for Chinese judges, lawyers, students, government officials, and business persons on the nature of intellectual property and the importance of its protection.

IV. Enhanced Access to the Chinese Market

- Confirmation that China will not put in place quotas, import licensing requirements or other (non-censorship) requirements on the importation of U.S. audio visual products, including sound recordings, motion pictures and videos.

- U.S. record companies will be permitted to market their entire catalog of works in China, subject to censorship rules.

- U.S. film product companies are permitted to enter into revenue sharing agreements with Chinese companies.

- U.S. companies in the audio-visual industries will be permitted to enter into joint venture arrangements for the production and reproduction of their products in China. These joint ventures will also be able to enter into contractual arrangements immediately with Chinese publishing enterprises for the nationwide distribution, sale, display and performance of their products in China. They will now be able to establish operations in Shanghai and Guangzhou and other major cities, with the number of cities to grow to thirteen by the year 2000.

- U.S. computer software companies will also be permitted to establish joint ventures in that sector and produce and sell computer software and computer software products in China.

A Review of the Problem and a History of U.S. Efforts to Resolve It

From 1984 through 1994, U.S. yearly exports to China rose from $3 billion to $8.8 billion. In the same period, however, Chinese exports to the U.S. rose from $3.1 billion to almost $38 billion. Some of the fastest growing and most competitive industries in the United States -- and ones in which we frequently have a trade surplus -- have been adversely affected by China's failure to enforce intellectual property rights, including computer software, audio-visual products, books and periodicals and trademarked goods and services.

While China did make significant improvements in its IPR legal regime as a result of the 1992 U.S.-China Memorandum of Understanding on Intellectual Property Protection, piracy of copyrighted works and trademarks continued to be rampant because China did not live up to its obligation under the Agreement to enforce its laws and regulations. Until recently, enforcement of intellectual property rights has been virtually absent, with piracy rates soaring in all major urban centers along China's increasingly prosperous east coast.

Piracy of computer software -- one of the most competitive industries of the United States -- has been running as high as 94 percent, according to U.S. software industries. Chinese piracy of U.S. CDs, laser discs, cassette tapes, videos and movies has been close to 100% in many parts of China.

In the past two years, Chinese companies have begun to export pirated products in large volume -- invading markets in southeast Asia and even reaching Latin America, Canada, and the United States. This trend is exemplified by the fact that 29 CD and LD factories in China have had a production capacity of 75 million CDs for a domestic market that can absorb only 5 million CDs annually. In addition, some of these factories began to produce and export CD-ROMS, which can hold dozens of computer software programs and other copyrighted works on a single disk. The administrative apparatus in China for policing copyright piracy has been extremely weak. Piracy of trademarks has also been rampant, especially in south China. Enforcement, while effective in some locales, has been sporadic at best.

On February 4, 1995, the Administration announced that, although the United States stood ready to continue to engage in serious negotiations, it had ordered the automatic imposition of 100% tariffs on over $1 billion of imports of Chinese products beginning February 26 if an acceptable agreement could not be reached by that date.

Our February 4 announcement was the result of an eight month investigation under the Special 301 provision of the Trade Act of 1974 into China's intellectual property rights enforcement practices. On December 31, I issued a proposed determination that China's IPR enforcement practices were unreasonable and burdened or restricted U.S. commerce and denied fair and equitable market access to U.S. IPR owners. USTR published a proposed retaliation list of $2.8 billion and held hearings on the proposed increase on tariffs on these products. At the same time, I extended the investigation until February 4 to allow negotiators time to pursue an acceptable settlement.

China's WTO Accession

There has been some speculation about the relationship between the IPR agreement and China's interest in becoming a member of the World Trade Organization. There has been no link between the two exercises. However, I am hopeful that this recent IPR agreement will help to improve the negotiating environment on China's eventual membership in the World Trade Organization. But, I want to be very clear: substantial work and improvements are necessary in a number of areas before an agreement on China's WTO protocol package can be completed. That package comprises a

protocol of the terms and conditions of the accession, a working party report which are negotiated multilaterally, and market access schedules in goods, agriculture and services which are the result of bilateral negotiations.

We are prepared to work with China, as we have in the past, to develop a mutually advantageous and commercially viable agreement. This will be beneficial to our goal of strengthening our bilateral relations. The Ways and Means Committee has been similarly clear that this is the way the Administration should proceed in this matter. The Administration, the Congress and the private sector are of one view on accession: it can only be completed on strong commercial terms.

The last set of meetings held on China's accession were in December. The Chairman produced negotiating texts and we conducted bilateral negotiations on market access, as did other countries. The progress was insufficient, and greater flexibility will be required before an agreement can be reached. In December, China's was unwilling to commit to align its trade regime with international norms or increase market access in goods, services and agriculture. The United States as well as other WTO members have outlined the areas where China must make commitments to undertake basic GATT and WTO obligations and to secure transparent and meaningful market access opportunities.

In early February, the Chairman conducted informal consultations. The consensus of China's partners was that unless and until China was prepared to undertake liberalization in market access and provide assurances about its regime conforming with WTO obligations, there was little point in resuming negotiations. The Chairman of the Working Party has asked all sides to review their negotiating positions, we are actively consulting with labor, business and agriculture on the status of negotiations and U.S. priorities and interests. We understand that China is undertaking its own review.

I remain hopeful that the results of China's review will enable China to signal that it is now prepared to pursue its accession to the World Trade Organization. China is not now participating as an observer in WTO meetings, unlike other accession applicants. I know that members of the Committee agree that it is in the interests of the United States that China become a member of the WTO, but only if it is secured on a commercially acceptable basis.

China's accession to the WTO on acceptable terms remains important and beneficial to all trading nations. China's accession would guide the structure of China's reforms, and it will cement reforms that are currently in place. A good protocol package will lead also to substantial additional market opening and a much improved trade and investment regime.

China's accession is important for reasons beyond our bilateral relations. There are now some 25 accession applications pending, including many other countries that are in the process of transforming their regimes to market-based systems. If China accedes to the WTO on anything less than commercially reasonable terms or without commitments to take further reform measures the integrity of the WTO will be at risk. We are prepared to resume our efforts with China and look forward to working with the Committee as the negotiations proceed.

Conclusion

Mr. Chairman, this is a good agreement for U.S. workers and firms. It will bolster our efforts to create more high-wage jobs in some of our most competitive industries. Our legitimate, high-quality products will not be required to compete against

Chinese pirated and counterfeit goods in third countries and in China. Our exports to China and third countries should increase. It means American businesses can gain the confidence they will be fairly treated as they enter the Chinese market, one which presents immense potential for U.S. businesses.

It is also a good agreement for the Chinese. It will provide evidence that China is willing to play by the international rules and enforce them. It will also improve the investment climate and encourage access to the high quality, technologically advanced U.S. goods and services. The agreement contains key features ensuring transparency in the Chinese system, which bolsters efforts to have a more open and democratic society.

Mr. Chairman, it is critical that we do not rest on this Agreement alone. Equally important, we must ensure that the agreement is fully implemented and enforced. We will be working aggressively to make sure that it is.

Again, let me say that I appreciate the support and cooperation we have received from the members of these subcommittees. I look forward to working with you in the weeks and months to come as we implement and enforce this historic agreement. Thank you.

Chairman CRANE. Thank you, Mr. Ambassador. I salute you and Ambassador Barshefsky again for your unrelenting effort to advance the cause of free trade. I agree with you wholeheartedly that free trade does more to advance and promote human rights concerns than any other single issue. It's not that it's confined exclusively to the question of economics, but you get into other areas as well.

You made reference to the fact that some of these factories have already closed. My understanding is that government officials owned some of the factories that were manufacturing CDs in violation of intellectual property rights. Do you know whether any of the factories that have been closed were either owned by government officials or the military?

Ambassador KANTOR. Some of the factories that have been closed have a connection to government ministries in Beijing. I could not comment with any authority on whether or not any particular individuals in or out of the Chinese Government have an interest in those operations. However, it would be, I think, important to note that the Chinese Government in a show of good faith, regardless of the connection these factories had, including the Shenfei factory which is the largest in China, operating in southern China, were closed as a result of their show of good faith during these negotiations. And as far as we know today they remain closed. And as I said, 2 million CDs were destroyed.

Let me also add, Chinese ministries in Beijing were using pirated computer software in their operations. They have now agreed—and I think this is awfully important—to discontinue to that use. To use nonpirated or legal computer software and to enhance their budgets under their agreement to make sure they can purchase such software. That is also a major step forward.

Chairman CRANE. What specific criteria and/or benchmarks do you plan to use to enforce the intellectual property agreement with China?

Ambassador KANTOR. Number one, we'll use the monitoring—first we start with a system of providing statistics and information on a quarterly basis from the Chinese. Second, a consultation system on a quarterly basis.

Third, we'll be able to monitor, not only because we have the right of establishment of U.S. companies there and the right of establishment of these offices representing the various industries, but frankly because we will be providing technical assistance and we will have literally U.S. employees on the ground in China working with their Chinese counterparts in the customs area or in the enforcement area. I believe we can be satisfied that we have taken a major step toward being certain that this agreement is either carried out appropriately or we can be fully cognizant of any weaknesses in the agreement or weaknesses in the willingness of the Chinese to carry it out.

Chairman CRANE. As you know, Mr. Ambassador, I've long been concerned about a lack of progress in some of these areas of obtaining adequate and effective protection and enforcement of patent rights, and this goes actually even beyond China. The cost of piracy of U.S. patented pharmaceutical products in Brazil, Argentina, and India I've been told reaches an estimated $1.5 billion in lost U.S.

sales annually. I was wondering—and it's not immediately germane to your trip to China, but what effort is the USTR undertaking with respect to intellectual property protection in, say the countries I just enumerated, especially in the context of the announcement of special 301 in April?

Ambassador KANTOR. Number one, we'll address that issue in April at special 301. Number two, I've recently had meetings with my Brazilian counterparts on that issue. They have again committed themselves to addressing the problem in an effective manner. President Cardozo will be here, as you know, on April 20 to meet with President Clinton. We have also had numerous conversations with Argentine officials, including with President Mina. I've had those personally with him. We've made it clear to Brazil and Argentina, as well as to India, that we are not going to stand idly by and allow patent rights of American companies to continue to be violated.

Number three, we have also said that we believe that it is critical that each of these countries implement their TRIPs, or intellectual property requirements under the Uruguay round, which they have signed onto to be implemented more quickly than the period which is called for in the TRIPs agreement.

Let me assure this committee that we are not going to leave this area and this subject unaddressed. I want to be somewhat cautious in advance of—as you would I think advise me to do—in advance of our special 301 review which we come out with every year. But let me make it clear, these are serious problems. They're as serious as what we addressed in China. And just as we were resolute and focused with bipartisan support here in this committee and in the Congress on the Chinese issue, we're going to follow the same pattern with regard to Brazil, with regard to Argentina, with regard to India.

Let me say, in our negotiations over Chile's accession to the NAFTA, there are certain problems with Chilean law and Chilean enforcement in the intellectual property that we'll be addressing as well during those negotiations.

Chairman CRANE. On the question of the WTO, Ambassador Barshefsky has indicated already that the Chinese accession offer to date has been inadequate from your perspective and that you will not give China developing country status. I'm wondering, are you considering recognizing that China has certain features for a developing country, and how would you ease the ability of China to accede? Are you, for example, considering developing country status with respect to intellectual property which would give China a 10-year phase-in of these obligations?

Ambassador KANTOR. Our position is we should maintain some flexibility. For certain limited purposes China is a developing country. For almost all other purposes China is not and is a major economic power. Let me indicate where we are in terms of our negotiations with China. The United States has taken the lead in these negotiations in terms of their accession to the WTO.

First, in market access, China must be comparable commitments to those secured in the Uruguay round in goods, services, and agriculture. For instance, in the zero for zeroes—remember, we have 10 categories of zero for zero where tariffs go down to zero—and

in chemical harmonization, just to mention two examples where we're insisting on that.

Second, in the transition, which is part of what we call protocol issues, the scope of any special provisions as China transforms its economy. In basic obligations, immediate uniform application and transparency of trade rules throughout China. That is critically important if we're going to operate and our companies will operate successfully in that economy, to have transparent rules and regulations.

In national treatment, that U.S. companies that operate in China have the same market opportunities as Chinese companies. In trading rights, the right to buy and sell directly to any Chinese company, which are severely restricted right now. In the foreign exchange, that this not be used as a barrier, a disguised barrier I would say, to trade.

There are also some Chinese-specific problems that need to be addressed; State trading subsidies, industrial policies such as conditions for access to China's market, access to technology, local content, which affects autos and electronics. And of course, other areas where LDC status would have some effect using balance of payments, infant industry to protect domestic markets and so on.

So we are requiring that China take on the same obligations, as they should, as everyone from Bangladesh to Brazil has taken on. We think we should require nothing less. However, just as in the case of those other countries, there is some flexibility. I believe it would be not appropriate and certainly not realistic to assume that China can take on every obligation that the most developed nations have taken on immediately. However, there is no excuse for China not to take on the basic obligations of the Uruguay round and the WTO, to become a member, in order to gain that accession on a commercially reasonable basis.

Chairman CRANE. In that context, are you planning to initiate any overtures to them or are you waiting for them to give you some kind of a signal first?

Ambassador KANTOR. The ball is in China's court. If China wants to come back to the table to engage in discussions regarding accession to the WTO we'd be pleased to join them at the table. But we have to hear from the Chinese first.

Chairman CRANE. I thank you very much for your testimony, Mr. Ambassador, and want to wish you a safe journey. We look forward to hearing from you on Monday or after Monday when you get back.

Now, Mr. Thomas.

Mr. THOMAS. Thank you very much, Mr. Chairman.

Obviously, this is an important step for the Nation, but I join my colleague from California indicating our thanks because of the work in two specific areas, intellectual property rights and agriculture. Not just because California happens to be on the Pacific rim, but given the size and importance to the Nation's economy, not to mention California's economy, I want to thank you.

Notwithstanding the agreement with Beijing, I want to underscore some points that you made that have concerned me over time in my visits with Chinese officials and the discussions that we've had. I hope they're beginning to understand the fundamental im-

portance of uniformity of enforcement at their multiple ports of entry. I know it's going to be difficult for them and they still have, in some ways, a developing country structure in terms of being able to provide really consistent, uniform enforcement.

In addition to that, the continued selective use of nontariff barriers, and most specifically, the political use of phytosanitary standards with no scientific basis in the agricultural area continues. They seem to be willing to meet and discuss, and I hope as you move forward in these agreements that you'll reinforce that.

Mr. Chairman, I do not want to unduly burden the Ambassador. He's got a major task in front of him. I would like to then ask for the record if I may submit a series of written questions to the U.S. Trade Representative so that I can get responses.

As you might guess, it's in the areas that I usually send the written questions over. But I want to underscore how pleased I am with the progress that you've made. Thank you very much.

Ambassador KANTOR. If I might just, Mr. Chairman, respond to Mr. Thomas' observations. First of all, we'll answer your questions quickly. But number two, let me say specifically addressing grapes, apples, other fruits. The Chinese have used sanitary and phytosanitary regulations without any scientific basis as a way to keep U.S. products out of the market.

Grapes are an obvious example using what I think is an unfortunate basis, the medfly in California, which has no basis in fact whatsoever—none. And on the basis of that have kept other fruits out, including apples from Washington. They look at the United States as one whole region which is, of course, nonsensical.

We addressed that issue and continue to address that issue in the WTO accession talks in Geneva. I plan to raise that this weekend with my counterparts in Beijing. Let me assure you, this is high on our agenda and we'll continue to raise it. We're not going to approve accession of China to the WTO until these kinds of issues are addressed.

Mr. THOMAS. I thank you for that comment very much.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I just have two questions, Mr. Ambassador. One is that with the Uruguay round now being implemented, the reduction of tariffs now are in place or about to be in place over the next 10 years. All countries that receive MFN status, most-favored-nation status, get that reduction of tariff even if they're not a member of the WTO. China obviously has MFN status at this particular time. So China benefits even though they're not a member of the WTO with the reduction in tariffs from the Uruguay round negotiations.

As you know, in the implementing legislation that we passed last December we have given the President through your offices the authority to provide for a snapback provision, to raise those tariffs back up to what they were prior to the Uruguay round negotiations if a country is not a member of the WTO, or if the country has not allowed access to their markets. Are you prepared under certain circumstances with the Chinese, outside of the intellectual property area, to use this authority and also perhaps go back and look at

some of these areas where tariffs might increase even though they might have MFN status?

Ambassador KANTOR. We are prepared, under the appropriate circumstances and under the procedures set out in section 301, to use our trade laws when and if necessary in order to address issues regarding China or any other nonmember of the WTO.

Let me add a parenthetical remark. One of the major features that I think we all agreed on in the Uruguay round was, it is a single undertaking. In other words, we have gotten away from the MFN free rider problem and all countries who become a member of the WTO or accept the Uruguay round agreement, have to play by the same rules after some phase-in for the developing countries. It is an enormous step forward.

Now for China or any other nonmember, we have other options. One is bilateral agreements such as this IPR agreement, or a market access agreement, or an agreement on agriculture, or an agreement on textiles as we reached last year which has worked very well. I'm sure Mr. Payne would want to talk about that, if I anticipate some questions this morning. The fact is that because China is not a member of the WTO we are able to use our trade laws in just the way you articulated your question. We would be prepared under the appropriate circumstances to do it.

Let me add though, it's always I think somewhat misleading if I indicate how quickly we would be willing to use our trade laws, without saying what we want first is agreements; agreements that work. We want to open China's market. We want to make sure that what's happened over the last 10 years begins to be resolved.

What is that? Ten years ago we exported 3.8 billion dollars' worth of goods to China, goods and agriculture. They exported to the United States 3.1 billion dollars' worth of goods. In 1994 China exported 38 billion dollars' worth of goods to the United States and we exported 8.8 billion dollars' worth. We had almost a $30 billion trade deficit. Much of that trade deficit is based upon the fact we didn't have market access to China. They were using licensing and quota requirements to keep our products out. They were pirating intellectual property. They were using sanitary and phytosanitary regulations to keep out agricultural products. We must address that issue.

So as we go forward we'd like to reach agreements, but not at any price. We'll use our trade laws where appropriate, but in a responsible manner. But you're absolutely correct, we have that facility to raise those tariffs in the form of a snapback if and when appropriate.

Mr. MATSUI. I appreciate that response because I think as our commercial relations with the Chinese continues to mature we're going to find other opportunities where their markets perhaps might be closed or not open to this and this tool obviously will be a very great help.

If I can just ask one very quick further question, Mr. Chairman?

Chairman CRANE. Yes.

Mr. MATSUI. I know my time has run out. You mentioned that the European countries are standing with us in terms of the WTO accession of China. I think they demonstrated that support with us last year. There's some feeling that many of the European coun-

tries, Asian countries that are in the WTO look upon allowing China to come into the WTO more as a political exercise rather than on, as you mentioned, a commercially reasonable basis, which I think is the appropriate measurement.

Do you feel that the countries that are working with us and staying with us on this issue will continue to in the future? And perhaps this is a question that shouldn't be discussed in a public forum, but it seems to me to be one in which we need to have some assurances from our trading partners that they'll stick with us.

Ambassador KANTOR. In the final 2 or 3 months of the negotiations regarding China's accession in Geneva, I think it's fair to say that through the advocacy on the part of the United States by our officials and, frankly, the good common sense of our trading partners, we all came to the conclusion that the only way we'd support China's accession is on a commercially reasonable basis. I believe that our trading partners will stick to that position. The European Union was resolute in that.

We had some discussions, as you know, in the summer of 1994 where there was some disagreement. But I think it is clear now that almost all—not all—almost all of our trading partners agree with us on that position.

Mr. MATSUI. Thank you very much, Mr. Ambassador.

Chairman CRANE. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I too want to join my colleagues once again in commending you, Ambassador Kantor, Ambassador Barshefsky, and your lean but very effective and efficient staff in terms of what you've been able to accomplish relative to the intellectual property agreement with China. It's truly an important conclusion and one that I'm very pleased that we reached and reached when we did.

As you mentioned, I do want to turn my attention, my questions, to the textile area. Let me try to put this in some perspective. You mentioned that we have a $29 billion trade deficit with China; textile and apparel account for almost $5 billion, $4.9 billion last year in 1994. It's a particularly lopsided situation where we received 4.9 billion dollars' worth of goods from China. We actually only exported 40 million dollars' worth into China. So that the difference is that we receive more than 100 times the amount of goods into this country that we ship.

I really have two questions. The first one then deals with market access and your comments about where we are and where we're going relative to market access in the textile and apparel area.

The second one has to do with something that you alluded to earlier, and that is the Memorandum of Understanding that was reached in 1994 as a result of the transshipment problem. In addition to the $4.9 billion, the Customs Service says that there's probably another $2 billion that come into this country from China that's transshipped. Others would suggest it's higher than that, maybe as much as $4 billion. We last year reached an agreement that reduced the rate of growth of the textile quota. It also had some tough new transshipment procedures.

If you would also then comment, in addition to market access, where we are in terms of the Memorandum of Understanding of

January 1994 and what has been implemented in the past year. I would appreciate that very much.

Ambassador KANTOR. First let me speak about market access. As you know, that is part not only of our MOU in 1992, which I will be discussing this weekend, access of textiles and apparel to China, but it's also part of the accession negotiations, China's potential accession negotiations, assuming China expresses a desire to come back to the table. As part of those accession negotiations we insist, of course, that China, like everyone else, as a result of our willingness to phase out the multifiber arrangement, provide effective market access.

As you know, Ambassador Hillman has been, frankly, wildly successful in getting those kinds of agreements, including with India and Pakistan which some predicted we'd never be able to reach, but we did. We insist, of course, we are going to insist that China reach the same kinds of agreements. They won't be the same in every aspect. That's number one.

Number two, let me talk about the 1994 agreement which came as a result of invoking sanctions in the textile area when China refused to reach agreement with us in late 1993 on an effective new bilateral textile and apparel agreement. From 1991 to 1992 China increased its exports in this category by 29.9 percent—almost 30 percent. From 1992 to 1993 it increased by 17 percent. In 1994, as a result of this agreement, Chinese exports of textiles and apparel to the United States dropped by 1.4 percent. That is an enormous step forward.

In addition to that, we've been able to identify, with the effective work of our Customs Service, transshipments or circumvention of U.S. laws on the part of some goods coming from China. We just finished consultations last night, in fact late last night on this area. The Chinese have presented us with, frankly, some effective and important documentation to address this issue. But this agreement is being enforced, and enforced, frankly, almost on a weekly basis. I think we can thank the Treasury Department and the Customs Service under Commissioner Weise for his effective administration of that agency.

So this agreement is working, Mr. Payne. But we're going to insist, in addition, on effective market access. Because just like in intellectual property, it's not enough just to enforce the law. If we don't have access to their markets we're never going to begin to address this difficult, difficult trade deficit that we have with China.

Mr. PAYNE. Thank you very much, Mr. Ambassador. I do appreciate the fact that we're seeing some positive results. I look forward to continuing to work with you and your very able staff as we continue to pursue these objectives, and I wish you great success in your trip. Thank you.

Ambassador KANTOR. Thank you very much, Mr. Payne.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman. Ambassador Kantor, you described many of the concessions that you won from the Chinese in these negotiations. What concessions did the United States have to make in order to reach the agreement?

Ambassador KANTOR. One concession we had to make is we weren't going to impose 100-percent tariffs on over 1 billion dollars'

worth of Chinese goods, which would be the biggest retaliation in American history. That's number one.

We made no other specific concessions except—and this is not a concession. I think it's in our interest—except to supply technical assistance to the Chinese Government in order to implement this agreement. Frankly, we have a much more sophisticated and mature system in terms of customs, or patent and trademark and copyright enforcement, and law enforcement in this area. The Chinese asked for and we were, frankly, delighted to provide that kind of assistance.

So therefore, the concessions on the part of the United States I think are in the interest not only of the Chinese but the interest of our country. Obviously, to get this kind of agreement you would have, I hope, agreed with us that we should have dropped our retaliation on that 1 billion dollars' worth of goods.

Mr. ZIMMER. I certainly do. Did we also drop our claim to compensation for past use of bootlegged software by Chinese ministries?

Ambassador KANTOR. We never had a claim such as that, sir.

Mr. ZIMMER. So we and the companies in this country will never pursue that?

Ambassador KANTOR. First of all, I am not an expert in Chinese law so forgive me. I quit practicing law on January 21, 1993, so let me give you a layperson's estimate of that. I'm not sure whether or not our companies could enforce their rights with regard to the pirating of certain computer software products by Chinese ministries in the past in the Chinese courts. I'm just not an expert and I'm not sure that we have anyone on our staff who is expert enough to be able to give you an effective judgment in that area.

However, the willingness of the Chinese to stop these practices in their ministries, and to provide a budget to purchase legitimate software both from the United States and, of course, any other competitive foreign company, is an enormous step forward. But I couldn't remark or give you a real estimate as to whether or not we would have any legal rights, or our companies would, to pursue past violations in this regard.

Mr. ZIMMER. Just to clarify this prospective use of the software. You're saying that the ministries will not continue to use illegally obtained software?

Ambassador KANTOR. That is their commitment under this agreement.

Mr. ZIMMER. You refer to the technical assistance——

Ambassador KANTOR. By the way, just to add one other note just so we can have as full an answer as possible. Our companies didn't ask for compensation. We, of course, worked very closely with the software industry in reaching this agreement, as we did with other industries, and they never asked us to pursue that.

Mr. ZIMMER. You referred to the technical assistance that we'll be providing the Chinese. It's certainly in our interest to do so. How much do you anticipate that will cost the United States?

Ambassador KANTOR. What we are negotiating and hoping is that other international bodies might provide some relevant financing in order to carry out this technical assistance and the implementation of the systems. Obviously, there will be some cost. Just

the mere fact that going with me today, for instance, are officials of the FBI, Customs Service, Patent and Trademark Office, Justice Department, there are some costs associated with that.

However, I think the small cost involved as compared to the potential benefits are clearly in our favor. So I would suggest that those costs be borne by us. But we also hope that some of the more major costs, implementation of a system and computerization and so on can be financed by international bodies. We're currently in some negotiations with, for instance, the Asian Development Bank, to see if we can provide such financing.

Mr. ZIMMER. Will you be seeking authorization or appropriations from Congress for the cost of the technical assistance?

Ambassador KANTOR. No.

Mr. ZIMMER. Thank you very much.

Chairman CRANE. Mr. Hancock.

Mr. HANCOCK. Thank you, Mr. Chairman, and welcome, Ambassador Kantor. I've got a couple of questions that I'd like to ask about, but we've discussed them in previous conversations so I'm not going to ask about them again. I would hope that we could get those situations resolved there before too long. I know you're doing everything you can on it.

One of the things that I'd like to just have part of the record here, if I could, is the declining value of the American dollar. Are you going to be considering this in your negotiations on this trade agreement on the trip you're going to be making?

Ambassador KANTOR. This is going to be an uncharacteristic reply for me, Mr. Hancock. Secretary Rubin speaks for this administration with regard to the dollar. So I think I'm going to allow him to answer that question, not me.

I will say in terms of our other conversations about bedding products and so on with regard to Mexico and tariffs, we're doing everything we can to reduce those tariffs in the four categories that we have talked about. I would like to report to you today we have met with success. We haven't. I'd like to even report we've made great progress. We haven't. But we have raised that in every meeting with our Mexican counterparts and we continue to do so. I think we have an opportunity, frankly, as we enter into the accession of Chile into the North American Free Trade Agreement to address that problem in an effective manner.

Mr. HANCOCK. Thank you very much. I agree with you that our monetary policy is the responsibility of Secretary Rubin. However, I don't think that the Ambassador of Trade and the Treasury Department of our Government should be operating just completely autonomously. I think that our trade negotiations should be related to our monetary policy because the declining dollar does affect our trade posture.

To me, we should address those in conjunction, looking at the whole picture instead of just part of it. I think the Ambassador of Trade and the Secretary of the Treasury should be considering the effect of our trade discussions on what's happening to the American dollar.

Thank you, Mr. Chairman.

Ambassador KANTOR. Let me just say, Mr. Hancock, I'm in constant communication with Secretary Rubin, with the new chair of

the NEC, Laura Tyson, and with other of my counterparts with regard to this and many other problems. So you can be assured we're talking about this.

Mr. HANCOCK. Thank you.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. Chairman Crane indicated a couple moments ago, Mr. Ambassador, that trade really wasn't the answer for everything, but he accepted that as the best measure of promoting human rights and other initiatives. What was different in this scenario in terms of rounding up business support for your position? It was almost monolithic, even businesspeople back home who had said to me in the past that they were skeptical of imposed sanctions, this time around they pretty much gave you a blank check.

Ambassador KANTOR. In the main, it's the magnitude of the problem. I think everyone recognized throughout American industry, regardless of whether they had a major stake in the intellectual property rights area protecting products or a not-so-major stake, that if we didn't address this problem effectively or show we would use our trade laws, they would be subject in their own particular area as they tried to do business with China to the same kinds of restrictions, quotas, licensing requirements, failure to provide access, lack of access to the courts, all the things that have been plaguing the intellectual property rights protected products.

So I think our industry correctly saw this as a long-term problem that needed to be addressed and it was in their interest, in the interest of the country frankly, to address it now and address it in a way that was effective. And they recognized, to their credit, that if they didn't stick together and support us, as all of you on both sides of the aisle have done which we appreciate so much, then we would be undercutting these negotiations and we would never have reached an agreement.

So everyone from—I won't mention the companies, but those who had pending contracts, large pending contracts who were frankly threatened by the Chinese publicly and privately, stood firm. And two good things happened. Number one, we reached an agreement. But number two, those contracts were not in any way affected adversely.

Mr. NEAL. Thank you. Ambassador Barshefsky, I watched one of the electronic media's reports, I think it was on that Sunday evening when they reported that the talks had collapsed. You looked pretty dismayed as you came out of the negotiations and got into a car. The next morning the situation was transformed. So, I assume at some juncture you got their attention. Would you just care to give us some background? Was there one event or exchange that got their attention?

Ms. BARSHEFSKY. I don't think there's any one event. Part of this, of course, is the nature of negotiation. By definition they go to the last minute, and by definition progress is slow or progress isn't made until the last minute. We were at a critical juncture. Ambassador Kantor and I had had many phone calls that day and into that night. We concluded that our positions were quite sound and that we were in a position to simply bide our time and that's what we did.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Shaw.

Mr. SHAW. I'm somewhat amused by that answer because it looks like what you did was adopt their form of trying to figure things out, and I congratulate you and the administration for doing an excellent job in that. I think you're certainly to be complimented.

Knowing, Ambassador Kantor, just what goes on inside China, which is a much more capitalistic society as you go south in the country, what is the inner working of the Provinces to the Central Government? How can we be sure that the agreements that we get from the Central Government will be enforceable in the Provinces?

Ambassador KANTOR. One of the more important things we insisted upon is in the enforcement procedures that subcentral governments be involved in those enforcement actions as well as those enforcement procedures. Our negotiators recognized early on that if that didn't happen, as you suggest, it would be very difficult to enforce these laws from Beijing. However, Beijing has committed, and we will follow up with, and I may even be able to have some meetings this weekend with Provincial leaders, to implement enforcement at the subcentral or Provincial level. As you suggest, that's a much more effective way of proceeding.

Mr. SHAW. Did the Provinces participate in the negotiations, or were they present during the negotiations, to your knowledge?

Ambassador KANTOR. No, but we are satisfied, at least for the moment, that there will be followup and an effective addressing of this issue. We made it clear that there couldn't be enforcement without the subcentral or Provincial level being involved. The Chinese Central Government agreed to that. It's part and parcel of this agreement and we, of course, have to make sure that occurs.

Mr. SHAW. Thank you. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Houghton.

Mr. HOUGHTON. Thank you. Mr. Ambassador, good to see you. I hope you have a wonderful trip. I thank you for all you're doing for our country. I think you're doing a great job. You're persistent, you're tough, you wait people out. It's just the right mix that we need in somebody in your position.

It would seem to me that what you're doing, and I'm not saying anything that's brand new, is probably as important as anything because the Chinese people—and I go back to this wonderful book. I don't know whether you remember it, "General Stillwell and the American Experience in China." Basically there's a great camaraderie between the United States and China, has been for many, many years. So they want to work with us.

But it seems to me that there are three things that are important. First of all, that somehow they establish a system of laws. It seems everything is done by sort of administrative fiat. Therefore, it confuses the companies and they are not really quite sure how to operate because those fiats change from time to time.

Another thing is that trade is both ways. If you're going to have a wonderful, fine, consistent trading relationship it must help both parties, not just one.

And the third area, and I'm sure you realize this far better than I, that there are rules. We don't expect them to be disciplinarians, but we do want them to establish a sense of fairness and under-

standing and consistency. So I applaud you on what you're doing. I think it's wonderful you're going and I wish you a great deal of luck.

Ambassador KANTOR. Thank you. If I could just—thank you first of all for those overly kind comments. We couldn't agree more with you. This agreement is replete with commitments on the part of China to develop a system of laws in this area. As I said—I'm not sure if you were in the room or not, Mr. Houghton—that building a system of laws, and reforming their courts in this area, and allowing greater access, and treating foreign companies the same as you treat Chinese companies in this area, preserving evidence, all the things we take for granted, of course, in our system. Beginning to implement those changes and reforms will have not only effect in the intellectual property rights area, which of course, it will, but also in other areas as well. That's an important step forward.

Number two, trade has to be reciprocal. We cannot, under the current situation—and I just noted Dr. Kissinger had an op-ed piece in the Washington Post this morning and he talked about the spread of economic and political power around the world, and certainly that's what happened. We've gone from a unipolar economic world where from 1945 to 1973 we were unchallenged as the economic power in the world, to a tripolar world where Japan, the European Union, and the United States, of course, led the world and remain the economic powers, to a spread of economic power around the globe.

Now that is both a challenge as well as an opportunity. As economic power spreads we grow a middle-class industrialized society and that means we are greater markets for our goods which we desperately need if we're going to continue to raise our standard of living.

However, for it to work we can't have a free-rider system. I was talking I think to Mr. Matsui, we were speaking about that earlier. It has to be reciprocal. The laws have to operate fairly. If we allow access to our market, then we need a corresponding or comparable access to the markets of other countries as well, and China would be an example.

Last, of course, rules are critical. If you're going to have rules it not only helps our companies or other foreign competitive companies, it helps the Chinese as well. If companies believe around the world they can come into the Chinese market and be protected and there's a rules-based society and they can rely with certainty on how they're going to be treated, obviously they're going to invest more in that economy. And it's going to help China and it's going to help our companies as well.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. Mr. Ambassador, Madame Ambassador, I want to thank you both and everyone at the USTR's office for your hard work on the agreement. Like virtually everyone on this committee, I had a number of constituent employers who lost a lot of sleep, and a number of constituent employees who were worried about losing their jobs because of a number of items listed on the possible retaliation list. Your office was very very receptive to our input, and very responsive to my constituent companies and I appreciate that effort. I'm very pleased, like every-

one, that the retaliation effort was unnecessary. I really do applaud your tenacity in this regard.

I just want to follow up, if I may, on the line of questioning by my colleague from Missouri. I understand jurisdiction and authority, but I also understand that the value of the dollar is certainly relevant to trade policy and certainly it can't be argued that it's not central to the work of this committee. Implicit in your response, Mr. Ambassador, was that you're at least as concerned about the value of the dollar as Chairman Greenspan indicated in his testimony up here yesterday.

Can you tell us what our trading partners are saying about the value of the dollar? I know you interact with them virtually on a daily basis.

Ambassador KANTOR. Without exception, I think we've all taken the same position. I'm going to again walk away from this question. The trade ministers, economic ministers I deal with, literally on a daily basis, have really left this question up to their finance ministers. It's not helpful, or even appropriate to speak about currency except with one voice from any government. I think in this Government it's Secretary Rubin and I think I'll leave that up to him.

Mr. RAMSTAD. I respect that and I guess we'll have to pursue it through other channels. So again, thank you for your work on the agreement and for being here today.

Ambassador KANTOR. Thank you,

Mr. RAMSTAD. Thank you, Mr. Chairman.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. Mr. Chairman, I want to thank you for having this important hearing this morning. Ambassador Kantor, as you know, I am from Washington State where trade accounts for two out of every five jobs in our State. China, of course, is a very large and growing percentage of our current and our future export market.

As the home of Microsoft, Nintendo, and hundreds of smaller software companies we are very, very concerned regarding the question particularly of intellectual property rights. I want to compliment you, Ambassador Kantor, on the recently negotiated agreement. Among other things it includes these items that are of special importance to us, the protection of video games within the definition of software; the immediate implementation of an enforcement action plan under the supervision of the Chinese State Council; the provisions to include actions against State-owned enterprises, who have been some of the most egregious abusers; and the provision regarding access to the Chinese markets.

My compliments on this agreement. We thank you for the fine work you and your staff have done. But due to the past level of abuse in this area I believe, as I'm sure others have told you, that it is very wise that we all remain somewhat skeptical until we have validated the information regarding the implementation of the provisions by the Chinese.

I know Mr. Zimmer and others have inquired about the intellectual property issue and I wonder if you might now, for purposes of my education, talk specifically about what the Chinese Government must do in order to ensure the legal use of software within its ministries.

Ambassador KANTOR. The Chinese Government—and I think I even remember the page number. I think it's page 5 of the letter of agreement, if I'm not mistaken—has committed itself to not using illegal or pirated software in their operations, and to provide the requisite budget increases in order to purchase legally acquired software.

The second is as important as the first. One of the problems has been that there's been no budget in these ministries to purchase legally produced software. So we wanted both commitments and Ambassador Barshefsky was able to gain both. One, to quit using or discontinue the use of pirated software, and to purchase, of course, legal software. We believe that's an enormous step forward.

Ms. DUNN. Good. Thank you.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

Ambassador, I want to ask not only about the agreement and how those in the ministry who may follow the present leadership may feel about the agreement on intellectual property, but also the concern about those in the Provinces and whether they were brought into this agreement and their feelings about this agreement and China's desire to join the WTO.

Ambassador KANTOR. Let me take your first question. In the agreement, the Provinces and 22 cities and their officials are officially brought in as part of these enforcement task forces. That was critical to all of us as we negotiated this agreement. We recognized, as you obvious recognize, that without a commitment for the Provinces to be involved, enforcement would be more problematical than it is under the current agreement. That was one of the most important aspects of what we were able to achieve.

We believe that commitment will be carried out. However, we're obviously not going to take that at face value. We'll work closely with the Chinese. The ability, frankly, to establish U.S. companies and trade associations in China and to provide technical assistance and the detailed data that has to be provided in the quarterly consultations all will ensure, we believe, either this agreement works correctly and we have not only Central Government but Provincial enforcement as is called for under the agreement—it's called subcentral enforcement—but that we can monitor compliance in other areas as well. That aspect of subcentral involvement and monitoring and technical assistance all go together to, we think, make this an effective agreement.

Mr. CAMP. For those U.S. companies that have lost money as a result of previous action, under the WTO what proceedings would be available to them to attempt to get compensation?

Ambassador KANTOR. First of all as I indicated earlier, our companies didn't ask us to either negotiate nor have they asked for compensation. Number two, I'm not an expert in Chinese law. However, I assume our companies could review and make a decision whether they could pursue compensation within the Chinese courts. Number three, of course, China is not a member of the WTO. Therefore, there would be no way to pursue dispute settlement in a WTO procedure.

Mr. CAMP. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. That concludes our hearing. Again, we want to express congratulations to both you and Ambassador Barshefsky and wish you Godspeed on your trip. Safe journey and we'll see you next week. Thank you so much.

Ambassador KANTOR. Thank you, Mr. Chairman. Thank you very much.

[Whereupon, at 10:53 a.m., the hearing was adjourned.]

[Questions for the record to Ambassador Kantor, and his responses follow:]

FOLLOW-UP QUESTIONS ON CHINA ISSUES

General

Question 1:

We all agree that our growing bilateral trade deficit with China, which reached nearly $30 billion in 1994, is a cause for concern. Please put this bilateral trade deficit into perspective for us by indicating, for example, what is the size of China's overall exports and imports; what percentage of Chinese exports come to the United States; whether other developed countries, particularly Japan and the EU, run big trade deficits with China; and whether other countries are seeking additional market access to China through bilateral negotiations (in addition to China's WTO accession).

Answer 1:

China's overall global balance of trade now exceeds $200 billion annually and China is the world's 11th largest trading nation. Approximately 40 percent of China's exports now go to the United States. While figures for 1994 trade with China are yet available, if trends over the past year hold, both the EU and Japan will have greatly increased exports to China. To the best of our knowledge, the EU has engaged in bilateral market access discussions with the Chinese outside of the WTO accession context. China routinely engages in consultations with other trading partners on trade issues, some of which clearly involve market access issues.

Question 2:

Now that the threat of U.S. retaliation has passed as a result of reaching an IPR agreement with China, what is the status of Chinese compliance with the 1992 bilateral market access agreement? Will they proceed with other market opening efforts? How?

Answer 2:

USTR will hold bilateral consultations on implementation of the market access Agreement on March 28-29 and we would be delighted to discuss the results of those consultations with the Committee once they have been completed. During Ambassador Kantor's visit to China on March 11-13, the Chinese announced that they were lifting their "suspension" of the market access Agreement and would, by no later than March 31, 1995, eliminate quantitative restrictions on products specified in the annex to the Agreement. The Chinese also moved forward on market access for U.S. agricultural products -- also a result of the visit.

Over the next two years, under the Agreement, the Chinese will eliminate 90 percent of all non-tariff barriers, and open markets to a broad spectrum of agricultural, electronics, heavy machinery, textile and apparel, and wood products.

U.S./China Intellectual Property Agreement

Question 1:

What was the role of the Chinese leadership in reaching the Agreement? Are you assured that the highest levels of the Chinese government have agreed?

Answer 1:

During Ambassador Kantor's visit, Chinese leaders -- from President Jiang Zemin to trade Minister Wu Yi -- expressed support for the IPR enforcement agreement. We can only assume therefore that the highest levels of the Chinese Government are in agreement. In fact, virtually all of the senior Chinese leaders with whom Ambassador Kantor met praised the Agreement -- and the negotiating process that led to the agreement -- as a "model" for other U.S.-China negotiations.

Question 2:

What is our recourse if China breaches all or part of the Agreement? How quickly could we impose sanctions?

Answer 2:

USTR is monitoring the Agreement under Section 306 of the 1974 trade act. Should China not comply with the terms of the Agreement, Ambassador Kantor has broad powers under the Act to take expeditious trade action against China.

Question 3:

How does this agreement compare to IPR agreements such as those negotiated with Taiwan and Korea? How does the enforcement mechanism compare to that included in the Taiwan agreement? Will this agreement be used as a model in future negotiations with countries that have good laws but bad enforcement?

Answer 3:

Each agreement addressed specific enforcement problems and so, to that extent, the agreements are quite different. When negotiating the Agreement with China, USTR negotiators drew heavily on our previous experiences in Korea, Taiwan, and in Singapore, Thailand, Malaysia, Italy, Brazil and other countries as well.

Question 4:

If a U.S. company believes that its IP rights are being violated in China, please describe specifically how it can seek recourse under the agreement and be satisfied that the Chinese government? Under what authority? If it is not satisfied by the Chinese government, under what authority may the company approach the U.S. government?

Answer 4:

One of the key components of the Agreement is access to the Chinese enforcement regime by U.S. rightholders. The Agreement describes in detail points of access to both administrative enforcement agencies as well as special task forces set up to curb piracy. In addition, by December, 1995, each Chinese enforcement agency will publish a booklet that describes in detail steps that rightholders must take to gain protection for their copyrighted works, patents, or trademarks.

Question 5:

It appears that the agreement will make it easier for U.S. companies to establish certain joint ventures in China. Aren't other reforms necessary in China -- broader than intellectual property -- to make this portion of the agreement meaningful?

Answer 5:

Clearly, China must take many more steps if it is to become a market economy fully integrated into the multilateral trading system under the WTO. Nonetheless, the Agreement will permit greatly expanded trade in audiovisual, published, and computer software products -- either through investment in joint ventures or exports of products into the Chinese market.

Question 6:

Are there any major issues in the intellectual property area that were not resolved by the agreement that we will have to pursue with the Chinese in future negotiations? Does China have to take further steps concerning intellectual property in order to be in conformity with the new TRIPs requirements?

Answer 6:

China must take a number of additional measures to bring its IPR regime into compliance with the requirements of the TRIPs. During the negotiations, we discussed those requirements with the Chinese in some detail -- and expect to continue to do so, both on a bilateral basis, and of course, in the context of China's wish to accede to the WTO.

Question 7:

Do you have a dollar estimate of the positive economic impact that should accrue to the U.S. intellectual property industries as a result of this agreement?

Answer 7:

At a minimum, U.S. industries will save up to $1 billion in losses and will generate considerable revenues on the positive side from the expanded trade and investment opportunities that will result from the Agreement.

Question 8:

A major concern of some of our high technology companies (particularly in areas such as biotechnology and electronics) is that some countries, such as Japan, only permit a very narrow scope of claims on their patents so that a very small change in an invention places it outside the scope of the patent. This makes it very easy for other companies to use legally our companies' patented technology in those countries in a way that would be illegal in this country. Are you aware of this problem in Japan, do you intend to address it in the context of Special 301, and is it a potential problem in China?

Answer 8:

-- We are very familiar with the problem of the narrow scope and interpreation of patent claims in Japan.

-- We raised this issue during the Framework IPR negotiations with Japan over the past two years but were unable to resolve the problem.

-- In the context of this year's special 301 review, we received a number of private sector submissions highlighting the seriousness of this problem.

-- Genentech, a California biotechnology company, requested that we identify Japan as a priority foreign country this year due to this problem.

-- We are in the process of making our Special 301 decisions for 1995 and will carefully consider all of the private sector submissions.

-- We are not aware of any complaints from the U.S. private sector on similar problems in China.

WTO Accession

Question 1:

Although there are many outstanding issues in the negotiations on Chinese accession to the WTO (e.g., market access, China's status as a developing country, special safeguard arrangements), what in your view are the most important issues that remain to be resolved?

Answer 1:

We need to complete a commercially viable accession package. Such a package must include detailed commitments on how China will adhere to the rules of the WTO -- these will be contained in the protocol and working party report. Additionally, China, like any other WTO accession applicant, must agree to open its market and provide schedules of concessions in goods, produce an agricultural country schedule on export subsidies and internal support and specific commitments to open its market in services.

As indicated at the hearing, the issues remaining are complicated and related to one another. China's accession is a unique and challenging exercise for all of us. China's willingness to deal with the substance of the issues, rather than debate labels such as LDC status should make it easier to make progress. For market access in goods and services, we believe that it is important for China to make commitments comparable to those received from major trading nations in the Uruguay Round in goods and services (e.g., chemical harmonization, joining the sectoral duty-free initiatives, meaningful services commitments, and an appropriate agricultural schedule.

With respect to protocol issues, clearly the scope of any transitional provisions as China transforms its economy will be the subject of hard negotiations. China has yet to fully agree to adhere to basic WTO obligations such as transparency and uniform application of its trade regime throughout China, or to provide national treatment that would provide U.S. agriculture and industry the same opportunities as Chinese producers of similar products. Trading rights, or the right for our companies to buy, sell and distribute products in China is also a difficult issue, as is assuring that China does not use foreign exchange requirements as a barrier to trade. In terms of trade rules, there are issues with respect to remedies such as the selective and special safeguard and respect for subsidies discipline. China's industrial policies raise specific concerns about China's readiness to adhere to WTO rules. Finally, we will have to address the issue of what China can and cannot do as it transforms its economy.

Question 2:

During your testimony, you stated that although China must meet the basic obligations of the WTO in order to accede, some "flexibility" should be given to China concerning whether China should be given developing country status in other areas. Specifically, which conditions could be affected by such "flexibility"? Are you considering recognizing that China has certain features of a developing country? What features are affected" How would this case the ability of China to accede. Are you considering developing country status with respect to intellectual property, which would give China a ten-year phase in of these obligations?

Answer 2:

We need to craft a protocol package that enables China to adhere fully to WTO rules and disciplines. In meetings with Trade Minister Wu Yi in Beijing, we agreed to address realistically the issue of China's status as a developing country. This was significant, because it means that we will finally move away from labels and address China's substantive concerns with meeting WTO obligations. The Chairman of the Working Party had provided a compromise in November that we thought was workable. The language would allow a specific item by item negotiation of commitments, recognizing that "some features" of China's economy are features of a developing economy. China rejected this compromise in December. It now appears that this offers a realistic way forward. We have discussed, what, if any, transition periods should be made available to China drawing from the LDC provisions and look forward to reviewing the issues with the Chinese. In terms of negotiations, the least number of transition periods are desirable.

Question 3:

China is impeding exports of California grapes and cherries because of alleged phytosanitary problems with California industry believes can easily be resolved. Are you planning to address these issues when discussing China's accession to the WTO?

Answer 3:

We have been very strong on this issue in our accession negotiations. The issue is one of credibility. China has said that it can and will adhere to the terms of the Uruguay Round Sanitary and Phytosanitary Agreement. Solving these issues, as we believe we have started to do as a result of Ambassador Kantor's trip, will increase China's credibility that it can and will adhere to multilateral rules in this area.

Question 4:

We understand that China has balked at the inclusion of a general safeguard mechanism in the WTO accession protocol. The safeguard mechanism would all the unlimited withdrawal of concessions indefinitely by any of the trading partners if they are unsatisfied with China's progress on trade disputes. What are your vies on inclusion of this safeguard mechanism. Doesn't it really highlight the depth of or trading partners mistrust in China's trade regime and its commitment to be a fair dealer in the world trading system?

Answer 4:

The draft text contains a proposed product-specific selective safeguard as well as a general safeguard mechanism. The Chinese accept the concept of a product selective safeguard, although the details have yet-to-be completed in this vitally important area. The general safeguard mechanism is somewhat different and has been included in a number of protocols for countries that were in the process of adopting market-oriented trade regimes. During the period of transition such a safeguard is appropriate, and should not be read as an indication of mistrust. It is there as "safety valve," as it has been in other protocols of accession.

Question 5:

Will Jackson-Vanik restrictions limit U.S. ability to apply WTO rules to China so that we can extend only conditional most-favored-nation treatment to China. Will you ask that the law be amended?

Answer 5:

Under the terms of Jackson-Vanik, the United States will not be in a position to grant China unconditional MFN treatment in line with Article I of the GATT 1994 and we will take appropriate steps to reflect this situation in the WTO when the accession negotiations are completed. The Administration does not currently have any legislative proposal to revise these provisions with respect to China.

Question 6:

How does the uncertainty in the leadership situation in China impact on accession talks, the willingness of the Chinese to meet our demands, and the move toward a market-oriented economy?

Answer 6:

Clearly, the Chinese leadership can make important decisions and, while they may deadlock on a particular issue, they have demonstrated repeatedly in past months that they have the ability to make decisions. In the context of the accession talks, the leadership must make decisions that will also have a long-term impact on the development and orientation of their own domestic economy. For any leadership, whether under a strong leader like Deng Xiaoping or under any other leader, such decisions are very difficult and require a complex balancing of different, and very powerful interest groups. That suggests that the leadership will likely move slowly to resolve difficult accession issues, but it does not mean that they cannot move, if they choose to do so. The current state of the Chinese economy -- high inflation, poor monetary and fiscal controls, highly inefficient state and other enterprises -- and the everpresent, and justified, fear of instability make long-term economic development decisions -- and therefore WTO accession decisions -- even more difficult.

The Chinese have decided, at a political level, that their goal is a market-oriented economy. They have not decided precisely what a market-oriented economy entails, and likely will continue to react to developments in their economy and not take a strongly proactive or dramatic approach to reform.

Question 7:

Does China provide for prompt and adequate administrative and judicial review overall trade-related matters covered by the WTO? Are the appropriate institutions in place, or is reform needed? Will measures related to services trade and intellectual property be covered by judicial review?

Answer 7:

The draft text we have been negotiating from does contain provisions on judicial review. These provisions have not yet been agreed. The issues outstanding are the scope of the review -- we take the position that it should include all WTO-related areas -- and assurance of an independent review body.

Question 8:

Isn't the huge size of China's state-run sector, even though it has been radically reduced in recent years, an overwhelming bar to China's ability to meet WTO obligations? How will this issue be addressed.

Answer 8:

The role of the state in China's economy is a major issue in the negotiations and it touches on nearly all the commitments that China must make to adhere to its trade regime. State trading, price controls, subsidies and procurement are all areas that we seek to address in the negotiations. This issue makes the exercise more challenging but we do not believe that the issues are insurmountable if we move through the protocol issue by issue we should be able to address the unique features of China's economy and its transition to a market-based regime.

Question 9:

What is the effect on accession of ongoing bilateral market access negotiations between the United States and China? How are those negotiations proceeding? When is the next round of negotiations and what are the prospects for progress in your view? What about sectors of particular interest to the U.S. such as computers, auto parts, chemicals, pharmaceuticals and paper? Will you press the Chinese for progress in the services sector?

Answer 9:

China's implementation of the market access Agreement has a direct bearing on accession to the WTO. The market access commitments that China has made in the Agreement are all commitments that China must make in the accession context. If China does not fulfill its obligations in the Agreement, it is difficult to see how China will fulfill such obligations in the larger WTO context.

The next round of market access negotiations is scheduled for March 28-29. By and large, China's implementation of the agreement has been good, but some major areas are still outstanding. China lifted its suspension of the market access Agreement during Ambassador Kantor's March visit to China. China has taken important steps forward in opening its markets to U.S. companies, eliminating import restrictions on more than 800 products, and making access easier for many additional machinery and electronics products. We expect to see China's purchases of U.S. equipment in these areas, many of which involve government procurement, rise dramatically.

In agriculture, Chinese phytosanitary barriers have unfairly blocked market access for U.S. agricultural products, including wheat, citrus fruit, grapes, and leaf tobacco, for many years. China now permits entry for apples from Washington State and limited access for wheat infested with TCK Smut but continues to bar other products. We are asking China to base agricultural standards on sound science, and to open its agricultural markets.

On March 11, during Ambassador Kantor's visit, USDA signed a Letter of Intent with the Chinese Ministry of Agriculture that takes an important step forward toward possible market access for key U.S. agricultural products. In particular, China has agreed to expand access for apples and cherries, and for live animal products.

On a bilateral basis, we have been discussing market access for services for the past year and a half. Limited progress has been achieved to date. During Ambassador Kantor's visit, the Chinese agreed to hold services discussions on value-added telecom services and insurance. In addition, we expect to pursue other services issues -- including advertising, travel services and business services issues.

In the WTO accession context, we are discussing the full range of services -- in particular including financial and banking services. We expect to achieve a services schedule that will lead to substantial market opening over time.

Question 10:

China's restrictions on the right of enterprises to engage in trade are among the most significant limitations on secure access to the Chinese market. How has China responded to this concern? Will it eliminate such restrictions and replace them with objective and generally applicable criteria for the granting of trading rights. If these limitations are removed, will certain products remain within the exclusive domain of designated foreign trade enterprises? What does this mean for U.S. business wishing to do business in China?

Answer 10:

A satisfactory resolution to the question of "trading rights" will be key to the completion of the accession negotiations. The lack of trading rights by foreigners and, in some instances, Chinese, severely limits access to China's domestic market. This remains a major issue in the negotiations and we are hopeful that China will respond to our concerns. China has already indicated that it will, over time, eliminate the designated rights of companies to trade in certain products. However, the details and the new situation to be created require further information form China.

Question 11:

How will China regulate the trade activities of subnational governments? How will it assure that subnational government authorities will not impose measures in a non-transparent, discretionary, and discriminatory basis. In what areas are U.S. companies most vulnerable to such measures? Does China have the authority to undo measure taken by subnational governments that are inconsistent with international obligations?

Answer 11:

China has stated that it is prepared to assure that subnational authorities adhere to China's WTO commitments. Part of our work in drafting the protocol and working party report has concentrated on receiving the needed commitments and assurances from China that only WTO-consistent rules will be enforced and that if there is a problem, prompt action will be taken. This has been a matter of general concern to U.S. business rather than an issue raised by one industry. China's central authorities are authorized to assure China's compliance with its international obligations.

QUESTION SUBMITTED BY CONGRESSMAN THOMAS

Question:

China is impeding exports of California grapes and cherries because of alleged phytosanitary problems which California industry believes can easily be resolved. Are you planning to ask China to address these issues when discussing China's accession to the World Trade Organization?

Answer:

Yes. During my recent trip to Beijing, officials of the U.S. Department of Agriculture and I continued our efforts to resolve these and other outstanding sanitary and phytosanitary (S&P) issues. We achieved some progress with respect to implementation of the 1992 Market Access MOU pertaining to S&P measures which will help establish a positive environment in which accession negotiations can resume. However, we still have substantial work ahead of us in negotiating the detailed and specific commitments of China's protocol package for accession.

Key among the outstanding issues will be agriculture and S&P concerns. The S&P process was advanced during the recent meetings in Beijing. On March 10 and 11, representatives of USDA's Foreign Agricultural Service met with Chinese plant quarantine officials and signed a letter of intent on agricultural technical issues. In the letter, China agreed to conduct Pesk Risk Analyses (PRA) on a commodity basis. This is important as the PRA precedes a protocol for import. The letter of intent also contained a specific Chinese commitment to conduct a PRA on grapes. USDA will be meeting with their Chinese counterparts in April and June to see if we can make further progress on these S&P issues.

○

FAST TRACK ISSUES

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

AND THE

SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE

OF THE

COMMITTEE ON RULES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 11 AND 17, 1995

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FAST TRACK ISSUES

THURSDAY, MAY 11, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
JOINT WITH COMMITTEE ON RULES,
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE,
Washington, D.C.

The subcommittees met, pursuant to notice, at 10:08 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane, chairman of the Subcommittee on Trade, and Hon. David Dreier, chairman of the Subcommittee on Rules and Organization of the House, presiding.

[The advisory announcing the hearings follows:]

ADVISORY

FROM THE COMMITTEES ON WAYS AND MEANS AND RULES

FOR IMMEDIATE RELEASE
April 7, 1995
No. TR-6

CONTACT: (202) 225-1721

CHAIRMAN CRANE AND CHAIRMAN DREIER ANNOUNCE JOINT HEARINGS ON FAST TRACK ISSUES

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, and Congressman David Dreier, Chairman of the Subcommittee on Rules and Organization of the House of the Committee on Rules, today announced that the Subcommittees will hold joint hearings on extension of so-called "fast track" negotiating authority to the Administration for use in negotiating trade agreements. The first hearing, concerning policy, conditions, and negotiating objectives of fast track, will take place on Thursday, May 11, 1995. The second hearing, concerning fast track procedures, will be held on Wednesday, May 17, 1995. **Both hearings will begin at 10:00 a.m. and will be held in the main Committee hearing room, Room 1100 of the Longworth House Office Building.**

Oral testimony at these hearings will be heard from both invited and public witnesses. Invited witnesses will include United States Trade Representative Michael Kantor. Also, any individual or organization may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

Certain trade agreements cannot enter into force as a matter of U.S. law unless implementing legislation approving the agreement and any changes to U.S. law is enacted into law. In order to implement a number of trade agreements, including most recently the Uruguay Round Agreements and the North American Free Trade Agreement (NAFTA), Congress enacted certain "fast track" procedures.

Now expired with respect to any new trade agreements, these provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, the President was required to give Congress at least 90 calendar days advance notice of his intent to enter into an agreement. After entering into the agreement, the President was required to submit the draft agreement, implementing legislation, and a statement of administrative action. After that point, the House committees of jurisdiction had 45 days to report the bill, and the House voted on the bill within 15 legislative days after the measure was received from the committees. Fifteen additional days were provided for Senate consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction is 90 days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

The purpose of the fast track approval process was to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process was designed to ensure certain and expeditious action on the results of the negotiation and on the implementing bill with no amendments.

The Administration is beginning negotiations with Chile as to possible accession to the NAFTA. Because the fast track authority used for the Uruguay Round Agreements and the NAFTA has expired, the Committees are now considering the extension of additional fast track authority.

In announcing these hearings, Crane said: "Because the benefits to the economy achieved by opening new markets to U.S. exports and reducing foreign trade barriers to U.S. goods and services through trade agreements are dramatic and proven, we must do all we can to give the Administration the expedited authority it needs to negotiate and conclude these agreements. However, fast track authority should be limited to trade legislation, and it is not appropriate to use fast track authorization for legislation involving issues not directly related to trade or not necessary to implement the trade agreement."

Dreier said, "Fast track procedures have been instrumental in permitting Congress to implement landmark legislation that reduces trade barriers, promotes private sector job creation, and raises living standards for American families. At the same time, there are increasing concerns that provisions not closely related to trade agreements are being attached to implementing legislation in order to receive expedited consideration. We must improve the fast track procedures in order to maintain a consensus in Congress behind this critically important grant of trade negotiation authority."

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearings must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Thursday, April 27, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittees may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE MINUTE RULE WILL BE STRICTLY ENFORCED.** The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing at which they will testify. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Tuesday, May 9, 1995 for the first hearing and 1:00 p.m., Monday, May 15, 1995, for the second hearing. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Thursday, May 25, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * * *

Chairman CRANE. Good morning. Welcome to this joint hearing of the Subcommittee on Trade of the Ways and Means Committee and the Subcommittee on Rules and Organization of the House, the Committee on Rules. Today is the first of two hearings these subcommittees will hold concerning fast track issues. The second hearing is scheduled for May 17.

During these hearings, we intend to address the policy, conditions, and negotiating objectives of fast track, as well as fast track rules and procedures. Over the course of these hearings, we will receive testimony from Ambassador Kantor, the U.S. Trade Representative, on May 17. Both today and on May 17, we will hear from Members of Congress and representatives from business and industry groups and academic/think tank institutions, as well as other individuals with expertise concerning the issue of fast track.

The Trade Subcommittee intends to hold separate hearings concerning Chile and accession to the NAFTA, North American Free Trade Agreement, as well as implementation of the NAFTA in the period since the NAFTA was enacted. At that time, accordingly, there will be an opportunity for witnesses to present testimony and for Trade Subcommittee members to ask questions concerning these issues.

Let me begin by saying that I am a strong supporter of fast track authority. Fast track has enabled us to implement a number of significant trade agreements over the last 20 years, including the Tokyo round, the United States-Israel free trade agreement, the United States-Canada free trade agreement, the NAFTA, and the Uruguay round. Because of these agreements, we have been able to make substantial progress in opening markets, lowering tariffs, and regulating and ending nontariff barriers to trade. These agreements are extremely beneficial in creating much-needed jobs, stimulating the economy, raising the standard of living for American families, and reducing the deficit.

I believe that the only way we can continue to develop these beneficial agreements is through the well-proven tool of fast track. Fast track ensures certain and expeditious consideration of trade legislation. At the same time, it gives Congress a strong role to play in negotiating trade agreements. In addition, fast track gives our trade negotiators and our trading partners confidence that the United States is earnest in negotiating a trade agreement.

This does not mean that we should not consider carefully the manner in which we craft fast track authority. Even as important as fast track is, it is just as important to make it as narrow and tailored as possible so as not to unnecessarily intrude on normal legislative procedures. Fast track is an exception to the rule that we permit only because we recognize the compelling need to consider quickly and efficiently legislation to implement trade agreements. The exception should not be so broad as to follow the rule.

The reason for limiting fast track to trade issues only is historically and constitutionally based. The President and the Congress both have important powers with respect to trade and foreign affairs issues. Therefore, trade agreements, in a sense, do not readily fit the legislative model that we use to consider other types of legislation. That is why we have developed fast track, to assure that our trade relations with other countries are handled expeditiously and

efficiently with the involvement of the executive and legislative branches.

There have been serious questions raised about the relationship between worker rights, environmental issues, and trade agreements. As important as these issues are, no consensus has been reached, either domestically or internationally, on the linkage of these issues to trade agreements.

In my view, it is inappropriate to include these issues within fast track. My reasons are simple: If we consider these issues under fast track, we usurp a vast range of congressional authority and prerogatives to make laws in these areas. In addition, the overall benefits of trade agreements serve to improve labor and environmental conditions.

Our leadership in the House is committed to passing a clean, narrow fast track bill designed to streamline and expedite the process of negotiating, concluding, and implementing trade agreements. Speaker Gingrich today stated that he supports fast track because it will create more good jobs and reduce the deficit.

I look forward to hearing from our witnesses today and in working with the administration to develop a fast track limited to trade issues only.

Now, I would like to yield to my distinguished colleague from the Rules Committee, Mr. Dreier, to make an opening statement.

Chairman DREIER. Thank you very much, Mr. Chairman.

Let me join in welcoming our five panels of witnesses we will be hearing this morning.

I would also like to associate myself with your statement of strong support for fast track and for promoting a more open and fair international trade regime. Namely, they contribute to a stronger and more vibrant U.S. economy, raise the standard of living for American families, and help create private sector jobs right here at home.

I note, as we begin these joint hearings, that it is a real step forward for this institution that on a matter of joint jurisdiction between committees such as the fast track statute, that we have cooperation rather than turf battles, which is what we have often witnessed in the past. I think the process and the eventual product will benefit.

The fast track procedures for trade agreements were developed in 1974 and have largely remained in their original form. We will be joined by a panel of witnesses at our hearing next Wednesday to discuss some of that history.

However, I would note that times have changed procedurally since 1974, especially due to the PAY–GO budget rules instituted in 1990. I think the effect of PAY–GO has been profound and very detrimental to fast track because completely nontrade provisions have been added to unamendable bills considered in an expedited fashion solely to meet budget requirements.

I am interested in finding a way to modify fast track to implement trade agreements while maintaining as open a process as possible for nontrade funding provisions.

Again, I want to express my appreciation to Chairman Crane and will say that, on behalf of the Rules Committee, I anxiously look forward to working very closely with all of the members of the subcommittees and full committees to bring about what we hope will be a very strong fast track agreement.

[The prepared statement follows:]

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Opening Statement of The Hon. David Dreier Chairman, Subcommittee on Rules and Organization of the House

Hearing on Fast Track May 17, 1995

Good morning and welcome to the members of the Subcommittee on Trade and the Subcommittee on Rules and Organization of the House, our distinguished witnesses, especially the United States Trade Representative, Ambassador Mickey Kantor, and the members of the public attending our hearing today.

These public hearings are intended to provide the two subcommittees with an opportunity to address issues relating to fast track procedures and rules, trade goals, negotiating objectives, and conditions associated with an extension of fast track authority.

Congress has recognized for decades the critical role the President must play to further a top national economic priority -- promoting an open and fair trade regime. This clearly contributes to a stronger and more vibrant U.S. economy.

U.S. exports have more than doubled over the last ten years. We are the world's top exporter. Exports directly account for one-in-ten U.S. jobs. Nearly a quarter of our economy is tied to international commerce. Reducing our import barriers have made our economy more efficient. Free trade also benefits middle income families by cutting taxes, increasing buying power, and raising living standards. I would note that fully implementing the GATT Uruguay Round promises the equivalent of a $500 tax cut for every American family.

Despite the overwhelming benefits of lower trade barriers, some have questioned the merits of the fast track process. Fast track has been called secretive, hasty, and even unconstitutional. I disagree with this view. I hope this hearing will help in fostering greater understanding of the history and purpose of fast track.

I would point out that fast track is only the most recent congressional-executive agreement to lower trade barriers. As early as 1890, Congress delegated tariff bargaining authority to the President. In 1934, following the economic disaster caused by Smoot-Hawley protectionism, Congress authorized the President to proclaim U.S. tariff reductions as part of trade agreements. This ability to reduce tariff barriers helped fuel this country's economy in the post-war era, creating economic growth in free-market democracies around the world.

By the early 1970's, tariff reductions were no longer the singular goal of U.S. trade policy. In 1974, Congress developed the fast track procedures to provide the President with credibility in negotiations to eliminate non-tariff trade barriers. Fast track ensures that Congress carries out its constitutional responsibilities regarding legislative implementation of those agreements.

Promoting free trade has been a successful national policy for 60 years. Fast track has contributed to that success for two decades. While the goal of improving the lives of American families by fostering greater international commerce has not changed, fast track can be fine-tuned to maximize its positive impact on the process.

Fast track procedures must foster ongoing and substantive consultations between the Executive Branch and the Congress in order to maintain its viability as a bond between the two branches with a role in international commercial policy. Fast track must be focussed on matters directly related to trade in order to avoid a critical procedural tool being undermined through overly broad application. Finally, the fast track process must be updated to account for changes in other congressional procedures, such as the "Pay Go" budget rules instituted in 1990.

I look forward to hearing from our witnesses today on how to improve the fast track process. I also welcome the opportunity to work with you, Ambassador Kantor, to send to the President trade negotiating authority in a timely manner so that we can build on the impressive trade accomplishments of the past two years.

Chairman CRANE. I thank the gentleman for his statement and would like to yield now to our distinguished ranking minority member, Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman, and chairman of this joint subcommittee.

I welcome this opportunity to get together as we start the consideration of the central issue of U.S. trade policy; namely, the nature and the terms of authority which the Congress delegates to the President for future trade agreements and the role of the executive and the Congress in their approval and implementation.

This so-called fast track authority for trade agreements has been successful in the past for approving the most important and comprehensive multilateral and free trade agreements in our history for two reasons.

First, there was always bipartisan cooperation and broad support in the Congress with Democratic and Republican administrations, as well as a general consensus within the private sector, on the needs and the objective for trade negotiations and on the procedures that would apply for their approval.

Second, Congress and the private sector were consulted and advised throughout the negotiation, and congressional committees of jurisdiction drafted the implementing legislation in consultation with the administration in an informal process which ensured that congressional constitutional prerogatives were still preserved.

The principles of broad bipartisan consensus and the executive-congressional partnership continue to be essential to successful trade negotiation and support for implementing the results. There are a number of important issues which need to be considered in formulating a trade agreement authority that will address the ever-evolving issues from a global economy.

I believe we must maintain an open mind and not rule out in advance any particular trade related objectives or issues, including labor and environmental standards, which some Members believe should be addressed in the trade agreement context.

On a very personal note, I believe that foreign cooperation in our efforts to stop illegal narcotic trade is also a very appropriate issue to raise in the trade negotiation context.

But, finally, we need to fully consider these important matters and proceed in a deliberate nonpartisan way if we are to deliver a successful legislative approach that has broad support. I look forward to working with my colleagues on both sides of the aisle toward this end.

Thank you, Mr. Chairman.

[The prepared statement follows:]

OPENING STATEMENT OF
CONGRESSMAN CHARLES B. RANGEL
JOINT SUBCOMMITTEE HEARING ON
FAST TRACK AUTHORITY
May 11, 1995

I welcome these joint hearings to begin the consideration of a central issue of U.S. trade policy, namely the nature and terms of authority which the Congress delegates to the President for future trade agreements and the role of the Executive and the Congress in their approval and implementation.

So-called "fast track" authority for trade agreement implementation has been successful in the past for approving the most important and comprehensive multilateral and free trade agreements in our history for two main reasons: First, there was bipartisan cooperation and broad support in the Congress and with Democrat and Republican Administrations, as well as general consensus within the private sector, on the need and objectives for trade negotiations and on the procedures that would apply for their approval. Second, Congress and the private sector were consulted and advised throughout the negotiations and Congressional committees of jurisdiction drafted the implementing legislation in consultation with the Administration in an informal process which ensured that Congressional constitutional prerogatives were preserved.

The principles of broad bipartisan consensus and Executive-Congressional partnership continue to be essential to successful trade negotiations and support for implementing the results. There are a number of important issues which need to be considered in formulating a trade agreement authority that will address the ever-evolving issues from a global economy. I believe we must maintain an open mind and not rule out in advance any particular trade-related objectives or issues, including labor and environmental standards, which some Members believe should be addressed in the trade agreement context. On a personal note, I believe that foreign cooperation in our efforts to stop illegal narcotics trade is also an appropriate issue to raise in the trade negotiation context. Finally, we need to fully consider these important matters and proceed in a deliberate manner if we are to develop a successful legislative approach that has broad bipartisan support.

I look forward to working with my colleagues on both sides of the aisle toward this end.

Chairman CRANE. Thank you, Mr. Rangel.

Now I would like to yield to Mr. Beilenson, the ranking minority member on the Subcommittee on Rules and Organization of the House, the Rules Committee.

Mr. BEILENSON. Thank you, Mr. Chairman.

Because we do have so many excellent witnesses to hear from today, I will forgo making a statement, if that is all right with the Members. My opening statement is submitted for the record, if I may, Mr. Chairman.

Chairman CRANE. It shall be.

Mr. BEILENSON. I say only at the outset that I, too, have been and continue to be a strong supporter of fast track. I agree with my friend, Mr. Dreier's comments about PAY–GO and the problems that, unnecessarily, we believe, it causes us with respect to fast track.

I must say I also strongly agree with my friend, Mr. Rangel, with respect to environmental standards and matters regarding labor, too, and hope that we can discuss those in the hours ahead.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

OPENING STATEMENT OF CONGRESSMAN ANTHONY C. BEILENSON
JOINT HEARING OF THE SUBCOMMITTEE ON TRADE
AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
HEARING ON FAST-TRACK TRADE AUTHORITY
May 11, 1995

I appreciate having the opportunity to join with our colleagues on the Subcommittee on Trade to begin considering the issues involved in the renewal of fast-track trade agreement authority.

Since 1974, this authority has been an essential feature of U.S. trade policy. It provides the Executive and foreign countries with the assurance that the House of Representatives and the Senate will vote on implementing legislation for a trade agreement within a specific time frame, and without amendment. At the same time, it guarantees that Congress will have an advisory role during negotiations on the content of agreements and in the development of the implementing bill.

Without fast-track trade authority, it is highly unlikely that the United States would have been as successful as it has been in recent years in negotiating more open trade arrangements with other nations--arrangements that are providing new markets for U.S. goods and promoting economic growth both here at home and abroad. If we fail to renew this authority, we face the real likelihood that the progress we have been making through the expansion of trade opportunities will come to a halt.

It is essential that we renew this authority but, in doing so, we must also seek to include environmental and labor issues as negotiating objectives in that authority, since both are inextricably linked to our trade interests. We cannot responsibly negotiate rules for the flow of goods and services across borders without considering the ecological consequences or the effects on workers that will result from those rules.

I am looking forward to hearing from our distinguished witnesses, from whom we are seeking guidance in shaping the new fast-track trade authority legislation our committees will be developing in the coming weeks. I join in welcoming them and thanking them for taking the time to be here today.

Chairman CRANE. Today, we will hear from a number of distinguished witnesses, and in the interest of time, I ask that you keep your oral testimony to 5 minutes. Of course, we are happy to include any longer written statements for the record.

On our first panel are two of our distinguished colleagues from the House, the Honorable Jim Kolbe and the Honorable Bill Richardson, if you two gentlemen will take to the dais. We will commence with Mr. Richardson first.

STATEMENT OF HON. BILL RICHARDSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. RICHARDSON. Mr. Chairman, thank you very much for holding this very timely hearing, and to all the members of the subcommittees, especially Mr. Rangel in his new role as ranking member of this subcommittee.

Mr. Chairman, I have eight quick points to make as you consider fast track authority. No. 1, it is important to keep the momentum going for the United States engaged in trade negotiations. This hearing is very timely. It is important that you move fast on whatever decision you make on fast track authority. I believe the peso crisis has subsided. That, obviously, had dimmed a lot of the luster for quick movement on any arrangement in Latin America, any arrangement related to trade. I think your timing is good and I urge you to move to keep the momentum, to send a signal to the world that the United States is engaged, is international, and is not in a period of retrenchment, as some have suggested.

No. 2, I think it is important that we keep trade issues bipartisan. I think we have. NAFTA and GATT, General Agreement on Tariffs and Trade, passed with strong bipartisan support. It is important to recognize that this is key to getting any agreement or any fast track authority passed.

Mr. Chairman, I think we should also bear in mind that this administration has done a good job on trade. They have negotiated agreements. They have negotiated serious concerns of the American people, like in NAFTA, the side agreements on trade, the environment, and worker rights. I think they are doing a good job with Japan right now. I would hope that we do not have a trade war, and I would hope that we end up without a damaging situation where the U.S. bilateral relationship with Japan, which is very important, is damaged. But I think they are moving in the right direction, and as you consider fast track authority, I think this administration deserves some flexibility, but not a blank check.

No. 3, Mr. Chairman, I think these subcommittees should increase their oversight of the side agreements on NAFTA, including environmental provisions, worker rights, NAD, North American Development Bank, and on some of the other issues that were negotiated separately from the treaty. I have a sense that they are not going as well as they should, that some of these entities that involve oversight of environment and worker rights and many other issues are not getting the proper funding and oversight, and I would urge you to do that. Despite these challenges, I think these side agreements are a model to what you might consider doing in the days ahead with fast track.

No. 4, I think it is critically important that you address Chile. Chile has been waiting now for 4 years without any agreement. They have been promised negotiations. I know this is going on. But I think to renew fast track authority without a special cognizance of this country, which is key in the Southern cone, which is a friend, which has a market economy, and yet has been deferred by two bipartisan administrations, is a mistake.

In the same vein, as part of the NAFTA commitment, I urge you to deal quickly with Caribbean parity. I think that is part of a NAFTA promise that we need to fulfill.

Mr. Chairman, also, let us not forget the impetus that the Summit of the Americas had on trade, on the American presence in South America. If we delay, if we hold back, all of those promises made at the Miami summit will not be taken seriously, so I hope we move ahead very soon. There is movement in free trade going on everywhere in our hemisphere, including MERCOSUR countries which we should encourage.

Mr. Chairman, worker rights and environmental concerns are important. I think that you should report language that gives the administration flexibility to deal with these concerns. I do not believe that they have to be part of the fast track law, but the precedents set by the side agreements on NAFTA are the way we should go in any future agreement.

You might consider putting language in the legislation that the United States, not just in bilateral agreements but at the WTO, World Trade Organization, and other international forums, to signal that we consider these issues extremely important. They will be included with Chile. Perhaps the only concern I would have with Chile now is that they need to be further along on an environmental infrastructure to enforce their laws.

Mr. Chairman, my final point is that it is critically important that Congress have a role. We should not give the administration a blank check; we should give them flexibility. We represent the people, and I think it is important that it be a joint effort, a partnership. This has not entirely been the case in the past.

But I do think that we need to move soon. I think to not move on a swift basis is going to send a negative signal to the international trade community. I do think that it is important that we move with Chile. It would be very damaging to the hemispheric and bilateral relationship if we do not.

We should urge the administration to work in partnership with us. I am a little distressed that they do not appear yet to have a strategy for fast track. They should. It is important to do this on a bipartisan basis. I remain encouraged.

Let me close, again, Mr. Chairman, by thanking you for this effort and commending everyone on this panel for the excellent role they have had on trade on a bipartisan basis. I am not going to name everybody, but they obviously know. But to both of you members of the majority that have moved aggressively on this front, I commend you. I urge you to keep the momentum going and move very soon.

Chairman CRANE. Thank you, Mr. Richardson.

Mr. Kolbe.

STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you very much, Mr. Chairman, and I will echo much of what my colleague said, though we will differ somewhat on some issues.

I have a fuller statement, which I have submitted for the record. I will make my remarks brief.

I also want to commend both of you for holding this historic meeting. To have this joint session of the two subcommittees on this subject certainly bodes well for the prospects of getting this kind of legislation through, to be working cooperatively rather than sometimes at cross purposes.

I think it is important for the Congress to promptly grant the President fast track negotiating authority. Our immediate goal is to enable Chile to gain quick accession to NAFTA and to take the next step toward the development of a hemispheric fast track community. That is the promise of the hemispheric historic Summit of the Americas meeting in Miami last December.

Let me first say a word about trade as a goal, a bit about Chile and South America, and then about the issue of other objectives in trade negotiations.

Increased trade is imperative if we are going to improve the American standard of living and create high-wage jobs. Our economy is increasingly reliant on the world economy as a source of economic growth, of job creation and rising national income. In fact, in the last 5 years, U.S. export growth has accounted for 50 percent of total U.S. economic growth. The United States is the largest exporter in the world, $512 billion in U.S. exports last year. In fact, one-third of our GDP now depends entirely on our ability to do business with other nations. We can ill afford to ignore the increasing importance of trade to our economic future.

Now, a word about Latin America and Chile. Failing to proceed with Chile's membership in NAFTA in a timely fashion would, I think, be unfortunate for Chile. It has so long been qualified for partnership in a free trading relationship with the United States. Moreover, because of the commitments that we have made to Chile, failure to move ahead would damage our credibility in the hemisphere and deal, certainly, a very sharp setback to prospects for meeting the timetable of hemispheric free trade that was contemplated by the Miami summit.

Such a result would be, I think, disastrous, economically as well as politically. If the dream of hemispheric free trade evaporates, the United States risks losing much of the market that is open to us in Latin America. Countries in Latin America are already forming overlapping regional alliances. Trade within these groups has grown at a staggering rate. Latin American exports to other destinations in the region have increased nearly 100 percent in real terms since 1982.

As might be expected, the relative importance of the U.S. market to Latin America has declined slightly, given the growth rate of both global as well as regional trade. If we do not pursue the hemispheric free trade in a timely fashion, we could find that by the time we do act, Chile and other Latin American countries may

have little desire or little need to feel they should negotiate with the United States.

Importantly, Chile's membership in NAFTA would also be a very visible acknowledgement of the dramatic way it has restructured both its economy and its political system by entrenching democracy. In the early eighties, the midpoint of the Pinochet era, Chile was hit by a 90-percent devaluation of the currency over 12 months, a collapse in international copper prices, and the failure of its domestic banking system. Chile went through an economic recession, more intense in relative terms than our own Great Depression.

Chile responded by decisively overhauling its economy, sweeping deregulations and tax cuts, tax simplifications that ease market entry for thousands of small and midsize firms, the process that rapidly broadened Chile's economic pace. A low uniform tariff was introduced. No industry—no industry—was kept under a strategic umbrella, deserving of special protection from international competition. Economic liberty led, as it always will, to demands for political reform. Political opposition to General Pinochet was energized and eventually overturned his rule at the ballot box.

Over the past decade, Chile's gross domestic product has grown by an average of 6 percent a year, and in the most recent 3 years, posted an average annual growth rate of 7.1 percent. During this period, it achieved an annual savings rate of 25 percent, far above all OECD, Organization for Economic Cooperation and Development, countries. Chile, of course, has privatized its Social Security system. As a result, the assets of Chile's private pension plans are equivalent to 50 percent of the country's annual GDP, a fiscal result certainly preferable to the precarious condition of our own Social Security system.

We ought to give some thought to rewarding Chile for these economic and political reforms, and membership in NAFTA would be a highlight to all of Latin America for the discipline and the tough choices that Chile has made to get it where it is today.

Last, on the issue of environmental and labor objectives, granting fast track authority to a President requires shared commitment to certain trade goals between the President and Congress. Since 1974, there has been bipartisan support for the President of either party to have broad authority to negotiate international trade agreements.

However, given this administration's repeated statements that they want to include labor and environmental issues in trade negotiations, it is my view that the fast track authority should be written by these subcommittees in a way that is fairly narrow and precludes the possibility of actually having negotiations on these issues that are part of the trade negotiations.

Environmental protection and protection of labor rights are certainly important foreign and social policy objectives for this country, but they should be pursued in alternate negotiations. I do not believe they should be tied to trade. Just as it devalues trade to tie it to peripheral issues, it denigrates the importance of efforts to protect the global environment, to wrap them around tariff schedules.

The benefits of free trade are clear. Because of the strides we have made in opening markets around the world and opening our own market, American companies have more opportunities to sell their products and American consumers are better off. Free trade serves the crucial function of consolidating economic and political liberalization.

Chile is almost certainly going to continue on that course. However, other nations that aspire to free trade relationships with the United States may rest on less stable political foundations. Admitting Chile to NAFTA and then moving purposely to expand free trade to other countries in the hemisphere would make conditions increasingly more hospitable for political and economic liberalization. Passage of fast track negotiating authority is critical to continuing that process.

Thank you, Mr. Chairman, for the opportunity to testify.

[The prepared statement follows:]

Testimony of the Honorable Jim Kolbe
Subcommittee on Trade of Committee on Ways and Means
Subcommittee on Rules and Organization of the House of Committee on Rules
May 11, 1994

Introduction

Thank you very much for the opportunity to testify today. I want to commend Chairmen Crane and Dreier for their leadership on this very important piece of legislation.

I believe it is important for Congress to act promptly to grant the President fast track negotiating authority. Our immediate goal is to enable Chile to gain quick accession to the North American Free Trade Agreement (NAFTA) and take the next step toward development of a hemispheric free trade community. This was the clear mandate of the historic Summit of the Americas meeting in Miami last December. But we are not seeking this legislation simply to pursue a foreign policy objective, enhanced trading opportunities are critical to the economic future of our own country.

We must stay focused on our objective -- to promote trade. We must not allow our trade policy to become a vehicle for non-trade related foreign policy objectives, such as labor and the environment. This is a prescription for ill-will, mistrust, and failure. Protection of the environment and labor are certainly worthy and important foreign policy objectives. But, they should be pursued in separate negotiations, not tied directly to trade agreements. The history of such agreements -- from international labor Conventions stretching back over a half century to the more recent Montreal Protocol on CFCs -- bear out the validity of this approach.

Simply stated, trade is a goal to be valued in and of itself; to make it conditional on constantly changing political and cultural circumstances only devalues it.

Importance of Enhanced Trading Opportunities

Increased trade is imperative if we are going to improve the American standard of living and create high-wage jobs. Though we have never had a self-contained economy, there was a time when we were more self-reliant. Now, our economy is increasingly reliant on the world economy as a source of economic growth, job creation, and rising national income. In fact, in the last five years, U.S. export growth has accounted for about 50 percent of total U.S. economic growth. The United States is the largest exporter in the world, with nearly $512 billion in U.S. exports last year. In 1970, the value of all trade -- both goods, services, and investment earnings and payments abroad -- amounted to 14 percent of our Gross Domestic Product (GDP); by 1994, that figure had doubled to 28 percent of GDP. Moreover, the U.S. Trade Representative's office has estimated that trade will continue to grow in importance and account for 36 percent of

GDP by 2010. That means that, in 15 years, more than one-third of our standard of living will depend entirely on our ability to do business with other nations. We can ill afford to ignore the increasing importance of trade to our economic future.

Importance of Latin America

Let me speak briefly about Latin America and Chile. Failing to proceed with Chile's membership in a timely fashion would be unfortunate for the country that has long been qualified for partnership in a free trading relationship with the United States. Moreover, because of past commitments we have made to Chile, failure to move ahead would damage U.S. credibility and leadership in the hemisphere and deal a sharp setback to prospects for the hemispheric free trade contemplated by the Miami Summit.

Such a result could be economically disastrous. If the dream of hemispheric free trade evaporates, the U.S. risks losing as much as Latin America. Countries in Latin America already are forming overlapping regional alliances. Trade within these groups has grown at a staggering rate. Latin American exports to other destinations in the region have increased nearly 100 percent in real terms since 1982. As might be expected, the relative importance of the U.S. market to Latin America has declined slightly given the growth rate of both global and regional trade. If we do not pursue hemispheric free trade in a timely way, we could find that by the time we do act, Chile and other Latin American countries may have little desire, or need, to negotiate with the United States.

Chile

Importantly, Chile's membership in NAFTA would also be a very visible acknowledgement of the dramatic way it has restructured its economy and entrenched democracy. We should reward such changes.

In the early 1980s -- the midpoint of the Pinochet era -- Chile was hit by a 90% devaluation of the currency over 12 months, a collapse in international copper prices, and the failure of the domestic banking system. Chile went through an economic recession more intense in relative terms than our own Great Depression.

Chile responded by decisively overhauling its economy. Sweeping deregulations and tax cuts and tax simplifications eased market entry for thousands of small and mid-sized firms, a process that rapidly broadened Chile's economic base. A low, uniform tariff was introduced. No industry was kept under a "strategic" umbrella, deserving of special protection from international competition. Economic liberty led, as it always will, to demands for political reform. The political opposition to General Pinochet was energized and eventually overturned his rule at the ballot box.

Over the past decade, Chile's gross domestic product has grown by an

average of six percent a year, and in the most recent three years, posted an average annual growth rate of 7.1%. During this period, it achieved an annual savings rate of 25% -- a rate far above most OECD countries Chile has even privatized its social security system. As a result, the assets of Chile's private pension plans are equivalent to 50 percent of the country's annual GDP of slightly more than $40 billion -- a fiscal result certainly preferable to the precarious condition of our own Social Security system.

I think we should reward Chile for its economic and political reforms. Chile's membership in NAFTA would highlight for all of Latin America the discipline and tough choices that have been required to put Chile where it is today.

Regarding NAFTA and Mexico's Recent Problems

A word of caution. NAFTA's opponents will use the Chile debate to fight the NAFTA war all over again. They will cite Mexico's devalued peso, a costly assistance package, and a worsening U.S. trade balance. Well, the fact is, the financial near-meltdown in Mexico had nothing to do with NAFTA; the benefits of free trade with that country remain as important as ever. Indeed, one could argue they are more important today than before.

Mexico's financial crisis was caused by an overdependence on foreign capital and protracted overvaluation of the peso. When a bungled devaluation caused investors to flee and the peso began to free fall, the government needed outside assistance to prevent a default. Far from worsening the crisis, NAFTA prevented Mexico from resorting to the standard solution of developing countries in crisis: imposing import barriers, restricting capital movements, and limiting economic activity. Instead, Mexico has adopted an austerity program that, while reducing short-term living standards in Mexico, avoids the catastrophic long-term economic consequences of closing its economy to international competition. The recent example of Mexico, if anything, makes the case for institutionalizing hemispheric free trade.

Now, Mexico's economy is showing some early, hopeful signs of improvement. The peso has risen from a low of nearly eight to the dollar to just under six, suggesting that inflation will not deepen. By cutting domestic demand so drastically, Mexico has cleared a path for a more stable economy and a return to growth in 1996. One obvious implication of this projected growth is that this year's likely trade deficit with Mexico of $12-15 billion is unlikely to persist and that our exporters will again enjoy the opportunities which we sought from NAFTA.

To repeat: to use Mexico's woes as an argument against free trade, and in particular, free trade with Chile, is simply wrong and irresponsible.

Use of Trade Policy to Achieve Environmental and Labor Objectives

Granting fast track authority to a president requires shared commitment to

certain trade goals between the president and Congress. Since 1974, there has been bipartisan support for the president of either party to have broad authority to negotiate international trade agreements. However, given this Administration's repeated statements that they want to include labor and environment issues in subsequent trade negotiations, I believe fast track authority should be narrowly written to explicitly preclude this possibility.

As I said at the outset of my testimony, environmental and labor protection may be important foreign policy objectives but they should be pursued in alternate negotiations, not tied to trade. Just as it devalues trade to tie it to peripheral issues, it denigrates the importance of efforts to protect the global environment to wrap them around tariff schedules.

Conclusion

The benefits of free trade lie in the increased opportunities to seek markets for goods and services, and in improved economic efficiency. Because of the strides we have made in opening new markets around the world and in opening our own market, American companies have more opportunities around the world to sell their products and they are becoming increasingly more competitive. American consumers are also better off. Enhanced trade translates into higher national income, higher real wages for American workers, and lower prices for American consumers.

Finally, free trade serves a crucial function of consolidating economic and political liberalization. Chile will almost certainly continue on that course. However, other nations that aspire to free trade relationships with the United States may rest on less stable political foundations. Admitting Chile and then moving purposefully to expand free trade to other countries in the hemisphere would make conditions increasingly more hospitable for political and economic liberalization. Simply stated, prompt passage of fast track negotiating authority is critical to continuing that process.

Thank you again for the opportunity to testify today.

Chairman CRANE. Thank you for your testimony.

Now we will proceed with questions, starting with Mr. Dreier.

Chairman DREIER. Thank you very much, Mr. Chairman.

Thank you, gentlemen, for your very fine testimony. I appreciate the opportunity to continue to work with you on trade issues, as we have in the past, on the NAFTA and China, the Uruguay round, and a wide range of other issues.

Let me step beyond Chile for a moment and ask you about the timeframe that you would envisage for other countries in Latin America to become part of the NAFTA, for either of you to comment on. Bill.

Mr. RICHARDSON. I would say that, this year, this calendar year, I would hope that negotiations are completed on Chile and on NAFTA, and that we can vote on the agreement perhaps early next year. I think that is possible. I think the Chile negotiations can be wrapped up rather quickly. I do not see many areas of difference.

Caribbean parity may be something that is determined more by the schedule of the Congress, because of the overload we have here. I think we need to do those, too.

Then, I would say that over the next 5 years, the administration should have enough flexibility to start other agreements. In the Southern cone, Argentina, Uruguay, and Brazil are now taking some constructive stances, even though last year they did not appear to be very helpful. There is recognition that Latin American countries are moving on their own, also.

I would say that the Central American countries, as a block, might be considered next. I also think consideration should be given to a bilateral agreement with Argentina.

I think to get into a situation where you are picking and choosing and rewarding rather than allowing the hemispheric leaders to come to a conclusion is not the way to go. What I think we need to do is encourage the leaders of the hemisphere to adopt a strategic plan. While they have not done that, I think many of them are waiting for us to get our fast track movement settled here.

But I just think, Mr. Dreier, that it is best that we move soon. Otherwise, this impetus, this opportunity that we have, is going to be lost.

Let me just close by saying there is talk that we will have free trade agreements in the future, possibly with Europe. Now, because of agricultural subsidies and other problems, this looks like it is not feasible at this very moment. I remember when Jim Kolbe and I and others talked about NAFTA 5 years ago and people would laugh at us, but it is possible, too, that we may move into free trade arrangements with Europe.

My point is that we should give some flexibility, but I guess where I would only disagree with my colleague is that I think worker and environmental rights should be part of some kind of signal that you send to the negotiators. Whether it is in the body of the law or not, they should be encouraged to pursue side agreements on these issues.

Chairman DREIER. The only reason that I pursued this timeframe issue is that there is a sense with MERCOSUR and other potential arrangements made in South America, that we conceivably could see some competition that would exist between North

and South America on that route, and that is why I was just wondering about that.

Mr. RICHARDSON. Mr. Dreier, if I might respond, I think it is probably a little bit premature to pick out the exact timetable. The foreign ministers and trade ministers will be gathering in Denver in June of this year to try to do the next step after the Miami summit, which is to lay out the specific game plan of timetables as to how we are going to proceed, and I think we need to wait for that meeting to take place.

But, certainly, looking down the road to the other MERCOSUR countries is probably the next likely area that we would be wanting to focus on.

Chairman DREIER. Thank you very much.

Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. It seems to be one of the areas that we are going after as to what authority in the area of environmental and labor cases will be included in the fast track. The chairman has just shared with me that he has no objection to these issues if they are directly related to trade, and, of course, I added in my opening statement narcotic trafficking, because notwithstanding the diplomatic resistance to this, I do not see how you can expand trade without thinking that the traffickers are going to take advantage of the increase in commercial trafficking for their own ends.

Jim Kolbe, at what point do you think that labor issues and environmental issues are directly related to a trade agreement, if at all?

Mr. KOLBE. I think your question is certainly a fair one, and it is true that if a provision is being used, either a labor provision or an environmental provision in the law is being used as a direct impediment to trade, in other words, if it is being erected as a barrier by a country, then that is an issue that needs to be addressed.

But I think it is inappropriate to try to take the larger, broader environmental standards or labor standards, and as you know, Mr. Rangel, the United States does not adhere to nearly as many of the ILO, international labor organization, conventions because of our own Federal system, we do not adhere to many of the ILO conventions that other countries do adhere to, and there is a logical reason, as I said, for that, because of our Federal system.

So I think it is just inappropriate for us to say that trade has to be tied to a certain degree, a certain passage, or a certain level of performance in protection of child legislation——

Mr. RANGEL. Let us take it all off the table and just suggest to me——

Mr. KOLBE. I am sorry?

Mr. RANGEL. Let us take it off the table, it is not relevant, but then suggest to me, where could it possibly be directly related to trade agreements?

Mr. KOLBE. Again, I would just put it in the more general terms, Mr. Rangel, and that is if a country enacts either an environmental or a labor standard as a direct barrier to closing their market, as a direct means of closing their market, a direct barrier to trade, that is appropriate for us to address in a trade negotiation.

Mr. RANGEL. The question of narcotic trafficking, as we increase trade with a country, should that ever be on the table?

Mr. KOLBE. I think narcotic trafficking should always be on the table. However, I am not sure in the context of inside of a trade agreement that it makes any sense.

Mr. RANGEL. I am talking about the people who are drafting a trade agreement. Of course, it should always be on the table. We are talking about fast track in a trade agreement.

Mr. KOLBE. I am not sure I can envision how a specific narcotic arrangement or provision on drug trafficking would be a part of a trade agreement.

Mr. RANGEL. Mr. Richardson.

Mr. RICHARDSON. Mr. Chairman, I think there could be instructions that at a time that we are negotiating a simultaneous trade agreement, a fast track authority, that we have parallel negotiations on narcotics. I think your work in this area is recognized. Having seen what happened in Mexico, we probably should have dealt with the narcotics issue a little stronger than we did.

My point is that I think this administration has been adept enough in dealing with these issues in side agreements. Now, these were side agreements to the treaty. That is how we voted on it. I think this can be done in the future.

The World Trade Organization, by the way, does have a strong link between trade and the environment. They have an entity that is supposed to, for all nations, deal with linkages between trade and the environment.

But I think you can do it on a parallel basis. That is my answer.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Hancock.

Mr. HANCOCK. No questions.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. No questions.

Chairman CRANE. Mr. Beilenson.

Mr. BEILENSON. No questions.

Chairman CRANE. Mr. Zimmer.

[No response.]

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

Gentlemen, I had hoped to have a chance to ask Mr. Gephardt these questions, and I would hope that, at some point, Mr. Chairman, we would have a chance to talk directly with representatives of the administration about their views.

But I would, gentlemen, like to address a question to you. If you would give me your point of view, it would be very helpful. During the NAFTA debate, the administration dismissed suggestions that the environmental side agreements and the supernational bureaucracy established to enforce it might impinge on U.S. sovereignty. This is an issue I run into a lot at home.

The recent threat by a coalition of environmental groups to bring suit against the United States if the President fails to veto certain rescissions in the environmental spending area appears to confirm the worst fears regarding the extent to which these agreements could be used to thwart U.S. domestic political processes. At the

same time, another environmental coalition is seeking a review of U.S. logging practices by the North American Commission for Environmental Cooperation.

In light of these two developments, what is your sense about a more detailed answer to the questions that have been raised regarding U.S. sovereignty, and do you have any sense about what the administration's plans are to ensure that the agreements cannot be used in any way to undermine the sovereignty of the United States?

Mr. KOLBE. I would have to defer to the administration to answer the part of the question as to what they intend to do about it. You have absolutely highlighted the danger. That is true of any agreement that you have, that a country or a group can use it if they choose, or they can try to use it as a tool to try to change the policy here in the United States or to undermine the agreement. It is my view that those kinds of attacks on U.S. labor or environmental laws should go nowhere because of what I would regard as some spurious attempts to undermine it.

It is true, also, you mentioned, too, in the environmental area, and it has also been true in the labor area, where labor unions have filed claims against U.S. companies doing business in Mexico for violation of labor laws when, of course, they are complying fully with Mexican labor laws. It is up to Mexico to decide whether they are or not, not up to a NAFTA panel group to make that decision.

There is going to be some testing of the waters initially, and I think that is what we are seeing. I would hope that these would get taken care of very quickly and not become a serious impediment to NAFTA implementation.

Mr. RICHARDSON. Ms. Dunn, I would think the sovereignty issue is manageable, although, as we all know, in the World Trade Organization, that became an issue as we debated GATT. I think we strongly can retain our sovereignty. I think we have enough people in the administration that can ensure that.

But I think the positive side is that you do have labor unions and environmental groups wanting to enforce what was agreed upon. But I have to be honest with you. On these environmental side agreements, I hope we are doing a good job, but I am not sure what we are doing. We have offices in Canada, Mexico, and the United States to enforce the environment. We have this North American Development Bank. My understanding is that they are underfunded, they have not started yet. I do not know what all these commissions are doing. I just hope that they are doing their job of respecting the environmental views, and others, like yourself, that want to make sure we are doing the right thing.

While I am not saying these lawsuits necessarily are all healthy, proper oversight needs to take place on these agreements that we have reached.

Ms. DUNN. Thank you, gentlemen.

Thank you, Mr. Chairman.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. I want to thank both witnesses for their testimony.

I would like to ask you, Jim, a couple of questions, and I think both of you have indicated you want bipartisan support of any fast

track extension, and I think everybody on both panels here would like to see that as well.

Obviously, the administration has the position, and I understand Ambassador Kantor will testify next week—he was not able to this week because of the Japan discussions and what is going on there. I think the key to getting a bipartisan agreement will be in the area of negotiating objections, obviously. Labor and environment hung it up last year and we were not able to attach it to the GATT legislation.

You believe it is wise, and I know your testimony indicated you support that, but to specifically prohibit the executive branch of government from negotiating labor and environment. Should it not be just kind of a clean bill, perhaps with negotiating objectives but not with specific mandates one way or the other? If you prohibit labor and the environment, then you can get into human rights, say we prohibit discussions on human rights, drug trafficking.

Should not that be conditioned upon the nature of the times, the proximity of the country? In Mexico, perhaps labor and environment were critical issues. Perhaps in Chile, Brazil, they would not be such critical issues because they are not contiguous with the United States. So do you think it should be perhaps a provision that has no conditions or no prohibitions, particularly, on the administration?

Mr. KOLBE. Mr. Chairman, I think by the very thrust of your question, Mr. Matsui, you have demonstrated why you are such a skillful legislator and negotiator, as you talk about the nuances and how we would finesse this issue. You are much more skillful than I am at that.

I think you are probably correct. There may be a way to do it that satisfies both sides, but I think there has to be an understanding on the administration's part that there will be on our side, and I really cannot speak for the Republican side, but I think that I probably capture the sentiment of most of the Republicans, and that is that an attempt to really tie those into an agreement would cause real problems for us, and, I think, sink the agreement from the outset.

So whether or not you write it in or whether there is a verbal understanding of this, I think we need to proceed on that basis.

I did not say earlier, but I do think that the fast track authority should be broad, geographically. It should be broad in terms of the issues, not just related to bilateral negotiations with Chile but also to deal with the unfinished things of the Uruguay round of GATT, such as investment, financial services, some loose ends to tie up on intellectual property rights. It should be of enough length of time to go beyond this term of this President, to go certainly more than 1 year of time, because some of these negotiations are going to take more time than that.

So I am for a very broad authority to the President. I just would like to keep it to trade negotiations.

Mr. MATSUI. I appreciate your comments, but if there is a skilled legislator in this room, it is you, Mr. Kolbe, and I want to congratulate you for all your efforts over the years, and particularly in the last couple of years. I appreciate it very much.

One thing that I know the subcommittees will not be able to deal with because of the politics, but do you feel that sometime in the future we are going to have to eventually look at fast track authority permanently for the executive branch, Democrat or Republican? It seems to me that it is almost weakening the Presidency internationally by having us come here every 3, 4 or 7 years and seek new authority. It seems like this should be part of the executive branch's authority——

Mr. KOLBE. I would certainly favor that. I mean, as long as you have the process where the negotiation has to take place simultaneously with whomever the countries you are negotiating or the groups you are negotiating with and Congress at the same time, so they are completely involved with it, I see no reason why we have to come back each time to get this approval to go on to one phase or one particular negotiation.

Yes, I would favor something, certainly, perhaps with a sunset to it, that every 5 years it must be renewed or something like that, but there has to be something that is a broader kind of authority.

Mr. MATSUI. Thank you. I thank both of you.

Chairman CRANE. Ms. Waldholtz.

Ms. WALDHOLTZ. Thank you, Mr. Chairman.

Gentlemen, I think it is very clear that we need to come up with some sort of mechanism to allow the United States to compete effectively in the world marketplace so that nations dealing with us know that the President has the authority to do what he is doing and that we will act promptly.

My concern is that the recent economic problems experienced by Mexico after signing NAFTA has eroded some of the public's confidence. Perhaps in the process, not simply in that particular agreement. It has raised concerns about whether we really know what we are doing as we enter into these agreements. Even the name "fast track" gives the public some concern that we are doing things in a way that, perhaps, does not reflect the care that they expect of the deliberative process.

Leaving aside the argument as to what happened in Mexico, I do not want to get into that at this point, are there some procedural safeguards that we can structure into fast track authority on which the public can rely in having confidence that this procedure, instead of being a quick procedure, as the name implies, actually gives the public confidence that we are doing the necessary review to know exactly what we are entering into at the time the Congress approves it?

Mr. RICHARDSON. Let me say that I think that is an excellent suggestion. I think you are absolutely right. There has been an erosion of public confidence in trade, the internationalist process, and the peso crisis was the reason for this. This is why, before you arrived, I commended the subcommittees for holding this hearing at this time, in effect, waiting for the peso issue to subside a bit. Although, I am not sure it is totally over; I hope so.

But I think we must move on, and what I would endorse is that the subcommittees include some of the language you just said, that reflects public input.

We do not have a bipartisan international support for trade. You try to build support for GATT and NAFTA in the country and peo-

ple yawn. It is not there. There is a nativist movement in this country that is going the other way. So I would think we need stronger public education, but at the same time, there is no reason why, in your legislation, you cannot say things like that and find ways to implement them.

I would also want the Congress to be involved. Jim and I agree on a lot of things, but giving the executive branch unlimited authority forever, I think, is not the answer. That totally cuts us out. I think some of the reflections that you have made need to be brought in, and the way we bring them in is by considering these agreements.

I would say a 5-year agreement might not be too long, but an unlimited agreement is the kind of blank check that I do not think we want to give any administration, because we, as representatives of the people, I do believe, have a say.

Mr. KOLBE. Your question is a superb one, and it really bears a lot of thinking about by the subcommittees.

But I do disagree with my colleague. The very nature of fast track does involve Congress, and I think that is what is misunderstood. First of all, you clearly understand that fast track means anything but fast. It can be very slow, indeed. We probably need to come up with a different name for it. It only implies that once the agreement is made, it is held together as a whole and voted on as an entity. As you understand, the reason for that is that nobody wants to negotiate if it gets picked apart in Congress. So when you are negotiating with another country, they have to know that what is finally done is going to be yes or no in the end by Congress.

The idea of bringing some additional public hearings, additional public input into it, I think, is very wise. We do have an education process, and I hope you ask the people who are behind us when they get up here about that, because I do not think we are doing enough to build grassroots support for trade. As I mentioned, one-third of our entire wealth of this country now depends on it, and it is growing. It is going to be 37, 38 percent after the turn of the century. I mean, an enormous part of our wealth depends on doing business with other countries. We need to continue to move forward in that area, not stand still.

So I do not really have the answer to your question, except that I do think the process does involve Congress. We are involved every step of the way. People just need to understand the perception is sometimes not accurate.

I wish I had time to answer the part about Mexico, go back to Mexico, but we will come back to that some other time.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. No questions, Mr. Chairman. I just want to pay tribute to the two gentlemen who are sitting out there. I think they are the finest example of two Members of Congress working together. They have worked together for a long time, long before NAFTA, on these trade matters. They have trained themselves and become experts in the technicalities of all of it and they have become wonderful, enthusiastic leaders. I salute them and wish we had more like you in Congress. Thank you.

Mr. KOLBE. Thank you.

Mr. RICHARDSON. Thank you.

Chairman CRANE. Mr. Neal.

Mr. NEAL. Thank you very much, Mr. Chairman.

I have a question for our two panelists. When you speak of perception and reality in trade talks, yesterday, Mr. Kantor, who has enjoyed pretty good bipartisan support in this House, he said yesterday in a meeting with the Trade Subcommittee that 25 percent of America's world trade deficit focuses directly on our relationship with the Japanese over autos and auto imports.

Let me ask you this. Do the American people have a legitimate gripe anywhere when we keep talking about the perception, and Mr. Kolbe states a fascinating statistic when he says one-third of our economy is now dependent upon international trade agreements. But do the American people not have a legitimate gripe somewhere along the lines when American goods cannot be sold in places like Japan and places like China?

We talk about how well-served we are by trade, and I acknowledge that Mr. Kolbe is correct, that expanding markets are good for our economy. But at the same time, it seems to me that there are an awful lot of people out there in the hinterlands and in middle America, in particular, that have some legitimate gripes about American trade practices.

I mean, we talk about human rights in China today, and the Chinese have demonstrated no more inclination to address those human rights concerns as they have to try to bring down the size of the deficit that they enjoy, or that we have with them.

My point is that I think sometimes when we talk about being in touch with mainstream America, the truth is that, overwhelmingly—the American people believe we have been ill-served by trade practices. Now, that may be a problem of perception catching up with reality, but I will tell you something. It is out there and it is strong.

When you hear statistics offered like the ones that Mr. Kantor offered yesterday, who is a man of great patience and an individual who, I think, has been largely successful, but there is a compelling truth today, and that is that when you go home and you try to talk about how important international trade is, there is a sense that we have been ill-served by the final product.

Mr. KOLBE. If I might just respond to that, you are correct. We, as elected Members of Congress, I think, have some responsibility to lead in this area. I think the perception is that we are ill-served, that the United States does not get a fair shake.

Let me make it clear that I do not believe that the United States is not without justification in complaining about the trade practices of other countries. I have never suggested that, and Japan is one very good example of that. I will be happy to send you some articles and speeches that I have given on this subject.

I have a difference over the prescription for solving the problem. I think we focus too narrowly on the numbers, the percentages, the access to particular market parts in Japan rather than the systematic deregulation of the Japanese economy that needs to take place. The fundamental problem in Japan is the lack of a direct foreign investment, 1 percent versus the OECD average of 16 percent. Our country is around that average, of 16 percent. There is less direct

foreign investment in Japan today than there was when they eliminated the law that prohibited foreign investment in 1970.

That is the fundamental problem that we have, and that is what we have to address in order to gain access to the Japanese market. It is a very systemic problem, and my frustration with the Japanese is no less than yours or Mr. Kantor's or anybody else. I don't really have the solution to it here, except that there are going to have to be some changes within Japan on that.

Mr. RICHARDSON. Mr. Neal, I will be brief. I support the administration's efforts and actions on Japan. I think they reflect the views of many bipartisan Members of Congress and the American people. I also would hope that our American automakers, if we do get into a trade war, show some restraint in the prices of American cars if we are totally trying to protect the American consumer, that is the victim in a trade war.

I just hope, though, that the administration, which has been very skillful in going to the brink and threatening, in many cases, China and others, can resolve this issue with Japan, because Japan is a very valuable ally. I think they have to recognize that they have to give on this issue and that we may have to give a little. I think it is the worst possible outcome if we get into a trade war. Everybody loses.

But I do think you are reflecting a lot of perception and reality on this subject. There is wide concern about market access that we have in Japan, but let us resolve this through the 301 tools. I hope we do not have to put forth some sanctions, but again, the administration, I think, has to be given credit for going to the brink with several countries and, at the last minute, at midnight, they resolve it. I hope this is what happens with Japan.

Chairman CRANE. I thank the gentlemen for their testimony and look forward to working with them both on a bipartisan basis toward our mutual objectives.

Mr. RICHARDSON. Thank you.

Mr. KOLBE. Thank you.

Chairman DREIER. Mr. Chairman.

Chairman CRANE. Yes?

Chairman DREIER. I would like to ask, it is now 11 o'clock, and as I look at the fact that we have scheduled four more panels ahead of us, if it would be appropriate, Mr. Chairman, if Mr. Bergsten and Ms. Stern could testify together, and then we have panels of four witnesses following that. Would that be appropriate, Mr. Chairman?

Chairman CRANE. I have no problem with that. Are there any concerns Members have?

[No response.]

Chairman CRANE. Then I would like to welcome Dr. Fred Bergsten, director, the Institute for International Economics, as one of our witnesses. Dr. Bergsten is the U.S. representative on and chairman of the Eminent Persons Group created by APEC, Asia-Pacific Economic Cooperation. He is also chairman of the Competitiveness Policy Council and he has served as Assistant Secretary of the Treasury for International Affairs under the Secretary of the Treasury for Monetary Affairs, and Assistant for International Economic Affairs to Dr. Henry Kissinger at the National

Security Council. He has authored 22 books on international economic issues.

Seated next to him is the Honorable Paula Stern, president, the Stern Group, Inc., and former chairwoman of the U.S. International Trade Commission. Dr. Stern is a member of the President's Advisory Committee for Trade Policy and Negotiations and the Advisory Committee of the U.S. and Foreign Commercial Service. She is a senior fellow at the Progressive Policy Institute.

We will proceed first with Dr. Bergsten.

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

Mr. BERGSTEN. Thank you very much, Mr. Chairman.

I am mindful that you have a large agenda today, and I will try to go quickly through my prepared comments.

I start by suggesting that it is imperative that you renew fast track authority. Building on the major successes of recent trade policy that have already been referred to, the future opportunities for U.S. trade policy are immense. The United States can build on the free trade commitments that were made late last year to eliminate barriers in the Asia Pacific region through APEC, in the Western Hemisphere through the Miami summit commitments, and it can pursue unfinished negotiations in the Uruguay round using the new World Trade Organization.

I think all these agreements will promote the interests of the United States for a very simple reason. Although we in the United States have already eliminated most of our trade barriers, most of our trading partners still have very large barriers—particularly the big ones in the Asia Pacific region and in Latin America, those that are growing fastest. So if we can implement these free trade agreements fully, it will clearly help promote U.S. economic interest.

Picking up on the point Mr. Neal just made a moment ago, quite rightly, we have to continue pushing very hard to get rid of barriers, be it in Japan or elsewhere, to pursue our economic objectives. Renewed fast track authority is essential to enable the United States to do so.

Let me quickly tick off several recommendations for alterations in the earlier versions of fast track and try to go directly to some of the questions raised by Mr. Dreier, Mr. Matsui, Mr. Kolbe, and Mr. Richardson when they were here.

First, on the Matsui/Kolbe colloquy that Bill Richardson also chimed in on, I would suggest the following time sequencing for your fast track authority in the future. First, I believe, with Mr. Matsui, that fast track authority should be extended on a permanent basis. The reason is that the United States will need to be negotiating almost constantly with countries around the world, and any administration will be hamstrung in its ability to pursue U.S. economic and foreign policy interests without such authority.

Second, the Congress should be asked to explicitly authorize any major negotiation undertaken under the fast track authority. In other words, give the administration authority permanently but require it to come back to the Congress and get explicit approval to implement that authority in any major given case, such as the APEC, the Western Hemisphere, or a new round in the GATT.

The United States has already begun the effort to eliminate barriers in the Asia Pacific and the Americas. All these arrangements will have big effects on the economy. They, obviously, need to be approved by the Congress. If you put fast track in place permanently, as I suggest, then each approval for a specific negotiation should include its own termination date in order to provide an effective deadline for concluding the authorized initiative.

My third recommendation goes specifically to a point raised by Mr. Dreier. I believe that the new trade legislation should be exempted from the current pay-as-you-go budget rules. I yield to few Americans, as members of the subcommittees know, in my zeal to deal with the budget deficit. I supported the balanced budget amendment, which was not popular in all quarters. I support very strongly the efforts by the Senate and House Budget Committees, announced in the last couple of days, to finally get rid of our budget deficit. But I do not see any inconsistency between zealous support for budget prudence and exempting trade legislation from the PAY–GO rules. There are three reasons.

First of all, every analysis shows that trade liberalization strengthens our economy and strengthens the budget. My colleague, William Cline at the Institute, did a paper on that last year. I would be happy to share it with you.

Second, we know that requiring budget offsets in trade legislation fundamentally conflicts with the purpose of fast track. Fast track intends to assure America's trading partners that the trade deals negotiated in good faith will be considered promptly and on their merits without procedural impediments, but as we saw in both the NAFTA and Uruguay round experiences, that the PAY–GO requirements clearly create such impediments. So I believe any new trade legislation should take the occasion to break the linkage with the PAY–GO rules.

Third, trade negotiations lead to generous legislation dealing with international factors and the role of other countries. Such an exemption, therefore, does not set unhappy or unfavorable precedents for dealing with the budget problem more broadly.

I would quickly add three or four things I think you should not do in the new legislation. First, I think it would be a mistake to explicitly link fast track authority to negotiations on environmental and labor standards. Both issues are extremely important and need to be addressed in their own rights. At my institute, we have either published or will shortly be publishing studies on both of those issues.

But current law already recognizes the importance of linking trade to labor standards and to environmental protection, so no new mandates on the topic are required. Moreover, trade agendas change over time. It would be inappropriate to condition the implementation of fast track, particularly if you do it permanently, as I recommend, on any set of contemporary issues, no matter how significant they may seem at a given moment.

At the same time, a la Congressman Matsui, I agree that it would be wrong to explicitly reject covering any important issues. Leave it as it is now. They are referenced in current legislation. The administration of whatever stripe, I think, will be prepared to pursue those issues, given their importance.

Second, we should not pursue any further trade negotiations without fast track authority. Congress could in fact authorize a negotiation, with Chile or another country, without fast track. The administration could try to negotiate without it. But I do not think it could conceivably succeed. Other governments would simply not negotiate if they did not know what the story was.

If a foreign government proceeded without fast track in place, it would know it could face a second bite from the U.S. Congress. If its officials in fact did a deal with the administration, I think they would hold back. They would not put their best offers on the table because they would fear Congress would then come along and ask for more. That means Congress would de facto become the trade negotiator. That is certainly a bad idea. I think, therefore, that the whole notion of operating without fast track should be avoided.

You can see what that would mean in the current pending Chilean negotiation. If you had amendable legislation, some of the protectionist interests would come in and try to carve their sectors out. But because Chile is small, it would be hard to mobilize the Business Roundtable, the gentlemen behind me, to make a strong push on the other side. As a result, you might not faithfully implement the deal done with the Chileans and you might set some very unfavorable precedents for future negotiations.

Therefore, my bottom line is to stick with fast track. It is a proven entity. It works very well.

Third, it would be a mistake to limit the renewal of fast track to Chile or any single country or any limited group, because then, again, you would have the narrow interests who did not like particular aspects of such a deal coming in and opposing it. It would be harder to mobilize the broad national economic interests to counter and get a broadly favorable outcome from the standpoint of the national interest. I would recommend, if that were the choice, further delay on Chile rather than to move ahead either without fast track or with fast track limited to the single case.

One final point. I think, as you renew fast track, it would be prudent to renew the previous procedure whereby the President starts the fast track clock ticking when he submits the legislation under the authority of fast track. There has been some suggestion of shifting that authority, perhaps to the Congress itself or elsewhere. I think that would be a big mistake. The Presidential submission of legislation to start the clock ticking, and, therefore, implement the fast track, is an integral part of that whole system and should not be undercut.

The bottom line is that we have a unique congressional system of government. It poses unique problems for our international economic relationships. The Congress obviously has to play a central role in all these issues, but our trading partners also have a legitimate right for expeditious address of international agreements.

Fast track is the creative solution to this problem that was worked out on a bipartisan basis over 20 years ago. As Congressman Rangel suggested, it has been successfully implemented on a bipartisan basis ever since. It is a proven success. Its renewal is essential. I urge the Congress to do so along the lines suggested as soon as possible.

[The prepared statement follows:]

RENEWING FAST TRACK

Statement by

C. Fred Bergsten*
Director
Institute for International Economics

Before the
Subcommittee on Trade
Committee on Ways and Means
US House of Representatives

May 11, 1995

The Imperative of Renewal

The past two years were the most successful in the history of American trade policy. The "triple play of 1993" comprised Congressional passage of NAFTA, the launching of a "Pacific economic community" via the APEC summit hosted by President Clinton in Seattle, and conclusion of the Uruguay Round negotiations in the GATT. The "triple play of 1994" included the APEC commitment in Indonesia to achieve free trade and investment by 2010/2020 among countries making up half the world economy, Congressional ratification of the Uruguay Round and the Miami summit's commitment to negotiate a Free Trade Area of the Americas by 2005.

These developments represent enormous achievements for American trade policy, the American economy and our overall foreign policy. The fast track legislative procedure worked out in 1974 made these agreements possible. It was employed explicitly in the NAFTA and Uruguay Round votes. Its presence assured the 17 other APEC countries and 33 other Western Hemisphere countries that they could pursue trade arrangements with the US Administration without facing a "second bite" from separate Congressional efforts.

It is now imperative that fast track be renewed. The future opportunities for US trade policy are immense: implementing the free trade commitments in the Asia Pacific region[1] and the Western Hemisphere, pursuing the several unfinished negotiations from the Uruguay Round, and using the new World Trade Organization to further reduce barriers on a global basis. All these agreements will promote the interests of the United States for a very simple reason: we have already eliminated virtually all of our trade barriers whereas most of our trading partners, particularly the large and rapidly growing markets in East Asia and Latin America, still maintain considerable protection.[2]

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* The views expressed in this statement are those of the author and do not necessarily reflect the views of individual members of the Institute's Board of Directors or Advisory Committee. It draws extensively on the third edition of I. M. Destler, *American Trade Politics*, Washington: Institute for International Economics and Twentieth Century Fund, April 1995.

[1] For an analysis see C. Fred Bergsten, *APEC: The Bogor Declaration and the Path Ahead*, Asia Pacific Economic Cooperation Working Paper Series 95-1, Washington: Institute for International Economics, January 1995.

[2] See the dramatic contrast between the findings of Gary Clyde Hufbauer and Kimberly Ann Elliott, *Measuring the Costs of Protection in the United States*, Washington: Institute for International Economics, January 1994, and those of Yoko Sazanami, Shujiro Urata, and Hiroki Kawai, *Measuring the Costs of Protection in Japan*, Washington: Institute for International Economics,

More broadly, it is essential to sustain the momentum of trade liberalization to avoid backsliding that could close foreign markets to US exports (the "bicycle theory"). Renewed fast track authority is essential to enable the United States to pursue all these objectives.

Amending the Authority

At the same time, experience with fast track over the past twenty years suggests the desirability of several alterations from its previous provisions.

First, fast track authority should be extended on a permanent basis. Given the continuing increase in international economic interdependence, the United States will need to be negotiating almost constantly with its trading partners around the world. Any Administration will be severely hamstrung in its ability to pursue American economic and foreign policy interests without such authority.

Second, the Congress should be required to explicitly authorize any major trade agreement pursued by the Administration. As noted above, the United States has already begun an effort to eliminate barriers to our exports in the Asia Pacific region and in the Americas, and to achieve a wide range of access agreements in the new WTO. All these arrangements will have important effects on the American economy and thus need to be approved by the Congress. If fast track is available permanently, as recommended here, each approval should include its own termination date in order to provide an effective deadline for concluding the authorized initiative.

Third, trade legislation should be exempted from the current "pay-as-you-go" budget rules.[3] Many developing countries still derive an important part of their fiscal revenues from tariffs and are reluctant to liberalize as a result. But it is ludicrous for a highly industrialized country like the United States to resist trade liberalization for budget reasons.

I yield to few Americans in my zeal for eliminating the budget deficit, indeed converting it into a modest budget surplus, and am a supporter of the Balanced Budget Amendment.[4] But there is no conflict between budgetary prudence and trade liberalization: we all know that the latter strengthens our economy and thus promotes the former. We should stop wielding a budgetary gun to shoot ourselves in the trade foot.[5]

Moreover, requiring budgetary offsets in trade legislation raises a fundamental conflict with the purpose of fast track. Its goal is to assure America's trading partners that trade pacts negotiated in good faith will be considered promptly by the Congress without procedural impediments. As demonstrated by both the NAFTA and Uruguay Round experiences, the "pay-go" budget requirements clearly create such an impediment.

Some of the objections to renewal of fast track clearly relate to the inclusion of nonamendable budgetary offsets in the

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January 1995.

[3] The case is elaborated in Steve Charnovitz, "Budget Rules and the GATT," *Journal of Commerce*, March 7, 1994.

[4] See my most recent testimony "Raising the American Standard of Living Through a Balanced Budget Amendment" before the Committee on the Judiciary, United States Senate, January 5, 1995.

[5] See William R. Cline, "Impact of the Uruguay Round on US Fiscal Policy," Institute for International Economics, March 1994.

recent NAFTA and Uruguay Round bills. Some objected to the concept of requiring such offsets. Some objected to specific elements of the individual fiscal packages. Any new trade legislation should take the occasion to break the linkage.

Amendments to Avoid

Past experience also counsels rejection of several other alterations that have been proposed from the previous fast track authority.

Fourth, it would be a mistake to explicitly link fast track authority to negotiations on environmental and labor standards. Both issues are extremely important and need to be addressed in their own rights. Indeed, I believe that we need an entire new international environmental regime and hope that the upcoming G-7 summit in Halifax will take initial steps in that direction.[6]

But current law already recognizes the importance of linking trade to labor standards, and to environmental protection, and no new mandates on the topic are required.[7] Moreover trade policy agendas change over time. It would be inappropriate to condition the implementation of permanent fast track on any set of contemporary issues, no matter how significant they may seem at a given moment. At the same time, it would be an error to explicitly reject the coverage of any important issues under fast track (as some tried to do with the environmental and labor topics last year).

Pragmatically, it is clear that an effort to include environmental and trade issues in this Congress would block any prospect of renewing fast track. The Administration was unable to obtain such legislation last year when its party controlled both Houses. It would obviously be impossible to do so now. Renewal of the legislation is simply too important to be held hostage to any such specific topics.

Fifth, it would be a mistake to pursue any further trade negotiations without fast track authority. Congress could of course authorize a specific negotiation without fast track, or the Administration could try to negotiate without prior authority. Neither course would be likely to succeed, however, because no country would expose itself to sequential negotiations with our executive and legislative branches. Any country that did proceed on such a basis would hold back its best offers from the Administration, knowing that the Congress would reopen the talks; the Congress would then in essence become America's chief trade negotiator, a distinctly undesirable (and probably unconstitutional) outcome.

This issue arises currently in the context of possible Chilean accession to NAFTA. Some observers have expressed the view that a relatively small agreement of this type could be concluded without fast track. But the case illustrates the perils to which I refer:

- amendable legislation to implement a trade accord with Chile would almost certainly attract amendments to bar liberalization in sectors where Chilean exports can compete in the United States, such as wine;

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[6] As proposed in Daniel Esty, *Greening the GATT: Trade, Environment and the Future*, Washington: Institute for International Economics, July 1994.

[7] See Steve Charnovitz, "How 'Fast Track' Got Derailed," *Journal of Commerce*, September 19, 1994.

- given Chile's size, it would be extremely difficult to mobilize major business groups and others to fight such amendments and faithfully implement the negotiated agreement; and

- provisions linked to Chile in such a context could then become either precedents for future and much larger agreements or, more likely, deterrents to our achieving such agreements because other more important trading partners would realize that such precedents had been set.

To its credit, Chile has indicated publicly that it will insist that the Administration possess fast track authority before it will complete any negotiation with the United States. The Chileans are correct and the Congress should avoid any temptation to authorize, or even encourage, any negotiation to reach fruition without fast track.

It would also be a mistake to limit the renewal of fast track to Chile (or any other single country or limited group of countries). The debate over such authority would inevitably encompass all the issues that would attend its extension for much broader purposes, as proponents of particular positions sought to establish precedents for implementing their views more broadly later. The same asymmetry noted above would prevail: narrow protectionist interests would work hard to incorporate their views whereas it would be difficult to mobilize the broader coalitions that accurately reflect overall US economic interests. Hence unfortunate precedents could be set that would severely hamper constructive US trade policy in the future. It would be better to delay the Chilean negotiation than to pursue it under "Chile only" fast track authority (or, as noted above, without any fast track authority at all).

Finally, it would be prudent to renew the established procedure whereby the President starts the fast track clock ticking by submitting trade legislation under its authority. Proposals to shift that authority to the Congress could substantially undercut the fundamental purpose of fast track: assuring our negotiating partners abroad of expeditious Congressional consideration of trade agreements they have concluded with the United States in good faith. Any shift in the power to initiate the timetable would be almost as serious as rejecting fast track itself.

Conclusion

The unique Congressional system of government in the United States poses unique problems for our international economic policy. The Congress obviously has a legitimate right to fully consider, and approve, all international agreements that significantly affect the American economy. At the same time, our negotiating partners abroad have a legitimate right to expect that their agreements with the Executive will be addressed expeditiously, and presumably approved, by the legislative branch.

Fast track is the creative solution to this problem that was worked out on a bipartisan basis over twenty years ago. It has been successfully implemented on a bipartisan basis ever since, providing the vehicle for approving at least four major US trade negotiations (the Tokyo Round, United States-Canada Free Trade Agreement, NAFTA and Uruguay Round). It is a proven success and its renewal is essential to pursue essential American economic and foreign policy interests. I urge the Congress to do so along the lines suggested as soon as possible.

Chairman CRANE. Thank you very much, Dr. Bergsten.
Ms. Stern.

STATEMENT OF HON. PAULA STERN, PH.D., PRESIDENT, STERN GROUP, INC., AND FORMER CHAIRWOMAN, U.S. INTERNATIONAL TRADE COMMISSION

Ms. STERN. Thank you, Mr. Chairman and members of the subcommittees.

I appreciate the chance to present my views on fast track and how it will facilitate executive/legislative branch cooperation and foster American trade objectives. Also, I appreciate the chance to discuss why I believe fast track, with an expansive negotiating objective, is a worthy expression of this Nation's bipartisan determination to continue as the world's economic and geostrategic leader.

Appropriately, you are launching these hearings in the wake of the 50th anniversary of V–E Day. Today's hearings will lay the path for the next half-century of strong U.S. leadership. At the end of World War II, we, as victors, chose to incorporate our adversaries into a world economy that made the whole world better and stronger, and to build on these successes, we need new, long-term strategies for the post-cold war international economy.

I do not intend to talk much about the procedures. I would be happy to answer some of that in the questions. I am here today to discuss the long-term aspects of this issue, not the short-term calculations, whether tactical or political. My objective is to explore the optimal policy positions for this Nation, which I think will be, ultimately, politically realistic and sustainable in the long term. It will stand the test of time, the test of economic benefit, and the test of the electorate.

The trade objectives I outline today build on the successes of the NAFTA and expand on them to include other countries. Although important features of the NAFTA have been obscured lately by the hyperbole of both the proponents and the critics, there are many positive features of the NAFTA model. These include the high economic and legal standards and the broad coverage of areas of great importance to the United States, such as intellectual property rights, investment services, labor, and the environment. They can be expanded beyond North America to enrich our relations with our trading partners all over the world.

There are numerous topics that conceivably will be considered at these hearings. Already, we have heard about constitutional and procedural questions, and on this question that came up in the colloquy earlier with Congressman Matsui, I can envision at least, if not an unlimited grant of congressional authority to negotiate, at least, perhaps, 9 years that spans a full administration plus. That is how long International Trade Commissioners, like myself, were appointed, and that was worked out by the Ways and Means Committee and the Finance Committee so as to have a long-term grant of authority but not an unlimited one. It may be a useful number to look at.

Also, there will be other concerns about timing of when the fast track begins. The fact that the Mexican peso crisis has over-

shadowed some of these discussions is a concern. There are broader concerns involving labor and the environment.

But the most important issue I would like to discuss is the role of fast track in enhancing American economic prosperity and maintaining America's global economic leadership role.

The grant of and broadening of our trade relations over the past 50 years, based on a bipartisan consensus, has meant, to some extent, a shrinking of our global economic dominance. That has been a byproduct. But that has enhanced all of our prosperity, globally and here at home.

Such a relative shrinking of our dominance, however, should not lead to the marginalization of American business, nor to the supplanting of American influence in important areas. That is the reason why, as we fashion the fast track, it is important that we do not shrink the role of the Congress and the executive branch to stand together in speaking with one voice with other sovereign nations.

The point that I would like to make is not only that it is important that we grant this authority, but what it is that we are going after. There are alternative strategies in negotiating with other countries, multilaterally, regionally, unilaterally. I think it is too soon to gauge the changes NAFTA has wrought, but I would simply say that the best answer for the strategies for dealing with other countries lies right here at home, and that is building on the NAFTA.

Clearly, we have enjoyed great gains here at home over the past two generations from global expansion of trade. While I say it is too soon to gauge what NAFTA has wrought, it is clear that, overall, this strategy has been a win-win for American workers and American families and has increased higher skilled, higher paying jobs in firms serving fast-growing overseas markets.

The point is that the NAFTA model has the advantages of being both more comprehensive and deeper than the World Trade Organization rules in any of the areas that we have negotiated.

I think we should take NAFTA globally, ultimately. The Clinton administration inherited the Bush administration's regionalist approach to follow Mexico with Chile, and I support this initiative. But as a global power, the United States should be thinking of how to broaden the NAFTA model and apply it beyond Latin America to capitalize on the economic opportunities which I spell out in greater detail in my longer testimony.

The United States should welcome to NAFTA all nations, regardless of their geographic location, that wish to open their markets reciprocally to trade and to investment, and to undertake the NAFTA labor and environmental standards. These commitments, made by a growing number of nations, could eventually become the basis for broader multilateral agreements.

The most serious current obstacles to discussion about a broader U.S. trade strategy for global leadership were examined in this morning's discussion about labor and the environment. We should resist allowing this very legitimate difference of views among labor and business and the environmental communities to become either a theological dispute or a political football that endangers the country's national interest in expanding trade.

Some object to the renewal of fast track because they do not want to permit the administration to negotiate labor and environmental objectives as part of a trade package, but this objection is puzzling. If you look at the fast track laws passed in 1974 and 1988, as I cite in my longer testimony, including labor rights among the negotiating objectives was very much there. Also, in May 1991, when Congressman Gephardt, who is sitting behind me now, signed and exchanged letters with President Bush and with Congressman Rostenkowski, environmental issues were also dealt with on a bipartisan basis. I urge you to look at my testimony for an expansion of this point.

So, in sum, ultimately, I believe expanding NAFTA to include many, if not all, of America's other trading partners will result in an improved world trading model, and ultimately a World Trade Organization at a higher level. NAFTA has higher economic and legal standards than the WTO; greater coverage than the WTO, such as with regard to intellectual property rights, investment, and services; and more coverage than the WTO to tackle labor and environmental issues that particularly arise when creating trade pacts between developed and developing nations.

In the short term, the United States should work, at a minimum, toward finalizing Chile's accession to NAFTA, a goal that is jeopardized by delaying reauthorization of fast track.

In the last Congress, the President and the Congress spoke with one voice. In spite of the battles—and they were very divisive—we did come together in approving the NAFTA and GATT agreements. Despite all of the pulling and shoving, the United States demonstrated that it understood the requirements of national success in the global economy.

Our postwar experience shows that if we do not lead the way, we put American business, workers, and consumers, indeed, American leadership in a secure world, at risk. The passage of fast track will be a reassertion that America intends to lead and knows where it is going. Thank you.

[The prepared statement follows:]

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NAFTA PLUS: KEEPING TRADE ON TRACK TO HELP AMERICANS PROSPER

Written Statement of
Honorable Paula Stern[1]
Subcommittee on Trade of the Committee on Ways and Means
and the Subcommittee on Rules and Organization
of the House Committee on Rules
of the U.S. House of Representatives

May 11, 1995

Chairmen, members of the Committees. Thank you very much for inviting me to testify before you today. I appreciate the chance to present my views on why fast track legislation will facilitate executive/legislative branch cooperation and foster American trade objectives, and also to set forth why I believe fast track with expansive negotiating objectives will be a worthy expression of this nation's bipartisan determination to continue as the world's economic and geo-strategic leader. Appropriately, you are launching these hearings in the wake of the fiftieth anniversary of V-E Day. Today's hearings will help lay the path for a next half century of strong U.S. leadership. At the end of World War II, we as victors chose to incorporate our adversaries into a world economy that made the whole world better and stronger. To build on these successes, we now need new long-term strategies for the post-Cold War international economy.

At the outset, I want to make clear that I am here to discuss long-term aspects of this issue, not short-term calculations, whether tactical or political. My objective is to explore the optimal policy position for the nation, which I believe will also be the most practical, politically sustainable formula in the long term. My intention is to suggest long-range, politically realistic policies that will stand the test of time, the test of economic benefit, and the test of the electorate -- not to suggest approaches that will work only for this year, this Congress, or this President. And I am here to explore bold policy options and sketch out their domestic political ramifications, not to provide specific legislative language.

In a nutshell, the trade objectives that I will outline today build on the successes of the North American Free Trade Agreement (NAFTA), and expand on them to include other countries. Although important features of the NAFTA have been obscured lately by the hyperbole of both proponents and critics, there are many positive and helpful features of the NAFTA template. These include high economic and legal standards and broad coverage of areas of great importance to the United States such as intellectual property rights, investment, services, labor, and the environment. They can be expanded beyond North America to enrich our relations with our trading partners all over the world, and this should be our objective.

My testimony today draws on 16 years of government experience in the trade policy area, including six years working in Congress. I am also speaking as a long-time student of the relationship between the legislative and executive branches in the area of foreign and trade

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[1]Paula Stern, President of the Stern Group, Inc., an international advisory firm, and senior fellow of the Progressive Policy Institute, is a former Chairwoman of the U.S. International Trade Commission and a member of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN). She acknowledges Raymond P. Paretzky of the law firm of Kaye, Scholer, Fierman, Hays & Handler for assisting in preparation of this text.

policy, a topic that was the subject of my doctoral research and book Water's Edge.[2] I see my theme today as a synthesis of these two areas, since I believe that it is very important that Congress and the Executive Branch speak with one non-partisan voice in the area of trade relations with our overseas trading partners.

I. Getting and Staying on the Fast Track

There are numerous topics that conceivably will be considered at these hearings on whether to extend fast track negotiating authority to the President.

* *There are constitutional issues, both substantive and procedural. They relate not only to the Executive-Congressional checks and balances over the regulation of foreign commerce and the Executive Branch competency to negotiate treaties and agreements, but also to the prerogatives of Congressional committees and the rules governing debate of amendments. For example, one proposed procedural reform is to require that implementing legislation of any fast track trade agreement be limited to provisions required by the trade agreement. A related proposal is one that would exempt international trade agreements from budget rules that require tariff cuts to be offset in the implementing legislation.*

* *There are also timing and diplomatic and partisan tactical issues, especially in light of the recent crisis involving the Mexican peso that has reopened the issues in both political parties that the NAFTA debate exposed so vividly. These partisan issues are not new; it should be noted; they existed in 1974 when a Democratic Congress gave fast track authority to President Ford, and in 1988, when a Democratic Congress gave fast-track authority to President Reagan. These partisan disputes are complicated by the tendency of the rank and file of both parties to take more inward-looking positions than their party leaders.*

* *And there are broader concerns, involving labor and the environment, about which I'll have more to say later.*

The most important issue, however, is the role of fast track in enhancing American economic prosperity and maintaining its global leadership role.

The issue of fast track cannot be considered in a vacuum. It should be part of a discussion on the U.S. role in the post-Cold War international economy. Some statistics illustrate the importance of the role currently played by trade in the U.S. economy:

* *The United States is the world's largest exporter, with 12.8% of all global trade, as compared to 10.5% for Germany and 9.9% for Japan.*

* *U.S. exports, according to the latest Department of Commerce estimates, are projected to experience double-digit growth in 1995, up from 5 to 7% as recently as one year ago.*

* *Trade employs millions of Americans mostly in our most dynamic and competitive industries. Wages in these industries are higher than the national average.*

These trade benefits could not have been achieved without the bipartisan cooperation that marked 50 years of post-war U.S. trade policy and finally brought us NAFTA and the WTO. And these kinds of results cannot be assured for the future without our elected leaders stepping into the shoes of the leaders who came before. Other countries promote trade and investment overseas in their own interest. U.S. efforts in these areas are now at risk because trade-promoting agencies such as the U.S. Export-Import Bank and the Overseas Private Investment Corp. are threatened by budgetary stringency. Weakening or destroying these agencies is a form of unilateral economic disarmament that is particularly untimely now, when U.S. manufacturing and service industries are strong, explosive growth opportunities exist overseas, and there is so much competition for world markets.

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[2]Paula Stern, Water's Edge: Domestic Politics and the Making of American Foreign Policy (Greenwood Press 1979).

If we care about U.S influence globally, we must also recognize that some of our current policies are reducing that influence. A few of these policies we may nonetheless wish to pursue, such as cutting the U.S. defense budget as a percentage of GNP. Reducing the U.S. foreign aid budget like reductions in areas related to trade promotion will cost us trade and other opportunities for American businesses. To some extent, of course, the very success of our exercise of leadership and our post-War policies around the world must result in shrinking U.S. global economic dominance, but it should not lead to the marginalization of American business or the supplanting of American influence in important areas. **What we must avoid is a needless decline in our influence that will result if we legislatively cripple the leadership of the Executive Branch and the ability of the U.S. President, whoever he (or she) may be, to tackle economic problems and to seize market opportunities, through negotiation with our overseas trading partners. When Congress and the Executive Branch stand together, the nation as a whole stands strong.**

As the first generation of American political and business leaders to take the post-Cold War stage, we cannot afford to rest on our laurels in the areas of trade and economic competitiveness. We have an obligation to do things right, just like the generation of leaders after World War II who were "present at the creation," a phrase coined by Dean Acheson, President Harry Truman's Secretary of State. The victory that we won in World War II and in the Cold War that followed needs to be followed by still a third victory. Now, we have an opportunity to demonstrate our leadership once again, in a new era of global economic cooperation and healthy global economic competition. The choice in this global economy is not whether we should be trading or not; the question is how we trade. And in order for the United States to play its desired role in defining these rules, we have to lead in building the structure around the negotiating table.

To be sure, while public opinion polls suggest that there is a strong strain in the American public that wants the U.S. government to assert itself on the world stage, the same public thinks that government is too big and over-extended.[3] When we talk about shrinking government, however, it is important to distinguish between domestic affairs and foreign policy. In domestic affairs, we can devolve power to the states, and even to the localities, so that Americans are governed close to home in welfare, education, crime, and possibly other government services. In the foreign policy arena, in contrast, that paradigm does not work; the nation must speak with one voice, the joint voice of the U.S. Congress and the U.S. President. We need to temper our desire to shrink our government with the reality that our government must be well-equipped and capable of playing its proper role on the world stage in support of real American interests.

Thus, implementation of a trade policy based on enlightened self interest depends on three factors:

* *a strong Executive Branch with the right negotiating tools representing national, not parochial, interests;*

* *a bipartisan Congressional coalition; and*

* *credible fast-track authority to negotiate ever-wider trade agreements that broaden our markets and sustain our economic health and leadership.*

Fast track is vital because it allows the U.S. to demonstrate global leadership while pursing its own economic prosperity. There are several reasons why fast track is an indispensable tool for both the Executive Branch and the Congress if the nation's trade negotiation objectives are to be met.

FIRST, fast track enhances the U.S.'s ability to speak with one voice when addressing other sovereign nations. Only if the President and Congress forge a partnership through fast track can the U.S. exercise credible leadership on the world stage.

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[3]For example, the recently released annual strategic survey of the International Institute for Strategic Studies (IISS) stated that "[w]ith a sigh of relief, Americans feel that the end of the cold war means they need not continue lifting most of the international burden."

SECOND, by giving a President credibility with our trading partners, fast track lays the groundwork for a comprehensive trade strategy as opposed to reactive, ad hoc management of individual trade disputes. History shows that foreign governments resist negotiating "final" agreements which Congress can amend with added demands. Already, in the eyes of our negotiating partners, the lack of fast-track authority last year inhibited the President at the Asia Pacific Economic Cooperation (APEC) summit meeting in November, and it complicated discussions about implementing a credible "after NAFTA" trade plan at the Hemispheric Summit in December, as I further discuss below.

THIRD, fast track allows for rapid U.S. action in response to fast-moving global events. This is particularly important because there is a real danger that American business could be marginalized in several areas of the increasingly interlinked world economy.

FOURTH, fast track establishes a mechanism for the Executive Branch and the Congress to consult closely on trade talks.[4] The recent Uruguay Round implementing legislation is an example of how fast track, far from stifling Congressional input, actually encouraged the administration and the Congress to work together to create and to implement U.S. trade achievements.

FINALLY, fast track allows U.S. negotiators to channel and use pressure from domestic interests to help negotiate improved dispute-settlement arrangements or new international rules with America's trade partners. Without the fast-track option, trade disputes over areas not covered by the rules can fester and lead to demands for unilateral sanctions or retaliation. With fast track, the two branches of government can stand together to define national interests *vis-a-vis* other sovereign nations. This is particularly vital in light of the possible erosion of domestic political support for liberal trade -- aggravated, no doubt, by the recent peso crisis in Mexico.

II. A Trade Architecture for the 21st Century; Alternative Trade Policy Approaches

As important as fast track is, even more important is what results from the decision of the President and Congress to negotiate trade agreements pursuant to fast track procedures. There are many alternative strategies, each with its own advantages and limitations.

* One possible approach is to pursue exclusively multilateral trade negotiations such as the recent Uruguay Round that led to the establishment of the World Trade Organization. A new multilateral trade round is not imminent, however: The world seems exhausted from the last seven-year negotiation process, and the job of getting the World Trade Organization (the successor to GATT) up and running takes precedence. It will probably be 10 years before the next big multilateral agreement on world trade. Thus, while it is preferable to build on the WTO, in the meanwhile U.S. negotiators should pursue other means to that end. As detailed below, building on NAFTA, initiating agreements with as many nations as possible as soon as feasible, can bring us to that end, much as the U.S.-Canada Free Trade Agreement helped jump start the Uruguay Round negotiations, and even as NAFTA itself helped bring closure and coverage at the Uruguay Round in areas such as intellectual property and services.

* The antithesis of the multilateral approach is for the U.S. to pursue a series of unilateral trade actions, such as under our "section 301" law. Reliance solely on this approach is both inadequate and overly broad. It is inadequate because the WTO dispute resolution system has effectively replaced section 301 for many areas of dispute between this country and our trading partners. It is overly broad because the "aggressive unilateralism" associated with section 301 causes friction with our trading partners while doing little to advance world prosperity.[5]

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[4]There may be need for procedural modifications to allow for greater time to review the implementation language for members of Congress who do not serve on the relevant trade oversight and drafting committees.

[5]While there are times when judicious use of 301 is certainly warranted, before targeting any industry for protection or bilateral trade discussions, the United States should review the (continued...)

* A third approach is for the U.S. to enter into a series of separate regional agreements. Many examples of this may be found, including the Bogor APEC declarations and the proposed North Atlantic Free Trade Agreement between the U.S. and the European Union. This method, however, is too slow, requiring a series of painstaking negotiations, each one beginning from scratch. On closer examination, some of these regional schemes are limited to hortatory declarations about the future, with little concrete action to show for a results-oriented U.S. policy. Also, this method of advancing different arrangements with the myriad of regional groupings can lead to a proliferation of different standards for each region or country grouping. This can have a chilling effect on business people trading globally.

The best answer, in my view, lies right here at home: Build on NAFTA. In November 1993, Congress cast a decisive, bipartisan vote for more open trade.[6] By approving the North American Free Trade Agreement, Congress put America on a positive course toward opening world markets to trade and investment. NAFTA's backers argued forcefully and effectively for a strategy of global engagement -- for expanded trade opportunities for both American consumers and businesses. Theirs was a triumph of the national interest over fear, pessimism and the status quo. And we should build on that strength for the future.

III. Putting NAFTA Into Perspective: A Continuum of Trade Liberalization, Trade Growth, and Increasing Global Prosperity

It is too soon to brag about the changes NAFTA has wrought, but we can say with certainty that the United States has benefitted from a period of global trade liberalization spanning two generations. Between 1970 and 1990, trade doubled as a share of U.S. gross national product (GNP). From 1950-80, when exports as a proportion of GNP rose from 7.4 percent to 16.7 percent, per capita income in industrialized nations nearly tripled. From 1986-93, U.S. exports of goods and services accounted for nearly 40 percent of GNP growth.

And there is much potential for these trends to continue. Over the next two decades, 12 countries with a combined population more than ten times that of the United States are expected to account for more than 40 percent of all export opportunities. The Commerce Department recently projected that U.S. exports to these emerging markets will be greater by the year 2000 than combined exports to the European Union and Japan. U.S. trade with Lain America alone could surpass trade with Japan and Europe by 2005. By that same year, future Hemispheric trade will bring an estimated 1.7 million new jobs.

Trade expansion is a boon to average working families, who get greater choices, lower prices on imported goods, and higher-skilled, higher-paying jobs in firms serving fast-growing overseas markets. Trade protection, on the other hand, favors less dynamic business, financial, and labor interests.

Both NAFTA critics and proponents have exaggerated its potential short-term impacts, but its most important features are the new areas it covers and its more comprehensive nature.[7] Overlooking these, foes predicted its passage would result in a flood of cheap foreign goods, an exodus of U.S. firms and investment to south of the border, and a net loss of 550,000 U.S. jobs

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[5](...continued)
relationship of that industry to overall U.S. trade goals.

[6]Indeed, it has been noted that between NAFTA and the WTO, 1993-94 may have been the high watermark for internationalist policies in the United States.

[7]NAFTA remains popular with the American people. According to a recent survey by the Chicago Council on Foreign Relations, half of the public and 86% of leaders believe that NAFTA is "mostly good" for the United States, while only 31% of the public and 13% of leaders think the agreement is "mostly bad."

over 10 years. But in the first year after NAFTA's passage, three-way trade of $348 billion soared 17 percent or $50 billion.[8]

Of course, in the wake of the Mexican financial crisis, critics are anxious to attribute the reversal in the first six months' increase in U.S. exports to NAFTA, despite the fact that NAFTA, a trade agreement, was silent on macroeconomic or monetary coordination. NAFTA is not a monetary agreement, and Mexico would probably have experienced the peso crisis even if NAFTA had not existed. Indeed, NAFTA has prevented Mexico from raising tariffs against increasing U.S. imports, as it might have done had the agreement not been in place, and many of its features will lead to important long-term gains.

IV. Taking NAFTA Global

The Clinton Administration inherited the Bush Administration's regionalist plan to follow up NAFTA talks by holding free-trade talks with Chile to reward its remarkable return to a democratically elected government pursuing economic privatization, liberalization, and deregulation. I support this initiative, as do many on both sides of the aisle. I dare say that passing legislation for a free trade pact with Chile would be far easier than passage of fast track legislation. However, as a global power, the United States should be thinking of how to broaden the NAFTA model and apply it beyond Latin America to capitalize on economic opportunities for U.S. industry and agriculture. And because of the open-accession clause that governs eligibility of future NAFTA members, it is possible to open NAFTA beyond just one country or one region (which was the Bush Administration's original intent).

This nation should boldly reach out to all regions of the world--particularly those in the biggest emerging markets--in pursuit of America's own interest in trade, environment, and labor protection. This can be achieved by extending the NAFTA bridge from the three NAFTA countries--the U.S., Canada, and Mexico--to the rest of the Americas, to Asia, and indeed to Europe.[9]

The United States should welcome to NAFTA all nations, regardless of their geographic location, that wish to open their markets reciprocally to trade and investment, and to undertake at a minimum the NAFTA labor and environmental standards. These commitments, made by a growing number of nations, could eventually become the basis for broader multilateral agreements.

The United States faces the growing challenge of competition with emerging nations of the world. Just as it assimilated World War II-devastated Japan and Europe into a healthy trading system--and forged an agreement between a developing nation, Mexico, and an advanced nation, Canada--now America must tap into the fastest growing regions of the world, Asia and Latin America, and to other emerging economies in Eastern Europe and elsewhere.

Applying the NAFTA approach universally would signal that the admission price to free trade with the United States is the same for all nations. This strategy of extending NAFTA also makes clear that regional initiatives that involve committing the United States to maintain open markets have a place in America's trade policy (1) particularly with emerging democracies but (2) only when the arrangements *exceed* multilateral standards for trade liberalization. In this way, expanding NAFTA is consistent with America's objective of bringing benefits of regional agreements into a multilateral context.

V. NAFTA, Plus

There are two principal ways to build on NAFTA. One is by accession: adding countries, such as Chile, one at a time. The second is by merger: merging with existing groupings of countries, such as the MERCOSUR or the European Union. These methods are not

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[8]U.S. Department of Commerce, NAFTA Facts, Document No. 4003. February 17, 1995.

[9]Future negotiations may be the opportunity both to extend the NAFTA geographically and to improve upon its procedures -- while maintaining NAFTA's major features.

inconsistent; both ways can be used to build on NAFTA, whichever is more appropriate for the country or group of countries at issue.

There are many countries and country groupings that could be added to NAFTA.

* In the Western Hemisphere, there are many opportunities for further expansion. Besides Chile, other nations or groups of nations that could be beneficially added to the NAFTA framework include Bolivia, the MERCOSUR nations (Brazil, Argentina, Paraguay, and Uruguay), Colombia and Venezuela (which with Mexico constitute the Group of Three), the Andean Group, the English-speaking nations known as Caricom, and the Central American nations.[10]

* Asia, Singapore, Korea, and Taiwan have all expressed interest in joining NAFTA. A bridge between NAFTA and Asia could ultimately develop into a *Pacific Area Free Trade Agreement* (PAFTA), although some countries in APEC would resist this idea.[11]

* With regard to Europe, there has been talk of a EU-US to form a *North Atlantic Free Trade Agreement*. President Clinton and Prime Minister Major of Great Britain discussed this possibility at a meeting in Washington last month, and Germany's foreign minister has urged that the idea be studied further. In light of the end of the Cold War, which was an important tie across the Atlantic, a strong geo-strategic argument can be made that there is a need to find other, salient means to maintain this alliance. The disadvantage of a EU-US link is that it will be perceived as a rich, Western European club. This problem could be solved by broadening the union to include the developing economies of Eastern Europe, together with NAFTA (including, of course, Mexico), creating a *Trans-Atlantic Free Trade Agreement*.

All of these geographical options are worthy of consideration.

VI. Trade, Labor, and the Environment

Currently, one of the most serious obstacles to expansion of NAFTA pursuant to fast track is the controversy over labor and the environment. As our economy becomes more open to the benefits of trade, we must also be more sensitive to issues such as labor and the environment. In the national interest, we should resist allowing the very legitimate differences of views among the labor, business, and environmental communities to become a theological dispute or a political football that endangers the country's interests in expanding trade.

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[10]Last year's Summit of the Americas endorsed a *Free Trade Area of the Americas* (FTAA) by the year 2005, while last month, the President of Brazil met with President Clinton to discuss means by which Brazil and the other MERCOSUR nations could make substantial progress toward achieving the FTAA by the year 2000. One could conceive of the MERCOSUR and NAFTA merging. However, although virtually all Latin nations have signed trade and framework agreements with Washington that could lead to negotiations for expanded trade, the benefits granted Mexico will only be offered to other economies that undertake serious and sustained reform effort, and these benefits--and the disadvantages that would accrue to any nation that opts out of the process--provide a compelling inducement to adhere to the reform course.

[11]The allure of the "Asian Economic Miracle" and the attendant idea of a "Pacific Century" that gave rise to the Pacific Community concept have become almost cliches. But the breathtaking reality of the economies of Japan, the Four Tigers (South Korea, Singapore Taiwan, and Hong Kong) averaging almost 6% annual growth over the course of a generation, China since 1979, and the "new tigers" of Malaysia, Thailand, Indonesia (if not Vietnam) remains a monument to Asian export-growth approaches to development that shattered the North-South paradigm. East Asia has clearly become an engine of the global economy and a defining reality of the post-Cold War international system. The challenge for the U.S. is how to balance competing interests and best utilize its many assets—economic, political, strategic—to provide sustained and consistent leadership as a first among equals and to help shape the emerging order in the Pacific with Washington woven into its political and economic fabric. In the long term, it is the engagement of the U.S. private sector that will be the keystone of sustained American engagement in the Pacific in the 21st Century.

Certainly the issues of trade, labor, and the environment have each been considered in separate policy frameworks. But as the NAFTA side agreements demonstrated, these three policies have begun to be closely interrelated, which is why I believe the NAFTA model is so useful. I am not here to suggest specific legislative language, but rather to explore with these committees a formula that is both defensible as a policy and politically pragmatic, taking into account public concerns about job security, labor standards, and environmental protection.

Some object to the renewal of fast track because they do not want to permit the Administration to negotiate labor and environmental objectives as part of a trade package. Their objection is puzzling: Fast-track laws passed in 1974[12] and 1988[13] included labor rights among their negotiating objectives, and in May 1991, there was an exchange of letters regarding NAFTA negotiating objectives including environmental issues worked out between Republican President George Bush, on the one hand, and Democratic House Majority Leader Richard Gephardt and Chairman of the Ways and Means Committee, Dan Rostenkowski, on the other.

A progressive and politically sustainable trade policy requires support from all commercial interests--business, workers, and consumers. To build the necessary domestic political support for future trade initiatives, Congress and the White House must strike a balance to advance worker and environmental goals as well as trade and investment expansion. Rules must be set to achieve sustainable global economic growth that does not degrade the environment and that advances worldwide labor standards. But we must resist tendencies for enforcement actions taken in the name of environmental and labor protection to become masks for trade protection.

Since the United States and its GATT trading partners formulated the objectives of the Uruguay Round a decade ago, many important new issues have emerged to become more prominent, including environmental protection, international recognition of worker rights, and the harmonization of competition or domestic antitrust policies (which also relates to the unfair trade practice of dumping). These issues must be addressed in a balanced, reasonable way to help establish common rules for global competition in an era of economic interdependence.

New trade pacts require new social compacts with American workers. We should link our trade expansion strategy with a social strategy for cushioning the often jarring impact of global competition on American communities. Retooled education and training programs--for example, Job Opportunity Vouchers for displaced workers--should equip Americans to cope with the volatile global economic environment. But our new labor policies also should emphasize the opportunities created by open global trade. These, in my view, far outweigh the dislocations.

The WTO, which has replaced the GATT, has new authority to settle international trade disputes. To ensure domestic public support for open trade, the new WTO rules for settling disputes must be applied fairly and rigorously. The WTO will eventually have to pick up some of the trade, investment, and competition issues mentioned above, but it was not designed to handle the increasingly controversial issues surrounding environmental concerns and international labor standards. New organizations, or reinvigorated old ones, are needed for these tasks. Giving those tasks to more competent world organizations would deflect some of the pressure that is threatening open trade legislation, particularly the renewal of fast-track trade authority. Now that we are free from Cold War security threats, we can attend more to other important goals, including environmental protection and improving labor standard adherence.

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[12]The law listed as a negotiating objective "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT." Trade Act of 1974, Pub. L. No. 93-618, §121(a)(4), 88 Stat. 1978.

[13]"The principal negotiating objectives of the United States regarding worker rights are--
(A) to promote respect for worker rights;
(B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and
(C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade." Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §1101(b)(14), 102 Stat. 1125.

ILO. The value of the 75-year-old International Labor Organization (ILO) should be reevaluated now that it is no longer used as a debating forum for Cold War adversaries. A reinvigorated ILO is the appropriate place to address squarely the issues of unfair labor standards and workers' rights. Trade restrictions against low-wage countries are not the answer to the fears of workers in high-wage nations such as ours. It is far better to channel U.S. diplomatic energies into improving adherence to internationally recognized standards that deal with the issues of forced labor and child labor, for example, and the freedom of association for workers. The Administration should work toward improving the functioning of ILO to address inhumane working conditions, reduce unemployment, and build up enforcement mechanisms in each country to ensure that international standards are indeed applied.

GEO. Likewise, the time may have come also to form a new organization to establish widely accepted, international environmental rules to replace the jumble of different standards and approaches adopted by individual nations. A Global Environmental Organization (GEO) could establish minimal standards based on scientifically accepted data. GEO would provide a single, neutral forum for addressing global or transborder environmental problems. It would develop methodologies and procedures for countries to follow in carrying out their shared commitment to global environmental protection, and it would mediate environmental disputes with established technical competence. Such an organization would also give environmental protection legitimacy and weight in developing countries, where support for environmental concerns is often weak. This will help underscore the fact that ecological security does not have to be sacrificed to gain economic security.

VII. Leading the Way

Ultimately, expanding NAFTA to include many if not all of America's other trading partners will result in a new world template, a WTO at a higher level. NAFTA has higher economic and legal standards than the WTO; greater coverage than the WTO, such as with regard to intellectual property rights, investment, and services; and more coverage than the WTO to tackle labor and environmental issues that particularly arise when creating trade pacts between developed and developing nations.

In the short term, the U.S. should work at a minimum toward finalizing Chile's accession to NAFTA, a goal that is jeopardized by delaying reauthorization of fast track. Delaying Chile's entry into NAFTA would send precisely the wrong signals to our Latin American neighbors and other nations whose governments we are asking to open their markets and liberalize their economies. And it would signal the world that Congress is not prepared to sustain the global economic initiative that is the signature of world leadership.

In sum, the President and the Congress should rebuild a bipartisan public consensus to achieve new authority for the Executive Branch to negotiate future arrangements. The battle over NAFTA and the GATT show that American political leaders, despite much pulling and shoving, still understand the requirements of national success in the global economy. Our whole post-war experience shows that if we do not lead the way, we put American business, workers, and consumers--indeed, American leadership in a secure world--at risk. The passage of fast track will be a reassertion that America intends to lead and knows where it is going.

Chairman CRANE. Thank you very much for your testimony.

I would like to address a couple of questions, first, to Dr. Bergsten, but then, Dr. Stern, have you respond to the same questions.

Ms. STERN. Certainly.

Chairman CRANE. First, how far do you think we can proceed in negotiations with Chile without fast track authority? Second, do you believe that Chile would be willing to negotiate with us without this authority?

Mr. BERGSTEN. The Chileans, to their credit, have said publicly that they are unwilling to conclude a negotiation with the United States unless it has fast track authority. The administration can begin talks but I do not think they can get serious and really come to fruition unless fast track is in place.

Chairman CRANE. Dr. Stern.

Ms. STERN. I concur. I do think we can get very far down the track. I dare say that I can see passage of a free trade agreement with Chile before we even get to resolving some of these serious, broad social issues on fast track. Ultimately, if the negotiations are ripe for finalizing a deal with Chile, then we should just go ahead and finalize Chile and try to get the best fast track legislation later.

Chairman CRANE. Thank you.

Mr. Dreier.

Chairman DREIER. Thank you very much, Mr. Chairman.

I just have one brief question that I would like to pose, and either of you are certainly in a position to answer. Most everyone in this room has strongly supported the Clinton administration's very persuasive arguments that human rights policy in China is improved by exposure to Western values, and that is clearly created by more and open trade.

Having supported that argument, it seems to me that it certainly would carry forward on the issue of both labor and environmental standards. As I say that, I cannot help but think that, as you look throughout the world, clearly, the wealthiest, most productive countries on the face of the Earth are those that have the highest environmental standards and worker rights.

I just wonder if the argument that is used on human rights cannot be carried forward, as we look at this question of labor and the environment.

Ms. STERN. I think it is clear that trade does usher in advancement of other social goals which we, as a democratic nation and a developed nation, wish to see in other countries.

Moreover, we should be enhancing any future trade negotiations with provisions that assure the public here at home that as the United States increases trade with developing countries, American workers have the right to retraining programs so that they can deal with the changes that result from competing with these developing countries. Also, the United States should spend more energy looking at other ways to channel the public's concern about trading with China and other developing countries by using the international labor organization and, conceivably, even creating a new organization to deal with environmental standards on a global basis, a global environmental organization.

So there are ways of channeling some of these legitimate concerns so that they are not all dealt within the context of trade legislation alone. But, I also agree that overall, trade will also help advance these other very legitimate goals.

Mr. BERGSTEN. I fully agree, and I would broaden the point with a personal observation. China began its economic liberalization policies in the late seventies, during the period when I happened to be in charge of the international part of our Treasury Department. There was a big debate at the time as to whether we should bring China into the IMF, International Monetary Fund, and the World Bank, somewhat like the debate today about bringing China into the World Trade Organization.

We moved very quickly to support China's going into the IMF and the World Bank. I believe it is one of the biggest unsung success stories in recent decades, because the World Bank, in particular, played a decisive role in helping steer the Chinese toward market economic reforms, which still have a long way to go but have made enormous progress in 15 years. Those economic reforms, in turn, have certainly improved labor, environmental, and human rights elements in China. Again, a huge amount remains to be done, but the relationship, the correlation, is very clear, and we have proof positive from a U.S. initiative of 15 years ago that those linkages do work.

Chairman DREIER. So pursuing a similar policy as we move ahead with fast track would, obviously, be the most responsible route for us to take, then?

Mr. BERGSTEN. I think so, and I think it would have spillover effects on our broader social objectives at the same time it pursues our immediate economic goals.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Dr. Stern, I think we all agree that for this to be successful, we have to approach it in a bipartisan way. How do you see a balance being struck on the question of labor and environmental issues?

Ms. STERN. As I said, I think we have some good history behind us in 1974 and 1988. I am not here to suggest specific legislative language today. I leave that to you and to the executive branch. But if you go back and look at the labor objectives, for example, that were included in the 1974 act and the 1988 act, they, I think, are a good start.

There was a consensus then and that was at a time when a Democratic Congress was giving, first President Ford and then President Reagan, in 1974 and 1988, authority. This Congress should be able to do the same. So we should, for starters, look at the old legislation.

Mr. RANGEL. I am new on the committee. Why do you not send something to me that maybe we can start talking with the chairman here and see what we can work out.

Ms. STERN. It would be a great privilege.

Mr. RANGEL. Thank you. Tell me, do you ever see an occasion where the question of international illegal narcotic trafficking could be a proper subject to be bringing up at trade agreement negotiations?

Ms. STERN. I understand your concerns about that. I do believe that as the United States integrates more closely in trade as well as in these other arenas that we talked about, that additional goals of the United States, including a reduction of narcotics traffic, are a legitimate objective that will be achieved as we sit at the trade talks.

Mr. RANGEL. But not at that forum?

Ms. STERN. I am sorry?

Mr. RANGEL. At that negotiation, do you see any situation where it could be on that agenda, not where we work out things in the future?

Ms. STERN. I could see it certainly as parallel talks. Then the question becomes, however, does certain behavior by other countries in narcotics trafficking become a condition upon which——

Mr. RANGEL. Strike out condition and sanctions, just an issue.

Ms. STERN. Yes. The answer to you is, yes, I could see them as being parallel discussions, but when we get into conditions and sanctions, that is where we have a——

Mr. RANGEL. Strike that out.

Dr. Bergsten.

Mr. BERGSTEN. I think the parallel approach is the right one. As I said, I would leave the explicit linkage out of fast track, either pro or con.

The goal should be to seek international agreements on labor standards, environmental regulations, and narcotics. I will give you an example. The Montreal Protocol was an international agreement on the environmental problems regarding the CFC contribution to destruction of the ozone layer. It was also agreed to use trade sanctions to implement that environmental agreement because that gave it real teeth.

There were some countries that indicated they would not comply with the Montreal Protocol. They were quietly told that they would suffer trade discrimination if they did not, and they quickly got into line. That is the way to do it effectively.

In the labor standards area, the ILO has a series of agreements that have been referenced before. They need to be dusted off. They need to be beefed up.

Once you get an international agreement on the substance in a given area, then you may ask, quite rightly, should we use international measures, such as trade sanctions, to deal with those who do not adhere to them? In some cases, it will look promising, as with CFCs. In some cases, it may not. But I think that is the right sequence: parallel negotiations and then put in place some sequential links on those issues.

Mr. RANGEL. Those that might be of concern, narcotics, labor, and environmental issues, after they reach an agreement, say, in a lateral way, who do they reach back to in order to even discuss the question of sanctions? Do they go back to the trade negotiators and bring up these unrelated issues?

Mr. BERGSTEN. Fortunately, in the case of labor standards, there is an international institution competent to do that, the ILO. We published a book at my institute about 1 year ago recommending the creation of a global environmental organization to set up the same kind of operation on the environmental side.

Mr. RANGEL. With the ability to include sanctions?

Mr. BERGSTEN. Including the option to pursue that course in cases such as the CFC protocol, where there was widespread consensus on dealing with an environmental problem. Then there would have to be an agreement, essentially, between the two international institutions, the one responsible for the environment and the one responsible for trade. They would talk to each other as equals and work out the way in which trade would be related to the problem.

But, as I said, in the case of the Montreal Protocol, nobody has complained, and, in fact, the sanction worked, even though in a narrow, legal sense it did violate the existing GATT rules.

Mr. RANGEL. Could not narcotics coattail on that theory?

Mr. BERGSTEN. I would think it could.

Mr. RANGEL. Thank you.

Chairman CRANE. Mr. Gibbons.

Mr. GIBBONS. I thank both of the witnesses for their longtime contribution to international economics and international trade.

I like your suggestion, Dr. Bergsten, about how we ought to permanentize the basic fundamental law on fast track, although I admit it is a misnomer as far as the procedure is concerned. I think we have had enough experience with it where we could do that.

I think, as I understand your suggestion, we leave some of these peripheral issues to the actual trade negotiation authorization that the Congress must do before the administration seeks to negotiate. Is that what you are suggesting that we do?

Mr. BERGSTEN. Yes, I think so. I can foresee over the next 5 to even 10 years three very major new U.S. trade negotiations. One would be to implement the Miami commitment to achieve a free trade area of the Americas.

The second would be to implement the Bogor declaration from last November to achieve free trade and investment in the Asia Pacific region.

The third, and I think foretold by the first two initiatives, would be a major new round in the GATT.

Probably all three of those negotiations will address the topics that we are discussing here. They will probably address them in somewhat different ways, depending on their sequencing and the countries that are involved, with each building on the other.

So I think the prudent course would be to create a permanent fast track, with congressional authorization of each individual negotiation. These authorizations would then include negotiating instructions from the Congress to the administration, depending on the circumstances at the time and dealing with each of these issues in a sequential and cumulative way as the process evolves.

Mr. GIBBONS. Thank you.

Dr. Stern, I agree with you. I think we ought to use the basic framework of the NAFTA for our future negotiations, for a few more years, anyway, until we come up with something better. I think that is a good suggestion and I hope all our negotiators in the Congress will follow that suggestion.

Ms. STERN. Thank you. To put a point on that, that is the reason why I have some difficulties with a variety and myriad of commitments, such as when there is a standard in the Bogor declaration

for the APEC from what might be the NAFTA standards. We need to make it clear to all regions of the world that we are not discriminating or distinguishing one from the other.

Mr. GIBBONS. Yes. Dr. Bergsten, you have done a marvelous job in connecting the relationship of the fiscal budget deficit with the trade imbalance in the United States here. For this record again, and for me personally, would you go through and spin that out for us, flesh it out as best you can. Take as much of my time and as much as the chairman will let you have so that this audience and future audiences will clearly understand why we must cure the fiscal deficit first in order to cure the trade deficit.

Mr. BERGSTEN. When the United States runs a large budget deficit, it means that the Federal budget is drawing down the already very low private saving pool in the United States to fund the Federal Government. That leaves very little money left over for private investment, because you can only invest if you have savings to finance it.

We obviously want to invest to keep our economy growing and boost productivity, more than is permitted by our low national saving rate. Therefore, we borrow huge amounts of money from the rest of the world. Consequently, the United States has become the world's largest debtor country, and that number keeps rising by $100 to $200 billion every year.

But when you are a net borrower from the rest of the world and have a capital inflow, that must be offset in the overall balance of payments accounts by a deficit in your current account—that is, your trade in goods and services—because your borrowing from the rest of the world in the immediate sense finances imports of goods and services in excess of what you are exporting to the rest of the world.

The mechanism through which that happens is largely the exchange rate. When the U.S. Federal Government borrows huge amounts to finance a deficit, that pushes our interest rates higher than they would otherwise be. Those higher interest rates suck international capital into the dollar. The dollar is then overvalued, compared to our underlying competitive position, and that makes it very difficult for our firms to compete either in export markets or against imports in our own markets.

So whether you build it up from the domestic distinction between savings and investment or run it through the exchange rate, which is the mechanism through which it happens internationally, the budget deficit produces, almost like night follows day, a big trade deficit. Because we have such a low private saving rate, we just cannot afford to run budget deficits, even of the magnitude that are comfortably taken care of in other countries.

Mr. GIBBONS. Thank you very much. That was a good explanation.

Chairman DREIER. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman.

Dr. Bergsten, you suggested eliminating or exempting trade legislation from the PAY–GO requirements, and then you followed that up by an observation that we know that reduction in tariffs and trade barriers, in fact, increases the revenues to the Federal Government. If that, indeed, is the case, why do we need to exempt

trade legislation from PAY–GO? Why do we not just fix the PAY–GO rules to reflect reality?

Mr. BERGSTEN. You could do that, I acknowledge. The difficulty is the need, if you do it in one area, to do it in other areas. In other areas, I think it is much more difficult analytically to figure out what the net budget effect of a particular legislative action would be.

I suggest eliminating the PAY–GO requirements from trade legislation because trade legislation is so different from other kinds of legislation. Its goal is to implement deals worked out with other countries, yet accommodating those deals to our unique congressional system, where otherwise you would have two independent bites at the apple.

You could do it the way you suggest, but there, being a zealous advocate of getting rid of the budget deficit, and in fact converting it into a surplus, I would worry more about the precedential effect.

The overall environment is, of course, critical. If this Congress pursues and implements effectively what the two Budget Committees have proposed in the last 48 hours, and we are really on a glide path to a budget balanced by 2002, then, of course, a lot of these things could be reassessed. But at the moment, I would prefer the exemption route simply to protect the overall budget integrity.

Mr. ZIMMER. So you do not think there is a technical reason why you could not establish a reliable dynamic economic model to reflect the real impact of a trade agreement?

Mr. BERGSTEN. You could certainly create a model. You could estimate the effects. No one could tell you with a hand on the Bible that these estimates represented exactly what was going to happen, but in the case of trade, we do have a very good historical record to draw on and empirical relationships that could be used.

My fear is simply that in other areas—tax changes, for example, or perhaps some other spending changes—you are just not as sure of what the dynamic or spillover effects would be, and you might not be able to get evidence that is as reliable from the past that would guide the future.

Mr. ZIMMER. In exchange for the exclusion from the PAY–GO rules, or in addition to the exclusion from the PAY–GO rules, would you also change the fast track guidelines so that there would not be revenue-raising provisions in trade bills, strictly to offset any anticipated losses? That is what has brought us into a lot of controversy and a lot of needless agony.

Mr. BERGSTEN. That is right, and that was part of my reason for making the proposal. A lot of the debate in both the NAFTA and Uruguay round fights was over this issue. I think that is a violation of the basic purpose of fast track. These debates brought in issues that were irrelevant to the international negotiation, albeit necessary for our domestic purposes, but really diverged significantly from the original concept and therefore, I think, ought to be handled separately.

Mr. ZIMMER. Dr. Stern, do you have a response?

Ms. STERN. On the point about setting a precedent, if you remove the PAY–GO for trade legislation, you will have clever economists coming in with models that they have created on why other propos-

als would "be budget enhancing," if you will. Therefore, I think it would set a precedent that might get out of control and then undermine the goal of fiscal integrity that we would like to pursue.

Mr. ZIMMER. You assume those clever economists are wrong. Is it not possible——

Ms. STERN. No, but I think that the outcome of any model would be based on assumptions, and they may not all be shared assumptions. I think you could end up legislating based on subjective judgments which are masked as economic certainty. They may appear to be economically sound but are not really if you examine their assumptions. I do not think that the Members of Congress have the time to go and look at the assumptions that underpin every one of these proposals. The Congress may find itself on a slippery slope.

Mr. ZIMMER. So, in sum, do you agree with Dr. Bergsten's initial recommendation that we simply have an exclusion from PAY–GO rules for fast track legislation?

Ms. STERN. I think that it works in the trade legislation. I must tell you, I do not feel strongly on this subject, how it is handled. I do believe that if it continues to become something that hamstrings the entire Congress from granting the executive branch the necessary negotiating authority, then I would be very happy to see it excluded. But I do not have a strong view one way or the other how it is dealt with.

Mr. ZIMMER. Thank you.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

Fred and Paula, I want to congratulate both of you. Both of you have been experts in the area of international trade, and we appreciate all your expertise over the years. Your testimony was excellent today.

Fred, can I ask you, because I really like and appreciate your suggestion in terms of permanency of fast track with the responsibility of the executive branch coming back to the Congress for specific negotiating authority for a country or for groups of countries, would that include the ability of Congress to, for example, add labor and the environment for specific negotiating areas? That is the first question I have.

Second, should there not be some kind of mechanism set up where you have a fast track of this provision? Otherwise, the Congress could sit on it and not give the President authority, so perhaps there should be some disapproval of the President's request for the right to negotiate.

Could you answer both of those or respond to both of those?

Mr. BERGSTEN. Yes. I think the answer is yes to both. As I said, I would envisage Congress, in its authorization of a specific negotiation, laying out negotiating objectives for the administration. This has been done historically, but it kind of slipped in the NAFTA case. It was not really done explicitly enough.

In many negotiations, the congressional directive has not been very precise. Administrations always like that. It gives them more flexibility, and there is a case for that vis-a-vis the foreign partners. On the other hand, it makes it more difficult when you come back to the Congress to get approval for the deal.

With the enormous increase in the importance of trade to our economy, which Jim Kolbe pointed out, and with the enormously increased engagement of the Congress in this area, as indicated by the NAFTA and Uruguay round legislation, I think whatever additional difficulties might be caused by ironing out precise objectives would be very much worth it in terms of improving the whole process.

I think we are going to need a very big trade policy debate in the country within the next 1, 2, or 3 years over these three major new upcoming negotiations that I talked about. We have essentially completed the first half century of postwar trade negotiations. Border barriers for industrial trade among industrial countries have basically been eliminated. There are a few pockets of protection left, but not much with the end of the Uruguay round.

We are moving into the much more difficult area of getting behind the border and into competition policies, environmental issues, investment policies, government procurement, things that have traditionally been viewed as domestic policy but which, as we see in the current debate with Japan, have huge effects on international flows. Those now quite legitimately and logically become the focus of what we call trade policy, though they are not really trade issues.

As global economic interdependence proceeds, as it will and as it should because it benefits us all, those issues come front and center. That makes a much more complex agenda for trade, if we still call it trade, and I believe, therefore, the issues have to be discussed in some depth and detail with the Congress and with the public before we proceed to free trade in the Asia Pacific, in Latin America, or in another big GATT round.

Mr. MATSUI. Thank you. I appreciate that.

Let me ask you, Paula, a question, because you talked about labor and environment being legitimate issues of negotiation. One of the issues that came up during the NAFTA debate was how far on the environment we go. For example, there was a general consensus that the Mexican laws on the environment were adequate, obviously not as good as our laws, but adequate. So what we did was we put in an enforcement mechanism. Each country must enforce their own laws, and we set up a body in order to make sure that somehow that will happen over the years of this agreement.

The environmentalists were still not happy. They felt that we should go beyond the borders. For example, if we start negotiating with Brazil and we want Brazilian logs to come into the United States, even if they qualify with our standards, do we tell Brazil that your logs cannot be cut in the forest? That is an issue that obviously creates concern for many of us, because then the Japanese, if we start sending logs over there, will say, hey, if you are doing it up in Washington State and you are killing spotted owls, we do not want your logs. So it could be used against us at the same time.

How far do we go on environmental issues when it comes to these, if we make them conditions and if we put sanctions on them? Perhaps you can address that, and Fred, if you want to add to that, as well. But Paula, the question is for you in particular, because you do favor some environmental standards.

Ms. STERN. Yes. If you look back throughout our history, when the United States negotiates with other countries and tries to exert its influence, it has used trade and economics to advance other nontrade goals. So I think it is a legitimate linkage. The issue is how to do it, as you said, and how far do we go.

As a preface, I wish to emphasize that part of my written testimony which talks about channeling America's energies into revitalizing both the International Labor Organization and possibly creating a global environmental organization. I do not believe that the World Trade Organization or the NAFTA template are really adequate to these tasks. We have not achieved adequate consensus on adherence to and enforcement of some of these standards among ourselves or with other countries. So to try to load all of this onto the trade discussions will not get us far enough, fast enough.

While I think that it is legitimate to have these objectives, I do not think that the exact rules or enforcement and sanctions that were in place for Mexico necessarily have to be stated in absolutely the same language for every other country. I applaud your suggestion to adjust the language depending upon which countries or regions you are dealing with. That is absolutely correct; the nation's negotiators have to have flexibility to deal with the different realities of different countries.

On the other more general point of giving authority for the future, I think it may be begging the question to have permanent fast track and then come back to Congress for each new initiative. Fred's idea sounds very good, but I think we have to really examine whether it is not just begging the question.

Thus, we come back to the Congress for each region, whether it is the Asian countries or the Latin countries, we may get into an ad hoc-ism. Then we will not have a strategy which allows for standards which the American public can support that will apply globally and where there will not be exceptions. We may send signals to other countries that the United States will have lower standards for some countries than others, even though we are giving all of them the same free trade access to the United States.

So I think we have to be very careful about papering over in the beginning these important strategic issues and then ad hoc-ing it into the future.

Mr. MATSUI. But could you answer my question on the clear cutting issue, though?

Ms. STERN. On the Brazilian clear cutting and on the Washington State issue, I am sorry. I assume that we do not have scientific-based standards in a lot of these matters, and I think it would be ill conceived to put in sanctions until we have the agreed standards, and I do not know that we have them, for example, on the logging.

Mr. MATSUI. Fred, do you want to comment?

Mr. BERGSTEN. We need to make a three-way distinction on environmental problems of that type. Does the environmental action of a country adversely affect only its own environment? If so, it should be viewed as up to that country to deal with that problem.

Second, does its environmental practice or lack thereof have a cross-border effect that legitimately hurts a neighboring country? This justifies, in my view, the neighboring country taking it up

with them in negotiations, and that was the case in NAFTA on the issue of the Mexican border.

The third type of environmental problem is where there is global economic damage. That was the case with the effect of chlorofluorocarbons on the ozone layer. That may also be the case with Brazilian clear cutting because of the effect on greenhouse gases.

So you have to make a distinction as to the extent of the environmental damage caused by a particular country's practice in determining what is the appropriate remedy. Then, if you can get agreement to apply a remedy, you have a clear basis to do so, as I said before, including the possible use of trade sanctions once there is a widespread agreement that the practice can be effectively dealt with in that way.

Chairman DREIER. Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Dr. Stern and Dr. Bergsten, thank you for being here and thank you the very positive contributions you both make in terms of U.S. trade policy and international trade policy.

Mr. Zimmer covered the area that I wanted to talk about. He did it very thoroughly, and so I will yield back the balance of my time. Thank you.

Chairman DREIER. Thank you very much.

Thanks to both of you for your very helpful testimony. We appreciate your being here and recognizing our time constraints.

Speaking of time constraints, I would now like to recognize the distinguished minority leader of the House, Mr. Gephardt, who, I understand, has a meeting in just a few minutes.

We welcome you, Mr. Leader, and look forward to your testimony. You can certainly summarize, if you wish.

STATEMENT OF HON. RICHARD A. GEPHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. GEPHARDT. Thank you very much, Mr. Chairman and members of the subcommittees. I am pleased to be here. I am on a tight timeline and I will go through this real fast. Maybe if there could be a question or two, I would be happy to answer, but I may have to leave at that point.

Mr. Chairman, you may recall that when President Bush came to the Congress in 1991 for fast track authority, I supported his request but only after an extensive discussion and negotiation about what the authority would be used for. In fact, I offered a resolution on the House floor along with the fast track extension that outlined our specific objectives. The action plan that President Bush negotiated at that time addressed a broad number of issues relating to the GATT Uruguay round and the North American Free Trade treaty negotiations.

Today, in the absence of that kind of action plan, and I think we could get one if we work at it, I do not believe we should offer open-ended fast track authority. The Constitution vested in the legislative branch the authority over international trade. Before we grant this authority with the presumption that there will be no amendments, we should know what we are giving the authority for. We should know what we are trying to achieve in the first place.

This does not mean that the President cannot negotiate, but if he wants a process that restricts Congress' ability to offer amendments, then we have a right and an obligation to find out exactly where the fast track leads.

The fast track represents a partnership between the Congress and the executive, and while I appreciate the role of your two committees, the Rules and Ways and Means Committees, I must say that the interests of all Members of Congress representing all the people of the country must be included. The only way we can develop broad public support for trade agreements is if there is a full and open debate on all of these issues.

Let me also say that the administration has begun negotiations with Chile for accession to NAFTA. If, at the end of the process, we can agree on what our objective should be, then I believe we should limit the fast track extension to this one issue. If the administration can define what it will do with fast track in other areas, we can then examine whether we should further broaden the authority.

Finally, as most of you know, I believe that trade involves a great deal more than simply tariffs and traditional trade issues. For example, I do not understand how you can have a free trade agreement with a country that does not have a free labor market, a free capital market, or a real political and economic reform so that working people actually see some benefit from free trade.

Let us remember that a free trade agreement is really an attempt to marry different economies. That means we need to ensure the greatest compatibility between our economies in the long term, and we need a good prenuptial agreement to establish the ground rules.

I would ask that Members maybe look at my testimony. It is more complete. It addresses a whole range of issues. I am sorry we do not have more time, and I thank the subcommittees for letting me be here to make this testimony today.

[The prepared statement follows:]

Summary of
Testimony By House Democratic Leader Richard A. Gephardt
Ways and Means Trade Subcommittee
and House Rules Subcommittee on Rules and Organization
Hearing on Fast Track Authority
Thursday, May 11, 1995

Broad v. Narrow:

It is premature to offer the President fast track authority.

In the absence of the kind of action plan that was negotiated in 1991, I don't believe should offer open-ended fast track authority. We should know what we're trying to achieve in the first place.

If we can agree on what our objectives should be, then I believe we should limit the fast track extension to Chile. If the Administration is prepared to define what it will do with fast track authority in other areas, we can then examine whether we should further broaden the authority.

Negotiating Objectives:

I believe that trade involves a great deal more than simply tariffs and traditional trade issues. For example, I can't understand how you can have a free trade agreement with a country that doesn't have a free labor market, or a free capital market, or real political and economic reform so that working people actually see some benefit from free trade.

During the NAFTA debate I said that I didn't believe that it was enough of a force for progress. I still hold that belief today. This year we are expected to run a trade deficit of more than ten billion dollars with Mexico. We've seen tremendous turmoil in their market. The NAFTA should not be a ceiling on our trade negotiations, it should be a floor.

If we're simply going to allow Chile to join the existing NAFTA, then I don't think we should offer fast track authority. And I would have trouble understanding how anyone who opposed the NAFTA could turn around and say that it looks any better today -- that we should simply extend its provisions to other nations.

Labor and environmental issues must be integral components of any future trade agreements -- not just as side agreements, but as part of the core agreement. And they must be fully enforceable.

We've also got to ensure that there is a broad base for economic and political reform to occur. Mexico's ruling elite refused to allow the benefits of economic reform to flow to all of the Mexican people. The failure to allow broad political reform helped foster an economic crisis that has affected our country as well as theirs.

We must use negotiations to ensure that human rights – including the rights of indigenous people -- are respected, not degraded.

We need to seriously discuss the volatility of today's capital markets, and do all we can to prevent future currency crises, such as the one that occurred with the Mexican peso earlier this year.

We also need a serious discussion about the drug trade.

Another vital issue is the need for a transition program. Too often, this is an afterthought, not an integral part of trade implementing legislation.

Time period:

I don't believe that we should be offering trade negotiation authority – if we are to grant it at all -- for a period that exceeds a President's term in office.

Chairman DREIER. Thank you very much, Mr. Leader. We appreciate your being here.

Mr. Rangel.

Mr. RANGEL. Mr. Leader, do you see the possibility of including the problem that we have with international drug trafficking ever being a proper subject in negotiating a trade agreement?

Mr. GEPHARDT. Yes, I do. Later in my testimony I talk about that. I talk about capital markets, I talk about currency exchange figures, and I think all of that, along with human rights, should be involved in negotiations of free trade agreements.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. I have no questions. I want to thank the leader for his testimony and for being here today.

Mr. GEPHARDT. I thank you.

Chairman DREIER. Mr. Payne.

Mr. PAYNE. No questions. I also want to thank the leader for being with us this morning.

Mr. GEPHARDT. Thank you.

Chairman DREIER. Thank you very much for being here, Mr. Leader.

Mr. GEPHARDT. Thank you.

Chairman DREIER. We are going to recess for just a few minutes, and I will try to get back as quickly as I possibly can, following this recorded vote.

[Recess.]

Chairman DREIER. The two subcommittees will reconvene.

Our next panel is made up of four witnesses from various business associations. We have Jerry Junkins, chairman, president, and chief executive officer of Texas Instruments, Inc., on behalf of the Business Roundtable; Duane Burnham, chairman and chief executive officer, Abbott Laboratories, and chairman of the Emergency Committee for American Trade; William C. Lane, International Governmental Affairs manager, Caterpillar, Inc., on behalf of the National Foreign Trade Council, Inc.; and Robert Morris, senior vice president, the U.S. Council for International Business.

We welcome all four of you and look forward to your testimony. We will begin with you, Mr. Junkins.

STATEMENT OF JERRY R. JUNKINS, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, TEXAS INSTRUMENTS, INC., ON BEHALF OF BUSINESS ROUNDTABLE

Mr. JUNKINS. Thank you, Mr. Chairman.

I appreciate the opportunity to speak to you about what has already been discussed, the pivotal role, and increasingly so, that international trade and investment plays in our economy and the role of the fast track in facilitating the negotiations of these international agreements.

It seems like every time you open the newspaper or turn on the radio or the television, someone is talking about the Internet or the Global Information Infrastructure or the Networked Society. What all this talk really says to me is that we are living in an increasingly interdependent world and technology has certainly linked us to our neighbors in this country and around the world.

Clearly, a similar pattern of increasing linkage is taking place in the international trade and investment area. Our own company invests substantially around the world, and just a quick example, in Taiwan, investment by ourselves and other multinational companies has made it possible for that country to develop its economy and become a major market for U.S. exports. Last year, U.S. exports to Taiwan were about the size of the U.S. exports to Germany, and Taiwan consumed more semiconductors than all of China and the former Soviet Union combined. This clearly is a win-win situation, and there are countless other examples.

Therefore, it is clear that economic isolation is not a viable choice for our nation. The reality is that the world is increasingly and unavoidably interdependent, and what we must do is decide how we can structure our economic interdependence to benefit Americans and safeguard the interests of the American people.

Negotiating bilateral and multilateral trade agreements that lower these barriers to our goods and services and create transparent international rules of trade is certainly part of the answer. But, as has already been stated, we cannot hope to conclude these meaningful agreements if we cannot assure our trading partners that agreements reached with the U.S. Trade Representative won't be negotiated a second time with either Congress or the U.S. private sector.

Therefore, the Roundtable strongly supports the renewal of congressional fast track procedures. On balance, we do not believe that drastic changes in the fast track process are called for. However, four general aspects of the fast track need to be reviewed and reforms considered, and some have already been discussed.

No. 1, we do believe that the Congress should increase its oversight of negotiations in the prenegotiation phase. It is at this point that the specific objectives for actual negotiations are formulated, and it is critical for Congress to have a more structured input at this stage.

No. 2, Congress and the administration should review the process by which legislation is developed to ensure that the full House and Senate are adequately consulted before the implementing legislation is finalized. This recommendation really reflects concerns that have developed and been expressed by Members of Congress during the consideration of GATT and NAFTA, by the full House and Senate that they did not have the opportunity for input before implementing legislation was finalized.

No. 3, and this has already been discussed, the Congress should evaluate, we believe, how to treat revenue loss from tariff changes, since the elimination of foreign barriers to U.S. trade and investment will contribute revenue gains through increased U.S. economic growth. Consideration clearly should be given to exempting trade and investment agreements from these PAY–GO rules.

No. 4, to come to the question of trade and environment, we think what Congress should do is enact fire walls necessary to prevent the fast track process from being used to, one, amend domestic labor and environmental laws; two, to authorize imposition of punitive trade sanctions linked to these labor and environmental policies and practices; and three, to implement international labor and environmental agreements.

The Roundtable believes that environmental, labor, trade, and investment liberalization objectives are all important. However, conditioning an environmental or labor objective on achieving a separate trade and investment objective, or vice versa, we believe, will impede achievement of both objectives.

Last, on the time, the Roundtable believes the fast track should be extended for a period that realistically takes into account the increasingly complicated nature of these negotiations, and given our experience on GATT, it is clear that the extension should be for several years and should be for both bilateral and multilateral negotiations.

The reality is that trading does benefit our economy. We are linked economically with others, and trying to isolate ourselves certainly is not an option if we want to maintain and improve our standard of living and prosper as a nation. If we are to prosper, we must work to shape the environment in which we compete, and the negotiation of these market-opening agreements facilitated by this fast track authority will certainly help us in this effort. Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF JERRY R. JUNKINS, CHAIRMAN PRESIDENT, AND CHIEF EXECUTIVE OFFICER, TEXAS INSTRUMENTS, INC., ON BEHALF OF BUSINESS ROUNDTABLE

Mr. Chairman and members of the Subcommittee, I am Jerry R. Junkins, Chairman, President and Chief Executive Officer of Texas Instruments. I am appearing today on behalf of The Business Roundtable. Thank you for giving me this opportunity to speak to you today. Before addressing the specific issue of fast-track, I would like to comment on the critical importance of international trade and investment to the United States and its companies, workers, farmers, and consumers.

It seems like every time I open the newspaper, turn on the radio or switch on the television, someone is talking about the Internet, the Global Information Infrastructure or the Networked Society. What all this talk says to me is that wefe living in an interdependent world. Technology has linked us to our neighbors in this country and around the world.

A similar pattern of increasing linkage is taking place in the international trade and investment arena. Our own company, Texas Instruments, invests substantially around the world. In Taiwan, for example, investment by TI and other multinational companies made it possible for that country to develop its economy and become a major market for U.S. exports. Last year, U.S. exports to Taiwan were about the size of U.S. exports to Germany, and Taiwan consumed more semiconductors than all of China and the former Soviet Union combined. This is a win-win situation for the United States, since this interdependence results in increased sales for American companies and, therefore, the creation of jobs at home.

The United States seems to be at a crossroads. The Cold War is over, and our pursuit of free market reforms around the world has met with stunning success. Our national economy remains fundamentally strong. However, despite these positive realities, there seems to be some question about whether we as a nation should continue to aggressively pursue trade and investment liberalization around the world. The answer should be a resounding yes, and both the public sector and the private sector should work together to expand trade and investment opportunities around the world.

INTERNATIONAL TRADE AND INVESTMENT ARE CRITICAL TO THE HEALTH OF THE U.S. ECONOMY

The U.S. economy, and U.S. business, have become internationalized. This is a fact of life that we can not, and should not, run from, but rather must embrace. There are those who enthusiastically recognize the nature of today's global economy and the exciting opportunities it presents. Others may seek to hide from the global economy. But we can't run from the reality of globalization, and we can't afford to turn our backs on major opportunities.

We are no longer an isolated economy functioning (or capable of functioning) without significant interaction with other economies.

Since the end of World War II, the importance of international trade to the U.S. economy has grown exponentially. The United States is the world's largest exporter, with $717 billion in exports of goods and services in 1994, accounting for 10.7 percent of overall GDP. From 1986 through 1993, exports of goods and services accounted for an astounding 37 percent of total U.S. economic growth. In absolute terms, total trade accounted for $1.9 trillion in business activity in 1994.

Trade is increasingly important for the world at large as well. In the last year alone, global trade in goods rose 9 percent in volume and 12 percent in value, to over $4 trillion. Compare this to the 3.5 percent rise in world goods production. Moreover, world services trade in 1994 has been estimated at $1.1 trillion.

While some may yearn for simpler days, there is no real way to now unhook the U.S. economy, or any national economy, from the larger global economy.

Trade is good for the economy, good for business, good for farmers, good for workers, and good for consumers.

We have no reason to attempt the impossible and try to hide from the global economy, because it presents enormous, unprecedented opportunities for our nation. I've already mentioned how important exports are to the U.S. economy. This importance continues to increase. In 1994 alone, U.S. goods and services exports grew at an annual nominal rate of 8.1 percent. Merchandise exports grew at a real annual rate of 11 percent, and as for some individual market sectors, consumer goods exports grew at an annual rate of 9.4 percent, and exports of autos and auto parts grew at 8 percent. These growth rates were far higher than the rate of growth for the economy as a whole, which was about 4 percent.

These exports mean huge amounts of money and jobs for the U.S. economy. There are now approximately 11 million U.S. jobs directly created by exports of goods and services; there are about 5 million jobs indirectly supported by exports. Moreover, the number of jobs directly supported by exports has risen 5 times faster than overall jobs in the U.S. economy.

These jobs created by exports pay, on average, higher wages than the average U.S. wage -- for example, jobs directly created by goods exports pay 18 percent higher than the average U.S. wage. Moreover, a significant majority of export growth is in high-wage sectors. Of the $65 billion increase in U.S. exports in the last two years, $15.5 billion was in electrical machinery, $8.4 billion in road vehicles, $4.8 billion in telecommunications equipment, $4.4 billion in computers, and $3.6 billion in general industrial machinery. These are the kinds of jobs this country needs to create for its workers.

Here are some examples of how important trade is for leading sectors of the U.S. economy:

Industry	Exports as Percentage of Shipments (1993)
Computer equipment	43.3%
Aerospace equipment	32.8%
Entertainment	26.2%
Telecommunications equipment	25.7%
Electronic components & equipment	23.6%
Plastics & rubber	22.5%
Personal consumer durables	18.6%

Exports are also key for our farmers. Thirty percent of harvested acreage in the United States is destined for export markets; a third of all U.S. farmers' cash receipts come from export sales. U.S. agriculture sector exports were $50.8 billion in 1993.

And exports just keep growing for important U.S. industries. For example, from 1991 to 1994, exports of semiconductors were up 32 percent, machine tools, 22 percent, and telecommunications equipment, 21 percent. Over the past five years, exports of medical equipment grew an average of 14 percent a year, and exports of motor vehicles grew an average 11 percent a year.

Trade obviously benefits the company that sells goods or services abroad. But trade also has a tremendous beneficial ripple effect in communities and throughout the U.S. economy. Trade benefits suppliers, especially the numerous small and medium sized companies, whose goods are either incorporated into exports or whose goods and services directly support the operations of U.S. exporters. Trade benefits numerous service providers, such as insurance companies and banks that finance an exporting company's activities. The benefits ripple throughout the local community, to the restaurants, stores, and other establishments near manufacturing facilities.

In many instances, those who are benefitting from trade have no idea this is happening. For example, many workers, especially in the smaller and medium sized subcontractors, don't realize that the fruits of their labor are destined for overseas markets, and that exports are responsible for a sizable chunk of their paychecks.

Thus, exports are central to the overall health of our economy. The strength of U.S. exports has spearheaded the economy's growth. It has created high-wage jobs. And it will continue to do so.

Imports have their place, too. They give consumers a greater choice of goods and services, and provide them with goods and services not readily available from U.S. sources. Imports are often needed as inputs into further manufacturing, which facilitate U.S. production and make it more competitive, and hence create more U.S. jobs. Moreover, imports encourage competition and innovation. Walling off producers from competition often results in bloated, uncompetitive enterprises. This does not benefit anyone -- not the company, not its workers, not consumers, and not the nation.

The fact is that the United States is highly competitive in many areas including: semiconductors, computers, computer software (in which the United States has 75 percent of the world market), aerospace equipment, construction equipment, telecommunications equipment and services, financial services, information services (in which the United States has 46 percent of the world market) and entertainment. These are the technologies of today -- and of tomorrow. We must not be afraid to leap wholeheartedly into the opportunities presented by the international marketplace.

A free flow of investment is just as important as a free flow of goods and services.

Not only is trade good for the United States -- international investment is important, too. Far too often, public debate on this issue is shaped by ill-informed and irresponsible rhetoric suggesting that any investment involving a foreign country must be bad. The facts quickly demonstrate how critical foreign investment is for the U.S. economy and for U.S. workers.

First of all, we must recognize that the primary goal of foreign investment is the desire to serve the consumers in the country or region in which the investment occurs, not to find cheap labor or other inputs. Customers, be they users of intermediate goods in their own production operations or end users, demand prompt and reliable service from their suppliers. It is frequently difficult to meet those demands from thousands of miles away in the United States. Customers sometimes need or want to receive their goods from nearby manufacturing facilities. Proximity is even more important for services, of course. Consumers expect their banks, telephone companies, and professionals to be nearby.

In fact, foreign investment by U.S. companies is concentrated in developed countries. If foreign investment were motivated by a search for low cost inputs, developing countries would be the predominant location for foreign investment. But developing countries accounted for less than 22% of worldwide stocks of foreign direct investment in 1992.

Companies are also frequently forced to produce in other countries in order to jump over trade barriers. If we continue aggressively to tear down these barriers, this impetus will be removed. Moreover, overseas investments are often needed to keep U.S. companies competitive. Foreign investment allows companies to enjoy greater economies of scale and scope, and access to important foreign technologies.

It is especially critical to recognize that exports follow investment. From 1982-1990, the growth in exports to affiliates of U.S. multinationals exceeded the growth in exports to unaffiliated foreigners by $14 billion. There is also a direct positive relationship between U.S. direct manufacturing investment in a country and the likelihood of a U.S. merchandise trade surplus with that country. Moreover, U.S. multinationals' foreign manufacturing

investments are not predominantly made to produce goods to send back to the United States -- excluding Canada, only 7.2 percent of sales in 1990 by U.S. foreign manufacturing affiliates were exports to the United States.

U.S. multinationals' net return on foreign investments has been consistently positive, amounting to $48 billion in 1992 alone. In fact, this net return has been the single largest positive contribution to the United States' balance of payments.

Inward investment is good for the United States, too. Foreign-owned companies operating in the United States make important contributions to the nation's economic strength and health and create U.S. jobs. U.S. subsidiaries of foreign-owned companies accounted for 4.7 million U.S. jobs in 1990, and about 10 percent of U.S. manufacturing jobs. Foreign investors in the United States accounted for $91 billion of U.S. exports in 1990. Foreign investors bring funds that enable U.S. companies to expand. They also bring manufacturing know-how and other technology. We should recognize that we operate in a global economy, and welcome the jobs and other benefits of investment from sources outside our country.

Liberalized trade and investment simply means getting governments, both at home and abroad, out of people's economic affairs and letting free markets work efficiently.

The voters have sent a message that they want the government to reduce the level of intervention in their day-to-day lives. They would prefer that markets, not government agencies, make economic decisions. Those of us who believe in markets as the best decision-making mechanism for the economy can immediately see the need for trade and investment liberalization. Barriers to trade and investment impede growth, reduce choice, and result in higher prices, lower quality goods and services for consumers, and fewer jobs. That is why a mainstream consumer group like Consumers Union has generally supported trade liberalization. Artificial isolation from healthy and fair competition for producers results in inefficiency and waste. Governments around the world have recognized these realities, and have been steadily reducing barriers to trade and investment.

The nay-sayers are wrong -- trade is not to blame for the economic problems some perceive in our nation.

Many arguments have been raised against trade and investment liberalization. These arguments, on close examination, don't hold much water.

One argument is that trade is bad because it costs U.S. jobs. It is true that some jobs are displaced by imports. However, trade involves a trade-off -- the gradual shift of jobs from low-productivity, low-competitiveness, low-wage jobs to high-productivity, high-competitiveness, high-wage jobs. Yet far more jobs are shifted because of other factors, most significantly technological change. All these types of job shifts are inevitable. You cannot hide from these realities.

There are always advocates of imposing trade barriers to "protect" jobs. Unless we are willing to reconsider the failed theories of isolated and planned economies, we know that jobs are created by the reality of the marketplace. You cannot permanently freeze jobs into the economy if the realities of technology and competition mandate otherwise. Studies show the exceedingly high cost to the economy of trying to do so; one estimate is that U.S. import protection costs the U.S. economy $70 billion a year, or around 1.3 percent of GDP. Moreover, I have already described how U.S. jobs are created by exports. We cannot effectively promote export growth and open markets abroad while closing our own markets.

I am not underrating the real effects of job loss for individuals. I simply do not believe that trying to freeze our economy in the face of reality is in the interest of this or future generations of workers. Our work force is one of the most diversified and highly educated in the world, and as a very large and flexible economy, we have the ability to absorb

workers into productive and well-paying jobs. Protectionism is not the way to help our workers, our citizens, nor our economy. What we need to do is keep our economy dynamic and open, and promote good, solid, effective training and education to help workers adapt to change.

The Business Roundtable is committed to continue working with Congress and the Administration to develop and implement appropriate governmental education and training programs. We are on record in support of a comprehensive national worker assistance and retraining program and in support of programs to improve the U.S. education system, starting with pre-school children. The Roundtable supports these types of initiatives because in a world of increasing technological innovation, companies must be able to rely on a steady flow of educated, trained, and skilled scientists, technicians, and workers.

Some have pointed to the U.S. trade deficit as evidence that trade is bad for the United States. Actually, we have a trade deficit because we consume more than we produce. The rest of the world provides us with what we demand, so we run a deficit. Also, in the last few years, we have been growing rapidly while our trading partners are mired in recession, so we temporarily import more and export less. The federal trade deficit doesn't help, either. We must also realize that a large portion of our trade deficit consists of petroleum imports, which is not a job-displacing commodity. Another huge chunk is our auto and auto parts deficit with Japan, which is due to special, unique bilateral problems.

When discussing the trade deficit, we should be addressing the low savings rate in the United States, and the high federal budget deficit, not imports. If we can lick these problems, we will have gone a long way to improving the U.S. economy, and the trade deficit will fall in line. Resorting to isolationism and protectionism to "solve" the trade deficit problem will not help the economy.

There are also those who argue that international investment is bad. The data I presented above amply refute this argument. The decision to invest is a very complex one, involving many factors. For example, many U.S. companies invest abroad to boost their sales, which benefits the workers and shareholders back home in the United States. It's especially important to recognize that companies do not go abroad just to find cheap labor; many other factors weigh into investment decisions. The United States is endowed with numerous advantages which make it an attractive place for U.S. companies and foreign companies, including a highly productive and well-educated work force, state of the art communications networks and computer systems, technologically advanced production facilities, a well-developed transportation infrastructure, and stable and sophisticated legal and financial systems. If low wages were the main determinant of investment decisions and manufacturing strength, Haiti and Bangladesh would be economic leaders, not the U.S., Germany, and Japan.

To those who would try to shut the United States off from the world economy, I would point to the experience of the Smoot-Hawley tariff of the 1930s. The United States, in a misguided effort to protect its market, helped spark a worldwide shoving match of protectionism and isolationism, which has been credited with deepening the worldwide depression.

I would also point to the recent trade liberalization undertaken by many developing countries. After years of failed attempts to improve their economies through protectionism, they are converting to the open market, capitalist philosophy and experiencing the highest growth rates in the world. The results have been phenomenally positive. For example, the Argentine GDP has grown at an annual rate between 6.0 and 8.7 percent after the liberalization policies of the current government began to take hold. In all of these countries, people are finding that opening markets, including dropping trade barriers, improves the national economy and the standard of living. It would be ironic for us now to repudiate our own counsel regarding free, open markets after seeing how well it has worked in these newly opened economies.

Constant trade and investment liberalization are needed to improve prospects for U.S. companies and their workers.

The goal of the government and the private sector is, and should be, to expand the U.S. economy and to create jobs for our workers. To accomplish these goals, it is critical that we open and expand foreign markets so we can boost U.S. exports. Congress, the Administration, and the business community, working together, have accomplished a lot towards this goal in the recent past. Most significantly, in just the last two years, the United States put into effect the NAFTA and the Uruguay Round, and negotiated numerous bilateral trade and investment agreements. All these accomplishments have gone far in opening foreign markets to U.S. goods and investment.

However, we cannot stop here. In my industry, if you stop investing in the future, you run the serious risk of falling behind. Trade and investment liberalization is the same -- an ongoing process in which the United States must invest. If we are not in the vanguard of liberalization, we risk falling behind other countries, which are pursuing their own liberalization agendas. Moreover, continued efforts are needed to open up markets in developing countries, markets that will present huge opportunities for this country in the years to come. And lastly, despite recent improvements in world trade rules, trade and investment barriers remain, and new ones may always be erected. That is why it is critical that we aggressively pursue trade and investment liberalization initiatives, such as those taking shape in the Asia-Pacific Region and in Latin America.

Growth in the developing world presents especially important opportunities for U.S. companies and their workers. Developing countries, particularly in Asia and Latin America, lead the world in GDP growth, have steadily increasing middle classes demanding consumer goods, and have high demand for goods and services, especially those needed for infrastructure improvement. The Commerce Department estimates that of the $2 trillion increase in global imports expected in all countries except the United States between now and 2010, 75 percent will occur in developing countries and former centrally planned economies.

Developing countries have a particularly strong demand for products and services for which U.S. companies are highly competitive providers. Examples are capital goods and equipment; high technology equipment and services; and goods and services needed for improvement of infrastructure such as transportation, construction, telecommunications, and environmental protection. Moreover, development builds demand for consumer goods and services, again an area of U.S. predominance. By the year 2010, China, India and Indonesia combined will have 700 million people with annual income equal to that of Spain today. The opportunities for the United States are, frankly, mind-boggling.

We are already seeing significant benefits from these markets. Over 40 percent of U.S. exports now go to the developing world; U.S. exports to Asia (excluding Japan) and Latin America have grown much more rapidly over the last decade than our exports to our major developed country trade partners. In 1994, for example, U.S. exports to developing countries grew at an annual rate of 11.5 percent. Growth of developing country economies and U.S. exports to those countries are predicted to continue rising dramatically.

We need markets, developing and developed alike, to be open to our goods, services, and investment. Although the trend has been positive, we cannot guarantee economic liberalization will continue without our encouragement, and backsliding is always possible.

Moreover, the world will not wait for us, as many countries are pursuing trade and investment liberalization agreements that could leave the United States out in the cold. Already, there are overlapping trade agreements in Latin America that do not include the United States. Some Asian nations have been discussing a trade grouping that would exclude the United States. The European Union has been exploring trade agreements with Latin American nations. In order to ensure that our trading partners don't implement agreements and regimes detrimental to our interests, we must remain engaged, and maintain the

leadership role we have exercised so successfully these many years. This is not a burden for the United States. It is an unparalleled opportunity to shape post-Cold War economic relationships in our interests.

The U.S. population is only four percent of the world population. If we ignore foreign markets, and do not actively pursue liberalization abroad, we risk putting our companies and workers at a disadvantage in competing for the huge prizes for success in the world marketplace, selling merchandise to the other 96 percent of the world's population. We cannot afford to do that.

And let's not forget that economic liberalization abroad benefits the liberalizing country itself, as well as global stability in general. Developing countries around the world have recognized the benefits of liberalization. They have, to varying degrees, abandoned statist, protectionist strategies in favor of openness. The result has been an economic boom. This in turn promotes creation of a middle class, which, along with openness to the rest of the world, promotes democracy and economic and political stability. Thus, economic liberalization advances important U.S. non-economic goals. And, in pure self-interest, we should note that these effects in turn boost the market for U.S. exports.

We recognize that there are many important domestic issues on the national agenda. The Roundtable is as committed as you are to move aggressively on these issues. Nevertheless, the United States cannot afford to lose sight of the fundamental importance of international trade and investment to the health of the U.S. economy and its continued strength in the future. The Roundtable is committed to making the extra effort with you to keep international initiatives high on the national agenda.

FAST TRACK PROCEDURES ARE A NECESSARY TOOL FOR THE NEGOTIATION OF INTERNATIONAL AGREEMENTS TO ELIMINATE TRADE AND INVESTMENT BARRIERS RAISED AGAINST THE UNITED STATES

It is clear that economic isolation is not a viable choice for our nation. If we retreat from the world marketplace in the name of independence of action, the likely result will be a shrinking economy, shrinking standards of living for Americans and the risk that the U.S. will drop from its leadership position to last in line. The reality is that the world is increasingly and unavoidably interdependent. The question we should be asking, therefore, is not "how can we avoid engaging with the world," but "how can we structure our economic interdependence to benefit Americans and safeguard the interests of the American people?"

Negotiating bilateral and multilateral trade agreements that lower foreign trade barriers to our goods and services and create transparent international rules of trade is part of the answer. We cannot hope to conclude meaningful agreements, however, if we cannot assure our trading partners that agreements reached with the U.S. Trade Representative will not have to be negotiated a second time with the U.S. Congress or the U.S. private sector.

During the last thirty years, Presidents Nixon, Ford, Carter, Reagan, Bush, and Clinton all utilized the fast-track process established by the Congress to facilitate international trade and investment negotiations to break open foreign markets for U.S. products and services.

As the Senate Committee on Finance explained in 1974, fast track procedures were created out of a clear and pressing need, because "our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame." The Committee recognized that, as a result, "[o]ur negotiators cannot be expected to accomplish [Congressional] negotiating goals . . . if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits." When the House Committee on Ways and Means endorsed extension of the fast-track process in 1988, it emphasized that the fast-track process preserved a careful

constitutional balance between the Congress and the President, included safeguards against abuse, and had a proven track record.

The reasons given by Congress to justify the renewal of fast-track procedures in 1988 and its extension in 1991 are equally compelling today. There is still a clear and pressing need for fast-track procedures and the careful constitutional balance remains in place.

If fast-track procedures are not reauthorized, comprehensive international negotiations that the United States needs to pursue will be impaired. Our trading partners will be reluctant to complete negotiations with us if they believe that they will have to negotiate the details of the agreement a second time with the Congress and the U.S. private sector. The Roundtable believes that such an outcome will be detrimental to the national interests of the United States.

Fast-track has now been used five times: in 1979 for the GATT Tokyo Round; in 1985 for the U.S.-Israel Free Trade Agreement; in 1988 for the U.S.-Canada Free Trade Agreement; in 1993 for the North American Free Trade Agreement; and in 1994 for the GATT Uruguay Round. Each of these have provided new insights on how to shape fast-track.

On balance, The Roundtable believes drastic changes to the fast-track process are unnecessary. However, four general aspects of fast-track need to be reviewed and reforms considered. First, the Congress should increase its oversight of negotiations in the pre-negotiation phase. It is at this point that the specific negotiating objectives for an actual negotiation are formulated. The types of negotiating objectives set forth in the past have been a good general overview of the key issues, but they are static and out of context. It is more meaningful for the Congress to have a comprehensive and structured input into the development of negotiating objectives in the context of the actual negotiation.

Second, Congress and the Administration should review the process by which legislation is developed to ensure that the full House and Senate are adequately consulted before the implementing legislation is finalized. This recommendation reflects concerns expressed by Members of Congress during consideration of the GATT agreement by the full House and Senate that they did not have an opportunity for input before the implementing legislation was finalized. This is a valid concern. Once implementing legislation is introduced, no amendments are permitted. However, many members of the House and Senate do not serve on the committees involved in preparing the implementing legislation.

Third, the Congress should reevaluate how to treat the revenue loss from tariff changes. Under the pay/go rules, Congress must find offsets for revenue losses. Since the elimination of foreign barriers to U.S. trade and investment will contribute to revenue gains through increased U.S. economic growth, consideration should be given to exempting international trade and investment agreements from the pay/go rules.

Fourth, Congress should enact firewalls necessary to prevent the fast-track process from being used (1) to amend domestic labor and environmental laws, (2) to authorize the imposition of punitive trade sanctions linked to labor and environmental policies and practices, and (3) to implement international labor and environmental agreements.

The Roundtable believes that liberalization of trade and investment is fully consistent with the pursuit of sound environmental policies and improved working conditions throughout the world. While enhanced environmental protection and improved working conditions are not the fundamental objectives of international trade and investment liberalization, the economic growth fostered by expanded trade and investment can provide the financial and technical resources and create the public and private expectations and social choices that are necessary to promote effective environmental protection measures and improved working conditions.

However, the focus of trade and investment agreements should be on liberalizing trade and investment, not on remedying specific environmental and/or labor-related problems. The proper instruments for addressing transborder and global environmental issues and improved world-wide working conditions are international environmental and labor agreements, not trade and investment agreements.

Environmental and labor and trade and investment liberalization objectives are all important. Making progress on one of these fronts should not be held hostage to making progress on the other. These objectives should be pursued vigorously through separate or parallel initiatives. Conditioning an environment or labor objective on achieving a separate trade and investment objective, or vice versa, will impede the achievement of both objectives. Such strict "conditionality" should be avoided.

Attached for the Committee's information are two statements by The Business Roundtable that explain in greater detail The Roundtable's position on international trade and investment initiatives and their relationship to international environmental and labor issues. The first, Protecting the Global Environment and Promoting International Trade: Principles and Action Plan, outlines a set of principles that the Roundtable believes should govern the relationship between trade policy and environmental protection. It also includes a series of initiatives that the U.S. should pursue in order to make significant progress in addressing transborder and global environmental concerns without unnecessary and unwarranted obstacles to continued liberalization and expansion of international trade and investment. The second, International Trade and Investment and Labor: Constructive Approaches, similarly sets out a framework and proposed initiatives to promote improved working conditions throughout the world.

Finally, The Roundtable also believes that fast-track should be extended for a period that realistically takes into consideration the increasingly complicated nature of international trade and investment negotiations. It should be noted that the Uruguay Round took seven years to negotiate and almost another full year to implement. Finally, the Roundtable believes that fast-track should be reauthorized for use in both multilateral and bilateral negotiations. To limit it to one or the other or to specific countries is too restraining and would unduly restrict the United States from taking advantage of unforeseen negotiating opportunities that may arise and accrue to the economic benefit of the United States.

CONCLUSION

The reality is that trading benefits our economy. We are linked economically with others. Trying to isolate ourselves simply isn't an option if we want to maintain and improve our standard of living and prosper as a nation. And if we are to prosper, we must work to shape the environment in which we compete. The negotiation of market opening agreements, facilitated by fast-track authority, will help us in this effort.



The Business Roundtable

May 9, 1995

INTERNATIONAL TRADE AND INVESTMENT AND
LABOR: CONSTRUCTIVE APPROACHES

The United States needs to promote economic growth through international trade and investment, which will improve working conditions throughout the world. The Business Roundtable believes these are complementary objectives: Success in achieving trade and investment liberalization will facilitate improved working conditions.

The relationship between trade and investment policy and labor policy has become a source of intense debate and controversy, both domestically and internationally. The way in which these issues are addressed by policy makers is of enormous importance to the business community and society in general. Consequently, The Business Roundtable has undertaken to formulate a set of general principles upon which the policy debate should proceed.

Principle 1. Trade and investment agreements should focus on achieving trade and investment liberalization, rather than on achieving labor policy objectives.

The principle objectives of trade agreements have been and should remain the liberalization of trade and investment and the promotion of economic growth. Trade expansion and economic growth create social and financial conditions conducive to achieving improved working conditions. The successful conclusion of a trade and investment negotiation should not be compromised or delayed by ancillary efforts to address labor issues by means of an agreement whose fundamental objective is to liberalize trade and investment. The inconsistency of linking between trade and labor policies is particularly troublesome because such conditionality would impede the achievement of both objectives.

For example, there is growing evidence to suggest that increasing trade and investment is having a positive impact on working conditions in developing countries without the threat of trade sanctions or the compulsion of international labor standards. Recent studies of those developing countries that have emerged as world market competitors indicate that their workers are reaping the benefits of the international trading system. Since the 1960's, real wages have increased by 400 percent in Hong Kong, over 600 percent in Korea, and more than 800 percent in Taiwan. In the 1980s, when newly industrialized countries became significant forces to be reckoned with in world markets, real earnings for workers in those countries either kept pace with or exceeded growth in GDP/GNP. Equally significant is the mounting evidence that these economies are also increasing real minimum wages,

sanctions, the United States should pursue cooperative international initiatives. To this end, The Business Roundtable believes the United States should upgrade its participation in the ILO. As the United States Council for International Business has suggested, the Untied States should:

- take more seriously the ILO's work with respect to employment creation and structural adjustment, including both policy and technical assistance activities;
- help revamp and modernize the overly complex system of ILO conventions (which are unworkable, as evidenced by their poor ratification record); and
- promote efforts to improve the ILO's supervisory machinery.

With respect to the WTO, it is not an appropriate forum to address international labor issues in general. The WTO's principal purposes are to facilitate the negotiation of trade and investment liberalization agreements and to ensure their implementation. Attempts to negotiate internationally recognized labor standards in the WTO that are linked to trade sanctions will politicize the WTO to the extent of risking its ability to adequately and effectively perform its mission.

Equally significant, and often ignored, is the plain fact that the WTO's dispute settlement procedures are not structured to address broad social issues. Even if it were possible to overcome the substantial difficulty in agreeing on clearly defined international labor standards, a dispute would involve qualitative and politically subjective judgments of what constitutes injury and how much trade should be sanctioned. For example, the WTO does not provide for collective withdrawal of market access rights (a concept envisaged by many proponents of a WTO labor regime, but in direct conflict with the WTO's fundamental principle that relates the severity of a breach of obligations directly to the level of injury caused).

Conclusion

The Business Roundtable agrees that improving working conditions around the world is an important goal. Economic growth, spurred by trade and investment, is the most constructive path to this objective. In conjunction with trade and investment, cooperative international efforts can also play a significant role. Trade sanctions and conditionality are counterproductive and undermine progress. With this in mind, the United States should promote improved global working conditions by continuing to promote trade and investment liberalization worldwide, while simultaneously pursuing cooperative bilateral and multilateral efforts on labor conditions.

[An additional attachment to this testimony is being retained in the Committee's files]

Chairman DREIER. Thank you very much, Mr. Junkins.
Mr. Burnham.

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

Mr. BURNHAM. Thank you. Good morning. I am Duane Burnham, chairman and chief executive officer, Abbott Laboratories, an Illinois-based manufacturer of health care products. I am here today to testify on behalf of the Emergency Committee for American Trade, of which I am also chairman, in support of fast track authority that will enable the President to negotiate trade agreements on behalf of the United States.

The Emergency Committee for American Trade, or ECAT, as we are more popularly known, is an organization of the leaders of about 60 large U.S.-headquartered multinational companies. ECAT was pleased to have been in the forefront of those who supported the original grant of fast track trade negotiating authority that was contained in the Trade Act of 1974. Without the fast track, there would have been no Tokyo round of multilateral trade negotiations in the seventies, no United States-Israel Free Trade Act, no United States-Canada free trade agreement, no NAFTA, and no Uruguay round.

While we do not have a bill of particulars as to what the details of a new grant of fast track negotiating authority should contain, we do have the following thoughts as to a general outline.

As to duration, we suggest a grant of negotiating authority for a period of at least 5 years. Were foreign trade a less contentious issue than it is, we would suggest a fast track grant for a period far longer than our suggested 5 years in order to provide greater certainty as to the conduct of U.S. trade policy.

As to the scope of trade negotiating authority, we recommend that the authority should be available for either bilateral, regional, or multilateral negotiations. This would enable the President to negotiate a trade agreement with Chile, for example, or with any other country or countries, as may be deemed appropriate.

In addition to authorizing negotiations on nontariff barriers, the fast track should also grant the President the authority to proclaim modifications of U.S. tariffs, subject to such limitations as are determined by the Congress.

As to objectives to be attained through trade negotiations that would be authorized by the new grant of fast track authority, we believe that since the new grant is not being formulated for the purpose of authorizing U.S. participation in a particular negotiation, the negotiating objectives of the fast track should be of a general nature, such as attainment of more open, fair, and reciprocal market access and improved trading rules and provisions that would benefit the U.S. economy.

More specific negotiating objectives would be spelled out and crafted to fit the circumstances of particular negotiations that might be undertaken, pursuant to the basic grant of fast track negotiating authority.

As is known to the Members of Congress, we in ECAT, together with other business groups, are opposed to the inclusion of labor and environmental issues as objectives of trade negotiations. We are in no way, however, opposed to international negotiations on these issues in nontrade forums, such as the ILO or other appropriate bodies of the United Nations, or in other international organizations. In fact, we believe it appropriate that the United States negotiate international agreements to improve labor standards and to safeguard the environment.

We firmly and strongly believe, however, that trade negotiations are not an appropriate forum for such negotiations. Because there is little consensus domestically or internationally on labor or environmental issues, we do not believe that such issues should be considered outside the normal legislative process, as they would be under the fast track procedures applicable to trade agreements.

In addition to opposing labor and environmental considerations being subject to trade negotiations, we in ECAT also adamantly oppose the use of trade sanctions as a means of seeking labor or environmental objectives or of expressing U.S. displeasure with foreign labor or environmental measures. The use of trade sanctions for such nontrade related issues disrupts commercial relations and is costly to U.S. exporters and their employees.

We recommend that other aspects of a fast track extension basically conform to the fast track provisions of the 1988 Omnibus Trade and Competitiveness Act, as amended. These provisions have well served the economic interests of the United States. We would suggest, however, that fast track procedures might be modified to ensure more effective and appropriate consultations with the Congress, both before, during, and after trade negotiations.

We in ECAT and, I believe, others in the business community, are generally satisfied with fast track procedures for consultations with the business community during the course of trade negotiations. We recommend that these be continued.

Before concluding, I would like to comment on the applicability of the congressional budget process to the financial consequences of trade negotiations. Opinion is nearly unanimous that trade liberalization stimulates economic activity with resultant positive economic consequences for the Federal budget. Therefore, we wonder if it would be possible to accommodate these consequences by perhaps removing trade agreements from the budget process.

I thank you for the opportunity to present our ECAT views to you and look forward to working with all of Congress on future matters of U.S. trade policy.

[The prepared statement follows:]

STATEMENT OF DUANE L. BURNHAM, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, ABBOTT LABORATORIES, AND CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE WAYS AND MEANS SUBCOMMITTEE ON TRADE AND THE COMMITTEE ON RULES SUBCOMMITTEE ON RULES AND ORGANIZATION HEARING ON EXTENSION OF "FAST TRACK" NEGOTIATING AUTHORITY

THURSDAY, MAY 11, 1995

Good morning, I am Duane Burnham, Chairman and Chief Executive Officer of Abbott Laboratories, an Illinois-based manufacturer of health care products. Our worldwide sales in 1994 totaled more than $9 billion. We have 50 thousand employees in 130 countries. I am here today to testify on behalf of the Emergency Committee for American Trade, ECAT, as we are popularly known, in support of a grant of "fast track" authority that will enable the President to negotiate trade agreements on behalf of the United States.

I am also the Chairman of ECAT which is an organization of the leaders of about 60 large U.S.-headquartered multinational companies. ECAT member firms account for a substantial portion of total U.S. exports. Their worldwide sales last year were over $1 trillion, and they employ nearly 5 million workers. As can be seen from these figures, ECAT has a keen interest in U.S. trade policy, and has supported trade-expansionary measures over the 28 years of its existence.

ECAT was pleased to have been in the forefront of those who supported the original grant of fast track trade negotiating authority that was contained in the Trade Act of 1974. The fast track was and is an innovative mechanism that assures to our trading partners that those provisions of trade agreements negotiated by the United States requiring statutory action will be considered in a timely fashion by the Congress. Without such assurance, it is a certainty that other countries would not conclude comprehensive trade negotiations with the United States. Without the fast track, there would have been no Tokyo Round of multilateral trade negotiations in the 1970s, no U.S.-Israel free trade pact, no U.S.-Canada Free Trade Agreement, no NAFTA, and no Uruguay Round.

Because we in ECAT firmly believe that these agreements substantially benefit the United States, we are strongly supportive of a new grant of fast track negotiating authority that will enable the United States to enter into new trade agreements designed to enhance our country's economy. We also believe that those who might be disadvantaged by such agreements should be appropriately assisted in coping with any changed circumstances.

While we do not have a bill of particulars as to what the details of a new grant of fast track negotiating authority should contain, we do have the following thoughts as to its general outline.

As to duration, we suggest a grant of negotiating authority for a period of at least five years. We would prefer this to a hyphenated authority such as the one provided in the Omnibus Trade and Competitiveness Act of 1988. That authority was for a period of three years with a qualified provision for a two-year extension. Were foreign trade a less contentious issue than it in fact is, we would suggest a fast track grant for a period far longer than our suggested five years to provide greater certainty as to the conduct of U.S. trade policy. Certainty is critical to the long-range planning that is increasingly necessary for the advancement of the economic well-being of U.S. firms and their employees in a globalized economy.

As to the scope of trade negotiating authority, we recommend that the authority should be available for either bilateral, regional, or multilateral negotiations. This would enable the President to negotiate a trade agreement with

Chile, for example, or with any other country or countries as may be deemed appropriate.

In addition to authorizing negotiations on non-tariff barriers, the fast track should also grant the President the authority to proclaim modifications of U.S. tariffs subject to such limitations as are determined by the Congress. Based on the requirement of reciprocity, we would suggest that the President be authorized to negotiate reductions in U.S. tariffs of 50 percent. The President should also be granted additional authority to negotiate the elimination of U.S. tariffs under such circumstances, for example, as the zero for zero negotiations of the Uruguay Round.

As to objectives to be attained through trade negotiations that would be authorized by the new grant of fast track authority, we believe that since the new grant is not being formulated for the purpose of authorizing U.S. participation in a particular negotiation, the negotiating objectives of the fast track should be of a general nature such as the attainment of more open, fair, and reciprocal market access, and improved trading rules and provisions that would benefit the U.S. economy.

More specific negotiating objectives would be spelled out and crafted to fit the circumstances of particular negotiations that might be undertaken pursuant to the basic grant of fast track negotiating authority. These specific objectives would be developed among the President, the Congress, and the public prior to entering into any trade negotiation. It is likely that the specific objectives of future trade negotiations will concern trade in goods and services, and improved protection for intellectual property rights. However, other objectives such as harmonizing competition policies or guaranteeing national treatment for foreign investments might also pertain to particular negotiations.

In short, we foresee the possibility of differing objectives for different trade negotiations. Therefore, we suggest the generic grant of fast track authority contain only general objectives. Later, specific objectives would be filled in for particular negotiations that might take place during the time frame of the basic authority.

As is known to members of the Congress, we in ECAT together with other business groups are opposed to the inclusion of labor and environment issues as objectives of trade negotiations. We are in no way opposed to international negotiations on these issues in non-trade forums such as the International Labor Organization or in other international organizations. In fact, we believe it appropriate that the United States negotiate international agreements to improve labor standards and to safeguard the environment. We firmly and strongly believe, however, that trade negotiations are not an appropriate forum for such negotiations. We recognize, however, that there are and will be instances where a labor or environmental consideration is directly and necessarily related to a matter subject to a trade negotiation. Such an instance might include sanitary or safety matters directly related to a trade agreement involving an agricultural or industrial product.

Because there is little domestic or international consensus on labor and environmental issues, we do not believe that such issues should be considered outside the normal legislative process as they would be under the fast track procedures applicable to trade agreements.

In addition to opposing labor and environmental considerations being subjects of trade negotiations, we in ECAT also adamantly oppose the use of trade sanctions as a means of seeking labor or environmental objectives or of expressing U.S. displeasure with foreign labor or environmental measures. The use of trade sanctions for such non-trade-related issues disrupts commercial relations and is costly to U.S. exporters and their employees.

We recommend that other aspects of a fast track extension basically conform to the fast track provisions of the 1988 Omnibus Trade and Competitiveness Act, as amended. These provisions have well served the economic interests of the United States.

We would suggest, however, that fast track procedures might be modified to insure more effective and appropriate consultations with the Congress both before, during, and after trade negotiations. In this way Congress can be a more effective participant in the whole negotiating process. This, for example, might require extending the 60-day notification requirement of intent to enter into trade negotiations to a somewhat longer period, of perhaps 75 days, to enable more extensive consultation between the Administration and the Congress on the nature and objectives of proposed negotiations before actually initiating them. This would enable the views of the Congress to be more effectively obtained and represented in the framework of negotiations. Similarly, the 90-day notification requirement of intent to sign a trade agreement might be extended to 120 days for the same purpose.

We in ECAT, and I believe others in the business community, are generally satisfied with fast track procedures for consultations with the business community during the course of trade negotiations. We recommend that they be continued. Our earlier suggestion that the 90-day notification requirement of intent to sign a trade agreement be extended to 120 days would afford the business community, particularly the advisory committees to the USTR and other agencies, needed time to evaluate and offer views on the proposed agreements.

Before concluding, I would like to comment on the applicability of the Congressional budget process to the financial consequences of trade negotiations. Opinion is nearly unanimous that trade liberalization stimulates economic activity with resultant positive economic consequences for the federal budget. Therefore, we wonder if it would be possible to accommodate these consequences, perhaps by removing trade agreements from the budget process. Otherwise, the future of U.S. trade policy might inappropriately be held hostage to questionable economic assumptions. This would be to the detriment of the U.S. economy, its firms, and its workers, and the countries with whom the United States trades.

If it is decided to leave trade agreements in the budget process, we suggest some revision of the rules to provide more flexibility in selecting the items to constitute the financing package. This could help to avoid the kind of jeopardy that the financing package nearly caused for the Uruguay Round.

I thank you for the opportunity of presenting these ECAT views to you, and look forward to working with you on future matters of U.S. trade policy.

Chairman DREIER. Thank you very much, Mr. Burnham.
Mr. Lane.

STATEMENT OF WILLIAM C. LANE, INTERNATIONAL GOVERNMENTAL AFFAIRS MANAGER, CATERPILLAR, INC., ON BEHALF OF THE NATIONAL FOREIGN TRADE COUNCIL, INC.

Mr. LANE. Thank you, Mr. Chairman, and thank you for this opportunity to present the National Foreign Trade Council's views regarding a new grant of fast track trade negotiating authority.

Even with the success of NAFTA and GATT, the council believes much remains to be done in order to increase U.S. exports. Trading blocks are forming and expanding in Asia, Europe, and Latin America. If the United States is part of these arrangements, American exporters and workers will benefit from improved market access. But if we are excluded, U.S. firms will be seriously disadvantaged in some of the world's fastest growing markets.

A good example of this is the proposal that NAFTA be expanded to include Chile. By obligating Chile to eliminate its current 11 percent duty on manufactured goods, the United States has an opportunity to not only gain better market access in Chile, but preferential market access. That is because Chile will only eliminate its duties on North American-built products. That means companies like Caterpillar will be able to sell virtually their entire product lines in Chile duty free, while our European and Japanese competitors will continue to be subject to Chile's high tariffs.

For the United States, what is even more compelling is that while Chile must make major trade concessions to join NAFTA, for many sectors of the U.S. economy, no change in U.S. tariffs will be required. The reason is simple. The United States has already eliminated its tariffs on a wide range of products. From beer to bulldozers, from furniture to pharmaceuticals, the U.S. tariff is already zero.

Of course, Chile does not have to join NAFTA. It could link up with the South American trading block, MERCOSUR. But if that happens, it is going to be Brazilian companies and their workers who will benefit from preferential market access in Chile.

Whether the goal is to increase trade in Chile, Asia, or the one continent we never hear about, Africa, the National Foreign Trade Council believes the premise behind fast track authority is still a sound one. For the United States to win meaningful trade concessions from other countries, there must be assurances that Congress will vote on a final trade bill in its entirety. That is why the Council recommends that a new grant of negotiating authority be structured in such a way as to allow America to pursue an ambitious trade agenda.

Consistent with this objective, we believe new authority should be for a long duration. We suggest 6 to 8 years, with flexibility so that the United States can pursue freer trade both within a regional and WTO context.

But the council also recommends that there be an improved fast track provision. We recall that the previous grant of negotiating authority extended fast track treatment to provisions deemed necessary and appropriate. This language allowed Congress to pass,

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TESTIMONY OF WILLIAM C. LANE
INTERNATIONAL GOVERNMENTAL AFFAIRS MANAGER
CATERPILLAR INC.

ON BEHALF OF

NATIONAL FOREIGN TRADE COUNCIL, INC.

BEFORE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
HONORABLE PHILIP M. CRANE, ILLINOIS, CHAIRMAN

AND

SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
COMMITTEE ON RULES
U.S. HOUSE OF REPRESENTATIVES
HONORABLE DAVID DREIER, CALIFORNIA, CHAIRMAN

MAY 11, 1995

Thank you Chairmen Crane and Dreier, and members of the Subcommittees. I appreciate the opportunity to testify today on the matter of extension of the President's trade negotiating authority.

My name is Bill Lane, of Caterpillar Inc., where I am Manager of International Governmental Affairs. I also serve as chairman of the National Foreign Trade Council's Trade and Investment Committee, on behalf of which I appear before you today.

The National Foreign Trade Council (NFTC, Council), founded in 1914, is a broad-based trade association dealing exclusively with U.S. public policy affecting international trade and investment. The Council's membership consists of approximately 500 U.S. manufacturing companies, financial institutions and other firms having substantial international operations or interests. Our members collectively account for over 60% of U.S. non-agricultural exports and a like percentage of all U.S. private foreign investment.

The Council's goal is to develop and advance policies designed to expand U.S. exports, enhance U.S. foreign investment, and improve the competitiveness of U.S. industry.

The NFTC strongly urges Congress to pass legislation this year extending "fast track" trade negotiating authority to the President.

The Council has long believed that it is in the U.S. national interest to provide the President with fast track trade negotiating authority. Equipped with such authority, Republican and Democrat administrations have persuaded foreign countries to open markets and adhere to a common set of trading rules. Fast track has proven vital to America's efforts to increase exports and create U.S. jobs.

via NAFTA and GATT, new revenue measures needed to satisfy congressional PAY–GO requirements.

NFTC believes that such an application of fast track authority was not appropriate. To correct this problem, the council recommends that new authority be more narrowly defined so that only what is required to enact the trade agreement be covered by fast track.

We also believe that new authority should not mandate that trade liberalization be linked to various social objectives. Persuading countries to lower trade barriers is a worthy and difficult pursuit in its own right, especially when U.S. tariffs are already at zero. Further efforts to open markets to American products will be vastly more complicated if trade agreements are encumbered with the added burden of setting labor and environmental mandates.

Mr. Chairman, fast track negotiating authority has allowed Republican and Democratic administrations to persuade foreign countries to open markets and adhere to a common set of trading rules. As a result, U.S. exports have increased and new American jobs have been created. We strongly believe that it is time for Congress to provide the President with new trade negotiating authority.

The 500-member National Foreign Trade Council looks forward to working with both of you and the other Members of the 104th Congress in this endeavor. Thank you.

[The prepared statement follows:]

Even with the success of the North American Free Trade Agreement (NAFTA) and Uruguay Round of GATT Negotiations (Uruguay Round), much remains to be done in order to increase U.S. exports. Trading blocs are forming and expanding in Asia, Europe and Latin America. If the United States is included in these arrangements, American exporters and workers will benefit from improved market access. If excluded, U.S. firms will be seriously disadvantaged in some of the world's fastest growing markets.

A good example of this is the proposal that NAFTA be expanded to include Chile. By obligating Chile to eliminate its current 11 percent duty on manufactured goods, the United States has an opportunity to not only gain better market access in Chile, but preferential market access. This is because Chile will only eliminate its duties on North American-built products. That means companies -- like Caterpillar -- will be able to sell virtually their entire product lines in Chile duty-free, while our European and Japanese competitors will continue to be subject to Chile's high tariffs.

What is even more compelling from the standpoint of the United States is that while Chile must make major trade concessions to join NAFTA, for many sectors of the U.S. economy no change in U.S. tariff rates will be required. The reason is simple. The United States has already eliminated its tariffs on a wide range of products. From beer to bulldozers . . . from furniture to pharmaceuticals, the U.S. tariff is zero.

Of course, lower tariffs is just one benefit of an expanded NAFTA. American firms will also benefit from improved market access for services, enhanced intellectual property rights protection, and better investment rules.

As you know, Chile doesn't have to join NAFTA. It could link up with the South American-based trading bloc Mercosur. If that happens, it will be Brazilian companies and their workers who will benefit from preferential access to Chile's market.

Whether the goal is to increase trade with Latin America, Asia or Africa, the NFTC believes the basic premise behind "fast track" authority is a sound one. For the United States to win meaningful trade concessions from our negotiating partners, there must be assurances that Congress will vote on a final agreement without amendment. Otherwise, negotiators will contend -- correctly -- that a final trade agreement is worthless because it could be "amended to death" by Congress.

But the Council also believes a new grant of negotiating authority should be structured differently from what was included in the Omnibus Trade and Competitiveness Act of 1988.

Following are the key elements of what the NFTC believes should comprise a new grant of fast track trade negotiating authority. We sent our fast track policy statement to each member of the Committees on Ways and Means and Finance in March.

- ***An Ambitious Trade Agenda***: New authority should be broad enough to permit negotiations beyond those required for Chile's accession to NAFTA. Authority should allow America the flexibility to bring other Latin American nations into NAFTA, pursue free trade objectives in Asia and initiate the first, comprehensive round of WTO negotiations.

- ***Six-to-Eight Years of Negotiating Authority***: Persuading countries to liberalize their trade regimes takes time. Consequently, negotiating authority needs to be granted for a long enough period so that comprehensive trade negotiations with Latin America and Asia can be concluded. Consistent with such a lengthy duration, NFTC believes there should be

increased Executive branch consultation with Congress and the private sector. Finally, to lessen the tendency to politicize trade, NFTC recommends that any built-in "fast track" renewals occur off the election cycle.

- ***Limited "Fast Track" Applications***: Previous grants of "fast track" have been too broad and liberally applied. By allowing fast-track treatment of provisions deemed "necessary and appropriate," Congress passed via NAFTA and GATT implementing legislation revenue measures needed to satisfy Congressional "pay-go" requirements. The Council recommends that a new grant of authority be more narrowly applied so that only what is "required" to enact the provisions of a trade agreement will be covered by "fast track."

- ***No Mandate to Link Trade with Labor/Environment***: Labor and environmental issues are important to NFTC members. The Council encourages the United States to pursue its labor and environmental objectives through engagement in such fora as the International Labor Organization, the Organization of American States and United Nations. Furthermore, we believe trade liberalization actually provides the resources needed to improve the environment and enhance worker rights.

  But NFTC strongly opposes calls to condition trade liberalization on meeting certain social objectives. Persuading countries to lower trade barriers is a worthy and difficult pursuit in its own right. Future efforts to open foreign markets will be vastly more complicated if trade agreements are encumbered with the added burden of setting and enforcing labor and environmental mandates.

- ***Limit Use of Trade Sanctions***: NFTC is keenly aware that some of the groups calling for linkage between trade liberalization and labor/environmental issues have a long history of advocating protectionism. It would be tragic if after 50 years of being the catalyst of global trade liberalization, the United States would allow these groups to erect new trade barriers through the back-door means of enforcing non-trade provisions.

  To limit such a possibility, NFTC recommends that a new grant of negotiating authority stipulate that trade sanctions cannot be used to enforce non-trade provisions.

Thank you again, Chairmen Crane and Dreier, for the opportunity to present the Council's views on this important issue. The National Foreign Trade Council looks forward to working with you and the 104th Congress this year to fashion a new grant of Trade Negotiating Authority.

Chairman CRANE. Thank you, Mr. Lane.
Mr. Morris.

STATEMENT OF ROBERT J. MORRIS, SENIOR VICE PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Mr. MORRIS. Thank you, Mr. Chairman.

I wish to make four main points in my testimony today. No. 1, the U.S. Council for International Business favors early renewal of fast track legislation, especially for the proposed negotiations this year for Chile's accession to NAFTA. However, we also recommend that any accession to NAFTA not be used as an occasion to add new provisions dealing with environment or workers' rights into the NAFTA agreement itself.

No. 2, we do favor expanded cooperation with any new free trade partners in this hemisphere in a variety of areas, and we support the negotiation of separate agreements with Chile, and eventually other free trade partners, which provide for programs of enhanced cooperation on environmental and labor matters in particular.

However, we also recommend that Chile and other new partners not be required to accede to the environmental and labor side agreements as reached with Mexico and Canada in 1993. We believe that any separate agreements on labor and environment with other countries should concentrate on encouraging and enhancing cooperation but should not contain coercive or confrontational features. We are particularly opposed to the incorporation of any form of trade sanction to enforce environmental or labor standards or behavior, since such sanctions would be contrary to the objectives of the NAFTA.

No. 3, we recommend that the legislation explicitly exclude the use of fast track procedures for negotiating or approving international agreements concerning labor or environmental matters, whether such agreements include trade measures or not. The legislation should also prohibit the use of fast track to change any U.S. labor or environmental laws. If the U.S. Government believes it is necessary to negotiate international agreements on such matters, and if any particular agreement requires action by Congress, that action should be pursuant to the normal legislative process and not the special fast track procedures.

Incidentally, we do believe there is a need to clarify or even change certain WTO rules to deal with the legitimate needs of environmental policy, but we see no need to make the WTO the preeminent international institution for the enforcement of environmental goals.

Finally, since we are recommending that the renewal legislation contain these specific references to labor and environmental issues, we also recommend that this legislation be the vehicle to deal with a problem which developed in the drafting of section 131 of the Uruguay Round Agreements Act of 1994 concerning future work regarding trade and workers' rights. This section directs the administration to seek establishment of a WTO working party on trade and workers' rights.

There are two problems with this section which we believe need to be corrected. The first is the requirement that the examination of the effects of denial of rights on trade be examined in the WTO,

and the second is in the language of the defined objectives, which carries the implicit assumption that there is a need to consider ways to address the presumed effects of trade on the denial of workers' rights before the examination has even concluded that there are such effects.

We objected to this section at the time that it was being negotiated last summer. Our informal inquiries led us to conclude that Congress had not intended to prejudge the results of that analysis, but the legislated text can be read that way and doubtless is so read by some. We believe this latter problem can be addressed by relatively simple changes in the text and have appended a revised text of section 131 to my fuller statement for your consideration.

However, the more fundamental issue is whether such an effort should or even can be undertaken in the WTO at all and whether pressing forward with that effort, as mandated in the law, may, in fact, be both ineffective and counterproductive to the effort to strengthen respect and enforcement of core worker rights in all countries.

The incontestable fact is that repeated attempts by the United States over the last 40 years to have that relationship between trade and workers' rights examined in the GATT have failed, and for good reason. The countries which are the objects of efforts to strengthen worker rights clearly understand that the purpose of the exercise is to change GATT rules to permit the use of trade sanctions to enforce observance of such rights. Consequently, they have consistently blocked all efforts to study this issue in the GATT and will almost certainly continue to do so in the WTO.

They are right to do so, because the GATT or WTO is, in fact, the wrong institution to examine the relationship between trade and workers' rights if, as the United States insists and as Congress agreed to last year, the first step is to discover what the nature of that relationship actually is.

On the other hand, work has been going forward for at least 1 year in both the OECD and the ILO to try to identify the interrelationships between trade, economic growth, employment, productivity, and the treatment of workers. These institutions have both the expertise and the mandates to do this kind of analysis and we believe that the law should be amended to encourage that effort. Our recommended language to do that is also appended to my fuller statement.

Thank you, Mr. Chairman.

[The prepared statement and attachment follow:]

Testimony of Robert J. Morris
Senior Vice President
U.S. Council for International Business
Before the
Subcommittee on Trade
and the Subcommittee on Rules and Organization
U.S. House of Representatives

May 11, 1995

The U.S. Council for International Business is a membership organization whose mission is to advance the global interests of American business, primarily through the international business organizations (ICC, BIAC and IOE) with which the Council is affiliated. Our objective is to promote an open system of world trade, finance and investment in which business can flourish and contribute most effectively to economic growth, human welfare and protection of the environment.

I wish to make four main points in my testimony today.

First, the U.S. Council favors early renewal of fast track legislation, especially for the proposed negotiations this year for Chile's accession to NAFTA. While we would leave the decision on the scope and duration of the authority to negotiate agreements using fast track procedures to Congress, we recommend that any accession to NAFTA not be used as an occasion to negotiate substantial changes in the NAFTA agreement, and especially not to add new provisions dealing with environment or workers rights into the NAFTA agreement itself.

Second, we do favor expanded cooperation with any new free trade partners in this hemisphere in a variety of areas, and we support the negotiation of separate agreements with Chile (and eventually other free trade partners) which provide for programs of enhanced cooperation on environmental and labor matters in particular. However, we also recommend that Chile and other new partners not be required to accede to the environmental and labor side agreements as reached with Mexico and Canada in 1993.

American business accepted the current NAFTA side agreements because the close proximity and intensity of the economic and social relationships among the U.S., Canada and Mexico arguably required such comprehensive agreements. However, these considerations simply do not apply in our relations with other countries in this hemisphere. Thus, we believe that any separate agreements on environment and labor with other countries should concentrate on encouraging and enhancing cooperation (including private sector-to-private sector voluntary projects) along the lines of the cooperative aspects of the NAFTA side agreements, but should not contain coercive or confrontational features. We are particularly opposed to the incorporation of any form of trade sanction to enforce environmental or labor standards or behavior since such sanctions would be contrary to the objectives of the NAFTA.

Third, we recommend that the legislation explicitly exclude the use of fast track procedures for negotiating or approving international agreements concerning labor or environmental matters, whether such agreements include trade measures or not. The legislation should also prohibit the use of fast track to change any U.S. labor or environmental laws. If the U.S. government believes it is necessary to negotiate international agreements on such matters, and if any particular agreement requires action by Congress, that action should be pursuant to the normal legislative process, not the special fast track procedures.

Finally, since we are recommending that the renewal legislation contain these specific references to labor and environmental issues, we also recommend that this legislation be the vehicle to deal with a problem which developed in the drafting of a section in the Uruguay Round Agreements Act of 1994 which concerns future work regarding trade and workers rights.

Section 131 of that Act directs the President to seek establishment of a working party in the WTO to examine the relationship of certain workers rights "to the articles, objectives and related instruments" of the WTO. Section 131(b) lays out the U.S. objectives for the working party, which include to "examine the effects on international trade of the systematic denial of such rights" and to "consider ways to address such effects".

There are two problems with this Section which we believe need to be corrected. The first is the requirement that the examination of the effects of denial of rights on trade be examined in the WTO; the second is in the language of the defined objectives which carries the implicit assumption that there is a need to consider ways to address the presumed effects on trade of the denial of workers rights before the examination has even concluded that there are such effects.

We objected to this section at the time it was being negotiated last summer. Our informal inquiries led us to conclude that Congress had not intended to prejudge the results of the analysis, but the legislated text can be read that way and doubtless is so read by some. We believe this problem can be addressed by relatively simple changes in the text, and have appended a revised text of Section 131 to this statement for your consideration.

However, the more fundamental issue is whether such an effort should, or even can, be undertaken in the WTO at all, and whether pressing forward with that effort, as mandated in the law, may in fact be both ineffective and counterproductive to the effort to strengthen respect and enforcement of core worker rights in all countries.

The incontestable fact is that repeated attempts by the U.S. over the last 40 years to have the relationship between trade and worker rights examined in GATT have failed, and for good reason. The countries which are the object of efforts to strengthen worker rights clearly understand that the purpose of the exercise is to change GATT rules to permit the use of trade sanctions to enforce observance of such rights. Consequently, they have consistently blocked all efforts to study the issue in GATT, and will almost certainly continue to do so in the WTO.

They are right to do so, because the GATT or WTO is in fact the wrong institution to "examine" the relationship between trade and worker rights if, as the U.S. insists, the first step is to discover what the nature of that relationship actually is. The GATT/WTO simply is not equipped to carry out complex analytical studies. The WTO is competent to do analysis about the implications of various GATT rules and to assist members in reaching conclusions about whether to clarify or change such rules. Developing countries know that, and view any effort to undertake a study in the WTO as a not-very-well disguised effort to change WTO rules for the purpose of authorizing sanctions to enhance worker rights.

On the other hand, work has been going forward for at least a year in both the OECD and ILO to try to identify in credible, objective analysis the interrelationships among trade, economic growth, employment, productivity, and treatment of workers. These institutions, and especially the OECD, have the capacity, membership and mandates to do this kind of work and we believe Congress should both recognize this and encourage full U.S. participation in these efforts, while leaving the question of whether further work in the WTO is needed until it has had the opportunity to examine the results of the analytical work underway in those institutions. That is the thrust of the amended Section 131 which we recommend in the attached draft text.

Amendments to Uruguay Round Agreements Act of 1994

Proposed by the U.S. Council for International Business

Delete Section 131 and substitute the following new section 131.

Section 131. Economic Growth, Trade and Workers Rights

(a) In General.____ The President shall encourage full U.S. participation in examinations underway in the ILO and the OECD of the relationships among economic growth, trade, employment and productivity, and the promotion of worker rights as defined in Section 502(a)(4) of the Trade Act of 1974.

(b) Objectives of the examinations.____ The objectives of the United States in the examinations described in subsection (a) are to____

(1) explore the interrelationships among economic growth, international trade and progress toward strengthening workers rights as defined in Section 502(a)(4) of the Trade Act of 1974, taking into account differences in the level of development among countries;

(2) examine whether and, if so, to what extent the systematic denial of such rights has significant effects on international trade;

(3) As regards the ILO in particular, consider how the organization can improve its ability to assist countries to promote workers rights.

(4) develop methods to coordinate the work going on in the two organizations.

(c) Report to Congress.____ The President shall report to Congress not later than 1 year from enactment of this provision on the progress made in those examinations and on United States objectives with respect to them.

Chairman CRANE. Gentlemen, I ask your indulgence one more time. We do not control the itinerary over there on the floor. I would like to recess, but I know there are a couple of questions from some of our colleagues that they would like to direct to you. Hopefully, we will keep this recess limited to 5 to 8 minutes. We will be right back. Thank you.

[Recess.]

Chairman DREIER. Now that our welcoming committee of Mr. Houghton has greeted everyone appropriately, we will reconvene. [Laughter.]

I understand that Mr. Matsui has a question, and I suspect that most of the members of this panel are very, very impressed and supportive of the remarks that all four of you have provided.

I would like to touch on one item, and that has to do with this ongoing discussion as to exactly what amount of time we might extend fast track on. If we look at this 3- to 5-year range, Mr. Burnham, you talked about a 5-year authority. If we look at that, other than inclusion of Chile in the North American Free Trade Agreement, what countries would you see as top priorities for us as we would move ahead with negotiations? I would like to hear from all four of you on it.

Mr. BURNHAM. There are a whole series of areas of the world that are particularly of interest to all of our Members. Chile is obviously on the table at this point in time. If we look at the Asia Pacific area, there are a number of countries that are potential targets for these kinds of agreements that we could see in the long term.

Obviously, the growth in that area of the world is important to all of U.S. industry. Additional trade agreements in that area would allow us to expand some of the trade activities that we have and that we anticipate.

Mr. JUNKINS. Congressman, I think we need to allow both time and flexibility and certainly, we all know and understand the opening of the Americas, as well as APEC. We in the Roundtable are taking a look at some of the countries, for instance, in Southeast Asia. We have several countries there that we have almost total open trade with.

I think it is appropriate that we try to target a few of those, get it as completely open as possible, with the idea of doing two things. One, maybe most important, is accelerating the broad base of countries toward the ultimate GATT objectives. We have all been critical, in some respects, that it is taking too long for some of those to develop and it is because of the lowest common denominator. If we can selectively pick off countries, negotiate agreements, get them completely open, and accelerate by 4 or 5 years, I think we can create momentum that will accelerate the entire world in this area.

So I would make it as broad and as general as possible, for both bilateral or multilateral, in small groups or large multilateral agreements.

Chairman DREIER. Mr. Lane.

Mr. LANE. Mr. Chairman, allow me to answer that from both a tactical and strategic viewpoint. Tactically, Chile is obviously the

next to join NAFTA, followed by Argentina. I think there is broad consensus on this from most folks familiar with Latin America.

Strategically, the world is currently awash in regional trade pacts. NAFTA is being extended. The EU, European Union, is being expanded. ASEAN is very serious about setting up a regional free trade area. You have APEC, which we are all trying to figure out, but clearly holds great promise. You have the South African Customs Union that is starting to take form. Finally, there is MERCOSUR.

We have some concerns that we may be building a lot of unneeded complications in the world trading system. Tactically, it makes sense to take freer trade wherever and whenever we can get it. That is why extending NAFTA to Chile really makes sense.

But the strategic solution is to address these issues in a multilateral and a WTO context. At some point, I think we are all going to have to swallow hard and say, it is time for a new GATT round. We can call it the American round. With this approach, we can open markets all over the world with as open a market access as possible.

Chairman DREIER. As you talk about the complexities, I wondered if you all—and I will let you, Mr. Morris, go ahead, but let me just briefly state that there was a piece in the Los Angeles Times written by Henry Kissinger about 1 month or 6 weeks ago in which he referred to the threat of this competition that might exist between North and South America as we see MERCOSUR and other blocks forming and possibly, because of the peso problem, a diminution in the commitment of this country toward moving ahead with NAFTA.

I wonder if you all might comment along that line, and you can certainly join, Mr. Morris, in reference to the need to establish countries.

Mr. MORRIS. Thank you, Mr. Chairman.

I, first of all, want to associate myself very much with what Bill Lane had to say about the need to strengthen the multilateral system. I think we do lose sight of that as we concentrate on the regional opportunities that seem to be so tempting and so potentially more operational.

But let us not forget that we left a lot of unfinished business after the conclusion of the Uruguay round, not least, for example, our inability to get the full range of zero-for-zero tariff arrangements that we had sought. We left uncovered a lot of areas where there will be a need for further action in the WTO to strengthen the international trading system, the world trading system.

I think, for example, the fact that the administration has chosen to go to the WTO dispute settlement system for judgment on whether or not the internal practices of the Japanese are consistent with their external liberalization obligations underlines one of the most important areas where we need to strengthen the system, and that is to make it clear that the domestic practices which restrict market access need to be more clearly and more directly addressed in world trading rules.

If the dispute settlement process that has been initiated by the administration on the Japanese practices does not fully satisfy the

needs that we feel are out there to do that, then clearly there is an area where further negotiation will be required.

Whether or not any of these, apart from, obviously, the tariff reductions, will require changes in U.S. law is an open question, but that is itself another reason why the availability of the fast track procedures to deal with that kind of a problem are really quite important and, therefore, should be extended for as long a period of time as the political consensus can achieve.

Relating to the question about Latin America, frankly, I am at least as concerned by the fragmentation of the global economy which is implied by all of these moves toward free trade arrangements that are exclusive to the partners that enter into them. This is a difficult problem for American business, because businesses, when they invest overseas or when they market overseas, normally have to do it on a global basis. They should not be required to restructure their operations to reflect a particular pattern of regional integration just because that pattern is out there.

They do, they have to, because that is the reality, but it would be so much better if they could do it with the freedom to move their products and their operations as necessary to serve particular markets as they emerge.

The Europeans, for example, are making overtures toward MERCOSUR. That, in and of itself, ought to be a matter of concern to us. It is not just the Latin Americans getting together among themselves or vis-a-vis the United States, but also what is happening to the fragmentation of the international system that is implied in the European move to try to negotiate some kind of an open trading arrangement with MERCOSUR while we are all wrapped up in our internal processes and not able to cope with that kind of a challenge. So both are out there and both need to be addressed.

Chairman DREIER. I could not agree with you more.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

I am sorry I am late, and I am sorry I delayed the procedures here.

Chairman DREIER. We survived it.

Mr. HOUGHTON. I have just a quick question, and this may be out of ignorance of the past testimony that has been given. It seems to me that there is no disagreement on the basic concept of the fast track. We are moving in that direction, and I hope that we are sort of one accord here.

However, I have just a couple of questions. First of all, nothing can be perfect. Where are the pitfalls? What is the biggest worry? What should be tightened up?

Second, maybe in that regard, there are a lot of nontrade related issues, and we have problems here because of this concept of PAY–GO. Everything we propose has to be paid. In the implementing language, sometimes you get tangled up in your scabbard because you want to do something but you do not have enough money to do it. Do you think those nontrade related issues should be part of any fast track legislation?

Mr. JUNKINS. Congressman, I made four suggestions, and the reason for the first three have to do in a general way with that,

and specifically more up-front work in deciding between the Congress and the administration what the objectives are, a process by which there can be a better understanding across Congress and a way to address this PAY–GO issue.

The Congresswoman from Utah mentioned earlier about the problems of the perception in the public. Fast track itself, the word is a problem. There clearly is a perception. Business understands and is committed to assisting in the education both of our own people in the communities in which we live and Members of Congress in terms of the business benefits that come from this.

It seems to me, No. 1, that we need to narrow this as much as possible so that all ills of mankind are not debated every time we come through with a fast track bill.

No. 2, as you have to do what we did in GATT, and that is accommodate the PAY–GO rules, we sent signals that these kinds of agreements cost money, and whether it is somebody whose interest rate they think is going down or whose pension may be affected by it and so on, I think we destroy, really, a great deal of the confidence that we need to build in the American public for free trade and, frankly, in the institution itself.

So my suggestions would be to narrow it, keep it on the issues that are necessary for the trade agreement, and really do not allow these others to creep into the debate. I think it will make your job easier. It certainly will make ours easier. I believe the public will have more confidence.

If they had any idea of the amount of time, effort, understanding, and dedication that many of the members of this committee put into these agreements, the public would have an entirely different view of what is going on up here in terms of monitoring this and being aware of it, and I think we need to strengthen that.

Mr. HOUGHTON. Thank you.

Does anybody else have any comments?

Mr. BURNHAM. I would just comment, maybe amplify a little bit on what Jerry Junkins said. I think the importance of clean, enabling legislation to the economy is often lost. We in the business community focus on the economic benefits of open and free markets.

One of the things that we in the health care industry particularly look at is research and development. For our company, for example, $0.10 of every $1 goes into research and development. Without free trade, we would totally be unable to invest in the technologies that we need to advance our business and, frankly, the quality of life in the United States. If we were not in a position where trade were open and those markets were available to us, we would be far less able to compete.

I think a focus on the need for a clean grant of trade negotiating authority, as opposed to focusing on all the other issues that go into fast track enabling legislation, would be much more sensible for the community at large as well as for our own individual companies.

Mr. HOUGHTON. Thank you very much.

Mr. LANE. If I could just add one thing, and I think this is something we all have to be careful of, namely, that we not oversell these agreements. Let us use extending NAFTA to include Chile as

an example. It is a good agreement. In Caterpillar's case, Chile is a big market because of its strong mining sector. NAFTA will give us preferential market access in that market. But even though Chile is a very long country, it is also a very narrow country. In other words, NAFTA is not going to make a huge difference commercially.

I think what often happens is we get caught up in our own efforts to persuade and we have a tendency to oversell. Free trade is good, but it does not cure all the ills of the world. I think we have to be careful to keep the benefits of trade in the proper context.

Mr. HOUGHTON. Thank you. My time is up. Thank you very much, gentlemen.

Thank you, Mr. Chairman.

Chairman DREIER. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I want to thank all four of the gentlemen here for their testimony. I appreciate the fact that Mr. Junkins, Mr. Burnham, Mr. Lane, and Mr. Morris have been involved in many of the trade issues we have had over the last few years and we want to thank them for all their help.

Fred Bergsten made a suggestion in terms of a permanency of fast track and the coming back to the Congress for authorization for specific areas of negotiating authority. Paula Stern felt that that was really begging the question, and I guess both of them have good points.

Do you all perhaps have thoughts on that particular point?

Mr. JUNKINS. I certainly would support Dr. Bergsten's side. I think, Congressman Matsui, you ought to make it as long as possible and, again, put as much front-end activity into it as appropriate to make sure there is an up-front agreement between the Congress and the administration, because the world is changing. I do not think you can sit here and define precisely where and when the next thing is going to come along. So I would certainly argue to make it as long as possible.

Mr. MATSUI. Then allow the authorization to go on a case-by-case basis?

Mr. JUNKINS. Yes.

Mr. MATSUI. Does anybody disagree with that?

Mr. MORRIS. I do not disagree, Congressman, but I think it is important, if you are going to go that route, to do whatever you possibly can to make it clear for your successors that will have to deal with the question of what kinds of negotiating objectives they are going to define pursuant to these procedures, that it be very clearly limited to commercial matters.

This facility should simply not be available to negotiate every conceivable, though desirable, international objective that we might have, and that explicitly includes and extends to such areas as environmental problems, labor problems, and so on. Those may be appropriate to deal with in terms of international agreements, and we do not deny that for a moment, but fast track ought not to be available for those kinds of agreements and the legislation ought to make that clear.

Mr. MATSUI. You are suggesting that there be specific prohibitions on certain areas in the overall language, then?

Mr. MORRIS. I think so. I think that is about the only way in which you can assure that the procedures will not be abused.

Mr. MATSUI. Let me make an observation about that, because my point of view is that if you had a clean bill and allowed future Congresses, future administrations, and future leaders of both business, environmental, and others in the United States to kind of make that decision, I do not know what might happen 10 years from now if you had a permanent fast track, for example.

But beyond that, the real concern I have is the potential for a loss of consensus in the United States on the concept of free trade, and I think you all alluded to that in the past, if not in this testimony. I am sorry that I did not hear all of your testimony. I was running back and forth for votes.

You have on your left the Democrats, and labor has been very influential. On the right, you have the Perot/Buchanan faction, and I believe that faction is getting very strong, at least from what I have seen in California and elsewhere. You could have a center of gravity that becomes very narrow over time. We saw that in NAFTA. It did not happen in GATT. But who knows where it might end up.

Perhaps we have to kind of think about how we handle these things, particularly if we want a strong bipartisan bill in the U.S. House and Senate.

I do not know quite how to deal with this. I am just raising this issue, kind of throwing the ball up in the air and perhaps getting some comments from you, because we have heard the testimony here today and comments made by our colleagues, and there was a huge diversity of opinion on this particular issue. Somehow, we have to come to some consensus. I would like to be part of that consensus, if we can achieve it. Obviously, we want everyone to be part of that consensus. Maybe it is impossible. Maybe it is a pipe dream. I do not know.

Yes.

Mr. LANE. Congressman, at the National Foreign Trade Council, we had four very lengthy and spirited discussions on this whole issue of fast track negotiations, and we were able to reach a strong consensus. We believe fast track should be granted for a long period of time. We thought recommending 6 to 8 years was pretty gutsy. Dr. Stern suggested 9 years, so it overlaps two Presidential terms.

That would be fine, but no one at NFTC, National Foreign Trade Council, suggested permanent fast track. I think it is important to occasionally go back and rehash these issues. In a way, it is a public service when we go through this process and remind people of the benefits of free trade.

Mr. MATSUI. Are there any other comments on this?

[No response.]

Mr. MATSUI. I want to thank all of you for your testimony.

Chairman DREIER. Thank you very much.

Mr. Rangel.

Mr. RANGEL. No questions, Mr. Chairman.

Chairman DREIER. Thank you very much.

Let me express our appreciation to all four members of this panel. It was extraordinarily helpful, and I appreciate your understanding of the time and scheduling constraints around here. You have been very kind.

Chairman DREIER. Our last panel today includes Robert W. Holleyman II, president, the Business Software Alliance; Karen El-Chaar, manager of International Trade, Air Products and Chemicals, Inc., and vice chairman, the International Trade Committee, Chemical Manufacturers' Association, on behalf of the Office of the Chemical Industry Trade Advisor; Mark A. Anderson, director, the Trade Task Force, AFL–CIO; and Rodrigo Prudencio, trade and environment specialist, the National Wildlife Federation.

We are happy to welcome the panelists here. You can proceed in whatever order you would like.

Mr. Prudencio.

STATEMENT OF RODRIGO J. PRUDENCIO, TRADE AND ENVIRONMENT SPECIALIST, NATIONAL WILDLIFE FEDERATION

Mr. PRUDENCIO. Thank you, Mr. Chairman.

I will be briefly going over my written statement, so I will ask that it be submitted for the record, please.

Chairman DREIER. Without objection.

Mr. PRUDENCIO. Mr. Chairman, I am Rodrigo Prudencio, trade and environment specialist for the International Programs Division, the National Wildlife Federation. The NWF, National Wildlife Federation, is the nation's largest private conservation organization, with over 4 million members and supporters. Thank you for the opportunity to testify before this joint subcommittee hearing on the reauthorization of fast track legislation.

Mr. Chairman, the National Wildlife Federation supported the 1991 2-year reauthorization of fast track. We did so because then-President Bush and USTR Ambassador Carla Hills, as well as influential leaders in the Congress, understood the value of addressing trade related environmental concerns in trade and investment negotiations. Ultimately, this bipartisan approach helped generate a wider constituency for economic integration than had previously been thought to exist.

At present, however, it should be obvious to anyone who takes the pulse of America on trade issues that there is little margin for error in gauging public support for international trade agreements. Indeed, some have suggested that fast track is, to put it bluntly, dead.

So Congress' priority in considering fast track legislation should be to figure out how the legislation can be drafted to maintain a constituency that favors, rather than opposes, trade and investment liberalization, not just in Chile, but throughout the world.

My organization, the National Wildlife Federation, along with many other environmental organizations, supported the North American Free Trade Agreement. We again can be an important element of the constituency of support for fast track and free trade, but only if U.S. trade policy and trade laws incorporate and address our concerns.

The National Wildlife Federation proposes the following approaches for a fast track bill. These suggestions will strengthen the prospects for trade and investment rather than dividing the very constituency that would allow the process of economic integration to proceed.

First of all, with negotiating objectives, some language on trade related environmental issues should be part of the fast track bill. This language should not reference any single negotiation or agreement but state that it is the goal of our negotiators to make trade and environment policies less conflicting and more mutually compatible. This would prevent the prevailing winds of individual agreements from steering U.S. negotiators off course.

Objectives for a specific agreement, say, for example, with Chile, should be set with greater public involvement than has previously been the case. The newly formed USTR and EPA Trade and Environment Advisory Committee, as well as a wider public consultation process, can be used to properly scope out environmental issues that would arise in the context of a specific agreement.

The second element of NWF's fast track proposal is citizen empowerment. This would include environmental impact assessment and public consultation processes associated with agreements. We believe there is a strong argument to suggest that some form of assessment be conducted at several different points prior to, during, and after a trade and investment accord has been negotiated. For instance, the initial scoping process helps identify major issues that would arise in the context of a specific agreement, and, as noted above, should help shape U.S. specific negotiating objectives in the field of environment.

Keeping in mind that the highest goal of fast track legislation is to gather a broad constituency for environmentally sustainable economic integration, Congress and the administration would be wise to utilize the process of environmental reviews in involving the public in a positive way in the crafting of these agreements.

After negotiations over a specific agreement have been concluded, the administration would distribute a report on the conclusion of negotiations to the Congress. To consider the report, a longer time period should be given to Congress and the public to debate and form opinion before a vote on the submitted agreement. Also, jurisdiction over set agreements should be broadened to include various other committees.

Last, the longer time period should allow the private sector advisory groups, including the Trade and Environment Public Advisory Committee, to report adequately and accurately to the Congress on their respective issues.

Mr. Chairman, let me conclude by restating that America's enthusiasm about entering into future trade agreements appears to be waning. Trade is increasingly a part of our lives, but, simultaneously, less comprehensible. We need to change that.

With respect to environment, the antidote for this diminishing support is twofold. No. 1, Congress should encourage a fast track bill which increases public involvement in the decisionmaking process. The National Wildlife Federation's proposals do this by assuring longer time periods for public comment at the beginning and

end of negotiations, as well as access to information regarding the state of negotiations as they unfold.

No. 2, and perhaps more importantly, fast track legislation should ensure that trade related environmental issues will be addressed appropriately and adequately in the context of trade negotiations, as we have proposed above.

Mr. Chairman, as I noted at the beginning of this testimony, the National Wildlife Federation has been a supporter of the fast track process as long as that process moves trade in the direction of dealing effectively with trade related environmental issues. If Congress moves forward on a fast track bill that approaches environment in that fashion, we will be ardent supporters. If not, we will reluctantly be forced to oppose it. Thank you.

[The prepared statement follows:]

Working for the Nature of Tomorrow

NATIONAL WILDLIFE FEDERATION

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TESTIMONY OF RODRIGO J. PRUDENCIO
TRADE AND ENVIRONMENT SPECIALIST, INTERNATIONAL PROGRAMS DIVISION,
NATIONAL WILDLIFE FEDERATION
ON
EXTENSION OF "FAST-TRACK"
NEGOTIATING AUTHORITY
BEFORE
A JOINT HEARING OF
THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS,
AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
COMMITTEE ON RULES

MAY 11, 1995

Good afternoon, Mr. Chairman. I am Rodrigo Prudencio, Trade and Environment Specialist for the International Programs Division of the National Wildlife Federation. The Federation is the nation's largest private conservation organization, with over 4 million members and supporters. The mission of the National Wildlife Federation is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources, and to protect the earth's environment in order to achieve a peaceful, equitable, and sustainable future.

Thank you for the opportunity to testify before this joint Committee hearing on the reauthorization of fast-track legislation.

Mr. Chairman, as you may know, the National Wildlife Federation supported the 1991 two-year reauthorization of fast-track. We did so because then-President Bush and USTR Ambassador Carla Hills, as well as influential leaders in Congress, understood the value of addressing trade-related environmental concerns in trade and investment negotiations. Ultimately, this bi-partisan approach led to a successful negotiation with Mexico and Canada on trade-related environmental issues, and helped generate a wider constituency for economic integration than had previously been thought to exist.

Today, as you begin deliberations on whether to extend fast-track legislation over the next few years, and explore suggestions on how best to modify and improve this legislation, it is even more critical to maintain and strengthen, rather than divide, the constituency that helped promote environmentally sustainable economic integration in North America.

In this regard, please allow me to offer a few initial observations.

First, as should be obvious to anyone who counts votes in Congress, or takes the pulse of America on trade issues, there is little margin for error in gauging public support for international trade agreements. Indeed, some have suggested to us that there is no constituency in the United States for further trade and investment accords. According to this view, fast-track is, to put it bluntly, dead.

A second observation, following from the first, is Congress' priority in considering fast-track legislation is to figure out how the legislation can be drafted to maintain a constituency that favors rather than opposes trade and investment liberalization, not just in Chile but throughout the world. Environmental organizations, many of which supported the North American Free Trade Agreement (NAFTA), can be an important element of this constituency, but only if U.S. trade policy, and trade laws, incorporate and address our concerns.

The reasons for doing so today are just as compelling as they were four years ago, and the testimony that follows is intended to provide suggestions to Congress on how to work with the Administration in fashioning a fast-track bill that strengthens the prospects for trade and investment, rather than dividing the very constituency that would allow the process of economic integration to proceed.

Trade and Environment: In the Interest of the United States

Since the early 1970's, international trade experts have been aware of the ties between international trade and environmental protection policies. But in those early years, the connections between trade and environment were at best hazy, and the appropriate policy responses to potential conflicts between trade and environmental concerns were largely ignored.

Twenty years later, the growth in the world economy, and the increasingly global nature of environmental problems, has made the connections between trade and environment more clear, and the potential conflicts more real. As a result, international efforts to make trade and environmental objectives mutually supportive are now moving rapidly forward. Indeed, the host of issues facing policy-makers today demonstrates that the question is not *whether* trade and environmental issues should be handled together, but rather, *how* both policy goals can be met.

Environmental protection has become a legitimate trade issue in many ways. International trade rules can affect our sovereign right to set and maintain the kind of environmental, consumer, and food safety laws we deem appropriate. International trade agreements can potentially undermine international environmental treaties which use trade, in some form, as an effective enforcement tool. Moreover, the direct impact of trade and investment liberalization can sometimes magnify environmental problems in countries other than our own, creating spill-over or transboundary effects that we in the United States must ultimately confront. Environmental problems caused by trade, and located on the border with Mexico provide just one example, but increased global environmental problems related to trade, whose sources may lie far from our borders, are also a growing concern.

To be sure, there are other areas where free trade and environmental protection should be compatible. Consider the benefits of phasing-out or eliminating environmentally-damaging and trade-distorting subsidies such as agricultural subsidies. In addition, tariff reduction and services agreements can make U.S. environmental technology and know-how more competitive in overseas markets.

NWF supports an approach in these policy areas which strengthens environmental protection while reducing the conflicts and increasing the complementarities between trade and environmental objectives. However, U.S. interests in these areas are best achieved when our goals and objectives are clearly articulated and manifestly supportive of trade that promotes, rather than inhibits sustainable development.

Fast-Track: Building a Better Model

This year's reauthorization of fast-track trade negotiating authority presents a critical opportunity to ensure that U.S. trade laws keep pace with new environment-related developments in trade policy and help secure long-term U.S. objectives. What follows is a number of elements which should be part of any new fast-track legislation:

Trade Negotiation Objectives:

Overall Objectives: Some over-arching language outlining U.S. objectives on trade and environment issues should be the highlight of this part of the fast-track bill. This language should not reference any single negotiation or agreement, but state that it is the goal of our negotiators to make trade and environmental policies less conflicting and more mutually compatible. Rather than subject U. S. negotiators to the prevailing winds of individual

agreements, this general negotiating objective would act as a beacon for a positive approach to trade-related environmental issues.

Specific Objectives: Objectives for a specific agreement, say for example with Chile, should be set with greater public involvement than has previously been the case. The newly formed USTR-EPA Trade and Environment Advisory Committee, as well as a wider public consultation process, can be used to properly scope out environmental issues that would arise in the context of a specific agreement. Moreover, an initial environmental review conducted by federal agencies should also be conducted prior to the onset of actual negotiations, and the findings of that review be available to Congress, and the public, to further assist in the delineation of specific objectives.

Rather than adopting a cookie-cutter approach to the setting of specific negotiating objectives, an improved process for fashioning these objectives would take into account specific attributes of a given negotiation. With respect to Chile, for example, environmental issues will be as compelling as they were when the previous Republican Administration negotiated NAFTA. Therefore, the specific authority to negotiate with Chile should be structured to incorporate trade-related environmental issues that are appropriate to Chile.

Environmental Impact Assessment and Public Consultation:

Much has been made in recent legal challenges as to whether and how to conduct environmental impact assessments of trade and investment agreements. We believe there is a strong argument to suggest that some form of assessment be conducted at several different points prior to, during, and after a trade and investment accord has been negotiated. The initial scoping process helps identify major issues that would arise in the context of a specific agreement and, as noted above, should help shape U.S. specific negotiating objectives in the field of environment.

A second assessment, at some point in the process of negotiating an agreement, should build on the initial scoping process and function effectively as a mid-term review of how the nature of environmental impacts of a proposed agreement may have shifted, and how negotiating stances of the U.S. government might appropriately be modified.

A third aspect to an environmental review would occur after a negotiation has been completed. This is typically the way such reviews have been conducted to date, and while offering little to change the text of an agreement, can provide valuable information to the public, and Congress, on the extent to which environmental issues have been dealt with effectively.

The fast-track legislation should spell out a clear process for conducting environmental reviews of pending trade and investment accords that incorporate the essential elements of our existing National Environmental Policy Act (NEPA), but are written in a manner appropriate to the preparation for and actual negotiation of such accords.

These assessments, however, are perhaps most important for involving the public at various stages in the development of trade and investment agreements with other nations. Keeping in mind that the highest goal of fast-track legislation is to gather a broad constituency for environmentally sustainable economic integration, Congress and the Administration would be wise to utilize the process of environmental reviews in involving the public in a positive way in the crafting of these agreements.

Report on the Conclusion of Negotiations:

After negotiations over a specific agreement have concluded, the Administration would distribute a Report on the Conclusion of Negotiations to the Congress. The Report would include the legal text of the agreement, the draft implementation bill, the Statement of Adminstrative Action, a report that explains the progress made in meeting the surveyed objectives, and as has been previously submitted by the Bush and Clinton Administrations, an

environmental impact report would be delivered to Congress. The Report would also be distributed publicly.

In this area, especially, the fast-track procedures should be strengthened in three ways. First, a longer time period should be given to Congress and the public to debate and form opinion before a vote on the submitted agreement. Second, jurisdiction over said agreement should be broadened to include various other committees, such as, the Senate Environment and Public Works, and the House Resources Committees. Lastly, the longer time period should allow the private sector advisory groups, including the Trade and Environment Public Advisory Committee, to report adequately and accurately to the Congress on their respective issues.

Building Consensus and Constituencies for Trade

The fast-track procedures were originally intended to speed Congress' consideration of trade agreements. But the last two agreements to be presented to Congress, the NAFTA and the GATT Uruguay Round, both faced considerable threat of defeat. Clearly, there is little to suggest that America is any more enthusiastic about entering into future agreements, and indeed there may even be greater opposition to such agreements than existed with NAFTA and GATT.

With respect to environment, the antidote for this diminishing support is twofold. First, Congress should encourage a fast-track bill which increases public involvement in the decision-making process. NWF's proposals do this by assuring longer time periods for public comment at the beginning and end of negotiations, as well as access to information regarding the state of negotiations as they unfold..

Second, and perhaps more importantly, fast-track legislation should ensure that trade-related environmental issues will be addressed appropriately and adequately in the context of trade negotiations, as we have proposed above. Some environmental issues are by their very nature trade-related issues, and should therefore be part and parcel of any future trade negotiation. These would include the protection of U.S. food safety and consumer protection standards, as well as the enforcement of international environmental agreements. They would also include issues specific to a given trading partner, say for example Chile, or any of the other agreements we might seek to enter into in this hemisphere under a future fast-track reauthorization.

Conclusion

Mr. Chairman, as I noted at the beginning of this testimony, the National Wildlife Federation has been a supporter of the fast-track process, as long as that process moves trade in the direction of dealing effectively with trade-related environmental concerns. If Congress moves forward on a fast-track bill that approaches environment in that fashion, we will be ardent supporters. If not, we will reluctantly be forced to oppose it.

Chairman CRANE. Thank you, Mr. Prudencio.

Ms. El-Chaar, you might commence, and I think after you have finished your testimony, we are going to have to recess again. They are just calling us to the floor.

STATEMENT OF KAREN EL-CHAAR, MANAGER, INTERNATIONAL TRADE, AIR PRODUCTS AND CHEMICALS, INC., AND VICE CHAIRMAN, INTERNATIONAL TRADE COMMITTEE, CHEMICAL MANUFACTURERS' ASSOCIATION, ON BEHALF OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

Ms. EL-CHAAR. Thank you. Mr. Chairman and members of the subcommittees, my name is Karen El-Chaar and I am manager, International Trade, Air Products and Chemicals, Inc., and serve as vice chairman, the International Trade Committee, Chemical Manufacturers' Association. I am here today representing the Office of the Chemical Industry Trade Advisor to urge you to renew the President's fast track trade negotiating authority. Fast track is a key component in the U.S. industry's ability to serve the global chemical market.

The OCITA, Office of the Chemical Industry Trade Advisor, is a coalition of seven national chemical trade associations. OCITA's role is to provide a unique chemical industry perspective on trade policy issues. Not only is our industry the largest exporting sector in the United States, but if it were not for the chemical industry, the country's trade deficit would be even greater than it is.

For over 70 years, the U.S. chemical industry has maintained a positive trade balance. In 1994 chemical industry exports totaled $51.5 billion, returning a trade surplus of $18.3 billion. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion and bettered aircraft exports by $23 billion.

Our industry is responsible for 27 percent of total worldwide sales of chemicals and allied products. OCITA provides some 2,600 companies nationwide with a voice on trade policy issues like fast track authority that affect their bottom line.

OCITA's bottom line is that Congress should renew the President's fast track negotiating authority and it should be renewed soon. Without fast track authority, the President cannot fully assure that the United States can continue to capitalize on the gains made in the Uruguay round and the NAFTA. Our industry's future growth will come in those markets, such as Latin America and the Far East, where trade agreements negotiated under fast track can pry back significant barriers to trade.

Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets, the United States, Canada, Japan, and Europe, is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth and the benefit it brings to the United States are what prompts our support for renewed fast track negotiating authority.

The Latin American market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization

and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within 10 years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

We cannot hope to serve these markets without the proper tools, however. Those tools are disciplines on tariff and nontariff barriers, meaningful intellectual property protection, and reform of investment measures. Reducing or eliminating tariff barriers alone would mean significant new sales for our industry, but these tools can only be forged on the anvil of fast track negotiating authority.

In short, Mr. Chairman, renewing the President's fast track authority is essential to securing the economic gains we realize from trade agreements. Our industry currently employs 1 million American men and women. For every additional $1 billion our industry secures in export sales, we create 4,000 new American jobs. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment, and economic growth.

As important as fast track authority is to our industry, Congress must be careful not to burden the procedure with mandated progress in areas not related to trade. OCITA believes that bilateral environmental and labor issues, for example, are more properly the subject of other nontrade agreements. Similarly, legislation to implement a trade agreement must be limited to those provisions absolutely necessary to meet U.S. obligations.

Prior to the record closing on these hearings, OCITA will be happy to provide the subcommittees with more details on the chemical industry's trade related priorities for future negotiations.

Mr. Chairman, the U.S. chemical industry's continued growth and success in the global market depends on fast track authority. Fast track protects Congress' prerogative in trade policy matters while assuring that we can realize the negotiated benefits of a trade agreement.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions you might have.

[The prepared statement and attachment follow:]

STATEMENT OF KAREN EL-CHAAR, MANAGER INTERNATIONAL TRADE, AIR PRODUCTS AND CHEMICALS, INC. VICE-CHAIRMAN, INTERNATIONAL TRADE COMMITTEE CHEMICAL MANUFACTURERS' ASSOCIATION, ON BEHALF OF OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

RENEWAL OF FAST-TRACK NEGOTIATING AUTHORITY
May 11, 1995

Mr. Chairman, members of the Subcommittees. My name is Karen El-Chaar. I am Manager, International Trade of Air Products and Chemicals, Inc. and serve as Vice-Chairman of the Chemical Manufacturers Association's International Trade Committee.

I am here today representing the Chemical Industry Trade Advisor to urge you to renew the President's "fast-track" trade negotiating authority. Fast-track is a key component in the U.S. industry's ability to serve the global chemical market.

The Office of the Chemical Industry Trade Advisor, or OCITA, is a coalition of seven national chemical trade associations[1]. OCITA's role is to provide a unique chemical industry perspective on trade policy issues affecting the chemical industry. Our industry is the largest exporting sector in the United States. Chemical industry exports totaled $51.5 billion in 1994, returning an $18.3 billion trade surplus that year. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion, and bettered aircraft exports by $23 billion. Our industry is responsible for 27% of total worldwide sales of chemicals and allied products. OCITA provides some 2,600 companies nationwide with a voice on trade policy issues, like fast-track authority, that affect their bottom line.

OCITA's bottom line is that Congress should renew the President's fast-track negotiating authority. And it should be renewed soon, to enable the United States to capitalize on the gains made in the Uruguay Round of Multilateral Trade Negotiations, and the North American Free Trade Agreement.

Our industry's future growth will come in those markets -- such as Latin America and the Far East -- where trade agreements negotiated under fast-track can pry back significant barriers to trade. Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets (the U.S., Canada, Japan and Europe) is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth, and the benefits it brings to the United States, is what prompts our support for renewed fast-track negotiating authority.

The Latin America market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within ten years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

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[1] OCITA members are the Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), American Crop Protection Association (ACPA), National Paint and Coatings Association (NPCA), The Fertilizer Institute (TFI), the Chemical Specialties Manufacturers Association (CSMA), the Society of the Plastics Industry (SPI).

We cannot hope to serve these markets without the proper tools, however. Those tools are disciplines on tariff and non-tariff barriers, meaningful intellectual property protection, and reform of investment measures. Reducing or eliminating tariff barriers alone would mean significant new sales for our industry. But these tools can only be forged on the anvil of fast-track negotiating authority.

In short, Mr. Chairman, renewing the President's fast-track authority is essential to securing the economic gains we realize from trade agreements. Our industry currently employs a million Americans. For every additional $1 million our industry secures in export sales, we create 4 new American jobs. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment and economic growth.

As important as fast-track authority is to our industry, Congress must be careful not to burden the procedure with mandated progress in areas not related to trade. OCITA believes that bilateral environmental and labor issues, for example, are more properly the subject of other, non-trade agreements. Similarly, legislation to implement a trade agreement must be limited to those provisions absolutely necessary to meet U.S. obligations.

Mr. Chairman, the U.S. chemical industry's continued growth and success in the global market depends on fast-track authority. Fast-track protects Congress' prerogative in trade policy matters, while assuring that we can realize the negotiated benefits of a trade agreement.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions you might have.

ADDITIONAL COMMENTS OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

The Office of the Chemical Industry Trade Advisor (OCITA) is a coalition of seven national trade associations. OCITA members are the Chemical Manufacturers Association (CMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), American Crop Protection Association (ACPA), National Paint and Coatings Association (NPCA), The Fertilizer Institute (TFI), the Chemical Specialties Manufacturers Association (CSMA), and the Society of the Plastics Industry (SPI). OCITA provides some 2,600 companies nationwide with a voice on trade policy issues, like fast-track authority, that affect their bottom line.

OCITA's role is to provide a unique chemical industry perspective on trade policy issues affecting the chemical industry. Our industry is the largest exporting sector in the United States. Chemical industry exports totaled $51.5 billion in 1994, returning $18.3 billion trade surplus that year. U.S. chemical exports in 1994 outdistanced agricultural exports by $5.6 billion, and bettered aircraft exports by $23 billion. Our industry is responsible for 27% of total worldwide sales of chemical and allied products.

Fast-Track Authority

OCITA believes that Congress should renew the President's fast-track negotiating authority. This should be done in the immediate future in order to enable the United States to capitalize on the gains made in the Uruguay Round of Multilateral Trade Negotiations and the North American Free Trade Agreement.

Renewing the President's fast-track authority is essential to securing the economic gains we realize from trade agreements. The chemical industry currently employs a million Americans. For every additional $1 million our industry secures in export sales, four new American jobs are created. Chemical export growth also spurs additional investment in downstream manufacturing and related exports, creating a ripple effect of future jobs, investment and economic growth.

Our industry's future growth will come in those markets -- such as Latin America and the Far East -- where trade agreements negotiated under fast-track can remove significant barriers to trade. Chemical sales growth prospects vary among the regions of the world. Sales growth in our most mature markets (the U.S., Canada, Japan and Europe) is expected to be slow. The most rapid market growth is projected for the newly industrializing and developing nations. The prospect of that growth, and the benefits it brings to the United States, is what prompts our support for renewed fast-track negotiating authority.

The Latin America market for chemicals and allied products was valued at $63.8 billion in 1993. The long-term potential of the market is huge. With 376.1 million persons, many Latin American nations have already achieved some success in trade liberalization and disciplines. Additional bilateral and multilateral trade agreements could further enhance the value of the Latin American market to the United States.

The market for chemicals and allied products in China and the East Asian newly industrialized countries is the most dynamic in the world. Within ten years, the per capita incomes of these nations are expected to exceed that of the more advanced countries in Western Europe. With a 1993 market value of $134.7 billion, long-term growth and sales prospects are excellent.

While the potential for growth is great, the chemical industry cannot serve these markets without the proper tools. Those tools are disciplines on tariff and non-tariff barriers, meaningful intellectual property rights protection, and reform of investment measures. In addition, reducing or eliminating tariff barriers alone would mean significant new sales for our industry. Fast-track negotiating authority is necessary to the development of a more equitable trading arena.

Negotiating Authority

While OCITA does not have a complete list of all details that should be included when granting new fast track negotiating authority, we would like to make the following observations and suggestions.

OCITA suggests that fast-track negotiating authority be granted for a period of at least five years. Certainty is critical to long-range planning and the well-being of U.S. firms. Persuading countries to liberalize their trade regimes takes time. Therefore, negotiating authority should be granted with sufficient time to conclude meaningful agreements. The scope of trade negotiating authority should be available for either bilateral, regional, or multilateral negotiations.

As important as fast-track authority is to our industry and other U.S. industries, Congress must be careful not to burden the procedure with issues not directly related to trade. For example, labor and environmental objectives should not be included in future trade negotiations. OCITA believes that these issues are important but are more properly the subject of other non-trade agreements. These issues should be pursued through engagement in such organizations as the International Labor Organization, the Organization of American States and the United Nations.

OCITA believes that legislation to implement a trade agreement must be similarly limited to those provisions absolutely necessary to meet U.S. obligations. In the past, fast-track treatment has been applied liberally to allow unrelated revenue measures to be included in the legislation. OCITA recommends that a new grant of authority be more narrowly applied to limit the legislation to only that which is required to enact the provisions of the covered trade agreement.

Finally, OCITA believes that the principal negotiating objective of any future multilateral negotiation on chemical tariffs should be sectorial harmonization, i.e. lowering foreign tariffs on chemicals to levels comparable to those negotiated in the Uruguay Round by the U.S., Europe, Canada, Japan and other industrialized nations. As a necessary condition to any further lowering of U.S. chemical tariffs, the agreement negotiated should be one that the President determines that the opportunities for U.S. chemical exports are substantially equivalent to those afforded foreign products in the United States. OCITA would encourage future multilateral negotiations in the chemical sector to use the Uruguay Round Chemical Tariff Harmonization Agreement (CTHA) as the model for negotiations to eliminate the problems created by free riders.

Conclusion

The U.S. chemical industry's continued growth and success in the global market depends on fast-track authority. Fast-track protects Congress' prerogative in trade policy matters, while assuring that we can realize the negotiated benefits of a trade agreement.

Chairman CRANE. Thank you very much, Ms. El-Chaar.

We will stand in recess, then, for 5 to 8 minutes. I apologize to you gentlemen. We will be right back.

[Recess.]

Chairman CRANE. The subcommittees will reconvene and Mr. Holleyman is next.

STATEMENT OF ROBERT W. HOLLEYMAN II, PRESIDENT, BUSINESS SOFTWARE ALLIANCE

Mr. HOLLEYMAN. Mr. Chairman, I am testifying today on behalf of the member companies of the BSA, Business Software Alliance. Our companies include the leading U.S. publishers of software for personal computers, companies like Novell and Lotus Development, Sybase, Microsoft, and Autodesk.

Collectively, U.S. PC software companies are the world's leaders. According to the Department of Commerce, in 1993, U.S. PC software companies held nearly 75 percent of the global market for personal computer software. They truly are the stars of U.S. export industries. It is a rapidly growing market, and it is a pleasure to have the opportunity to testify on behalf of these companies regarding the proposed extension of fast track negotiating authority.

I would like to be clear in the statement of the software companies that I represent. We affirmatively endorse the extension of fast track negotiating authority, and in addition, we believe that intellectual property protection should be identified by Congress as an explicit negotiating objective in conjunction with any fast track negotiations.

Our basis for this testimony is also clear. It is history. We know what works. We know what has worked to the benefit of U.S. software companies in the past through two very clear agreements. The first of those agreements was the North American Free Trade Agreement, where the United States negotiated the most explicit protection for intellectual property and for computer software that had been negotiated up until that time, and it is still the world model for intellectual property protection.

Second, the trade related intellectual property provisions in the Uruguay round negotiations take a very important step in expanding protection to more than 100 countries who will be adherents to that agreement.

BSA believes that Congress' grant of fast track authority was instrumental in allowing both of these agreements to be negotiated. BSA supports the extension of this authority to allow expansion of NAFTA to include Chile and other countries in this hemisphere, and we believe that doing so will strengthen intellectual property protection for U.S. software companies.

U.S. companies will be the beneficiaries of any effort that opens markets, and, second, that requires protection of copyrighted works, both as a matter of law and as a matter of practice through adequate enforcement.

Currently, NAFTA provides several key benefits that would be useful in reducing rates of software piracy throughout the whole of Latin America, and, in addition, would expand upon the benefits of U.S. software companies in those markets.

Specifically, NAFTA would address problems like those that exist in Chile, where more than 84 percent of all the software in use is pirated because of several deficiencies in the Chilean law. Specifically, there are no statutory damages when infringement is shown. There is no ability to go before a court and get ex parte relief. The civil penalties and criminal penalties are inadequate.

We believe that by taking the NAFTA copyright and enforcement provisions and expanding those throughout the hemisphere and into countries like Chile, it will require affirmative changes in the Chilean law that will reduce software piracy. It will take what was a $14 million market last year for computer software companies and expand it up to a potential of an $84 million market in that one country.

We believe that those would be positive steps, and that all U.S. software companies would be the beneficiaries. We believe that fast track authority is absolutely critical to expanding trade opportunities for U.S. companies. We urge the subcommittees to extend fast track authority and to explicitly identify intellectual property as a negotiating objective in that process. Thank you very much.

[The prepared statement follows:]

TESTIMONY OF

ROBERT W. HOLLEYMAN II, PRESIDENT
BUSINESS SOFTWARE ALLIANCE (BSA)

BEFORE THE SUBCOMMITTEE ON TRADE
OF THE COMMITTEE ON WAYS AND MEANS
AND
THE SUBCOMMITTEE ON RULES AND ORGANIZATION
OF THE COMMITTEE ON RULES

UNITED STATES HOUSE OF REPRESENTATIVES

ON EXTENSION OF FAST-TRACK NEGOTIATING AUTHORITY
TO THE ADMINISTRATION
FOR THE NEGOTIATION OF TRADE AGREEMENTS

MAY 11, 1995

1. **The BSA and the Computer Software Industry.** The Business Software Alliance ("BSA") is the leading organization in the world fighting against international barriers to trade in computer software for personal computers, and working toward stronger intellectual property laws and enforcement protecting the rightholders of computer software around the world. The BSA promotes the continued growth of the software industry through its international programs in the United States and more than 60 countries around the world.

BSA members include the leading publishers of business software for personal computers, such as Autodesk, Bentley Systems, Intergraph, Lotus Development, Microsoft, Novell and the WordPerfect Applications Group, The Santa Cruz Operation and Sybase.

2. **BSA Endorses the Extension of Fast Track Negotiating Authority.** As Representative Philip M. Crane declared when he and Representative Dreier announced these Joint Hearings, benefits to the U.S. economy as a result of trade agreements concluded under fast-track negotiating authority "are dramatic and proven." This certainly has been the result for the computer software industry, perhaps America's most successful export industry. This U.S. industry dominates a global market of more than $75 billion per year, due not only to American creativity in the realm of high technology, but also to falling trade barriers which have generated billions of dollars of additional export revenues, as well as hundreds of thousands of high value-added jobs in the United States.

BSA stands to benefit most clearly from the recently enacted North American Free Trade Agreement (NAFTA), and the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPs), one of the fruits of the Uruguay Round of multilateral trade negotiations, both of which were concluded under fast track procedures. It is doubtful that NAFTA and TRIPs would have been enacted on the same timetable--or at all--without fast-track negotiating authority. BSA shares the view of many observers that negotiation of a successful, definitive trade agreement would not be possible without fast track negotiating authority. Fast track procedures allow trade negotiators to make comprehensive commitments to trading partners, and obtain promises in return, without likelihood that individual provisions will be modified. Nonetheless, Congress retains its constitutional authority to approve or disapprove any treaty or trade agreement negotiated by the United States.

Because the United States is the world's largest economy and the world's leading exporting nation, BSA believes that the United States stands to gain

more than most countries from falling trade barriers. This is particularly true in the export of goods having high intellectual property content as a percentage of total value, such as computer software, where the United States continues to dominate global markets. Just as fast-track negotiating authority was necessary for U.S. approval of NAFTA and TRIPs, BSA believes that fast-track negotiating authority will be necessary to conclude other important trade agreements, such as agreements approving the accession of Chile and other countries in the Hemisphere to NAFTA.

3. **NAFTA's Importance to the Computer Software Industry.** As mentioned above, BSA does believes that fast track negotiating authority enabled the United States to negotiate NAFTA, which was then approved by Congress. NAFTA was an important and historic accord for the computer software industry because it delivered the following benefits:

- **National Treatment** - NAFTA requires national treatment with regard to the protection and enforcement of intellectual property rights, which prevents a foreign government from singling out U.S. companies (holding intellectual property rights), or foreign companies, for less favorable treatment than it provides to its own companies.[1] This principle has important practical effect in preventing unfavorable levies relating to intellectual property rights that various governments, particularly in Europe, impose on U.S. companies.

- **Computer Programs Are Literary Works** - NAFTA specifies that computer programs are literary works within the meaning of the Berne Convention,[2] and thus will benefit from all of the Berne Convention jurisprudence on the protection of literary works, which includes strict limitations on exceptions from protection.

- **Databases Are Protected Works** - Databases and other data compilations which by reason of selection or arrangement constitute intellectual creations are protected by copyright.[3]

- **Commercial Rental Right** - NAFTA clearly establishes that the rightholder of a computer program can authorize or prohibit the commercial rental of a computer program, and the distribution of a computer program will not exhaust the rental right (which otherwise would be exhausted by the "first sale" doctrine).[4]

- **Enforcement Provisions** - Perhaps the most important provisions of NAFTA are the extensive enforcement provisions, never before included in a multilateral intellectual property rights agreement. They are particularly important to BSA because so many Latin American countries lack "effective" enforcement of intellectual property rights including "expeditious" remedies to prevent and deter infringement, the standards set forth in NAFTA. Among the breakthroughs in the enforcement chapter are the following:

  A) The parties must have the right to limited discovery.[5]

  B) Injunctions must be available to parties in civil proceedings.[6]

  C) Damages must be adequate to compensate the right holder for the injury suffered.[7]

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[1] NAFTA Art. 1703.
[2] NAFTA Art. 1705(1)(a).
[3] NAFTA Art. 1705(1)(b).
[4] NAFTA Art. 1705(2)(d).
[5] NAFTA Art. 1715(2)(a).
[6] NAFTA Art. 1715(2)(c).
[7] NAFTA Art. 1715(2)(d).

D) Provisional measures must be prompt and effective, and must be available on an *ex parte* basis where delay is likely to cause irreparable harm to the rightholder or evidence is likely to be destroyed.[8]

E) Criminal penalties and remedies must be available at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale, and the level of penalties should be sufficient to provide a deterrent. Both problems are faced by the computer software industry in Latin America and around the world, and criminal penalties tend to be insufficient to provide a deterrent, unlike in the United States where felony provisions may be imposed including incarceration of up to five years and penalties of up to $250,000.[9]

- **Moral Rights** - Moral rights are excluded from the purview of NAFTA, which was an important goal of U.S. industry. These rights which are personal to authors, and often nontransferable, thus cannot be adjudicated by the NAFTA dispute settlement mechanism, and will continue to be freely alienable in the United States.[10]

- **Economic Rights Transferable** - No limitations can be placed on freedom of contract regarding the economic exploitation of a work,[11] which would prevent the application of laws, found in many civil law countries, that do not recognize certain transfers of rights by rightholders, and even when recognized, the right of the transferee to receive remuneration may be circumscribed.

- **Basic Rights** - NAFTA establishes a public distribution right and a public communication right, which are the rights of the rightholder to authorize or prohibit the first distribution to the public of a work, or the first communication of the work to the public.[12] These give the rightholder stronger distribution rights than the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971), and thus are of considerable use to U.S. industry, especially as we move into the Information Age.

4. TRIPs' Importance to the Computer Software Industry. While NAFTA generally establishes the highest level of intellectual property protection ever set forth in a multilateral trade agreement, TRIPs is even more important because it will bind more than 100 nations to standards of intellectual property protection that are similar to NAFTA standards. TRIPs' enactment by Congress as part of the Uruguay Round Agreements Act of 1994 also benefited from fast-track procedures. The advantages of TRIPs to the computer software industry include:

- **Constructive Accession to Other IPR Agreements** - TRIPs requires that the members of the World Trade Organization must extend intellectual property protection to other members as if all members had acceded to various intellectual property rights conventions, such as the Berne Convention on copyright, the primary multilateral agreement for protection of computer programs and other literary works.[13]

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[8] NAFTA Art. 1716(2).
[9] NAFTA Art. 1717(1).
[10] NAFTA Annex 1701 3(2).
[11] NAFTA Art. 1705(3).
[12] NAFTA Art. 1705(2).
[13] TRIPs Art. 3(1).

- **National Treatment** - TRIPs also establishes national treatment as the essence of intellectual property protection (although TRIPs national treatment is subject to more exceptions than Berne national treatment).[14]

- **NAFTA-Like Provisions** - Most of the provisions set forth above are also found in TRIPs, with the exception of the provision on the free transferability of economic rights, and NAFTA's clear enunciation of a distribution right and public communication right.

5. **Fast-Track Authority Should Require Strong Intellectual Property Protection.** As a grant of negotiating authority, Congress is able to establish policies, conditions and negotiating objectives to govern the Administration's fast-track authority. **One such condition or negotiating objective should be that any trade agreement will include strong provisions on intellectual property protection.** The United States Congress and the Executive Branch have cooperated over the past decade in guaranteeing to global industry much higher standards of intellectual property protection and enforcement than existed previously. This cooperation must continue in any negotiations on NAFTA accession or other trade agreements.

While the BSA recognizes that fast-track procedures must not become burdened with issues unrelated to trade, intellectual property protection is an essential component of international trade. Without strong intellectual property protection abroad, it is estimated that more than half of all United States exports would suffer substantial harm. Intellectual property protection and trade are inseparable, a position clearly recognized by NAFTA and TRIPs.

6. **Chilean Accession to NAFTA.** Fast-track negotiating authority would enhance the likelihood of Chilean NAFTA accession, and thus would expand the NAFTA trading area to the benefit of the computer software industry and much of the rest of U.S. industry. But whether or not Congress does grant the Administration fast-track authority, it is essential that negotiations with Chile (and other trading partners) require substantial improvements in intellectual property legislation and enforcement. Significant Chilean deficiencies include:

- **Penalties Inadequate** - Chilean criminal penalties for copyright infringement are seriously inadequate, and Chilean law fails to prescribe significant statutory damages for civil law copyright infringement (unlike U.S. or Brazilian law, for example).

- **Need to Prove Profit-Making Intent** - For most violations involving computer programs, the need to prove the existence of "profit-making intent" on the part of the infractor in order to fall within the Law.

- **No *Ex Parte* Search Procedures** - There is no express provision in Chilean legislation mandating *ex parte* civil search procedures (that is, without advance notice to the opposing party), which makes it very difficult for private parties to enforce copyright laws against Chilean pirates.

- **Limited Remedies** - Remedies available to Chilean enforcement authorities to curtail piracy are quite limited. The authorities should be permitted to close commercial establishments that use illegal software (much as they do in tax evasion cases with great effect). The seizure of illegal copies of computer programs and personal computers (or other equipment used to make copies) should be explicit in Chilean legislation.

- **Copyright Modifications Needed** - Modifications to Chile's copyright law are necessary. In particular, Chilean law should expressly prescribe a rental right

[14] TRIPs Art. 3(1)-(2).

(at least for computer programs), consistent with Art. 1705(2)(d) of NAFTA and Art. 11 of TRIPs.

- **Chile's Customs Valuation Is Unfavorable** - Chile's customs duty on the importation of computer software is 11%, but Chile assesses this duty over the value of a software package's content, not just the value of the physical media. Assessment over the value of the media only is favored by most of Chile's trading partners, including the United States, Canada, Mexico, Brazil, and the countries of the European Union. Assessment over the value of the content raises the price of computer software in the Chilean market and probably increases piracy.

7. Conclusion. Fast track negotiating authority for trade agreements has served the interests of U.S. industries such as the export-oriented computer software industry exceedingly well. Such authority should include as a condition or negotiating objective very high, NAFTA-like standards of intellectual property rights protection and enforcement. Countries such as Chile should not be permitted to derogate from such standards in any negotiations over accession to NAFTA. With these objectives in mind, the BSA strongly supports the extension of fast track negotiating authority.

Chairman CRANE. Thank you, Mr. Holleyman.
Mr. Anderson.

STATEMENT OF MARK A. ANDERSON, DIRECTOR, TRADE TASK FORCE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)

Mr. ANDERSON. Thank you, Chairman Crane.

The AFL–CIO appreciates this opportunity to testify on fast track negotiating authority. We believe that the current international economic position of the United States, together with the recent Mexican financial crisis and the resulting harm to workers, suggests at least extreme caution in further pursuing the trade liberalization agenda.

The AFL–CIO, therefore, believes that fast track authority, if granted, should be limited to negotiations with Chile but must include, among other things, worker rights, standards, and capital markets as principal negotiating objectives.

Workers in the United States have endured an extended period of economic hardship and extreme uncertainty. The huge structural shifts that have taken place in the economy have caused real pain for millions of workers and their families. Over the last 12 years, the nation has experienced falling wages, declining incomes for the majority of American families, increasing inequality and poverty, and the loss of millions of manufacturing jobs, all as the U.S. trade deficit has grown to record levels.

Just this year, the Mexican financial crisis, brought on in large part because of Mexico's own unsustainable trade deficit, will bring further pain to workers in both countries. Mexican workers have already seen their jobs disappear and their standards of living plummet. U.S. workers will experience increased downward pressure on their wages and will see their jobs eliminated as Mexico cuts imports, promotes exports, and attracts more and more U.S. investment to take advantage of its ever-cheaper labor costs.

The small 1994 U.S. trade surplus with Mexico will turn into a deficit that may reach $15 billion this year. The promise that NAFTA would bring about increased employment and prosperity for all has proven to be empty.

This tragedy should be a cautionary tale for all of us. It suggests, at least, that so-called free trade agreements are not a panacea for our problems, and if progress is to be made, it must be recognized that economic integration is a complex process that should be undertaken slowly and with extreme care. If anything, a deepening and widening of the negotiation agenda is needed.

Negotiations with Chile provide an opportunity to address these issues, make necessary improvements in the NAFTA, and reduce the likelihood of the Mexican crisis being repeated.

In our view, worker rights are the key to a successful agreement. The linking of worker rights and standards to trade has been a long held but unfulfilled negotiating objective of successive Democratic and Republican administrations. It is not a new issue and has been under discussion far longer than trade in services, investment, or intellectual property protection.

Both the 1974 and 1988 trade acts made worker rights a principal negotiating objective of the United States. The Uruguay

Round Agreements Act of 1994 directs the President to continue to press for worker rights in the WTO, as did Presidents Reagan and Bush throughout the round.

It has an even longer history in U.S. law. For example, the McKinley Tariff Act of 1890 prohibits the import of prison-made goods. Over the last 10 years, a large series of U.S. trade and investment laws were enacted that included worker rights conditionality.

Now, despite this history, the relationship between worker rights and trade remains controversial, so I would like to touch on why worker rights is, indeed, an integral part of trade and not an extraneous issue.

Both the NAFTA and the Uruguay round agreements resulted in the establishment of extensive rules under which goods and services are produced. The appropriate role of both government and private enterprise in economic development is directly addressed. This reflects agreement among the parties that in order to encourage the growth of trade, there needs to be agreed upon rules to ensure fair competition.

Those rules are no longer limited to border measures, like tariffs or quotas, but now address a whole series of practices that, in the past, were considered purely domestic in nature. The provisions of financial services, domestic government subsidies, consumer and product standards, intellectual property protection, and environmental policy, just to name a few, are all subject to international discipline or negotiation and are all considered to be trade related.

Labor used in the creation of goods for export is at least equally trade related. Indeed, the denial of worker rights has long been used to affect trade flows. This is most graphically demonstrated in the worldwide growth of export processing zones, where restrictions on worker rights are frequently used by governments as a trade and investment incentive.

If it is possible for us to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous, at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

Finally, Mr. Chairman, a central thrust and major deficiency of the NAFTA, in our view, is the reduction or the elimination of government control over the provision of financial services, capital flows, and investment. The financial crisis in Mexico is a grim reminder of the folly of relying solely on the market as a means of achieving economic prosperity. Ironically, in this case, speculators will be protected by U.S. Government intervention, but workers in both countries have been simply told to submit to the discipline of the market.

Once again, in our judgment, negotiations with Chile provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. Certainly, U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill-conceived economic activity.

Thank you very much, Mr. Chairman.

[The prepared statement and attachment follow:]

STATEMENT OF MARK A. ANDERSON, DIRECTOR, TASK FORCE ON TRADE
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
ON
FAST TRACK NEGOTIATING AUTHORITY

May 11, 1995

Mr. Chairman, members of the Committee, the AFL-CIO appreciates this opportunity to present its views on the fast track negotiating authority. The current international economic position of the U.S., together with the Mexican financial crisis and the resulting harm to workers, suggest extreme caution in further pursuing a trade liberalization agenda. However, if the process is to continue, it is particularly important for the Congress to establish negotiating objectives that hold out the prospect of advancing, not retarding, the interests of working Americans.

For these reasons, the AFL-CIO believes that fast track authority, if granted, should be limited to negotiations with Chile, and must include among other things, worker rights and standards, and capital markets as principal negotiating objectives. Appended to this statement is a more complete review of issues related to possible negotiations with Chile that was submitted by the AFL-CIO to the U.S. Trade Representative on April 28, 1995.

Workers in the United States have endured an extended period of economic hardship and extreme uncertainty. The huge structural shifts that have taken place in the economy have caused real pain for millions of workers and their families.

Last year the U.S. merchandise trade deficit reached a near record $151 billion. The 1995 deficit is projected to be substantially larger. Over the last dozen years, the trade deficit has totaled some $1 1/2 trillion, and helped turn the U.S. from being the world's largest creditor nation, to the worlds largest debtor. During this period, a period of increasing trade liberalization, the nation experienced falling wages, declining incomes for the majority of American families, increasing inequality and poverty, the loss of more than three million jobs in the manufacturing sector, and growing social tension. While trade is not necessarily the cause of all these problems, it has certainly made a major contribution, and indicates that the best interests of working people are tremendously vulnerable, as long as those interests are ignored in negotiations on international economic issues.

Last December, Mexico, because of its own unstainable trade deficit, was forced to allow the peso to freely float in value relative to the dollar. This action had the effect of almost immediately reducing the peso's value by some 50 percent. It is clear, that the cost of this devaluation, together with its underlying economic causes, will be borne largely by workers in both countries. For Mexican workers, imported goods have skyrocketed in cost, real earnings have plummeted, inflation has soared, and more than one-half million jobs have disappeared. Because of the devalued peso, U.S. employers in the export maquiladora sector who calculate their wage costs in dollars, will see an annual windfall of some three-quarters of a billion dollars. As Chrysler President Robert Lutz observed, lower labor costs will "flow right through to the bottom line."

U.S. workers will experience increased downward pressure on their wages, and will see their jobs disappear as Mexico cuts imports, promotes exports, and attracts more and more U.S. investment to take advantage of its ever cheaper labor costs. The small 1994 U.S. trade surplus with Mexico will turn into a deficit that may reach $15 billion this year. By most commonly accepted calculations, this will mean the loss of 300,000 U.S. jobs this year alone. The promise that NAFTA would bring about increased employment and prosperity for all has proven to be empty.

This tragedy should be a cautionary tale for all of us. It suggests, at least, that so-called free trade agreements are not a panacea for our problems. If progress is to be made, it must be recognized that economic integration is a complex process that should be undertaken slowly and with extreme care. If anything, a deepening and widening of the negotiation agenda is needed.

Issues such as capital markets and most importantly, worker rights and standards, must be dealt with directly. Certainly, U.S. taxpayers should no longer be required to be the ultimate rescuer, as is the case with Mexico, of speculators and elites involved in ill-conceived economic activity.

Negotiations with Chile provide the opportunity to address these issues, make necessary improvements in the NAFTA, and reduce the likelihood of the Mexican crisis being repeated. Early in 1994, the AFL-CIO and our counterpart organization, the Unitarian Workers Central (CUT) of Chile, reached agreement to support the negotiation of a bilateral trade agreement between our two countries, so long as those negotiations were directed at reaching agreement on core worker rights and standards. Our two movements did not shy away from integration, we sought to embrace it.

We believed that a bilateral agreement could be a significant improvement over the flawed NAFTA, and had the possibility of setting new standards for decency in trade. While the decision to negotiate a new trade arrangement with Chile through the expansion of NAFTA was disappointing, we continue to believe that the goal of directly incorporating worker rights and standards in commercial agreements is eminently possible. The government of Chile has expressed its willingness to negotiate on this issue. The governments of Mexico and Canada have indicated that labor rights and standards must continue as part of an expanded NAFTA. The U.S. Administration has expressed the view that the NAFTA side agreement is a floor, not the ceiling for future negotiations.

The opportunity to secure the support of workers, who are most at risk from trade liberalization, should not be lightly dismissed. Addressing their interests would demonstrate that movement toward freer trade can be beneficial to the majority of people and not just corporate and political elites.

WORKER RIGHTS

The linking of worker rights and standards to trade has been a long held, but unfulfilled negotiating objective of successive Democratic and Republican administrations. It is not a new issue, and has been under discussion far longer than trade in services, investment, or intellectual property protection.

The 1974 Trade Act, which provided the authority to negotiate the Tokyo round of multilateral trade negotiations directed the President to seek "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT (Section 121(a)(4))." The Omnibus Trade and Competitiveness Act of 1988, which provided the authority to negotiate the Uruguay Round stated, "The principal negotiating objectives of the United States regarding worker rights are: (A) to promote respect for worker rights; (B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and (C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international traded. (Section 1011(b)(14)). The Uruguay Round Agreement Act of 1994 instructed the President to seek the establishment of a working party, under the auspices of the World Trade Organization (WTO), to examine the relationship of internationally recognized worker rights to the articles, objectives, and related instruments of the GATT and WTO respectively, and to examine the effects on international trade of the systematic denial of such rights (Section 131). The Clinton Administration is currently pursuing that Congressional directive.

These longstanding negotiating objectives are based on the understanding that there are no automatic mechanisms by which increased trade, or indeed, purely national economic growth leads to higher wages and improved working conditions. While increased trade can provide the resources for improvements, history tells us that only trade unions through collective bargaining and government through adequately enforced labor laws can ensure that trade really does lead to higher standards of living for all workers.

The preamble to the GATT, understanding that increased trade is not an end in and of itself, states that the participating countries are entering into the accord:

> "Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."

The Havana Charter of 1948, which the GATT incorporates by reference states:

> "The Members recognize that ... all countries have a common interests in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade and accordingly each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within the territory."

But the history of linking worker rights and trade is much older. The McKinley Tariff Act of 1890 included a provision banning the import of prison made goods. That prohibition is included in the GATT. In 1912 the U.S. banned the import of white phosphorous matches because of health hazards associated, not with their use, but with their production.

Both the Eisenhower and Nixon Administrations proposed including worker rights in the GATT. At the start of the Uruguay Round in 1986, the Reagan Administration proposed that worker rights be included on the negotiating agenda, and throughout the round former USTR's Clayton Yeutter and Carla Hills sought to introduce the issue many times. Their reasoning was explained in a 1987 letter to the Ways and Means Committee from President Reagan's Labor Secretary Bill Brock who wrote:

> "Those countries which are flooding world markets with goods made by children, or by workers who can't form free trade unions or bargain collectively, or who are denied even the most minimum standards of safety and health are doing more harm to the principle of free and fair trade than any protectionist group I can think of."

While sadly little progress has been made at the multilateral level, the last twelve years have seen a significant expansion of worker rights conditionality in U.S. law. The Caribbean Basin Initiative, the Generalized System of Preferences, the Andean Trade Preference Act, the Overseas Private Investment Corporation, Section 301 of the 1988 Trade Act, and U.S. participation in international financial institutions all contain some form of worker rights conditionality. Experience under these programs has indicated that by directly focusing on worker rights, increased trade and investment can contribute to economic and social development.

Despite this history, these are some who believe that worker rights and standards are unrelated to trade, and therefore have no place in trade negotiations. Both the NAFTA and the Uruguay Round agreements resulted in the establishment of extensive rules under which goods and services are produced. The appropriate role of both government and private enterprise in economic development is now directly addressed. This reflects an agreement among the parties that in order to encourage the growth of trade, there needs to be agreed upon rules to ensure fair competition. In other words, the right to participate in world trade places certain duties on countries to observe international norms. Those norms are no longer limited to border measures like tariffs or quotas, but now address a whole series of practices that in the past were considered purely domestic in nature. The provision of financial services, domestic government subsidies, consumer and product standards, research and development practices, agricultural policies, intellectual property protection,

environmental policy, and anti-competitive practices are all subject to international discipline or negotiation and are all considered to be trade related.

Labor used in the creation of goods for export is equally trade related. Indeed, the denial of worker rights has long been used to affect trade. This is most graphically demonstrated in the worldwide growth of export processing zones, where restrictions on worker rights are used by governments as a trade and investment incentive. Pakistan, Turkey, Peru, Columbia, Venezuela, Indonesia, Malaysia, Philippines and various countries of the Caribbean Basin, to name just a few, have used or are using such restrictions. In countries like China, independent unions are simply prohibited.

The question is not whether GATT or regional trade agreements should interfere with national policies. They already do. After all, trade agreements are by definition about reducing national sovereignty. That is why they are negotiated. For workers, the issue now is whether those international regulations can be extended to the people side of the production equation, to set a minimum level of labor standards so as to ensure that social conditions improve as trade expands. If it is possible to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

At the international level, the real difference in view over worker rights is between those who believe that the operation of democratic institutions is a necessary and essential aspect of economic development, and those who believe that autocratic government and "disciplined labor" is the key to economic success. This latter view has even been expressed in our own country from time to time. At the turn of the century, George Baer, head of the Reading Railroad, voicing opposition to an ongoing strike of miners stated:

> "The rights and interests of the laboring man will be protected and cared for--not by the labor agitators, but by the Christian man to whom God in his infinite wisdom has given the control of the property interests of this country."

Surely, we have learned the error of this view and now understand that worker rights and democratic institutions are as necessary internationally, as they are in our own country. The experience of the former Soviet Union, Eastern Europe, Chile, and South Africa all point to the importance of worker rights and democratic institutions. Where these basic rights are denied, power will be concentrated in the hands of a political and economic elite. By itself, this will restrict the ability of mass markets to develop. For growing trade to lead to benefits for the majority of people, there has to be freedom to create institutions such as trade unions that can ensure a fair distribution of productivity gains. This is also in our overall interest because it will encourage a faster growth of new markets.

While the North American Agreement on Labor Cooperation represents a small first step in associating worker rights and standards to an international trade agreement, major improvements are needed. The AFL-CIO believes that a minimum, negotiations with Chile should focus on reaching agreement concerning the prohibition of forced labor, guarantees on freedom of association and the right to organize and bargain collectively, nondiscrimination in employment, and a minimum age for the employment of children. Negotiations should also seek to delineate rules and regulations that ensure a safe and healthy workplace. An international consensus on these issues and others has already been developed by the International Labor Organization.

Agreements reached in these areas should be incorporated in the main body of trade agreements, and be subject to the same dispute mechanisms available to other covered issues. During this period of increasing economic insecurity, workers interests can no longer be shunted aside to inadequate side agreements.

CAPITAL MARKETS

A central thrust and major deficiency of NAFTA was the reduction or elimination of governmental control over the provision of financial services, capital flows, and investment. What was ignored is the reality that when governments stop regulating or supervising trade, currency, and investment flows, then those matters will be the sole province of private investors, multinational corporations and currency speculators. They, not elected governments, will make decisions affecting economic development and equity, and thus democracy itself.

The financial crisis in Mexico, and its harm to Mexican and U.S. workers is a grim reminder of the folly of relying solely on the "market" as a means of achieving economic prosperity. Ironically, speculators will be protected from the market by U.S. government intervention, but workers in both countries have been simply told to submit to the discipline of market forces. During the NAFTA negotiations, the AFL-CIO repeatedly urged that the governments address such issues as excessive foreign debt, exchange rate fluctuations, and investment controls and oversight. That advice was ignored.

Negotiations with Chile provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill conceived economic activity. Among the issues that should be positively addressed are greater transparency, a transaction tax on short term financial instruments, expansion of such laws as Chile's that prohibit the repatriation of capital for one year, expansion of government screening of inward investment, increases in reserve requirements for financial institutions, as well as direct negotiations on exchange rates.

Mr. Chairman, the AFL-CIO believes that negotiations with Chile, if carefully constructed, hold the possibility of making needed improvements on NAFTA. Worker Rights are key to a successful agreement. We stand ready to work with you and members of the Committee to structure legislation that would benefit workers, and make freer trade a positive goal for all.

STATEMENT OF MARK A. ANDERSON, DIRECTOR
AFL-CIO TASK FORCE ON TRADE
ON BEHALF OF THE
LABOR ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS AND TRADE POLICY
TO THE UNITED STATES TRADE REPRESENTATIVE
ON
NEGOTIATIONS WITH CHILE ON ACCESSION TO THE NAFTA

April 28, 1995

On December 11, 1994, the heads of State of the United States, Mexico, Canada, and Chile announced their decision to begin the process by which Chile will accede to NAFTA. In that announcement, they stated "We seek in this hemisphere to expand market opportunities through equitable rules and to eliminate barriers to trade and investment through agreed disciplines at high levels. This approach, coupled with policies that address the conditions of labor and protection of the environment will be pillars of a new partnership in the Americas." Formal negotiations are expected to begin in the spring of 1995.

The AFL-CIO and the Unitarian Workers Central (CUT) of Chile had advocated the negotiation of a bilateral trade agreement to make it more likely that basic worker rights and standards were included directly in an agreement, and subject to the same dispute settlement mechanism available to rules governing capital. While recognizing that the NAFTA represented a small first step in addressing workers interests, workers in both the U.S. and Chile did not want the flawed labor side agreement to NAFTA to be the standard for further hemispheric integration.

In commenting on the announcement of negotiations leading to Chilean accession to NAFTA, the AFL-CIO and the CUT stated that they "deeply regret the decision of our two governments to negotiate a new trade arrangement through the expansion of the flawed NAFTA. We have argued for months for a bilateral agreement which would set new standards for decency in trade matters in a way that the interests of the companies should not be above the internationally recognized labor rights of the workers... We will nevertheless continue to work together to make respect for basic worker rights and standards a central feature of trade agreements in this hemisphere."

While negotiations with Chile over NAFTA accession will make this goal more difficult to achieve, it remains eminently possible, and should be the principal negotiating objective of the U.S. The government of Chile has expressed its willingness to discuss these questions. The opportunity to secure the support of workers, who are most at risk from trade openings should not be squandered by governments. Addressing their interests would clearly demonstrate that movement toward freer trade can be beneficial to the majority of people and not just corporate and political elites.

Events following the enactment of NAFTA, demonstrated that the agreement, as written, provided no guarantee or assurance of economic prosperity. Indeed, the reverse is painfully evident. The financial crisis in Mexico that has resulted in a massive devaluation of the peso will cause untold hardship for tens of thousands of Mexican and U.S. workers. In Mexico, workers have seen their real earnings plummet, while multinational corporations have reaped a financial windfall from drastically lower dollar denominated wage costs. U.S. workers will see their jobs disappear as Mexico cuts imports, promotes exports, and seeks to attract more and more U.S. investment. The small U.S. trade surplus in 1994 will turn into a deficit that may reach $15 billion in 1995. Clearly, NAFTA is not the answer. Negotiations with Chile provide the opportunity to make necessary improvements and reduce the likelihood of the Mexican tragedy being repeated.

LABOR RIGHTS AND STANDARDS

The linking of labor rights and standards to trade has been a long held, but unfulfilled, bipartisan negotiating objective of successive U.S. administrations. Both the 1974 and the 1988 Trade Acts made worker rights a principal trade negotiating objective of the U.S. Labor rights conditionality has been established in a variety of U.S. trade laws, among them the Caribbean Basin Initiative in 1983, the Generalized System of Preferences in 1984, Overseas Private Investment Corporation in 1985, Section 301 of the 1988 Trade Act, and most recently in the 1994 authorization bill for multilateral lending organizations. That conditionality must be extended to NAFTA through the upcoming negotiations with Chile. Failure would be a step backward in this vital area.

This linkage has been based on the understanding that there are no automatic mechanisms by which increased trade or indeed, purely national economic growth, leads to higher wages and improved working conditions. While increased trade can provide the resources for improvements, history tells us that only trade unions through collective bargaining and government through adequately enforced labor laws can insure that increased trade really does lead to higher standards of living for all workers.

As a rules-based international trading system develops, it is vital that workers receive the same treatment that has been provided business interests. These rules are, in large measure, designed to establish basic conditions under which traded goods and services are produced. No longer are they focused solely on border measures, but now address practices that heretofore were considered purely domestic in nature. For example, the provision of financial services, domestic government subsidies, consumer and product standards, anti-competitive practices are all subject to international discipline or discussion. If it is possible to reach agreement on issues as complex as intellectual property protection, whose direct link to trade is tenuous at best, surely it is possible to negotiate basic rules for worker rights and standards that are directly related to the production process.

While the North American Agreement on Labor Cooperation represents a small first step in associating worker rights and standards to an international trade agreement, major improvements are needed. The AFL-CIO believes that at minimum, negotiations should focus on reaching agreement concerning the prohibition of forced labor, guarantees on freedom of association and the right to organize and bargain collectively, as well as nondiscrimination in employment. Negotiations should also seek to delineate rules and regulations that insure a safe and healthy workplace, prevent child labor and establish appropriate standards concerning hours of work. An international consensus on these issues and others has already been developed by the International Labor Organization.

Agreements reached in these areas should be incorporated in the main body of trade agreements, and be subject to the same dispute mechanisms available to other covered issues. During a period of increasing economic uncertainty, workers interests can no longer be shunted aside to inadequate side agreements.

FINANCIAL SERVICES, INVESTMENT, AND CAPITAL MARKETS

A central thrust of NAFTA was the reduction or elimination of governmental control over the provision of financial services, capital flows, and investment. What was ignored is the reality that when governments stop regulating or supervising trade, currency, and investment flows, then those matters will be the sole province of private investors, multinational corporations and currency speculators. They, not elected governments, will make decisions affecting economic development and equity, and thus democracy itself.

The financial crisis in Mexico, and its harm to Mexican and U.S. workers is a grim reminder of the folly of relying solely on the "market" as a means to achieve economic prosperity. Ironically, speculators will be protected from the market by U.S. government intervention, but workers in both countries have been simply told to submit to the discipline of market forces. During the NAFTA negotiations, the LAC repeatedly urged that the governments address such issues as excessive

foreign debt, exchange rate fluctuations, and investment controls and oversight. That advice was ignored.

The upcoming negotiations provide the opportunity to learn from past mistakes and develop alternative approaches to the important issue of capital markets. U.S. taxpayers should no longer be required to be the ultimate rescuer of speculators and elites involved in ill conceived economic activity. Among the issues that should be positively addressed are greater transparency, a transaction tax on short term financial instruments, expansion of such laws as Chile's that prohibit the repatriation of capital for one year, expansion of government screening of inward investment, increases in reserve requirements for financial institutions, as well as direct negotiations on exchange rates.

INTELLECTUAL PROPERTY

There are a variety of issues concerning the rights of performers that need to be addressed in the upcoming negotiation. They include the following:

* A new NAFTA agreement, as is now the case with the WTO, should require that parties to the agreement provide performers with the ability to prohibit the unauthorized fixation, reproduction, or broadcast of their live performances.

* Negotiations must develop provisions, based on existing U.S. law, that obligates audio hardware manufacturers and blank tape suppliers to pay a levy to compensate copyright owners and performers for unauthorized home copying. The revenue collected from this levy is distributed to performers and copyright holders on the basis of national treatment. U.S. statute also prohibits the sale or importation of audio hardware that is not equipped with technology that prevents serial digital copying. Similar protections should be included in NAFTA.

* Legislation is now being considered by Congress that would give copyright owners the ability to authorize or prohibit the transmission of their sound recordings through digital media. This kind of protection is necessary for performers and must be included in a new agreement, and should be extended to all audio/visual works.

* The existing NAFTA, denies American performers, but not producers, the right to collect revenue for the public performance of their sound recordings. This inequity must be corrected in the upcoming negotiation, and should be extended to all audio/visual works.

* Finally, the existing NAFTA exempts Canada from appropriate obligations for its "cultural industries." This exception has been particularly harmful to the U.S. entertainment industry, is currently subject to a Section 301 petition, and has been cited by France, the European Union, and other countries as the basis for exempting their cultural industries from WTO discipline. It must not be extended to other nations.

TEMPORARY ENTRY

The existing NAFTA, as well as its predecessor, the U.S.-Canada FTA, made significant changes in U.S. immigration laws by expanding the right of U.S. employers to recruit foreign nationals to work in the United States on temporary status in professional occupations. Employers are not required to obtain a visa or demonstrate that a shortage exists.

The impact of these provisions is most acute in the health care industry. Because the FTA provisions were enacted on top of the H-1A visa program which was enacted in 1989, the annual entry of temporary RN's now equals some 5 percent of RN's newly diplomaed in the United States each year who are looking for work. Instead of cutting back on their use of temporary RN's as the shortage of the 1980's abated, employers have continued to increase their use. This is especially troublesome in light of the fact that the health care industry is undergoing a massive and far-reaching restructuring. The maximum cooperation of government, employers and workers will be needed to promote the retraining and re-employment of displaced workers. The continued

existence of this free trade loophole--which is being expanded through inter-governmental consultations to include additional health care occupations--only makes that cooperative effort more difficult to achieve.

The LAC believes that NAFTA provisions permitting this type of entry should be renegotiated in order to remove registered nurses and other health care professionals from the list of eligible occupations.

SAFEGUARDS

The existing NAFTA seriously weakened Sec. 201 of the Trade Act by drastically limiting the ability of the government to impose protective measures, including quotas, to remedy or prevent injury to domestic industry and to workers as a result of increased imports from the other parties. While providing the illusion of possible safeguard action, the present agreement includes procedures and definitions that make the finding of injury highly unlikely, while at the same time prohibiting the imposition of measures that would remedy injury caused by imports.

The deficiencies of this chapter loom large in light of the Mexican financial crisis and peso devaluation which help will turn the small 1994 U.S. trade surplus with Mexico into a deficit that may reach $15 billion by the end of 1995. That shift in terms of trade between Mexico and the U.S. will result in the displacement of tens of thousands of U.S. workers because they have little hope of receiving relief from U.S. trade law. The LAC believes that this chapter should be renegotiated to correct its serious shortcomings.

ENVIRONMENT

The Declaration of Principles adopted by the Heads of State at the Summit of the Americas stated that, "Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly." Negotiations with Chile provide the first opportunity to take concrete steps to bring life to that Summit declaration.

The LAC believes that the environmental side agreement to NAFTA, while establishing a connection between necessary environmental protection and commercial agreements, is inadequate to the task of insuring progress in this important area, and should be significantly improved. Appropriate environmental law, and the means to fairly and openly settle disputes concerning those laws, should be made part of any new trade agreement.

NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

The NAFTA-TAA Program was established to provide training, re-employment services and income support for workers dislocated because of trade with Mexico and Canada. As of April 10, 1995, the Department of Labor had received 426 petitions requesting assistance. Of that number, 194 were certified, covering almost 27,000 workers who lost his or her job because of NAFTA. With the U.S. trade balance deteriorating sharply with Mexico and Canada, the need for effective adjustment assistance will grow rapidly. The addition of Chile to NAFTA will add to this serious problem.

The LAC believes that NAFTA-TAA needs to be improved by increasing public outreach efforts on the part of government, relaxing the very strict training requirements currently present in the program, increasing program coverage to include service workers, and extending the income support component of the program to two years. Such steps would ease the burden on those workers whose jobs disappear because of NAFTA.

Chairman CRANE. Thank you.

This is a germane issue, but not one that we focused on thus far in our discussions today. The President has made a case, and I think very convincingly, that the promotion of free markets in China is calculated to enhance rather than diminish the human rights of the Chinese people. While it is not the total answer to human rights problems, still, I think, raising living standards when you are talking about basic human rights, the ability to put a roof over your head, clothe your children, feed your children, is a vital human right. Would you folks agree with that?

Mr. ANDERSON. Mr. Chairman, I would certainly view the ability of someone to improve his or her own lot in life a desirable goal for all governmental policy or private sector policy.

I would make a distinction, however, between the promotion of human rights as an overall goal and the promotion of labor rights and standards in trade agreements. Human rights are something that we believe, and we disagreed with the President's decision, Mr. Chairman, to delink on China. We disagreed with it very strenuously. But it is a different issue when you talk about labor rights and standards, which have a direct economic impact on the trade flows.

Chairman CRANE. Does anyone else choose to comment on that?

[No response.]

Chairman CRANE. That was the second question I was going to get to, and that is the President does not approve of the linkage with MFN, most favored nation, extension to China of human rights conditions. I am just curious how, if that should not be linked, you simultaneously feel either labor or environmental issues should be linked. I mean, if they are not directly and immediately related to the promotion of more free trade.

Mr. ANDERSON. If I could expand, Mr. Chairman, the notion of labor rights and standards, I think that labor workers are certainly a direct part of the production process. Certainly, their conditions, their ability to join together into unions to bargain over their conditions, their ability to improve their wages through collective action or through individual action has a direct bearing on how goods are traded internationally. Certainly, it has a direct bearing on the price and cost of those goods.

For me, it is instructive that there are so many countries in the world who use the denial of worker rights, prohibit the organization of unions, permit the employment of children, as a means of attracting foreign investment and as a means of expanding trade, because they realize it will cut their costs. We think those are the kinds of things that should be addressed in a negotiating context so that the livelihoods of all those workers can be improved.

Chairman CRANE. Does anyone else have a comment?

Mr. PRUDENCIO. Mr. Chairman, I would just add on the environmental questions and where they relate to environment, again, pointing to my testimony, we are looking at addressing the trade related environmental issues. We feel strongly that environmental issues of their own right deserve their own fora for negotiation, which is why the Montreal Protocol, the convention to protect the trade of endangered species, all those were negotiated not as trade agreements or with trade provisions to enforce them, but as indi-

vidual environmental agreements, where we look for certain environmental safeguards within these trade agreements or on issues that directly relate to environmental protection, consumer safety.

Pesticide revenues, for instance, the role of investment in creating potential pollution havens in other countries, those are the issues we are trying to identify and trying to address within these trade negotiations. We are not trying to, for instance, force another country to set a certain standard on environmental protection.

In fact, the NAFTA environmental agreement or the NAFTA itself did not set one environmental standard. That is important to note. What the NAFTA side agreement did, it said, we are going to work cooperatively to make sure that we are all improving our environmental performance and we will have some mechanisms in place if one of us does not live up to the bargain. That is important to note, I think.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Thank you.

Mr. Anderson, I cannot think of anything that is more directly related with trade than how it impacts on American workers. The best deal in the world, if it means that we are going to be unemployed, obviously, we would have to take a look at it. So I can see how people want to make this as simple as possible, but when the people go to vote, the only thing I hear is, what is the impact going to be on the American workers?

It seems to me that those that negotiate should not be so far up in the clouds that they do not understand that on the street and in the Congress, people want to know. We want to help those people. We want free trade. But how does it impact on me?

But, Ms. El-Chaar, as relates to environment, I would normally think that the chemical industry, whenever anyone says that they are discussing environmental protection, that the chemical industry would say, count me in. I would like to fund that. We talk about cancer, lung cancer, the cigarette industry says, I am with you. You talk about drunk driving, the alcohol and beer industry say, whatever I can do.

Why would not the chemical industry say, that is what I have been telling you all along. We have to have progress and protect the environment.

Ms. EL-CHAAR. We are not saying the opposite. We are in agreement with you. Yes, we should be protecting the environment.

Mr. RANGEL. I mean, whenever it comes up, you say, count me in. If it comes up here with a trade agreement, you say, hey, I want to be there. I want to show you what we have been doing. I want them to learn as a result of our mistakes and our progress. Why would you not insist that the industry be protected to show what you believe would be a good record or at least to show what you intend to do in the future as you find the balance between profit and our national interest?

Ms. EL-CHAAR. We do insist on being there, and we do promote our record. Many of the chemical companies manufacture products that work in tandem with the environment. Perhaps one product——

Mr. RANGEL. Specifically, what I am talking about is your testimony saying that it should be excluded from the fast track. That is all I am talking about. I know other good work that you do, but I am only talking about this. How would this impede anything that your industry would want to do?

Ms. EL-CHAAR. I would suggest that working with environmental initiatives is better addressed through multilateral larger fora——

Mr. RANGEL. I heard you. I am asking why. Why would you want to do it multinational? Why would you think it would hurt your industry to almost insist that if you are going to discuss environment, I want to be on that table? How do you think it helps you—and this may be a dangerous question to answer—how would it help your industry to exclude it from the trade negotiation? What could happen badly for your industry?

Ms. EL-CHAAR. Perhaps I am not best qualified to answer the question at this point, but we will ensure——

Mr. RANGEL. Do you represent the industry?

Ms. EL-CHAAR. On this position, yes, but we can answer your question and submit it as an answer to your question for this testimony.

Mr. RANGEL. Oh, no. I think we all know the answer, and it is unfortunate, that is all. I wish the chemical industry could have more confidence in our negotiators and in the process. Thank you so much.

Thank you, Mr. Chairman.

Chairman CRANE. I want to thank all of you for your testimony today. I appreciate your giving of the time. The subcommittees now stand adjourned.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

EXTENSION OF FAST TRACK NEGOTIATING AUTHORITY TO THE ADMINISTRATION

WEDNESDAY, MAY 17, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
JOINT WITH COMMITTEE ON RULES,
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE,
Washington, D.C.

The subcommittees met, pursuant to call, at 10:03 a.m., in room 1100, Longworth House Office Building, Hon. David Dreier (chairman of the Subcommittee on Rules and Organization of the House) presiding.

Mr. DREIER. The joint subcommittees will now come to order. The matter before us is the second of two joint hearings of the subcommittees concerning fast track agreement negotiating authority.

I would like to say good morning and welcome to the members of the subcommittee on Trade and the Subcommittee on Rules and Organization of the House, also to our distinguished witnesses, especially our good friend, U.S. Trade Representative, Mickey Kantor, and the members of the audience who are here today.

These public hearings are intended to provide the two subcommittees with an opportunity to address issues relating to fast track procedures and rules, trade goals, negotiating objectives, and conditions associated with an extension of fast track authority.

Congress has recognized for decades the critical role the President must play to further a top national economic priority—promoting an open and fair trade regime. This clearly contributes to a stronger and more vibrant U.S. economy.

U.S. exports have more than doubled over the last 10 years. We are the world's top exporter. Exports directly account for more than 1 in 10 U.S. jobs. Nearly one-quarter of our economy is tied to international commerce.

Reducing our import barriers has made our economy more efficient. Free trade also benefits middle-income families by cutting taxes, increasing buying power, and raising living standards.

I would note that fully implementing the Uruguay round of the General Agreement on Tariffs and Trade promises the equivalent of a $500 tax cut for every American family.

Despite the overwhelming benefits of lower trade barriers, some have questioned the merits of the fast track process. Fast track has been called secretive, hasty, and even unconstitutional by some. I totally disagree with this view. I hope very much that this hearing

will help in fostering greater understanding of the history and purpose of fast track.

I would point out that fast track is only the most recent congressional executive agreement to lower trade barriers. As early as 1890, Congress delegated tariff bargaining authority to the President. In 1934, following the economic disaster caused by Smoot-Hawley protectionism, something that Chairman Crane likes to often refer to, Congress authorized the President to proclaim U.S. tariff reductions as part of trade agreements. This ability to reduce tariff barriers helped fuel this country's economy in the postwar era, creating economic growth in free market democracies around the world.

By the early seventies, tariff reductions were no longer the singular goal of the U.S. trade policy. In 1974 Congress developed the fast track procedures to provide the President with credibility in negotiations to eliminate nontariff trade barriers. Fast track ensures that Congress carries out its constitutional responsibilities regarding legislative implementation of those agreements.

Promoting free trade has been a successful national policy for 60 years. Fast track has contributed to that success for two decades. While the goal of improving the lives of American families by fostering greater international commerce has not changed, fast track can be fine-tuned to maximize its positive impact on the process.

Fast track procedures must foster ongoing and substantive consultations between the executive branch and the Congress in order to maintain its viability as a bond between the two branches with a role in international commercial policy. Fast track must be focused on matters directly related to trade in order to avoid a critical procedural tool being undermined through overly broad application.

Finally, the fast track process must be updated to account for changes in other congressional procedures, such as the PAY–GO budget rules instituted in 1990.

I look forward to hearing from our witnesses today on how the fast track process can be improved.

I want to extend a warm welcome to Ambassador Kantor and look forward to resolving this issue. I would like at this time to yield to Chairman Crane, who has been a leader in this fight for free trade, and I appreciate the fact that we are able to jointly work together in these two subcommittees on this issue. Chairman Crane.

Chairman CRANE. Thank you, Chairman Dreier. I, too, look forward to hearing our witnesses testify today on the second day of our joint fast track hearings.

In my May 11 statement, I set forth the details of my position on fast track authority. I am a strong supporter of fast track authority because it assures certain and expeditious consideration of legislation to implement trade agreements, agreements that have allowed us to make substantial progress in opening markets, lowering tariffs, and regulating and ending nontariff barriers to trade. I look forward to hearing from our witnesses today and working with the administration to develop a fast track limited to trade issues only.

Mr. DREIER. Mr. Beilenson.

Mr. BEILENSON. Thank you, Mr. Chairman.

We on the Rules Committee appreciate having this opportunity again to join with our colleagues on the Subcommittee on Trade for this second day of hearings on issues involved in the renewal of fast track trade agreement authority.

This has become an essential feature of U.S. trade policy. Without it, it is highly unlikely that the United States would have been as successful as it has been in recent years in negotiating more open trade arrangements with other nations, arrangements that are providing new markets for U.S. goods and promoting economic growth, both here at home and abroad.

We look forward to working on the renewal of this authority in the weeks ahead. We appreciate the guidance we are receiving on this matter through this set of hearings.

One suggestion made at last week's hearing was to make fast track authority permanent, but to require Congress to explicitly authorize any trade agreement the administration wishes to negotiate under that authority. I hope that suggestion will be pursued by our two subcommittees.

I hope we will be able to find a satisfactory way to address environmental and labor issues in the context of this renewal of trade authority. I personally feel strongly that we cannot responsibly negotiate rules for the flow of goods and services across borders without considering the ecological consequences or the effects on workers that will result from those rules.

We are looking forward to hearing from our Trade Ambassador, Mr. Mickey Kantor, and the other distinguished witnesses we will be hearing from today, and I join in welcoming them and thanking them for taking the time to be with us here today.

Thanks, Mr. Chairman.

Mr. DREIER. Thank you very much, Mr. Beilenson.

Are there any other Members who wish to make opening statements?

If not, it is with a great deal of pleasure that I welcome my very good friend and fellow Angeleno. We are also joined by my ranking minority member, Mr. Beilenson.

I have to say that, once again, it has been a great pleasure for me to welcome this administration and Mickey Kantor. From his active role as a Democratic leader in California, who might have had a pattern of wanting to replace some of us who serve as Members of the California congressional delegation on the Republican side, to his official position here in this administration so that we can, in fact, find and maintain strong areas of agreement, I look forward to continuing that and continuing to have you in this capacity for at least a couple of years to come.

With that, I am happy to welcome you, Ambassador Kantor. I look forward to your testimony.

STATEMENT OF HON. MICHAEL KANTOR, U.S. TRADE REPRESENTATIVE

Ambassador KANTOR. Mr. Chairman, thank you for the kind remarks. I look forward to that as well—in fact, for the next 6 years.

Let me say that I, in response to your kind remarks and my background in California and with also our friends, Bob Matsui—

and Mr. Matsui, Mr. Beilenson, I rarely went east of La Cienega, so, therefore, I had no effect on your district whatsoever.

In fact, my record in politics in California would show I had very little effect on politics in California. Some suggested the best thing that ever happened to the Republican party there is that I was chairing a number of campaigns for Democrats in the State, so I think I am better off in this nonpartisan and bipartisan job.

Mr. DREIER. Well, I have to say, it was your departure that actually led us to increase our numbers in the Republican delegation in California.

Ambassador KANTOR. I am not sure there is a correlation.

I want to say hello also to Chairman Crane, who we have worked closely with and has been so helpful to us.

I hope it is appropriate also to indicate in the audience here is a former member, Mr. Frenzel, who has been so helpful and worked with this administration in a bipartisan effort on NAFTA and GATT and other matters, and he has been very helpful. He was a very valued member of the Ways and Means Committee for years, and we all have tremendous respect for him, and I am appreciative that he is here today as well, Mr. Chairman.

I would like to, if I could, submit my entire testimony for the record and not read it in the whole——

Mr. DREIER. Without objection, so ordered.

Ambassador KANTOR.—and just highlight that testimony.

We together, in a bipartisan manner, have an opportunity and responsibility, as you indicated, Mr. Chairman, to promote open and fair trade. We have worked together now for 27 months, and I would say that the President of the United States, working with Republicans and Democrats in the Congress and among Governors, both in the private sector as well as nongovernmental organizations, has had a successful, a successful 27 months, maybe the most successful in the history of American trade policy.

I need not go over everything except to say that we have had 81 trade agreements during this period. Among them has been the largest trade agreement in history, which you cited, the Uruguay round, which in addition to a major tax cut for every American family, cut tariffs by 40 percent, will create millions of jobs in our economy, will add $100 to $200 billion a year to our gross product, and is—will lead to higher standards of living.

We approved the largest regional trade agreement in history, the North American Free Trade Agreement, begun by the Bush administration and then completed by the Clinton administration and ratified by a bipartisan Congress of the United States.

In addition to that, we have had the Summit of the Americas and the Free Trade Agreement of the Americas. We are working on Chile accession. We have reinvigorated, with the President's leadership, working with the Congress, the APEC, Asia Pacific Economic Cooperation forum, which has led to a declaration in Bogor and Indonesia just last year which will lead to free trade in the fastest growing region of the world in the Pacific by the year 2010 or 2020, depending on the level of development of the economy.

We have had numerous bilateral as well as regional agreements, including the largest procurement agreement in history between Europe and the United States which will provide $100 billion in op-

portunities for European companies and U.S. companies alike—a $200 billion agreement reached on April 15, 1994.

Let me make three very quick points on why open and fair trade, which you concentrated on, Mr. Chairman, is so important, then lead into why fast track is so important to those points, and then talk about an agenda. If I might at some point, I would like to just run through some charts very quickly at the last part of my testimony.

First of all, trade is critical to our economy. Just a few years ago, trade represented no more than 7 to 9 percent of our economy. Now it is 28 percent. In 1994 it represented $1.8 trillion. For the first time in American history, our exports exceeded $500 billion. I would note in February, our exports to Japan for the first time exceeded $5 billion. So trade is growing and growing quickly.

We have a number of jobs, which I will note. You can see the 28 percent. You see the growth of trade in the U.S. economy from 1970 up to 1994, from a very low percentage, less than 10—or just barely over 10 percent all the way up to 28 percent. That is a dramatic rise. Jobs connected to exports in our economy paid 13 to 17 percent more than other jobs in our economy. Therefore, trade is critical, critical to our success.

We need not note more than in passing that the globalization of our economy and the interdependence of the United States and other economies is a fact. We are not going to turn that around, whether we want to or not. What we need to do is make sure, as the President has said, that we compete, not retreat. So that is point No. 1.

No. 2, is that trade has become central to our foreign policy. Frankly, in the past, trade was a tool of our foreign policy, advancing political and strategic interests, as it should have been during the cold war. We had an obligation during the cold war to make sure we thwarted Soviet expansionism by building the economies of the European Union and Japan. We did that very successfully. We allowed both of those entities to maintain sanctuary markets where our markets remained open in order that their economies would grow, they would become stronger and stronger, and this was part of an overall policy of containment. The fact is, it was a proper policy at that time, and now that policy has run its course.

The cold war is over, Mr. Chairman. It is now time that trade and international economics takes its place among strategic and political issues, as all three are the legs of a very important stool upon which we will stand to provide leadership in the international arena over the next number of years.

No. 3, our economic strength begins at home. We can't compete in foreign markets unless we are strong at home. We lower our deficit, we increase jobs, we raise our standard of living. We make sure we educate and train our people. We invest in the future of our economy. None of that is partisan. None of that is liberal or conservative. This is about our country and about its future, and that is how trade fits into this overall approach.

Let me indicate that the Speaker, in a statement last week with regard to fast track, could not have been more articulate and more supportive of what this administration believes. He observed that the partnership between the Congress and the President on mat-

ters governing the development of trade policy objectives has been a successful one. We agree with that.

He said fast track has unquestionably spurred economic growth and private sector job creation in the United States. We obviously agree with that.

He said the explosion of economic opportunity and growth that can be directly related to international trade has become critical to our economy. That is obvious, and that is something where we agree with the Speaker.

I could go on and on. Let me just say that this testimony by Speaker Gingrich is something we support. It is something we have shared together. We have fought for the NAFTA and the GATT and other trade agreements, and this is one area where this administration and this Congress, working with the American people, have full and complete agreement.

Let me now talk about fast track, how important it is to our trade policy and what we would like to do as we proceed forward in a bipartisan manner.

First of all, we certainly need expeditious consideration of this if we are going to have certainty in our trade negotiations. It shouldn't escape our attention that in 1967 two trade agreements reached by the Johnson administration were turned down by the Congress. Part of the reason for this was that there was no fast track at that point. In 1974 fast track was initiated in the 1974 trade bill.

For 20 years, Republicans and Democrats, liberals and conservatives, regardless of region, have supported this concept for the Republican and Democratic Presidents of the United States. It is critical to our future. It means credibility with our trading partners as we try to move forward on a mutual trade agenda. It means leadership continues in the hands of the United States. It means, indirectly, countries realize that we are going to move forward with a trade agenda which opens markets, expands trade; and, therefore, the countries begin to liberalize their markets even before we reach these agreements. We have seen this happen time after time.

Last, fast track means a partnership between the Congress, which is critical, and the administration. Nothing, nothing is more important than maintaining that bipartisan approach. We have tried to be as careful as possible—and I appreciate the leadership, Mr. Chairman, you have shown and Chairman Crane has shown, Mr. Gibbons has shown, Mr. Matsui and others, as we have tried to make sure we have not politicized this issue; and we don't intend to do so in terms of this fast track discussion.

We may have some disagreements. I am sure we are not going to have full and complete agreement on every nuance in what we are dealing with, but at least I think we can agree to move forward in a positive direction together as we work out these concerns.

Let me observe here that the nature of trade agreements has changed significantly in the past decade. As traditional trade barriers have come down, tariff and nontariff barriers, we are now confronting matters that previously were considered purely, frankly, domestic issues. Antitrust or competition policy, we know, has enormous adverse effect potentially on U.S. products going into our

market. Just yesterday, we addressed that issue with regard to Japans autos and auto parts.

Corruption, bribery, and lack of transparency in government procurement has an adverse effect on U.S. businesses—therefore on U.S. workers—as we try to sell our products all over the world. Environmental standards and labor issues also have a direct effect upon trade and put us in an adverse competitive position if they are not addressed carefully and properly in trade agreements. It is through this process of negotiation that these issues are defined, refined, and incorporated into agreements.

This administration has demonstrated the importance it attaches to issues including the environment and worker standards. The NAFTA, with the bipartisan support of the Congress, includes supplemental agreements addressing those issues. At the Summit of the Americas last December, all 34 Democratic nations in this hemisphere recognized the relationship between trade, labor, and the environment.

In the summit action plan, the 34 heads of State pledged to "make trade liberalization, environmental policies mutually supportive," and to "further secure the observance and promotion of worker rights," as economic integration proceeds.

In the context of these recent developments, it would not be productive for the United States to suddenly change course. We must work together in a bipartisan manner to find the formula that addresses our concerns. We did it with NAFTA. We can do it as we contemplate expanding NAFTA and seeking other trade opportunities as well.

Flexibility is essential to the negotiation of good agreements. We need to address the full range of issues pertinent to our trade and economic interests in individual countries. Congress still gives guidance and decides whether to approve or disapprove the agreements. That is why the fast track has always worked for Republican Presidents and Democratic Presidents alike. It is a formula that has expanded trade and created American jobs for two decades, while preserving the prerogatives of both Congress and the President.

If I might, Mr. Chairman, I would like to end by going to these charts and indicating how important new agreements are and how it will affect our economy. I will apologize, I have no microphone. I will try to speak up, although some have said that is not a problem for me.

I have already referred to this chart which shows the growth from 1970 to 1994 in terms of trade as a percentage of our economy. It is $1.8 trillion and 28 percent as of 1994. U.S. jobs from 1986 to 1994 have grown—related to exports—from 6.6 to almost 12 million today. Those are very high-paying jobs, traditionally are high-wage, high-skill jobs.

Developing countries have provided the fastest growing markets for our exports. As you can see, this is Asia and Latin America. You can see the more mature economies of Japan, the European Union, and Canada have much less growth over the last number of years. This is from 1985 to 1994; and so, therefore, you can see where our opportunities lie in Asia and Latin America.

Developing countries will provide the largest share of future export growth. It is really fascinating. Today, we have as much dollar exports to Latin America as we do to Europe, all of Europe. By the year 2010, we will have more exports to Latin America than Europe and Japan combined. Fifty-five percent of all our exports by the year 2010 will be to Asia outside of Japan and to Latin America. That is an enormous change in our priorities. This President and this Congress has focused on that with the free trade area of the Americas, with NAFTA, with the accession to NAFTA, and with APEC. We have recognized how critical this is to our future.

The U.S. share of the Latin American market is growing. It is almost 50 percent today. That is in a critical area. Let me make a point about that.

The growth of Latin America, the building of industrialization in the middle class, a younger population, a faster growing labor force, faster growing economies, has not been lost on our trading partners. Japan and the European Union recognize that. They negotiated every day with both the subregional areas, like the ANDEAN Pact and MERCOSUR, as well as individual countries.

Shame on us if we don't take advantage of this market share we have now and continue to work with our Latin American neighbors. By proximity and proclivity, they want to work with the United States. That is why fast track is so critical to maintain this momentum we have in Latin America today.

This shows that the low-income developing populations are growing faster. Look at the labor forces. They are growing faster as well.

Asia, Latin America, and former Communist countries will lead the world's growth. That just emphasizes the issues we are talking about today in terms of fast track and working on new agreements.

Finally, I have cited some of the numbers. This shows up to 2010. Look at Latin America, including Mexico, Asia outside of Japan. Look at the growth and look where they will stand in terms of U.S. dollar volume.

We will have by the year 2010 about $1.2 trillion in exports. That is a stunning figure. By the way, in 1948 we had $38 million in exports. This $1.2 trillion, over one-half will be in those two areas alone. The rest of the world—Japan, the European Union—will grow very slowly. Important areas, nonetheless, but slowly.

This is where the opportunity is, and that is why fast track is so critical to our future. I thank you for your attention. I hope that we can work closely together as we move toward a fast track agreement in this Congress.

[The prepared statement follows:]

TESTIMONY BEFORE THE
WAYS AND MEANS COMMITTEE
AND RULES COMMITTEE JOINT HEARING

AMBASSADOR MICHAEL KANTOR
MAY 17, 1995

Introduction

Mr. Chairman, it is a pleasure to appear here today to discuss the opportunities and responsibilities we face in the coming years in trade policy. We have a unique opportunity to work together to build on the historic accomplishments President Clinton, with bipartisan support in Congress, has already made in trade.

In just over two years, President Clinton and his administration, with bipartisan support in Congress, advanced and then ensured the passage of the North American Free Trade Agreement; set our negotiations with Japan on a new course under the Framework Agreement and are now working diligently to open Japan's closed autos and auto parts market; concluded and obtained approval of the broadest trade agreement in history, the Uruguay Round; set the stage for trade expansion in Asia through the Asia Pacific Economic Cooperation forum with the Bogor Declaration; and announced creation of a Free Trade Area of the Americas by 2005 at the historic Summit of the Americas. We concluded the largest procurement agreement in history with the European Union, 14 agreements with Japan, an agreement covering 80 percent of global shipbuilding, and an historic intellectual property rights agreement with China. In addition, his Administration completed scores of other bilateral trade agreements, including textile agreements.

It is important that we don't rest on our laurels, however. We must move forward in the effort to open markets and expand trade, especially in Latin America. This is a critical part of the effort to create jobs and raise standards of living in the United States, foster growth, and build global stability. Today, I want to talk about how important this is to the country as we approach a new century; and the importance of working together to establish an effective fast track procedure that ensures we can negotiate and implement trade agreements that fully benefit American workers and companies.

It is important to first emphasize the importance of trade to our future prosperity. President Clinton's trade policy is part of an economic strategy to keep the American dream alive as we move into the 21st century. President Clinton understands that future prosperity in the United States depends on our ability to compete and win in the global economy. He has based his trade policy on three basic truths about the era in which we live.

1) Trade is increasingly important to the U.S. economy.

Where our economy was once largely self contained, now we are increasingly interdependent with the rest of the world. This change began decades ago, but has accelerated in recent years. Twenty-seven percent of our economy is now dependent on trade.

This global economy offers tremendous opportunities for American workers. Over 11 million workers in this country owe their jobs to exports. These jobs pay higher wages, on average, than jobs not related to trade. Every billion dollars of exports supports 17,000 jobs. Clearly, expanding trade is critical to our effort to create good, high-wage jobs.

The United States has a mature economy and we have only four percent of the world's population. Future opportunities for growth here at home lie in providing goods and services to the other 96 percent. Given this fact, opening markets, expanding trade and enforcing our trade agreements are more important than ever to fostering growth here at home.

2) Trade is increasingly central to our foreign policy.

With the end of the Cold War, and the growing importance of trade to our economy, economic concerns are now as evident in our foreign policy as strategic, or political concerns.

After World War II and during the Cold War, the United States used trade policy as part of the strategy to help rebuild the economies of Europe and Japan and resist communist expansionism. We led the world in global efforts to dismantle trade barriers and create institutions that would foster global growth.

During that period, we often opened our market to the products of the world without obtaining comparable commitments from others. As the dominant economic power in the world, we could afford to do so. And as part of a strategy in the Cold War, we needed to do so.

Despite the uneven commitments, the resulting expansion of trade fueled growth, stability and ultimately proved to be the winning card in the Cold War. But now we are no longer the sole dominant economic power in the world. We are the world's largest economy -- and largest trading nation -- but our economy, which represented 40 percent of the world's output following World War II, now represents 20 percent.

Although we welcome the products, services and investment of other nations here in the United States, now we insist that the markets of our trading partners be open to the products, services and investment of the United States. We insist on reciprocity in our trade agreements.

In addition, it is critical to fostering global stability that we expand economic ties with other countries. Fostering growth in other countries through expanded trade is in our interest because it builds the middle class and helps democracies take root.

3) Our nation's economic strength begins at home.

Trade negotiations and trade agreements open new opportunities for American workers and firms. All of us, in turn, must accept the responsibility to make the most of those opportunities. And government -- at the local, state, and federal level -- must work as a partner with the American people to give them the tools to prosper in the new economy. Getting our own domestic policies in order, expanding education, and investing in the future has taken on a new urgency as we compete in the global economy.

American workers compete against highly educated, high-wage workers in other countries as well as low-skill, low-wage workers. We must make sure everyone achieves their full potential.

Together, President Clinton and the bipartisan coalition in Congress have ensured American leadership in the global economy. We have opened doors of opportunity that have led and will continue to lead to the creation of jobs. Our efforts to open markets and expand trade will particularly benefit small and medium sized businesses, who often lack the means or resources to overcome foreign obstacles to trade. Despite the temptation to turn inward and cut ourselves off from the world, the United States has renewed its commitment to remain engaged in the world and continue the U.S. leadership role in the global economy.

Fast Track

Our trade agenda is now entering a new phase. We must get down to the hard work of reaping the benefits of those trade agreements that we have negotiated over the past two years for the good of U.S. workers and companies. We must forge new agreements to continue to reduce trade barriers to U.S. exports and expand economic opportunity here. To do that the President and the Congress will need to work in close partnership. Essential to that partnership -- and to opening foreign markets for American goods and services -- is a renewal of trade negotiating authority in fast track.

Mr. Chairman, there are strong reasons why the Congress created fast-track -- and then renewed and extended it over the past 20 years. And why Congress has made fast track procedures available for both Democratic and Republican Presidents. First, fast track confers a very powerful advantage on America's trade negotiators. Just consider the astonishing list of trade-opening agreements we negotiated under fast track during the past two decades -- including the GATT Tokyo Round, our free-trade pacts with Israel and

Canada, the NAFTA, and, most recently, the Uruguay Round agreements. Fast track was vital to each one of those accomplishments. I can tell you first hand that we simply could not have brought home the Uruguay Round agreement or the NAFTA if I did not have the fast-track to rely on.

Fast-track allows the United States to set the pace and timing of our most trade important negotiations. More importantly, fast-track gives us credibility and clout at the negotiating table. It tells other countries that the Administration and the Congress stand together in negotiating the best possible agreement for the United States. That means American negotiators can make tough demands, and our negotiating partners know that Congress will back up those demands. And it allows our trading partners to make hard decisions with the assurance that the United States will not reopen the deal it strikes.

Fast track isn't just a vital negotiating tool. It provides important, indirect trade advantages as well. Fast track sends a powerful signal to those countries hoping for special trade arrangements with us. It says that the Congress and the Administration are serious about moving forward. That creates a strong incentive for countries to make *unilateral* economic reforms and market openings -- just to qualify for free and fair trade negotiations with us.

We can already see the power of this incentive in Latin America, where numerous countries are reforming their economies and lowering trade barriers based in part on the hope of entering into a free and fair trade arrangement with us.

Conversely, if we fail to renew fast-track -- and thus signal that America's trade agenda is "on hold" -- countries in the region are likely to procrastinate in making the changes we seek. Moreover, other countries that are prepared to negotiate will set the terms of integration in the region -- terms that are not likely to coincide with U.S. objectives or standards of fair trade.

Holding out the possibility of privileged access to the U.S. market acts as a powerful "carrot," which complements the "stick" of U.S. trade remedies. That gives the President, working with bipartisan leadership in the Congress, the full array of economic policy tools to further this nation's trade interests.

Mr. Chairman, you know just how much importance I attach to our trade laws. I have not been reluctant to enforce those laws when other countries have unfairly closed their markets to our workers and companies. Our trade laws are very important tools to open those markets and level the playing field. To fully benefit American workers and promote economic growth, we must complement use of our trade laws with the economic opportunities created by trade-opening agreements such as the Uruguay Round and the NAFTA. Agreements fostered by fast track authority mean hundreds of thousands of high-wage, high-skilled jobs for Americans across this country. Fast-track renewal is critical if we want to continue expanding economic and job growth in this country by opening key foreign markets for our firms and workers.

In sum, fast-track represents a joint undertaking by the President and Congress to accomplish the best possible results for the United States in international trade negotiations. That is why Congress has provided fast-track procedures for every President over two decades -- and why fast track has always enjoyed wide bipartisan support.

Fast track is also an issue that has united the Congress and the Executive Branch. Fast track creates a partnership establishing a clear channel for the Congress to be consulted, make its voice heard, and have its specific concerns addressed both before and after negotiations get underway. And fast track ensures that the Administration and the Congress draft implementing legislation together.

Mr. Chairman, I would like to note that trade policy has become much more complex in the last fifteen years. When the GATT was founded after World War II, it began with lowering tariffs. Later, we began to address non-tariff barriers. In the Uruguay Round, we established rules for agriculture, services and protecting intellectual property for the first time. This fifty-year record of tariff reductions and trade rules have sparked tremendous interdependence among nations. The prosperity of the United States, as well as many

countries around the globe is now increasingly dependent on fostering free and fair trade.

Our focus on non-tariff barriers has now led to issues that have been considered "out of bounds" because they address a nation's internal policies, not at the border. We look at these policies because they distort or inhibit trade. These policies include, but are not limited to, a nation's actions -- or inactions -- regarding anticompetitive business practices; lack of regulatory transparency; corrupt practices such as bribery; environmental protection; and adherence to internationally recognized labor standards. In addition, there is a clear need, as demonstrated by the creation of the Committee on Trade and Environment in the WTO, to clarify the relationship between trade disciplines and environmental policies.

President Clinton has long understood the importance of these issues and firmly believes we must move forward in addressing them. As a candidate, he spoke at North Carolina State University to endorse the NAFTA, but insisted that we negotiate agreements on labor and environment as they intersect and interact with trade. As President, he has spoken frequently on these issues and worked hard to address them with our trading partners. President Clinton understands that this is an important part of working towards more open markets, fostering global growth and maintaining U.S. leadership in the global economy.

At the historic Summit of the Americas last December, the nations of this hemisphere agreed to recognized the link between trade and the environment, as well as trade and improving working conditions. The Declaration of Principles says, "Free trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment." In the Plan of Action, the 34 heads of state pledged to make trade and environment mutually supportive, and to "further secure the observance and promotion of worker rights."

We should view the current debate over whether fast track should include labor and environment in this context. We are beginning to reach international consensus on the importance of addressing these issues.

There are, of course, differences of opinion in the Congress about the relationship of trade and labor and the environment. This is a very difficult issue both substantively and politically. However, we should not run away from this challenge: we should seek to find a solution that enjoys broad bipartisan support.

The President needs to have the flexibility to act to take quick advantage of opportunities to conclude agreements that will benefit American companies and workers. The President -- as well as future administrations -- should have the freedom and flexibility to address whatever issues that arise in trade negotiations. Thus, to ensure the President can seize the tremendous opportunities in the global economy, we need to have fast track, reflecting our trade priorities in several areas:

Extended Uruguay Round Negotiations. We are poised to move forward within the next year to complete extended negotiations, as called for in the Uruguay Round agreements that the Congress approved last year. For example, we now have talks underway in the WTO to open markets around the world in financial services and basic telecommunications services. Agreements in those two dynamic sectors could be of tremendous benefits to our firms and workers. We also expect to negotiate a further lowering of trade barriers in the agriculture sector, where the United States leads the world; in investment; and to establish new, universally applicable rules of origin to streamline customs procedures world-wide. Congress can improve our chances of success in each of these areas by renewing fast track for these talks.

In addition, we should begin to study areas in which we can progressively expand economic ties and remove trade barriers with the European Union, already our largest trading partner.

Latin America. An issue of great importance for this administration is to build on the commitments of the Summit of the Americas and expand trade in this hemisphere. Allow me to explain why the U.S. must move forward with concrete action to expand trade and negotiate trade agreements in the Western Hemisphere and why we seek fast track to do so.

The history of our economic relations with Latin America and the Caribbean was based for much of the last 20 years on a preoccupation with official development assistance and other politically driven initiatives in our effort to encourage democracy. Many countries in the were non-democratic regimes. The region was viewed as devoid of market based competitive economic policies or significant opportunity. Not surprisingly, our trade with the region was viewed as having little promise. U.S. trade policy towards the region was focused almost entirely on a limited set of issues with only a few countries in South America and on tariff preferences for sub-regional groups.

This old thinking has been buried in recent years by a revolution in economic policy coupled with a dramatic strengthening of democracy. This Administration, or any astute observer of this hemisphere, does not believe this region should be ignored. Accordingly, numerous initiatives to strengthen ties in the hemisphere have been launched or strengthened.

We have an historic opportunity now to take major steps toward hemispheric prosperity -- and expand U.S. economic opportunities. Strengthening the economic ties among the nations of the Americas will cement recent economic reforms, foster growth, build the middle classes and strengthen democracy. This is not time to sit back and hope for the best, or lose sight of the need to act on our hemispheric objectives. There will inevitably be some difficulties as we proceed, but to not proceed will only increase the prospect of the U.S. losing out on substantial economic opportunity and the chances of having to face unnecessary economic turbulence.

The Summit of the Americas was a watershed in hemispheric relations. It placed the United States squarely in the center of the hemisphere's economic integration and renewed our leadership position. Our economic fortunes, and our leadership in this hemisphere, however, will be determined in large part by the success we have in implementing the Summit trade and integration action plan. This Administration is determined to move forward to begin building the Free Trade Area of the Americas (FTAA). The negotiation of Chile's accession to the NAFTA is a necessary strategic step in this endeavor. If we are not able to complete Chile's accession to the NAFTA expeditiously, others in the Hemisphere will ask if we are able to lead the hemisphere's integration and market opening.

The absence of a timely Congressional fast-track procedure to review and implement comprehensive trade agreements will:

- undermine the U.S. ability to open vibrant new and growing markets in the hemisphere and significantly influence the critical initial stages of the FTAA process;
- cripple our ability to build more fairness and openness into the hemisphere's trade regimes;
- weaken the hemispheric commitment to market based economic policies and open economies; and
- most importantly harm our ability to increase the higher paying U.S. job base that results from the expansion of U.S. trade and the stimulation of investment.

This is an issue on which the Administration and Congress should come together for the national economic interests.

Let's consider what is at stake from an economic standpoint for the United States:

- Latin America and the Caribbean is now the second fastest growing region in the world;
- U.S. exports to this region exploded from nearly $31 billion in 1985 to nearly $93 billion in 1994, supporting over 600,000 new U.S. jobs;
- U.S. exports to Latin America, including Mexico, increased 71 percent from 1990 to 1994;

- U.S. exports to Latin America and the Caribbean now approximate our exports to the European Union (E.U.). If trends continue, U.S. exports may reach $232 billion by 2010, greater than our combined exports to the E.U. and Japan;

- Latin Americans spend an average of 40 cents of every dollar spent on trade on U.S. goods. We supply over 70 percent of some Latin countries' imports and often three to four times as much as a country's next largest trading partner: and

- U.S. exports of capital goods, which account for over half of U.S. exports to Latin America and the Caribbean, in just the 1992 to 1994 period increased dramatically. For example:

  - electrical machinery exports increased from $6.8 billion to $9.7 billion, or 42 percent; and

  - office machines and computer equipment increased from $3.4 billion to $5 billion, or 47 percent.

We must also bear in mind that the region is not waiting for us. The world recognizes the new vibrancy of this region. The region is embarked on its own agenda, easily the most active of any developing region in the world. The E.U. is seeking preferential trade agreements with the Southern Common Market (Argentina, Brazil, Paraguay and Uruguay) -- which comprises over half the economic output of Latin America -- and others that have the potential to leave U.S. exporters, investors and service providers at a relative disadvantage. The average tariff in the region is still four times the U.S. average. It is in our interest to undertake efforts to gain tariff free access to these important markets as our competitors are doing while U.S. exporters continue to face significant tariffs.

The competition to seek out new economic and trade opportunities must be faced with a decisive commitment to comprehensively open markets on the basis of reciprocity in this hemisphere. The constant search for new economic opportunity is something this country was built on, but one that has taken on ever more challenging dimensions in this hemisphere.

The first critical step is Chile's accession to the NAFTA. It is important for the United States to forge a partnership with the leader of economic reform in Latin America and its most dynamic economy over the last 10 years. Chile is one of our fastest growing export markets in Latin America. U.S. exports have grown from $682 million in 1985 to $2.8 billion in 1994 -- quadrupling. We ran a trade surplus with Chile of nearly $1 billion in 1994. Since 1985, Chile's economy has grown at an average rate of six percent rivaling the dynamic Pacific Rim economies. In the first quarter of this year Chile's economic growth has been 7.4 percent and has shown declining single digit inflation. Chile is an economy that has thrived on increased trade and investment and on prudent growth-sustaining economic policies.

Chile is not just a symbol of reform, but an activist in opening markets, having negotiated free-trade areas with Venezuela, Colombia, Ecuador and Mexico. It is pursuing an agreement with the Southern Common Market and has proposed a free-trade area with the E.U. Chile was the first developing country to bind all its tariffs in the GATT during the Tokyo Round, was an active player in the Uruguay Round, and is a new member of APEC.

Chile's accession to the NAFTA is its number one trade priority. Two successive Presidents have committed the United States to the pursuit of a free trade area with Chile. On December 11, 1994 in Miami the President, along with the leaders of Chile, Mexico and Canada, committed to pursue Chile's accession to the NAFTA in what is viewed in the region as a near term test of the U.S. commitment to trade and economic integration in the hemisphere. Ensuring that happens will encourage similar economic and trade policies through this hemisphere -- a goal we can all view as enormously beneficial to our economic future.

For the United States, Chile's accession to the NAFTA, because it will need to address a comprehensive set of U.S. inspired disciplines, is the most important concrete step we can now take to ensure we are shaping the trade and integration effort in Latin America in a

realm of fast-moving and competing trade agreement paradigms. Chile, the region, and our European and Asian partners, are measuring the U.S. commitment to lead.

Asia

Finally, it is important to build on the Bogor Declaration, the commitment by the Asia Pacific nations to eliminate barriers to trade by 2010 or 2020, depending on each country's level of development.

The Asia Pacific region is critical to future U.S. prospects for trade expansion. It has the fastest growth in the world -- three times the rate of the established industrial countries. Over the past three decades, Asia's share of the world's GDP has grown from eight percent to more than 25 percent. By the year 2000, if current trends continue, the East Asian economies will form the largest market in the world, surpassing Western Europe and North America.

This growth has led to an explosion of trade with the United States. East Asia is the number one export market for U.S. products. US merchandise exports to Asia have grown nearly 60 percent over the last five years. U.S. trans-Pacific trade was 50 percent more than our trans-Atlantic trade in 1992. Our exports to Asia account for over two million jobs in the United States. One projection shows that Asia, excluding Japan, will be our largest export market by the year 2010, amounting to $248 billion.

Following the APEC summit last year, APEC leaders directed ministers to develop a plan for implementing the Bogor Declaration. Work is underway to develop an APEC Action Agenda for consideration at the next Leader's meeting in Osaka, Japan, in November. All APEC members are working constructively and pragmatically to prepare this agenda, to define issues fro APEC work, and to outline the business facilitation, cooperation and liberalization steps APEC should take to implement this important goal. The Osaka meeting also will be a critical next step to realizing the Seattle Summit's vision of an Asia-Pacific Community of nations which ensures U.S. presence in the region's economy in the future.

Conclusion

Mr. Chairman, President Clinton, with the support of a bipartisan coalition in Congress, is doing everything possible to raise standards of living and improve the lives of working Americans as they compete in the new economy. Together, we must continue to fight to open markets and expand trade, because it will foster new opportunities for working Americans, create jobs and raise standards of living.

The President put it best in a speech last November: "The center, the heart of our economic policy must be an unbreakable link between what we do to open the global marketplace and what we do to empower American workers to deal with that marketplace."

Americans need not hide behind their fears, but must boldly build a new country of peace, growing prosperity, and economic security. I look forward to working with you to achieve that goal. Thank you very much.

Mr. DREIER. Thank you very much, Mr. Ambassador. That is very helpful testimony.

As you were standing at the charts, I couldn't help but think of that horrible Wall Street Journal front page story that was written about you at the very beginning of this administration saying that they didn't think that you would be able to handle this issue. You have obviously done an extraordinary job, and we are very impressed with so much of your work.

I would like to begin by raising one of those areas of disagreement that we have.

Last year, I had the privilege of participating in what was the first bipartisan, Oxford-style debate that we had on the House floor. Mr. Thomas had participated in the health debate. Other Members participated in the three Oxford-style debates that we had. The one that I participated in focused on the issue of trade and human rights, and it was interesting because a number of people in the Clinton administration helped us with information on this because we were making the case that President Clinton consistently makes about the need to improve human rights in China through exposure to Western values. The byproduct of that is that we would improve living standards.

We know that the areas of worker rights and environment are priorities for everyone. We all desperately want to improve those. But I have a difficult time reconciling the argument that I share with you and President Clinton on utilizing greater trade to improve the human rights situation in China and, at the same time, trying, through the fast track procedure, to deal with the issues of worker rights and environmental standards with constraints, strings attached. I just would like, Mr. Ambassador, to have you comment on the disparity there and try to explain how we can possibly reconcile that.

Ambassador KANTOR. We believe we can. The President has advocated addressing these issues where they have a direct connection and nexus with trade, beginning as early as October 4, 1992, at Raleigh, N.C., when he endorsed the NAFTA in a speech there during the campaign when he was still Governor of Arkansas, as you may recall.

Let me make a couple of comments about what you said.

First of all, I don't disagree with everything you said. I think we have to, first of all, indicate there is certainly a separation between human rights and worker rights, and I will come back to that.

Second, we agree, with regard to MFN to China, the President separated, in a very courageous decision supported by the Congress of United States, trade from human rights concerns.

We believe in full and complete engagement with China. We believe the best way to gain more and more liberalization, more and more democracy in China is not to disengage but to engage on both the economic front, on the human rights front, and on the proliferation front, but not connected together in a way that would lead to a process where we would not have the influence that we have been able to exhibit.

The intellectual property rights agreement, which we reached, led by Ambassador Barshefsky, who is sitting behind me, who did a marvelous job with our team—there was Lee Sands, Deborah

Lehr, Tom Robertson, Kathy Field, and others, is an example of what you can do.

In that agreement there is liberalization of the Chinese courts. The rule of law is respected. We open up those courts in economic matters. It is only the next leap into other matters as well. So we think we are making progress. So, on that, we would agree.

Just a bit of history. The Treaty of Versailles in 1919 recognized the nexus between trade and worker rights. That was again reiterated in the Havana Charter, which was the forerunner, of course, to the GATT in 1947. Along the way, this was lost in the GATT over the fight in the U.S. Congress.

Starting with President Eisenhower in 1953, every President, Republican or Democratic, regardless of ideology, regardless of party, has supported taking up the case of the nexus between worker rights, internationally recognized standards and trade.

Now, let me explain what we mean by that, because sometimes I think we don't explain it in enough detail. I am sorry to go on so long, but it is so important.

We are talking about child labor, slave labor, prison labor, freedom of association, the right to collectively bargain, and working conditions. In fact, many U.S. laws, including GSP, Generalized System of Preferences, in section 301, already recognize the nexus between trade and those issues. So, therefore, it is not such a great leap to say in future trade agreements we should effectively address those issues in order to make sure U.S. companies are not put at an unfair advantage.

Comparative advantage, legitimately exercised, is appropriate and proper in trade. Not legitimately exercised—for instance, the use of child labor, prison labor, slave labor—these are examples of things that we should oppose and that we should insist be outlawed in trade agreements. I think there is very little controversy over that, although you may want to take issue with that, Mr. Chairman.

The fact is that whether it is environmental rights, now recognizing that within the World Trade Organization—we have a Trade Environment Committee, we have an environmental side agreement to the NAFTA, which the Congress passed; a labor side agreement to the NAFTA, which the Congress passed; U.S. trade laws, which recognize worker rights. We have gone a long way toward recognizing how important these are to keep U.S. businesses competitive and our workers from being disadvantaged.

That is what we are trying to accomplish. We don't believe this needs to go over into the field of human rights and not have an economic or trade context.

Mr. DREIER. The only problem I have is that, as you raise the issue of worker rights, we get right back to the China debate. It seems to me that as you have gone through this litany of the benefits in the United States, in Latin America, and throughout the world with the freer trade, which we jointly support, that improving environmental standards and worker rights is obviously what is going to follow. That is why I just have a tough time with the idea of imposing those limitations.

We want to move ahead, and I want to call on Chairman Crane at this point.

Chairman CRANE. Thank you, Chairman Dreier.

Ambassador Kantor, you enumerated a list of worker rights or worker conditions. When does child labor end?

Ambassador KANTOR. I am sorry.

Chairman CRANE. At what age does child labor end?

Ambassador KANTOR. Well, it depends on the jurisdiction, of course, and the country, what the various laws are.

But I think, generally speaking, this country has stood up very strongly against the use of child labor of 8 year olds and 10 year olds working in factories in various countries around the world which are producing products at rates in which it is very difficult for the U.S. companies to compete. It is not only bad for our companies; it is also bad for their economies if—let me just give you an example.

If kids don't go to school, if there is no level of compulsory education up to a certain age, if they are working in factories, they are not going to educate their population; therefore, create a trained work force; therefore, industrialize; therefore, create a middle class which is stability and new markets for us.

Nothing could be more important for the United States of America than to keep our companies competitive by being able to work on these issues which are, I think, legitimate. Everyone from Eisenhower to Clinton has supported it, at the same time making sure we build industrial and middle-class societies around the world which are in new markets. Both fit together, I think, in a very consistent fashion.

Chairman CRANE. Well, if, for example, a country said, if you are 10 or under, you are a child, and that is our law; and anyone over 10 is not viewed as a child—or 12—do we respect that country's right to make that determination?

Ambassador KANTOR. I think the International Labor Organization has set certain standards in this area which are helpful. I believe we need to harmonize up those standards.

We are not going to solve this problem tomorrow. We are not going to solve them completely with trade. But what we can do is start to make progress. To ignore the problem of prison labor, slave labor, child labor——

Chairman CRANE. No. I am not talking about prison and slave labor. I am talking about child labor.

To put this into another context, historically, a child became a man at 12. Adolescence is a phenomenon of the 20th century, and it came about because we were affluent and we were in a position where we could educate our kids beyond age 12. They didn't have to get out and start laboring.

But I remember, in my own case, back in the thirties as a kid. We worked for 10 cents an hour, 10 hours a day down at the farm, and we were under 12 years of age. We were contributing to the total product.

Now, is that, in our contemporary environment, viewed as a violation of child labor law?

Ambassador KANTOR. Well, I think, on one hand, as a kid, I worked in my father's store every summer; and I didn't get paid anything, frankly. I am still angry about it.

Chairman CRANE. Well, did you get an allowance, though, Mickey?

Ambassador KANTOR. No, I didn't even get that. Very tough household. Some would say that is why I react the way I do today.

The fact is—in a serious note, Mr. Chairman, the fact is that child labor, used unfairly in a noncompetitive situation, is not good for the country that is doing it nor good for the United States. We have laws which allow kids to work with their parents on farms and in other activities. Those laws—the fact is, you have to be balanced in your approach to this situation, as we were in the NAFTA, which you supported, we supported. We said, enforce your own laws. Make sure at least those minimum standards are adhered to. I believe that is a step in the right direction.

Will it solve all the problems? Of course not. But I think at least it allows us to begin to harmonize up standards and keep our companies competitive. That is all we are trying to promote here.

Chairman CRANE. Well, that is a good objective, to be sure. As Ben Franklin said, a good example is the best sermon. That is why the presence of American companies in some of these developing countries that are implementing standards that are above the norms in some of those less developed countries, I think provides a very positive incentive for competition within those boundaries to get up to speed and meet more advanced standards that we have achieved.

But I am just a little concerned about the potential arbitrariness of a cutoff in defining what our situation ought to be with respect to countries that do not have the level of advancement, the opportunities for their kids to go on to high school, to continue to, in effect, live off their folks without having to work for a living.

All we did down at the farm—we were working for our spending money because we never got allowances either, and you spent what you got or what you earned.

Let me turn to one other issue before yielding, and that is a question of this fast track extension. Is that absolutely essential for consummating a free trade accession to Chile?

Ambassador KANTOR. Yes, sir, it is.

Chile is one of the most impressive economies in this hemisphere. They are a strong democracy and a strong market economy. The year before last, they had 10 percent growth, 4 percent unemployment, a trade surplus, and a budget surplus. I am very jealous of those numbers. They continue to grow at a very rapid pace.

We need to bring Chile into the NAFTA. We can only do it effectively with the fast track procedure.

I would only observe that my Chilean counterparts have been very concerned that we don't have fast track authority today because they are worried—and I think you can understand why—if they begin these negotiations, make certain concessions and we don't get fast track authority, we will have a second negotiation with the U.S. Congress. I think that is a legitimate concern on their part, and any help we can get to work on this would be very helpful to Chile's accession, as well as moving forward in Asia and Latin America with broader agreements.

Chairman CRANE. I concur with your assessment, but are the negotiations moving forward with the expectation that we will get a fast track extension authority?

Ambassador KANTOR. Yes, sir, they are. We have had four meetings already of experts and officials. We will have a fifth meeting in May. We have our first ministers meeting on June 7 in Toronto. We are moving rapidly forward.

But there is concern, and legitimate concern, on the part of Chile and our other counterparts, Canada and Mexico, who don't have the same systems that we have. So, therefore, I would only urge all of us, including the administration, to move as quickly as possible.

Chairman CRANE. Well, I am glad to hear those encouraging words, Mr. Ambassador. The fact is that I think it is essential that we not only get the fast track extension but that we get the vote on Chilean accession, ideally no later than January or February of next year.

Thank you again, Mr. Ambassador, for your testimony.

Yield back.

Mr. DREIER. Thank you very much, Mr. Chairman.

To one who I am sure received an allowance, Mr. Beilenson.

Mr. BEILENSON. Thank you, Mr. Chairman.

Mr. Ambassador, let me come back briefly, if I may, to another nexus upon which you touched, at least briefly, toward the end of your response to Mr. Dreier's original question. That is the question of addressing environmental issues in the context of this renewal of trade authority.

You pointed out to us again that trade is growing most quickly in developing countries. I take it there is an inherent tension, as it were, there. I take it these are countries that haven't, as yet, on the whole, paid quite so much attention to environmental as well as perhaps labor standard matters as some other more developed countries. Could you tell us a little bit about that?

More than that, for those of us who are strong supporters of open and free trade but who also care very deeply and want as much as possible for labor and environmental questions to be included, is there any decent, good, or useful way of ensuring that environmental standards, for example, are included in these negotiations without tripping up the negotiations themselves?

Ambassador KANTOR. I will come back to it—the answer is yes, but I will come back with a little more lengthy explanation to your second question.

In your first question, the United States has been the leader in promoting sustainable development around the world. We have certainly been the leader in three administrations in promoting the environment as—and its nexus with trade as part of the Uruguay round trade agreements.

We were not able in many ways to have a full, sustainable development agenda promoted in the Uruguay round agreement, but in the sanitary and phytosanitary regulations, in the technical barriers to trade or standards section, we made major changes and reforms which are helpful to the environment as it intersects with trade.

In addition to that, all countries unanimously, by consensus, because of the good work of the Reagan, Bush, and Clinton administrations, agreed to set up for the first time in history in this multilateral organization, a trade environment committee.

We are clearly moving forward. That doesn't mean, as I have said before, that we have solved every problem. Of course we haven't. That doesn't mean trade will solve every problem in the environment. It shouldn't, and it can't. But it does mean, where there is a nexus between the two, we should clearly, forthrightly address the issue and confront it directly. We are doing that in this administration with the help of Congress. We will continue to do it, I hope.

Fast track authority in this area would be very helpful. It would be a negative signal to the rest of the world if this Congress for some reason adversely addressed the issue of environment or labor in trade agreements because these issues, along with many other so-called new issues, are critical to our economic future.

Let me give you just one, Mr. Beilenson, at risk of going on too long, one bit of history.

Ten years ago, no one thought intellectual property protection, investment protection, or services should be part of a trade agreement. The Tokyo round, completed in 1978 and 1979, was merely a tariff agreement with a little bit of nontariff barriers addressed, as Mr. Gibbons knows so well.

We have now recognized that expanding trade, opening markets, is dependent upon a whole host of concerns, many of which we are addressing here today, which would not have been conceived 3 or 4 years ago.

Mr. BEILENSON. Thank you, Mr. Chairman.

Mr. DREIER. Mr. Thomas.

Mr. THOMAS. Thank you very much, Mr. Chairman.

Mr. Ambassador, I, too, want to congratulate in a general sense the effort of this administration and, in so doing, congratulate the earlier administrations which happened to be of a different party in terms of the uniformness in which we have tried to handle the question of trade.

Notwithstanding our failure to restructure our executive branch in a way that allowed us to have the horsepower and the coordination other nations have in the area of trade, I think across several administrations, all of the ambassadors have done an outstanding job with very few personnel vis-a-vis most of our other agencies in the government, and you continue to do an excellent job with what I think are too few people focused on a very critical area.

Just briefly—because I don't want to enter into a dialog on it—I agree with you generally that the question of the environment and worker rights has a nexus in terms of their focus on economic and trade issues. What concerns me is that, more recently, what I have seen as arguments on workers' rights tend not to be so much for underscoring the international agreements that I think all of us would agree with in terms of fundamentals—the slave labor, prison labor, and the rest—but appear to me to be more and more actually the reverse of what their proponents would hope people would think they were. Frankly, I think a number of them have been protectionist.

In the argument that you have to elevate workers in other countries to standards in the United States and if you don't do it, we don't have an agreement with them and we don't move forward on opening up trade between the countries, on the one hand, you could certainly argue the higher sense that this is to try to elevate the workers' conditions in other countries, but what I have noticed in terms of who the proponents are and the way in which it is presented, I believe that there is far more to the agenda than just that.

I do want to compliment this administration for continuing to try to keep it to its bare essentials as it relates to trade.

In terms of your charts and the importance of Latin and South America, I agree with you. We were heavily involved in the United States-Israeli one because it was first, and we wanted to try to get it right. We, obviously, have run into problems because it was first and we agreed to quota reductions. Now, with the Uruguay round, you can "tariffy" quotas and they are now trying to reopen an agreement that is 10 years old and was supposed to move forward.

We have some of those problems with Canada as well. I was very much concerned and involved with the United States-Canada agreement, in part because of the products and location of the country. That led to NAFTA. I was very pleased with the administration's movement toward trying to create a North American Free Trade Agreement.

What bothers me now is that we are talking about moving into the Latin and South American area with far more aggressiveness, with all the focus on Chile.

I have to tell you that representing California and the role that especially agriculture plays, not only in terms of the economy of the United States—and people forget about us until something like lettuce disappears from the marketplace and all of a sudden we become focused on the bags of baby carrots that people now consume in terms of the value added of that product and the enormous increase in consumption, or the fact that almonds are one-third of 1 billion dollars' worth of our balance of payment question with the European Union.

I could go on and on, but the one that I want to focus on, just as an example of the concern I have in the complexity of creating an expanded market here in North and South America, is a question of why?

It doesn't make a lot of sense to me to have a treaty between the United States and Mexico, and Mexico has a treaty between Mexico and Chile, and we are going to enter into an agreement with Chile, which perhaps would provide a tariff structure between Chile and the United States, all three of which put producers of mine at a disadvantage in the marketplace in literally all three countries. That is not my idea of a reasonable trade agreement.

When you throw in the fact that the Mexicans are not even honoring the areas of agreement in the area of phytosanitary, that they are putting up phony arguments for moving our stoned fruit products, for example, across the border, when in fact they are attempting a political ploy, I have to kind of underscore the fact, Mr. Ambassador, that I am a strong supporter of the direction that you are going but that, at some point, we have to go back and revisit

what we thought we had as an agreement. That if it isn't there, I am not anxious to go forward, and that you know and understand the concerns that we have and that other people have to understand that if it isn't the way we thought it was, we are not going to go forward.

Ambassador KANTOR. Let me respond to that.

No. 1, agriculture is a critical export product. We are going to exceed, for the first time in American history, $50 billion in exports in agriculture this year. Obviously, the State of California is one of the most important agricultural exporting entities in the world.

Our agreements with Canada and Israel, I will only remark quickly, require them to get rid of tariffs in the agricultural sector. We went to tariffication on tariffs in the Uruguay round. We will insist they adhere to those agreements.

No. 2, as far as Chile, Mexico, and the United States are concerned—somebody is going to go out and write that I have criticized the Bush administration. I have not. This agreement was signed on December 17, 1992, but there is an acceleration clause in that agreement that was well done and well negotiated.

We have asked Mexico to negotiate an acceleration and lowering of tariffs on wine to put us on an equal footing with Chile in the Mexican market. The Mexican Government has refused so far.

We have made it clear, absolutely clear, as we begin the suggestions over Chile's negotiations, that we are going to address this issue in all three markets—not only as to wine but as to agricultural products. That is very high on our agenda.

We will work with you and, obviously, other Members of the Congress, Republican and Democrat. Nothing could be more important. This doesn't mean we want to be unfair to Chile or Mexico. It means we want to be treated fairly; and in certain areas like wine, we are not. So, therefore, I couldn't agree more with you.

Mr. THOMAS. Thank you for your response, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. DREIER. Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman.

I was sitting here reflecting about my experience on this panel over these long years and the progress we have made. When I looked at your first chart, I realized that imports and exports of the United States when I first started were less than $50 billion combined and we are now up to over $1 trillion. I would have to say that we have made great progress.

Let me say about your performance, I have observed many people in your office; and I think you have as good a concept of what the strategy ought to be as I have ever heard. Your presentation today with these charts represents your actual strategy. You are right on track, and you are out ahead of most people in your thinking. Because the great markets of the world are those that are still undeveloped and will develop. We ought to spend our time and our energy in going after these markets and expanding our presence in them. That is where our opportunity lies.

As far as fast track is concerned, we simply have got to recognize that, as Americans, we have a far different system of government than everybody else on Earth. While we are only 5 percent of the population, we have got to make the kind of changes in our govern-

ment that allow us to get out and compete with the rest of the Earth.

Fast track is certainly that kind of a process. I was here when it was developed. We came about it in a rather circuitous manner; but there is no way we can conduct negotiations with the rest of the Earth unless we have fast track.

It is so clear and so simple. Nobody is going to negotiate with us unless we are prepared to negotiate from a framework which they understand, and they don't understand our government and they don't understand the necessity for coming back and having to negotiate again with Congress and the impossibility of negotiating with Congress because we represent 435 different constituencies, rather than a unified public policy.

Fast track works. It is an appropriate adaptation of our Constitution and our practices to deal with the rest of the world in trade negotiations. We must, as Americans, recognize that fast track is in our best interest, and is not some encroachment upon the Constitution.

Now, we hear discussion about the environment and about labor rights. I think you are on the right track. We are burying our heads in the sand if we don't admit that these are issues that must be addressed. I don't think they ought to drive our trade negotiations, but they have to be a component part of these negotiations. I think, Mr. Kantor, you have handled these issues very well.

We are in an era of change, not dramatic change, but it is an important change and environment and labor rights are an important part of this process. As you pointed out, we can be at an economic disadvantage if we don't recognize that a country with inadequate environmental laws has an economic competitive advantage on us, and a country with terrible human rights and inadequate labor laws has an advantage on us. So you are on the right track. Keep going in the direction you have started.

You may wish to react to what I have said, but I don't really have a question for you. I just want to commend you for what you are doing. It is excellent.

Mr. KANTOR. Thank you, Mr. Gibbons. I appreciate that very much.

Mr. DREIER. Mr. Ramstad.

Mr. RAMSTAD. Thank you very much, Mr. Chairman.

Mr. Ambassador, certainly there is enough empirical data to conclude that trade agreements increase economic growth and therefore revenues to the government. However, we must, obviously, operate within the parameters of PAY–GO rules. I would like to ask you, Mr. Ambassador, have most of the nontrade provisions included in the trade bills been added to comply with PAY–GO rules?

Ambassador KANTOR. There have been a lot. I don't know if I would say most because I haven't counted them, but there have been a lot because we have had to comply, and that is because we want to maintain budget discipline. I think that is generally accepted both in the administration and here in the Congress.

We are living in an era, properly so, where budget discipline is critical. It is important to our economy. It is important to build credibility with the American people. It is important with these trade agreements. We want the American public to support what

we are doing because we are working for them and in their interests, and to the extent we maintain that discipline and adhere to PAY–GO rules, I think we help that.

Mr. RAMSTAD. I guess what I am really getting at, Mr. Ambassador, in your judgment should the PAY–GO rules be changed so that they more accurately project the impact on Federal revenue of trade bills, the dynamic nature of trade bills? In other words, should the scoring account for the increased economic growth that is spurred by more free international commerce?

Ambassador KANTOR. The answer is the administration would not support a change in those rules. We believe that they are properly drafted. They create the kind of discipline I was talking about. We think it is important to continue to reduce the deficit as this President has over 27 months. It is half what it was when we arrived in Washington.

We worked with the Congress on that issue, and we believe that if we began to address it in that way in trade agreements, that would begin the slippery slope downward toward lack of discipline. We don't think that would be appropriate at this time.

Mr. RAMSTAD. So that is not under consideration by the administration?

Ambassador KANTOR. No, it is not.

Mr. RAMSTAD. The other line of questioning was pretty much exhausted. As a cleanup hitter, that often happens, but I want to thank you, Mr. Ambassador, for working in a bipartisan, pragmatic way on these issues. It has been a privilege to work with you. I just wish some of that bipartisanship would permeate some of the other issues under the jurisdiction of the subcommittees. No reflection on you certainly, Mr. Ambassador.

Thank you, Mr. Chairman.

Mr. GIBBONS. Good suggestion.

Mr. DREIER. Thank you very much, Mr. Ramstad. That is an excellent suggestion, and I would like to ask, Mr. Ambassador, that you take that back to some of your colleagues within the administration.

Now, I would like to call on the distinguished ranking minority member of the Trade Subcommittee, my friend from New York, Mr. Rangel.

Mr. RANGEL. Well, I would like to take this opportunity, Mr. Chairman, to be as bipartisan as we can ever be under the circumstances in which we have had our hearings in the past. I would also ask unanimous consent to allow my opening statement to be placed in the record.

Mr. DREIER. Without objection.

[The prepared statement follows:]

STATEMENT OF
CONGRESSMAN CHARLES B. RANGEL
HEARING ON FAST-TRACK
TRADE AGREEMENT AUTHORITY
MAY 17, 1995

I would like to welcome Ambassador Kantor and the other witnesses to today's hearings. Ambassador Kantor has compiled an outstanding record as United States Trade Representative. He will be able to speak to us authoritatively on the importance of fast track for negotiating and implementing complex trade agreements given his experience with NAFTA and the GATT agreements.

It is clear from testimony we received at last week's hearing that, while there is fairly broad agreement on the need to renew fast track, there is no clear consensus on how exactly this should be done. I was particularly struck at the diversity of views last week on the issues of labor and the environment, and how they should be dealt with in future trade agreements. I look forward to hearing from Ambassador Kantor on that subject.

As I indicated last week, the principles of broad bipartisan consensus and Executive-Congressional partnership continue to be essential for successful trade negotiations and implementation of the results. Last week's hearings were a useful beginning to our debate on fast track and today's hearings should further our understanding of this important matter.

Thank you, Mr. Chairman.

Mr. RANGEL. I would like to thank you once again, Mr. Ambassador, for the great job you have done for our country. We have traditionally been bipartisan in our approach to this.

In your opening statement you seek the same thing as relates to giving authority under fast track for you to deal with some of the labor and environmental conditions that may be controversial. It would seem to me, however, that regardless of how we would look at the agreement once it is reached that we should give the executive branch the authority to have the tools that it requested to work with, and I think what you would be doing is trying to resolve some of the problems people may have as they have to vote or support the overall agreement. You would be given the opportunity to remove the problems of environment and workers' rights the best you can, and as I have been saying over the years, we should be able to include the narcotic trafficking since we are opening up our borders and we are communicating more so that at least we, in the Congress, would know that as you talk with these countries that you put our concerns on the table as friends and negotiators.

My question is, Have you felt that you have been able to make any progress in bringing closer together these nonpartisan committees on the question of fast track and workers' rights as well as environment in reaching some compromise?

Ambassador KANTOR. First of all, I want to be a little bit careful. The one thing I try not to do is get in the way of the inner workings of these committees. I am not a member of this great House, and that is not part of my jurisdiction, but let me just say in August of last year there are a number of people here, I am looking at Mr. Matsui, Chairman Archer is not here. We worked very closely together trying to reach a compromise on these issues.

The language reached was acceptable both to the administration and to the Ways and Means Committee unanimously. In fact, at that point it was late in the process, and we were unable to get the other body to agree to that compromise for a number of reasons, which frankly had nothing to do with the compromise itself. So on one hand I would say, yes, we have made some progress. Whether that approach is viable now is another question.

We feel strongly about the questions, not only environment and worker rights. I want to emphasize that there are other issues, and that is the problem here that we need to raise as well, including transparency, corruption, bribery, which get in the way of trade, anticompetitive policies. These are things that are of enormous importance to our workers and to our businesses.

I have enjoyed and been appreciative of the support this administration has received on a bipartisan basis. The President is deeply grateful for it. I don't believe this is beyond our ability to address. We feel strongly about the issue. There are many on the subcommittees that agree with us. There are some, I assume, that don't agree with us, but I think all agree, and in fact, I have had no one disagree that we need fast track authority.

We need to move forward to take advantage of these opportunities. It is in the interest of the American people, and so we will continue to work with obviously you, Mr. Rangel, as we always have, and everyone else on the subcommittees to reach that kind of agreement that will work for everyone. It is in the interest of the

country. It is in the interest of our economy. It is no reason to turn back at this time.

Mr. RANGEL. Well, I think things will be easier. The 100 days are over, the contract is over, we are back to reality, and I think that we might be able to work this out in a bipartisan way. Thank you. You do a great job.

Ambassador KANTOR. Thank you, Mr. Rangel. Appreciate it.

Mr. DREIER. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman.

Mr. Ambassador, I would like to ask you a question that may sound political, but it is really not. It is substantive. I believe as you have said that free and fair trade are just simply a positive assumption as a plus for the United States.

You mentioned the Speaker's comments and certainly in your own you reiterated that this is always a plus for us, but when I go back home I often hear from constituents that they are very concerned about the NAFTA and the GATT, and they have suspicions that they are going to cause us to lose sovereignty or we recall from last year's debate the great sucking sound of the loss of jobs in the manufacturing sector to Mexico, for example. I am really concerned about why we can't seem to bring these people up to speed on some of the issues that are so obvious to us on the subcommittees and others of us who agree with your administration that we should be supporting any opportunity to enhance fair and free trade.

I am wondering if you could speak for a moment about why you believe so many people are out there still in opposition and how realistic their concerns are. For example, what the results of NAFTA really have been and what we can do together on a bipartisan position to ease their fears and to get together on this critically important issue.

Ambassador KANTOR. Thank you for your question. It is not political at all. It is very substantive and critical. The American people are very smart, and this is an area they understand better than many people suspect.

I have certainly learned they understand it very well. There is a historic reason why the American people are skeptical, and even cynical, about trade.

For years, we had a self-contained economy. We literally didn't need to export or import. We were the strongest economy on Earth from World War II until the midseventies; we were unchallenged and unrivaled. We used trade politically during those years to advance strategic interests in the cold war, and so as we opened our markets, as we should have, others kept their markets closed, as we allowed them to do, and Americans saw this as unfair.

Although we built the economies of Europe, Japan, and others, we became a bulwark against Soviet expansionism, and it was an appropriate policy at the time. What we didn't do during that period of time or subsequently—Democrats and Republicans, this is not political—is begin to talk to the American people about a new world of globalization, interdependence, higher paying jobs. We are 4 percent of the world's population, 96 percent of our market is outside of our borders, and we have to take advantage of it.

We had to do two things or three things; No. 1, build our own economy; No. 2, reach trade agreements that were reciprocal in na-

ture where everyone played by the same rules; and No. 3, absolutely make sure that trade was no longer used as a tool for other foreign policy interests. We have begun to do that; the Reagan administration, the Bush administration, and now the Clinton administration, Republicans and Democrats, liberals and conservatives.

For the first time in the history of the Gallup Polls, in November 1994 the American people saw trade as more advantageous than disadvantageous. So, as we continue to face some skepticism or even cynicism, we are making progress.

Frankly, it is up to all of us in the Congress and the administration, Governors, mayors, to continue to advocate opening markets because we have got to compete in winning these world markets or we are not going to expand our economy. We are a mature economy. We are an aging population. We are almost at zero population growth.

We must sell our high technology goods, representing high-wage, high-skilled jobs all over the globe. That can only be done through use of trade agreements or sometimes in exercising our trade laws, and so you are raising the absolutely correct issue.

This President has focused on it. He has advocated open trade and open markets from the day he announced his candidacy for President. He then went to Georgetown and made two speeches and talked about it. He went to the New York Foreign Policy Association in April 1992 and spoke about it. He went to the Los Angeles World Affairs Council in May 1992 and talked about it.

October 4 in Raleigh, N.C., he supported the NAFTA and talked about the need to open markets, expand trade, increase jobs, and raise our standard of living, and he has continued to talk about it as President of the United States. Republicans and Democrats, leaders of both parties have supported him in this quest, and we need to continue to do so.

Mr. DREIER. Thank you very much, Ms. Dunn. I would just say that it concerns me, Mickey, to see us moving possibly even further toward including other areas. You have to ask yourself at what point you draw the line on what is clearly a trade agreement. I mean, we have talked, you have mentioned bribery and corruption, what about embezzlement. I mean, this thing could expand further and further, and that is something that does concern me.

Mr. Matsui.

Mr. MATSUI. Thanks, Mr. Chairman.

Ambassador Kantor, I want to, again, congratulate you and the President, both of you, and certainly President Bush and Carla Hills, Ambassador Hills, have done a tremendous job for this country.

When you think about the last 24 months, you really build off of the previous administration's work in the area of NAFTA, GATT, MFN, China, the APEC conference, and certainly the Summit of the Americas, and now your efforts on behalf of opening the Japanese markets.

I believe there is a great deal of American support for that effort, and we congratulate you and we are all behind your efforts. As we get closer to the 30-day deadline, obviously many people will become anxious, particularly our auto dealers that sell these cars.

At the same time, I am convinced that throughout this period and well into the period when sanctions will actually be imposed, should they be necessary, you will have the strong support of the Congress and certainly the American people.

I want to make two observations. No. 1, I think what Mr. Thomas says is very correct in terms of California agriculture. I am not one that normally likes to talk about special issues within my State or my district, but the wine issue, obviously, is one that many people expect to be settled in the Chilean negotiations.

The disparity of 10 years, 3 years in terms of Chilean wine going into Mexico, and U.S. wine going into Mexico. I have to say I am beginning to believe that it is the Chileans, but it is also the Mexicans, who may be wanting to develop their own production capability of wine, and that being the case, we may have to negotiate with both, and I am hopeful that the Mexicans will understand the importance of this issue.

No. 2, I would like to talk about the issues of labor and environment. I think these are two issues that are going to create a problem for fast track, and I believe it is essential for this administration to have negotiating authority. I mean, it would be shameful if this Congress did not give the President and you the authority to negotiate trade opening agreements.

Another is the PAY–GO issue, which I don't believe is particularly critical. I think we need to resolve it, but I don't think it is critical to how a Member will vote. The issues of labor and the environment are. We have a real difference there that developed in the last hearing. Certainly, as the comments here bring out, some would like to see labor and the environment specifically prohibited as negotiating objectives and as part of the negotiated agreement.

Others would like to see specifically labor and the environment mentioned as negotiating goals and objectives. It is almost as if we will not be able to put this together. I have to say there is a midground, and I hope others will agree with it, and that is pretty much the status quo. Don't state anything about these things. Leave it to the administration's negotiations with the Congress, and the meeting and conferring to make those decisions.

Let me say why I think that is essential. Unlike some who may think labor and the environment should never be part of the negotiating process, I think that perhaps in the future they should be. You raised interesting observations. Ten years ago we never would have thought about intellectual property protection or investment protection, and the reason for that is because I think there was a general feeling among the international trade community that we should not reach into the sovereignty of another country.

We shouldn't tell, for example, the Chinese certain kinds of things they should do with or without human rights, and they shouldn't tell us what we should do in terms of some of our domestic activities, but we have changed that. That concept has been actually changed in our negotiations on intellectual property, and in the area of investments, protection of investments.

Now, we have gone to the Chinese and say you have to provide due process to people that trade with you, and that means you have to change your court system, domestic court system. We will

say the same thing in terms of Latin countries as we develop investment protection patterns.

The issue of transparency, which I think is really going to be the issue of the 21st century, we are going to have to make sure that the other countries that we deal with have strong securities and exchange regulations so investors will know whether or not stocks have got something behind them or not. That being the case, we don't know today what kind of negotiations we may need in the future.

Labor and environment may become an issue, and so you need those tools to be able to make that determination as time permits, and in reference to that, when we dealt with developed countries, it was never a problem. It is only as we begin to deal with emerging countries like China, Indonesia, India, Pakistan, that we are really going to need all these tools and have a great deal of flexibility.

So it is my hope that if we want to give you the authority that I think is essential, that we give you flexibility, and obviously we always have the final decision to vote against whatever you come up with. So, ultimately it is the Congress that will decide whether your negotiating objections are correct or not, so I am hopeful that we will be able to come to some resolution of what I believe to be a very difficult issue at this time to deal with.

Ambassador KANTOR. If I might, thank you, Mr. Matsui, for your kind words, and I couldn't agree with you more. Let me just use the China intellectual property rights agreement which Ambassador Barshefsky did such a wonderful job on as a precise example of what we are trying to do.

Let me talk about the eight different areas this agreement addressed, and then you will realize how far we have come in trade in trying to address the critical issue. One example of the problem, last year China produced 75 million pirated compact disks mainly of U.S. origin. Seventy million of those were exported, mainly into Asia, some as far as into Canada, even a few got into the United States.

We were hurt in the Chinese market, a huge potential market and hurt in the third country markets as well. We probably lost about $800 million in 1 year just in the Chinese market alone due to the failure to enforce intellectual property rights in this area, the area of trademarks and other areas as well.

The agreement we reached addressed everything from transparency to their courts to new customs systems, to special enforcement teams, to the right of establishing the U.S. companies in their market, to joint ventures between U.S. and Chinese companies, to market access to technical assistance, including onsite involvement of patent and trademark office employees, the Federal Bureau of Investigations, the Department of Commerce, and the Department of Justice.

Now, that is going a long way toward addressing a huge problem affecting our companies and our workers, but yet involving policies internal to China. That is exactly the example of what we are talking about. It has a direct effect on us economically, a direct effect on our employees and our workers and our standard of living, yet involves policies internal to China. You made the obvious and the

correct assertion and example, and I just wanted to relate those for the record just to show how far we have gone in that agreement.

Mr. MATSUI. Thank you, Mr. Ambassador.

Mr. DREIER. Mr. Zimmer.

Mr. ZIMMER. Thank you, Mr. Chairman. I just have a specific question about PAY–GO policy. Is it not the purpose behind the PAY–GO policy that the Federal Government will not undertake programs that will lose more revenue than they will gain?

Ambassador KANTOR. Well, under the scoring systems, and I am not an expert in this area, so excuse me for what might be too simplistic an answer. We don't believe it is necessary or prudent to sacrifice budget discipline to pass trade implementing legislation in the Congress.

The PAY–GO system was implemented to impose discipline, as I understand it. There are those who are in front of me who know a lot more about it than I do. All I can tell you from my perspective as a member of the President's cabinet, is that from the President's perspective, budget discipline is critical.

We have done it in this administration. We have cut the deficit in half since we arrived here 27 months ago. More needs to be done working together on a bipartisan basis, but to somehow forego the PAY–GO rules, whether it is in terms of trade agreements or in other areas as well, would not be helpful to that process.

Mr. ZIMMER. Is there any major trade agreement that the United States has entered into over the last two decades where the result of that trade agreement has not been an increase in the revenues with the so-called offsets even disregarded?

Ambassador KANTOR. If you took a dynamic economic model, my guess is my economist friends—I just happen to be a dumb lawyer—my economist friends would tell me that the answer is, Every one of the trade agreements have contributed more to our economy and to our Federal revenues than have been taken out. Certainly the Uruguay round, NAFTA will do the same, but that is not the question here.

The question here is that the PAY–GO rules impose a discipline that is important, especially at this point in time, in developing credibility with the American public, keeping all of our feet to the fire, and making sure we continue to address this huge problem of a budget deficit. So I would only suggest on behalf of the administration that we continue to stick to those rules.

Mr. ZIMMER. Ambassador Kantor, are you conceding that the PAY–GO rules in the case of international trade agreement do not reflect economic reality? I understand your point about economic discipline, but I am trying to talk about the real world. I don't know whether lawyers or economists understand the real world.

Ambassador KANTOR. Some would say neither of us understand the real world very well.

Mr. ZIMMER. I am amongst the latter, and I am seeing things more clearly since I stopped practicing law, but the question is why should we bind ourselves by something that is clearly an artifact?

You referred to dynamic scoring. Well, in this case it is just common sense, and I don't understand why the administration binds itself to a model which no rational person, regardless of his professional training, would agree with.

Ambassador KANTOR. Discipline is a very interesting subject. We could talk about it a lot, especially in terms of public policy. You may or may not agree with me. This administration is very focused.

We need to lower this budget deficit as much as possible. If we begin to address issues such as trade agreements in one way and other agreements in others, it will only be a short period of time before one person or another will begin to say, well, what about investing in education, what about capital gains, what about other areas?

I don't think we should start down that slippery slope and reduce our discipline in this area. The President believes we should maintain this discipline, and we are going to continue to maintain that position.

Mr. ZIMMER. Let me just suggest that instead of talking about discipline in the abstract even when it runs counter to economic reality, we should both focus on the objective, which is to balance the budget, and I eagerly await the administration's entry into the debate about exactly how we are going to eliminate the budget deficit. Thank you.

Ambassador KANTOR. This administration certainly understands economic reality, 2.6 million new jobs, I mean in the last—I am sorry, 6.3 million new jobs in the last 27 months. Incomes are rising, 15 million American families are paying lower taxes today, they are the working poor who have worked hard and played by the rules.

We have invested in education, Goals 2000, School to Work, AmeriCorps, money for Head Start, that is where we ought to be putting our money, build our economy, maintain discipline, lower the number of Federal employees, which we have done by 100,000 since coming into office. It will be 272,000 by the end of 4 years, the smallest Federal Government since Jack Kennedy was President of the United States.

This President understands reality, smaller government, bigger economy, build jobs in the private sector. Ninety-three percent of all the new jobs, of that 6.3 million new jobs, are in the private sector, the highest percentage since Warren Harding was President of the United States, and that is economic reality. This President has done quite well with the support of the Congress in moving forward in this regard.

Mr. ZIMMER. Thank you.

Mr. DREIER. I would add to that that the level of income for those in the export sector is significantly greater than the nonexport sector, and it is for that reason that we are going to be looking at legislation that could possibly modify the PAY–GO procedures because clearly the level of revenues to the Federal Treasury is enhanced due to increased exports. I hope very much that we will be able to find some kind of area of agreement.

We have received a letter from Alice Rivlin on this issue, and I do know the administration's position, but I think that we may be able to come up with a way in which we can address that.

Mr. Neal.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman, and thank you very much, Mr. Ambassador. I wanted to commend you and commend the administration for the job that you are doing. I think the charts tell the story in terms of, No. 1, how important trade is to our economy and to our Nation, and, No. 2, what this administration has accomplished such as the NAFTA agreement, the GATT, and others, and what this means to districts like my own is certainly very, very important.

You have been very responsive to needs of special segments of our working population, i.e., those who are in the textile and apparel industry. I just wanted to take this opportunity to thank you for that and to let you know that we appreciate all of your efforts on our behalf. I have no questions, and I would yield back the balance of my time.

Ambassador KANTOR. Thank you, Mr. Payne, I appreciate that very much.

Mr. DREIER. Thank you very much, Mr. Payne.

Mrs. Waldholtz.

Mrs. WALDHOLTZ. Thank you, Mr. Chairman.

Ambassador, I think we all recognize how important it is to have an effective trade policy. It is important to our country's economic future as well as the future of the rest of the world. But, I want to return for a moment to something we touched on earlier, and that is what I think is a deep public concern about whether we are pursuing the right trade practices.

The peso crisis falling so closely on the heels of the finalization of the NAFTA agreement helped erode public confidence as to whether our government, both the administration and the Congress, is conducting thorough, successful trade negotiations. We could spend all day arguing whether that is a correct linkage or not, and I don't want to get into that today. I think that is a discussion for another day.

But my question is in the face of what I think is an erosion of public confidence. Are there procedural or substantive changes to the fast track procedure that you could recommend that could help bolster public confidence so the public will feel more secure that we are thoroughly investigating the claims of the people with whom we are negotiating, and the impact of the agreement on American workers?

Ambassador KANTOR. No. 1, the more open the debate and the more extensive the hearings on this subject, the more help it will give because I think there is such a wide support for opening trade, expanding markets, for creating more and more export jobs in this country.

As I said before, we are a mature economy. We have to rely on the 96 percent of the consumers who live outside our economy. The faster growing economies, younger populations, faster growing labor force, and growing industrialization are going to be our markets of the future. If we just relied on our economy, because of our lower growth rates in all of the areas I just mentioned, we would be in some trouble.

No. 2, no great nation in history has ever increased its wealth without expanding trade, which is fascinating.

No. 3, what we need to do is make sure we reach a quick agreement on fast track and move forward. We have enormous opportunities in Latin America and in Asia, and in the progressive elimination of trade barriers with Europe as well. All of that is in the best interests of the American people.

Let me give you an example which came up yesterday, which has had some note. Our automobile industry is critical to our future. They are 5 percent of our gross product. Two-and-a-half million Americans are employed by our manufacturers, by our automobile dealers, and by their suppliers.

The auto industry purchases more iron, steel, aluminum, flat glass, platinum, synthetic rubber, and more natural rubber than any other industry in America, so therefore the ripple effect is greater than any other industry. In fact, it purchases more semiconductors than almost any other industry in America.

It is a high-technology industry with high-wage, high-skilled jobs. To the degree that the second largest car market in the world, Japan, is closed to our products, it has an adverse effect upon American workers, American jobs, American companies, and our economy. Therefore reaching trade agreements, exercising our trade laws, making sure we work in a multilateral, regional, and bilateral basis are critical to our economic future.

One thing I would give you, I just talked to Ms. Dunn about this. We had a dialog on this issue as well, the fact is the American people are gaining in confidence in terms of trade. For years, of course, we used trade as a political, not an economic tool. We have changed that in this administration.

We realize our economic security and our national security are inexorably intertwined with each other, and so we are going to continue down that path. We have had great support from Republicans and Democrats alike, and I think there is a consensus, a consensus among the Congress, the administration, and among Governors, Republican and Democratic alike, that we ought to continue this, and so all I would suggest in light of fast track is we move quickly, we move in a bipartisan manner and make sure we have wide agreement in the Congress as we move forward.

Mrs. WALDHOLTZ. But there are no particular changes that you would recommend in the fast track procedure that could increase confidence? You think we should move forward as it is?

Ambassador KANTOR. The fast track procedures always required and maintained that administrations, Republican and Democratic, over the 20 years have had to consult very closely, especially with Ways and Means and the Finance Committee of the other body. I certainly have done that on a continuing basis. I know my predecessors did as well. That is the best way to ensure that the people's representatives, as symbolized by all of you up here, are deeply involved in every step of our trade negotiations, as you were in the NAFTA and the GATT and other areas as well. That is the best way to ensure full and complete agreement.

On the other hand, we have to make sure that what we negotiate sticks. No country is going to sit down at the table with me or anyone else in my position and negotiate if they think the first negotiation is with the trade rep and the second is with the Congress of the United States. That just won't work.

Mrs. WALDHOLTZ. I have no further questions. Thank you.

Mr. DREIER. Mr. McInnis.

Mr. MCINNIS. Thank you, Mr. Chairman.

Mr. Ambassador, prior to the NAFTA agreement there were several tire companies in the United States that exported tires to the country of Mexico. Subsequent to the NAFTA agreement, Mexico is now allowed to export tires to the United States duty free, but is utilizing a 4-year exception to the standards chapter to prevent us from exporting tires into Mexico. So I have two questions.

A few days ago the Washington Post covered this topic in a recent article which you may have read. My first question is obvious, What activities are being utilized at this point to stop this injustice so that we "all play by the same rules," and second, what is being done, Mr. Ambassador, to prevent other nations from adopting these tactics if we were to bring Chile or other countries into the NAFTA agreement?

Ambassador KANTOR. First of all, I met just yesterday with the Mexican trade minister. This is one of the most important issues on our agenda. What the Mexican Government has allowed to happen in terms of requiring U.S. tires exported to Mexico to be molded in Spanish is inconsistent with international standards where English is used to describe certain attributes of the tire involved. They would not accept that we were willing to put labels on those tires which would accomplish the same purpose.

We made it clear we would use the dispute settlement processes of the NAFTA if they did not change their policy. They had agreed with us to respond to our proposal by May 5. I think that is the right date. Someone will correct me if I am wrong. We are still waiting for this response. We will not wait forever.

Second, we will directly address this issue, not only that issue, but there is a used tire import ban in certain countries that we have to address. As we go into Chile's accession, we will make sure we address these issues in an appropriate way.

Let me say the Mexican Government has attempted to indicate to us that we could not reopen certain areas of NAFTA such as this or the wine area, Mr. Thomas. We made it clear to them we don't go into any negotiation with preconditions, and we won't do so in this case, so we are addressing the issue.

You are absolutely correct it is a problem. We are deeply concerned about it, and we made sure the Mexican trade minister understood our deep concerns yesterday.

Mr. MCINNIS. Well, Mr. Ambassador, May 5, you are not going to wait forever. Could you define that? Did you define that to the Mexican personnel that, hey, May 5 is the preliminary date, but May 20, for example, is the drop dead date. How specific is this response?

Ambassador KANTOR. May 20 is the date, and that is what I mean by not waiting forever.

Mr. MCINNIS. Thank you, Mr. Ambassador.

Ambassador KANTOR. Thank you.

Mr. DREIER. Mr. Houghton.

Mr. HOUGHTON. Thank you.

Mr. Ambassador, I heard what you have said. I think literally and figuratively you are on the right track. I am going to give you

a Memorial Day present. I am neither going to make a statement nor ask a question. Thank you very much.

Ambassador KANTOR. Thank you very much, Mr. Houghton.

Mr. DREIER. Mr. Ambassador, thank you very much. We appreciate your taking the time to be with us. It was very thoughtful testimony, and you handled the questions extraordinarily well. We look forward to working with you on some of these areas of concern that we have so that we can proceed with the kinds of agreements that will increase opportunities to improve living standards, worker rights, the environment, and improve the plight for people here in the United States. Thank you very much for being here.

Ambassador KANTOR. Thank you very much, Mr. Chairman, for your kindness. I appreciate it.

Mr. DREIER. Our next panel includes a most distinguished former Member of Congress, a member of the Ways and Means Committee, Bill Frenzel.

Congressman Frenzel served his country and the citizens of Minnesota for over 20 years as a congressional leader on all matters of trade, finance, and fiscal policy. Bill Frenzel was a member of this committee in 1974 and participated in the crafting of the fast track process.

After leaving the people's House, Congressman Frenzel was tapped by President Clinton to explain why the North American Free Trade Agreement was a bipartisan issue vital to our Nation's long-term future, and I had the privilege of helping him convince people that it was a bipartisan issue. He was a critical member in that effort, and he remains a leading voice on trade and budget matters.

Joining him on this panel is Richard R. Rivers. Mr. Rivers has served as general counsel of the Office of the U.S. Trade Representative from 1977 to 1979, served on the staff of the Senate Finance Committee from 1972 to 1977, and helped draft the fast track procedures included in the 1974 Trade Act. He is currently a senior partner in the Washington law firm of Akin, Gump, Strauss, Hauer & Feld.

I am very honored to welcome Bill Frenzel and Dick Rivers to this subcommittee hearing and look forward to their thoughts on where fast track came from, whether it has accomplished its intended goals, and any modifications that might be made, and I would like to first defer to Chairman Crane.

Chairman CRANE. Well, I thank the gentleman for yielding, and I want to welcome both of our distinguished witnesses, but especially a good friend and former colleague that I sat next to on the Trade Subcommittee for quite some time, Bill Frenzel, and rather than me taking the time to welcome Bill before the subcommittees, I would like to yield to our colleague, Mr. Ramstad, down there, since they are both Minnesotans.

Mr. RAMSTAD. I thank the Chairman for yielding, and it is a real pleasure to welcome my mentor and predecessor, Bill Frenzel, back to the committee, not that he needs any formal welcome to the Ways and Means Committee on which he served with such distinction for 16 years. I know I am embarrassing him now. I don't know anybody more modest or anybody with greater expertise or knowledge on trade issues than my friend, Bill Frenzel.

I think Mr. Gibbons put it well when he mentioned to Ambassador Kantor that we have made great progress on trade over the last couple decades, and as virtually every member of the Ways and Means Committee more senior to me has mentioned since I joined the committee earlier this year, nobody has contributed more to that progress over the last two decades than Bill Frenzel. Bill, it is great to see you here today and welcome. I look forward to your testimony.

Mr. DREIER. Thank you very much, Mr. Ramstad. We look forward to your testimony, and I can assure you, Mr. Rivers, that had you been a member of the Ways and Means Committee you would have gotten similar accolades.

Gentlemen.

Mr. THOMAS. Reserving the right to object.

STATEMENT OF HON. WILLIAM FRENZEL, WASHINGTON, D.C., FORMER MEMBER OF CONGRESS

Mr. FRENZEL. Chairman Dreier, Chairman Crane, members of the two subcommittees, thank you very much. You are putting wings on the dog, and I am just going to do my best to do what you asked us to do here. I would ask that my written testimony, in two pieces, be accepted for the record, and that I may be permitted to proceed for a few minutes.

Mr. DREIER. Without objection.

Mr. FRENZEL. Mr. Chairman, the problems that face you, I think, on how to reconstruct fast track, I hope, are problems of repair only. In my mind, the most difficult question is the budget question, the PAY–GO question.

In my testimony, I explain that this brings matters on taxation that are quite complicated before the Congress with insufficient time to discuss them. I mentioned the Pickle amendment last year in the Uruguay round, which was a very complicated, important piece of tax policy, which was not given proper attention by the Congress because it was simply one of the financing pieces. You know a number of similar examples.

Some Members have suggested that you simply waive PAY–GO with respect to multinational trade agreements. I would think that would be a great thing to do if you, Chairman Dreier, and Mel Hancock were the only Members in the Congress. I am a little nervous about the precedent that a waiver sets. I have been around too long to think you could get away with just making it apply to trade bills, and so I suggest caution with respect to a waiver.

One of the other solutions is that you get better dynamic estimates from the CBO, Congressional Budget Office. I doubt these two subcommittees are going to go arm wrestle with CBO and change the estimation process. I think, however, every year you get better data and better estimates, and I suspect that some day you will have a situation where the CBO will estimate that trade bills pay for themselves. However, in the early years CBO seems unwilling to do so, and you will still probably have some PAY–GO to worry about.

If that is the case, I think the Members need a fair chance to discuss the financing portion of a trade bill, and I suspect it is not a bad idea to create a piece of the rule so that those items can be

discussed. Maybe even one of our famous modified open rules, which might allow amendment of the financing piece as long as the amendment was revenue-neutral, would be appropriate.

I do not like to recommend an amendment that would allow the whole trade bill to go down because of the financing piece. I think my final counsel on this budget problem is that the problem is not really in the House, it is in the Senate. You need 60 votes to pass a trade bill as long as you have PAY–GO, and so if these two subcommittees or others are involved in a fast track bill, you are going to have to be very careful in negotiating with the Senate so you don't let them run away with you, or find ways to overburden the trade bill, and yet, at the same time, provide a way for them to pass it on to majority vote.

I am not smart enough, I don't understand Senate rules. As near as I can figure, only one person does, and I am not sure he is in favor of this proposition.

There is a second proposal that I think is important. Nowadays the President presents to the Congress a proposal that contains "necessary and appropriate" changes to the law to ratify the negotiations. Congress throws in a few more "appropriates" in its nonmarkup section. That allows what I think are nongermane features to be picked up under the protection of the fast track where they are unamendable and unreachable. My advice to the subcommittees would be to dump the word "appropriate," and stay with "necessary." I understand that political urgencies will distort the definition of the word "necessary," from time to time, but it is a lot harder to distort than "appropriate," and I think it is a worthwhile change.

The third problem is the time definition. It is suggested that there be a time certain or a time requirement from the President or President's representative signing whatever the agreement is to the introduction date. I don't think that is a bad idea, but I think you need to be careful because often there is a long time between the initial signing and the final draftsmanship.

I do think it is unreasonable to let the President hold the introduction for months and months and months. I would think that some sort of a time requirement there would be worthwhile.

Also committees of the House and Senate need time, as we found out when Senator Hollings made his legitimate request for time last year and bumped you all into a special session. Your discussions on fast track have to allow time for those committees.

Now, I do not think you need to extend the time between introduction and final ratification. After all, it is called the fast track process, and if you slow it down you are only going to make life more difficult for yourself.

The fourth point I would like to make is, above all, preserve the essential fast track process. It is an ingenious process by which the Congress can exercise its constitutional jurisdiction over trade and still let somebody else do the negotiating which Congress cannot do. Whatever you do, try to retain that process.

I believe, as the previous witness suggested, that we ought to have negotiating authority on the books right now. I have perceived in the brave new world, or whatever we are in now, that commercial competition is the hallmark of our international relations.

I think a President always needs negotiating authority. I think there are opportunities that abound out there, not just the WTO where Ambassador Kantor indicated he had opportunities or NAFTA or even APEC. There are other situations which we can't even imagine now in which it is going to be good for the President to have the authority. If he has to come arm wrestle you and get over the political hurdles of environment and labor rights and drug interdiction and whatever else, America is going to miss some opportunities.

My judgment is you ought to have a basic piece on the book. If after the President starts negotiating under that authority you want to give him some instructions on goals, set a time certain when he should complete the negotiation, I think that is appropriate. But the President has to be equipped in today's world to begin negotiating immediately.

I believe that this authority ought to have a fairly long term. I leave it to you to decide what it is. I believe it should always extend into the term of the next President, whoever he or she may be.

Trade has carried hitchhikers for years, whether it is national security or whether it is suppression of the people or whether it is shipping bombs around the world or narcotics or environment or labor rights or any of a long list of 100 things. None should be encouraged, but you should not forbid them in the negotiating authority.

The law ought to be silent. The President ought to be told by the Congress what is acceptable and what isn't, but his negotiating authority should not be unreasonably restricted. So, Mr. Chairman, I have overtaken my time and I shall withdraw.

[The prepared statement and attachment follow:]

STATEMENT OF WILLIAM FRENZEL, GUEST SCHOLAR
BROOKINGS INSTITUTION

RULES AND WAYS AND MEANS COMMITTEE
JOINT HEARING ON "FAST TRACK" AUTHORITY

Dear Mars. Chairmen:

My first duty is to remind the Chairmen and their Subcommittees that this presentation is mine alone and does not represent the opinions and ideas of the Brookings Institution. The second is to tell you what a privilege it is to appear before either of these distinguished Subcommittees. Because the subject of this hearing is of such unusual importance, and of particular interest to me, today meeting is a special pleasure.

HISTORY

As is widely known in these Committees, and less widely known among Members of Congress, Fast Track Authority is a rather recent addition to the Legislative process. When the first Congress met, the second law it enacted, US Code 2, was a trade bill, a protective tariff for the fragile industries of the new country. Thereafter, the Congress continued to carry out its Constitutional Trade jurisdiction until after the passage of The Reciprocal Trade Act of 1934. From then until 1962, Congress passed successive laws allowing The Executive Branch to negotiate reductions, within specific limits, in our tariffs, in exchange for tariff reductions by our trading partners. When the agreement was completed, The President merely promulgated our reductions.

For the early GATT rounds this procedure worked fine because they dealt almost completely with tariff changes. When non-tariff measures (NTMs) began to be more important, the Pre-approval/Promulgation system was no longer adequate. For the Kennedy Round negotiations, the President and the Congress agreed on the Fast Track process: The Congress gives the President Negotiating Authority; The President presents the legal changes required to implement the agreement he has negotiated;

and then Congress votes on those changes, without amendment, within 60 days of the introduction of those changes.

For the 1979 Tokyo Round ratification, the process was modified to allow Congress and its committees of jurisdiction to replicate its standard mark-up and conference committee procedures before the President actually introduced his bill. The new procedures allowed Congress to maintain tighter controls over the negotiations than than under the 1974 system. That new procedure, which allows for a little more potential for Congressional mischief, has been used since for the US-Israel, the US-Canada, NAFTA, and Uruguay treaties.

NEW PROBLEMS

In a dynamic Legislative arena, old rules are often inadequate to cover new contingencies. In my judgement, there are good reasons to consider revisions to the current Fast Track procedures now.Some of the reasons are the following:

1. New Budget Rules have complicated process and confused some of the players. Budget strictures require financing of Trade bills under the Pay-Go limitation. Many Members might agree that Trade treaties do pay for themselves in additional economic activity, but very few Members would be willing to scrap Pay-Go, even in a severely limited instance, for fear that such action would open an undesirable loophole precedent. Assuming that the Budget restriction will endure, the problem which remains is that complex tax provisions can, and often must, be inserted into the unamendable bill. Time pressures and the desire to focus debate on the trade bill means that the hitchhiking tax provisions may get insufficient debate.

In the case of the Uruguay Fast Track, a good example was the Pickle amendment to the ERISA Act. It was highly controversial, subject to frequent changes in closed-door sessions, and, of course, got little attention either from Congress or the Press although I consider it far more important tax policy than the so-called "Washington Post Boondoggle". The House probably doesn't want to go through a process like that again.

2. Another problem is that the Fast Track law allows measures "necessary or appropriate" to be included in the bill under consideration. One person's definition of appropriate may vary widely from another's. Experience has proved that the temptation to expand the bill, both by the Executive and the Legislative Branches, is irresistible. It is preferable in my judgement, to allow political exigencies to expand, occasionally, the definition of "necessary", than to allow infinitely more opportunities for mischief under the much looser definition of "appropriate".

3. Senator Hollings's legitimate request for time for his Committee to review the Uruguay bill revealed another flaw in the process, or in the administration of the process. Time restrictions are essential to the Fast Track process, but each house must have the ability to allow its Members and its Committees time for proper review of the implementing bill. In an exception process negotiated between branches to handle increasingly complicated Trade bills, it is advisable that the process be clearly understood, and that it not try to sidestep political realities.

POSSIBLE CHANGES

In general, my own opinion is that the Fast Track is a practical, convenient way for the Congress to dispatch its Constitutional authority for Trade, but changing circumstances have made it ripe for repairs. The repairs should not change the essential nature of the process. The Fast Track remains an ingenious way for the Congress to exercise its Trade responsibilities under the Constitution. With a process like Fast Track, it has pretty good control over the negotiating process and the approval of the result of the process. Congress is not a good negotiator, but with a Fast Track type process, regularly reviewed and revised, it can do everything it needs to do in Trade, except the actual negotiations.

Therefore, Msrs. Chairmen, my recommendation is to revise the Fast Track process, but to retain its essential nature. Because you are dealing with subject regularly, you will undoubtedly have more ideas than I about needed changes. Here, however, a word of caution is appropriate (and maybe necessary). Although the system is obviously flawed, it is my fervent hope that you don't overfix it. It would be relatively easy to fix up the Fast Track process so well that it would not work. I hope you will resist that temptation and, instead, fix only the real flaws.

1. Allow for debate and amendment of revenue items required by Budget rules. Amendments probably should be limited and revenue-neutral. This part of the new Fast Track Law must be tight enough to keep the Senate, as well as the House, from shipwrecking the bill over its financing provisions. An alternate change might be to exempt Multi-Lateral Trade Agreements from the Pay-Go Budget rules. That would be very difficult, and perhaps unwise in the middle of political fist fight on budget balancing.

2. Limit Fast Track bills to matters that are "necessary" to implement the Trade Agreement, including, of course, financing items, per #1 above.

3. Provide for review of the final bill by committees which have jurisdictional interest before the bill is introduced, and therefore unamendable. The time restraints are formidable, but if other committees cannot be worked into the Ways and Means and Finance "non-markups", then they must be given time for hearings and recommendations between the signing of an Agreement and the "non-markup" or the bill introduction.

Finally, I do not believe the description of the Negotiating Authority need be included in the Fast Track Law. Congress can give Negotiating Authority loose or tight, long or short, with goals or without, with one country or the whole world, but the Fast Track approval process should be the same in all cases.

Msrs. Chairmen, may I again say how privileged and flattered I am to appear before you today on this vital subject? Thank you.

ADDENDUM TO TESTIMONY

After preparing the foregoing testimony, a few other thoughts, which might be worth adding to the Fast Track Discussion, occurred to me. They follow in no particular, or rational, order.

1. Pay-Go Budget Rules Many Members, particularly Mr. Armey and Mr. Archer, have long requested that CBO revenue estimates reflect the economic reality that increased tax revenues follow increased economic activity. So far CBO has been unwilling to make extended estimates, despite the Senate 10 year rule, and its 5 year estimates, despite the complaints of the requestors, do not seem to include new revenues that many economists predict will flow from Trade agreements like Uruguay and NAFTA. This is contentious issue, fraught with political peril, and I do not recommend that these Subcommittees try to out-muscle the CBO. However, it would be well for the Subcommittees to follow this question. If CBO ever alters its estimating procedures, I hope these Subcommittees will be quick to alter Fast Track Law.

2. Pay-Go Budget Rules I hope these Subcommittees will counsel with their Senate counterparts on the Senate Budget Rules. Under current procedures, even after giving effect to all of the changes generally prescribed, it still takes 60 votes in the Senate to pass a Trade Agreement. I am not clever enough to figure out how to back the Senate into a simple majority situation, but somebody may be able to do so. The Law must work in both houses, and a 60 vote Senate hurdle seems to me to be unrealistically high.

3. Nature of Authority In my original testimony, I did not make recommendations as to what kind of Negotiating Authority this Congress ought to give the President. At the risk of violating germaneness rules, I now respectfully suggest that the Authority contain as few conditions or limitations as possible.

Since the fall of the Wall, vigorous commercial competition is becoming, more and more, the driving force in the relationships between nations. Countries are demanding newer and better ways to find increased market access. If the WTO,

APEC, or NAFTA is not open or expanding, other groups or "clubs" will be formed. The US, like every other international competitor, must be ready, at a moment's notice, to begin negotiations anywhere in the world. The deals will come and go quickly. If the President is obliged to fuss with Congress for a couple of months, the US may well lose a valuable access it could otherwise have gained.

Except for the immediate post-War II period when every other country is the world had a war-ravaged economy, US companies have never been in a better position to compete internationally. The government, specifically the Congress, which has Constitutional jurisdiction over Trade, must be ready to provide new opportunities immediately. Unless it provides the President Negotiating Authority he can use to open or expand not only our major trading systems, but also to do so in new systems we can only imagine, I believe Congress will be negligent it its duty, and perhaps cast some doubts on the wisdom of Framers who chose Congress to control trade.

Mr. DREIER. Thank you very much, Mr. Frenzel.
Mr. Rivers.

STATEMENT OF RICHARD R. RIVERS, SENIOR PARTNER, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

Mr. RIVERS. Thank you very much, Mr. Chairman. On a personal note I want to thank you for your welcome to this hearing room. I will note, however, that it was a member of this committee, the late Hale Boggs, who brought me to Washington 30 years ago, and my testimony today was prepared in part by his grandson, Lee Roberts, so in a way, things have come full circle.

I have been in this hearing room on a number of occasions. Thank you. I also have a statement I would like to submit for the record, but I will just briefly summarize.

Mr. DREIER. Without objection, so ordered.

Mr. RIVERS. Let me say I wish in general to associate myself with the remarks that Mr. Frenzel has given. I think that is very sage advice. I strongly support renewal of the fast track provision. This is an indispensable tool for the President and executive branch to conduct trade policy. You just can't do it without it.

There are a number of issues that have to be addressed. First, I am of the view that you ought not encumber it with a requirement to negotiate on other issues however important or desirable those issues might be. Side agreements on environmental issues and labor issues ought not be made a requirement.

I think silence is golden and I think Bill Frenzel is right about that. My reasoning, my position is based on the original purpose of the fast track authority. Fast track is a delicate arrangement between the legislative and the executive branches. Both branches recognize that well-crafted trade agreements are in the interest of the United States, but they also recognize that if Congress maintains the option to amend agreements piecemeal during the approval process, then countries negotiating with the United States will fear that any deals reached will be reopened and they will find themselves back in this hearing room negotiating again. But this fast track authority is a very limited grant of authority to the executive branch and one that ought not to be abused.

It should only extend to provisions, I believe, that are necessary. I tend to think that the original language "appropriate" is desirable, but I do agree with Bill Frenzel that "appropriate" is a little bit easier to distort than "necessary" by itself.

There is a real danger in the United States trying to solve all of its problems through trade negotiations. The wider you expand the scope of fast track, the more you can expect unwanted intrusions by our trading partners into our own domestic policies. Moreover, we should not expect our trade negotiators to substitute their expertise for that of other agencies of our government.

The way to avoid these potential pitfalls is to keep the fast track process generally clean and unencumbered by side agreements, or at least let's be silent on the issue.

The second issue, obviously, is the very difficult one of pay-as-you-go rules, which were added by the 1990 budget agreement. When fast track was designed in 1974, we had nothing like that in mind. We probably should have had, but we didn't at the time.

There is no easy or obvious solution to this problem, and this brings to mind an aphorism of my friend and law partner, Bob Strauss. He is occasionally heard to say that this is one of those chasms that must be crossed in two steps, and I think that is exactly what this is.

One possible solution would be to create a mechanism whereby the necessary budget cuts would be considered outside of the fast track procedures. I would defer especially to Bill Frenzel. I think if it is brought up under kind of a modified, open-rule procedure it is important that it be revenue neutral.

My concern is that we ought not allow the PAY–GO requirement, which is very important in terms of budget objectives, to be the device by which entire trade agreements are sunk on their merits. We should not create an Achilles' heel from the PAY–GO provision that would block the consideration of the central legislation.

We negotiate and conclude these agreements because they boost the economy of our country. We stand to gain from these agreements more than what we temporarily lose in tariff revenues. So I believe that the unique character of trade agreements justifies some sort of special treatment to resolve the PAY–GO problem. Fast track is a good way to pass trade agreements, but it is a very impractical way for deciding budget policy issues.

In conclusion, let me say that I strongly urge renewal of this authority because, without it, the trade policy bus is going to go on into the next century without the United States as a passenger and a participant.

Thank you.

[The prepared statement follows:]

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

TESTIMONY OF MR. RICHARD R. RIVERS

BEFORE THE JOINT HEARING OF THE TRADE SUBCOMMITTEE OF THE COMMITTEE ON WAYS AND MEANS AND THE RULES COMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES

MAY 17, 1995

Thank you very much for inviting me to appear today before your two committees. I am pleased to be here, in a personal capacity, to share my views on the renewal of fast track.

Let me begin by saying that I strongly support the renewal of the fast track provision. This is a necessary tool for the Executive Branch to conduct the trade policy of the United States. Today I intend to address two issues concerning the proper structure of fast track.

First, I am convinced that fast track should not be encumbered with the authority to negotiate on other issues, however important. In particular, side agreements concerning environmental issues and labor issues should not be part of fast track.

My reasoning for this is based on the original purpose of fast track authority. Fast track is an arrangement between the Legislative and the Executive Branch. Both branches recognize that well-crafted trade agreements are in the interest of the United States. But both branches also recognize that if Congress maintains the option to amend agreements piecemeal during the approval process, then countries negotiating with the United States will fear that any deals reached will later be reopened. But this is a very limited grant of authority to the Executive, and one that should not be abused. Fast track should only extend to provisions that are necessary and appropriate as part of trade agreements.

This limited but critical role for fast track will be more clear if I give you a little historical background. Beginning with the 1934 Trade Agreements Act, Congress delegated to the Executive, for reasons of practicality, the authority to negotiate tariff reduction agreements. In simple terms, Congress gave the President advance authority to reduce tariffs and the President used that authority to negotiate agreements. This arrangement was successful, and it led to a series of GATT tariff reductions during the post-war era.

However, by the 1970s the swamp of tariffs had been drained. As the waters receded, it became apparent that the true stumps and boulders creating hazards to international trade were the so-called non-tariff barriers. These include quotas, subsidies, standards, procurement practices, customs valuation rules and similar behavior that have the effect of limiting trade. Virtually all countries do this, at least to some extent, and by the 1970s it was clear that these non-tariff barriers had become the most significant impediments to trade liberalization.

The need to negotiate trade agreements addressing non-tariff barriers eventually led to the first grant of fast track authority, in the Trade Act of 1974. But this path was not a direct one, and therein lies a lesson. Originally, in 1973, the Nixon Administration proposed legislation that would have given the President the authority to negotiate on non-tariff barriers of whatever kind or character. Moreover, when the negotiations were completed, he would have simply notified Congress of the agreements and whatever changes in U.S. law were needed. Unless either the House or Senate adopted a resolution of disapproval, then the proposed changes would become the law of the land. It was, in effect, a proposal for negotiating authority limited only

by possible legislative vetoes, which today would be considered unconstitutional. This legislation was in fact passed by the House of the Representatives.

But the Senate took a different view. When the Finance Committee analyzed the bill, Senator Herman Talmadge of Georgia said that he had doubts about its constitutionality. In words I'll never forget, he told me, "We just don't do things that way". He offered an amendment during mark-up that later became the basis of fast track. In essence he was saying: "Mr. President, we agree with you that non-tariff barriers are serious problems that should be addressed through trade negotiations. We understand that you need the credibility at the negotiating table that will only come if we foreswear piecemeal amendments. But the Congress cannot and should not give up its role. We insist that you consult with us throughout the negotiating process, and we will of course maintain the authority to reject agreements in their entirety."

But this is a limited grant of authority -- it was given because Congress wanted trade agreements. Congress gave the President specific authority to obtain trade policy goals, and there was never any suggestion that matters of a broader scope would be included.

There is real danger for the United States in trying to solve all problems through trade negotiations. The wider you expand the scope of fast track, the more you can expect intrusion by our trading partners into U.S. policies. Moreover, we should not expect our trade negotiators substitute their expertise for that of other agencies in our government. The way to avoid these potential pitfalls is to keep fast track "clean," unencumbered by side agreements.

The second issue facing fast track is the need for new procedures because of the "pay as you go" rules of the 1990 budget agreement. When fast track was designed in 1974, we obviously had nothing like the current budget rules in mind.

While I vigorously support the need to reduce the budget deficit, it is frustrating that important trade agreements -- which are complicated enough in themselves -- have had their approval complicated further by the need to decide on funding changes for programs unrelated to trade policy. Moreover, legislators are now forced to take an up or down vote on legislation that covers not only complex trade agreements, but also complex decisions on federal budget priorities.

There is no easy or obvious solution to this problem. As my friend and law partner Robert Strauss would say, "This is a chasm that needs to be crossed in two steps." One possible solution would be to create a mechanism whereby the necessary budget cuts would be considered outside of fast track procedures. I am concerned, however, that this would slow down and complicate the approval of trade agreements even further.

A second solution would be to allow special "scoring" for the budget impact of trade agreements. After all, tariff cuts spur trade and therefore ultimately have the effect of increasing, rather than decreasing, federal revenues. However, I do not need to tell the members of the committee how controversial such "dynamic scoring" might become.

The best solution, and the one I urge you to follow, would be for Congress to exempt all fast track trade agreements from the budget rules, similar to the waiver passed for the Uruguay Round. Such a blanket waiver would eliminate the need to either satisfy or waive the budget rules for each individual trade agreement.

Trade agreements deserve such a blanket waiver. We negotiate and conclude these agreements because they boost our economy. We are the largest exporter in the world and home to the lion's share of the world's multinational corporations. We stand to gain the most from these agreements that lower trade barriers to American goods and services around the world, much more than is temporarily lost from cuts in tariffs. I recognize that this exception would be opposed by some, but I believe that the unique character of trade agreements justifies such an exception. Fast track is a good way to pass trade agreements, but it is an impractical means for deciding budget policy issues. A pay-go waiver would eliminate an unnecessary complication from both fast track trade agreements and the budget process.

Allow me to close by observing that we are discussing fast track because countries around the world are negotiating trade agreements of increasing scope with growing frequency. The United States cannot afford to sit by while the world changes so dramatically and at such a pace -- we need to be able to reduce tariffs and nontariff barriers around the globe. If the United States is forced to disengage from this process because the President and Congress cannot agree on fast track authority, our international economic future could be jeopardized.

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I will be happy to answer any questions that any members of the committees may have.

Mr. DREIER. Thank you very much, Mr. Rivers.

I would like to pose just one question.

Bill, you indicated that you didn't want to say a certain timeframe for fast track beyond having it extend to the next administration. I would like to ask about the constraint for the nonamendable implementing bill, 45 days, 45 legislative days, which conceivably could work out to be about 3 months. Do you think that should be modified at all?

Mr. FRENZEL. No. I don't say that it can't be modified, Mr. Chairman, but I think it has proved to work all right; and I am reluctant to make it any longer because the only thing that is more important than the adjective fast is the other adjective—single. It is a single track because it can only go up or down, and it is a fast track because Congress has to take it up at a time certain.

I wouldn't recommend extending it or contracting it, but it may be that you can do it a little bit without hurting it.

Mr. DREIER. Mr. Beilenson.

Mr. BEILENSON. Thanks, Mr. Chairman.

We do have a vote on. I don't have any questions of these gentlemen. I found their testimony to be very direct, to the point, and what you both said are things I agree with, so I we will leave it at that.

Surely good to see you, Mr. Frenzel.

Mr. FRENZEL. Thank you, Tony.

Mr. DREIER. Thank you, Mr. Beilenson.

We are going to recess. I suspect that if you all could stay for a few minutes, there are a number of Members who I think would like to pose a few questions to you, and I would hope that we could reconvene in 5 or 8 minutes. That is what Mr. Crane indicated, and we are going to try and work that out. Thank you.

The subcommittees stand in recess.

[Recess.]

Chairman CRANE [presiding]. Folks, I think if you will take your seats, we can get started. The others will be filtering in after this journal vote.

Let me start off by asking both of you the same question. That is, is it serious to believe that an international trade agreement could be negotiated if there were no fast track process in place where, ultimately, after the negotiations, we got a straight up or down vote in Congress? How far do you think we might be able to proceed in negotiations with Chile, for example, in the absence of fast track extension?

Mr. FRENZEL. Mr. Chairman, I believe we cannot negotiate without fast track. As the world got complicated, we needed the fast track. I believe that if we hadn't had it in 1974, we couldn't have ratified the Kennedy round, and I don't think we could have ratified any of the rounds since.

So I think it is absolutely essential in this very complicated world to have some vehicle like this by which the President negotiates and the Congress ratifies. Particularly now with the United States, still the largest economy in the world, the biggest trading country, but less and less dominant, people simply will not negotiate with us unless they know they have a fair shot to have it approved.

There is much reluctance to negotiate even with the fast track, because countries must negotiate, sign, commit their own countries, and then congressional approval is still needed. We are the only country that I know of that says you must jump that extra hurdle. If there was the potential for amendment in the Congress, I don't think we could get Outer Mongolia to negotiate with us.

Chairman CRANE. Mr. Rivers.

Mr. RIVERS. I agree. Under the Constitution, the President has the inherent constitutional authority to negotiate with foreign countries, but it is the Congress that regulates trade. The President can go out and negotiate but when it comes to where the rubber hits the road, so to speak, it is Congress that makes the decisions, and I can't imagine a foreign government that is going to enter into serious trade negotiations with the President if they feel like they are going to face Congress in another implementing negotiation immediately thereafter.

So I agree with Bill Frenzel.

Mr. FRENZEL. I think, Mr. Chairman, you mentioned Chile. My own judgment is that the House might be able to pass a Chile accession to NAFTA on a closed rule, but once you send that thing over to the Senate, you can kiss it goodbye. Heaven knows what it would pick up over there—probably the price of gold, how to regulate the militia, the anti-uzi prohibition. I certainly hope we won't do real negotiating with Chile under anything but a solid fast track authority.

Chairman CRANE. Other than Chile's accession to NAFTA, are there any other trade initiatives that you folks would encourage the administration to undertake?

Mr. RIVERS. Well, I think one element of this debate that ought to be addressed in this hearing is what is out there that we don't yet know about. With the world changing so dramatically, a year from now we may find that having this authority in the President's toolbox is very, very important to seize opportunities that may present themselves.

One example is, the whole process of Uruguay round regionalization—there is talk of some sort of new North Atlantic arrangement, post-NATO on the trade side. A lot of that is, at the present, somewhat ill defined; but it is advancing rapidly. A year from now there may very well be opportunities that we don't know about right now.

Mr. FRENZEL. Ambassador Kantor mentioned that he had some things he would like to begin working on in the WTO. These are more specific, not broad negotiations, but I believe they require fast track authority.

I also think that sooner or later we have to get APEC off of this 2020 or 2015 free trade goal, and we have to do something specific over there. When that time comes, the United States has got to be ready or the others will go without us.

I think also the elections in Argentina give me some confidence that there may be more qualifiers in South and Latin America for accession to NAFTA. I just don't believe in the kind of world we are in today that America can afford to be without negotiating authority. Because if we won't negotiate, others will.

Chairman CRANE. I understand that the Advisory Committee for Trade Policy Negotiations issued a report recently stating—or supporting, rather, trade negotiating authority but finding that the benefits for the U.S. business sector arising out of a Chilean accession are not sufficiently large to overcome the heavy costs of obtaining trade negotiating authority in the current environment.

In light of the strong language of that report, what kind of difficulties do you think we will have in getting fast track passed?

Mr. RIVERS. Well, I don't necessarily agree with what the advisory committee says. I think it may well be that the cost and benefits of a particular agreement with Chile may not balance out, but the principle of that type of negotiation in the Western Hemisphere is extremely important, I think.

Obviously, the current climate is not ideal, but the current climate is never ideal for these types of negotiations. There are always groups that don't want them to proceed, want to protect their own interest in a way that subordinates the broader national interest, but we have always had to contend with that. That is the nature of trade policy.

Mr. FRENZEL. I don't know what they refer to when they suggest the cost is too high. Presumably, that is a political cost that is paid to bring that treaty into being.

I agree with Dick Rivers with the thought that it is pretty hard to expand NAFTA until you take Chile in. The potential benefit beyond Chile is enormous. So if you have to do one that doesn't show a huge return, I don't mind doing that to set the precedent that NAFTA is an expandable treaty and it is one that we want our entire hemisphere in for the future.

I don't want to outguess people who are doing international business, but I would really be surprised to see any kind of a relatively free trade treaty that didn't deliver pastime benefits at both ends.

Chairman CRANE. Do you have any general comments to make while we are still waiting for our colleagues to get back here?

Let me throw one thing out for you. That is, I have had a bill in, Bill, for some time, promoting free trade agreements with Pacific rim countries. I have met with a number of the ambassadors, and there are some very eager to begin those kinds of negotiations with us. Some are more advanced in terms of the possibility than others, but what is your view on the potential?

We are planning to take a trade subcommittee trip over there and ending that in Osaka on November 19, which is the APEC conference they are hosting, but we will start in Australia and then work our way up from there. What do you think of the possibilities, No. 1, and, No. 2, the advisability?

Mr. FRENZEL. Well, in the first place, I think the fact that there will be congressional observers at the APEC Osaka meeting is extraordinarily important. I think that APEC has got a pretty good launching. It has got a long way to go, and the fact that you are going to bring some of our colleagues over there is an important recognition of what we expect long term from APEC.

I have known about your bills. I think I have been one of your few cosponsors on some of those efforts. It is always worthy to press wherever we can with whoever will negotiate with us for free trade treatment or a free trade zone, whatever it may be.

Certainly, if we were to negotiate a free trade agreement with Hong Kong or Singapore, it would only be us that are lowering the barriers, because they don't have very many. But I think those kinds of agreements, if entered into, like Australia and New Zealand, like the EU and some of the Mediterranean countries, like the United States and Israel, like NAFTA, are always items that put pressure on the WTO to keep going forward, too. So I think they serve a double purpose, and I endorse them.

Chairman CRANE. Do you have any thoughts, Mr. Rivers?

Mr. RIVERS. No. I agree entirely with what Bill said about APEC and the importance of incorporating those developments into U.S. trade policy and into the post-Uruguay round world.

I have one general comment I would like to make on fast track that I think bears underscoring, and that is when Congress originally enacted this in 1974, the emphasis—and I think it was correct at that time and I think it is correct today—the emphasis was heavy on consultation, consultation between the executive branch and the Congress, the Members of Congress, and the relevant committees and, also—and I would like to underscore this—consultation with the private sector.

The entire structure of advisory committees was set up in 1974 as part of the Trade Act of 1974, and you can't conduct trade policy without almost daily consultation with those private sector advisors, the people that know their industries and know their interest in the world, and also with the committees of Congress.

So the fast track won't work without that intense degree of consultation.

Chairman CRANE. Well, gentlemen, I thank you profoundly for your willingness to come testify today. With no further questions from me and unless you have any final, concluding comments to make, we will adjourn this portion of our hearing, and I will call upon the next witnesses. Thank you again for being here.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. RIVERS. Thank you.

Chairman CRANE. Next is Clifford Sobel, Bruce Cowen, David Starobin, Arthur Gundersheim, Robert Neimeth, and Mary Minette. If you folks will get situated.

If you are comfortable, we will start with Mr. Sobel.

STATEMENT OF CLIFFORD M. SOBEL, CHIEF EXECUTIVE OFFICER, BON-ART INTERNATIONAL, AND CHAIRMAN, ALEXIS DE TOCQUEVILLE INSTITUTION, ARLINGTON, VA.

Mr. SOBEL. Good afternoon, Mr. Chairman and members of both subcommittees. Thank you for inviting me here today to offer our views on fast track.

I come here in my capacity as chairman of the board of Alexis de Tocqueville, but I am also the chairman and CEO of two firms importing and exporting displays for retail stores. These companies employ over 450 people domestically, and I believe that the spread of free trade in the Western Hemisphere and throughout the world will allow me to employ even more people in New Jersey, California, and other States.

I will speak today about three major areas that pertain to fast track. First, why fast track is necessary for America; second, how

granting the President fast track has served the Nation well in the past; and, third, what are some of the ways that Congress can improve fast track.

First, the most important reason why fast track is necessary is that it gives the President of the United States the credibility to negotiate with foreign countries in good faith. Without fast track, it would be far more difficult for the President to conclude additional trade agreements, whether with Chile or other nations.

In my experience as a businessman, the people sitting across the table from you must have confidence that the concessions they make will not be continually anted up. Given the constitutional prerogatives of Congress, a foreign nation would have every reason to fear that a trade agreement with the United States would be reopened, picked apart, and returned in a different form without fast track.

A second key point is that fast track authority has served the Nation well in the past. The Tokyo round, Uruguay round, United States-Canada trade agreement, and NAFTA have all come to fruition under the grant of fast track authority. GATT, as just concluded in the Uruguay round, is expected to generate 1.4 million jobs in the United States by its 10th year of implementation. GATT negotiators spun such an intricate web involving so many nations and issues that if the U.S. Congress were to be removed or added one or more parts, it would have jeopardized the entire agreement.

The third and probably most important area I would like to discuss is how fast track authority can be improved. The best reform would be for Congress to consider removing trade agreements from the pay-as-you-go strictures of the Budget Enforcement Act of 1990. Pay as you go should be waived pursuant to fast track, since nearly every economist since Adam Smith in the Wealth of Nations has discussed how reducing tariffs actually increases government revenues by raising the volume of trade and by boosting economic growth. I believe Congressman Zimmer this morning addressed that very ably.

However, under a static scoring system and the nineties Budget Act, tariff cuts must be paid for by raising taxes someplace else.

To give you an idea of the absurd situations that can predictably take place under the current law, look at what occurred during GATT. Even though everyone knew GATT would increase revenues overall—and detailed analyses showed that this would be the case—Congress and the administration were forced to scramble to come up with revenue replacements.

The result? To take one example, Congress froze the maximum annual contributions employees could make to their 401(k) plans in 1995 and then limited the increase in the maximum contribution for future years to below the rate of inflation.

When every economic and political leader is decrying the poor rate of savings in America, it seems counterproductive to balance a positive development such as a free trade pact with something not only negative but totally unrelated, such as placing limits on how much people can save for their retirement in a given year.

Another area ripe for reform is negotiating objectives. I do not believe that Congress should burden fast track authority with such objectives as raising the labor and environmental standards of our

negotiating partners. In the long run, increased trade, by increasing a country's wealth, will do more to help the Nation's workers and environment than anything we can attempt to dictate through negotiations.

In this country, U.S. labor and environmental laws are currently quite controversial. Imagine how much more controversial they would be if they were dictated by a foreign power.

What some in this country see as an America using its moral authority, others see as it as preaching protectionism or worse. When American negotiators at GATT attempted to multilateralize the U.S. approach to workers' rights, developing countries in particular were vocally negative.

As author Patrick Low noted in "Trading Free," a book on GATT, some of the more emotive interventions from developing countries questioned the sincerity of U.S. concerns about the welfare of foreign workers. Others raised racial considerations. The underlying assumption was that a workers' rights agenda would be used to reduce wage differentials through government intervention, thereby undermining a vital developing country source of comparative advantage.

In conclusion, I would urge the subcommittees to approve an extension of fast track negotiating authority, and I hope you will consider the reforms on fast track that I discussed here today. Thank you.

[The prepared statement follows:]

U.S. House of Representatives

Committees on Ways & Means and Rules

Joint Hearings

on

Fast Track Negotiating Authority

May 17, 1995

Testimony

by

Clifford M. Sobel

Chairman of the Board

Alexis de Tocqueville Institution

Arlington, Virginia

Mr. Chairmen and Members of both Committees, thank you for inviting me to appear here today to offer my views on fast track. I come here in my capacity as Chairman of the Board of the Alexis de Tocqueville Institution, but I am also the CEO of two firms active in importing and exporting displays for retail stores. These companies employ over 450 people and I believe that the spread of free trade in the Western hemisphere and throughout the world will allow me to employ even more men and women in New Jersey, California, and in other states.

I will speak today about three major areas that pertain to fast track. First, why fast track is necessary for America. Second, how granting the President fast track has served the nation well in the past. And third, what are some of the ways that Congress can improve fast track.

First, the most important reason why fast track is necessary is that it gives the President of the United States the credibility to negotiate with foreign countries in good faith. Without fast track, it would be far more difficult for the President to conclude additional trade agreements, whether with Chile or other nations. In my experience as a businessman the people sitting across the table from you must have confidence that the concessions they make will be not continually anted up. Given the Constitutional prerogatives of Congress, a foreign nation would have every reason to fear that a trade agreement with the U.S. would be re-opened, picked apart, and returned in a different form without fast track.

A second key point is that fast track authority has served the nation well in the past. The Tokyo Round, the Uruguay Round, the U.S.-Canada trade agreement, and NAFTA all came to fruition under the grant of fast track authority. GATT, as just concluded in the Uruguay Round, is expected to generate 1.4 million jobs in the United States by its 10th year of implementation. GATT negotiators spun such an intricate web involving so many nations and issues that if the U.S. Congress were to have removed or added one or more parts, it would have jeopardized the entire agreement.

The third and most important area I would like to discuss is how fast track authority can be improved. The best reform would be for Congress to consider removing trade agreements from the "pay as you go" strictures of the Budget Enforcement Act of 1990. "Pay as you go" should be waived pursuant to fast track, since nearly every economist since Adam Smith in the Wealth of Nations has discussed how reducing tariffs actually increases government revenues by raising the volume of trade and by boosting economic growth.

However, under a static scoring system and 1990's budget act tariff cuts must be "paid for" by raising taxes someplace else. To give you an idea of the absurd situations that can predictably take place under the current law look at what occurred during GATT. Even though everyone knew GATT would increase revenues overall, and detailed analyses showed this would be the case, Congress and the Administration were forced to scramble to come up with revenue replacements. The result? To take one example, Congress froze the maximum annual contributions employees could make to their 401(k) plans in 1995 and then limited the increase in the maximum contribution for future years to below the rate of inflation. When every economic and political leader is decrying the poor rate of savings in America, it seems counterproductive to balance a positive development, such as free trade pact, with something not only negative but totally unrelated, such as placing limits on how much people can save for their retirement in a given year.

Another area ripe for reform is negotiating objectives. I do not believe that Congress should burden fast track authority with such objectives as raising the labor and environmental standards of our negotiating partners. In the long run, increased trade, by increasing a country's wealth, will do more to help a nation's workers and environment than anything we can attempt to dictate through negotiations. As we know in this country, U.S. labor and environmental laws are currently quite controversial. Imagine how much more controversial they would be if they had been dictated by a foreign power?

What some in this country see as America using its moral authority, others see as

preaching protectionism, or worse. When American negotiators at GATT attempted to multilateralize the U.S. approach to workers' rights, developing countries in particular were vocally negative. As author Patrick Low noted in *Trading Free*, a book on GATT, "Some of the more emotive interventions [from developing countries] questioned the sincerity of U.S. concerns about the welfare of foreign workers. Others raised racial considerations. The underlying assumption was that a workers' rights agenda would be used to reduce wage differentials through government intervention, thereby undermining a vital developing-country source of comparative advantage."

In conclusion, I would urge the committee to approve an extension of fast track negotiating authority. And I hope you will consider the reforms on fast track that I discussed here today. Thank you.

Chairman CRANE. Thank you, Mr. Sobel.

Something I want to remind all of you is that while we have a guideline of trying to confine presentations, confine them to 5 minutes, that if you have any longer statements or materials you want, it will all be inserted in the record.

Mr. Gundersheim.

STATEMENT OF JACK SHEINKMAN, PRESIDENT, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AS PRESENTED BY ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT, DIRECTOR OF INTERNATIONAL AFFAIRS, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

Mr. GUNDERSHEIM. Thank you, Mr. Chairman. I trust my statement will be entered into the record.

The issues we want to raise today in terms of fast track are—it is almost not the question. The question of trade is, How is it done? The question is, How does it really benefit people? How does it enhance living standards and how does it truly promote world increases in wealth?

The issue of trade, in and of itself, is not by definition, automatically great and wonderful for every participant. I obviously picked in my written testimony the extreme example of China at the turn of the century—trade benefits there, one could say, were not overwhelmingly beneficial for them.

The issue is, What are the standards by which we are going to enter into trade negotiations? What are the objectives and what are the ultimate goals that the United States is trying to seek in entering into agreements?

In that sense, this debate over fast track or no fast track is almost not quite the issue. It is irrelevant in a way. Because if there were no fast track, you would debate the merits of a trade agreement at the end of the agreement. But, in effect, you debate the merits of a trade agreement while it is being negotiated.

The same demands that Congress would make in terms of the contents of an agreement and certain parameters of the negotiations and the certain objectives that a particular Congressman would like to see, or Senator, those are entered into in the process of negotiation; and they frequently hold up the negotiations just as they would if there were a vote at the end of the process.

Carla Hills would have signed the Uruguay agreement in 1991 if it weren't for the fact that certain Members of Congress objected to what was sitting on the table at that point in time. We didn't have the agreement in 1991.

So I don't understand why the issue is as vital as some people seem to make it.

The real issue is, What is it that we want to see? If some people in the rest of the world don't like our democratic process and they don't like a representative government, that is their problem. I don't think the exigencies of trade should override our democratic principles. That goes to the issue of whether labor rights and the treatment of human beings is an essential part of trade agreements.

I always thought under Economics 101 there were three factors in production: land, which are basically resources, labor, and cap-

ital. Somehow we seem to feel that labor is not a contingent part of this whole equation and we just ought to write it out.

The whole purpose of trade is to see how the benefits of the enhanced wealth created adhere to the people who produce it. Unless there is some opportunity and necessity in the goals of the negotiations to make sure that that happens, we don't see any purpose in trade negotiations.

The only way we see that can be accomplished currently in the world is by an absolute commitment to the simple rights of people to associate, the opportunity to pursue their goals collectively, and to share, within their own particular systems, ways in which the benefits of trade could be ensured to them.

We traditionally in our own country said child labor—and child labor very carefully defined, Mr. Chairman, because I recognized your question to Ambassador Kantor—that there are limitations in terms of the ways and ages at which people should work, in what industries they should work, and how many hours they should work. There are limitations under the physical conditions that people ought to work, that there are health and safety laws, there are all kinds of other limitations that we place so the benefits of the economic environment adhere to everybody.

Now all we are simply saying is that this has to be an essential part of any future trade negotiations. Without that, I think you will find the labor movement in very strong opposition.

I want to make a couple other points. One is that there has to be, in addition, a means by which to deal with the problem that several nations never enforce their own laws or their own practices.

NAFTA presented a very interesting, innovative idea in the sense that people in the private sector, the nongovernmental organizations, can petition to try and get nations who are participants in the agreement to enforce their own laws. They can rectify their failure to enforce particular situations that, as a consequence of which, create an artificial competitive advantage, and I think that ought to be considered seriously in any future trade negotiation objectives.

One other thing you have to deal with is unanticipated consequences. Obviously, since NAFTA was negotiated, and even the Canadian free trade agreement, there have been dramatic changes in the currency markets. Therefore, many of the balances achieved in that agreement no longer are in effect. In fact, we would perceive that as being a vastly unequal treaty at this moment.

There has to be a mechanism created—and I know there are reopener clauses—but a specific mechanism created so that the terms of trade that were agreed to at the time of negotiations can be dramatically and quickly addressed if the circumstances change such as to change the balance that was achieved initially.

Finally, I want to say that if fast track were to be limited to Chile only, I would hope that there would be no restrictions in terms of what could be negotiated on the labor and environmental front. We have had very strong indications from the Chilean Government, from the Chilean labor movement, that they are willing to enter into a labor rights agreement with the United States of a much stronger nature and a much firmer nature than currently exists in NAFTA. We would hope that the two countries have the ability to enter into such an agreement without constraints being placed on it by Congress.

Thank you very much.

[The prepared statement follows:]

TESTIMONY OF

THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO
JACK SHEINKMAN, PRESIDENT

PRESENTED BY ARTHUR GUNDERSHEIM, ASSISTANT TO THE PRESIDENT
DIRECTOR OF INTERNATIONAL AFFAIRS

HEARING ON EXTENSION OF FAST TRACK AUTHORITY
FOR FUTURE TRADE AGREEMENTS

TO CHAIRMEN CRANE AND DRIER AND MEMBERS OF THE
WAYS AND MEANS SUBCOMMITTEE ON TRADE AND
RULES SUBCOMMITTEE ON RULES AND ORGANIZATION

MAY 17, 1995

Chairmen Crane and Drier and Members of the Subcommittee:

Our union of some 230,000 members has always been an advocate of development, and not a spokesman for "protectionism." We fully understand that trade can act as a major means to improve living standards and raise wealth for all participants.

But we also know that trade likewise can be a disaster, a means for enhanced exploitation of people, destruction of nations and often historically responsible for many a war. The issue is not more or less trade, but how it is done. Just ask the Chinese of a century ago whether being forced to open their markets to global trade was such a great thing; for them it meant humiliating treatment of their workers, destruction of their nationhood and millions of opium addicts.

To those who forget this history now argue that labor and human rights have nothing to do with trade. These advocates also forgot their first lesson in economics -- that the basic inputs of production are land, labor and capital. To negotiate international rules regarding only two out of these three is preposterous.

Others testifying at this hearing will set forth the long bipartisan history of including treatment of workers as one of our major objectives in trade policy. After all, when our own nation found that totally free markets led to huge swings between boom and bust cycles, to the most frightful working conditions, to massive financial frauds, to robber barons and mass poverty, Congress said enough. We have other society wide values co-equal to, or more important than, economic productivity and pure commercial concerns. Thus we established a tax system meant to spread the wealth from economic activity to all members of society while it still rewarded initiative, effort, and risk. We established Fair Labor Standards and a minimum wage, outlawed use of child labor and set reasonable levels of health and safety conditions. We mandated transparent filings in capital markets and requirements of honest accounting for public corporations. Numerous ways were set to prevent monopoly or other abuses of market power. We set rules of interstate commerce to prevent a destructive competition of one state against another which resulted in a race to the bottom, rather than a raising common denominator.

So the lesson is clear. Without an absolute commitment to worker rights and standards, to simple human rights of association and opportunity to pursue goals collectively, giving "fast track" negotiating authority to the President is unacceptable to our members. If future Congressional action on trade agreements is to be circumscribed and limited, then Congress has the obligation to mandate components of such an agreement (or agreements). For us, the human factor of economic activity is of higher priority than all other terms of trade.

However, stating labor rights as a necessary condition of future trade agreements is not the complete requirement. There has to be an effective enforcement mechanism, particularly since many of these matters are dependent upon national governmental action, not international action.

The side agreements of NAFTA contain a very innovative feature that should be expanded and made part of all future agreements. The side agreements allow private sector people or organizations to petition against the failure of our trading partner to enforce their own laws within its boundaries and seek redress from this "artificial" government created competitive advantage. Just as we are demanding that the Japanese government answer to and rectify its failure to foster domestic competitive practices in the current auto industry negotiations, so should all national practices designed to gain unreasonable advantage be open to formal challenge.

New trade agreements also must contain specific reopener requirements if the underlying conditions or unanticipated events significantly change the balance agreed upon at the time of signing or ratification. The currency crisis in Mexico and the 30% devaluation of the Canadian dollar have greatly undermined the balance of concessions negotiated in the Canadian and NAFTA agreements. U.S. workers and companies are now faced with competitive pressures never expected. In effect, we now face a very inequitable NAFTA agreement - one that never would have passed Congress under current conditions. Creating high incentives for American companies to locate or expand their production in our competitor's countries merely to use them as export platforms is not what trade is about.

In fact the explosion of Foreign Trade Zones (FTZ's) throughout the world undercut the very purposes of expanding trade. FTZ's sole function are to create exemptions from a country's domestic laws, policies and practices so as to induce foreign investment or processing. The products produced are not allowed to enter the domestic market. The usual pressures of economic forces to raise wages, retain wealth and pay for infrastructure are absent, thus hindering local development, not assisting it. In fact FTZ's should be made an illegal means of international competition.

One final point. There has been some discussion of restricting Fast Track authority to negotiations only with Chile as a first step in expanding NAFTA. There is a chance in these negotiations that the two governments may agree to expand or enhance labor rights and environmental agreements from what NAFTA currently contains. In short, what is known in the slang of trade as a "consenting adults" clause.

We would be strongly opposed if Congress mandated restrictions on what the two countries could negotiate on these issues.

In a world increasingly moving toward an global market place the conditions under which products and services are produced are as important as the traded items themselves. If the benefits of increasing trade are to contribute to economic development, there has to be a guaranteed way by which workers and the general citizenry can share in an increased standard of living. Assurances of the right to form unions, to bargain freely in a democratic environment and to set minimum standards of work are the only way this will happen.

Chairman CRANE. Thank you.
Dr. Starobin.

STATEMENT OF JAY MAZUR, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AS PRESENTED BY HERMAN STAROBIN, PH.D., RESEARCH DIRECTOR, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Mr. STAROBIN. Thank you for this opportunity to testify on fast track issues.

We oppose the use of fast track because Congress ends up delegating too much of its authority to the executive branch. That authority is clearly cited in article 1, section 8 of the Constitution. However, if Congress in its wisdom decides to grant such authority, it should include in it provisions on worker rights and labor standards.

Such provisions are not new to U.S. trade law. Let me mention just a few examples.

The Trade Act of 1974 listed among our Nation's objectives in the Tokyo round negotiations of the General Agreement on Tariffs and Trade "adoption of international fair labor standards."

The Omnibus Trade and Competitiveness Act of 1988 includes among our Nation's major objectives in the GATT Uruguay round promoting respect for worker rights, ensuring that the benefits of the trading system are available to all workers, and adoption by GATT of the principle that denial of worker rights should not be a means by which a country or its industries gain competitive advantage in international trade.

CBI, Caribbean Basin Initiative, legislation states that, in designating a beneficiary country, the President must take into account the degree to which its workers enjoy reasonable workplace conditions and collective bargaining rights. CBI, you will recall, was proposed by President Reagan in 1982 and went into effect on January 1, 1984.

When the GSP was established during the Nixon and Ford presidencies, renewed by Congress in the Trade Act of 1984, and signed into law again by President Reagan, it included specific provisions on worker rights. The President was prohibited from designating any country for GSP benefits which had not or was not taking steps to afford internationally recognized worker rights.

Section 503 of the act defined these rights as:

> the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children and acceptable conditions of work with respect to minimum wage, hours of work, and occupational safety and health.

The argument that labor and environmental standards have no relation to trade and therefore are not germane in negotiating trade agreements is seriously flawed. If this were the case, it could also be argued that intellectual property and financial services, among other factors, have no place in a trade agreement.

The notion of comparative advantage cannot ignore the comparative advantage that some countries exercise through lax labor laws, poverty level wages, and frightful environmental standards.

The collapse of the Mexican economy, as an examination of trade data shows, raises serious doubts as to whether new markets have

truly been created as a result of trade policy. They raise the question as to whether, in the words of the advisory on this hearing, "the benefits to the economy achieved are dramatic and proven."

We are told that every $1 billion in exports creates 20,000 jobs. Ambassador Kantor changed that to 17,000 in his testimony today, but the 20,000 figure is the one that has been generally used. That figure was developed by the Commerce Department for the Bush administration NAFTA negotiators.

Our chief NAFTA negotiator at the time, Julius Katz, told the Wall Street Journal on January 4, 1995, that, "The job numbers are totally phony numbers. My great regret is we got trapped into that argument."

We also continue to be subjected to the misclassification of apparel export data to bolster the case for trade policy. Exports of apparel parts for assembly and return as finished in products to the United States under item 9802 of the Harmonized Tariff Code, for example, are commingled with exports of finished in product.

Last year, our government negotiated an agreement with India that provided for reciprocal market opening for apparel and textile products. Given its low living standards, however, it is doubtful that India provides any appreciable market for U.S. imports.

Moreover, in its WTO accession statement, India reserved the right to invoke article 18(b) of the GATT which was carried over into the WTO. This article allows a developing country to invoke balance of payments criteria and institute new quotas and tariffs.

We have questioned the reported successes of trade policy in our testimony. It seems clear that for reciprocal market opening to work, especially with the developing world, the United States must follow a policy that would help to create an effective market in these countries.

This brings me back to the conclusion that worker rights, labor standards, and attention to environmental concerns are as important in trade policy as any other factor. Markets can be effectively opened if our trade policies incorporate these standards, making it clear to the minute elite in the developing world and U.S.-based multinationals that this is the only way we can benefit the people of our own country and assist those in a developing world.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Before the
Subcommittee on Trade, Ways and Means Committee
and the
Subcommittee on Rules and Organization, Committee on Rules
U. S. House of Representatives
May 17, 1995

ON THE EXTENSION OF "FAST TRACK" PROCEDURES

STATEMENT OF JAY MAZUR, PRESIDENT
INTERNATIONAL LADIES' GARMENT WORKERS' UNION
AS PRESENTED BY HERMAN STAROBIN, PH.D., RESEARCH DIRECTOR
INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Thank you, Chairman Crane and Chairman Dreier, for this opportunity to appear today before your committees to testify on fast track issues. My comments are made on behalf of the International Ladies' Garment Workers' Union and our 155,000 members who produce women's and children's apparel and related products in more than two-thirds of our nation's fifty states.

We are on record in opposition to the use of fast track authority to promote the North American Free Trade Agreement and the Uruguay Round of the General Agreement on Tariffs and Trade for reasons which I will elaborate on below. Our primary reason for opposing fast track and its use from time to time is that, despite arguments to the contrary, Congress ends up delegating too much of its constitutional authority. This limits the ability of Congress to shape trade policy.

Granting fast track authority to negotiate an accession agreement to the NAFTA with the government of Chile appears to be the immediate issue before the Congress. However, if the Congress decides to grant such authority, we believe it essential to include in any further grant of fast track authority provisions on worker rights and labor standards.

In the "Advisory" for this hearing, Chairman Crane says that "fast track authority should be limited to trade legislation, and it is not appropriate to use fast track authorization for legislation involving issues not directly related to trade or not necessary to implement the trade agreement." Chairman Dreier states that, "there are increasing concerns that provisions not closely related to trade agreements are being attached to implementing legislation in order to receive expedited consideration."

The statements by both Chairmen do not specifically mention provisions on worker rights and labor standards or environmental considerations. However, it seems clear that some in the Congress, among them the chairmen of the two subcommittees, do not see these matters as "closely related" or "directly related" to trade or that they may be a major issue. These issues, it will be recalled, played an important role in discussions and debate on both the NAFTA and GATT enabling legislation.

Because of opposition to linking trade and worker rights and the environment, weak side agreements on both issues were negotiated in the case of NAFTA in order to insure passage of the agreement by the Congress. For the same reason, labor rights and environmental provisions were completely eliminated from the legislation to implement the Uruguay Round. In the latter action, it is worth pointing out that some other matters not "closely" or "directly" related to trade were included.

Worker rights and labor standards are not new to U. S. trade law. The Trade Act of 1974 listed among our nation's objectives in the Tokyo Round negotiations of the General Agreement on Tariffs and Trade "adoption of international fair labor standards". (Section 121 (a) (4). The Omnibus Trade and Competitiveness Act of 1988 includes among our nation's major objectives in the GATT Uruguay Round promoting respect for worker rights, ensuring that the benefits of the trading system are available to all workers and adoption by GATT of the principle that denial of worker rights should not be a means by which a country or its industries gain competitive advantage in international trade.

The Caribbean Basin Economic Recovery Act, generally known as the CBI, states that, in designating a beneficiary country, the President must take into account, among other factors, the degree to which its workers enjoy reasonable workplace conditions and collective bargaining rights. CBI was proposed by President Reagan in 1982, passed by the Congress in 1983 and went into effect on January 1, 1984.

When the General System of Preferences was established during the Nixon and Ford presidencies and renewed by Congress in the Trade Act of 1984 and signed into law by President Reagan, it included specific provisions on worker rights. The President was prohibited from designating any country for GSP benefits which had not or was not taking steps to afford internationally recognized worker rights to its workers. These rights are specifically defined under the 1984 Trade Act, Section 503, as

"(A) the right to association;
"(B) the right to organize and bargain collectively;
"(C) a prohibition on the use of any form of forced or compulsory labor;
"(D) a minimum age for the employment of children;
"(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

The "Advisory" also lays out the circumstances under which fast track was used to negotiate NAFTA and the Uruguay Round agreement. It makes the point that, "[t]he purpose of the fast track approval process was to preserve the constitutional role and fulfill the legislative responsibility of Congress with respect to trade agreements. At the same time, the process was designed to ensure certain and expeditious action on the results of the negotiations and on the implementing bill with no amendments."

Article I, Section 8 of the Constitution explicitly states that, "The Congress shall have Power ... To regulate Commerce with foreign Nations...." The granting of fast track authority to the Executive Branch means that the Congress accepts trade agreements negotiated by the Executive Branch without the right to amend such agreements. It transfers from the Congress to the Executive Branch the making of trade policy.

Congress should maintain its constitutional power to "regulate Commerce with foreign Nations". It should insure the most open debate on any agreement without limitations and exercise its right to amend trade agreements. It should restore the power given to it by the Constitution.

The "Advisory" notes that the Administration is to negotiate with Chile on possible accession to NAFTA. Chairman Crane says that "[b]ecause the benefits to the economy achieved by opening new markets to U. S. exports and reducing foreign trade barriers to U. S. goods and services through trade agreements are dramatic and proven, we must give the Administration the expedited authority it needs to negotiate and conclude these agreements."

To the best of our knowledge, of the hundreds of agreements negotiated over the years by successive U. S. administrations, the only ones which used fast track procedures were NAFTA and GATT. No one has ever satisfactorily explained why trade agreements now require fast track authority. What has changed? Why has it suddenly become necessary for Congress to delegate even more of its authority to negotiate trade agreements to the Executive Branch?

Since the enactment of the Reciprocal Trade Agreements Act of 1934 by the Congress, it has periodically delegated its constitutional authority to the President to negotiate and to proclaim reductions in tariffs under reciprocal agreements, subject to specific conditions and limitations. Sections 1102(b) and 1102(c) of the Omnibus Trade and Competitiveness Act of 1988 authorize the President to negotiate agreements with foreign countries, subject to congressional consultation, and "fast track" requirements for approval of bilateral and multilateral agreements.

In its wisdom, and perhaps in recognition of its constitutional obligations, Congress has tied fast track procedures to specific dates in line with anticipated trade negotiations. Fast track is not a blanket authority; it exists within given time frames and can either be renewed or not renewed by the Congress.

As we will show below, the trade agreements negotiated by successive administrations under fast track have been far less successful in creating private sector jobs in the U. S. Nor have they created good jobs for the people of our trading partners. Nor have they provided the other benefits claimed for them. It is difficult, indeed, to find any reason to view them as beneficial to our nation's economy and its workforce.

In prior testimony on NAFTA and the Uruguay Round before the Trade Subcommittee of the Ways and Means Committee and the Senate Finance Committee, we have expressed serious doubts as to what, in fact, has been, or could be, achieved in such agreements. Before summarizing those conclusions and the contemporary situation resulting from the recent agreements, I would like to make a few additional comments.

It is difficult to understand why there is such a rush to judgment on what an agreement that may lead to Chile's accession to NAFTA will accomplish well before negotiations have even started. It would make more sense to hold off granting of fast track authority to any Administration until it becomes clearer exactly what such an agreement might entail. So far, to the best of our knowledge, only very preliminary discussions have been held with Chile. Congress should ask for progress reports on a step-by-step basis before indicating readiness to grant fast track authority.

We see the argument that labor and environmental standards have no relation to trade and, therefore, are not germane in negotiating a trade agreement as seriously flawed. If this were the case, it could also be argued that intellectual property rights, for example, also have no place in a trade agreement.

This argument goes to the very issue of what is trade and how trade between and among nations is implemented. The very notion of comparative advantage cannot ignore the comparative advantage that some countries exercise through lax labor laws, poverty-level wages and the ignoring of environmental standards which U. S. companies are required to enforce.

Nor does trade mean, as we shall show, the export of parts to low-wage countries with poor or unenforced environmental standards and assembled there with low-cost labor and then returned to the U. S. This kind of "trade" is one in which U. S. companies trade with themselves and not with the so-called beneficiary countries.

The collapse of the Mexican economy at the end of last year and examination of trade data raise serious doubts as to whether new markets have truly been created as a result of trade policy. They raise the question as to whether "the benefits to the economy achieved ... are dramatic and proven."

Clearly, there are those who have benefitted from trade policy, but they do not include the average American. We have been subjected to the use of patently incorrect data in justification of trade policy. I would like to list some of them briefly.

We are told that every billion dollars in exports creates 20,000 jobs. That figure was developed by the Commerce Department for Bush Administration NAFTA negotiators. Our chief NAFTA negotiator at the time, Jules Katz, told The Wall Street Journal on January 4, 1995 that, "The job numbers are totally phony numbers.... My great regret is we got trapped into that argument."

The 20,000 figure has subsequently been revised downward and I understand that a new figure

should appear shortly. Even assuming that any of these figures has some modicum of accuracy, it seems obvious that every billion dollars in imports results in the loss of 20,000 jobs or whatever the figure will be. This factor is completely ignored by supporters of trade policy, despite the massive merchandise trade imbalance, which is not offset by a smaller surplus in trade in services.

What may have been meant was that each billion dollars of the surplus of exports over imports created 20,000 jobs. But that, of course, is not done because, given our unfavorable trade balance, more job losses would have to be reported than jobs created.

We have also been subjected for many years to the misclassification of apparel export data, despite our efforts to have these data corrected. Exports of apparel parts for assembly and return as finished products to the U. S. under Item 9802 of the Harmonized Tariff Code are commingled with exports of finished product.

Given the tremendous increase in outward processing, especially in Mexico and the Caribbean Basin Initiative countries, export data are grossly distorted. The General Accounting Office in its two-year old study, U.S.-Mexico Trade, states that Mexican trade data differed from U. S. data because Mexico excluded from its import figures shipments to maquiladora operations because the product assembled there did not enter Mexico's market. U. S. data, it said, do not distinguish between parts sent to Mexico (or any other countries, including the CBI) for assembly and return to the U.S. and finished product.

The GAO recommended that U. S. export data be revised. This has not been done by the appropriate government agencies. False data are used to justify such trade agreements as NAFTA, the Uruguay Round and CBI parity and in support of extension of fast track.

Using Bureau of the Census data and the methodology suggested by the GAO, we have found that new markets are not being created as a result of trade policy. Once again, to take the case of apparel, reported exports in 1993, net of reexports of foreign apparel, totalled $4.8 billion. However, $3.1 billion or 65.2 percent were exports of parts for assembly and return to the U. S. Yet the $4.8 billion figure was used to show how rapidly apparel exports are growing and that reciprocal market opening, negotiated in recent trade agreements, works.

Further analysis underlines the conclusion that we are not opening new markets to the extent supporters of current trade policy assert. Of the remaining $1.7 billion in reported apparel exports in the 1993 data, 95.4 percent went to Canada, Japan and the European Union. This left a total of $77 million in real apparel exports to the rest of the world -- including Mexico and the CBI.

In a similar study we did last year, we found that the U. S. reportedly imported $4.2 billion worth of apparel from the CBI in the year ending September 1994. Of this total, $3.4 billion or 80 percent, were imports of apparel assembled under the Item 9802 program and the special CBI program.

With respect to the alleged opening of new markets, the case of India is worthy of attention. USTR hailed an agreement reached with the government of India on, among other things, reciprocal market opening for apparel and textile products. The agreement was concluded on December 31, 1994, the last day for India to accede to the new World Trade Organization as a founding member.

Given its low living standards, it is doubtful that India provides an appreciable market for U. S. imports. Of equal interest is that fact that in its accession statement to the WTO Director General India reserved the right to invoke Article 18()B of the GATT, which has been carried over into the WTO. Article 18(B) allows a "developing" country to invoke balance of payments criteria to institute new quotas and tariffs.

Of perhaps even greater concern is the fact that the Indian parliament has turned down the Uruguay Round agreement on protection of intellectual property. The provision has been viewed

as crucial to U. S. trade negotiators elsewhere. Furthermore, since the WTO is a unitary agreement and members cannot pick and choose which articles they will abide by, it remains to be seen whether India can still be considered a WTO member. The Trade and Rules subcommittees should look into this matter.

We have suggested in this testimony that the reported successes of recent trade policy are highly questionable. For reciprocal market opening to be successful, especially as it concerns the developing world, it is essential that the U. S. endorse a policy that would make possible an effective market in these countries.

This brings us back to our conclusion that worker rights and labor standards and attention to environmental concerns are as important in trade policy as any other factor. Markets can be effectively opened if our trade policies incorporate these standards, making it clear to the minute elite in the developing world and U. S.-based multinationals that this is the only way we can benefit the people of our own country and assist those in the developing world.

The role of U. S.-based multinational corporations is crucial in this area. As reported in the Survey of Current Business for March of this year, these companies represent 41 percent of U. S. imports and 58 percent of our nation's exports. They should be held accountable by the Congress for truly contributing to our nation's workforce and assisting Third World nations to raise their living standards, rather than maintaining the degradation that is so characteristic of working conditions in these countries.

As the representative of all of the people of our nation, Congress should reserve its constitutional right to make trade policy in the interests of all of us.

Chairman CRANE. Thank you, Dr. Starobin.
Mr. Cowen.

STATEMENT OF BRUCE D. COWEN, PRESIDENT, TRC COMPANIES, INC., WINDSOR, CONN., ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. COWEN. Thank you, Mr. Chairman. If I could ask that my written statement be included in the record, I will summarize that statement now.

Chairman CRANE. Without objection.

Mr. COWEN. The U.S. Chamber of Commerce's support for fast track authority dates back to the 1974 Trade Act. Indeed, the Chamber has supported the concept of fast track trade negotiating authority since its inception as tariff proclamation authority in 1934.

The reasoning is simple. The United States trading partners will not sit down to negotiate an agreement that can be undone or modified significantly and after the fact by Congress. They need to know that the deal will either pass or fail as is, without the uncertainty of numerous amendments or death by a thousand cuts.

Fast track should apply broadly in geographic terms to negotiations not only with Chile and other Western Hemisphere nations but worldwide. At the same time, it should be limited to trade issues and not serve as a catchall for labor, environmental, and other issues that are not directly trade related.

We recognize that fast track is, in effect, a waiver of House and Senate rules. As such, it is a privilege, not an obligation. In return for that privilege, the executive branch owes it to the Congress and to the private sector to tell both what it is they are negotiating while they are negotiating. Improved U.S. access to foreign markets has long been a bipartisan objective, even if not without controversy.

Negotiation and approval of NAFTA in the Uruguay round agreements under three administrations and several Congresses testifies to that fact. But taking advantage of the resulting opportunities and successfully competing in those markets is up to competitive individual companies.

Proinvestment, domestic, tax, and regulatory policies can do much to encourage competitive U.S. companies; and trade agreements can open up a lot of doors. But it is ultimately up to the companies themselves to walk through those doors and compete for the business that is available.

We have proven that at TRC where South America is the single largest growth market for our environmental engineering services. We recently were awarded a $1 million contract to design a state-of-the-art municipal landfill in Santiago, Chile; and we expect to be awarded a contract for approximately $2 million in Colombia to remediate a pesticide contaminated property designated to be a residential area.

South America should contribute over $5 million in revenue to TRC. We are a $100 million company with 800-plus people located here in the United States over the next year.

Mutually beneficial trade agreements in Latin America and elsewhere should increase the potential not only for us but for companies of all kinds and markets all over the world.

Before I wrap up, I would just say that it is probably unusual for a president of a major U.S. environmental company to be supporting fast track without the labor or environmental side agreements, and the reason for that I would like to summarize.

First, we work for U.S. companies abroad. Many of the U.S. companies abroad today are applying U.S. environmental standards like those being met in the United States. So by going south or going east or going west, they are basically stepping up the standard for the environment within those countries.

The second point is that banks, not only in the United States but internationally, are all taking actions to eliminate the kind of environmental hazards that we have had in the United States in the past and other parts of the country. There is self-regulation going on.

Finally, I think if you look at the governments, governments are becoming more proactive. As the economies improve, the wealth improves. Quality of life is a very important issue.

Mr. Chairman, I appreciate this opportunity to testify; and I will be happy to try and answer any questions that you or the subcommittees may have.

[The prepared statement follows:]

STATEMENT OF BRUCE D. COWEN
PRESIDENT, TRC COMPANIES, INC.
ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

May 17, 1995

Mr. Chairman and members of the subcommittees, I am Bruce Cowen, President of TRC Companies, Inc. TRC is a publicly owned international environmental engineering and consulting company headquartered in Windsor, Connecticut, focused primarily in the United States, Latin America and central Europe, and employing over 800 employees throughout the United States. I am pleased to present this testimony in support of renewed fast track trade negotiating authority on behalf of the United States Chamber of Commerce, the world's largest voluntary business federation. I am a member of the Chamber's Board of Directors.

WHAT IS FAST TRACK?

Fast track means that when the U.S. executive branch enters into a trade agreement requiring congressional approval, Congress will vote on it up or down, without amendments, within a specified amount of time. This process is a Congressional invention designed to simplify the negotiating process and provide the President and his negotiating team with the credibility needed to approach the bargaining table.

WHY IS FAST TRACK SO IMPORTANT?

Fast track authority is essential if the United States is to pursue international trade agreements. It was critical to the implementation of the North American Free Trade Agreement (NAFTA) and the GATT Uruguay Round Agreement. And it will be critical to the conclusion of any other international trade agreements that may come up in the future. The Chamber believes that such agreements, if properly negotiated, will benefit a broad base of its 215,000 business members -- ranging from most of the Fortune 500 companies to tens of thousands of small- and medium-sized firms.

The Chamber's support of presidential fast track authority is not new, but dates back to its support for the Omnibus Competitiveness and Trade Act of 1988, as well as previous legislation providing for such negotiating authority -- the 1974 Trade Act. Indeed, the Chamber has supported the concept of "fast track" trade negotiating authority since its inception as "tariff proclamation authority" in 1934. The reasoning for this support is straightforward -- the United States' trading partners will not sit down at the negotiating table if any contracted agreement with the United States is subject to unilateral modifications ex post facto by Members of Congress. This is basic to doing business; one simply cannot expend valuable time and resources contracting with negotiators who are not in a position to commit their company -- or nation -- to an agreement.

At the same time, such Congressional approval will require intensive, good-faith consultation by the executive branch and private sector during the development of negotiating strategy and the negotiations themselves.

WHAT TYPE OF AGREEMENTS SHOULD WE NEGOTIATE UNDER FAST TRACK?

The primary purpose of any trade agreements we seek to negotiate should be to reduce trade barriers, increase opportunities for U.S. companies in global markets and, in so doing, increase employment and income in the United States. Toward this end, the objectives of trade agreements authorized and negotiated under fast-track should be limited to the resolution of trade issues that are generally consistent with section 1101 of Public Law 100-418, the "Omnibus Trade and Competitiveness Act" (19 U.S.C. 2901).

Overall negotiating objectives should include:

- More open, equitable and reciprocal market access;
- The reduction or elimination of barriers and other trade-distorting policies and practices;
- Strengthened international trading disciplines and procedures; and
- Increased economic growth and employment in the U.S. and global economies.

Specific negotiating objectives should include:

- Expanded competitive opportunities for the export of U.S. goods;
- More open and equitable conditions of trade for U.S. services, including financial services;
- Reduction and elimination of artificial or trade-distorting barriers to international direct investment;
- Maximum protection for intellectual property rights; and
- Transparent, effective and timely enforcement of agreements' rules and implementation of dispute settlement procedures.

WITH WHOM SHOULD AGREEMENTS BE NEGOTIATED UNDER FAST TRACK?

There are any number of potential opportunities to negotiate mutually beneficial trade agreements. I will limit my comments on the most prominent of these opportunities.

The most immediate impetus for renewal of fast track is the U.S. commitment, reaffirmed most recently in Miami last December, to continue expansion of NAFTA throughout the Western Hemisphere, beginning with Chile. Since 1992 the U.S. Chamber has agreed that Chile should be the next candidate for free trade agreement negotiations with the United States. We are pleased that formal negotiations are expected to begin in June after the NAFTA ministerial meeting. A comprehensive trade agreement with Chile based upon NAFTA's core principles would be a win for everyone--the United States, our NAFTA partners and Chile. The key to Chile's prompt accession to NAFTA is prompt approval of fast-track negotiating authority of the kind discussed earlier in my testimony --- authority which permits us to reach a comprehensive commercial agreement unencumbered by non-trade negotiating objectives.

Rapidly bringing Chile into NAFTA is a critically important step toward building a hemispheric free trade area that could greatly advance U.S. economic and political goals in the region. Chilean accession to NAFTA would provide a signal that there is renewed momentum in the drive to achieve the free trade zone envisaged at the Miami Summit last December. In addition, a Chilean accession based upon NAFTA core principles would a benchmark for future steps in constructing the hemispheric wide free trade area.

The potential for expanded U.S. trade and investment throughout the Western Hemisphere remains enormous--- despite the effects on currency and financial markets in the immediate aftermath of the Mexican peso crisis. By 1994 trade between the United States and Latin America exceeded $125 billion and had grown 46% over the previous four years. The three hundred forty million people and $1.3 trillion GDP of the Latin American region offer enormous opportunities for U.S. exports of goods and services.

Realizing those opportunities will, however, require U.S. leadership in sustaining and fostering the move toward open markets and fair trade throughout the Hemisphere. This leadership can only be fully exercised through Congressional approval of fast track authority. With such authority in hand, the U.S. Government would be in a much stronger position to address the major areas of "unfinished business" from the Summit of the Americas held last December. Areas that the U.S. Chamber believes need to be addressed on a priority basis include:

1. Creation of the Free Trade Area of the Americas based on NAFTA's core principles;
2. Building on existing regional/subregional arrangements while avoiding the proliferation of trade agreements with different standards and rules;
3. Negotiating a Western Hemisphere Investment Code; and
4. Beginning negotiations to facilitate the flow of goods, services, information and investments in areas such as customs procedures, product standards and infrastructure.

But going beyond the Western Hemisphere, the U.S. administration and its Asia-Pacific partners in APEC also agreed last November in Bogor, Indonesia to seek to establish a free trade area in that region by 2020. While 2020 may seem a long way off, it is not too early for the U.S. government and all potentially affected elements in the private sector to begin assessing the implications of such a free trade area, identifying particularly problematic issues, and developing strategies for resolving those issues. And as in other cases, credibility is a critical asset our negotiators must have.

The GATT Uruguay Round itself left unfinished a number of business items that will eventually require negotiations. Among them: (1) additional clarification of what constitutes a permissible subsidy under multilateral rules, and (2) possible augmentation or replacement of current antidumping and other trade remedy systems with still inadequately defined "competition policies".

And actions taken by the World Trade Organization (WTO) to broker disputes and enforce discipline under the Uruguay Round will likely require the U.S. and other WTO signatories to negotiate agreements to resolve those disputes. While the Uruguay Round agreement contains provisions for withdrawal from that agreement, such a step by the U.S. would be extraordinary and should be avoided unless the WTO issued a ruling that was truly devastating to U.S. interests -- something that is most unlikely, given the decision record of previous GATT dispute settlement procedures and their impact on U.S. interests.

WHAT PRICE AND LIMITATIONS ON FAST TRACK?

First, as noted earlier, it is incumbent upon any Administration to consult regularly with the Congress and the private sector as it plans and executes its negotiating strategy. This is especially important, as trade agreements by their nature entail significant changes in the economic environment and in government-to-government relationships, and Congress has voluntarily acceded its prerogatives to amend implementing legislation as it sees fit and on its own timetables. Confidence in the negotiations cannot be maintained absent such consultations.

Second, the United States should seek to cooperate with other countries in raising labor standards and strengthening environmental protection, but should **not** address these important issues in commercial negotiations whose purpose is to remove barriers to global trade and investment. Making trade cooperation contingent upon reaching agreement on complex labor and environmental issues could seriously damage vital U.S. economic interests while at the same making it more difficult to achieve labor or environmental cooperation than might be possible through separate negotiations. The resort to trade sanctions to enforce labor or environmental agreements would seriously disrupt the global trading system. Under any future Congressional grant of "fast track"

authority to the President for trade negotiations, the objectives should be limited to commerce and not also require resolution of non-commercial issues.

CONCLUSION

Improved U.S. access to foreign markets has long been a bipartisan objective, even if not without controversy. Negotiation and approval of NAFTA and the Uruguay Round Agreements under three U.S. administrations and several Congresses testifies to that fact. But taking advantage of the resulting opportunities and successfully competing in those markets is up to competitive individual companies.

Pro-investment domestic tax and regulatory policies can do much to encourage competitive U.S. companies. And trade agreements can open up a lot of doors. But it is ultimately up to the companies themselves to walk through those doors and compete for the business that is available.

This has been proven at TRC where South America is the largest growth market for our environmental engineering services. We recently were awarded a $1 million contract to design a state-of-the-art municipal landfill in Santiago, Chile. We expect to be awarded a contract for approximately $2 million in Colombia to remediate a pesticide-contaminated property designated to be a residential area. South America should contribute over $5 million in revenues to TRC over the next year.

I appreciate this opportunity to testify and I will be happy to try and answer any questions you may have.

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Chairman CRANE. Thank you, Mr. Cowen.
Mr. Neimeth.

STATEMENT OF ROBERT NEIMETH, PRESIDENT, INTERNATIONAL PHARMACEUTICALS GROUP, PFIZER, INC., ON BEHALF OF THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA

Mr. NEIMETH. Thank you, Mr. Chairman. I appreciate the opportunity to testify today at this hearing in support of the renewal of fast track procedures.

In addition to representing my company, Pfizer, I also appear here today on behalf of PhRMA, the Pharmaceutical Research and Manufacturers of America, whose Intellectual Property Task Force I chair. PhRMA is a trade association representing over 100 research-based pharmaceutical companies, including over 40 biotechnology companies. PhRMA and its member companies appreciate the benefits that balanced, well-negotiated free trade agreements can provide for the United States.

Especially important to our industry is the opportunity free trade agreements provide to obtain a commitment by foreign governments to provide adequate, effective and timely protection of intellectual property. With its highly educated and well-trained work force and leadership in research, development, and creativity, the United States enjoys a comparative advantage in industries like ours that depend on protection of their intellectual property. Pirates who are permitted abroad to steal our patents, copyrights, trademarks, and other intellectual property with impunity are stealing America's future prosperity.

Free trade agreements are, thus, a tool for achieving, among other U.S. objectives, protection of intellectual property. Fast track authority is, in turn, a tool for facilitating the legislative implementation of free trade agreements. We, therefore, support the reenactment of fast track procedures which enable the Congress to consider a trade agreement negotiated by the President, in consultation with the Congress as a whole, free from unraveling amendments that otherwise surely would be offered.

We also support legislation reenacting fast track procedures because such legislation is a tool for establishing minimum conditions for a free trade agreement. Fast track procedures should be available only if specified minimum conditions are satisfied, one of which should be the timely availability of adequate and effective protection of intellectual property on an accelerated and nondiscriminatory basis.

Specifically, any future free trade agreement must establish at least NAFTA-level protection of intellectual property. In other words, we simply urge the Congress to exercise its constitutional authority to legislate parameters for trade agreements. We support a bill that would require any trade agreement considered under fast track procedures to meet minimum standards for the protection of intellectual property.

Now, even NAFTA is not perfect as it does not provide adequate protection in the field of biotechnology, and this is an area of increasing importance to our industry in which further improvements are needed.

However, NAFTA, at least, does not suffer from the most glaring deficiencies of the WTO Agreement on trade related intellectual property rights. The TRIPs agreement establishes standards in areas of primary concern to our industry that are generally adequate. Yet the value of these standards is negated by the delays permitted to developing countries before they must conform their laws and regulations to these standards.

TRIPs explicitly permits many of the large emerging markets to continue their piracy of patented pharmaceutical and specialty chemical products for 10 years or more. Falsely described as a transition measure, this provision is nothing less than a shield for continued theft of intellectual property.

Another glaring deficiency of TRIPs is its failure to provide pipeline protection. U.S. patent holders are unfairly deprived of ever, ever obtaining any benefit from an innovation already patented under U.S. law, even for the duration of the original U.S. patent.

In reenacting fast track authority, PhRMA member companies urge the Congress to establish minimum conditions for that fast track eligibility. Specifically, in the intellectual property area, we urge that NAFTA-level protection be the minimum standard, including pipeline protection and the timely availability of adequate and effective intellectual property protection.

If these minimum conditions are established, the new free trade agreements would help remedy the defects of TRIPs, at least for our industry. Through free trade agreement negotiations, the United States can obtain better and faster protection of intellectual property than TRIPs accomplishes. Moreover, renewal of fast track authority with such minimum conditions would help implement section 315 of the Uruguay Round Agreements Act, which establishes as an objective of the United States the accelerated implementation of the TRIPs provisions.

The research-based pharmaceutical industry considers free trade agreements and a renewal of fast track procedures for their legislative implementation, tools for achieving the adequate, effective, and timely protection of intellectual property rights. In fact, these tools may be increasingly effective and important in scope as more and more countries wish to negotiate their accession to FTAs with the United States.

However, to maximize success in achieving our intellectual property objectives, these tools must be part of an overarching strategy. Plurilateral FTAs and fast track procedures must complement multilateral initiatives such as TRIPs, as well as a vigorous bilateral program, based in part on the special 301 legislation enacted in 1988.

A uniform standard must be employed in all negotiations, since any deviation or softening, be it on a country or regional level, would represent a new benchmark of acceptability that would invade all negotiations. The adherence to a uniform set of standards will best enable U.S. trade negotiators to achieve the best results as widely and as quickly as possible.

In conclusion, Mr. Chairman, our industry supports the reenactment of fast track procedures, provided that only FTAs meeting specified minimum conditions would be eligible for fast track consideration. Specifically, we believe that the fast track procedures should be available only for the review of an FTA that provides at least NAFTA-level protection of intellectual property, including pipeline protection of pharmaceuticals and the timely provision of protection without TRIPs-style delays.

Thank you, Mr. Chairman; and I would be pleased to answer any questions.

[The prepared statement follows:]

Statement PhRMA

STATEMENT OF ROBERT NEIMETH
PRESIDENT, INTERNATIONAL PHARMACEUTICALS GROUP, PFIZER, INC.

ON BEHALF OF THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA

before the
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS

and the

SUBCOMMITTEE ON RULES AND ORGANIZATION
COMMITTEE ON RULES
House of Representatives

May 17, 1995

Chairman Crane, Chairman Dreier, and other Members, my name is Robert Neimeth and I am the President of the International Pharmaceuticals Group of Pfizer, Inc. I appreciate the opportunity to testify today at this hearing in support of the renewal of fast track procedures for the Congressional review of certain trade agreements.

In addition to representing my company, I also appear here today on behalf of the Pharmaceutical Research and Manufacturers of America (PhRMA), whose Intellectual Property Task Force I chair. PhRMA is a trade association representing over one hundred research-based pharmaceutical companies, including more than forty of the country's leading biotechnology companies.

I also serve as Chairman of the Intellectual Property Committee of the International Federation of Pharmaceutical Manufacturers Association (IFPMA), based in Geneva, Switzerland.

PhRMA members discover, develop and produce most of the prescription drugs used in the United States and a substantial portion of medicines used abroad. The U.S. pharmaceutical industry is one of the country's most competitive high technology manufacturing industries, exporting $525 million more in U.S. pharmaceutical products last year than were imported into this country.

PhRMA and its member companies appreciate the benefits that balanced, well negotiated free trade agreements can provide for the United States, including for our industry. Free trade agreements open up foreign markets to U.S. exports of goods and services, permitting competitive American companies to reach more customers. They reciprocally open up the U.S. market, thus helping American companies to remain competitive in a global economy through access to inputs at world market prices. They can ensure fair rules for foreign direct investment; this is especially important since studies show that trade and investment flows are closely correlated. Where U.S. firms can and do invest abroad, they tend to succeed in penetrating the market there through exports as well.

Especially important to our industry is the opportunity FTAs provide to obtain a commitment by foreign governments to provide adequate, effective and timely protection of intellectual property. With its highly educated and well trained work force and leadership in research, development and creativity, the United States enjoys a comparative advantage in industries that depend on protection of their intellectual property. Pirates who are permitted abroad to steal our patents, copyrights, trademarks and other intellectual property with impunity are stealing America's future prosperity.

Generally, it takes about twelve years and over 350 million dollars just to get a single pharmaceutical product from the laboratory shelves to the shelves of a pharmacy. For every drug that finally is successfully marketed, the developer has screened from 4,000 to 10,000 chemicals, and has conducted extensive human clinical trials. The regulatory approval process is so lengthy that most drugs enjoy market exclusivity for only eight to ten years, even though the patent term is significantly longer.

It is these huge R&D costs for pharmaceutical products that make our industry so intensely dependent on patent protection. It costs literally millions and millions to discover, test and market a new drug, but virtually only pennies to copy it. The pirates abroad who expropriate our years of effort deny us sales abroad and fair compensation for our innovation. The toleration of piracy by foreign governments, through their failure to enact or enforce adequate laws, impairs our ability to fund the mammoth R&D required to discover new drugs and treatments for the dread diseases of not only today, but also tomorrow.

Can any of us doubt the importance of this research in light of, for example, the recent new outbreak and spread of the lethal Ebola virus in Zaire?

Because FTAs can provide so many benefits, including for the protection of intellectual property, we support the reenactment of fast track authority. The political vulnerability of even the best FTAs is that they are necessarily reciprocal. The United States appropriately not only obtains rights, but accepts responsibilities. The U.S. not only obtains access to a foreign market, but also agrees to provide access to the U.S. market.

Imagine a free trade agreement considered by the Congress under the normal legislative rules. I believe the vast majority of Members would recognize the benefits to the national economic interest of such agreement and support it overall. However, it would be a rare Member who could resist offering at least one amendment advocated by constituents. Every state and nearly all districts have some unique concerns, promotion of which could compel a Member to tinker with the agreement.

The result is that the agreement negotiated by the President would likely be amended beyond recognition. This would undercut dramatically the President's ability to speak with one voice for the United States in trade negotiations, and through such negotiations to advance our national interests. One reason we support the reenactment of fast track procedures, then, is simply to make free trade negotiations, with their potential benefits for the United States, feasible.

Another reason is to establish at the outset, clearly and immutably, minimum conditions for a free trade agreement. Fast track procedures for Congressional review of free trade agreements should be available only if specified minimum conditions are satisfied. One of those conditions should be the timely availability of adequate and effective protection of intellectual property on an accelerated and nondiscriminatory basis.

Specifically, PhRMA believes that fast track procedures should be available only for agreements that establish at least NAFTA-level protection of intellectual property. Even NAFTA is not perfect, as it does not provide adequate protection in the field of biotechnology. This is an area of increasing importance to our industry, in which further improvements are needed.

However, NAFTA at least does not suffer from the most glaring deficiencies of the World Trade Organization Agreement on Trade-Related Intellectual Property Rights (TRIPS). The TRIPS Agreement establishes standards in areas of primary concern to our industry that are generally adequate, including a twenty-year patent term, nondiscriminatory and limited compulsory licensing, with importation allowed to fulfill the working requirements of a product; and patent protection for all fields of technology. Yet the value of these standards is negated by the delays permitted to developing countries before they must conform their laws and regulations to these standards. TRIPS explicitly permits many developing countries to continue their piracy of patented pharmaceutical and specialty chemical products for ten years. Falsely described as a "transition" measure, this provision is nothing less than a shield for continued theft of intellectual property. During the ten-year period, the piracy-haven countries enjoy immunity from the obligations borne by other countries. The so-called "transition" period is nothing more than a long and costly dodge and delay, to the serious injury of U.S. patent holders.

Another glaring deficiency of TRIPS is its failure to provide "pipeline" protection. Under Mexican law prior to the NAFTA negotiations, for example, patent protection was not available for pharmaceuticals and specialty chemicals. Absent a NAFTA pipeline provision, U.S. holders of patents on such products already patented under U.S. law would not be able to obtain patent protection in Mexico even today. With the NAFTA pipeline provision, we may obtain patent protection for such products in Mexico at least for the duration of the original U.S. patent.

In reenacting fast track authority, PhRMA member companies urge the Congress to establish minimum conditions for any agreement that the President proposes for Congressional consideration under fast track procedures. Specifically in the intellectual property area, we urge that NAFTA-level protection be the minimum standard, ensuring that any new free trade agreement provides for pipeline protection and the timely availability of adequate and effective intellectual property protection, without TRIPS-style, decade-long delays.

If these minimum conditions are established for use of any renewed fast track procedures, then new free trade agreements would help remedy the defects of TRIPS, at least for our industry. Through FTA negotiations, the U.S. can obtain better and faster protection of intellectual property than TRIPS accomplishes. Moreover, renewal of fast track authority with such minimum conditions would help implement section 315 of the Uruguay Round Agreements Act, which establishes as an objective of the United States the accelerated implementation of the WTO TRIPS provisions.

The research-based pharmaceutical industry considers free trade agreements and a renewal of fast track procedures for their legislative implementation, tools for achieving the adequate, effective and timely protection of intellectual property rights. In fact, these tools may be increasingly effective and important in scope, as more and more countries may wish to negotiate their accession to FTAs with the United States.

However, to maximize success in achieving our IP objectives, these tools must be part of an over-arching strategy for IP protection. Plurilateral FTAs and fast track procedures therefore must complement multilateral initiatives such as TRIPS, as

well as a vigorous bilateral program, based in part on the Special 301 legislation enacted in 1988. In this respect, a uniform standard must be employed in all negotiations, since any deviation or softening -- be it on a country or regional level -- represents a new benchmark of acceptability that will invade all negotiations. The adherence to a uniform set of standards will best enable U.S. trade negotiators to achieve the best results as widely and quickly as possible.

The need for the creative as well as vigorous use of all tools available to the United States is underscored by the proliferation on intellectual property problems around the globe. In Argentina, for example, President Menem recently derailed enactment of substandard and onerous patent legislation through an eleventh hour veto. However, it remains to be seen whether Argentina finally will act on its many promises to implement effective patent protection for pharmaceuticals.

In Brazil, the government has promised repeatedly for over five years to provide adequate and effective patent protection for pharmaceutical and specialty chemical products. During his recent visit here, President Cardoso pledged his best efforts, but results are what we are still awaiting.

India has long served as a global center for patent piracy, and has resisted efforts to adopt global standards of pharmaceutical patent protection in both multilateral fora and bilateral negotiations with the U.S. Any delay in Indian implementation of TRIPS until 2005 is wholly unacceptable. Moreover, the Indian legislature recently has resisted even implementing the minimum patent provisions required by TRIPS, so that U.S. patent rights holders might at least gain some minimal protection there eventually.

The situation in Turkey shows some progress, but adequate and effective patent protection remains a distant goal. On March 6, Turkey signed a customs union agreement with the European Union, in which the Turkish Government promised to implement TRIPS principles by 1999. While the U.S. should lend support to this agreement we also should maintain bilateral pressure on Turkey to accelerate implementation of TRIPS and provide pipeline protection.

In Egypt, the government has prepared draft legislation that would upgrade considerably the terms of patent protection for pharmaceuticals. Egypt has not yet decided, however, whether it will attempt to delay the implementation of the law for five or ten years at TRIPS permits.

We also have received reports from various sources that Israel is preparing to weaken its intellectual property laws, with specific reference to pharmaceutical patents. We are told that the Government of Israel specifically is considering allowing Israeli manufacturers who do not have any rights to the patent to conduct large-scale manufacturing in Israel, during the life of the originator's patent. This proposal could permit the manufacture and export of tons of patented product before patent expiration. We hope that the Israeli Government will not take this misguided course.

While Singapore does not represent a center for patent piracy, its enactment earlier this year of a new law, containing onerous and unacceptable compulsory licensing provisions, represents a clear violation of TRIPs principles. As Singapore is one of the most developed economies in the world, the new law also represents an abdication of responsibility for demonstrating adherence to global standards of patent protection for pharmaceutical products. We understand that the Singaporean Government has promised to remove the onerous provisions from their law by the end of this year, and not to utilize the current provisions between now and then.

In conclusion, our industry supports the reenactment of fast track procedures for the Congressional review of free trade agreements, provided that only FTAs meeting specified minimum conditions would be eligible for fast track consideration. Specifically, we believe that the fast track procedures should be available only for the review of an FTA that provides at least NAFTA-level protection of intellectual property, including pipeline protection for pharmaceuticals and the timely provision of protection without TRIPs-style delays.

I would be pleased to answer any questions.

Chairman CRANE. Ms. Minette.

STATEMENT OF MARY MINETTE, STAFF ATTORNEY, NATIONAL AUDUBON SOCIETY

Ms. MINETTE. Thank you.

The National Audubon Society is an organization with more than one-half million members and over 500 chapters throughout the United States and Latin America. Our principal mission is the protection of wildlife and habitat. On behalf of my organization, I would like to thank you for the opportunity to testify today regarding the fast track policy and negotiating objectives.

In the coming months, Congress will consider legislation which will allow the President access to fast track procedures for Chile's accession to the North American Free Trade Agreement and perhaps beyond. In drafting that legislation, we urge Congress to include negotiating objectives which will promote environmental protection, conservation of resources, public participation, and transparency.

We applaud the expansion of the North American Free Trade Agreement to include Chile. However, we believe that trade expansion plans and fast track legislation granting the President authority to turn those plans into trade agreements must include environmental safeguards. Both Canada and Mexico have announced their support for expanding the North American Agreement on Environmental Cooperation to include Chile, and the Chilean Government has repeatedly indicated its willingness to negotiate.

United States trade policy must reflect a similar commitment to the concurrent expansion of trade and environmental protection.

Expansion of trade often has a direct impact on the global environment. The most obvious example of this is the severe pollution in the United States-Mexico border region caused by unchecked industrial growth as a result of the free trade zone which predates NAFTA.

Chile also faces environmental problems caused by economic expansion. Although the country has enjoyed a period of sustained economic growth in recent years, this growth has come with steep environmental costs. Chile faces severe urban air and water pollution and pollution from its extensive mining and agricultural sectors. Its environmental laws are new and lack the enforcement structure to fully address these problems.

Trade without environmental safeguards encourages unsustainable use of resources. Overexploitation of natural resources not only harms species and ecosystems but also prevents future generations from enjoying the benefits of those resources. Biodiversity is an important economic resource. The continued viability of industries such as fishing and forestry depend upon conservation of species.

In addition, a lack of environmental protection controls in developing countries affects the ability of U.S. industry to compete fairly in global markets. Low or unenforced environmental standards not only harm the global environment and jeopardize public health but also affect the competitiveness of U.S. products on the global market with respect to similar products produced in countries with low or unenforced standards. Environmental protection levels the

playingfield by eliminating the comparative advantage of low or unenforced standards.

While we believe that environmental issues should be addressed in future trade agreements, we do not recommend a cookie-cutter approach to future trade negotiations; and we believe that fast track legislation should not impose such constraints on the President's negotiating authority.

For example, Chile is at an early stage in developing a framework of environmental protection laws and lacks many of the necessary structures to fully enforce them. In addition, some provisions of the North American Agreement on Environmental Cooperation relating to border pollution issues may not be relevant for Chile.

Fast track legislation must include basic environmental objectives in order to ensure both trade liberalization and environmental protection. An expanded NAFTA and future trade agreements must continue to address the environmental issues inextricably linked to trade expansion to prevent further degradation of the global environment and depletion of natural resources, and to ensure the competitiveness of environmentally conscious U.S. firms.

Fast track legislation will have a strong impact on the future direction of U.S. trade policy and must reflect the environmental principles developed in the NAFTA negotiations.

The inclusion of nontraditional negotiating objectives in fast track legislation is nothing new. Previous fast track legislation has included objectives relating to worker rights, intellectual property, and agricultural subsidies. Each of these goals is linked to trade expansion, and environmental issues are similarly linked and should be included in fast track legislation.

The North American Free Trade Agreement and the North American Agreement on Environmental Cooperation enjoyed strong bipartisan support in Congress. NAFTA and the North American agreement made considerable progress in addressing the impacts of increased trade on the environment by creating a forum for developing solutions to trade and environment issues and by providing mechanisms for public accountability and public participation.

The principles developed in NAFTA must be reflected in fast track legislation which will strongly influence the direction of future U.S. trade policies. Fast track legislation that does not build upon the environmental and public participation principles incorporated in NAFTA would be a step backward for U.S. trade policy.

Thank you very much.

[The prepared statement follows:]

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STATEMENT OF MARY MINETTE
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NATIONAL AUDUBON SOCIETY

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE, COMMITTEE ON RULES
OF THE
U.S. HOUSE OF REPRESENTATIVES

May 17, 1995

Introduction

My name is Mary Minette, and I am a staff attorney with the National Audubon Society, an international conservation organization with more than a half million members and over five hundred chapters throughout the United States and Latin America. Audubon's principal mission is the protection of wildlife and habitat. On behalf of my organization, I would like to thank the members of the Subcommittees on Trade and on Rules and Organization for the opportunity to testify regarding fast track policy and negotiating objectives.

In the coming months, Congress will consider legislation which will allow the President access to fast track procedures for Chile's accession to the North American Free Trade Agreement, and perhaps beyond. In drafting that legislation, the National Audubon Society urges Congress to include negotiating objectives which will promote environmental protection, conservation of resources, public participation, and transparency.

Audubon applauds the expansion of the North American Free Trade Agreement to include Chile; however, we believe that trade expansion plans, and fast track legislation granting the President authority to turn these plans into trade agreements, must include environmental safeguards. Both Canada and Mexico have announced their support for expanding the North American Agreement on Environmental Cooperation (NAAEC) to include Chile, and the Chilean government has repeatedly indicated its willingness to negotiate. United States trade policy must reflect a similar commitment to the concurrent expansion of trade and environmental protection.

The Link Between Trade and Environment

Expansion of trade often has a direct impact on the global environment. The most obvious example of this is the severe pollution in the U.S./Mexico border region caused by unchecked industrial growth as a result of the free trade zone which pre-dates NAFTA. Chile also faces environmental problems caused by economic expansion. Although the country has enjoyed a period of sustained economic growth in recent years, this growth has come with steep environmental costs. Chile faces severe urban air and water pollution and pollution from its extensive mining and agricultural sectors. Its environmental laws are new, and lack the enforcement structure to fully address these problems.

Trade without environmental safeguards encourages unsustainable use of resources. Overexploitation of natural resources not only harms species and ecosystems, but also prevents future generations from enjoying the benefits of those resources. Biodiversity is an important economic resource--the continued viability of industries such as fishing, forestry, agriculture, and chemical and pharmaceutical manufacturing depend on conservation of species. The Chilean economy is, in part, dependent upon natural resource extraction; however, overexploitation of forests and fishing stocks could lead to depletion of those resources in the future.

In addition, a lack of environmental protection controls in developing countries affects the ability of U.S. industry to compete fairly in global markets. Low or unenforced environmental standards not only harm the global environment and jeopardize public health, but also effect the competitiveness of U.S. products on the global market with respect to similar products produced in countries with low or unenforced standards. Environmental protection "levels the playing field" by eliminating the comparative advantage of low or unenforced environmental standards.

While we believe that environmental issues should be addressed in future trade agreements, we do not recommend a "cookie cutter" approach to future trade negotiations, and we believe that fast track legislation should not impose such constraints on the President's negotiating authority. For example, Chile is at an early stage in developing a framework of environmental protection laws and regulations, and lacks many of the necessary structures and resources to fully enforce them. In addition, some provisions of the North American Agreement for Environmental Cooperation relating to border pollution issues may not be relevant for Chile.

We believe that U.S. trade negotiations with Chile should encourage enforcement of Chile's existing laws, and the development of stronger protections as it benefits from liberalized trade with North America. Liberalized trade will give Chile more resources to use in protecting its environment, but an increase in resources will not guarantee adequate environmental protection in the short term. Thus, Chilean accession to NAFTA must include accession to the NAAEC, with appropriate modifications to reflect Chile's unique conditions. If the U.S. welcomes Chile into NAFTA without obtaining its commitment to enforce and further develop its environmental protection laws and regulations, we will give Chilean industry an unfair advantage over U.S. industry and the Chilean environment, and the Chilean people, will suffer in consequence.

The Need For Environmental Negotiating Objectives

Fast track legislation must include basic environmental objectives in order to ensure both trade liberalization and environmental protection. An expanded NAFTA and all future trade agreements must continue to address the environmental issues inextricably linked to trade expansion, to prevent further degradation of the global environment and depletion of natural resources, and to ensure the competitiveness of environmentally conscious U.S. firms. Fast track legislation will have a strong impact on the future direction of U.S. trade policy and must reflect the environmental principles developed in the NAFTA negotiations.

The inclusion of non-traditional negotiating objectives in fast track legislation is nothing new: previous fast track legislation included objectives relating to worker rights, intellectual property, and agricultural subsidies. Each of these goals is linked to trade expansion; however, none is a traditional subject of trade agreements. Environmental issues are similarly linked to trade expansion, and objectives which address these issues should be included in fast track legislation.

Transparency Objectives

Openness and accountability of decisionmaking institutions is a central tenet of democracy: we believe that the institutions to which the U.S. is a party should reflect our country's democratic values. Closed trading institutions such as the new World Trade Organization, which provides only limited opportunities for public scrutiny and comment, not only harm interested members of the public but also harm U.S. businesses whose livelihood may be affected by WTO policy decisions and dispute proceedings.

The Omnibus Trade Act of 1988 included openness and transparency of international trading regimes as a negotiating objective, and the NAFTA package, including the environmental and labor agreements, represent strong progress towards the goal of open and equitable procedures for trade policy development and dispute resolution. Fast track legislation should include objectives that reflect a continued commitment to more open and accountable trade institutions.

Conclusion

The North American Free Trade Agreement and the NAAEC enjoyed strong bipartisan support in Congress. NAFTA and the NAAEC made considerable progress in addressing the impacts of increased trade on the environment, by creating a forum for developing solutions to trade and environment issues and by providing mechanisms for public accountability and public participation. The principles developed in NAFTA must be reflected in fast track legislation, which will strongly influence the development of future United States trade policies.

Audubon urges Congress to craft fast track legislation which will ensure that U.S. trade policy promotes environmental protection as well as expansion of markets. Fast track legislation that does not build upon the environmental and public participation principles incorporated in NAFTA would be a step backward for U.S. trade policy.

Chairman CRANE. Thank you, Ms. Minette.

I would like to direct my first question to you, Ms. Minette, and to Dr. Starobin and to Mr. Gundersheim.

We have heard the comment from Mr. Neimeth on the essentiality of intellectual property protection. I know that, because that is included in fast track and considered a very viable fast track issue, that there has been an attempt on the part of some to equate labor and environmental issues on a parity with intellectual property. While I can understand the intellectual property argument, because it is a very fundamental part of trade expansion when otherwise you could have people stealing out from under you, I am wondering if you all feel that labor and environmental issues are on the same level, on a parity, if you will, with intellectual property right guarantees.

Mr. Gundersheim, you might start.

Mr. GUNDERSHEIM. No, it is not on the same level, it is on a higher level. If you think it is perfectly legitimate to have 4 year olds chained to a loom, weaving carpets in Pakistan or India or Nepal, I am appalled. If you think it is perfectly legitimate for a competitive advantage in the workings of a free market system to have 8 and 9 year olds mining coal, I just find that incredible, that that is not treated with the same seriousness, the same importance and, in fact, greater importance than any of these commercial interests that are part of the trade agreements.

I think the consequences to human beings is something that our society has traditionally addressed and most societies addressed during the whole industrial revolution, and that is why all these standards of work and the treatment of human beings have arisen. The fact that we have to revisit all these arguments of the last 100 years I find completely preposterous.

Chairman CRANE. Could I put the question to you that I put to Mickey Kantor earlier? What is the cutoff line for abusing a child because that child is working?

Mr. GUNDERSHEIM. The ILO standard is basically 16 years, and we are talking about industrial employment.

Chairman CRANE. Can you elaborate on industrial employment? Is that somebody working in a production line?

Mr. GUNDERSHEIM. Yes, spending 8 hours a day in a factory or traditional work environment where that is their entire basic day, that there is no education, there is no other traditional activities of a child.

Chairman CRANE. Even if that is only part-time labor?

Mr. GUNDERSHEIM. Let me answer it in a slightly different way. I was a newspaper boy when I was 11 and 12, and that was not illegal because it is 2 hours. It is not considered hazardous. It is not—did not interfere with my education and so on. That is a reasonable kind of standard.

Working in a coal mine is not. There are generally recognized agreements in terms of most countries of the world as to what should be the educational process within those countries, what is considered legitimate occupations for children to engage in, and what are not legitimate occupations. We are basically talking about using children as a substitute for adult employment. That is the basic fundamental——

Chairman CRANE. Let me ask you if you have any agricultural ancestors in your family tree, farmers.

Mr. GUNDERSHEIM. Going back maybe many, many generations in Europe, probably so.

Chairman CRANE. The reason I asked that question, and this is what I put to Mickey Kantor, the transition, and this goes back throughout the span of recorded history, between a boy becoming a man was age 12.

Now, to be sure because of advancements, economic advancements in this country we were able to indulge our young people by giving them the addition of what we define as adolescence. Adolescence was a term unheard of. What is adolescence? Adolescence is still time off when you don't have to suddenly grow up and be productive.

I ask you that question because when we were kids on the farm, I mean I am not exaggerating, we worked 10 hours a day, with 5 minutes off on the hour, 10 hours we put in in a day harvesting hay, for example, hay crops.

Now, that was heavy, physical labor, and to be sure it was only a summer job, but the fact of the matter is everybody took that for granted. Nobody ever questioned that. My father encouraged that kind of discipline, and he was brought up in that kind of environment, as was his father. I think that we have managed to indulge ourselves in a luxury because when I got my first union job there was no heavy lifting involved, and I didn't work nearly as strenuously, and I made a whale of a lot more money.

Now, I am not condemning that. That is a good thing. But on the other hand, I am suggesting that there are nations in transition that have not achieved our level, and until they achieve the levels that we achieved 50 years ago, I think it is a little arbitrary to come in and make definitions that 16 is the cutoff point, or that any kid that works in a production line, an assembly line, is being abused if he is only 15 years of age when there may not even be an opportunity for a high school education in that country.

I mean, that may be unheard of yet, and I applaud your concerns about advancing the conditions for labor, and I applaud Miss Minette's concerns about advancing our environmental concerns. But take Superfund, Ms. Minette, I mean look at how many sites we have identified here and how few sites we have addressed with the expenditure of billions of dollars, half of which has gone into lawyers' pockets so far, and we have only barely scratched the surface. Yet we are attempting to impose standards on underdeveloped countries that are equivalent to ours with all of those filthy sites that will not be cleared up in your lifetime.

Again, I applaud your objective in moving toward that kind of a goal. We want to see it happen worldwide, but I think you are inclined to impose some standards that are a little extreme given the nature of a lot of these developing countries.

Ms. MINETTE. If I might, Mr. Chairman, the environmental side agreement to NAFTA in no way imposes U.S. standards, and that is not what we are asking for. What it does is create a process to discuss standards, to discuss raising standards, to discuss enforcing standards, and in no way does it require that Mexico or Chile put in place a system completely like the U.S. system. It may not be

appropriate, it may not be what they need to address their particular problems. That is what I was talking about when I talked about not requiring a cookie-cutter approach to these issues.

Chairman CRANE. Well, having the commitment, all of us, I mean we all have a vital stake in guaranteeing that we try to keep the world clean, just as we have, I think, a civilized stake in guaranteeing that you are not abusing children and you give those kids the best opportunity.

Dr. Starobin.

Mr. STAROBIN. Mr. Chairman, I don't think there is any magic formula in dealing with this question, either the question of child labor, the environment, or worker rights and labor standards. I would not suggest for a moment that it is something that can be done tomorrow morning, that decent conditions, that better working conditions, that the right of workers to express themselves can be accomplished overnight.

On the other hand, you speak of nations in transition, there should also be a policy of transition, a policy that would lead ultimately to a better life for working people in the countries with which we trade. That is, to me, a perfectly obvious kind of thing, but it is not included in any of the trade negotiations.

For example, I am not suggesting in the case of the CBI that wages be brought to American standards overnight. Let them be brought within 5 years, within 10 years to half of the American standard. Then we are talking about a transition. Otherwise we are just playing games with that whole concept.

As far as child labor is concerned, and both my colleague, Mr. Gundersheim, and I have had the opportunity to travel very extensively throughout Southeast Asia where we have seen some of the most frightful examples of child labor.

Child labor takes the place of adult employment in these so-called developing countries. I call them underdeveloped countries because I think that is much more characteristic. Child labor takes the place of adult labor. Children have no ability to really protect themselves. They are pliable, but they are also worn out at an early age, given the hours and the conditions under which they work.

We are talking about a process, I think, and that process has to be embodied in our trade negotiations or our general thinking, our view of democratic development should be meaningful, but there are also economic considerations.

Aside from any human considerations, we do not develop markets in Third World countries, contrary to what Ambassador Kantor says, contrary to the phony figures that continue to be used—the word "phony" is not my term, it is Jules Katz's term. We are not developing markets unless we raise living standards.

It is an elementary economic fact that people do not buy products unless they have the wherewithal. If we really want to create open markets in Third World countries, we have to give the people the opportunity to raise their living standard.

We have to support improved working conditions. We have to support the right of workers to organize and protect themselves. Otherwise we are not really opening markets. We are dealing with a minute elite. Anyone who has visited these countries knows that

this is absolutely the case. We may be shipping capital goods, but we are not shipping consumer goods. Mexico is perhaps the most dramatic example of a country with which we are not really trading consumer goods. We never did, the figures are absolutely clear, the data have been distorted. The data presented to this committee and elsewhere have been terribly distorted, Mr. Chairman.

Chairman CRANE. Well, I am thinking specifically of a trip I made with some of our colleagues over to mainland China about 3 years ago, and one of the arguments I have raised with Nancy Pelosi with her concerns about human rights—and they are very legitimate concerns—is that what more fundamental human right is there than the ability to bring up a family, feed the family, clothe the family, shelter the family? They are making such mindboggling progress on mainland China in the advancement of what Deng Xiaoping likes to call Leninist capitalism, the ultimate oxymoron, but the fact of the matter is you see children now, because of family resources that have greater opportunities for other things than working chained to that thing that you mentioned, Mr. Gundersheim, in production lines. Kids going to school and having downtime for other pursuits, and it is because of the total surge that is going on in terms of the nation's economic growth.

Now, to be sure it is not evenly spread across the entire nation, but mercifully the government over there, even while it calls itself Communist, is committed to this, and is giving the younger generation an opportunity. Not all of them to be sure yet, but giving a younger generation an opportunity that never ever before existed on the Chinese mainland.

Mr. STAROBIN. Mr. Chairman, having been to China on many occasions, having traveled very extensively in China, I would make the point that this may be true in certain sections of the country, but I think it is quite improper to generalize so far as a population of well over 1 billion people are concerned. Once you get away from the major cities, the situation is dramatically different.

Chairman CRANE. I am not disputing that, Dr. Starobin, but they are migrating, contrary to the government's desires, into those urban areas where that growth is going on. The exciting part of it is the commitment of the government to try and extend that. Right now it is concentrated in southern China, no question about it.

Mr. STAROBIN. Well, I would question some of it based on what I have seen in China, Mr. Chairman. I would tell you that over the years that I have had the opportunity to go there I have seen the development of begging, which is something that did not exist, say, 10 years ago.

Chairman CRANE. You can find that in Chicago.

Mr. STAROBIN. We are talking about China. Obviously, you find it in Chicago. We have our own problems as well, but you really have a situation that is characteristic of so-called developing countries in which children fundamentally take the jobs of their parents not because they are looking to do that, but because they are easier to deal with, and the children are worn out at an early age.

This has been discussed endlessly among people who deal much more deeply and much more knowledgeably than I about child labor, but it remains a fundamental factor in the use of children in industry.

Chairman CRANE. Well, with qualifications I am not disputing that. The qualifications are I grew up in that kind of family environment that insisted upon absolute inculcation of that work ethic early on, and we never—now Mickey Kantor said he didn't, either, but we never got allowances. Any money we wanted, my dad would even get Scotch tape and put a nickel up on the window. You want to wash that window, you can take the nickel. But I mean this went back to a very early age, and that has been a part of our entire national experience, and I would hope it continues.

Let me ask one more expanded question, and that is the participation of private sector folks from the business community, I mean all walks of our private sector, including labor and environment, has this administration been more open in encouraging your participation in negotiations that we have conducted in trade matters, and if you have got a question, Mr. Cowen, I noticed you had your hand up there, but you have got an elaboration first, but then I would just like your input. Are we getting the input that we want from all sectors of our economy to guarantee that we make continuing progress?

Mr. Cowen.

Mr. COWEN. Before I answer that, Mr. Chairman, I just wanted to mention when you talked about your growing up on a farm, I grew up in western Massachusetts in a city, but I was a paper boy at age 10. At age 13 and 14 I picked tobacco two summers, and with the ethic that was given to me by my parents and after picking tobacco for 2 years, I am proud to say that I put myself through college, and I wish more youngsters got involved in that kind of work ethic because I think this country would be a much better place for our youth.

I think on the question of has the administration involved us in the process, I think the administration is doing quite a bit to promote business externally, and I would have to say even though there have been discussions with the Commerce Department that they have been more proactive than they have been in the past, but as to the discussion on fast track, we are for fast track, but we are not for the requirement of the side agreements, and in those discussions I don't believe that we have participated.

Chairman CRANE. Does anybody have any other comments on that subject?

Mr. GUNDERSHEIM. I can say from my own experience, which goes back to the Tokyo round, that the administration where the contact and the exchange, the honest exchange in the sense of seriously considering advice from the private sector, that the best period was during the Carter administration with Ambassador Strauss and, in fact, with Dick Rivers and so on.

The second best has been the Clinton administration. I must tell you that the Reagan and Bush administrations treated the advisory process as nothing more than a sounding board for their own policies and their own propaganda and never seriously considered private sector advice with very few exceptions.

Mr. SOBEL. Mr. Chairman.

Chairman CRANE. Mr. Sobel.

Mr. SOBEL. I would just like to make one comment, and it goes back to your initial question. I just wanted to define the distinction

on intellectual properties, and that is that in that specific instance you are dealing with protecting the rights of American companies and American citizens, which is perhaps different, but is actually specific as it regards our Nation and what we are trying to protect.

Chairman CRANE. Are there any questions from you, Mr. Zimmer?

Mr. ZIMMER. Mr. Chairman, I don't have any questions, but I did want to belatedly welcome to the panel a neighbor from New Jersey and a leader in that State, Cliff Sobel, who has been very active in business and civic affairs and has relatively recently taken on the chairmanship of the Alexis de Tocqueville Institution, in which I am sure he will serve with great distinction.

So, Mr. Sobel, I want to give you my greetings and to all of you my regrets that I wasn't here to hear your testimony.

Chairman CRANE. Well, if there are no further questions, I want to thank all of the panelists for their participation today, and we look forward to working with you in the future as we go down the line in the advancement of our common denominator objectives, even though we may have some minute quarrels from time to time. Thank you so much.

Mr. ZIMMER [presiding]. At this time, we will call our last panel today, which includes David Hirschmann, executive vice president, the Association of American Chambers of Commerce in Latin America; I.M. "Mac" Destler, acting dean, School of Public Affairs, and director, Center for International and Security Studies, University of Maryland; Ambassador Ambler H. Moss, Jr., director, the North-South Center, and professor, International Studies, the University of Miami.

I would like to remind the witnesses that the oral testimony will be limited to 5 minutes and that their full written statements will be made a part of the record.

Dr. Destler.

STATEMENT OF I.M. DESTLER, PH.D., CENTER FOR INTERNATIONAL AND SECURITY STUDIES, SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF MARYLAND

Mr. DESTLER. Thank you, Mr. Chairman. Thank you for including my written statement in the record. I will summarize briefly.

The fast track procedures on trade are one of the great legislative innovations of the past quarter century, and like any important reform, fast track has not worked out precisely as its writers envisaged.

On the positive side, the congressional role has proved more substantive than the statutory language suggests: through the so-called nonmarkup sessions of this and other House and Senate committees where the members offer draft language and recommendations to the administration prior to submission of the President's bill.

Less positive has been the related tendency for trade implementing bills to become thicker and more complex and to include provisions that go well beyond those necessary for carrying out U.S. trade commitments.

Another problem was that in the case of NAFTA, Congress found itself facing up or down votes on an ongoing negotiation that it

never specifically authorized. A third problem with fast track arose in late 1994 when a Senate committee chairman with only limited jurisdiction was able to delay for 45 days the vote on the Uruguay round legislation. The time has therefore come, I think, for significant fast track reform.

Renewal is very important, but change is important also. I have three recommendations and one comment, which are drawn from the new edition of my book, "American Trade Politics." The first important step would be for the Congress to guarantee in law the congressional role that has developed in practice. At present, there is no statutory support for this role embodied in the so-called nonmarkup sessions, no requirement under fast track that the administration consult with Congress prior to submission of a bill implementing a trade agreement.

The fast track renewal, I believe, should include such a requirement, a minimum period, perhaps 60 or 90 days, for a nonmarkup process to proceed between the signing of a trade agreement and the submission of an implementing bill.

This guarantee should be accompanied, however, by a shortening of the time limits for subcommittee review after the implementing bill is introduced, since no amendments are then possible. A total time period of 30 days or perhaps slightly more for House or Senate action would seem sufficient, in contrast to the current 90 days.

The second suggestion I would make for change would be to limit the scope of an implementing bill, as former Congressman Frenzel and others also suggested, to measures "necessary" for carrying out a trade agreement, for example, rather than "necessary and appropriate" as currently provided. The leeway of the broader language has been politically useful. Provisions not required to implement a trade agreement that have been added during nonmarkups have often broadened political support for trade implementing legislation. But the price has been high in adding trade law changes that should come through the normal legislative process; and in delaying congressional action, as happened last year on the Uruguay round, as antidumping and other laws are rewritten far more than is required to carry out U.S. trade commitments.

A particular problem in the implementing legislation has been the intersection of the fast track and budgetary procedures. I personally believe that budgetary discipline and budgetary procedures should be maintained on trade legislation, but there is no reason why the measures which accomplish this should not be subject to floor amendment because they are not part of our agreements with foreign nations.

I understand staff of both subcommittees are working on some specific language or formulas that would allow for a separate and amendable trade revenue bill to appear, to be worked on, to be subject to floor amendment, but still following the required time limits. This seems to be a sensible way to balance the budgetary, trade, and legislative needs.

Third, Congress should rewrite the fast track law to assure that it has the opportunity to authorize any major agreement which is subject to its provisions. This has always been the case for the big GATT negotiations which the laws of 1974 and 1988 explicitly authorized. But free trade talks with Mexico were not anticipated in

1988 when Congress passed the law whose language authorized them, and the fast track renewal bill of 1991 was considered after President George Bush and Mexican President Carlos Salinas had already initiated the NAFTA discussions.

I think the negotiation was important. NAFTA should have been launched only after being authorized explicitly by Congress. How specifically might Congress assume this for future negotiations? One means would be for the Congress to make the general fast track provisions permanent, with no date of expiration, but to provide that they could only be invoked for negotiations that Congress had specifically authorized. Each specific authorization, however, would specify negotiating objectives and include a deadline date, as has typically proved necessary to force hard compromises.

One final thought relates to the substance of trade negotiations. The fast track procedures have worked because there is broad bipartisan consensus in support of liberal trade. The process becomes difficult to maintain when negotiations extend to issues involving labor and the environment for which consensus is lacking.

These issues are increasingly intertwined with trade issues and will become more so as global economic interdependence increases, so it seems unreal and unreasonable to exclude them entirely from trade negotiations. Under present political circumstances, however, explicit authorizing of negotiations on trade related labor and environmental issues is too controversial for fast track to sustain. It is best, therefore, that this year's legislation be silent on this matter.

I am happy, Mr. Chairman, to respond to questions now or later from you or your staff.

[The prepared statement follows:]

Renewing and Reforming "Fast Track"

Testimony of I. M. Destler[1]
Before the a Joint Hearing of the
Subcommittee on Trade
Committee on Ways and Means
and the
Subcommittee on Rules and Organization of the House
Committee on Rules
United States House of Representatives

May 17, 1995

The "fast-track" procedures are one of the great legislative innovations of the past quarter-century. When, in the early 1970s, the Nixon administration sought advance Congressional authority to negotiate on non-tariff barriers to trade, it was anything but clear whether the United States could devise a mechanism which would give the administration credibility in trade bargaining, while maintaining Congressional authority over the results. But the Trade Act of 1974 did provide such a formula. It has made it possible for four different administrations to sign major trade agreements, and for Congress to provide for their implementation.

Like any important reform, "fast-track" has not worked out precisely as its creators envisaged. On the positive side, the Congressional role has proved more substantive than the statutory language suggests: rather than simply voting up or down on the President's bill implementing a trade agreement, Senators and Representatives have played active roles in the drafting of the bill, through the so-called "non-markup" sessions of this and other House committees and their Senate counterparts.

Less positive has been tendency for implementing bills to become thicker and more complex, and to include provisions well beyond those necessary for carrying out U. S. trade commitments. Another problem was that, in the case of NAFTA, Congress found itself facing up-or-down votes on an ongoing negotiation that it never specifically authorized. A third problem arose in late 1994, when a Senate committee chair with only limited jurisdiction was able to delay for 45 days the vote on the Uruguay Round legislation.

The time has therefore come for significant fast-track reform. Renewal is important--to build on the landmark achievements of 1993 and 1994. But change is important also.

One important step would be *to guarantee, in law, the Congressional role that has developed in practice.* Congress has established for itself a serious role in implementing comprehensive trade agreements--whereas it had no role at all in the implementation of the tariff agreements concluded in the thirties through the sixties. But at present, there is no statutory support for this role, no requirement under fast-track that the administration consult with Congress prior to submission of a bill implementing a trade agreement. The fast-track renewal should include such a requirement--a minimum period, perhaps sixty or ninety days, for a "non-markup" process to proceed between the signing of a trade agreement and the submission of the implementing bill.

This guarantee should be accompanied, however, by *a shortening of the time limits for committee review after the implementing bill is introduced.* Since no amendments are then possible, a total time period of thirty days for House and Senate action would seem sufficient -- in contrast to the present ninety days.

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[1]Mr. Destler is Professor and Acting Dean at the School of Public Affairs, University of Maryland, where he directs the Center for International and Security Studies at Maryland (CISSM). He is also Visiting Fellow at the Institute for International Economics. This testimony draws upon his *American Trade Politics*, Third Edition, published by the Institute and the Twentieth Century Fund in April 1995.

A second needed change is *to limit the scope of an implementing bill*--to measures "necessary" for carrying out a trade agreement, for example, rather than "necessary and appropriate" as currently provided. The leeway of the broader language has been politically useful, of course: ancillary provisions added during the "non-markups" have often broadened support for the implementing legislation. But the price has been high: in adding trade law changes which should go through the normal legislative process; in delaying Congressional action as antidumping and other laws are rewritten far more than is required to carry out U.S. trade commitments. The more that an implementing bill reaches beyond what a trade agreement requires, the less one can justify special procedural treatment under fast-track.

A particular problem has arisen from the intersection of fast-track and budgetary procedures. Budgetary discipline means that revenues lost from trade agreements should be offset, but there is no reason why the measures which accomplish this not be subject to floor amendment, for they are not part of our agreements with foreign nations. This committee should therefore explore ways to subject the budgetary provisions to less restrictive procedures. *One means would be a separate trade/revenue bill*, subject to time limits but also to amendment, one which would be passed prior to action on the implementing legislation itself.

Third, Congress should rewrite the fast-track law *to assure that it has authorized any major agreement which is subject to its provisions*. This has always been the case for the big GATT negotiations: the laws of 1974 and 1988 were explicitly enacted to provide for the Tokyo and Uruguay Rounds. And when Congress extended the fast-track process to bilateral negotiations in 1984, it did so with Israel and Canada in mind, and it added a committee veto over use of this authority beyond the Israeli case. But free-trade talks with Mexico were not anticipated in 1988, when Congress passed the law whose language authorized them. When President George Bush decided to inaugurate them in 1990, the committee veto still applied, but Congress as a whole got into the act only after the talks were launched, and only through the fast-track extension vote of 1991 which applied also to the Uruguay Round. A negotiation as important as NAFTA should only have been launched after being authorized explicitly by Congress, under procedures allowing an up-or-down vote on its merits.

How might Congress avoid a repeat of this? One means would be *to make the general fast-track provisions permanent*, with no date of expiration, but *provide that they could only be invoked for negotiations which Congress had specifically authorized.* Each specific authorization, moreover, would specify negotiating objectives and include a deadline date--as has typically proved necessary to force the final hard compromises.

In the current situation, Congress could include two things in this year's bill: a comprehensive, permanent reformulation of the fast-track legislation; and specific authorization for certain negotiations which are ripe. The latter would include, at minimum, NAFTA negotiations with Chile and completion of the unfinished business of the Uruguay Round. When the administration is ready to launch further specific negotiations, it would come back to Congress for authority. Consideration might be given to allowing the authorizing legislation for certain types of negotiations to receive fast-track consideration. For example, Congress might endorse--if it chose--the goal of Hemispheric free trade, or free trade among the nations Asia-Pacific Economic Cooperation forum, and provide that bills authorizing specific negotiations to these ends would receive fast-track procedural treatment. But exactly how members choose to structure this process is a matter of detail; what is most important is that, one way or another, Congress gets in effectively at the takeoff of each negotiation.

One final thought relates to the substance of trade negotiations. The fast-track procedures have worked because there is broad bipartisan consensus in support of liberal trade. The process becomes difficult to maintain when negotiations extend to issues--involving labor, involving the environment--on which such consensus is lacking. These issues are often intertwined with trade issues, and will become more so as global economic interdependence increases, so it seems unreal to exclude them from trade negotiations. Under present political circumstances, however, explicit authorizing of negotiations on trade-related labor and environmental issues is too controversial for fast-track to sustain. It is best, therefore, that this year's legislation be silent on the matter.

Mr. ZIMMER. Thank you, Dr. Destler, for your useful and specific testimony.

Gentlemen, as you can hear, we have got a roll call vote coming up. If each of you can spend slightly less than 5 minutes, we will be able to hear the testimony from the entire panel before I have to leave. So, Mr. Hirschmann, if you could proceed.

STATEMENT OF DAVID HIRSCHMANN, EXECUTIVE VICE PRESIDENT, ASSOCIATION OF AMERICAN CHAMBERS OF COMMERCE IN LATIN AMERICA

Mr. HIRSCHMANN. My name is David Hirschmann. I am executive vice president of the association of 22 American Chambers of Commerce throughout Latin America, and we consider fast track to be perhaps the most important piece of legislation before Congress this year.

Since my full statement is in the record, I will simply summarize some of the reasons we think fast track is needed now and isn't an issue that this Congress can afford to postpone for future years.

Creating a free trade area of the Americas based on the core commercial principles of NAFTA is the best way of ensuring that the gains that have happened in Latin America over the last few years are continued. The change in Latin America has been remarkable, but it is still reversible. In fact, we have seen some of that this year.

If we want to make sure that those trends continue and that the opportunities for American companies continue to open up, I think the best way to do that is to have fast track in place, begin and conclude negotiations with Chile this year as a clear signal to the rest of the hemisphere that we are serious.

Throughout Latin America, clearly the Summit of the Americas was celebrated, but there is still some doubt as to whether the Congress is a partner in what the administration signed in Miami, and I think the best way to indicate that there is a bipartisan consensus moving forward is by approving fast track.

That said, I think there is some danger in trying to link fast track to labor and environmental provisions. As we try to look at what has already happened, I think we would have fast track today if it were not for that debate on labor and environmental issues. That is perhaps the central reason why we should avoid the linkage. In linking other issues to trade agreements we make it more difficult to make progress on the important issues of opening markets.

Labor and environment are clearly important issues. There might be others that come up in Latin America, just thinking of narco trafficking or immigration issues, but they should be separately pursued and not at the expense of moving forward with trade agreements.

Finally, we do have a comment on the issue of pay as you go. This Congress has been debating the issue of baseline budgeting. Congress used to claim that cuts were being made when, in fact, they were really decreases in projected spending.

By our way of looking at it, there is a certain amount of symmetry at least in the logic to claiming that trade agreements don't add revenue and therefore not counting the revenues of future agreements as part of a way of looking at the impacting of a trade agreement. So we think that the current way of accounting or the PAY–GO way of accounting for trade agreements should go the same way as baseline budgeting. Thank you, Mr. Chairman.

[The prepared statement follows:]

Prepared Statement of
David Hirschmann
Executive Vice President

Association of American Chambers of Commerce
in Latin America (AACCLA)

KEEPING TRADE WITH LATIN AMERICA ON THE FAST TRACK

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
and the
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE
COMMITTEE ON RULES

UNITED STATES HOUSE OF REPRESENTATIVES

May 17, 1995

Mr. Chairman, thank you for the opportunity to testify on what both the Association of American Chambers of Commerce in Latin America (AACCLA) and the Chilean-American Chamber of Commerce consider to be one of the most important pieces of legislation before Congress this year. We compliment Chairman Crane and Chairman Dreier for holding these hearings and for the long and determined efforts of these committees to successfully open global markets for U.S. goods and services.

AACCLA strongly urges this Congress to keep trade with Latin America on track by quickly enacting broad fast track negotiating authority, unencumbered by non-trade negotiating objectives.

Founded in 1967, AACCLA advocates trade and investment between the United States and the countries of the region through free trade, free markets, and free enterprise. AACCLA is the umbrella organization for the 22 American Chambers of Commerce (AmChams) in 20 nations throughout Latin America. Our AmChams represent over 16,600 companies and individuals dedicated to facilitating increased U.S. - Latin trade. Our members manage the bulk of American commerce in the region, and are therefore the most knowledgeable executives on doing business there. AACCLA is an unmatched resource for American business looking to become more active in trading with the nations of Latin America.

CREATING THE FREE TRADE AREA OF THE AMERICAS (FTAA)

Mr. Chairman, for the American business community active in Latin America there is no goal more important than fostering, sustaining and making permanent the dramatic gains in market access and economic reform that are underway throughout the region. Creating a Free Trade Area of the Americas, based on the core commercial principles in the NAFTA, is the best means of ensuring the continuity of these gains. If we succeed in seizing this opportunity, it will in large reflect to this Congress' commitment to work with the Administration to move forward this year to initiate and conclude negotiations for Chile's accession to the NAFTA.

To be sure, creating a Free Trade Area of the Americas within 10 years, as announced at the December Summit of the Americas, is an ambitious goal. Despite the tremendous progress in both political and economic reform throughout the region, the hurdles are still formidable.

This is precisely why we applauded the post-Miami Summit announcement by the three NAFTA partners (Canada, the United States and Mexico) that negotiations for Chile's accession to the NAFTA would begin early in 1995. Since then several rounds of preparatory discussions among the four countries have been conducted and the formal launching of negotiations is now expected in mid-June. Yet despite all this progress, many observers throughout Latin America still question the United States' determination and ability to move forward to build the Free Trade Area of the Americas.

FAST TRACK IS NEEDED TO QUICKLY CONCLUDE NEGOTIATIONS WITH CHILE

This uncertainty is primarily caused by the absence of fast-track negotiating authority for the President to negotiate with Chile and other potential partners. In fact, Chilean government officials have said that while they are willing to initiate negotiations without fast track, they believe that it is unlikely that these negotiation can be concluded until this Congress has adopted fast track legislation.

Three consecutive American Presidents -- Republicans Ronald Reagan and George Bush as well as Democrat Bill Clinton -- have strongly supported the vision of a Western Hemisphere united in fair and open trade. They have done so primarily because they have recognized that it is in our overwhelming economic interest to do so. Despite the recent crisis in Mexico, our exports to Latin America are expected to grow more quickly than to any other region of the World. Before the year 2020, the Department of Commerce estimates that United States exports to Latin America will exceed our exports to Europe and Japan combined.

In developing a strategy to forge a free trade area stretching from Alaska to Antarctica, we must not forget that the democratic gains and market reforms in the region are still reversible. Therefore, we must act now to help thwart opponents of economic reform throughout the region from seizing any short-term opportunity to turn back the clock to the days of high tariffs and closed economies.

THE UNITED STATES MUST HELP SHAPE THE HEMISPHERIC TRADE ZONE

Mr. Chairman, AACCLA believes that the creation of Free Trade Area of the Americas must be based on the highest possible levels of discipline, currently embodied in the NAFTA. This is another reason why we must move forward quickly to complete Chile's accession.

The Summit of the Americas declaration lists 13 areas that will be covered by the FTAA. Specifically, they agreed to "maximize market openness through high levels of discipline" in 13 areas, all of which are the basic disciplines included in the NAFTA agreement: tariff and non-tariff barriers affecting trade in goods and services; investment; intellectual property; dispute resolution; agriculture; subsidies; technical barriers to trade (standards); rules of origin; safeguards; anti-dumping and countervailing duties; sanitary and phytosanitary standards and procedures; dispute resolution and competition policy.

Although it is clear that the Summit leaders had NAFTA in mind when they drafted this list, they were not able to agree that NAFTA's high standards should be the minimum for future obligations.

This is one important reason why the United States cannot afford to deal itself out of hemispheric trade initiatives by not having fast track negotiating authority in place. In addition to enabling our negotiators to quickly conclude negotiations with Chile, Congressional approval of fast track will give our negotiators the credibility and authority they need to actively pursue the enactment of the trade commitments made at the Summit of the Americas.

FAST TRACK IS ESSENTIAL FOR SUCCESSFUL NEGOTIATIONS

At its core, fast track negotiating authority is the United States' way of assuring our trading partners that they can negotiate trade agreements with knowing that the United States Congress will either approve or reject the final pact as negotiated. This authority is not a concession from Congress to the executive branch. Instead, it is Congress' way of making sure that our negotiators have the maximum leverage at the bargaining table by ensuring that the United States government speaks with one strong voice. To achieve such a consensus, the Executive Branch must extensively consult with all segments of the Congress before, during and after negotiations.

This process has been a critical factor behind the strong, bi-partisan U.S. trade policy initiatives that have succeeded in opening up markets for U.S. businesses of all sizes, creating new high-wage jobs for millions of U.S. workers while also ensuring that American consumers have access to the high quality, competitively-priced products from around the world.

NEGOTIATIONS WITH CHILE ARE BROADLY SUPPORTED

There is strong bi-partisan support for free trade negotiations with Chile in the U.S. Congress even among Members who did not support the North American Free Trade Agreement itself. Many of the issues that complicated NAFTA's approval are likely to be absent from the debate on Chile.

Chile serves as a model for economic reform and democratization around the world. From El Salvador to the Czech Republic, Chilean economists serve as advisors to many nations seeking to expand economic opportunities for their citizens by moving toward a free market system. Despite the plethora of articles and stories about the "Chilean economic miracle" that have appeared around the world, I have never heard anyone claim that Chile's strengths have been exaggerated.

With a domestic market of only 13.6 million consumers, Chile has nonetheless attracted a remarkable share of foreign investment from around the world, enjoying the highest ratio of foreign investment per capita in Latin America. Indeed, news of foreign investment in Chile is so commonplace that it seldom makes front-page news. Instead, today you are more likely to read about Chilean companies investing in Argentina, Peru, Brazil or Bolivia.

By further opening the Chilean market, the U.S. can solidify its position as Chile's leading trading partner. Between 1987 and 1993, U.S. exports to Chile grew over 200%, largely due to unilateral moves by the Chilean government to open their economy. Negotiation of an accession agreement would knock down remaining barriers while also locking into place access to the Chilean market, thus helping to maintain the steady rise in U.S. exports which creates jobs here at home.

Because Chile's economy is already so open, negotiations for Chile's accession to the NAFTA should not prove to be protracted or difficult. Some trade experts have suggested that absent the important fast track hurdle, negotiations with Chile could be concluded and ready for Congressional consideration in as little as four to six months. But, without fast track, it has been argued that Chile's accession could take years.

LABOR AND ENVIRONMENTAL ISSUES SHOULD BE DE-LINKED FROM FAST TRACK

This possible delay in moving forward to negotiate market opening agreements with Chile and the rest of the hemisphere, highlights an important reason why labor and environmental negotiations should be kept separate from both trade negotiations and the fast track. By burdening trade negotiations with a myriad of other important issues we might want to discuss with our trading partners, (including not only labor and the environment but also human rights issues, narco-trafficking, immigration and others,) we jeopardize progress on both trade and these other issues.

Absent the controversy over labor and environmental linkages with trade, fast track would have most likely been included in the GATT implementing bill and negotiations with Chile could by now be well under way. Simply put, the broadly supported initiative to negotiate with Chile should not be further stalled or delayed by tying Chile's accession to the larger and still unresolved and contentious proposal to link environmental and labor issues to trade agreements.

Political proponents of linking labor and environment to trade have argued that moving in this direction would increase both Congressional and public support for these agreements. The recent experience with NAFTA, and the current fast track debate, show just the opposite.

Furthermore, the initiative to include labor and environmental objectives in the fast track stems from two ill-reasoned premises:

1. That expanded trade is detrimental to both the environment and the rights of workers.

2. That applying trade sanctions on other nations is the only way to improve labor and environmental conditions.

In fact, the opposite is true. As we pointed out in our 1994 "Agenda for the Americas," white paper, jointly produced by AACCLA, the Council of the Americas and the United States Chamber of Commerce, "Free and open markets and sustainable development are not mutually exclusive, but mutually inclusive." By pursuing macroeconomic policies that promote strong growth, including opening markets, nations can generate the resources needed to increase environmental protection. That paper went on to state that "if people of the Western Hemisphere earn rising incomes, they will be able to afford what they often now see as the 'luxury' of environmental protection."

In using trade sanctions to enforce labor and environmental goals, we risk creating new non-tariff barriers to trade that would not only limit the economic benefits of future agreements, but also postpone the day when those developing nations will be able to devote greater resources to acquire environmental technologies that would in turn increase environmental protection.

We therefore urge these committees to separate labor/environmental issues from the up-or-down (no amendments) provisions of fast track.

PAYING FOR TRADE AGREEMENTS

A second issue that has added unneeded controversy to recent trade agreements is the pay-as-you-go provisions of the 1988 Omnibus Budget Reconciliation Act. As you know, Mr. Chairman, these provisions require the Congress offset the loss of potential future tariff revenues resulting from a trade agreement with either budget cuts or tax increases. While these provisions were designed by Congress to provide some budget discipline, they are not unlike the now discredited "baseline" budgeting procedures which allowed the Congress to label reductions in the scheduled growth of federal spending as a "cut."

The pay-go provisions as applied to trade agreements fail to take into account the added revenues that these trade agreements generate simply by stimulating increased trade and economic growth. We believe that the "pay-go" way of calculating the real impact of trade agreements on the federal budget should go the way of "baseline budgeting."

Mr. Chairman, we thank you for this opportunity to share the views of both the Association of American Chambers of Commerce in Latin America and the Chilean-American Chamber of Commerce on this important legislation. We look forward to working with you and the subcommittees to seek timely approval of fast track legislation.

Mr. ZIMMER. Thank you very much.
Ambassador Moss.

STATEMENT OF HON. AMBLER H. MOSS, JR., DIRECTOR, NORTH-SOUTH CENTER, UNIVERSITY OF MIAMI (FORMER U.S. AMBASSADOR TO PANAMA)

Mr. MOSS. Thank you very much, Mr. Chairman. I will try to match my friend and colleague, Mr. Hirschmann, in his brevity. I appreciate my written comments being submitted in the record. I think basically my statement can be summarized under four headings.

First of all, leadership and political will. When the countries came together at the Summit of the Americas, 34 freely elected leaders of the hemisphere agreed to put together a "free trade area of the Americas." One thing that has emerged at that process and since is clear. They looked to the United States to lead this movement and to be a part of it, and it won't happen without that kind of leadership. It is a test of our political will and our ability to keep the momentum going.

Second of all, the immediate issue which came out of the Miami summit is the accession of Chile into NAFTA, promised first by President Bush, ratified by President Clinton, and up for immediate consideration. I agree with everything that has been said about Chile's readiness. Basically, if Chile couldn't get into NAFTA, no country could. It is a model country. Everybody simply agrees with that.

The question is will the fast track authority be there to enable the United States to negotiate successfully with Chile to bring it in.

The third rubric in my statement has to do with our competition for this fabulous market of 800 million people. I agree with Ambassador Kantor in what the market is going to become within a few years, more important than Europe, and Europe plus Japan. It is ours to have or ours to lose.

The competition, the European Union and Asia are wasting absolutely no time in negotiating, as in the European case with MERCOSUR, the southern countries. They will move in on the South American free trade area. If the United States sits back and does not act in its own interest, it can lose that market.

Finally, Mr. Chairman, let me come to the controversial issue of the nature of fast track. No one has argued that labor and environmental concerns are unimportant, but the issue is how or whether they should be linked to trade. The proposal of the Declaration of Principles and Action Plan of the summit emphasizes more goals than linkages in that sense, as does the administration's paper which is provided for going to the trade ministers meeting coming up in June, the end of this month.

I would suggest as to how this controversy could be resolved with respect to fast track, there are a couple of possible suggestions. One way might be to exclude labor and the environment from fast track authority by name, but require the administration to submit labor and environmental assessments of conditions in Chile to eventually other NAFTA partners. That would be useful in enabling the Con-

gress to make up its own mind as to whether or not these were qualified and appropriate NAFTA partners.

The second variant on this suggestion would be to include only trade in the fast track authority, but to leave any side agreements on labor and environment outside of that scope to full congressional scrutiny and not make it a part of fast track. I think we have to be realistic, Mr. Chairman, free trade in the Americas—there are now 24 free trade agreements running up and down the Americas, crisscrossing them—will happen with or without the United States. For it to happen in the right way, and in our own national interests, we have to be the leader, and that is, I think, what this debate over fast track is all about, and I urge its passage.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT
SUBMITTED FOR THE RECORD
BY AMBLER H. MOSS, JR., DIRECTOR
NORTH-SOUTH CENTER AT THE UNIVERSITY OF MIAMI

to the

Subcommittee on Trade, Committee on Ways and Means
and the
Subcommittee on Rules and Organization of the House, Committee on Rules
U.S. House of Representatives
Washington, D.C.
May 17, 1995

Mr. Chairman and Members of the Subcommittees:

Last December in Miami, the 34 freely-elected heads of state and government of the Western Hemisphere resolved to construct a "Free Trade Area of the Americas" (FTAA). It is to be negotiated by the year 2005 and involves the progressive elimination of barriers to trade and investment. The countries of the Americas look to the United States to provide the leadership for that commitment. The passage by the Congress of fast-track legislation will be an important early test of that leadership.

The Miami Summit did not draw up a blueprint for the achievement of an FTAA. In its Plan of Action, however, it set a meeting of trade ministers for this June, 1995, to be held in Denver, and the next trade ministerial to be held in March, 1996. These meetings will construct the full game plan. It is critical at this stage that the United States demonstrate a firm political will to maintain the momentum needed to achieve the FTAA, a free-trading system which soon will have over 800 million people. The creation of this open market will be the greatest accomplishment of the Western Hemisphere since its countries won their independence.

Ever since President George Bush made his historic Enterprise for the Americas speech in June, 1990, the North-South Center has been engaged with other institutions throughout the Hemisphere in studies involving the centerpiece of his speech, the economic integration of the Americas. We give great importance to the commitment made at the Miami Summit, to "invite the cooperation and participation of the private sector, labor, political parties, academic institutions and other non-governmental actors...thus strengthening the partnership between governments and society." The North-South Center has a Congressional mandate to improve relations among the United States, Canada, Latin America and the Caribbean. We believe that trade is the most powerful force for integration and prosperity on the planet. It has been an area of our emphasis, therefore, for the past five years.

In my opinion, failure to grant the Administration fast track at this juncture would send a signal to our trading partners that the U.S. government is divided over whether to continue hemispheric negotiations as agreed to at the Summit. They may justifiably question why fast track has been in place for multilateral and for North American negotiations but is not in place for hemisphere-wide negotiations. It would be a crushing blow to U.S. credibility. Our partners in the Hemisphere would wonder at our failure to accomplish something so obviously in our national interest.

I do not want to sound apocalyptic about these matters. It is technically correct that, although failure to enact this authority would make achievement of this objective very difficult, fast track is still only a procedural mechanism; hemispheric integration can be accomplished even if it is not in place. Nevertheless, since 1974, fast track negotiating authority has been synonymous with an American sense of purpose to complete negotiations within a finite time period and to assure the passage of trade accords without change by Congress. Fast track has been used to negotiate and approve such momentous agreements as the Final Acts of the Tokyo and Uruguay Round of Multilateral Trade Negotiations, bilateral free trade agreements with Israel and Canada and the NAFTA with Canada and Mexico. Without it, we would certainly be moving about in uncharted waters, and that could produce uncertain results.

At the Miami Summit, the United States, Canada and Mexico announced that negotiations

would begin with Chile for that country's entry into NAFTA. Recognizing all of the factors that determined Chile's readiness to join NAFTA, that promise had been made originally by President George Bush in 1992 and subsequently reiterated by President Bill Clinton shortly after he took office. Chile has been cited as a model economy in Latin America. It has had an annual growth rate of 7% for the last eight years, low unemployment and exemplary rates of savings and investment. Its imports are growing at annual rate of 26%. Chile also has adopted, in recent years, excellent standards of labor-management relations and of environmental protection.

Basically, it is fair to say that if Chile could not qualify for NAFTA membership, no country could. Nevertheless, although the negotiations will begin next month and probably can be concluded quickly, it is not a foregone conclusion that Chile will enter NAFTA this year. The reason is the absence of fast track negotiating authority. Such legislation may be in doubt because of the political fallout from the Mexican financial crisis, preoccupation by the United States with its own domestic concerns, and political disagreement over the form of fast track authority.

After Chile, there are other potential NAFTA candidates to keep the momentum going. In the Caribbean, Trinidad and Tobago, and Jamaica meet appropriate standards for entry. To admit them would be a positive signal that the United States is moving boldly toward the FTAA. It would also send an important message to all the countries of the Caribbean Basin.

From the North-South Center's vantage point in Miami -- the city which has become the crossroads of the Americas -- it is clear that the failure of the United States to present determined leadership toward Hemispheric integration would play into the hands of those who would prefer not to see a strong, unified FTAA with our full participation. The European Union (EU) has recently announced its intention to complete free trade negotiations with MERCOSUR, the second most important trading group in the Western Hemisphere, as early as the year 2001, four years before the Miami Summit deadline.

The EU has free trade arrangements with more countries than any other entity in the world. It has reciprocal or one-way free trade arrangements with dozens of countries in North Africa, the Arab world, sub-Saharan Africa, the Caribbean Islands and in the Pacific Rim. It now proposes negotiating free trade agreements with the MERCOSUR beginning with an "interregional association agreement" in the near future and is already formulating its negotiating positions for this purpose. Realizing that certain agricultural products may be too sensitive for the Union to agree to include within a free trade agreement, the EU Vice President has stated that WTO rules only require that 84 percent of trade be included. This would allow the most sensitive agricultural products to be excluded from the agreement.

Meanwhile, Brazil has announced its intention to create a South American Free Trade Agreement (SAFTA) this June through a free trade agreement between MERCOSUR and the Andean Pact. MERCOSUR is also negotiating a free trade agreement with Chile. Even if the target date is overly optimistic, past performance has demonstrated that such objectives are eventually attained.

A SAFTA would mean that all major South American countries, including Argentina, Brazil, Chile, Colombia, Peru and Venezuela, would be united into a single undertaking. If such a SAFTA were to be created, the European Union would, in all probability, expand its negotiating mandate to include all of SAFTA as opposed to only MERCOSUR. Given its past experience in negotiating free trade arrangements, there should be little doubt that the European Union will adhere to its objective absent a strong response from the United States.

I would like to make one additional comment regarding fast track at this point. Perhaps as important as passage of fast track is an agreement to end the unfortunate offset requirements for the bill. The case can be made that liberalizing trade by increasing economic activity produces an increase in tax revenues that more than offsets any loss in duty collections from reduced duties. Yet current rules require offsets, either through increased taxes or reduced spending for every dollar of decreased duty collections. This extremely static analysis must be modified to take into account the dynamic consequences of trade liberalization.

The United States now appears to be supporting a two-pronged approach for creating the FTAA. As envisioned in the Miami Summit, the two prongs are the amalgamation or enlargement of existing free trade arrangements and the harmonization of provisions in such agreements so as to create hemisphere-wide building blocks. The key developments in the first part of this process are the following:

-- The process of expanding existing free trade agreements will be the launching in the near future of Chilean accession negotiations to NAFTA. These negotiations should be

completed late this year or early next, with Congressional approval expected before the end of 1996.

--The Brazilian and American Presidents agreed at their recent summit that U.S. Trade Representative Mickey Kantor and Brazilian Foreign Minister Lampreia should meet at least three times over the next two months to begin the process of bringing NAFTA and MERCOSUR together.

--The passage of HR 553, providing for "NAFTA parity", will remove serious impediments to American-Caribbean Basin Trade and launch a serious process of CBI accession to NAFTA. It is an extremely important building block, and it is gratifying that it is achieving so much bipartisan support.

With regard to deepening existing integration within the hemisphere, the OAS is to complete a comparison of trade provisions in each of the major hemispheric integration agreements. This comparison could provide the basis for the eventual harmonization of these provisions throughout the hemisphere.

The United States has proposed that the upcoming Denver Ministerial approve a comprehensive hemispheric negotiating agenda. The proposed agenda covers almost all the issues encompassed in NAFTA and the Uruguay Round, including market access, government procurement, investment, intellectual property rights, standards, antidumping and countervailing duties and dispute settlement. Canada has proposed a particularly ambitious scheme for preferential trade negotiations, including an agreement by the end of 1996 on a ten-year phase-out of tariff and non-tariff barriers beginning in 1998. Colombia, Costa Rica and Peru, among others, have laid out specific items for trade liberalization.

Agreement on a detailed agenda for substantive hemispheric negotiations at the June Ministerial would go a long way towards enhancing negotiations on the FTAA. It would be desirable for all participants to make suggestions of their own for hemispheric negotiations as well.

Although it is not realistic to expect that fast track will be passed by the time of this Ministerial, a bipartisan agreement on the outline of fast track would be helpful. A trade subcommittee markup would send exactly the right signal in this regard.

Let me address the most controversial aspect of fast track, the disagreement on labor and environmental provisions. No one has argued that labor and environmental concerns are unimportant, but the issue is whether, or how, they should be linked to trade. The Miami Summit addressed these concerns in terms of commitments made in its Declaration of Principles. In the section on economic integration and free trade, it states: "Free trade and increased economic integration are key factors in raising standards of living, improving the working conditions of people in the Americas and better protecting the environment. In the U.S. Proposal for Agreement at the Denver Trade Ministerial (quoted in Inside NAFTA, May 3, 1995), goals are stated, with respect to labor, to:

--"reaffirm Summit commitment to raise standards of living and promote worker rights in the region at the June Ministerial;

--recommend that the labor ministers, at their meetings, discuss how to achieve Summit's commitments on worker rights and to share those views with ministers responsible for trade before their next meeting in March 1996;

--by March 1996 establish national procedures for obtaining the views of labor regarding the FTAA process."

and with respect to environment, it states:

--"at the June Ministerial, reaffirm Summit commitment to make trade and environment policies mutually supportive;

--determine by March 1996 ways to consult with appropriate environment and business NGO's and with the appropriate environmental ministry(or ministries) on trade issues."

This proposal of the Administration emphasizes goals rather than linkages. This is consistent with a Latin American viewpoint. Latin American countries are generally supportive

of high labor and environmental goals, and Chile is a particularly good example. They are generally suspicious of linkages, however, as an infringement on sovereignty and often as an excuse to apply protectionist measures.

How can this controversy be resolved with respect to fast track? One way might be to exclude labor and the environment from fast track authority but require the Administration to submit labor and environmental assessments of conditions in Chile and eventually other NAFTA candidates. These assessments would enable the Congress to evaluate the suitability of potential NAFTA partners. A variant on this suggestion would be to include only trade in the fast track authority, but to leave any side agreements on labor and the environment, if entered into, to scrutiny by the Congress without fast-track treatment.

This is no time for the United States to turn inward. This decade has been one of great progress by administrations of both political parties toward a world free trading system based on open regionalism. There has been great continuity. In June 1990 President George Bush outlined the vision, in his Enterprise for the Americas speech, of a free trade system in the entire Western Hemisphere. He began the NAFTA negotiations which President Clinton completed, and for which he fought hard for Congressional approval. A successful Asia Pacific Economic Conference was held in Seattle, now including two Latin American members, Mexico and Chile. By December 1994, the Congress approved the accords resulting from the Uruguay Round of the GATT. At the Miami Summit, the United States took the leadership role in projecting the vision of the FTAA and committing to it.

We must be realistic. Free trade in the Americas will continue with or without the United States. It is a fabulous market, which is ours to have or ours to lose. Of course, there cannot be a FTAA without the United States. It is the best of all options for the entire Western Hemisphere. Fast track is an important step along the way. I urge its passage.

Mr. ZIMMER. Thank you very much, Mr. Ambassador. I would like to thank all the witnesses for their testimony. This concludes our hearings on fast track. The subcommittees are adjourned.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

BEFORE THE SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS AND THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE COMMITTEE ON RULES, UNITED STATES HOUSE OF REPRESENTATIVES

JOINT HEARINGS ON EXTENSION OF FAST-TRACK NEGOTIATING AUTHORITY

WRITTEN STATEMENT IN OPPOSITION TO FAST-TRACK PROCEDURES FOR TRADE AGREEMENTS CONTAINING THE NAFTA CHAPTER 19 BINATIONAL PANEL DISPUTE SETTLEMENT SYSTEM

SUBMITTED ON BEHALF OF

AK STEEL COMPANY
ALAMO CEMENT COMPANY
AMERICAN TEXTILE MANUFACTURERS INSTITUTE
ASH GROVE CEMENT COMPANY
ASSOCIATION FOR MANUFACTURING TECHNOLOGY
BETHLEHEM STEEL CORPORATION
CALAVERAS CEMENT COMPANY
CINCINNATI MILACRON
COPPER & BRASS FABRICATORS COUNCIL, INC.
FLORIDA CRUSHED STONE CO.
FOOTWEAR INDUSTRIES OF AMERICA, INC.
GIANT CEMENT COMPANY
INDEPENDENT FOREST PRODUCTS ASSOCIATION
INLAND STEEL INDUSTRIES, INC.
LTV STEEL COMPANY, INC.
LAFARGE CORPORATION
LEATHER INDUSTRIES OF AMERICA, INC.
LEHIGH PORTLAND CEMENT COMPANY
LONE STAR INDUSTRIES
MEDUSA CORPORATION
MUNICIPAL CASTINGS FAIR TRADE COUNCIL
NATIONAL ASSOCIATION OF WHEAT GROWERS
NATIONAL CEMENT COMPANY
NATIONAL STEEL CORPORATION
NORTH TEXAS CEMENT COMPANY
NORTHEASTERN LUMBER MANUFACTURERS ASSOCIATION
PHOENIX CEMENT COMPANY
RIVERSIDE CEMENT COMPANY
RMC
SOUTHDOWN, INC.
SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION
SOUTHERN FOREST PRODUCTS ASSOCIATION
TARMAC AMERICA, INC.
TEXAS INDUSTRIES, INC.
TEXAS-LEHIGH CEMENT COMPANY
THE AMERICAN BEEKEPERS FEDERATION, INC.
THE AMERICAN HONEY PRODUCERS ASSOCIATION
THE COALITION FOR FAIR ATLANTIC SALMON TRADE
THE COLD-FINISHED STEEL BAR INSTITUTE
THE COMMITTEE OF DOMESTIC STEEL WIRE ROPE AND SPECIALTY CABLE MANUFACTURERS
THE FERROALLOY ASSOCIATION
THE SMOKED SALMON ALLIANCE
THE FRESH GARLIC PRODUCERS ASSOCIATION
USX CORPORATION
VALMONT INDUSTRIES

May 11, 1995

I. INTRODUCTION

Chapter 19 of the North American Free Trade Agreement ("NAFTA") extended to Mexico the novel and unprecedented system for resolving antidumping duty ("AD") and countervailing duty ("CVD") appeals that was introduced by the U.S.-Canada Free Trade Agreement in 1989. Under this system, AD and CVD determinations made by the governments of NAFTA countries are appealable to ad hoc panels of private individuals from both countries affected rather than to impartial courts. The panels do not interpret agreed NAFTA AD or CVD rules; rather, they review agency determinations for consistency with national law.

This system departs radically from traditional international dispute settlement principles whereby international bodies resolve disputes over the interpretation of internationally agreed texts. Unlike any other international dispute mechanism, the Chapter 19 system entails direct implementation under national law, without intervening political review, of decisions rendered by non-judges and indeed by non-citizens.

II. SUMMARY

Established as an interim measure only for U.S.-Canada trade, the Chapter 19 system is fundamentally flawed and undemocratic. It places far-reaching decision-making power in the hands of private individuals who do not have judicial experience or temperament and who are not accountable in any way for their performance. Under this system, constitutional safeguards to assure judicial impartiality are absent. International panels -- with foreign nationals frequently in the majority -- interpret and implement U.S. law, and their decisions have the force of law. Justice Department officials warned Congress in 1988 that, for this very reason, the proposed system was unconstitutional.

In addition, the system's ad hoc and fragmented nature dooms it to failure as a replacement for domestic courts. Especially if the system were extended to additional countries, industries attempting to exercise their rights against unfair trade from different points of origin would end up facing a multiplicity of panel and court proceedings likely to yield divergent rulings on identical issues. Neither industry nor the government agencies involved could afford to prosecute so many litigations. The result would be incoherent bodies of law, an unpredictable environment for litigants and businesses, and even the possibility of MFN problems resulting from unequal application of AD and CVD laws. In short, the system would become unworkable (and the Congressionally-mandated U.S. trade remedies unusable).

The Chapter 19 system has already failed in some of its most critical disputes. Panels reviewing U.S. Government determinations have repeatedly disregarded the requirement that they behave like a U.S. court and apply U.S. law, and they have impaired implementation of mandatory U.S. trade remedies. In light of the system's abysmal disposition of the recent softwood lumber subsidy case -- including undisclosed conflicts of interest on the part of two panelists and the express refusal of one panelist to apply U.S. law as called for in the NAFTA -- U.S. industry can have little faith in U.S. trade remedy policies as applied to imports from Canada and Mexico, much less to imports from an even broader array of countries.

The Chapter 19 system need not, and should not, be extended to other countries since the WTO dispute settlement system satisfies U.S. importers' and exporters' need for international dispute resolution. Unlike the Chapter 19 system, the WTO system is based on traditional international dispute settlement principles, i.e., international bodies interpreting international rules. The unprecedented impairment of sovereign legal functions entailed by Chapter 19 -- with foreign nationals interpreting and implementing domestic law -- is unworkable in the United States

and, in the long term, in any country.

Accordingly, Congress should direct the Administration to negotiate elimination of Chapter 19 from the NAFTA. At minimum, legislation -- for example legislation renewing fast-track procedures for trade agreements -- should expressly prohibit agreements that extend the Chapter 19 system to trade with additional countries. In addition, fast-track procedures should be expressly inapplicable to bills for the implementation of trade agreements that extend the Chapter 19 system. It is important that this matter be carefully considered at this juncture to prevent Chapter 19 from becoming part of a template for future, broad U.S. free trade agreements.

III. BACKGROUND ON THE CHAPTER 19 SYSTEM

A primary Canadian goal in negotiating the U.S.-Canada Free Trade Agreement ("CFTA") was exempting Canadian exports from the United States' AD and CVD laws. The United States maintained a diametrically contrary position: the agreement should establish disciplines on unfair trade practices rather than permitting them to go unsanctioned.

U.S. and Canadian officials reached a compromise on this issue as the negotiations drew to a close in the Fall of 1988. The CFTA provided that after the agreement came into effect the United States and Canada would pursue negotiations on subsidy disciplines and a "substitute system" of AD and CVD rules. CFTA Art. 1907. Pending achievement of the "substitute system," and for a maximum of seven years, CFTA Art. 1906, the countries would operate under the Chapter 19 system of AD/CVD review by panels.

Chapter 19 was revolutionary and extremely controversial. First, judicial review of disputes involving customs duties by impartial courts created under Article III of the Constitution has a long history in the United States.[1/] Replacing impartial courts with binational panels raised the specter of unfair decisions and circumvention of U.S. law.

Second, during Congress's consideration of the CFTA, U.S. Justice Department officials advised that the system would be unconstitutional if panel decisions were implemented automatically, as is now the case. United States-Canada Free Trade Agreement: Hearings Before the Senate Judiciary Committee, 100th Cong., 2d Sess. 76-87 (1988) ("Senate Judiciary Comm. Hearing"). Several Members of Congress expressed serious reservations about the constitutionality and workability of Chapter 19, including Senators Grassley and Heflin. See id. at 89-98; S. Rep. No. 509, 100th Cong., 2d Sess. 70-71 (1988).

The Chapter 19 system was ultimately accepted along with the rest of the CFTA based on Executive Branch commitments to Congress that: 1) panels reviewing U.S. agency determinations would be bound by U.S. law and its governing standard of review, just as the Court of International Trade is so bound; 2) there would be strict and fully enforced panelist conflict-of-interest rules; and 3) the system would be in place only a short while and only with Canada. According to one of the primary U.S. negotiators on this issue, the system could only work for Canada. It was

> not, and [was] not intended to be, a model for future agreements between the United States and its other trading partners. Its workability stems from the similarity in the U.S. and Canadian legal systems. With that shared legal tradition as a basis, the panel procedure is simply an interim solution to a complex

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1/ Reported cases include, for example, United States v. Tappan, 24 U.S. (11 Wheat.) 418 (1826) and Elliot v. Swartwout, 35 U.S. (10 Pet.) 137 (1836).

issue in an historic agreement with our largest trading partner.

United States-Canada Free Trade Agreement: Hearings Before the House Judiciary Committee, 100th Cong., 2d Sess. 73 (1988) (Testimony of M. Jean Anderson).

Although the Chapter 19 system was accepted, negotiations with Canada to create disciplines on unfair trade practices, including subsidies, failed. Nonetheless, with little additional discussion, and contrary to Executive Branch commitments to industry, the system was made a permanent part of the NAFTA in 1994.

IV. CHAPTER 19's DESIGN IS FLAWED IN SEVERAL RESPECTS AND HAS SERIOUS CONSTITUTIONAL PROBLEMS

Under the Chapter 19 system, panels are formed on a case-by-case basis to review the consistency with national law of AD and CVD determinations issued, in the United States, by the Commerce Department ("DOC") and the U.S. International Trade Commission ("ITC"). The panels contain five members -- three from one country involved in the case and two from the other -- who are private-sector trade experts, usually lawyers.[2/]

The System is Undemocratic and Unaccountable

On its face, the system is, at minimum, anomalous. A group of private individuals, each with his or her own clients and interests, is empowered to direct the actions of government officials and dictate the outcome of cases involving billions of dollars in trade. These panelists do not have judicial temperament or training. Nor are they insulated, as judges must be, from outside pressures and conflicts. Once a case is over, the panelists simply return to their occupations -- many of them practicing before the very agencies whose decisions they recently were reviewing. They are not accountable in any way for their decisions as panelists.

This process is contrary to traditional principles of representative governance. Indeed, as indicated above, Justice Department officials advised Congress that the Chapter 19 system contravenes a constitutional provision intended to establish accountability among U.S. decision-makers (the "Appointments Clause").[1/] Congress cannot "sanction" or "correct" erroneous decisions because the "judges" are not part of a standing judiciary.

The System Violates Principles of Impartial Judicial Review

Article III of the Constitution establishes safeguards to assure an impartial federal judiciary, i.e., life appointment and freedom from salary diminution. As noted above, review of trade cases by Article III judges has a long tradition in the United

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2/ Each country involved in the dispute appoints two panelists. NAFTA Chapt. 19, Annex 1901.2. The two countries are then to agree on a fifth panelist. Id. If they are unable to agree, the two countries decide by lot which country will select the fifth panelist. Id.

1/ U.S. Const. art. II, § 2, cl. 2. Ironically, the Appointments Clause emerged, in part, from the Founders' experience with the British colonial government's selection of Royal officials, a preponderance of which were customs officials. The Founders included as a grievance in the Declaration of Independence that the King "has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance." The reference is to customs officials. Barrow, Trade and Empire 256 (1967).

States,[4] and dispensing with Article III protections for reviews of AD/CVD determinations is unwarranted. In fact, conflicts of interest on the part of panelists were a major problem in the Chapter 19 review involving Canadian softwood lumber (see below). Even setting constitutional infirmities aside, the conflict-of-interest prone Chapter 19 arrangement creates a serious perception problem damaging to the credibility of the international trading system.

The System's Ad Hoc, Fragmented Nature Renders it Unworkable

The Chapter 19 system contemplates that a separate panel proceeding is to resolve each AD/CVD appeal on a country-by-country basis. In practice, this cannot work, especially if Chapter 19 is extended to many different countries. An industry seeking a remedy against unfair trade from several countries -- as is often the case -- would end up facing proceedings before panels for each of the countries from which unfairly-traded merchandise is imported. The resulting decisions could relate literally to identical issues.

Neither the affected industry nor the U.S. agencies involved could afford to engage in this multiplicity of litigations. Even if this were manageable procedurally, the panels would inevitably come to different interpretations of U.S. law on the same underlying issues. Such an atomized judicial mechanism cannot retain (and indeed has never gained) credibility. The inevitable result is an unworkable system, leading to effective neutralization of the trade laws.

V. In Practice, the Chapter 19 System Has Been Disastrous

Before it came into effect, Senator Grassley expressed deep concern about the novel experiment in replacing the U.S. judiciary with panels and whether it could, in practice, earn the respect of private parties. Senate Judiciary Comm. Hearing at 89-90, 94, 96. Unfortunately, Senator Grassley's concerns have been vindicated. Based on the panels' track record, private parties cannot have faith that the trade laws will be administered fairly or correctly as regards imports from Canada and Mexico, much less imports from an even broader array of countries.

Were they to adhere to the standard of review mandated by the NAFTA and U.S. law, panels would be very deferential to DOC and ITC trade determinations. In particular, they would sustain the agency's findings unless they have no "reasonable" factual basis or are grounded on a legal interpretation that is "effectively precluded by the statute." PPG Indus., Inc. v. United States, 928 F.2d 1568, 1573 (Fed. Cir. 1991).

As recognized by Congress, the reality has been to the contrary.[5] Panel decisions involving Canadian pork and swine imports were so flawed that the U.S. Government sought review by appellate Chapter 19 panels ("extraordinary challenge committees" or "ECCs"). The swine ECC virtually conceded that the lower panel erred but declined to take corrective action. Live Swine from Canada, No. ECC-93-1904-01 USA, slip op. at 6 (Apr. 8, 1993) ("[T]he Committee felt the Panel may have erred.")

4/ Supra note 1 and accompanying text.

5/ See S. Rep. No. 189, 103d Cong., 1st Sess. 43 (1993) ("The Committee believes . . . that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review. . . ."); see also H.R. Rep. 361, 103d Cong., 1st Sess. 75 (1993).

The Chapter 19 system also failed conspicuously in the recent case involving subsidized Canadian softwood lumber, the largest single trade case to this point.[6] In that case:

- The lower panel decision and the ECC decision were decided by bare majorities strictly along the lines of the nationality of the panels' members. Certain Softwood Lumber Products from Canada, No. USA-92-1902-1904-01, slip op. (Dec. 17, 1993); Certain Softwood Lumber Products from Canada, No. ECC-1904-01USA, slip op. at 37 (Aug. 3, 1994) ("Lumber ECC"). The United States lost on a "coin flip," pursuant to which the lower panel and ECC contained Canadian majorities.

- Two of the three Canadian members of the lower panel and their law firms were involved in representations of Canadian lumber interests and governments. Contrary to applicable ethical rules, most of these conflicts were not disclosed. See Lumber ECC at 71-86, Annex 1 (Wilkey opinion).

- The panels disregarded explicit Congressional committee reports which specified the proper interpretation of the CVD law on litigated issues. See Brief of United States, No. ECC-1904-01USA, at 69, 79-80 (May 3, 1994).

- An ECC member relied on a facially wrong understanding of the review standard for panels that is established by the NAFTA and the applicable U.S. statute. See Lumber ECC at 28 (Hart opinion) (indicating that panels need not be as deferential as the Court of International Trade).

The dissenter in the lumber ECC decision was former Federal Appeals Court Judge (and former Ambassador) Malcolm Wilkey, one of the United States' foremost jurists. According to Judge Wilkey, the underlying panel majority opinion "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." Lumber ECC at 37 (Wilkey opinion). Moreover, Judge Wilkey demonstrated that the lumber case violated all of the safeguards on which Congress based its conclusion that the Chapter 19 system is consistent with constitutional due process protections. Id. at 69-70, citing H.R. Rep. No. 816, Pt. 4, 100th Cong., 2d Sess. 5 (1988).

Recent Mexican statements provide even more reason to fear that respect for national law -- a central feature of the system on which U.S. acceptance was explicitly based -- will continue to be lacking. Appearing before a panel reviewing a Mexican antidumping determination on steel products from the United States, a lawyer from SECOFI (Mexico's AD/CVD administrative agency) directly challenged the common understanding that panels are to review agency determination as national courts would, for consistency with national law:

> The panel, a Secofi lawyer said, can make independent decisions and is not limited to judging whether the dumping investigation was legal under Mexican law. "The question is the nature of the panel's powers. . . . The panel is supposed to resolve disputes," and is not necessarily bound to apply the letter of Mexican law, he told panelists.[7]

Apparently, SECOFI is counting on the binational panel to affirm its determination notwithstanding inconsistencies with Mexican law. Even if SECOFI's arguments are rejected by this particular panel, this statement calls into question the Chapter 19 system's

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6/ The softwood lumber case concerned trade flows totalling around $5 billion per year.

7/ "NAFTA Dispute Resolution Panel Examines Steel Issue in First Hearing," BNA Daily Report for Executives 6-7 (Apr. 21, 1995).

theoretical utility for U.S. exporters as well as (more importantly) revealing an expectation on the part of our NAFTA partner that panels will, explicitly, substitute their preferences for the requirements of national law.

VI. Relevance for Future Trade Agreements

The infirmities in Chapter 19's design and its failures in practice show that the U.S. Government should belatedly adhere to the CFTA negotiator's admonition noted above and not extend the Chapter 19 system to other countries. Even setting aside these problems with Chapter 19, however, it should not be part of future U.S. free trade relationships because it is not needed. The WTO system fulfills any legitimate need for international AD/CVD dispute settlement.

Unlike the Chapter 19 system, WTO dispute settlement will operate under standard principles of international dispute settlement: WTO panels will resolve disputes over the meaning of the WTO texts, deciding whether the importing country has complied with its international obligations. This process, coupled with access to domestic courts, should satisfy any concerns about securing unbiased review of AD/CVD determinations. There is simply no need for the unworkable and sovereignty-impairing Chapter 19 system.

Even if Chapter 19's theoretical benefit to U.S. exporters showed real signs of materializing, that benefit would be vastly outweighed by the systemic problems described above and the undermining of U.S. trade remedy policies that would inevitably result. Moreover, the benefit to U.S. exporters would be marginal indeed since, with respect to ensuring that foreign governments' AD/CVD determinations comply with national law, the WTO agreements include provisions on effective judicial review. While hard work by negotiators will be needed to make these provisions meaningful in practice, they present an opportunity to achieve by more legitimate means the very goals Chapter 19 was ostensibly designed to promote.

VII. Conclusion

The U.S. Government should negotiate elimination of the Chapter 19 dispute settlement system as it exists with Canada and Mexico. At minimum, Chapter 19 should not be extended to additional U.S. trading partners.

Congress should:

- Ensure that "fast-track" negotiating authority and implementing procedures are unavailable for trade agreements that extend the Chapter 19 system to additional countries.
- Hold hearings on the Chapter 19 system to investigate: 1) whether the system is constitutional; 2) whether the system is necessary in light of WTO rules and the WTO dispute settlement system; 3) the suitability of the system as a permanent replacement for judicial review of trade cases; and 4) the past performance of the system.
- Direct the Administration to pursue through negotiations elimination of Chapter 19 from the NAFTA.
- Consult closely with the Administration regarding not only U.S. panelist appointments but also consideration of panelists proposed by Canada and Mexico.

STATEMENT
OF
THE AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
AND
SUBCOMMITTEE ON RULES AND ORGANIZATION
COMMITTEE ON RULES

U.S. HOUSE OF REPRESENTATIVES

"Fast Track Negotiating Authority"

The American Forest & Paper Association appreciates this opportunity to advise the Committee of our views regarding the extension of fast track negotiating authority.

AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. AF&PA represents approximately 400 member companies and related trade associations (whose memberships are in the thousands) which grow, harvest and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber; and produce engineered and traditional wood products.

The vital national industry which AF&PA represents accounts for over seven percent of total United States manufacturing output. Employing approximately 1.6 million people, the forest and paper industry ranks among the top 10 manufacturing employers in 46 states, with an annual payroll of approximately $49 billion. Total sales of U.S. forest and paper products exceed $200 billion annually.

The U.S. is the world's largest producer of pulp and paper and paperboard; it provides 35 percent of the world's pulp, and satisfies 30 percent of its paper and paperboard needs.

In 1994, U.S. forest products exports totalled $ 18.2 billion. Using the Department of Commerce yardstick, these sales support more than 360,000 direct and indirect jobs here in the United States.

Our export sales represent the fastest growing segment of our industry's business, and an important source of growth. For pulp, paper and paperboard, exports represented more than 40 percent of the growth in output during the 1988-1994 period.

This industry is ranked among the most competitive in the world. We have historically relinquished any tariff protection here in the U.S. and relied upon our competitive strength to win markets abroad. Where trade barriers are eliminated, and the playing field leveled, the investments in quality and productivity enhancements our industry has made in recent years has left us very well positioned to take full advantage of market-opening opportunities.

Clearly, the maintenance and expansion of open world markets is vital to our future as a global industry. For this reason, we have historically supported our government's efforts to open world markets and have consistently worked for the extension of fast track negotiating authority. We believe it is self-evident that such authority is an absolute prerequisite for the conduct of credible international trade negotiations.

That remains our position today. AF&PA would support the extension of fast track authority -- but we wish to emphasize that such authority should be granted solely for the purpose of negotiating agreements which will serve to open markets and liberalize trade. We would oppose any attempt to encumber the achievement of open world markets by the imposition of unrelated -- and perhaps inimicable -- environment and labor objectives in such negotiations. Our views are based on two fundamental observations.

The first is the historic basis for the delegation of authority under fast track. In our view, it is entirely inappropriate to accord fast track treatment to any agreement relating to international environmental and labor matters. The legislative history of fast track procedures makes it clear that they are intended only for the conduct of trade negotiations where there is sufficient support for broad market-opening goals and objectives that the Congress is willing to forego the opportunity for specific amendments.

This is not the case for international environmental or labor issues. There is no domestic political consensus regarding the extent to which trade agreements should be used to accomplish environmental and labor objectives, nor indeed, on what those objectives should be. Nor is there any international agreement on how these subjects should be treated in the context of a global system of jurisprudence focused exclusively on trade. Absent any clear sense of direction from the American people, any international agreement in these areas must therefore be subject to full public scrutiny and Congressional review.

The second relates to the underlying calculation of reciprocal concessions and mutual benefit which is at the heart of a good trade agreement. Effective trade agreements must first make economic sense. The introduction of labor, environmental, or other objectives which cannot be quantified necessarily unbalances this equation and--to the extent that the U.S. is the demander--clearly diminishes the economic benefit which the U.S. can request of its partner to the deal.

It should be emphasized here that there is no stronger advocate for high standards of environmental and labor protection than the U.S. forest products industry. It is our view that the environmental and labor practices of our companies are among the highest in the world. We would support efforts by our government to negotiate cooperative agreements with other nations with the objective of achieving mutually agreed goals in these areas. However, we would attach the following conditions to any such agreements:

- o they must be strictly separated from any trade negotiation, to avoid any interpretation that such agreements are integral to performance under the trade agreement, or that such agreements are a legally required part of a trade pact;

- o because they have the potential to impact domestic law and policy in these areas, and as we have indicated, because there is no domestic consensus, any such agreements should not themselves be subject to fast track procedures;

- o they must not provide for trade sanctions as enforcement mechanisms.

In the immediate case, AF&PA would support the extension of fast track authority for negotiations with Chile. Beyond this, we do not have a view on the duration and scope of such authority. However, we strongly recommend that the statement of negotiating objectives make it clear that this would apply only to issues related to traditional trade matters, including tariffs, standards and subsidies, and specifically exclude accession to the NAFTA side agreements relating to environment and labor. We do not believe that Chile or any other future NAFTA partner should be required to accede to the labor and environmental side agreements.

On the other questions regarding fast track, AF&PA would support enhanced Congressional involvement in the process, not just in the formulation of objectives, but on a continuing basis. We would also support a process for separate consideration of the funding mechanism for future agreements. The present pay-go approach not only denies the reality of the long-term fiscal gains from trade expansion, it force companies to choose between the clear long-term gains from trade and potential tax changes which go to the immediate bottom line. These are not the kinds of calculations which U.S. companies should be forced to make if they are to compete in tomorrow's global markets.

Mr. Chairman, the U.S. forest products industry is unshakably committed to free trade. We are also supportive of expanded international cooperation on matters related to the environment and labor. We believe that the effort to marry these two does a disservice to both. We urge you to provide fast track authority which will allow the President to realize the vision of the Miami Summit, and continue to open global markets for American industry. At the same time, we urge you to oppose any attempts to impose a new template on the global trade system which would put at risk the steady expansion of global economic opportunity which has served as the foundation of our post war economic expansion.

STATEMENT OF THE CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION IN OPPOSITION TO AUTHORIZING FAST-TRACK NEGOTIATION OF INTERNATIONAL TRADE AGREEMENTS WHICH INCLUDE BI-NATIONAL PANEL REVIEW IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

The Customs and International Trade Bar Association ("CITBA"), the nation-wide organization of customs and international trade lawyers, opposes an extension of fast-track negotiating authority for any free trade agreement which would include the use of bi-national panels to review administrative decisions in countervailing duty and antidumping duty cases to determine their lawfulness for purposes of U.S. law.

While CITBA has never opposed and does not now oppose any free trade area agreement, CITBA has consistently opposed bi-national panels for review of U.S. countervailing duty and antidumping duty determinations. CITBA now reiterates its opposition and, in addition, opposes extending the bi-national panel system beyond the current NAFTA signatories.

CITBA has approximately 450 customs and international trade attorneys as members. CITBA members practice before all of the courts and agencies involved in U.S. customs and international trade proceedings and litigation, including the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit (CAFC), the United States Supreme Court, and the administrative agencies which make countervailing duty and antidumping duty determinations, the United States Department of Commerce and the United States International Trade Commission. Many of our members have also appeared before the bi-national panels constituted under Chapter 19 of the United States-Canada Free Trade Agreement (US-CFTA), as well as similar panels constituted under NAFTA. Moreover, members of the association also have served as panel members in these proceedings.

CITBA's continuing opposition to bi-national panel review is premised on the following considerations:

1. Bi-national panel review permits and directs the imposition, assessment, and collection of United States government taxes (i.e., imposition and collection of United States countervailing duties and antidumping duties) without the benefit of Article III judicial review. In our view, such a system is both unconstitutional and unwise as a policy matter because (a) the cases are not disputes of an international character and (b) the panels replace the governmental institution which is intended and is best suited to adjudicate the lawfulness of agency actions for purposes of U.S. law -- Article III courts -- with an institution less well suited to perform exactly the same function.

2. Members of the bi-national panels are predominantly a constantly changing ad-hoc array of practicing international trade lawyers (whether United States, Canadian or Mexican citizens) with continuing professional responsibilities to their clients and law practices, who have not been appointed or confirmed by the United States Senate and have not taken the Constitutionally-required oath to preserve, protect and defend the Constitution of the United States. In addition to being unconstitutional, establishment of this pool of decision-makers is unwise as a policy matter because it creates the appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

3. Bi-national panel review creates a dual, if not multiple, system of review which produces two or more separate legal interpretations of the same trade laws, sometimes in the same case. It is constitutionally suspect since it may result in unequal protection of the laws and certainly undermines the constitutional requirement of uniform import duties. Moreover, the multiplicity of decisions is unwise as a policy matter because of the confusion and burdens it inevitably creates.

BACKGROUND

Countervailing duties are imposed by the United States to offset the effects of foreign governmental subsidies conferred on products imported into the United States. 19 U.S.C. § 1671, et seq. Antidumping duties are duties imposed by the United States when foreign goods enter the United States at less than their "normal value." 19 U.S.C. § 1673, et seq. "Normal value" (formerly known as "fair value") is generally the higher of (a) the home-market price of the product or (b) the manufacturing costs of the merchandise, plus overhead, expenses, and profits. Before countervailing or antidumping duties are imposed, the United States International Trade Commission must determine that a United States industry is materially injured or threatened with material injury, or, if such industry does not exit, whether the establishment of an industry in the United States is materially retarded by reason of the subsidized or dumped imports. Because of the method of calculating the countervailing duty or antidumping duty, many such duty determinations have tended to be among the highest of all United States taxes when calculated on an ad valorem basis.

Currently, except in cases involving imports from Mexico or Canada, antidumping and countervailing duty determinations by the Department of Commerce and International Trade Commission are reviewable at the request of importers, exporters, and United States manufacturers and their labor unions in the United States Court of International Trade, an Article III court established by Congress. Decisions of the Court of International Trade are then reviewable by the CAFC, and ultimately by the United States Supreme Court. By virtue first of the US-CFTA and then NAFTA, administrative determinations in antidumping and countervailing duty cases affecting Canadian -- and now also Mexican -- products imported into the United States are subject to review by bi-national panels consisting of experts in the international trade fields from the exporting and importing countries involved. 19 U.S.C. § 1516a(g). These panels have tended to be composed of international trade lawyers who also have clients in other antidumping duty and countervailing duty cases. Antidumping duty cases and countervailing duty cases from Mexico and Canada may be reviewed in United States Courts but only if all sides first waive bi-national panel review. Since 1989, the effective date of the US-CFTA, such a waiver has never occurred.

Bi-national panels were first proposed as a substitute for judicial review of countervailing and antidumping duty disputes in the US-CFTA. They were apparently a last-minute compromise among the parties to overcome their differences as to whether countervailing and antidumping duty measures should even exist between countries who were members of a free trade area. Rather than resolving the fundamental problem, the negotiators decided to study the issue for five to seven years and, in the interim, review countervailing duty and antidumping duty decisions in bi-national panels. The concept of bi-national panels had not been previously discussed publicly, and when it first appeared as part of the final text of the negotiated agreement, CITBA immediately objected.

CITBA's opposition to the bi-national panel provisions of the US-CFTA were set out in its statements of December 3, 1987 and March 3, 1988. By letter dated July 8, 1992, CITBA also objected to the inclusion of the bi-national panel procedure in the NAFTA. On April 25, 1995, CITBA reaffirmed its opposition to such panels. CITBA's December 3, 1987 and March 3, 1988[1] statements in opposition to bi-national panel reviews of countervailing duty and antidumping duty determinations are matters of public record. While we here briefly review and reemphasize these outlined main

[1] See Hearing Before S. Finance Committee on the U.S.-Canada Free-Trade Agreement, S. Rep. No. 100/1081, at 160-185 (1988).

points, we also readopt and reaffirm all the points we made in our prior submissions without repeating them here.

I.

LACK OF REVIEW BY ARTICLE III FEDERAL COURTS.

A. Elimination Of Article III Judicial Review Of Countervailing Duty And Antidumping Duty Determinations Is Unconstitutional.

1. In General. As stated above, antidumping and countervailing duty cases arise under statutes of the United States to remedy injury to United States industry from dumped and subsidized imports by imposing a supplemental import duty, payable to the United States, on the imported merchandise.

Prior to the adoption of the Constitution in 1787, the continued existence of the United States had become increasingly problematical because the central government under the Articles of Confederation had no compulsory mechanism by which to raise revenue to fund its operations. The various states had repeatedly rejected requests by Congress to give Congress the power to levy import duties. When New York again rejected such a request in 1786, the Constitutional Convention was called, with George Washington acting as its president, to organize the nation's form of government.[2]

Since the main purpose of the convention was to provide the central government with the authority to raise revenue by import duties (see Constitution, Article I, Section 8), each of the major plans first proposed at the convention provided that new federal courts be established (under the Articles of Confederation there were no federal courts at all) to review these customs cases. Thus, for example, the "Virginia Plan," proposed by Governor Randolph of Virginia, provided:

> 9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature...that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all...cases...which respect the collection of the National Revenue...

Farrand, I Records of the Federal Convention of 1787 21-22 (New Haven, 1911, 1936, 1986) ("Records"). Competing plans submitted by New Jersey, Hamilton and Pinckney also each provided for similar new federal judicial review over tax matters. See id. at 136, 223-224, 230, 232, 237, 243, 244, 293 & 305. As the Convention granted more powers to Congress, the functions of the Federal Courts encompassed more subjects and the Judicial power that we know today in Article III became generalized so that, in James Wilson's words (referring to Congress' control over duties and trade), "the Judicial should be commensurate to the legislative and executive authority." Id. at 237, n. 18. (See also George Washington's letter of transmittal at II Records 666.) True to expectations, the first Congress as its first substantive act passed the tariff act, 1 Stat. 24.

Since that time disputes between importer-taxpayers and the government over import duties have been subject to judicial review in Courts of the United States organized under Article III of the Constitution to determine whether the duty assessed is in accordance with law. Such taxes are always levied pursuant to a

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[2] See generally Max Farrand, The Framing of the Constitution of the United States, 4-6, 45-46 (1913, reprinted 1988); Carl van Doren, The Great Rehearsal 45 (1986).

law of the United States passed in accordance with the Constitution, which grants Congress the power to levy duties upon imports. Thus, they fall squarely within federal question jurisdiction provided by Article III, Section 2. This has always been the position of the United States Government and CITBA believes that removal of such review is unconstitutional.

2. Case Law Does Not Support Bi-National Panel Review. In light of these constitutional provisions, it is noteworthy that the decision of the U.S. Supreme Court most often cited in support of the constitutionality of bi-national panels, Cary v. Curtis 44 U.S. (3 How.) 236, 11 L. Ed. 576 (1846), does not in fact provide such support. In Cary, the Court, in a 4-3 decision, interpreted a statute to extinguish one of the available procedures for obtaining judicial review of customs duty assessments: that was the common law action in assumpsit, which was the most commonly used procedure at the time, but not the only one.[3] The Court ruled that the statute as interpreted was constitutional. However, in a passage that subsequently seems to have been often overlooked, the Court majority emphasized that it did not intend to condone the constitutionality of entirely eliminating Article III judicial review in import duty cases: "[n]either have Congress nor this court furnished the slightest ground [for the assertion that under the statute, as interpreted by the Court] the party is debarred from all access to the courts of justice, and left entirely at the mercy of an executive officer." 44 U.S. (3 How.) at 250. Rather, the Court appears to have felt that other procedures for obtaining judicial review remained available. Thus, as the Supreme Court later noted, Cary v. Curtis "specifically declined to rule whether all right of action might be taken away from a protestant, even going so far as to suggest several judicial remedies that might have been available." Glidden Co. v. Zdanok, 370 U.S. 530, 549 n.21 (1962) (citing 44 U.S. (3 How.) at 250).

Accordingly, CITBA reiterates its position that withdrawing Article III judicial review from United States federal tax determinations is unconstitutional.

B. Policy Issues.

1. Review Of Agency Decisions Under U.S. Law Is Not An "International" Dispute. Since bi-national panels are essentially international tribunals, support for such panels may be based in part on the perception -- a false perception, however -- that review of antidumping and countervailing duty determinations pursuant to U.S. statute is an "international dispute" which requires some special form of "international" or "bi-national" settlement. On the contrary, it is important to emphasize that the antidumping statute and the countervailing duty statute reviewed by bi-national panels are tax-levy laws of the United States. Moreover, the bi-national panels review the agency decisions to determine whether they conform to the requirements of U.S. law -- not whether they satisfy an international standard set forth in the US-CFTA, NAFTA, or other international trade agreement.

Equally important, reviews of agency decisions under the antidumping and countervailing duty statutes are not transformed

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[3] In any event, within 36 days after Cary, Congress passed an amendment which overruled the Court's interpretation of the statute and restored the right to obtain judicial review in federal court by action in assumpsit to determine the legality of customs duty assessments. Besides the action in assumpsit, judicial review in nineteenth century customs cases was sometimes obtained by other common law forms of action, such as the writ of trover, e.g., Tracy v. Swartwout, 35 U.S. (10 Pet.) 80 (1836), and sometimes by the importer's refusing to pay the bond given to secure duty and forcing the government to sue to obtain payment on the bond. E.g., United States v. Kid, 8 U.S. (4 Cranch) 1 (1807).

into international or bi-national cases by virtue of the parties to the cases. As noted earlier, the statutes impose supplemental duties on products imported into the United States. The importer is the party responsible for paying these duties. Thus, even from the perspective of the importing interests, antidumping and countervailing duty cases present a conflict between the U.S. government and U.S. taxpayers -- usually corporations. Of course, the cases also present a conflict between U.S. citizens and the U.S. government where the agency decisions are challenged by the domestic industry or labor union petitioner. In contrast, no duties and no penalties are assessed against foreign corporations or citizens, much less against foreign governments.

The non-international nature of the case is not altered by the fact that many of the importers are frequently, but not always, corporate subsidiaries of foreign companies. These corporations are organized under the laws of the states of the United States and, hence, are United States companies subject to the laws of the United States. To argue that collection of import duties from U.S.-incorporated subsidiaries creates an "international dispute" produces two classes of corporations in this country: those which are subsidiaries of foreign corporations and thereby subject to some form of "international dispute" and those which are not. On the contrary, like all citizens of the United States, corporations organized under the laws of the states and doing business here are provided remedy for unlawful imposition of Customs duties in the Court of International Trade and its appellate tribunals, the CAFC and United States Supreme Court.

Even to the extent some of the respondents to the administrative proceedings under the antidumping and countervailing duty laws may be foreign citizens or corporations, the use of bi-national panels to review the administrative decisions in antidumping and countervailing duty cases -- as a substitute for domestic courts -- is not justified under traditional principles of international law. Traditionally, most international tribunals deal with government-to-government claims, and an international claim arising from a decision by an administrative agency affecting a foreign citizen or corporation could not even be raised until completion of normal judicial review of the administrative decision in domestic courts. The Restatement, Third, of the Foreign Relations Law of the United States, § 902, comment k, explains that: "Under international law, before a [country] can make a formal claim on behalf of a private person, ... that person must ordinarily exhaust domestic remedies available in the responding [country]"; accord, e.g., James L. Brierly, The Law of Nations 281-82 (6th ed. 1963); Ian Brownlie, Principles of Public International Law 494-504 (4th ed. 1990)). In other words, before resort to an international tribunal is appropriate, the national courts are given the initial opportunity to review the contested government action (in the case of antidumping or countervailing duties, the administrative determinations resulting in their imposition and assessment) and, if necessary, to correct it for purposes of local law. Thus, for example, it could be appropriate for a foreign government to refer an antidumping duty or countervailing duty case to the World Trade Organization if the foreign government believes that the United States law or practice, as affirmed in an authoritative adjudication by the Article III judiciary, does not meet international norms such as those in the WTO-GATT Subsidies And Countervailing Duty Code or the WTO-GATT Antidumping Code. In contrast, the use of NAFTA-type bi-national panels instead of domestic judicial review introduces an entirely different structure that does not correspond to traditional principles of international law regarding the treatment of foreign citizens. Indeed, the use of NAFTA-type bi-national panels might internationalize a dispute unnecessarily, when the contested issue could readily have been resolved at the domestic level through judicial review; this is particularly true because, as noted earlier, the aggrieved party will not normally be a foreign party at all, but either a domestic industry or labor union petitioner or a U.S. citizen taxpayer.

Accordingly, international tribunals such as the WTO in antidumping and countervailing duty cases should only be considered where judicial review in Article III courts has been fully conducted but, for one reason or another, does not satisfactorily resolve the matter; international tribunals such as NAFTA-type bi-national panels which substitute for domestic courts should not be used.

2. Article III Courts Are The Government Institution Best Suited To Review The Lawfulness Of Agency Action. The premise of the bi-national panels is that, somehow, the Court of International Trade and its appellate tribunals, the CAFC and the United States Supreme Court, do not dispense justice fairly in these situations. The Customs and International Trade Bar Association informed Congress that any such allegations were groundless in 1987-1988. The judges of the Court of International Trade, being Article III federal judges, are, without doubt, the most expert and unbiased arbiters who can be found in these matters. Article III courts, moreover, remain the governmental institution which is intended, and is best suited, to be primarily responsible for adjudicating the lawfulness of agency actions in the United States.

This fundamental importance of judicial review by Article III judges in the American system of government has been articulately expressed in a leading treatise on judicial review in administrative law:

> [T]here is in our society a profound, tradition-taught reliance on the courts as the ultimate guardian and assurance of the limits set upon executive power by the constitutions and legislatures.
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> ...
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> The guarantee of legality by an organ independent of the executive is one of the profoundest, most pervasive premises of our system. ... It is clear that the country looks, and looks with good reason, ... to the courts for its ultimate protection against executive abuse.
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> ...
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> ... [The] availability of [judicial review] is a constant reminder to the administrator and a constant source of assurance and security to the citizen.[4]

As the workings of the bi-national panels have shown, they are not a substitute for a system of jurisprudence worked out in this country over two centuries. At best, bi-national panels arguably might be able to perform the judicial function almost as well as the courts. At worst, the bi-national panels have been accused of being biased and having little or no regard for the law of the United States as interpreted by United States courts, even though it is exactly that law which they are supposed to be applying.

It is true that the judges of the Court of International Trade are reviewing the agency decisions in these matters for purposes of United States law, not international law. That is what was intended by the Constitution and Congress, since the issue is whether the decisions by the responsible administrative agency resulting in the assessment of a supplemental import duty is supported by substantial evidence and is otherwise lawful and in accordance with the will of Congress as set forth in the U.S. statutes. These are clearly judicial functions in common law countries, and they should always be carried out for the United States by federal judges as required by the Constitution.

As explained earlier, however, bi-national panels under NAFTA are supposed to review whether the administrative decisions are

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[4] Louis L. Jaffe, Judicial Control of Administrative Action 321, 324 & 325 (1965).

consistent with U.S. law, and they are supposed to apply exactly the same standard of review as the Court of International Trade and its appellate tribunals. In short, the panels are supposed to undertake the same judicial function as Article III courts, without having the same qualifications and characteristics. This has always appeared to be a poor policy and the passage of time has failed to demonstrate otherwise. See, e.g., Judge Wilkey's dissent in Certain Softwood Lumber Products from Canada, Extraordinary Challenge Committee Proceeding, ECC-94-1904-01USA (Aug. 3, 1994).

II

PROBLEMS RELATING TO PANEL MEMBERSHIP.

A. Constitutional Issues.

1. The Protections Of Independence And Impartiality In Article III. By securing review by Article III courts in litigation between taxpayers and the government in tax matters, the Constitution guarantees the taxpayer (and the government) a fair, impartial, and independent hearing of the matter. Article III, Section I provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuation in office.

Required for such hearing was a federal court with judges appointed for life and with no diminution of salary. These provisions were intended to make the judiciary as apolitical and unbiased as possible. The provisions were intended to allow the judges to hold the scales aright between the government, of which they are part, and the citizenry, of which they are also part. Writing in The Federalist No. 79, Hamilton stated the reason briefly and correctly: "[i]n general course of human nature, a power over a man's subsistence amounts to a power over his will." Outright bribery and blackmail were not what was contemplated. The very existence of easy governmental procedures (diminution of salary or executive dismissal from office, both foreclosed by the constitution) to punish the judge was recognized as a subtle power over his will to judge rightly and fairly. Nothing about human nature has changed from the drafting of the constitution to the present day.

Congress apparently thought that members of the private trade bar from the United States, Canada or Mexico would be able to lay aside all bias, prejudice, and hope for further employment to serve on bi-national panels and render fair and unbiased decisions which could not be appealed to any court. However, we believe that the appearance of a conflict in such situations is a recurring concern. Thus, we believe, as did the framers of the constitution, that persons who are not given as their sole duty in life the activity of being a judge, will not be able on all occasions to act impartially. This is especially so in cases where panel members return to their usual livelihoods of advising clients on international trade. Subconscious bias, at least, will always be a question.

Article III makes it impossible for active federal judges to sit on any bi-national panel. Federal judges are available only in federal courts. They do not give advisory opinions nor do they undertake to adjudicate matters which are not federal cases and controversies. Congress cannot impose such duties upon them, nor can they accept them. Thus, the bi-national panels are condemned to use private parties in rendering their unappealable decisions.

At times these private arbiters may be retired federal judges. Such a situation may be a plus, but it does not make a system which is operating outside the constitution into one which is operating within it.

2. The Appointment And Oath Issue. As we have discussed, the Framers, in the Constitution, guarantee the independence and impartiality of judges by insulating judges from political and economic pressures by virtue of lifetime employment and guarantee of no deduction of pay. At the same time, the Framers insured that those interpreting and enforcing United States laws would be in compliance with both the Constitution and the directive of Congress. This was accomplished in four ways. First, the Constitution provides that all federal officers be nominated by the President and confirmed by the Senate. Second, the Supremacy clause mandates that the Constitution and the laws of Congress be the Supreme law of the land, overriding conflicting state law. Third, the oath clause requires that all federal and state legislators, judges, and executive officers take an oath to be bound by the Constitution. Finally, the impeachments clause grants to Congress the right to accuse and try any federal officer who commits high crimes and misdemeanors, including failure to comply with his or her oath.

In the context of the imposition and collection of duties, these constitutional safeguards are clear: An officer nominated by the President and confirmed by the Senate is responsible for determining the rate or amount of duty to be applied in a certain case. Likewise, anyone reviewing such a determination, specifically a judicial officer, is also subject to such an appointment process. Moreover, under the Constitution, both the administrative or executive officer and the judicial officer must take an oath to preserve the Constitution and if such task shall fall to a state official, the oath is equally applicable, and the Constitution and the laws of Congress are supreme. Finally, if the executive or judicial officer shall commit some crime or misdemeanor, he or she may be impeached and tried.

Thus, under the constitutional scheme both administrators and judges deciding such cases are subject to severe sanctions should they stray from the Constitution or the laws of Congress.

However, under the bi-national panel system there are no such constraints. Indeed, perversely, in some cases, the system is designed to materially thwart these Constitutional protections. First, neither the United States nor the foreign (Mexican or Canadian) panelists are nominated by the President or confirmed by the Senate. These panelists, of course, determine the liability of U.S.-citizen taxpayers for taxes payable to the United States government. Second, the foreign panel members never take an oath to support the Constitution or the laws which were enacted by Congress. This is particularly odd in the context of bi-national panels where such panels' only function is to interpret United States import duty laws. Indeed, many panel members may not in good conscience make such an oath because they have already taken an inconsistent oath to support some other form of government. Finally, of course, while the panelists may be subject to some form of sanction, they are not subject to the constitutional sanction of impeachment. Thus, we feel, that these constitutional defects should preclude bi-national panel review.

B. Policy Issues.

The principal policy objections to the membership of bi-national panels are closely linked to the foregoing constitutional issues. Fundamentally, bi-national panels cannot achieve the independence and impartiality of Article III federal judges. At best, they may hope to come close, but as a practical matter the system has been seriously criticized. First, by virtue of using citizens of different countries, the panels increase the appearance

of politicization and nationalistic bias. Second, by virtue of using practicing trade attorneys, the panels increase the appearance of either client-related or issue-related conflict of interests. In other words, one source of possible conflict, as was alleged in the Softwood Lumber case, is that panel members or their law firms have often represented companies in the industry involved in the case. And even if the panel member has no genuine client conflict, a second possible conflict is that particular practitioners may favor a particular substantive interpretation of the law because it would help a client in a future case. These factors create an appearance of a lack of impartiality, thereby undermining legitimacy and confidence in the system.

Notably, a frequent response to the conflict-of-interest criticism is that, if taken to its logical extreme, it would eliminate large numbers of the international trade bar from membership in panels and, consequently, eliminate the main pool of expertise. In fact, this response illustrates that the panel attempt is fundamentally flawed because the goals of impartiality and expertise are too difficult to achieve simultaneously, forcing one or the other goal to be compromised.

The problem was well stated during the colonial period, when customs and international trade lawyers served on the colonial Vice-Admiralty courts which decided customs and international trade issues:

> this Gentlemen is a constant practicing attorney, in all the King's Courts here, so that when anything comes before him in the Court of Vice-Admiralty, where his clients are concerned, he is under a strong temptation, to be in their favor, to His Majesty's dishonor, and to the great discouragement of His Majesty's Officers of the customs, and should he not so act he must lose a great number of fat clients, who are of much more value to him than his post of Judge of the Vice-Admiralty.[5]

In contrast to these problems with bi-national panels, it is beyond question that Article III judges possess independence and impartiality and, when appointed to the Court of International Trade and CAFC, are able to develop specialization and expertise in the countervailing duty and antidumping duty laws.

III

THE PROBLEM OF DIVERGENT CASE LAW.

By having a system that relies on bi-national panel review for imports from some countries and CIT judicial review for imports from other countries, it is inevitable that inconsistent results and divergent lines of jurisprudence will result. While the panels are supposed to be guided by domestic law standards of review and rules of interpretation, one of the repeated criticisms of the panels is that they misapply U.S. law. See, e.g., Judge Wilkey's dissent in Softwood Lumber, supra. Furthermore, if a panel is presented with an issue of first impression, there is no assurance that the panel would decide the issue in the same way as an Article III court.

An added problem is the differing role of precedent. As courts in a common law system, the Supreme Court, the CAFC and Court of International Trade apply the doctrine of stare decisis, and the courts' legal conclusions are also binding on the agencies. Panel decisions, in contrast, do not have direct legal effect beyond the immediate case. At best, they may constitute a

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[5] Governor Jonathan Belcher of Massachusetts and New Hampshire to the Admiralty, 31 January 1742 (as quoted in M. H. Smith The Writs of Assistance Case, 58-59 (1978)).

persuasive commentary. Although panel decisions are often cited in subsequent panel deliberations, they are not authoritative or legally binding in the way judicial decisions are. The situation is even more complicated under the NAFTA with the addition of Mexico, for Mexico has a civil law system in which the doctrine of stare decisis does not exist at all.

These difficulties are compounded when a petition is filed against multiple countries, some of which are entitled to bi-national panel review and some of which are not. In addition to the legal issues, there is no assurance that panels would reach the same decision as courts under the relatively subjective "substantial evidence" test. Thus, it is entirely possible that the same factual conclusions might be sustained with respect to one country and overturned with respect to another country.

As a constitutional matter, the multiple system of review raises two issues. First, it is arguable that the system of review violates the equal protection of the laws. Second, the likelihood of divergent interpretations of the same statute undermines the requirement in Article I, section 8, that import duties must be uniform throughout the United States. As a practical matter, the multiple system of review can be extremely burdensome and confusing. Where a petition is filed against several countries, the petitioner and the agencies would be forced into the expense of simultaneously defending review proceedings before a different panel for each country involved in the case.

CONCLUSION

CITBA believed that the provisions for bi-national panel review in antidumping duty and countervailing duty cases under the U.S.-Canada Free-Trade Agreement and the North American Free Trade Agreement were unconstitutional and unwise. We believe that the serious deficiencies in bi-national review should compel Congress to withhold fast-track negotiating authority for any new free trade agreement, with Chile or any other country, which would include the bi-national panel review system.

Respectfully submitted,

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

PATRICK D. GILL, PRESIDENT
SIDNEY N. WEISS, CHAIR, TRIAL
AND APPELLATE PRACTICE COMMITTEE
CUSTOMS AND INTERNATIONAL TRADE
BAR ASSOCIATION
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May 24, 1995

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
AND
SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
COMMITTEE ON RULES

JOINT HEARING ON FAST TRACK ISSUES

STATEMENT OF THE DISTILLED SPIRITS COUNCIL
OF THE UNITED STATES

The following statement is submitted on behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS), for inclusion in the printed record of the joint hearing on fast track issues. DISCUS is the national trade association which represents U.S. producers and marketers of distilled spirits.

I. INTRODUCTION

Like many U.S. industries, the distilled spirits is becoming increasingly dependent upon exports. U.S. distilled spirits companies have doubled their export volume over the past five years and now export to more than ninety countries around the world. With the U.S. market for distilled spirits in the midst of a long term decline, expanding exports is the key to our members future economic growth and well being.

Recognizing this fact, DISCUS members strongly supported the negotiation of the North American Free Trade Agreement and its approval by the Congress. As a member of the Zero Tariff Coalition, we worked closely with U.S. trade negotiators to bring about the elimination of tariff barriers in the Uruguay Round of GATT negotiations and we actively campaigned for Congressional approval of the resulting agreements. The existence of fast track negotiating authority enabled U.S. negotiators to secure concessions of great importance to U.S. distilled spirits companies. The existence of fast track approval procedures ensured that our members will have the chance to take advantage of the new export opportunities created by these concessions.

II. DISCUS POSITION

DISCUS strongly supports the early enactment by the Congress of legislation renewing fast track negotiating authority and approval procedures. Such authority and procedures are essential to the efforts of U.S. trade negotiators to forge new trade liberalizing agreements. Without this negotiating authority and accompanying approval procedures, U.S. negotiators will face an infinitely more difficult task in persuading U.S. trading partners to open their markets to U.S. exports. Countries simply will not be willing to make concessions to the United States without the certain knowledge that the agreements entered into will not be amended in a subsequent negotiation with the U.S. Congress.

Ideally, fast track renewal should be sufficiently broad and flexible to allow U.S. negotiators to pursue the conclusion of trade liberalizing agreements in bilateral, regional and multilateral forums. Fast track renewal should authorize negotiations under the framework of the World Trade Organization, with the countries of Latin America in the context of enlarging the NAFTA, and with the countries of the Asia-Pacific region. At an absolute minimum, it should be renewed without any further delay to allow negotiations with Chile on accession to the NAFTA to be completed this year.

Each of these initiatives will lead to expanded export opportunities for U.S. companies, including producers of distilled spirits. In the distilled spirits industry, expanded exports will generate additional jobs at not only the production level, but in related industries, including packaging, distribution and shipping. Without these opportunities, current employment levels will decline as domestic sales continue to contract.

III. FAST TRACK PROVISIONS

In considering the terms of fast track renewal, DISCUS would encourage Congress to include provisions which will generate the needed certainty in the negotiating process while facilitating the subsequent approval process. For example, we suggest that Congress consider enacting a multi-year renewal of fast track, for a period of at least five years. This would ensure that U.S. officials have sufficient authority and flexibility to negotiate agreements while maintaining a set period in which negotiations must be brought to conclusion. It also would remove the need for Congress to revisit the terms and negotiating objectives of fast track on a frequent basis, as has been the case in recent years.

We also suggest that Congress consider limiting fast track approval procedures to only those provisions which are absolutely necessary to implement the agreements concluded during a particular negotiation. The much broader standard used in recent years has led to the inclusion of provisions which have not been directly related to the implementation of the relevant agreements. These measures, which often have been politically sensitive, have unnecessarily complicated the Congressional approval process, while denying Congress the opportunity to consider these provisions under normal legislative procedures.

In addition, DISCUS suggests that Congress carefully review whether the "pay-go" budget procedures should continued to apply to trade agreements. Most economists generally agree that the economic activity created by tariff liberalization far exceeds the loss in tariff revenues collected. Should this not prove possible, at a minimum Congress should provide in the fast track renewal legislation that provisions included in implementing legislation for the purpose of "funding" trade agreements should be amendable. This will ensure that trade agreements and accompanying implementing legislation are considered on the basis of their merits, while enabling the Congress to fashion acceptable funding mechanisms independently.

IV. CHILE AND NAFTA ACCESSION

As mentioned above, DISCUS strongly supports the immediate renewal of fast track for negotiations on the terms of Chile's accession to the NAFTA. We strongly support Chile's accession to the NAFTA because we are convinced that it will lead to new export opportunities for our members and job growth within our industry. As noted in the attached fact sheet, Chile maintains a number of different trade barriers to U.S. exports of distilled spirits. We have been working closely with Executive Branch officials to ensure that these issues are considered in the forthcoming negotiations. However, the success of these negotiations with Chile depends in large part upon the rapid renewal of fast track authority and procedures by the Congress.

Much of the debate over fast track renewal has centered on whether or not labor and environment-related issues, including the use of trade sanctions, should be included in future trade agreements. While these issues are very important, we are deeply concerned that a prolonged debate on the merits of including these issues will result in a further delay in renewing fast track and the loss of opportunities to conclude trade liberalizing agreements, such as with Chile, which will benefit U.S. exporters.

V. CONCLUSION

In conclusion, DISCUS and its member companies urge Congress to enact legislation renewing fast track as soon as possible. Such legislation should provide authority which is sufficiently broad and flexible to allow U.S. negotiators to conclude trade agreements which will create new opportunities for U.S. exporters, while establishing procedures which will facilitate their careful consideration by the Congress.

Thank you very much.

Sincerely,

Fred A. Meister
President/CEO

Florida Sugar Marketing & Terminal Assn. Inc.

Members:
Atlantic Sugar Association
Okeelanta Corporation
Osceola Farms Co.
Sugar Cane Growers Cooperative of Florida
United States Sugar Corporation

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May 25, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Extension of Fast Track Negotiating Authority for Trade Agreements

Dear Mr. Moseley:

The Florida Sugar Marketing Terminal Association, Inc. located in Singer Island, Florida, submits the following written comments with respect to the captioned matter. Florida Sugar Marketing & Terminal Assn. Inc. is a cooperative association, operating under the laws of the State of Florida, for the marketing and transportation of raw cane sugar processed by its members. The members of Florida Sugar Marketing and Terminal Assn. Inc., each of which is a processor of raw cane sugar are Atlantic Sugar Association, Okeelanta Corporation, Osceola Farms Co., Sugar Cane Growers Cooperative of Florida and United States Sugar Corporation. Florida Sugar Marketing & Terminal Assn. Inc. markets approximately 65% of the Florida sugar crop. The Association's members have generally been supportive of the recently concluded Uruguay Round Agreement on Agriculture, which was negotiated and implemented into U.S. law pursuant to so-called "fast-track" procedures. The agreement, which resulted in a tariff rate quota in lieu of a quota under section 22 of the Agricultural Adjustment Act and some reductions in level of subsidization, is acceptable to Florida growers and processors if coupled with the continuation of the loan program at current or improved levels.

The industry is interested in having the United States pursue an expedited negotiation with the major sugar producing and exporting countries to eliminate in the near future all export subsidies and to harmonize and then reduce or eliminate all domestic subsidies. Our members support such negotiations in the belief that the elimination of the subsidies would reduce the need for the current loan/price support

program and is consistent with the long-term interests of the United States in liberalized but fair trade. Such an approach also lets the United States reduce programs in the U.S. without engaging in "unilateral disarmament" which would simply penalize domestic sugar producers.

INTRODUCTION

Upon acceding to the World Trade Organization (WTO), the United States converted existing quotas and fees applicable to quota products into tariffs or tariff-rate quotes. In the case of sugar, the United States established a tariff-rate quota based on current market-access levels of approximately 1.2 million tons per year, with imports above that level subject to additional tariffs and (potentially) "special safeguards." The United States grants no export subsidies on sugar. Moreover, the U.S. sugar program has been administered by the Commodity Credit Corporation since 1985, by statutory mandate, at "no net cost" to the Government.

Although many countries agreed to reduce the level of export subsidies in accordance with the agriculture agreement, in many cases the subsidy levels (export and domestic) granted to sugar producers will remain exceptionally high in real terms throughout the implementation period. For example, recent OECD data for 1993 confirm that the United States' total support to the sugar sector has a producer subsidy equivalent (PSE) of 51%, as compared to 67% for the EU, a major sugar producer, and 60% for OECD countries in the aggregate. Domestic subsidy levels in other sugar-producing countries will be subject to modest reductions, only as components of the Aggregate Measure of Support (AMS). As a pratical matter, domestic subsidies on sugar and related products may not be reduced at all by our trading partners, provided that "aggregate" reduction commitments are met.

Export subsidies are also an important consideration. The EU, Brazil, and South Africa notified the WTO that they granted substantial export subsidies on sugar. Although such export subsidies are subject to reduction commitments of 21% on a volume basis, and 36% on a budget basis, the absolute level of export subsidies granted by these countries with respect to sugar will remain very large.

Subsidies permeate world manufacturing and trade in sugar. For example, the European Union is the world's largest exporter of sugar yet is one of the world's most cost uncompetitive producers. But for the staggering subsidies, European producers could not participate in world exports. A recent study done for the Florida industry indicates that exports from Europe to "free markets" are at prices equal to as little as 39.6% of the European cost of producing sugar and can be 25% below variable costs. Obviously, these pricing practices are nonsustainable without massive government assistance. Similarly, China's export prices are well below full cost (roughly 50% of cost). Indeed, the study indicates that free market exports from Australia, Brazil, China, Colombia, the European Union, Mexico, South Africa and Thailand of raw and/or refined sugar are below cost in most situations.

Thus, the current "world market" for sugar is merely an outlet for dumped and subsidized exports of excess production, itself the result of mis-allocation of resources.

In sum, although the domestic and export subsidy-reduction commitments in the Uruguay Round Agreement represent a positive development, they will have only limited practical impact on the domestic and export subsidies that have distorted the world sugar market for many years.

PROPOSAL

Conditions of trade that have led to over-production of many agricultural products and depressed world market prices will likely persist, notwithstanding the salutary effect of the Uruguay Round Agreement on Agriculture. In the case of sugar in particular, the Agreement will produce only modest changes of the status quo: substantial transfers by foreign governments to their sugar producers and processors.

Consequently, the Florida industry would propose that if the Congress renews fast track negotiating authority that it provide direction in the form of negotiating objectives that would include, inter alia, the expedited negotiation of a sugar and sugar products agreement to eliminate export subsidies and to harmonize domestic subsidies between the U.S. and other sugar producing countries as ceiling amounts with reductions or even total elimination (other than green light subsidies under the Agriculture Agreement). Subsidies are at the heart of so much of the misallocation of resources in agriculture. We believe that such as agreement would do much over time to permit liberalized trade.

There is ample precedent under the predecessor of the WTO for negotiations seeking "GATT plus" arrangements for a specific sector (i.e., liberalization, beyond that required by prior, multilateral agreements). With varying success, parties have sought sector deals in steel (the "MSA" talks, which continue), civil aircraft (plurilateral agreement), and oil seeds (negotiations terminated). Plurilateral agreements also exist on bovine meat and dairy.

The domestic industry believes that a supplemental agreement would be highly beneficial to the eventual rationalization of world trade in sugar and sugar products. By contrast, unilateral liberalization of sugar programs and tariff-rate quotas, absent parallel commitments by our trading partners, is not in the interest of the domestic industry.

Respectfully submitted,

Fred R. Hill

Florida Sugar Marketing & Terminal Association, Inc.

Newt Gingrich
Sixth District
Georgia

(202) 225-060?

Office of the Speaker
United States House of Representatives
Washington, DC 20515

STATEMENT BY THE SPEAKER OF THE HOUSE

One of the real priority issues the House will consider this year is the extension of fast-track authority to implement trade agreements. This authority, in effect since 1974, represents a partnership between the Congress and the President on matters governing the development of trade policy objectives, the pursuit of bilateral and multilateral negotiations designed to achieve those goals, and the expeditious implementation of agreements brought to fruition.

Fast-track also has unquestionably spurred economic growth and private sector job creation in the United States. Through numerous successful trade agreements over the years, combined with effective enforcement of U.S. trade laws, our country has experienced an explosion of economic opportunity and growth that can be directly related to international trade. Trade has become a major feature of the U.S. economy. The United States is the world's top exporter. Trade in goods and services, plus earning on investment now represents about a third of the U.S. gross domestic product -- more than double what it was in 1970. American workers, firms that hire them, and consumers who buy high-quality products they produce have all benefited enormously from this trend.

I believe the extension of sound fast-track procedures is essential if we are to continue to pursue important trade liberalization initiatives and reap the benefits of a solid, coordinated trade policy. Such procedures serve the dual goals of allowing Congress to fulfill its constitutional responsibility with respect to international trade while at the same time providing assurance that trade agreements will be effectively implemented. It establishes confidence in the ability of U.S. negotiators to successfully conclude and gain Congressional approval of trade agreements that serve American interests.

The fast track procedure is a legislative-executive agreement to facilitate a coordinated policy on international trade. For the system to function effectively, it is critical that consultation and cooperation be the hallmark of the relationship. Therefore, it is important that the Administration clearly lay out its goals and intentions in the area of trade policy, and that this process of consultation and cooperation be ongoing throughout the lifetime of the fast track agreement.

We must also be cautious about how broadly these special legislative procedures are applied. Fast-track was not designed to circumvent regular legislative procedures with respect to matters unrelated to trade agreements or which otherwise should be approved through normal processes. If fast-track becomes a magnet for unrelated provisions, the integrity of the legislative process could be threatened and support for a coordinated policy and procedure for approving trade agreements could be seriously eroded.

I am confident that the Congress and the Administration can once again construct a meaningful process for developing and approving trade agreements. With such procedures in place, the U.S. can continue to exercise its traditional leadership role in the international trade communities and can continue to seek new opportunities for economic growth worldwide.

# # #

[BY PERMISSION OF THE CHAIRMAN]

STATEMENT OF
DR. RICHARD L. BERNAL
AMBASSADOR FROM JAMAICA TO THE UNITED STATES

BEFORE THE
HOUSE WAYS AND MEANS TRADE SUBCOMMITTEE

MAY 25, 1995

PROPOSALS TO RENEW FAST TRACK TRADE NEGOTIATING AUTHORITY

Mr. Chairman, thank you for providing me this opportunity to submit testimony before your Subcommittee on proposals to renew fast track trade negotiating authority. As the Subcommittee moves forward with plans to reauthorize this critically important legislative initiative -- which will have a far-reaching impact on trade relations throughout Latin America and the Caribbean -- I believe it is important to provide you with a Jamaican perspective on some of the issues surrounding fast track.

A. Fast Track in 1995: The March to 2005

Last December, the 34 Democratically elected nations of the Hemisphere came together in Miami to hammer out an agreement to launch a Free Trade Area of the Americas (FTAA) by the year 2005. Next month, the trade ministers of those countries will reconvene in Denver to determine how to take the next steps in this important goal. As the Hemisphere moves to put that vision into practice, it is important that the US Congress pave the way for viable negotiations by quickly passing fast track trade negotiating authority.

Fast track renewal is an important ingredient in the establishment of an FTAA by the year 2005. The difficulties with which both the NAFTA and GATT implementing bills were passed make it clear that future free trade agreements in the Hemisphere will be supported by the American people if the goals and objectives of these agreements are well understood in advance. The fast track consultation procedure will help ensure that the goals of the FTAA be communicated to and understood by the US population, much as similar procedures will communicate the goals to the Jamaican citizenry. But experience has shown that, without fast track procedures, it may be exceedingly difficult to pass free trade implementing bills in a form or a time frame that will help establish the FTAA over the next decade.

In this regard, fast track authority should reflect the ten-year timetable established in Miami to negotiate an FTAA by the year 2005. Without such a timetable, hemispheric negotiations could be prematurely stopped while a mid-term reauthorization of fast track in the US Congress were sought, or worse, denied. Similarly, a short reauthorization -- of say 4 to 6 years -- could discourage some countries from even participating in the free trade process.

With regard to the inclusion or exclusion of labor and environmental principles in fast track legislation, I cannot intrude into the domestic US debate over the establishment of trade negotiating objectives. I can, however, proudly point to Jamaica's outstanding record both in taking steps to ensure sound environmental stewardship and in securing healthy working conditions and unalienable workers' rights throughout

the country. Moreover, there is close cooperation with the United States in combatting illicit narcotics trafficking.

In addition, Jamaica has established concrete achievements in other areas that have been identified as possible trade negotiating objectives in recent years. Jamaica's economic reform program -- which has emphasized tight fiscal and monetary policies to control our inflation, tariff reductions to promote trade-based growth, and privatization of state-owned enterprises to stimulate the private sector -- has set the stage for considerable, and unencumbered, economic linkages with the United States. Taken together with the more traditional trade negotiating objectives -- such as protection of investments and intellectual property -- Jamaica stands ready to participate in free trade negotiations with the United States.

B. The US/Caribbean Basin Economic Partnership -- The Basis for Free Trade

With the inevitable focus on trade in the Hemisphere, Congress will consider its trade relations with the Caribbean as an integral element of its fast track debate. The Caribbean, has already established an intensive trade relationship that should help expedite free trade negotiations, once fast track authority is enacted. In the dozen years since it has been enacted, the Caribbean Basin Initiative (CBI) has emerged as an important stimulus of economic development in the Caribbean Basin and of trade linkages throughout the region. The effect has been felt -- not only in Kingston and Montego Bay -- but also in Chicago, Miami, Baltimore, New Orleans, and hundreds of other communities throughout the United States.

Through its combination of trade, investment, and tax policies, the CBI legislation has progressively established a framework that has facilitated mutually beneficial, U.S./Caribbean economic links. In turn, Jamaica and other Caribbean countries have matched the liberalizing reforms enacted by the CBI to launch their own trade and investment economic reform programs. Together, the United States and Caribbean countries have created a trade partnership worth more than $20 billion a year, employing hundreds of thousands of workers throughout the region.

The successes of the CBI legislation are reflected in the figures signalling robust growth in the U.S./Caribbean trade partnership. Since the mid-1980's, U.S. overall exports to the Caribbean have expanded by over 100 percent and Caribbean exports to the United States have climbed by roughly 50 percent. The Caribbean Basin now comprises the tenth largest market for the United States, and is one of the few regions where the United States consistently posts a trade surplus. With combined trade exceeding $24 billion in 1994, U.S./Caribbean commercial links support more than 265,000 jobs in the United States and countless more throughout the Caribbean and Central America. During the past decade, nearly 16,000 American jobs have been created each year as U.S. trade links with the Caribbean have expanded. Throughout the Caribbean, where the economies are much more dependent upon trade, increased exports to the United States has generated hundreds of thousands of additional jobs. Such employment growth has been felt in both export industries, as well as in the many sectors that cater to these industries.

On several occasions, Congress has considered and passed legislation to strengthen the CBI framework to enhance trade links with the Caribbean. In 1990, Congress made the CBI program permanent and extended some of the duty and tax

provisions. In 1995, Congress is considering legislation -- The Caribbean Basin Trade Security Act (HR 553), which has been adopted by this Subcommittee -- to insulate the CBI from unintended adverse affects of the NAFTA. Passage of this measure will simultaneously remove impediments from the US/Caribbean trade partnership and set the stage for greater US/Caribbean economic integration through a free trade arrangement.

C. The Importance of Fast Track: A Commitment to Free Trade

Fast track authority creates a vital mechanism through which the United States can develop a clear, comprehensive, and consistent trade policy. It establishes a formal series of communications and consultations between the Executive and Legislative Branches and the US private sector, enabling various elements of US society to develop a common trade negotiating posture. It also defines a transparent process through which the results of arduous trade negotiations -- the implementing legislation -- can be submitted and enacted into law by Congress in an expeditious manner. In many respects, fast track sets out a process with maximum opportunity for domestic US input and minimum opportunity for domestic political surprises.

This transparency and consistency is of critical importance during trade negotiations. In undertaking trade negotiations, we are less likely to make concessions or agree on sensitive points if we feel that our agreements will be undone by eleventh hour modifications by the US Congress. Similarly, without the assurance of Congressional pre-approval of the consultation process we are less assured that the results of trade negotiations -- which can have domestic political ramifications in our own country as well -- will ever be realized.

Moreover, the fast track framework imposes certain disciplines in the trade negotiating process and in the formation of trade policy. This is especially important in the Caribbean, where US trade policy has often been shaped to fit specific industries and interests. For example, the Caribbean Basin Initiative (CBI) which seeks to encourage industrial diversification through trade, excludes textiles and apparels from duty and quota free treatment even though the garment industry is a principal means of industrial and export diversification for least developed countries. Similarly, the current US/European Union banana quarrel is threatening to undermine the principal market for many banana exporting nations in the Caribbean, even though the United States produces no bananas for export. The fast track process, however, ensures that trade negotiations reflect a US national position as well as the specific needs of individual US industries.

D. Conclusion

As Congress continues its debate on trade measures this year, broad fast track authority should be favorably considered and expeditiously approved. Not only would it signal a US commitment to move forward with the FTAA, but it would also create the necessary mechanisms through which free trade in the Hemisphere could be enhanced.

NAHM National Association of Hosiery Manufacturers

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90th ANNIVERSARY NAHM 1905 1995

April 13, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: Extension-Fast Track Negotiating Authority

Dear Mr. Moseley:

The National Association of Hosiery Manufacturers (NAHM) is the trade association representing the interests of those companies in the United States that produce all types of men's, women's, and children's hosiery. NAHM members manufacture and market approximately 85% of all the hosiery sold in the United States. The following comments address the joint hearings scheduled by the Subcommittee on Trade of the Committee on Ways and Means and the Subcommittee on Rules and Organization of the House of the Committee on Rules relative to the extension of "fast track" negotiating authority to the Administration for use in negotiating trade agreements.

The Association supports, in principle, periodic multi-lateral trade negotiations under the World Trade Organization which are designed to promote the orderly expansion of international trade. Such talks should be organized as needed around clear objectives and based on the principles of equal reciprocity and market access. The trade agreements arising from such negotiations benefit the economy by opening new markets to U.S. exports and reducing foreign trade barriers to U.S. goods and services. NAHM supports the position that fast track procedures permit Congress to implement vital legislation that reduces trade barriers, promotes private sector job creation, and raises living standards for American families. Critical to fast track negotiating authority is the provision that amendments to implementing legislation are not permitted once the bill is introduced, with committee and floor actions consisting of "up or down" votes on the bill as introduced.

NAHM believes fast track procedures should protect the integrity of the negotiated trade agreement by acting as a safeguard against legislative issues not directly related to trade or the implementation of the trade agreement. Accordingly, the Association would support improvements in fast track procedures which would maintain a consensus in Congress regarding votes on the negotiated trade agreement. This would continue to preserve the constitutional role and fulfill the legislative responsibility of Congress and ensure expeditious action vis-vis the agreement and implementing legislation with no amendments.

NAHM appreciates the opportunity to submit comments regarding the extension of fast track negotiating authority. Please feel free to contact me if I may be of any assistance.

Very truly yours,

Chuck Brooks
Vice President and Secretary

ASSOCIATIONS ADVANCE AMERICA



National Association of Wheat Growers
415 Second Street, N.E., Suite 300, Washington, D.C. 20002, (202) 547-7800, Fax (202) 546-2638

May 11, 1995

Honorable Philip Crane
Chairman
Subcommittee on Trade
Ways and Means Committee
U.S. House of Representatives
1104 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As your committee begins its consideration of renewal of fast-track negotiating authority, our organization would like to submit the following comments for inclusion in the May 11, 1995, hearing record.

In general, U.S. wheat producers are supportive of initiatives designed to facilitate free trade. Ours is an export-dependent commodity. Each year, U.S. wheat producers export at least fifty percent of their harvested acres to over 130 countries.

With respect to negotiations with Chile in particular, we believe that the agreement to facilitate its integration into the NAFTA will set the standard for additional countries wishing to join the agreement. U.S. negotiators must proceed with caution and sensitivity to how this prospective agreement will affect the trade of wheat within the hemisphere. We urge that special attention be applied to the following areas of concern to our membership:

Chilean Price Band for Wheat: The Government of Chile currently maintains a price band mechanism for wheat and wheat flour. It is our understanding that the stated objective of the price band is to stabilize domestic prices by reducing transmission of international price fluctuations into Chile's domestic market, while at the same time maintaining a long-term linkage between domestic and international prices. In operation, the price band mechanism typically results in the application of a surcharge in U.S. dollars equal to the difference between a weekly reference price and an administratively-set floor price level. These surcharges, when applied, are in addition to Chile's 11 percent ad valorem duty applied on nearly all imports.

We advise the immediate elimination of the existing price band mechanism for wheat and flour and the staged reduction of the 11 percent ad valorem to zero within five years after the accession agreement is enacted.

Export Subsidies: Latin American wheat imports have more than doubled the level of the late 1980's when severe economic difficulties limited import demand. A combination of improved economies, decreased wheat production, sustained rapid population growth, and import liberalization has expanded opportunities for U.S. wheat producers to export to this region. Unfortunately, our competitors have also taken steps to increase market share, largely at our producers' expense. The most egregious exporting practices to date have been committed by the European Union and the Canadian Wheat Board. According to USDA, in 1982/83, the United States maintained 70 percent of Latin American wheat imports. Today's figure is closer to 25 percent.

The Uruguay Round Agreement on export subsidies will in time constrain the export subsidy practices of the Europeans and the United States, although the U.S. use of EEP in Latin America has been limited. In contrast, the discriminatory pricing practices of the Canadian Wheat Board have not been disciplined in any previous free trade agreements -- the U.S.-Canada Free Trade Agreement, the NAFTA, or the GATT. There can be no free trade of wheat until the CWB's pricing practices are neutralized. Therefore, we urge the President to consider the use of EEP and other competitive measures in Chile until price transparency can be achieved with the CWB in all NAFTA countries.

Chapter 19, Dispute Settlement Panels: Under the CUSTA and the NAFTA, Chapter 19 calls for the assembly of ad hoc panels of private individuals to determine whether antidumping and countervailing duties have been imposed consistent with the domestic law of the importing country. This appeal process circumvents U.S. trade laws and is inconsistent with the newly established World Trade Organization dispute settlement procedures which rely on panels to interpret international rules. As part of Chile's accession negotiations, we would like to see the NAFTA Chapter 19 provisions eliminated.

Thank you for the opportunity to comment on this matter.

Sincerely,

Ross Hansen
President

National Grange
of THE ORDER of PATRONS of HUSBANDRY
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Robert E. Barrow, Master

May 18, 1995

The Honorable Philip M. Crane, Chairman
House Ways and Means Subcommittee on Trade
1104 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

The "fast track" authority that was granted the President in Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, which permits the President to enter into trade agreements that would be subject to the expedited legislative procedures that are set forth in Section 151 of the Trade Act of 1974, has expired.

The "fast track" procedures have expired with respect to any new trade agreements. These provisions required the President, before entering into any trade agreement, to consult with Congress regarding the nature of the agreement, how and to what extent the agreement will achieve its applicable purposes, policies, and objectives, and all matters that concern the agreement's implementation.

America's farmers and other agricultural interests have long supported international efforts to achieve more open markets and more favorable trading rules for agriculture through multilateral trade negotiations, such as the General Agreement on Tariffs and Trade (GATT). The progress that was made in previous trade negotiations in opening markets for agricultural exports has been tremendously important to the United States' agricultural sector and the nation's economy as a whole.

Agriculture must remain a priority for the United States in world trade talks if U.S. farmers are to support the continuation of proposals like the GATT. The National Grange strongly supports granting "fast track" authority to the President provided the authorizing legislation is "clean" and is not encumbered by amendments that would change the premise of the agreement. We urge you to be cautious about how broadly these special legislative procedures are applied. It would be inappropriate to include issues such as workers' rights and the environment in "fast track". "Fast track" authority is essential for forming successful and acceptable trade policies. Without an agreement, America's agriculture will be faced with the very real threat of serious trade conflicts.

We believe that Congress should retain a major role regarding the aims, progress, and conduct of any trade negotiations in accordance with its preeminent constitutional authority. Therefore, we are pleased that Congress has created the "fast track" procedure by which to retain the power to approve or reject a trade agreement. At the same time, Congress has wisely limited its ability to unilaterally amend a trade agreement that would, in any way, undermine any administration's ability to advance the United States' national interests. If Congress could amend a negotiated agreement, our trading partners would be much more reluctant to work with an administration whose decisions could be changed by another form of government. We cannot let internal domestic disputes alter the relationships we have established with our trading partners.

We believe that extending the negotiating authority under "fast track" will result in meaningful and successful future

trade policy. America's farmers have had too much experience in dealing with the results of bad agricultural trade deals or agreements in which agriculture has been ignored. We are afraid that agriculture could be traded off simply to benefit a non-farm sector.

The Grange's trade objectives have included expanding markets through increased market access, reducing trade-distorting domestic subsidies, reducing and phasing out export subsidies, and prohibiting the use of unjustifiable health and sanitary restrictions that are non-tariff trade barriers.

We urge your Committee to approve extending the President's "fast track" authority and to oppose any efforts to deny or amend the extension. We believe that the successful conclusion of trade agreements offers one of the best prospects for the future growth of the United States' economy, industries, exports, and jobs.

Thank you for considering the Grange's views. We respectfully request that this letter be made part of the hearing record.

Sincerely,

Robert E. Barrow, Master
National Grange of the Order
of Patrons of Husbandry

REB/trh
ccs: House Ways and Means Committee

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May 25, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Press Release TR-6, Joint Hearings on Fast Track Issues Held by the Subcommittee on Trade of the House Committee on Ways and Means and the Subcommittee on Rules and Organization of the House of the House Committee on Rules.

My firm is active in trade matters in the United States and in other countries, largely representing U.S. companies in various matters before federal agencies and courts. In recent years, my firm has participated in a number of challenges to U.S. antidumping and countervailing duty determinations before the binational panel in the U.S.-Canada FTA. At the present time, one of my partners is a panelist in the challenge of a Mexican antidumping determination. One of my partners has also written a book on the NAFTA Chapter 19 dispute settlement process.*

This statement is submitted in my personal capacity and does not necessarily reflect the positions of any of my firm's clients (domestic or foreign) or the positions of any of my partners.

While there are a host of important issues surrounding the question of whether the expired fast track authority should be renewed or extended, this written submission will focus on just two issues: (1) if fast track authority is extended, should Congress restrict the ability of the Administration to extend NAFTA or other agreements to provide non-judicial review of antidumping and countervailing duty actions to determine compliance of U.S. agency action with U.S. law; (2) what type of negotiating objectives should Congress establish if fast track authority is extended.

On the first issue, I add my voice to those who have advocated preventing the further expansion of binational panels to review the compliance of U.S. agency actions with U.S. law and the eventual renegotiation of NAFTA to eliminate binational panel review in such cases.

On the second issue, if multiple year authority is provided, Congress should mandate that the negotiating objectives included in the 1988 Omnibus Trade and Competitiveness Act that were not achieved in the Uruguay Round be pursued as well as all issues that would in fact render our major trading partners' markets accessible to U.S. products. While the long standing difficulties with Japan in autos, auto parts, and many other products makes Japan a critical focus of the negotiating objectives, there may well be other countries where special issues also exist.

---

* James R. Cannon, Jr., Resolving Disputes Under NAFTA Chapter 19 (Shephard's/McGraw-Hill 1994).

1. Elimination of binational panels for antidumping and countervailing duty cases

Constitutional issues remain unresolved

Serious constitutional issues were raised at the formation of the U.S.-Canada FTA. Those issues have not been addressed in fact to date and continue to cloud the legitimacy of the binational process -- a process which is not designed to determine whether U.S. (or other country) action complies with international agreements (a potentially useful function) but rather whether U.S. agency action complies with U.S. law. I cannot improve on the statement prepared by the Customs and International Trade Bar Association* prepared by the Trial and Appellate Practice Committee on the constitutional issues and so simply refer the members of the Subcommittees to the CITBA submission. Multiple lines of case authority; application of U.S. law differently to imports from different countries; Article III requirements and other issues all pose significant policy issues that deserve careful consideration by the Congress.

A retired former Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit has also expressed strong doubts about the constitutionality of the binantional panel structure.

Practical Problems

Many practitioners would agree that for many of the cases that have been brought before the binational panel, the outcome was reasonably prompt and the outcome was probably justified by existing U.S. case law. That has not been true of several politically sensitive cases where concerns have been raised about the propriety of the standard of review used or whether panelists were tainted by conflicts.

To a large extent, the structure of the binational panel process and the limited appeal rights guarantee that when there is an important case before the panel, the parties are likely to be dissatisfied with whatever outcome emerges.

(a) Cultural differences mean terminology may carry different meanings to members of different nations

In one of the lumber panels, concerns were raised about possible conflict of interest issues for one of the panelists. Having discussed the matter with U.S. and Canadian lawyers, I am convinced that much of the problem may flow from the different structure of law firms in Canada, different construction of the term within Canada or other reasons having nothing to do with lawyers deliberately flaunting conflict requirements of the panel process.

While the U.S. and Canada have similar common law systems, the same is not true for Mexico and will not be true for other countries which may join NAFTA in the future. It is questionable whether the member countries can anticipate all of the likely areas of unintended misunderstanding flowing from cultural or practice differences. If the issues are not anticipated, fully articulated with commonly understood standards adopted, the panel process will always be subject to concerns of bias and misconduct.

---

* I am currently a member of the Board of Directors of CITBA but was not involved in the drafting of the paper; as a Board member I did provide comments and voted for the paper's adoption.

(b) Many of the panelists in fact have no background in the standard of review used by the national courts

Most of the panels to date have been either challenges of U.S. antidumping or countervailing duty determinations or challenges of Canadian determinations. Many of the Canadian panelists have been non-lawyers who do not necessarily understand either U.S. or Canadian standards of review. But even for the lawyers, one of the often voiced concerns of panelists has been the difficulty in understanding and properly applying the national court's standard of review. Thus, one can anticipate claims that regardless of the verbiage used in a decision, panelists from a different country are in fact applying the standard of review from their home courts. Since the appeals process to date has not proven capable of dealing with claims of an improper standard being applied in fact, there is no institutional way to resolve the problem in an individual case.

Nor does there appear to be significant training done by the Secretariats involved of panelists on how the standards actually work, nor are retired judges from the national courts used as advisors to counsel the panelists on consistency with standards.

Hence, anytime a party loses a panel and one or more of the votes against the party are from nationals from the other country, concerns about the propriety of the decision are likely to be present.

(c) The limited appeal process forces parties to look for signs of impropriety

Because the structure of the binational process assumes the elimination of appeals in most situations, companies who perceive their interests are not protected by a panel decision are left with two unattractive options: accept a decision they believe is wrong; challenge the panel process as tainted. In politically sensitive cases, there is huge pressure to get a second opinion of an adverse ruling. As long as the only way to do that is accuse the panelists of some form of wrongdoing, there will never be respect for the institution.

(d) There is no way to prevent votes along national lines from appearing biased

The panel process does not require unanimity. While many panel decisions have been unanimous and many others do not exhibit panelists voting along national lines, there have been cases and will be cases in the future where votes end up cast with each country's panelists supporting the position of their respective governments. The bona fides of such votes is irrelevant. Such votes will always appear to be tainted.

(e) There is no way to prevent the appearance of impropriety when panelists are practicing trade lawyers

I have had the great privilege to know many of the panelists from the U.S. roster over the years. I have also had the privilege of meeting a number of Canadian panelists. All are, in my opinion, honorable practitioners who have taken the responsibility of serving as a panelist with the utmost seriousness. However, it is highly unlikely that <u>any</u> legal issue (including the application of law to facts) that would arise in a panel proceeding would <u>not</u> be confronted in another case in which the panelist is involved. Thus, no matter how honorable the panelists involved or how objective they have been in carrying out their function as panelists, where a vote

goes against a party, practicing lawyers from either country can be accused of the appearance of impropriety.

The result of these various practical problems of the existing panel process is that antidumping and countervailing duty decisions appear much more political than is good for the system. The panel process exacerbates that problem.

Court proceedings are much more timely now

At the time that the U.S.-Canada FTA was negotiated, some argued that the time to get an administrative decision challenged in the U.S. Court of International Trade was excessively long. Whatever the merits of the claim in the late 1980s, time lines at the CIT are significantly shorter today,* with additional changes being considered which would reduce time lines further. Indeed, the CIT has achieved dramatic results in moving the massive steel litigation through the court for all countries in extremely short time periods.

Moreover, panels have been confronted with the same need for remand and possible reconsideration as face the Court of International Trade, so some of the assumed time savings in panel cases have not materialized.

Thus, there is little justification from a time saving point of view for maintaining binational panels.

WTO is the Proper Forum for Our Trading Partners to Negotiate Changes, if Any, to U.S. Law and Practice

Trade laws are supposed to be applied to all countries equally. Indeed, MFN obligations of the WTO should raise serious concerns about efforts of individual countries to obtain differential treatment under the laws. If Canada, Mexico or any other trading partner is dissatisfied with U.S. law and practice, their remedy is either to seek multilateral negotiations on the matter through the WTO or, where U.S. action is believed to be contrary to existing GATT obligations, to seek dispute settlement in the WTO. Panel review is not the appropriate place to resolve questions over agreement construction.

2. Negotiating Objectives

During the extension of fast track authority in 1988, Congress outlined a broad array of negotiating objectives for the Administration. Many of those objectives were taken up as part of the Uruguay Round. Others had not been included in the Uruguay Round negotiating mandate in 1986 and have been addressed, if at all, in bilateral or other fora.

As Congress considers extension of fast track authority, I believe it would be important to evaluate whether certain of the 1988 objectives have not been addressed to date and if so to include those as objectives identified for the use of fast track authority. See, e.g., my statement to the House Ways and Means Committee's Subcommittee on Trade, Hearings on Uruguay Round, November 5, 1993. Such a list should include 19 U.S.C. 2901(a)(5)(current account surpluses), (6)(trade and monetary coordination -- some advance in WTO; some at G-7 level), (7)(D)(agricultural problems re excess production), (8)(C)(enforcement of GATT rules re state trading enterprises

---

* The Clerk of the U.S. Court of International Trade presented information on the reduction in time lines for customs litigation and litigation of trade cases during the Ninth Judicial Conference on November 16, 1994, in New York City.

and acts requiring substantial direct investment -- some progress in WTO), (11)(foreign direct investment), (13)(specific barriers -- some progress made each year), (14) (worker rights), (15)(access to high technology) and (16)(border taxes).

In addition, it is critical that the United States make a top priority to obtain multilateral rules that address the types of border and internal barriers that have frustrated U.S. manufacturing, agriculture and service industries from obtaining greater market access in Japan and other of our trading partners around the world. With binding dispute settlement procedures now in place, the U.S. cannot afford to be locked into a system where market barriers in the U.S. can be addressed through the multilateral system but the barriers of our major trading partners cannot, and cannot be dealt with through U.S. law without threat of WTO challenge and retaliation. The current challenges by the U.S. and Japan on autos and auto parts present a major challenge to the adequacy of the multilateral system to secure fair market access to all markets. While I remain optimistic that the WTO will prove able to deal with the systemic problems in a country like Japan through the dispute settlement process, fast track legislation should authorize tackling such uncovered areas (e.g., trade and competition policy, investment, harmonization of regulatory areas, etc.) on a high priority, so our rights and our trading partners' obligations are clear.

I appreciate the opportunity to provide written comments.

Sincerely,

Terence P. Stewart

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U.S.-CHINA TRADE RELATIONS AND RENEWAL OF CHINA'S MOST-FAVORED-NATION STATUS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 23, 1995

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HEARING ON U.S.-CHINA TRADE RELATIONS AND RENEWAL OF CHINA'S MOST-FAVORED-NATION STATUS

TUESDAY, MAY 23, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 1100, Longworth House Office Building, Hon. Philip M. Crane (chairman of the subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
May 2, 1995
No. TR-9

CONTACT: (202) 225-1721

CRANE ANNOUNCES HEARING ON U.S.-CHINA TRADE RELATIONS AND RENEWAL OF CHINA'S MOST-FAVORED NATION STATUS

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on U.S.-China trade relations, including the question of renewing China's most-favored nation (MFN) status. **The hearing will take place on Tuesday, May 23, 1995, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

Oral testimony at this hearing will be heard from both invited and public witnesses. Also, any individual or organization may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

Non-discriminatory MFN trade status was first granted to the People's Republic of China on February 1, 1980, and has been extended annually since that time. Annual extensions are granted based upon a Presidential determination and report to Congress that such an extension will substantially promote the freedom of emigration objectives in Title IV of the Trade Act of 1974, the so-called Jackson-Vanik amendment. Subsections 402 (a) and (b) of the Trade Act set forth criteria which must be met, or waived by the President, in order for the President to grant MFN status to non-market economies such as China.

The annual Presidential waiver authority under the Trade Act expires on July 3 of each year. The renewal procedure requires the President to submit to Congress a recommendation for a 12-month extension by no later than 30 days prior to the waiver's expiration (i.e. by not later than June 3). The waiver authority continues in effect unless disapproved by Congress within 60 calendar days after the expiration of the existing waiver. Disapproval, should it occur, would take the form of a joint resolution disapproving the President's determination to waive the Jackson-Vanik freedom of emigration requirements for China.

FOCUS OF THE HEARING:

The focus of the hearing will be to evaluate overall U.S. trade relations with the People's Republic of China, and to consider the extension of MFN status for China for an additional year on the basis of that country's emigration performance. The Subcommittee will be interested in hearing testimony on China's emigration policies and practices; on the nature and extent of U.S. trade and investment ties with China and related issues; and on the potential impact on China, Hong Kong, and the United States of a termination of China's MFN status.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202) 225-1721 no later than the close of business, Thursday, May 11, 1995. The telephone request should be followed by a formal written request to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-6649.

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are required to summarize briefly their written statements in no more than five minutes. **THE FIVE MINUTE RULE WILL BE STRICTLY ENFORCED.** The full written statement of each witness will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statements for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 1:00 p.m., Friday, May 19, 1995.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement by the close of business, Friday, June 2, 1995, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

*****

Chairman CRANE. Good morning. Today's hearing of the Trade Subcommittee concerns the question of renewing China's MFN (most-favored nation) trade status and, thereby, preserving U.S.-China trade relations.

I want to welcome the witnesses and thank them for taking time to address this issue which the Trade Subcommittee must consider on an annual basis. Under the Jackson-Vanik amendment, Congress will receive a recommendation from President Clinton before June 3 regarding the renewal of China's MFN status. Although the Jackson-Vanik statute speaks specifically to immigration practices, the congressional debate over China's MFN status always covers the many difficult issues in U.S.-China relations, including human rights.

Last year, in a decision I strongly supported, President Clinton announced his intention to separate the pursuit of human rights objectives from the annual extension of MFN. As my colleagues know, I have long held the view that increased trade with China will strengthen U.S. influence in the region and lead to the advancement of human rights.

A policy of engagement, as frustrating as it can be, is the only effective way to encourage political reform in China. The subcommittee met on March 9 to hear from Ambassador Kantor regarding the U.S.-China agreement on intellectual property rights, and China's proposed accession to the WTO (World Trade Organization) which this subcommittee is monitoring closely.

Today's hearing will continue that discussion and give representatives from the private sector a chance to give their views on the complex issue of U.S.-China trade relations.

Again, I want to welcome the witnesses and apologize that we only have about 3 hours for today's hearing, so if you would be so kind as to summarize your comments, within 5-minute timeframes, and elaborate for the hearing record, if you wish.

Now, I would like to ask for comments from our first witness, our distinguished colleague from New York, Mr. Solomon.

STATEMENT OF HON. GERALD B. SOLOMON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SOLOMON. Well, Mr. Chairman, and members of the subcommittee, I appreciate very much the opportunity of joining with these good colleagues in appearing before the subcommittee today to discuss with you the subject of renewing for another year the MFN status of the People's Republic of China. With your permission I will present a somewhat abbreviated version of my prepared statement.

Mr. Chairman, there can be no doubt as to where the President's recommendation on renewing MFN for China, this next year, will be. Having abandoned last year any pretense of maintaining a human rights component in the U.S.-China dialog and being willing, evidently, to countenance the decline of U.S. military power and political influence in the Far East, the President can be expected to recommend business as usual for another year.

Rumor has it that he will announce his recommendations at some point during the week of May 29 when Congress is out of session. Accordingly, Mr. Chairman, and Members, I will introduce a

resolution of disapproval as soon as Congress returns to Washington during the week of June 5.

Mr. Chairman, 1 year ago this month, President Clinton severed the link between human rights and the annual renewal of China's MFN status. The Chinese Communist regime responded by issuing an official statement, through its foreign ministry that called upon the United States to show—and I would like you to listen up to this, Mr. Chairman—called on the United States to show "sincerity" and to take "concrete action" toward improving U.S.-China relations."

Think about that for 1 minute. Can you imagine? We hand them a $29 billion trade surplus in 1994, alone, and soft-pedal our own other concerns and still the dictators in Beijing call on us to demonstrate sincerity, and to take concrete action?

That is what they said and here is what I said at the time. On August 9, 1994, when the House considered my resolution of disapproval, I listed a litany of abuses that have taken place in China in the context of 14 straight years of MFN treatment, 14 years. I concluded by saying, "No, Mr. Speaker, appeasing China does not earn us their respect and their cooperation; it earns us their contempt," and it does.

Now, listen to these words: "Frankly, on the human rights front the situation has deteriorated." Now, who said that? It was not Jerry Solomon. That was Assistant Secretary of State Winston Lord, last January 11, some 7 months after human rights considerations were delinked from MFN. What a shocker.

"On the human rights front the situation has deteriorated," but then Mr. Lord went on to say, "China is a somewhat difficult partner these days." Well, hello, gentlemen and ladies. Few things in life are more unsettling than the sight of a crestfallen U.S. diplomat expressing his disappointment at the intransigent behavior of a Communist regime.

My only question is, partner in what? It is precisely this kind of muddled thinking that a recent editorial in the San Francisco Examiner had in mind when it noted that the "Clinton administration proves that once you get rolled, it is easier to get rolled again. The Chinese have little reason to think that the United States will make good on any threat," and that seems to be what our foreign policy is all about these days.

The Examiner editorial concluded, "Instead of calling the shots, the United States is treated by the Chinese as a bothersome supplicant." Mr. Chairman, "Such a back of the hand treatment should not come as a surprise. For years the United States has seen how China treats its own citizens * * *."

Mr. Chairman, and Members, I actually do fear that we have entered into a kind of partnership with China, but certainly not the kind of partnership that Winston Lord had in mind. It is a partnership that reveals that some elements in the American business community—and this is coming from this probusiness conservative Republican—it reveals that some elements in the American business community are so anxious to make a quick buck in China and their supporters in government are so anxious to curry favor with the dictators in Beijing, that there is no policy or practice carried out by the Chinese Communist regime that we are not prepared to

tolerate in the interests of preserving business as usual. I resent that.

U.S. exports to China, which were already low to start with because China does not give MFN treatment to the United States, rose by 60 percent in the 5 years between 1989 and 1994. During the same period, since the Tiananmen Square massacre, Chinese exports to the United States rose by how much?—223 percent. Our trade deficit with China has gone up by a staggering 377 percent to a level of $29.5 billion in 1994, alone.

In 1989 about 23 percent of China's total exports came to the United States, 23 percent, that was a lot, right? By 1994 that figure had risen to nearly 37 percent. Almost one-half of China's exports come to the United States of America.

Mr. Chairman, the trade deficit we are running with China will approach $40 billion this year, and within 2 years, it will be larger than the one we have with Japan. What are we doing here?

What do we have to show for all this? Or more specifically, what progress could be pointed to by those who advocate trade or "commercial engagement,"—to use the administration's term—as the means for getting the Chinese regime to modify and reform its course? The answer is already in, Mr. Chairman, as far as human rights are concerned. Things have gone from horrible to even worse, if that were even possible.

One effort after another to try to get China to open up has failed. That is not me saying it. That was the State Department saying it, Mr. Chairman.

Mr. Chairman, my colleagues here with me on the panel can supply chapter and verse information on human rights abuses in China. I would just note that the use of forced labor in the manufacture of export products is so pervasive today and is now so generally acknowledged, that only the most serious allegations even get investigated any more. That is how far we have deteriorated in this country in supporting human rights in China.

Mr. Chairman, and Members, before concluding my testimony I want to discuss a vitally important issue that is only now starting to get the international attention that it deserves. It is so very serious to the future of this world of ours.

China's defiance of the nuclear nonproliferation regime is well known by all of us. So also is the fact that China is the only country on Earth that does not observe the moratorium on nuclear testing, and you all saw what happened in the past 3 weeks. But only now is notice being given of the rapid and unwarranted buildup of military power that China has been pursuing since 1989.

You ought to listen to these facts and these are facts. As long ago as 1980, China successfully test-fired an ICBM capable of delivering a nuclear warhead to a target up to 8,000 miles away. But until 1989, most credible outside observers regarded the Chinese Armed Forces as being a rather cumbersome, bloated, politicized, and somewhat antiquated operation that might prove to be more of a hinderance to China's superpower ambitions than anything else.

Well, Mr. Chairman, all of that has changed since 1989. The gradual decline in military spending that had been since the late seventies was reversed decisively in the aftermath of Tiananmen Square. In 1994, alone, military spending in China rose by 22 per-

cent—that is just this past year—rose by 22 percent over the previous year which, itself, had seen a 13-percent increase over the year before that. That is almost a 50-percent increase in 2 years.

All told, Chinese military spending has more than doubled since 1989. These figures that I have cited represent only the tip of the iceberg. They are the figures which the Chinese regime publishes officially. The true cost of research and development, procurement, and subsidies to the defense industry are spread and hidden throughout China's national budget. That is not the part that they even admit to.

Mr. Chairman, along with this dramatic acceleration in military spending, China has totally revised its military doctrine since 1989. The historic reliance on a huge land-based army has been replaced by new emphasis on the building of an expanded and survivable nuclear strike capability. This is what the rest of the world better wake up to, Mr. Chairman, the development of a modern navy.

Listen to this, since the late eighties, and aside from the rapid expansion in its fleet of surface ships, China has launched 11 submarines, each to be armed with 12 short-to-intermediate range missiles capable of delivering a nuclear warhead to a target up to 3,500 miles away. Think about that. What are they doing with those 11 submarines with those kinds of weapons?

Mr. Chairman, in preparing this testimony I was absolutely astonished to learn that the authoritative Jane's Information Group, based in London, has estimated that if present economic trends in China continue, and if military spending continues to grow at its present rate, just by the year 2000, right around the corner, China will have the second-largest defense budget in the world and it could total well over $100 billion.

Mr. Chairman and Members, all of this is taking place at a time when virtually every other country on Earth is reducing its military spending, including us. The irony is that through our trade deficits we, Americans, are paying for it. We are financing this dangerous military buildup in China.

Mr. Chairman and Members, I have made an unusually long statement today because of my rock-solid conviction that the United States policy toward China is wrong-headed, and I think it is leading us toward disaster. I believed this under President Bush, and I believe it under President Clinton. When are we going to see the Chinese regime for what it really is? It is a remorseless, ambitious, amoral, cocky, Communist dictatorship that is bent on spreading its Communist tentacles throughout the entire Far East and, God knows, where else when you look at that kind of military buildup.

Mr. Chairman, I would just say this in closing. While granting MFN to China, over the last 14 years, while at the same time denying it to the Soviet Union, we saw communism crumble in Eastern and Central Europe. We did not give them MFN. We treated them for what they were, "An evil empire," to quote my hero, Ronald Reagan. But we saw communism flourish in China where a deadly atheistic philosophy continues to persecute hundreds of millions of innocent people.

Just look at today's Washington Post Reuters story that reports, "A new wave of suppression unfolding on a large scale." My friend, Mr. Wolf, will elaborate on that I am sure when his turn comes.

Mr. Chairman, it is time we stopped aiding and abetting this kind of inhumane treatment of decent human beings. It is time we once again became respected leaders of the world in standing up for the basic human rights of all people. We were noted for that. What happened to this great country of ours?

Mr. Chairman, one single vote to temporarily interrupt this most-favored-nation status will send shock waves through the old Communist leaders in Beijing, and I guarantee you it will get results. It is hitting them up side the head with a 2 by 4, Charlie. You know what that does? It wakes them up. You know what, they will come around.

I urge you to give favorable report to my resolution disapproving this approval when it comes before your panel. Let me just assure you on a light note of one thing. When it comes before the Rules Committee, I guarantee you it will get favorable treatment. [Laughter.]

Thank you, very much.

[The prepared statement follows:]

STATEMENT
BY
REPRESENTATIVE GERALD B. SOLOMON
TO
THE SUBCOMMITTEE ON TRADE

May 23, 1995

Mr. Chairman and Members of the Subcommittee,

I appreciate very much the opportunity of joining with these good colleagues in appearing before the Subcommittee today to discuss with you the subject of renewing for another year the most-favored-nation trade status of the People's Republic of China.

The President is, as Members know, required by law to submit to Congress by June 3 his recommendation on whether or not MFN status for China should be renewed. And rumor has it that the President will indeed submit his recommendation this year at some point during the week of May 29, when Congress is out of session.

There can be no doubt as to what his recommendation will be. Having abandoned last year any pretense of maintaining a human rights component in the U.S./China dialogue, and being willing evidently to countenance the decline of U.S. military power and political influence in the Far East, the President can be expected to recommend business-as-usual for another year.

Accordingly, Mr. Chairman and Members, **I will be introducing a resolution of disapproval** as soon as Congress returns to Washington during the week of June 5.

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One year ago this month, when President Clinton severed the link between human rights and the annual renewal of China's MFN status, the Chinese communist regime responded by issuing an official statement through its Foreign Ministry:

"The current situation offers a historic opportunity for the enhancement of Sino-American relations. We hope that the U.S. government, on its part, will take a realistic and forward-looking stand in the overall interests of Sino-American relations and take concrete action to show its sincerity for enhancing relations."

Can you imagine that? We hand them a $29 billion trade surplus in 1994 alone and softpedal our other concerns, and still the dictators in Beijing call on us to demonstrate "sincerity" and to take "concrete action."

That is what they said. Here is what I said. On August 9, 1994, when the House considered my resolution of disapproval, I listed all of the abuses that have taken place in China "in the context of 14 straight years of MFN treatment." And I concluded, **"No, Mr. Speaker, appeasing China does not earn us their respect and their cooperation. It earns us their contempt."**

Now listen to these words: "Frankly, on the human rights front, the situation has deteriorated." That was Assistant Secretary of State Winston Lord last January 11 -- some seven months after human rights considerations were delinked from MFN. What a shocker! "On the human rights front, the situation has deteriorated."

But then Lord went on to say, "China is a somewhat difficult partner these days." Well, hello? Few things in life are more unsettling than the sight of a crestfallen U.S. diplomat expressing his disappointment at the intransigent behavior of a communist regime. My only question is: Partner in what?

It is precisely this kind of muddled thinking that a recent editorial in *The San Francisco Examiner* had in mind when it noted that the Clinton Administration proves that "once you get rolled, it's easier to get rolled again. The Chinese /have/ little reason to think that the United States will make good on any threat."

The *Examiner* editorial concluded: "Instead of calling the shots, the United States is treated by the Chinese as a bothersome supplicant. Such back-of-the-hand treatment shouldn't come as a surprise. For years, the United States has seen how China treats its own citizens..."

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Mr. Chairman and Members, I actually do fear that we have entered into a kind of partnership with China, but certainly not the kind of partnership that Winston Lord had in mind.

It is a partnership that reveals some elements in the American business community are so anxious to make a quick buck in China, and their supporters in government are so anxious to curry favor with the dictators in Beijing, that there is no policy or practice carried out by the Chinese Communist regime that we are not prepared to tolerate in the interest of preserving business-as-usual.

U.S. exports to China --- which were already low to start with because China does *not* give MFN treatment to us --- rose by 60% in the five years between 1989 and 1994.

During that same period, since the Tiananmen Square massacre, Chinese exports to the United States rose by 223%. And our trade deficit with China has gone up by a staggering 377% --- to a level of $29.5 billion in 1994 alone. In 1989, about 23% of China's total exports came to the United States. By 1994, that figure had risen to nearly 37%.

The trade deficit we are running with China will approach $40 billion this year and, within two years, it will be larger than the one we have with Japan.

And what do we have to show for all this? More specifically, what progress can be pointed to by those who advocate trade or "commercial engagement" --- to use the Administration's term --- as the means for getting the Chinese regime to modify and reform its course? Open up the avenues of commerce, they say, and the good things will start to flow.

The answer is already in as far as human rights are concerned. Things have gone from horrible to worse, if that was even possible. The State Department's own report for 1994 acknowledges that the Administration's efforts to get China to permit the International Committee of the Red Cross to visit Chinese prisons have failed.

The Administration's efforts to get China to quit jamming Voice of America broadcasts have failed. That isn't me saying it --- the State Department is saying it. Yes, China loves our money. China loves its access to American markets. It's our ideas that have made America so successful a democracy that China cannot stand.

My colleagues here with me on the panel can supply chapter and verse information on human rights abuses in China. I would just note that the use of forced labor in the manufacture of export products is so pervasive and is now so generally acknowledged that only the most serious allegations get investigated any more.

And in my testimony before this Subcommittee last year, I cited China's new eugenics law. I said at that time that "not since the days of Nazi Germany has a government openly expressed its desire to 'avoid new births of inferior quality.' This is social engineering of a hideous nature on a potentially monstrous scale."

We have learned since then that the eugenics law has been amended so as to prohibit marriages between people who are deemed to be "medically inappropriate for bearing children, unless the parents agree to be sterilized or to take long-term contraceptive measures." The definition of "medically inappropriate" was conveniently left out of the legislation itself --- that will be decided when the law itself is enforced.

Mr. Chairman and Members, before concluding my testimony, I want to discuss a vitally important issue that is only now starting to get the international attention it deserves.

China's defiance of the nuclear nonproliferation regime is well known. So also is the fact that China is the only country on earth that does not observe the moratorium on nuclear testing. But only now is notice being taken of the rapid and unwarranted buildup of military power that China has been pursuing since 1989.

As long ago as 1980, China successfully test-fired an ICBM capable of delivering a nuclear warhead to a target up to 8,000 miles away. But until 1989, most credible outside observers regarded the Chinese armed forces as being a rather cumbersome, bloated, politicized, and somewhat antiquated operation that might prove to be more of a hindrance to China's superpower ambitions than anything else.

All of that has changed since 1989. The gradual decline in military spending that had been seen since the late-1970's was reversed decisively in the aftermath of Tiananmen Square. In 1994 alone, military spending in China rose by 22% over the previous year, which itself had seen a 13% increase over the year before that. All told, military spending has more than doubled since 1989.

And these figures I have cited represent only the tip of the iceberg --- they are the figures which the Chinese regime publishes officially. The true costs of research and development, procurement, and subsidies to the defense industry are evidently spread (and hidden) throughout China's national budget.

Along with this dramatic acceleration in military spending, China has totally revised its military doctrine since 1989. The historic reliance on a huge, land-based army has been replaced by new emphases on the building of an expanded and survivable nuclear strike capability and the development of a modern navy.

Since the late 1980's, and aside from the rapid expansion in its fleet of surface ships, China has launched 11 submarines, each to be armed with 12 short-to-intermediate range missiles capable of delivering a nuclear warhead to a target up to 3,500 miles away.

In preparing this testimony, I was astonished to learn that the authoritative Jane's Information Group, based in London, has estimated that if present economic trends in China continue, and if military spending continues to grow at its present rate, by the year 2000 China will have the second largest defense budget in the world --- and it could total well over $100 billion a year.

Mr. Chairman and Members, all of this is taking place at a time when virtually every other country on earth is reducing its military spending. Moreover, it is coming at a time when China's borders have been more secure than at any time in at least the last 150 years and the overall security environment in the Far East has been more peaceful and stable than at any time this century.

I sadly fear that the current sabre-rattling in the Spratley Islands, which are 900 miles from China and well within the territorial waters of the Philippines, is only a small taste of what it is to come.

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Mr. Chairman and Members, I have made an unusually long statement today --- and I have helped to force this whole MFN issue before Congress each year since 1990 --- not because I enjoy doing it just for the fun of it or because I want unnecessarily to take up the time and attention of Members. I do it because of my rock-solid conviction that U.S. policy toward China is wrongheaded and is leading us to disaster.

I believed this under President Bush and I believe it under President Clinton. When are we going to see the Chinese regime for what it truly is? A remorseless, ambitious, amoral, self-confident, even cocky, communist dictatorship that is bent on achieving regional hegemony throughout the Far East --- that's what it is. And the Far East isn't where China's ambitions stop. Believe me, a China which is not at peace with its own people will not be at peace with America.

During the Cold War, there were Members of Congress who criticized --- and rightly so, in certain instances --- some of the unsavory characters and regimes with which our government was pursuing a relationship in the interest of containing communism.

But what is our excuse now? Now that the Soviet Union has collapsed, what is the urgency of maintaining business-as-usual with the likes of Beijing? From 1945 on, we were faced with the *reality* of Soviet power and ambition. It was there --- we had no choice but to try to contain it.

But in the 1990's, we seem bound and determined to do what ever we can to help *give* the Chinese communist regime the means to realize its national ambitions. Not that the people of China will benefit. They will suffer the consequences of this folly just as surely as we will.

That is why, Mr. Chairman and Members, I pursue this fight as I do --- and I will continue to pursue it. Thank you for your attention here today.

Chairman CRANE. Thank you. Let me reiterate again that if you could be so kind to just try and confine your opening statement to 5 minutes. Anything further you have will be submitted for the record.

With that, I recognize Mr. Wolf.

STATEMENT OF HON. FRANK R. WOLF, A REPRESENTATIVE OF CONGRESS FROM THE STATE OF VIRGINIA

Mr. WOLF. I will submit my whole statement and just let me summarize. One, when this bill came up before and the argument was about delinking, in all honesty while I strongly opposed it, you could have argued that delinking could have brought about favorable human rights. We know delinking has been a total immoral failure. It just has not worked.

Look at all the cases. Slave labor is increasing and goods coming into this country made by slave labor are increasing. The MOU (Memorandum of Understanding) has totally failed. So we know that. We also know that persecution of human rights has increased. It has gone up. So that delinking has had no impact whatsoever.

We know with regard to the nuclear testing that it has not worked. We know that they are selling weapons to terrorists in the Middle East. We know that is taking place so it has not worked.

We also know, with regard to religious persecution, it has increased. On Monday or Thursday, 140 Christians were in a church and they were raided, taken away, and many of them have not been found. So we know there has been no improvement.

On Easter Monday, the day after Easter, they came and took a Catholic Priest away, and yet, this government says absolutely nothing, and we are not even sure where they are. We know that human rights and religious persecution has increased. The Dalai Lama and Buddhists in Tibet are being plundered. We know that. There have been no concrete improvements whatsoever.

But these are issues that were around before and when the Congress, I think wrongly, voted, but I think understandably, to delink because we want trade, we had this information to go on. But there are two additional things we now have, and the subcommittee, frankly, has to focus.

I will give you data on it and documentation which we do not have the time for now, but I will let you see a video and I hope all of you will see it. We know now that since we gave them MFN, they are killing up to 10,000 young men a year, taking them out of prison, putting a bayonet in their back where they stiffen up, shooting, firing until they drop to the ground. They take them away. They cut them open and they sell their kidneys for $30,000 apiece.

We have Americans from this country going to China for kidney transplants. We also know and have proof that in some cases if you really want a fresh kidney, they will get a 24- or 25 year-old young man and cut him open while he is alive and take out both kidneys and transplant them. Because the sooner the transplantation takes effect, the better the opportunity is. We know it. The BBC has this on film. I am sure many of you have seen it, but I am going to make it available to the chairman to make sure every Member, before you vote on this, make sure you see this film.

Then, the other week, a person came in my office, just back from China, and brought in pictures which I did not want to bring because of the graphic nature. To show that what they are now doing in Chinese Government hospitals is they are selling aborted fetuses, aborted babies for human consumption, to eat, to eat!

We have the documentation. We have people looking at it. I have been down to the White House. We have asked them to investigate it. Sandy Berger has told me that he will investigate it, but we have pictures.

So I will just tell the subcommittee last year I think your vote probably made sense in the sense that if this was going to improve, then maybe to delink would have been appropriate. I did not agree with it, but I did not think you were really that far wrong, because who could say?

But now, we have tried it for 1 year. We have delinked and I will summarize, because the red light is on. We have seen increased persecution of the Christian faith. There are priests that—and Chris Smith had a hearing the other day where a nun, a Buddhist priest, and a Catholic pastor testified together. The Buddhist priest, they got him and they hung him upside down and they sprayed water on him in the winter so he literally froze. The story is unbelievable. Thirty some years in these prisons. So we know that that has not changed.

We also know that slave labor is increasing and the goods are coming into this country. We also know that. They are even mad because we are trying to get a Memorandum of Understanding which does not even work.

But now, we also know that they are killing 24- and 25-year-old young men, up to 10,000 a year, picking them out—almost like you do at a restaurant or something when you pick a side of beef or you pick a lobster out that you want—they are picking these young people out and they are shooting them, killing them, and then taking their kidneys for $30,000 and more, and selling them.

Now we know that they are taking human fetuses and selling them. This is parallel—strong statement coming—this is parallel to what the Nazis in Germany did. It is unacceptable and this Congress, in a bipartisan way, ought to stand up and reaffirm the fundamental rights that we believe in.

If you are not going to change the delinking, and I hope you do, you have got to fashion some other policy. It is inappropriate—and I will say—it is inappropriate—I was going to say something else—to continue where we are. We just cannot.

Because future generations, when we are all 10, 15, and 20 years from now sitting on our rocking chairs, and thinking about it and our grandkids and kids come up and say, dad or mom, were you in Congress back in the midnineties, when they came up with the data about eating human fetuses? We call them fetuses. Can we call them babies, because they are babies in many cases. They are babies and were you around when we had the documentation that they actually are shooting young men, my age, mom or dad, or grandpop or grandmom, for kidney transplantation?

You were in Congress. Did you do anything about it? You are going to want to say, yes, I did something about it. I strongly urge this subcommittee to do something about it. I thank you for having these hearings, and I will just submit my statement for the record.

[The prepared statement follows:]

Testimony of Rep. Frank R. Wolf (R-VA)

House Ways and Means Subcommittee on Trade
Most-Favored-Nation (MFN) Status for China
May 23, 1995

Thank you, Mr. Chairman for the opportunity to testify before the Subcommittee today. As you know, this issue has been close to my heart for several years and I am a strong opponent of the current policy of extending Most-Favored-Nation status to China.

Last year, the argument used during the MFN debate was that trade and openness was the best way to improve human rights in China. Engagement is the way to go, some argued. If we keep trading with the Chinese, our Western values of human rights and democracy will eventually rub off on the Chinese government.

But, Mr. Chairman, a year has passed and the human rights situation has not improved. The State Department's 1994 Country Report on Human Rights admitted it. Assistant Secretary of State for Human Rights and Humanitarian Affairs John Shattuck admitted it. Assistant Secretary of State for Asian Affairs Winston Lord admitted it. Dissidents are still being arrested. In the past few days, seven prominent dissidents have been rounded up and thrown in jail as the Chinese government tries to quell dissent before the six-year anniversary of the Tiananmen massacre. Four more dissidents have disappeared. Many of the detained or missing were signatories to the petition submitted to the Communist government last week demanding the release of all those still jailed for their part in the Tiananmen protest. Christians are still harassed and detained. Repression in Tibet has worsened. Our engagement policy is clearly not working. It's time to re-link Most-Favored-Nation status and human rights. It's time to revoke China's MFN.

Believe me, I wish I could sit before this subcommittee and tell you that things were getting better in China. But sadly, they have not. Religious persecution against Christians has worsened. Earlier this month, 140 Christian evangelists from Henan province were arrested as they fanned out across the country to spread the Christian message. On Easter Monday, a Roman Catholic priest was arrested after he rebuffed the Public Security Bureau's demands to cancel an Easter Mass for 600 people gathered outside his home. The same weekend, 30 to 40 Catholic leaders from the underground Roman Catholic church were arrested by the security bureau in Jiangxi Province. On April 13, a Protestant House church was raided in Shanxi Province and six pastors were arrested. A new story about the arrest of leaders or worshippers in China's burgeoning underground church emerges almost every month.

Buddhist monks in Tibet have seen an especially harsh year. The Chinese government has imposed a series of orders aimed at halting the spread and influence of Tibetan Buddhism. These actions include restrictions on the age that Tibetans can join monasteries, limits on funds monasteries can receive and expulsion of monks from monasteries deemed too large. Tibetan monks continue to be thrown

in prison, and more and more monks are being driven into exile in India where they are cut off from their families and their homeland.

But, Mr. Chairman, it gets worse. Over the past several years, a credible body of evidence has emerged that the Chinese government not only violates human rights, but it also violates human beings for profit. We now have credible evidence that internal organs such as kidneys and corneas are taken from executed prisoners and sold for around $30,000 a piece to wealthy patients from abroad needing a transplant. The BBC ran a provocative story in October of last year showing footage shot during a BBC correspondent's undercover trip to China with Harry Wu, a 19-year veteran of a Chinese gulag who has committed his life to exposing the inhumanity of China's gulag system. An April 30 article in the *Sunday Morning Post*, a prominent Hong Kong newspaper, reported that 20 kidney patients had gone to the military hospital in Guanzhou to await transplants just prior to the May 1 national holiday -- a day on which a large number of executions traditionally take place in China. The patients had been told by doctors that their kidneys would come from executed prisoners, would be sent to the hospital immediately after the execution and would cost up to $200,000.

The Chinese government has admitted to the practice of using prisoners' organs, but says it only uses organs from executed prisoners if the prisoner or the prisoner's family gives consent or if the corpse is uncollected.

According to testimony heard earlier this month at a Senate Foreign Relations Committee hearing on this subject, this is not true. Gao Pei Qi, a former official in China's Public Security Bureau who oversaw dozens of executions, said that the consent of the donor is rarely sought before the execution takes place. In fact, he said, the family is held in house arrest during the execution. Harry Wu testified at the same hearing that once a person is convicted of a political crime and sentenced to death, the family typically denounces the prisoner and refuses to pick up the body.

Political dissent is a crime punishable by death in China and the Chinese judicial system falls far short of internationally accepted standards. There is no telling how many executed prisoners are put to death wrongly. Mr. Wu, when asked whether executions were accelerated in order to obtain the appropriately matched organs for transplant, told the Foreign Relations Committee that before an execution takes place, death row prisoners undergo medical testing. Mr. Gao testified that in Shenzhen province where he was employed with the Public Security Bureua, 20-30 death row prisoners are held in reserve prior to each execution. We can only assume that prisoners are selected for execution according to medical needs. But the U.S. remains silent.

Human organs are not the only kind of human flesh being sold for profit in the People's Republic of China. In early April, a reputable English-language newspaper in Hong Kong, the *Eastern Express*, ran a front-page story alleging that human fetuses are being sold as health food in government-run hospitals and private

clinics. The allegations were based on a one-month investigation by reporters from *Eastern Express* newspaper and its sister publication *Eastweek* magazine. I have asked a number of private groups and the administration to look into these allegations.

Selling human fetuses for internal consumption -- which most would call cannibalism -- is beyond the pale in my opinion. We should be concerned about this practice because of China's repressive one-child policy, which continues to result in reports of forced abortion and sterilization in various regions of China.

In the area of slave labor, the policy of engagement has not resulted in greater compliance with the Memorandum of Understanding between the U.S. and the People's Republic of China governing the export of goods manufactured with slave labor. Last fall, Harry Wu revealed evidence that artificial flowers and green tea manufactured in China's gulags with slave labor is still being sold in the United States. The Chinese government has been slow to arrange those prison visits requested by the U.S. government in compliance with the MOU and places many restrictions on U.S. officials during the visits.

For example, U.S. teams are not allowed to take photos or remove (or pay for) samples of the good being produced. When government officials are allowed official visits, they usually find nothing because the prison has been sanitized. Last year, when a U.S. consulate official made an undercover visit to prison #1 in Yunaun province a day after an official visit, she collected enough information to prove in a U.S. federal court that the diesel engines manufactured at the prison had been exported to the United States. The Chinese government is not complying with the MOU and our policy of engagement is not helping them do so.

China's democrats are preparing and re-energizing for transition in the Post-Deng era. What we do this year could have a profound impact on the direction of the transition. In an essay printed in the *New York Times* on Monday, William Safire put it this way, "Too many of us fall for subtle interpretations of maneuvering inside the Forbidden City as if it were comparable for jockeying for leadership within our Republican Party. Forget that inside Ping-Pong, because the stakes are of a different magnitude: The after-Deng convulsion will determine whether a billion-plus people will progress toward democratic stability - or regress to rigid totalitarianism that would lead to civil war within a nuclear power. That's why we should be more actively on the side of the dissident scholars and students." The current U.S. policy is not on their side.

Wang Dan, a man in his early twenties who has already been in jail numerous times for his leadership in democracy activities, was imprisoned this weekend. After threatening to starve himself, Mr. Wang said "I am willing to exchange my life for the Chinese government promising to carry our democracy and reforms." The weak United States policy must be demoralizing to this brave activist.

I have presented some examples of how the U.S. policy of

engagement has been a failure when it comes to improving human rights in China. You will hear many more examples before the end of this hearing. History has shown us that when the U.S. gets tough, the Chinese government listens. This was illustrated in February when U.S. Trade Representative Mickey Kantor threated to impose $1 billion in sanctions unless an agreement on intellectual property could be reached. The MFN threat works the same way. We must get tough in order to promote those values which the United States holds dear -- life, liberty and the pursuit of happiness. Revoking MFN is the only way to improve human rights in China. It must be tried.

Chairman CRANE. Thank you, Mr. Wolf.
Mr. Kolbe.

STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you, Mr. Chairman. I will keep my remarks brief and I appreciate the subcommittee holding these hearings. I think it is very important.

Let me just say to my colleagues who are with me at this table, their commitment to human rights and to freedom and democracy around the world, I think, are well known and I salute them for this strong commitment. Certainly, both Mr. Solomon and Mr. Wolf have been a voice of conscience for all of us here in the Congress.

Our economic stake in maintaining trade with China is well known so I am just going to limit my testimony to the question of linking of human rights in China to the renewal of the MFN, most-favored-nation trade status.

It is no secret to this subcommittee or to the people that are here that I believe that President Clinton and, before him, President Bush, made the right decision—certainly President Clinton, last year, when he decided to delink the issues, to extend China's MFN status without the conditionality.

Does this mean that I do not care about the kinds of things we have heard here this morning about human rights in China? No. Absolutely nothing could be further from the truth. The issue is not whether we support basic human rights for people in China and elsewhere around the world. All of us that are here today support those goals. The issue is how we can best promote those human rights. The issue is not one of the statistics we heard, but rather it is one about the policy that we should use. None of us would disagree with many of the descriptive and horrible things that we have heard from Mr. Wolf that are going on in China. The question is, what can we do about it?

I think that it has been shown over and over again, that we can best advance human rights, not only in China but in other countries, by conducting trade with them. In this case, that means by extension of the MFN status.

That is not a contradiction of terms or of policy, because the best foreign policy tools available to us to encourage political reform abroad are those that promote capitalism, market reform, and free trade. They are all powerful levers for political change. I can point to country after country where this has taken place.

Precisely, they are powerful tools because they are powerful mechanisms for economic change. Our foreign policy toward China should embrace these tools. We do not condition them. They are precisely the tools we can use to promote the evolution of Chinese society so that its people will be able to press for political reform from within.

They are the tools that we need to stimulate Chinese society to adopt a more pluralistic and democratic political process. That, in turn, will inevitably lead to greater respect for human rights and personal liberty. All of us understand that sometimes it does not happen on the timetable that we would like.

But I think it is clear, as we look around the world, there is example after example where we have supported the proposition of economic freedom and market reform which ultimately has led to political reform.

Now, some will argue that this diminishes the commitment that the United States has to human rights. Nothing, I think, could be further from the truth.

We must not abandon our promotion of human rights or democratic principles around the world. But to revoke or limit trade with China would actually retard the cause of human rights in China. It means we leave the playingfield.

U.S. economic sanctions harm the emerging Chinese private sector, particularly the dynamic market-oriented provinces in Southern China—all of which depend tremendously on trade. This would weaken the very forces in China that are pressing the hardest for economic and political reform.

The question of revoking MFN or conditioning trade with China has never been whether or not we condone political repression or human rights abuses in China, because none of us do. The fundamental question is this, what actions will further democratic reforms in China?

My own firm belief is that we can ill-afford to undermine reform-minded Chinese who have come to depend upon economic opportunity as a means of ultimately achieving political freedom in that country.

So, again, I would just suggest that it is not the goals that we seek that is at issue here, but it is the means by which we achieve those goals. I am convinced that history bears out my argument because it has been borne out in country after country that economic involvement, that trading with countries, does bring about political freedom in countries around the world.

Thank you, Mr. Chairman.

[The prepared statement follows:]

The Honorable Jim Kolbe
Testimony before the Ways and Means Subcommittee on Trade
May 23, 1995

Thank you very much for the opportunity to testify today. I commend the Subcommittee for holding hearings on the important issues related to U.S.-China trade. As the United States' economic stake in maintaining strong trade ties with China is well known, I will limit my testimony to the question of linking the issue of human rights to renewal of China's Most Favored Nation (MFN) trade status.

I feel strongly that President Clinton made the right decision last year when he made the decision to extend China's MFN status without conditions on human rights. Does this mean I don't care about human rights in China? No, absolutely nothing could be further from the truth. The issue here is not whether we support basic human rights for people in China, and elsewhere around the world; we all support those goals. The issue is how we can best promote human rights.

I believe that we can best advance human rights in China by granting China unconditional extension of MFN. That is not a contradiction of terms or policy. The best foreign policy tools available to us to encourage political reform abroad are policies that promote capitalism, market reform, and free trade. All three are powerful levers for political change, precisely because they are powerful mechanisms for economic change.

Our foreign policy towards China should embrace these tools, not condition them. These are precisely the tools we can use to promote the evolution of Chinese society so that its people will be able to press for political reform from within. They are the tools to stimulate Chinese society to adopt a more pluralistic and democratic political process. That, in turn, will inevitably lead to a greater respect for human rights and personal liberty. Currently, there are many examples around the world which support the proposition that economic freedom and market reform ultimately results in social and political reform.

Some will argue that this principle diminishes the U.S. commitment to human rights. Nothing could be further from the truth. The U.S. must never abandon its promotion of human rights and democratic principles around the world.

Revocation or limitation of trade with China would actually retard, rather than promote, the cause of human rights in China. U.S. economic sanctions would harm the emerging Chinese private sector and the dynamic market-oriented provinces in Southern China, which depend on trade. This would weaken the very forces in Chinese society pressing hardest for economic and political reform.

The question of revoking MFN or conditioning trade with China has never been whether or not we condone political repression and human rights abuses in China, because none of us do. Rather, the fundamental question is this: What actions will further democratic reforms in China? My own firm belief is that we can ill afford to undermine reform-minded Chinese who now have come to depend on economic opportunity as a means of ultimately achieving political freedom in China.

Thank you again for the opportunity to testify today.

Chairman CRANE. Thank you, Mr. Kolbe.
Ms. Pelosi.

STATEMENT BY HON. NANCY PELOSI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. PELOSI. Thank you, Mr. Chairman, for having this hearing today. I am pleased to be here with the members of the subcommittee, the ranking member, Mr. Rangel, and your other colleagues on the subcommittee.

Chairman Crane, I was pleased to cosign your recent letter to President Clinton urging President Lee of Taiwan to be allowed to visit his alma mater of Cornell University. I concur with the views you expressed in the letter and hope that the newspaper reports that the President may be granting a visa to President Lee are correct, and I thank you for your leadership on that issue.

Well, it is that time of the year again. Here we are, the usual suspects, gathered around the table to talk about China MFN and whether the situation, in terms of using trade as a lever for improvement in human rights in China, is effective or not.

Just within hours of this hearing, over the past weekend, Mr. Chairman, and probably as we speak it continues in China by all reports, the Chinese Government is rounding up leading dissidents. People in this case are being defined as dissidents for signing a letter asking for reform and for the end of corruption in China.

Over the past several months, as I am sure you and our colleagues are aware, there have been a number of petitions put together by leading intellectuals and scientists in China to the leadership of that country. The most recent petition has seen some of its organizers rounded up.

This is all in addition to the fact that Wei Jingsheng is still in prison. As you may recall, he was released briefly when the Chinese were trying to get the Olympics and after that effort failed and after his meeting with Secretary Shattuck, Wei Jingsheng, the leading dissident in China, the leading advocate for prodemocratic reform, was once again incarcerated. His whereabouts are unknown.

This administration's own State Department's human rights report for 1994 notes that the human rights situation in China is deteriorating. Last year, when President Clinton delinked trade and human rights, he said he was doing so because he thought that was the way to improve human rights in China.

Clearly, that has not worked. My written statement will document some of the abuses and much can also be seen in the State Department's own report. What I would like to put on the record here is the question, why is there a double standard for China?

My colleagues and Mr. Chairman, there are three areas of concern in the Congress about our relationship with China. Human rights is one of them, trade and proliferation are the other two.

On the issue of trade, it is projected that our trade deficit with China will be $38 to $40 billion this year. Before Tiananmen Square, it was under $5 billion. It has increased 750 percent since the tanks rolled into Tiananmen Square, since over 200,000 troops came into the square to slaughter a few hundred or a couple of thousand students in the square.

One example of the double standard I mentioned—why the big fuss about Japan when we practically brush aside the lack of market access into China? I think the administration deserves credit for the work it has done on intellectual property. I wish it would use its leverage for issues other than just trade.

I hope that this time we get the horse that we have now bought three times on intellectual property—the Bush administration once, the Clinton administration twice—but hopefully this time the Chinese will abide by the agreement on intellectual property. But apart from that, the situation is such that because of lack of market access, our trade deficit will grow.

In addition to that, I see the time is growing short so I am going to move on and leave for the record some other concerns, the use of prison labor for export which can be well documented but which this administration ignores.

On the issue of proliferation, you know that this administration has chosen to ignore some of the proliferation of weapons to Pakistan. There is a big fuss about the sale of technology from Russia to Iran, while there is soft-pedaling on the same actions on the part of the Chinese to Iran. This is a very serious matter endangering the Middle East.

Again, in terms of human rights, this policy has not worked. When the President made his announcement, he said he was going to announce a statement of principles for businesses doing work in China. We have not seen it yet. He said he was going to provide funding for NGO's (nongovernmental organizations) in China who are fighting for prodemocratic reform. Indeed, this is even outlawed in China. There was supposed to be funding for radio communication into China, Radio Free Asia, for example. This has not happened. So many of the actions announced in that pronouncement 1 year ago have not taken place on the part of the administration.

Indeed, what has taken place is more growth in our trade deficit, which is unfair to American workers. I might add, the percentage between what we sell and buy from Japan is more favorable to us than what is happening in China, even though our trade deficit with China is not as high as the Japanese trade deficit.

But it will be. Next year, the year after, we will be sitting here—you may still be chairman, I do not know whether you will still be chairman. You may have gone on to higher things. But I will tell you one thing, the trade deficit will, by then, surpass the Japanese trade deficit, and we make little mention of that.

I strenuously object to the double standard when it comes to human rights, trade, and proliferation. If we are going to have any moral authority about speaking out for human rights and prodemocratic reform throughout the world, we cannot ignore what is happening in China, just because certain businesses succeed in having their exports accepted there while most products made in America are barred from the Chinese market.

With that, Mr. Chairman, I once again commend you for holding these hearings and I would be pleased to answer any questions you may have. I ask permission to have my full statement entered for the record.

[The prepared statement follows:]

Statement of Representative Nancy Pelosi
Ways and Means Subcommittee on Trade
Hearing on China MFN

May 23, 1995

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today. Chairman Crane, I was pleased to cosign your recent letter to President Clinton urging that President Lee of Taiwan be allowed to visit his alma mater, Cornell University. I concur with the views you expressed in that letter that, "it is frankly astonishing to us that we should so obsequiously allow Beijing to dictate who can or cannot visit the U.S. -- especially in light of its own general disregard for the principles of liberty and human rights for its citizens.", and I am pleased about recent news reports indicating that the Administration will allow the visit.

By June 3rd, President Clinton must once again send to Congress the Jackson-Vanik waiver for China to continue receiving Most Favored Nation trade status. At the same time, the world will be marking the sixth anniversary of the Tiananmen Square massacre.

As you know, concerns in Congress about the U.S.-China relationship have focused on three areas: human rights, trade and proliferation. In each of these areas, there continues to be growing cause for concern and, in each of them, the Administration has unfortunately exhibited an alarming double standard. A comprehensive assessment of any one of these three topics would require days worth of hearings, I will highlight only a few major points in each category.

As we sit here today, the Chinese government is detaining and arresting pro-democratic reformers and intellectuals who are daring to speak out in criticism of their government's policies. The newest round of arrests started last Friday and they continue. Over 12 petitioners have been arrested, detained or harassed.

In addition to these activities, China has thumbed its nose at proliferation concerns. Less than 48 hours after the successful conclusion of the NPT, China conducted a nuclear test at its Lop Nor site. Estimates of the size of the explosion range from 40 - 150 kilotons.

HUMAN RIGHTS

It has now been one year since President Clinton's decision to delink human rights and trade and to grant China unconditional MFN. Since that decision, which signed away our leverage with the Chinese government, the human rights situation in China and Tibet has markedly deteriorated. The State Department's own annual country reports on human rights for 1994 notes the deterioration, stating among its extensive findings that "there continued to be widespread and well-documented human rights abuses in China, in violation of internationally accepted norms...including arbitrary and lengthy incommunicado detention, torture, and mistreatment of prisoners," and that Beijing "continued severe restrictions on freedoms of speech, press, assembly and association, and tightened controls on the exercise of these rights during 1994." Further, "hundreds, perhaps thousands, of prisoners of conscience remain imprisoned or detained."

The marked deterioration in China's human rights started immediately after the President's announcement of his decision, when Chinese Premier Li Peng implemented new state security regulations which broadened the basis for restricting peaceful dissent and imposed further restrictions on freedom of expression and freedom of association. China also outlawed outside assistance to fledgling human rights groups in China. (You may recall that one of the pieces of the President's new China policy was supposed to be financial support for human rights groups in China.)

Controls are being tightened further as concerns about succession increase. Chinese authorities talk regularly about "maintaining social stability," a euphemism for clamping down on dissent. Over the past few months, a group of prominent Chinese dissidents and intellectuals, at great personal risk, has sent a

series of petitions to China's National People's Congress in support of pro-democratic reform. With each petition, their numbers grow. Over a dozen prominent dissidents, have been arrested over the last week alone, as they prepared to petition the Chinese government to commemorate the "souls of those who died wrongful deaths" in Tiananmen Square six years ago. Despite these arrests, the petition was distributed. Human rights activists expect that the round-up of dissidents and intellectuals will pick up momentum both because of succession concerns and in anticipation of the Fourth World Conference in Beijing this September.

Other examples of the Chinese government's crackdown on human rights since President Clinton's decision to delink include:

* In December, the Chinese government handed down some of the harshest sentences since the prosecutions following the post-Tiananmen crackdown. Nine dissidents, first arrested in 1992 for pro-democratic and labor rights organizing, were given jail terms of up to 20 years. Chinese officials twice postponed these trials, (a term I use loosely, since legal representation is minimal; people are generally denied right to counsel; and often do not know the charges brought against them until the time of trial) until after the President's MFN decision.
* Criminal charges are being used against political dissidents. By using such charges, the authorities can conceal the true number of political prisoners in China.
* Releases of Chinese political prisoners have come to a virtual halt. At the same time, arrests and trials continue.

Prior to the President's MFN decision, international pressure was instrumental in obtaining the release of some of China's most prominent political prisoners. In some cases, the release was life-saving. Since the decision, all leverage has disappeared and the status of some of China's best-known pro-democratic activists is unknown or their future is in doubt.

For example, Wei Jingsheng, China's most prominent dissident and a nominee for the 1995 Nobel Peace Prize, has not been seen or heard from since his re-arrest on April 1, 1994.

Tong Yi, Wei Jingsheng's assistant, was badly beaten in a Chinese prison labor camp. Ms. Tong is serving a sentence for "re-education through labor," imposed without trial, for being an "accessory" to Mr. Wei.

Bao Tong, a high-ranking political reformer in the Communist Party, detained in 1989 for his support for easing repression and now serving a seven year prison term, is seriously ill. His family's efforts to obtain a "medical parole" for him have been unsuccessful. They have not even been allowed access to his medical records.

Talks between the Chinese government and the International Committee of the Red Cross (ICRC) have been in limbo for the past year. The ICRC has been trying to negotiate an agreement to obtain confidential access to Chinese prisoners, in order to deliver the same kind of humanitarian services which they provide in other countries around the world. These negotiations constituted one of the provisions in President Clinton's May 1993 Executive Order linking continued MFN status to progress in human rights.

Absence of the rule of law

The lack of an independent judiciary and absence of the rule of law has adverse impacts for American businesses in China. Recent stories about problems faced by McDonalds, Lehman Brothers, and other companies illustrate that commercial contracts are not being honored. In addition, foreign business people are being subjected to arbitrary arrest and detention.

Crackdown on religious freedom

Catholics and Protestants who try to exercise their faith and those who refuse to comply with Chinese government religious registration requirements are subject to detention, harassment and fines.

For example, in August 1994, Chinese Public Security officials broke up an Assumption Day prayer celebration, stationing several thousand soldiers, police and hired men around

a mountain which 2,000 Roman Catholic worshippers were attempting to climb. At least 100 people were reported injured when the police, using sticks and electric batons, ended the service. At least 10 Roman Catholic church leaders detained at this time are believed to remain in custody. In November 1994, authorities in Henan province surrounded an unregistered house-church which was holding a Bible training seminar and arrested 169 local Chinese Christians. This kind of activity occurs regularly.

Repression of workers

Organizations in China seeking to defend the rights of urban or rural workers have been subject to intense repression in the past year. Despite adoption of a new labor law that took effect on January 1, 1995, worker unrest remains widespread, fueled by inflation, corruption and poor working conditions. Official Chinese Labor Ministry officials admit that at least 15,000 labor disputes took place in 1994 alone.

Unless and until China's workers are free to organize, working conditions there will not improve. Until that happens, American workers do not stand a chance. How, for example, can an American textile worker compete against someone earning 35 cents an hour, working 14 hours a day, six days a week? China's totalitarian government is particularly concerned about the potential effects of an organized labor movement and continues to take harsh steps against those individuals trying to organize.

Human rights abuses in China over the past year have been serious and legion. President Clinton's MFN decision last May gave the Chinese government a free hand to crack down on its citizens. When the President announced his decision, he unveiled a "new" policy of engagement with China, saying that the new policy would improve human rights and that "This is not about forgetting about human rights, this is about which is the better way to pursue the human rights agenda." One year later, it is clear that the Administration has not applied itself to implementing its new human rights policy and that this new policy has been a complete failure in improving human rights.

A cornerstone of the Administration's "new human rights strategy" was to be a "Statement of Business Principles," "regarding the activities of American business firms to advance human rights in China." It is now one year later. No Statement of Business Principles has yet been formally released. The Statement being circulated for comment is so vague as to be useless, and it contains no reporting procedure or enforcement mechanism. In order not to offend the Chinese dictators, the Statement being circulated is not even China-specific; instead it is amorphous and global.

A second piece of the "new strategy" was to be increased international broadcasting. Here, too, the Administration has come up short. Obtaining Congressional support for Radio Free Asia funding has not been an Administration priority; the rescissions bill passed by the House and Senate would reduce from $10 million (already an insufficient amount) to $5 million the funding for Radio Free Asia. It is also my understanding that the Administration has yet to submit its nominations for members for the Board of International Broadcasting, the body to oversee this broadcasting.

The third piece of the Administration's new human rights strategy was to be "expanded multilateral agenda." This is the only part of the strategy in which the Administration has made any effort. By all reports, the Administration's efforts to pass a resolution condemning China's human rights record at the U.N. Human Rights Commission are to be commended. Although the resolution did not ultimately pass, U.S. efforts were instrumental in overcoming China's procedural maneuverings and in defeating thé motion to table the resolution. I am pleased at this activity on the part of the Administration and wish that such an effort would also be expended in other multilateral fora, including placing China's human rights practices on the agenda for the G-7 meeting and promoting Chinese workers' rights at the World Bank.

The final piece of the human rights strategy announced by President Clinton last year when he delinked trade and human rights was support for NGOs in China. To the best of my knowledge, this support has not been forthcoming and, in fact, as

noted earlier, China outlawed such foreign assistance for pro-democracy groups shortly after President Clinton's announcement.

It is clear that there has been no progress made in improving human rights in China with this new policy. It is also clear that human rights practices in China have gotten worse since President Clinton walked away from his Executive Order and abandoned the leverage which MFN provided in pressuring the Chinese dictators to accord their citizenry the basic human rights embodied in the Chinese Constitution and in the Universal Declaration of Human Rights, to which the Chinese are signatories.

TRADE

I commend the Administration for its successful negotiations on intellectual property rights, but note with sadness that while it is willing to take talks on rights relating to objects to the brink, it is not willing to expend anything on rights relating to people. This is an unfortunate double standard.

While progress was made on this aspect of the trade front, the overall trade picture remains the object of serious concern. Our trade deficit with China, fueled in great measure by Chinese barriers to U.S. products and Chinese unfair trade practices, was approximately $29 billion in 1994. According to the Congressional Research Service, if the rate of growth continues as expected, the U.S. trade deficit with China will be $38 billion this year.

Prior to the Tiananmen Square massacre in 1989, the deficit was only $5 billion. That means in six years, the U.S. trade deficit with China has increased by 750%. We are on the brink of a trade war with Japan because it has refused to open its markets to U.S. products. At the same time, we are turning a blind eye to many of China's practices which contribute to the soaring trade imbalance. We in Congress could act, and could have acted, to address these practices. Yet, we have not, for fear of getting China mad at us. Appeasement in trade relations may help a few industries -- overall, however, it is hurting American workers, it is hurting our economy, and it is hurting us all.

One unfair Chinese trade practice of particular concern is the use of slave labor for products for export. It is against U.S. law to import into this country products made by slave labor, but, the China continues the practice.

Under President Bush, the U.S. government signed a Memorandum of Understanding (MOU) with the Chinese regarding access to prisons suspected of producing slave labor goods for export. This MOU, weak as it was, has still not been effectively implemented three years later and the Chinese government stonewalls at every opportunity. Only last month at the APEC meeting in Bali, Secretary of Treasury Rubin complained about the lack of access to re-education through labor camps in China. It is past time for this MOU to be rescinded and to be replaced with a meaningful agreement to stop this abhorrent and illegal practice.

Here as in other issues, the Administration has a double standard, tolerating practices and inaction by the Chinese government which it would not accept from others.

PROLIFERATION

While the double standard in human rights and in trade is obvious, in matters relating to the proliferation of weapons of mass destruction, it is blatant and dangerous. Most recently, the Administration has resoundingly condemned the Russians for their plans to transfer nuclear technology to Iran, a rogue state. At the same time, there has been next to no comment about the fact that the Chinese are also providing nuclear technology to Iran. The Administration has not acted as strongly toward the Chinese transfer of M-11 missile technology to Pakistan, in violation of the Missile Technology Control Regime (MTCR) as it should have, by law. And, our response to Chinese expansionist activity in the Spratley Islands has been less than forceful. China's military build-up; its nuclear test within days of the conclusion of the NPT; and its territorial expansion activities continue to raise security concerns in the Asian-Pacific region.

One common thread throughout these three main areas -- human rights, trade, and proliferation, is the Chinese government's

pattern of saying one thing and doing another; signing something and then ignoring it. China's dictators want to be a part of the global partnership, but they want to do it on their own terms. President Clinton's decision last year, after extreme lobbying pressure from the business community, to grant unconditional MFN to China, despite the fact that they had not met the conditions of the 1993 MFN Executive Order only helped to convince the Chinese leaders that they can have it all and have it on their terms. This lesson will come back to haunt us repeatedly, including in WTO accession discussions.

China's communist dictators have always believed that to capitalists, money is all that matters and that values mean nothing. Unfortunately, last year's MFN decision only proved to them what they already believed we believed. The decision demonstrated that freedom and democracy are unimportant if short-term profit is on the line. I would hope that this year's MFN decision would send a different kind of message -- but I have no such expectation.

Thank you, Mr. Chairman and the Members of the Subcommittee for this chance to appear before you today.

Chairman CRANE. Without objection it is so ordered. Thank you for your testimony and I am trembling looking heavenward, without going higher.

May I yield now to our distinguished ranking minority member, Mr. Rangel?

Mr. RANGEL. Mr. Chairman, I ask unanimous consent to have my opening statement placed in the record.

Chairman CRANE. Without objection, so ordered.

[The prepared statement follows:]

OPENING STATEMENT OF
CONGRESSMAN CHARLES B. RANGEL
HEARING OF THE SUBCOMMITTEE ON TRADE ON
U.S.-CHINA TRADE RELATIONS
MAY 23, 1995

Mr. Chairman, thank you for calling this hearing to review U.S.-China trade relations and the question of renewing China's most-favored nation trade status. This hearing is indeed timely because the Congress will receive in the next few days the President's recommendation on whether to continue to extend most-favored-nation treatment for China under the Jackson-Vanik provisions of U.S. trade law.

China continues to be a major trade policy challenge for the United States. In 1994, our second largest bilateral trade deficit (after Japan) was with China, at $29.5 billion. While China was our fourth largest source of imports at $38.8 billion, China was only our fourteenth largest export market at $9.3 billion. Clearly, this large trade imbalance is unsustainable and further steps must be taken to open the Chinese market.

I recognize that we have negotiated several trade agreements since 1992 with China in areas covering intellectual property, textiles, and access to the Chinese market, and these agreements have been worthwhile and well received by the private sector in this country. At the same time, China continues to impose significant barriers to U.S. exports. It seems to me that more needs to be done to remove these barriers and I look forward to reviewing our options with Ambassador Barshefsky and our other witnesses in this regard. In particular, I look forward to hearing about the status of negotiations on China's accession to the World Trade Organization. This negotiation is crucial to our long-term ability to sell in the Chinese market.

I also look forward to hearing from our witnesses this morning on the results of President Clinton's decision last year to delink his recommendation on MFN renewal from human rights issues and to pursue a new human rights strategy. We have learned from a variety of sources, including the Administration's own annual report on human rights issued in February, that progress on human rights in China since the President's delinkage decision last year has been disappointing. While Jackson-Vanik was designed to deal statutorily only with freedom of emigration, and not broader human rights matters, I recognize that a number of Members of Congress continue to believe that human rights should be taken into account in making MFN decisions under Jackson-Vanik. I welcome the testimony this morning of Mr. Solomon, Mr. Wolf, and Mrs. Pelosi in this regard.

Mr. Chairman, as I said at the outset, China poses a major public policy challenge for the United States. It has the world's largest population, it has an economy growing at over 10 percent per year, it is rapidly becoming one of our top trading partners, and there is tremendous potential in China for U.S. economic interests. At the same time, many in this country continue to have legitimate concerns about the direction China is headed in areas such as human rights, nonproliferation, and the political and social evolution of Chinese society. As the committee of jurisdiction with respect to our trading relationship with China, we have a special obligation to keep well informed on developments in China. Again, I look forward to hearing from today's witnesses on this important subject.

Thank you, Mr. Chairman.

Mr. RANGEL. I just would like to add that our colleagues have raised some very serious questions here and, at the same time, we have to recognize that we are dealing with the nation with the largest population in the world, and certainly our potential biggest trade market.

Having said that, the starkness in which the presentation has been made this morning, I think I would dictate to this subcommittee that we have an obligation to the American people to look into these types of violations of human rights. I would hope that those that have testified, that you might give us as much supportive information as you have, because I am certain that the Chair and other members of his subcommittee feel some sense of obligation to make certain that our country is not appearing to be so interested in trade that we would accept any type of behavior with our trading partners.

Mr. Kolbe, I just want to ask you before I move on, have you taken a position as relates to the trade embargo against Cuba?

Mr. KOLBE. No. But I do believe the time has come for us to reexamine that issue.

Mr. RANGEL. Because I do hope that the President might be able to find some type of standard so that we can all start reading from the same page in that there would be no question concerning our decision as relates to what is in the national interest and that we could remove politics from it, so that the whole world would know that our country has a moral level as well as an interest in increasing trade.

I have never heard these type of allegations that I have heard this morning with all of the faults and things that have to be corrected as relates to human rights in Cuba, but certainly the dramatic testimony I have heard here should make any civilized person want to, at least, take another look at the people that we are dealing with.

So, I am glad to see that Chairman Solomon, my friend, has an open mind on this issue. I look forward to—either privately or preferably publicly—sharing with this subcommittee, because the chairman has a very sensitive position on this. I would like to join with him in exploring it from a very bipartisan point of view.

Ms. PELOSI. Would the gentleman yield on that point?

Mr. RANGEL. Yes.

Ms. PELOSI. Mr. Rangel, I think it is important to note that this is another category in which there is a double standard as far as China is concerned. We hear everyone say it is very important for us to have most-favored-nation status, and we are not talking about an embargo or talking about not allowing China to have trade with the United States, we are just talking about most-favored-nation status.

It is very interesting to hear the administration and others of our colleagues contend that the very important way to change a society and to democratize is just through trade, while that same administration and many of those same colleagues support the embargo on Cuba.

It is hard to understand how they could justify that.

Mr. KOLBE. Mr. Chairman, if I might, since you asked the question of me, let me just say that I think one does have to examine

each case individually. There is no question that the Chinese economy is vastly different from the Cuban economy.

I think that the role that we can play in terms of trying to change China by denying our economic involvement is quite different than it is in the situation in Cuba, where you have a much different political and economic situation.

Our current policy there is much more effective from an economic standpoint. I do not think there are too many—even those up here—would argue——

Mr. RANGEL. You are saying that the embargo has, in your opinion, been effective?

Mr. KOLBE. It certainly has a much greater impact than withdrawing economic activity from China would have on that country.

Mr. RANGEL. You believe that the——

Mr. KOLBE. I believe that, yes.

Mr. RANGEL. The 40-year embargo against Cuba has had economic and political impact?

Mr. KOLBE. Yes. I definitely think it is having a political impact. Whether or not we are at a stage where it is the right thing to do to take a look at changing that is something that I think should be examined.

But I think even those that are up here at this dias, who from a very strong—and Mr. Wolf, from a very strong—moral standpoint would argue we should not be engaged in giving the same status of trade to China that we give to other countries; would probably not argue—well, maybe would—but I do not think you can argue very effectively that it will ultimately change the Chinese political system by doing that, by making any changes there, if there are too many opportunities for them to substitute others.

Mr. RANGEL. If you are taking a moral position, I do not think it makes any difference whether it changes or not.

Mr. KOLBE. OK.

Mr. SOLOMON. If I may comment, though? I do not agree because it was my amendment that took away MFN from Ceausescu and it helped bring Ceausescu down. It was one of the best things. I remember the Reagan administration, as anti-Communist as they were, continued to give MFN to Ceausescu because of business dealings. Finally the Congress hiked up its moral courage and took it away. Then we saw the barbaric things that they did to children in the orphanages, and exposure helped bring the government down.

Frankly, most of the Romanian people said, "Take it away because it is our chance for freedom." I think most of the Chinese people would be better off, in some respects, if this government left and by denying MFN, I think it would have a great impact on them.

Last, before I leave, I will send all the members of the subcommittee a copy of the video, the BBC video that documented conclusively the organ things. I will also send you the graphic pictures on the eating of, the selling of the human fetuses.

Mr. Chairman, if I might, because I have to leave to go to the Rules Committee, but as you know, I made the point earlier in my testimony, that in the past 14 years we have given the People's Re-

public of China most-favored-nation treatment, while, at the same time, denying it to the former Soviet Union.

Let me tell you, those issues did more to bring the Soviet Union to its knees than anything else. We are not talking about interrupting trade with China. I am wearing a shirt right here. It is made in upstate New York. If you remove most-favored-nation treatment from China, they are still going to be able to import shirts into this country in competition to the maker of this shirt and it will still be much cheaper.

We are still going to do business. But let me tell you something about the $40 billion in trade surpluses coming into China. You do not think that that denying MFN is going to make a difference? You interrupt that and you will see an upheaval in China because it means jobs. That is exactly what happened to the Soviet Union. So do not think that hitting them up side the head with a 2 by 4 is not going to wake up those old men in Beijing. It will.

All they are doing is pushing us to a point, and if you hold them responsible, they will come around and you know it.

Chairman CRANE. Thank you, for your responses. Mr. Lantos has just arrived. If you would like to make an opening statement, then we would ask if you could confine opening statements to 5 minutes, and any other information you have will be submitted for the record.

STATEMENT OF HON. TOM LANTOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LANTOS. I am grateful, Mr. Chairman, and I will try to be very concise.

Let me say at the outset that there is a history of our government underrating the intelligence of the Chinese Government and overrating their influence. I want to give you two examples which were, in many ways, much more dramatic than the issue that we are talking about now.

The Chinese put on a full-court press to get the Olympics in the year 2000. One of the reasons they did not get it was the resolution we passed in this body and in the Senate saying that China should not be honored by being the host to the Olympics, a game of brotherhood and sisterhood, as long as they pursue the appalling human rights policies that they do.

Our publicly stating that they are not fit to hold the Olympics was a matter of global record and nothing happened to our relationship with China. A few weeks ago I introduced in the International Relations Committee a resolution demanding that the President of Taiwan, a distinguished scholar with a Ph.D. from Cornell, be allowed to accept an honorary doctorate from Cornell.

The administration was dead set against the proposal. The House passed my resolution unanimously. The Senate passed the identical resolution 97-to-1 and today the front page of the New York Times indicates that the administration has agreed to let the President of Taiwan come here and accept his honorary doctorate from Cornell. Nothing will happen to our relationship with China because it is far too important for the Chinese to disturb that relationship.

Now, the Olympics was important. Keeping the President of Taiwan out of this country is important but a $40 billion trade surplus is a great deal more important. China has one of the worst human rights records in the world. I will not outline it, you have heard about it.

This human rights record deteriorated after President Clinton renewed MFN for China last May. It was a horrendous mistake and had we not renewed it, China would have dramatically improved its human rights record and we would be in a position to continue trade with them.

The overall U.S.-China relationship has not improved since this administration renewed MFN. As a matter of fact, China is currently in the process of selling nuclear equipment to Iran, one of the most dangerous developments on the face of this planet. China is flaunting its international obligations under the Nuclear Nonproliferation Treaty, and the Missile Technology Control Regime.

I think, Mr. Chairman, the loss of U.S. markets would be irreplaceable for China.

There is no other place they can sell their 40 billion dollars' worth of tennis shoes and toys. The notion that they will find other markets is a figment of someone's immagination. They are selling every dollars' worth of Chinese products everywhere.

Moreover, many of the factories, as you well know, Mr. Chairman, that produce products for the American market are owned by the Chinese military and the dollars they earn serve to modernize Chinese military capability.

It is absolutely counterproductive for a nation with our leverage to close its eyes to the human rights violations and the sale of nuclear technology to Iran, when principled action would bring the right results and would allow us to continue to be viewed as a country that deserves to be respected because it stands up for its principles of human rights and democracy.

Chairman CRANE. Thank you, Mr. Lantos.

Ms. Dunn.

Ms. DUNN. Thank you, very much, Mr. Chairman.

I ask unanimous consent to have my opening statement placed in the record.

[The prepared statement follows:]

STATEMENT OF REP. JENNIFER DUNN

Thank you, Chairman Crane, for the opportunity to offer a brief opening statement with regard to renewing Most Favored Nation trading status to the People's Republic of China. Today we are likely to hear the argument that the policy of delinking human rights to trade has been a failure. Perhaps some of the testimony we will hear will include accounts of individual human rights violations. We all agree that there are vast improvements to be made in China on this front. We are challenged with determining a policy that carries out the most effective method of bringing about change in China.

The infringement of human rights anywhere in the world is not something the United States should *ever* overlook. While these considerations are important, we must consider practical solutions that meanwhile have a positive affect on the lives of ordinary Chinese citizens. I remain unconvinced that it is in *anyone's* interests to cut off opportunities for the Chinese economy to grow -- growth that has a direct impact on the standard of living in Chinese society.

Society in general has been positively affected by increased trade with China. Along with increased business opportunities, Chinese men and women are beginning to have alternatives to working for state enterprises. The living standard is rising as China finds itself exposed to western philosophy, literature, concepts of freedom, travel, and the enjoyment of leisure time. The affordability of western products is improving, especially with regard to agricultural products.

Two weeks ago, the US ambassador to China told a Washington state trade delegation in China that today, 100 million people in China are able to afford imported goods. Three years from now, that number will rise to 300 million. While that may not be significant compared to China's total population, it's important to stress the point: Ten years ago, only 1 million Chinese had access to imported goods. That trend tells it all. A **100-fold improvement** over the last few years -- and today's statistics will triple by the 1998. We are making progress in the lives of every Chinese citizen.

Ms. DUNN. I had an interesting session yesterday morning with a group of businesses from my home state, back in my district, major exporters, many of whom do business with China.

Their advice to me was to consider that the best way for us to assist foreign nations and to have a good influence on them is through policies of engagement, through trade. I, too, believe that.

I look forward to hearing the rest of the people who are going to be on panels today who will have that point of view, because I think that is vitally important as we put into effect, in other nations, our standards on the environment, on labor, on human rights principles. I think that is, as Mr. Kolbe says, a very effective tool for influence.

I guess the question I would like to ask, as we see the President providing waivers from Jackson-Vanik to China, I would like to know, Mr. Kolbe from you, is MFN, does it continue to be an effective policy for trade, an effective tool?

Jackson-Vanik, has it worn out its usefulness?

Mr. KOLBE. I think my personal view is, yes, I think it has. It is a very blunt instrument to use. Remember, we have embargoes with a number of countries, but Iran, actually has MFN status. Libya has MFN status. We have embargoes with those countries, but they actually have MFN status.

It is just a very, very blunt instrument to use, and I think a very ineffective one. I think you put your finger on what I think is the key point and that is engagement versus disengagement. Do we engage countries or do we disengage? Around this place if we are in disagreement with each other, it does not mean that we walk away. We try and engage through a debate process. We try and change it. I think that is exactly what we are finding is it does work in a country like China, where American business is operating, establishing standards within their companies operating there.

For example, one company that I am familiar with, IBM, has established a home mortgage program for its employees actually creating the idea of private ownership of property. I think it is having an impact.

It takes time and it does not change the government overnight, but I think it does have an impact and I think we have seen that in country after country around the world today.

Mr. LANTOS. If I may comment on your question. I think the issue of engagement or disengagement is a phony dichotomy. Nobody is arguing for disengagement. We are talking about engagement which is spineless or engagement which is principled. We have been engaged with them for the last year. That was the assumption on which this administration extended MFN: that we engage, we remove human rights from the table and human rights will improve.

The exact opposite occurred. Human rights deteriorated. They told us to go fly a kite with respect to the sale of nuclear technology to Iran. We all want engagement but some of us favor engagement which is principled, which tells them that if they want a $40 billion trade surplus with us, they had better shape up.

Ms. PELOSI. If I may comment, as well, Mr. Chairman?

Chairman CRANE. Please.

Ms. PELOSI. I associate myself with Mr. Lantos' remarks but I wanted to say a couple of things about your question. First of all, we are not talking about our principles only. These are universal principles declared in the Universal Declaration of Human Rights at the United Nations.

All of what we are talking about with the Chinese is contained in their own constitution. That is why it is so unfortunate that, as we are sitting here I just got a Reuters report that today, Tuesday, more dissidents were rounded up before the sixth anniversary of the June 4, 1989, Tiananmen Square massacre.

The kinds of people who are signing these proclamations include an 88-year-old preeminent scientist in China who is the creator of the atomic bomb in China, former Secretary——

[The following was subsequently received:]

Chinese Police Harass Dissidents As June 4 Nears

BEIJING—Chinese police have stepped up efforts to disrupt the activities of political dissidents again this spring as the anniversary of the June 4, 1989, government crackdown on democracy demonstrators in Tiananmen Square draws nearer.

Spurred by an annual bout of nerves over possible trouble on the infamous date, police have detained six prominent dissidents in recent days, while four others have been reported missing, Chinese sources said.

"A new wave of suppression is unfolding on a large scale. . . . The detention of people in large numbers is continuing," the New York-based Human Rights in China declared.

The latest dissidents detained were Wang Dan, who had been jailed for four years as a leader of the 1989 student-led demonstrations; a student colleague named Yang Kuanxing; and longtime labor activist Liu Nianchun.

Wang, 25, was one of 45 people—including the cream of China's academic community—who signed a public appeal last week to Communist Party leader Jiang Zemin demanding release of all those still in prison for their part in the 1989 demonstrations.

Human Rights in China identified the four missing dissidents as poet Liao Yiwu, former college lecturer Chen Xiaoping and democracy advocates Deng Huanwu and Liu Yong. Many dissidents say that as the June 4 anniversary approached in recent years they were taken out of Beijing and kept in hotels before being freed days or weeks after the date had past.

REUTERS

Ms. DUNN. Excuse me, Ms. Pelosi, you are claiming my time, Mr. Chairman, while I have a couple of minutes left.

What we are addressing here is whether we should be separating two policies, one of human rights, and I think we all agree, as Mr. Kolbe has said, with everybody on this panel with regard to human rights, that it should be treated with great sensitivity. We all care about it.

But whether we should combine that with trade policy with our ability to trade with a neighbor who is very important, certainly to the folks in my State of Washington, or whether we should shoot ourselves in the foot on behalf of human rights, that is the question.

Thank you, Mr. Chairman.

Ms. PELOSI. If I may, Mr. Chairman, forgive me, Ms. Dunn, I should have asked the chairman to put this in the record in a separate question instead of using your time. But I think two points probably separate us on this. First of all, you and I both come from great trading areas that do a great deal of trade with Asia because of our population and our geographic location.

But most products made in America do not have access to the Chinese market. So we should not have our policy, I believe, driven only by those who export, but be driven by all potential exports into that market.

Certainly, engagement is important, but we have to recognize where our successes and our failures are. That is one of the ironies of the Taiwan situation. Taiwan is a country that has democratized, where free markets have led to more democratic reform. It has taken Mr. Crane's enthusiastic leadership and Mr. Lantos' resolution and all of Congress to get even the President of Taiwan to be allowed into the United States.

I think we have to have some consistency. Certainly trade can create change. We have to insist that trade benefit the American worker as well because we will have a $40 billion deficit this year and that means we are buying 48 or 50 billion dollars' worth of products from the Chinese. That should give us some leverage, I believe.

Thank you.

Chairman CRANE. Thank you.

Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I would like to thank you for holding these hearings as well. I might, first of all, thank all three of the witnesses, and Mr. Wolf, and Mr. Solomon who had to leave, for their very fine testimony. They are, obviously, all very helpful.

I would like to make one observation, probably just for the record although some may disagree. I believe it was Mr. Wolf who made the statement that Ceausescu was overthrown mainly because of the issue of MFN. We did not have much trade with Romania at the time that MFN was eliminated in 1988.

I think that there was something called the fall of the Berlin Wall that might have had more to do with the overthrow of the, then, leader of Romania. But let me just make an observation and ask both Representative Pelosi and Mr. Lantos a question.

Do you favor the immediate cutoff of trade with China or do you favor a conditionality? In other words, add conditions and then cut trade off in June 1996. If you could keep your answers reasonably brief, that would be helpful because I may want to follow up.

Mr. LANTOS. No one, Mr. Matsui, in his right mind would recommend an instantaneous and abrupt termination of all trade with China. We are talking about conditionality and we are suggesting, in response to Ms. Dunn's query, that unless human rights is linked to trade, we will not have the leverage we need to have China's human rights improve.

Mr. MATSUI. May I follow up on that then, Mr. Lantos?

Words are leverage. Words are strong leverage.

Mr. LANTOS. Leverage is a $40 billion trade deficit that we have with China. They will sell this year $40 billion more to us than they will buy from us. That is about as powerful a leverage as you can find.

Mr. MATSUI. A gentleman from the State Department testified last year to that effect. He indicated that the trade surplus was our leverage, that is, China's trade surplus, our trade deficit.

The problem with that is that presupposes that any country that has a trade surplus with the United States we would be better off not trading with that country.

Mr. LANTOS. Not at all, not at all.

Mr. MATSUI. Well, it appears to be that is where your leverage is so——

Mr. LANTOS. Not at all.

Mr. MATSUI. But hold on. With Japan, what we should do, since they have a $66 billion trade surplus with us, is just cut off trade with them, two-way trade, because——

Mr. LANTOS. Nobody is——

Mr. MATSUI. Then how is the $40 billion deficit totally toward our advantage where we have so much leverage?

Mr. LANTOS. Well, no one is recommending that a trade surplus, ipso facto, gives us leverage. First of all, Mr. Matsui, you know as well as I do, you need to distinguish between critical imports and noncritical imports.

Petroleum happens to be a critical import. Toys are not a critical import. It is very easy to substitute other suppliers of toys, it is not so easy to substitute other suppliers of petroleum.

We should work to open up their markets so they buy from us, but I do not believe that eliminating human rights from the equation helps us economically and it certainly undermines us as the international champion of expanding human rights globally.

Mr. MATSUI. Well, let me just make—so you are saying that a surplus may or may not be a benefit or give us leverage, is that correct?

Ms. PELOSI. If I may——

Mr. LANTOS. I am differentiating between imports which are desperately needed for the functioning of this economy and cannot be replaced from other sources.

Mr. MATSUI. What would those items be?

Mr. LANTOS. Petroleum, for instance, would be an item which is essential and toys are items that are No. 1, nonessential; No. 2, are easily substitutable from a dozen other countries.

Mr. MATSUI. So we should allow the Chinese to import into this country petroleum but not toys, is that what you are saying?

Mr. LANTOS. They are not a petroleum-exporting nation. They have very little leverage. Saudi Arabia has a great deal of leverage because they have oil.

Ms. PELOSI. Mr. Matsui, if I may respond to your question?

I think it is very clear that there has not been a person coming before this panel who has ever suggested that we should be cutting off trade with China. I do not want there to be any impression that that is the case.

Mr. MATSUI. No. That is what the Solomon proposal would do.

Ms. PELOSI. He is talking about removing MFN. He is not talking about cutting off trade. You know that there is a distinct difference. In addition to which——

Mr. MATSUI. Not really. I do not think so in that situation.

Ms. PELOSI. Well, I disagree with you.

Mr. MATSUI. Seriously, I think we should not—if we cut off MFN, we are basically going to cut off trade with China. I do not think there is any question about that.

Ms. PELOSI. Well, but let me tell you why I do not think that is the case.

First of all, the cost of making products in China is so much less than it is in the United States that they will still be able to sell their products in the United States at an advantage. But there is another distinction with China from other countries and that is to a certain extent it is still a centralized economy.

Beijing authorities benefit greatly from the hard currency that they receive from the U.S. trade. Theirs is not an open economy where this money is flooding into an open market.

There is a huge dependence by the authorities in Beijing on this hard currency that they get. This year it will be $38 to $40 billion in hard currency which consolidates their power, enables them to build up their military, to invest in the development of weapons for proliferation, to increase their trade in that regard, as well, and to enhance further their own position by bringing in more hard currency and more money to bolster the regime.

They are not going to walk away casually from that. The point is, if they know that we are serious about using leverage, they are not going to walk away from a $40 billion profit. But if they do not think we are serious, then they will not address our concerns.

It is still ironic to me that a country can say to Japan, we are going to put a 100-percent increase in tariff on certain luxury cars coming into this country, but we would not even lift MFN from products made by the People's Liberation Army, including weapons that are coming into the United States.

I think that that is a double standard.

Mr. MATSUI. If I could just say this: Last February, we were very serious about cutting off MFN status with the Chinese. Before the President made his decision in May 1995, the Secretary of State, a number of Assistant Secretaries of State, and a number of others went to China. It did not appear that the Chinese leadership was thinking about those things that you said, Representative Pelosi, because, if you recall, arrests occurred at that time of many of the dissidents, many of those that were involved in Tiananmen. So it

is somewhat inconsistent that one would suggest that the Chinese felt we had so much leverage that they were so frightened of us, because——

Mr. PELOSI. You used exactly the right word, if I may, Mr. Kolbe, because it is addressing what I said. You used exactly the right word "inconsistent." The reason the Chinese responded the way they did is because they got a completely mixed message from the Clinton administration. They had the Secretary of Commerce and other Cabinet officers traveling to China telling them there is no way that we are going to lift MFN conditionally on certain products, it is not going to happen. That was the main concern.

If the administration had put forth a bold face, as they did, by the way, with the intellectual property negotiations—when the Chinese know that we are serious, then they will be serious. But when they know that we are not, then do not expect them to make any changes. I think the main reason we find ourselves where we are today is because we did not soon enough send a signal of consistency and seriousness about our willingness to use leverage to improve human rights.

The whole point is that in this period of the succession, we want to send signals to those who are reformers within the government that the United States really does care something about democratization or political reform, improvement in human rights in China, and that our concern is just completely based on some select group of exporters continuing to have access to the markets where, by and large, the American workers' products are excluded from the Chinese market.

Mr. MATSUI. I have to believe that we were serious last year. I think the testimony from the Assistant Secretary of State was very clear about the fact that we would cut off MFN status with China if they did not comply with those seven or eight terms in that condition.

Mr. LANTOS. The administration sounded a very uncertain trumpet, Mr. Matsui, and anybody with any degree of sophistication knew which way that decision would come down. The administration undermined its own position, abetted by significant segments of the business community.

Mr. MATSUI. Tom, is that not just the problem? There is no consensus in the United States for cutting off trade with China, as there was with South Africa, as there was with Iran, as there was with Iraq.

Mr. LANTOS. Nobody is advocating cutting it off.

Mr. MATSUI. You cannot wish and make it happen. It just does not work. You are not going to get that kind of consensus.

Mr. KOLBE. Mr. Matsui, could I just respond?

Mr. MATSUI. That is why there is no leverage. That is the problem with this issue.

Mr. KOLBE. Mr. Matsui, thank you. If I might just respond, I just want to clarify one thing and just make one comment, and that is certainly I do not think anybody in this body or in this room should be under any illusions that cutting off MFN status does as you suggested, cuts off trade. When you are talking about returning to Smoot-Hawley levels of 100 percent tariffs, it means a virtual total cutoff of trade. Countries that do not have MFN, there is virtually

no trade, so it does mean absolutely cutting off, totally cutting off trade with that country.

The other point I would make is that the correct place to be talking about the issue of market access is in the forum where we are talking about China's accession to the WTO. There is where we should be talking about the market access issue, and not here with the MFN issue.

Chairman CRANE. Mr. Coyne.

Mr. COYNE. No questions, Mr. Chairman.

Chairman CRANE. I thank our panelists for their testimony today. I appreciate your willingness to give your time and make your presentations.

We will now ask for panel number two, the Honorable Charlene Barshefsky and the Honorable Kent Wiedemann.

Ms. Barshefsky, if you would be so kind as to make your presentation first. Again, I would ask that you try and confine your opening remarks to 5 minutes, and any additional material you may have will be submitted for the record.

STATEMENT OF HON. CHARLENE BARSHEFSKY, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ms. BARSHEFSKY. Thank you, Mr. Chairman, Mr. Rangel, members of the subcommittee. It is a pleasure to appear before you again to testify on the administration's policy toward China.

My colleague Mr. Wiedemann from the State Department will discuss our policies with respect to human rights and nonproliferation, and most of my remarks will focus on the trade relationship.

Last year, when the President made his decision to renew most-favored-nation trade status for China, he chose explicitly not to link trade with human rights or other bilateral issues. This decision set the long-term foundation for a more productive bilateral relationship with China. At the same time, the administration has pursued and will continue to pursue vigorously U.S. objectives in all areas of our policy toward China, including human rights and nonproliferation.

Broadly speaking, the administration's goals with respect to the areas of policy we will address today are to instill in China respect for the rule of law and adherence to international norms. Overall, the administration's approaches in each policy area, human rights, nonproliferation, and trade, reflect these goals. In trade, we seek adherence to a rules based regime, using as our touchstone the WTO and other international conventions.

In human rights, we seek respect for the rule of law and the rights of individuals based on internationally accepted standards such as the Universal Declaration of Human Rights. In proliferation, we continue to urge China to become a full partner in internationally accepted nonproliferation regimes such as the Nonproliferation Treaty and the missile technology control regime. Respect for law, adherence to international norms, and the development of a civil society are the over-arching goals of this administration's policies toward China.

The road is not smooth. As my colleague Mr. Wiedemann will testify, the human rights situation in China remains a matter of

grave concern. Basic rights to freedom of speech, association, and religion are generally denied.

In recent days, China has arrested a number of prominent intellectuals for expressing their interest in obtaining these basic freedoms. It is clear that extrajudicial arrests and detention remain common practices. But at the same time, Mr. Chairman, greater engagement on all fronts, not only by government and NGO's, but also by U.S. corporations operating in China, will encourage the emergence of a more open society.

We have witnessed throughout Asia a tendency for greater individual freedom to follow economic liberalization. This is a logical extension of our current policy.

As in other areas of our relationship with China, the administration bases its trade initiatives on international rules and disciplines. Despite the trade agreements that we have achieved with China in market access, textiles, and intellectual property rights, major problems remain in our trade relationship. It is disturbing that China still has not made the fundamental decision to join the mainstream of world trading nations. It is disturbing that China appears to want to set the rules of trade with its trading partners, as opposed to following international norms.

Recent developments have only strengthened our view in this regard. China only selectively upholds its trade agreements. It is reluctant to accept obligations in other areas such as the recognition of arbitral awards or the sanctity of contracts. China continues to resist creation of a fair and equitable investment climate. It discriminates against foreign companies in its pricing of goods and services, and it maintains a range of overlapping barriers to trade in goods and services.

As a result, we have a large trade deficit with China. We are attempting to attack that fact. We intend, therefore, to continue an active and aggressive bilateral and multilateral strategy.

Mr. Chairman, I see that my time is up. My testimony details the initiatives that we have undertaken with respect to market access, intellectual property rights, trade in services, and China's GATT accession. I will be pleased to answer questions on those.

Thank you, sir.

[The prepared statement follows:]

TESTIMONY OF THE

HONORABLE CHARLENE BARSHEFSKY

DEPUTY U.S. TRADE REPRESENTATIVE

BEFORE THE

HOUSE WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON TRADE

MAY 23, 1995

Last year, when the President made his decision on May 26, 1994 to renew Most Favored Nation (MFN) trade status for China, he chose explicitly not to link trade with human rights or other bilateral issues. This decision set the foundation for a more productive bilateral relationship with China over the long term. At the same time, the Administration has -- and will continue -- to pursue vigorously U.S. objectives in all areas of our policy toward China, especially human rights, non-proliferation, and trade.

The President and the Administration recognize that China's economic and strategic importance to the United States require us to engage the Chinese on specific issues across a broad array of policy concerns. On trade, as in other areas, the Administration is prepared to make full use of the legal instruments available to us to pursue and gain our objectives. This is vital if we are to bring China into the international community and take advantage of the opportunities this will provide.

Complementarity of Administration Policies

Overall, the Administration's approaches in each policy area toward China are complementary. The Administration's goal is to instill in China respect for the rule of law and international norms in all areas -- including human rights, non-proliferation, and trade.

- In trade, for example, we seek adherence to a rules-based trade regime such as the World Trade Organization, or other international conventions.

- In human rights, we seek respect for the rule of law and the rights of individuals based on commonly-accepted principles, such as the Universal Declaration of Human Rights.

- In proliferation, we continue to urge China to become a full partner in internationally-accepted nonproliferation regimes such as the Non-Proliferation Treaty (NPT) and the Missile Technology Control Regime (MTCR).

My colleague from the State Department will speak on our human rights and non-proliferation policies. I would simply observe that, over the long-term, we expect to see in China respect for law and international norms, and development of a civil society.

The Administration recognizes that the human rights situation in China remains deplorable in some instances, and basic rights to freedom of speech, association and religion are generally denied. Extrajudicial arrest and detention remain common practices. That said, it is clear that greater engagement on all fronts -- including by U.S. corporations in China -- will help encourage the emergence of a more open society. We have witnessed throughout Asia a tendency for greater individual freedom to follow economic liberalization -- a logical extension of our current trade policy. Such evolutionary processes seem also to be at work in China. Finally, China can no longer keep

out Western ideas and values as it accepts and absorbs Western economic practices. The growth of modern communications and technology has already assisted the process of opening.

Trade Policy

As in other areas of our relationship with China, the Administration bases its trade initiatives on international rules and disciplines, for example, the WTO and other international conventions. The market access, intellectual property rights laws and enforcement, and textiles Agreements all have been thoroughly grounded in the GATT and now WTO. Clearly, the ongoing negotiations over accession to the WTO for China are part of our overall approach of creating an effective framework for our trade relationship.

Here, too, trade cannot be separated from the broader considerations of creation of a more open, rules-based society. Reforms of China's legal system, institution of new laws and regulations, notions of due process and transparency all build a better trade relationship. Our immediate focus in trade negotiations is on achieving particular goals. Nonetheless, as was the case in the IPR enforcement negotiations, we worked together with China's negotiators to create an enforcement regime that strengthened the legal system and the rule of law in general, including greater transparency, and the importance of observing due process.

Building on the IPR enforcement Agreement and Ambassador Kantor's visit to China, we now have an excellent opportunity to move China in a more positive direction on trade. We should seize the opportunity to improve the bilateral trade relationship, pursue multilateral WTO accession negotiations on a sound commercial basis, and take advantage of the growing commercial opportunities in China.

Despite our market access agreement, the IPR enforcement agreement and other bilateral agreements such as textiles, major problems remain in our trade relationship, however. It is disturbing that China still has not made the fundamental decision to join the mainstream of world trading nations. China appears to want to set the rules of trade with its trading partners, as opposed to following international norms. Recent developments have only strengthened our view in that regard. China only selectively upholds its trade agreements with the United States, and it is reluctant to accept its obligations in other areas, such as recognizing and enforcing international arbitration judgments, or the sanctity of contracts. China continues to resist creation of a fair and equitable investment climate, discriminates against foreign companies in its pricing of goods and services, and maintains a myriad of overlapping barriers to trade in goods and services.

The rapid growth of China's trade regime -- bilateral U.S.-China two-way trade has risen from roughly $2 billion in 1979 to $40 billion in 1994 -- and the growing importance of China's global role demand that we worked actively and aggressively to bring China's trade practices into line with international norms. We must actively engage the Chinese on trade issues, and open Chinese markets to U.S. goods and services.

Our trade relationship is badly out of balance. China exports vast quantities of goods to the United States, but still buys relatively little from us. In 1994, we had a trade deficit with China of close to $30 billion. No other major trading partner has a deficit in goods of that size with China -- and no other major trading partner's markets are as open to Chinese goods as are those of the United States.

Services trade is also of concern. The United States is the

largest exporter of services in the world and U.S. companies in banking, insurance, financial services, travel, advertising and other services are the best or equal to the best in the world. In the communications and information services sectors, U.S. companies are leading a global information revolution and transforming the way that business is conducted around the globe. Nonetheless, China's market for services is still largely closed. If China is to reform and modernize its economy, it cannot do so without the creation of a sophisticated services sector. And, clearly, it cannot develop an articulated services industry without opening its services market.

For its part, it is in China's interest to take these steps. As much as the United States and other trading partners will gain, the benefits to China in further trade liberalization and market opening are much, much greater. China must take serious steps to enhance significantly market access.

Themes for 1995

As a result of the clear opportunities that we now have to improve our trade relationship, and the clear inequities that continue to exist, we intend to continue an active, aggressive bilateral and multilateral strategy. This means:

(1) Full use of U.S. trade laws to enforce existing trade agreements and to open markets for U.S. companies and workers;

(2) Vigorous market opening initiatives, both through USTR negotiations and Department of Commerce trade promotion and development initiatives.

(3) Complementary and mutually reinforcing bilateral and multilateral initiatives -- a vigorous bilateral trade agenda and intensive use of the APEC process and China's WTO accession negotiations.

(4) Complementarity of the U.S. trade agenda and the broader U.S.-China policy.

Trade Initiatives

The Administration is currently engaged in negotiations and consultations on market access for goods, based on the 1992 market access Agreement, market access for services, and intellectual property rights protection. We are also addressing China's bid for accession to the World Trade Organization. Successful conclusion of the all of these initiatives and the faithful implementation by China of the existing Agreements, will improve not only the United States-China trade relationship, but also the prospects for China's own economic reforms.

IPR

Protection of intellectual property rights (IPR) is an area of major concern for the United States. Failure to protect IPR harms China's legitimate research and business interests, as it does those of foreign countries.

As it has in other areas of trade, the Clinton Administration acted decisively to protect the intellectual property rights of U.S. companies. The Administration initiated a Special 301 investigation into China's IPR enforcement practices on June 30, 1994 and published a proposed retaliation list when 20 months of negotiations failed to yield meaningful results.

Nonetheless, on February 26, U.S. negotiators reached a landmark agreement on the protection of intellectual property in China, particularly in the areas of copyrighted works and trademarks. The Chinese established a 9 month 'special

enforcement period,' formed enforcement task forces in more than 22 cities, closed 7 CD and LD factories that were producing pirated products, and pledged by July 1, 1995 to clean up remaining CD piracy.

We cannot take implementation of the IPR agreement for granted. Initial indications suggest, however, that China has taken implementation of the Agreement seriously. For our part, USTR has set up an IPR Secretariat to oversee implementation of the Agreement, under which are interagency task forces to monitor developments nationally and in each locality where IPR enforcement has been a serious problem. At the same time, in cooperation with the Department of Justice, the U.S. Customs Service, the Patent and Trademark Office, and the Federal Bureau of Investigation, USTR's Secretariat is coordinating training and technical assistance programs for the Chinese. These programs are designed to ensure that China has the ability to carry out the enforcement actions -- and the restructuring of their IPR enforcement regime -- that are mandated by the Agreement. In June, U.S. negotiators will return to China to hold the first in a series of quarterly consultations on implementation of the Agreement.

Market Access

In October 1992, the United States and China signed a market access Agreement that committed China to make sweeping changes in its import regime. To date, China's implementation of some parts of the 1992 market access Agreement has been commendable, although some important exceptions remain. In the Agreement itself, China committed over a five year period elimination of 90 percent of all non-tariff barriers -- such as import licensing requirements and quotas, increased transparency, elimination of the use of import substitution as a policy or practice, and an end to the use of sanitary and phytosanitary standards as barriers to U.S. agricultural exports.

China has taken important strides toward making its trade regime more transparent. China has published a large number of trade rules and regulations in the past year, so many that it has become difficult to keep track of them all. China nonetheless has a long way to go before its trade regime, and it trade institutions, are truly transparent. We are particularly concerned that China's provinces apply Beijing's trade laws and regulations uniformly and that the provinces' trade regimes are transparent.

China has made a major commitment to eliminate non-tariff barriers, and since the end of 1993, has reduced to roughly 150 from the several thousand that existed the number of GATT-inconsistent barriers. By reducing these barriers, China will open markets for computers, medical equipment, heavy machinery, textiles, steel products, chemicals, pharmaceuticals, and other products. However, the remaining non-tariff barriers are of serious concern and the Chinese have yet to provide schedules for their elimination.

China has not fully implemented the market access agreement in other respects. It has yet to live up to its obligations to publish quotas, uniformly apply its laws and regulations, or fully eliminate import substitution as a practice. As a result of Ambassador Kantor's visit to China in March, China lifted its brief "suspension" of the market access Agreement, and has committed to elimination of further non-tariff barriers on computers, textiles, heavy machinery and other key U.S. products.

Of considerable importance, China has not yet resolved our concerns about the use of sanitary and phytosanitary standards as barriers to imports of agricultural and live animal products. China continues to use unscientific standards to block exports of citrus fruit, stone fruit, wheat, apples, and leaf tobacco --

products that the United States exports to Japan and other nations throughout East Asia. Through consultations in Washington in March and San Francisco in April, we have established a time table for the closure of these issues -- although resolution of concerns over wheat from the U.S. northwest and other areas where TCK infestation exists remains problematic. We expect China to move expeditiously to resolve these issues, in accord with the Agreement.

Services

Market access for services is another, integral, part of the U.S. bilateral trade agenda with China. China's services markets today are still largely closed. While limited experiments are underway, and a variety of extra-legal services ventures have started, legitimate access for U.S. companies in most instances is not available. On a bilateral basis, China has agreed to hold bilateral negotiations on insurance and value-added telecommunications, to complement discussions that have been underway for many months on services issues -- both bilaterally and in the context of China's bid for WTO accession.

We have asked that China commit to substantial liberalization of its insurance, value-added telecommunications distribution, advertising, travel, communications, audiovisual and other services. As I noted earlier, these liberalizations are in China's own interest. We expect, for example, that China will license more foreign insurance companies to operate in China on a national treatment basis, will open its enhanced telecommunications sector and its distribution system to U.S. companies, and will liberalize access to its audiovisual markets. American companies have much to contribute to China's economic development and prosperity. China cannot make the leap from a labor intensive economy to one with a higher technology base without considerable participation by foreign firms in its services sectors.

An additional vital component of our services agenda with China is improvement in its domestic business climate. Consistent with the obligations that China will assume under the WTO, China must create a non-discriminatory environment within which both foreign and Chinese firms compete on an equal footing. Adherence to basic investment principles, such as the right of establishment and national treatment, along with rights to conduct associated activities, would go a long way toward that end.

Similarly, China discriminates against foreign traders in its pricing practices, often charging foreigners prices that are several times those charged Chinese businessmen. China has indicated that it may take steps to eliminate this discrimination, and we await concrete actions to make these intentions reality.

WTO Accession

Last, negotiations on possible accession for China to the WTO are ongoing -- with a round of bilateral discussions in Geneva having concluded just last week. The United States supports China's accession, but has made it clear that accession can only occur on a commercially-meaningful basis. Although we have taken a practical, and pragmatic position toward the negotiations, we are not prepared to support China's accession with anything less.

If China accedes to the WTO, and makes and implements firm commitments to bring its trade regime into compliance with WTO rules and disciplines within a set time period -- including market access -- we will all have taken a significant step forward in achieving our trade policy goals in China. At this time, the ball is in China's court. We await improved offers on market access and rules-based disciplines that will provide a

sound basis for the negotiation of an acceptable protocol package.

Over these past many months, the United States -- as well as other contracting parties -- have clearly outlined the areas in which China must make commitments to basic WTO obligations and to secure transparent market access opportunities. These basic areas include: uniform application of national laws and regulations in the provinces; national treatment for imported goods, firms, and traders; elimination of non-tariff measures as required by the WTO; granting foreign firms trading rights and expanding the right to trade generally; and assuring that its foreign exchange regime is not used as a trade barrier. China must make commitments to open its market to services, submit a reasonable schedule on agriculture supports and subsidies, and provide secure and amplified opportunities for market access in goods commensurate with its status as a world-class exporting country.

Conclusion

While much work remains, in trade, we have taken some initial, significant steps forward toward improving our bilateral relationship, and in helping to establish the primacy of the rule of law and international norms. Despite the problems that exist, we have a good opportunity now to move forward to broaden our trade relationship and help U.S. companies to take advantage of China's enormous commercial potential. At the same time, we must also continue to pursue serious initiatives on human rights and non-proliferation. We must act now -- if we are to see China develop a rules-based regime. We expect over the coming year, in accord with the President's pledge, to pursue these mutually compatible goals vigorously and forcefully.

Chairman CRANE. Mr. Wiedemann.

STATEMENT OF HON. KENT WIEDEMANN, DEPUTY ASSISTANT SECRETARY OF STATE FOR EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. WIEDEMANN. Thank you, Mr. Chairman, Mr. Rangel, and other distinguished members of the subcommittee.

I, too, will read a very brief summary of my statement and would request that the full statement be entered in the record.

Last year, the President decided that extending MFN for China would strengthen broad engagement between the United States and China and over the long term permit us to promote the full range of American interests with China, including our human rights, strategic, economic, and commercial concerns. We continue to believe this is the right course.

China is the most important emerging power in the world for the United States. It is a nuclear power, a fact of which we were reminded recently when they exploded yet another underground nuclear test.

One out of every five people on the planet, as Congressman Kolbe has pointed out, is Chinese. China is one of the five permanent members of the United Nations Security Council. As we head into the 21st century, China is the single most important factor shaping events in Asia and, indeed, having great and increasing influence on the shape of the world of the future.

The situation within China is in a period of extreme flux. Deng Xiaoping no longer plays the central stabilization role he once did, and the leadership is gradually coming to terms with their new power and responsibilities. They have become more conservative and cautious, focusing inward more than outward, concentrating on domestic stability and control during this period of uncertain transition.

The economic situation adds to the transitional uncertainties, as Chinese economic leaders try to deal with the consequences of rapid growth, inflation of over 20 percent, overheated production, new tools and concepts, macroeconomic concepts, many of which they are learning from us and others in the West.

China's concerns over its domestic situation have led to a general tightening within China which has regarded our efforts on the human rights front. We are also approaching the sixth anniversary of the Tiananmen incident. The Chinese authorities reportedly have recently detained several activists associated with the original demonstrations, a pattern that we have seen in past years as we approached the Tiananmen anniversary date.

We are continuing our bilateral human rights dialog with China. Assistant Secretary of State Shattuck went to China in January to press our concerns on prisoner releases, treatment of prisoners, and freedom of religion. We also continue to pursue initiatives in exchange of legal experts, such as Supreme Court Justice Kennedy who visited China in February.

Multilaterally, we have also continued our efforts to work for improvements in the human rights situation in Chain. We joined with the European Union and a number of other countries to introduce

and pass a China resolution at the U.S. Human Rights Commission in Geneva.

In spite of intense Chinese lobbying, we and the cosponsors were able to defeat China's procedural motion to block that resolution. For the first time in 5 years of trying, the resolution came to the floor. Although it was defeated by only a single vote, the resolution sent a strong signal that China's human rights practices are of global, not just bilateral concern.

In enforcing our statutes on the prohibition against prison labor goods entering the United States, we have initiated an investigation in over 50 cases, and visited six suspected facilities this year already. We have 20 detention orders outstanding against products alleged to have forced labor content. In the past 2 weeks, we have received reports of visits to another suspected prison labor facility.

We have made counternarcotics cooperation an element of our ongoing dialog with the People's Republic of China and have received high-level assurances from the Chinese authorities that they desire greater cooperation in this area.

On our own initiative, we have conducted training programs for Chinese drug enforcement officials, and the DEA conducted an enforcement training course in Ziamen just this year.

China is a major player in the international arms world. Chinese observance of the multilateral proliferation regimes is necessary to halt the spread of weapons of mass destruction and missiles. Proliferation is a high-level concern, indeed a top priority concern in our dealings with Beijing, and comprehensive engagement has helped us to move ahead on several fronts with the Chinese in this very important area of U.S. national interest.

The United States is concerned with China's nuclear cooperation with Iran. While China's cooperation does not involve nuclear weapons, usable material, equipment, or technology and is subject to safeguards, we still oppose such cooperation, because we are convinced that Iran is using its civilian nuclear program and its NPT (Nonproliferation Treaty) status as covers for nuclear weapons development.

The Chinese have agreed to a global ban on exports of missile technology control regime class ground-to-ground missiles. This exceeds the strong presumption of denial requirements of the MTCR (Missile Technology Control Regime) guidelines. In addition, China has accepted the principle of inherent capability in defining MTCR-class missiles.

I see, Mr. Chairman, that my time too has expired. I would be happy to continue with discussion of the important issue of nonproliferation efforts, as well as human rights and any other issues of interest to the subcommittee.

Thank you very much.

[The prepared statement follows:]

TESTIMONY OF
KENT WIEDEMANN
DEPUTY ASSISTANT SECRETARY OF STATE
EAST ASIAN AND PACIFIC AFFAIRS
BEFORE THE
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE
May 23, 1995

Mr. Chairman, I very much appreciate the opportunity to come before this committee to discuss with you the renewal of Most Favored Nation (MFN) status for China. You have just heard from my colleague, Ambassador Barshefsky, the many avenues in which we are pursuing the interests of the United States in trade with China and the importance of MFN to maintaining our trade relationship and providing jobs and export opportunities for America. I want to add a few words to put the MFN issue into the overall context of American foreign policy toward China.

This Administration believes the U.S. national interest is served by developing and maintaining friendly relations with a China which is strong, stable, prosperous, and open. Last year the President decided to renew China's most favored nation trade status because he concluded that strengthening broad engagement between the U.S. and China offers the best way, over the long term, to promote the full range of U.S. interests with China, including our human rights, strategic, economic and commercial concerns.

The President's MFN decision recognized that engagement with China has enabled us to make progress and to reduce differences on a wide range of issues. High-level engagement provides valuable opportunities to remind China of the need to adopt and fulfill international norms. Pursuing the interests of the United States is, of course, the fundamental premise of our China policy. In trade and other areas, we must apply this yardstick as we address the entire constellation of bilateral, regional and global concerns in which our countries' interests intersect.

Comprehensive Engagement

It is in this context that the President approved in September 1993, a strategy of "comprehensive engagement" with China. The purpose of this strategy can be simply stated:

- to pursue all of our interests at the levels and intensity required to achieve results;
- to seek to build mutual confidence and agreement in areas where our interests converge; and
- through dialogue, to reduce the areas in which we have differences.

We believe our engagement strategy has succeeded not only in helping to move the U.S. China relationship forward but also in encouraging China's continued integration into the international community.

Following high-level consultations with us last October, China re-affirmed its commitment to the Missile Control Technology Regime (MCTR). China agreed that it would not export ground-to-ground missiles subject to the MCTR.

China has continued to be a quiet but helpful partner in regional affairs of great concern to us, most notably on the Korean peninsula.

China has also joined us in continuing efforts to support the transition to a democratically elected government in Cambodia.

China continues to integrate itself into the greater East Asian community by participation in regional fora such as APEC and the Asean Regional Forum.

China is moving ahead with development of its Agenda 21 program for protecting the environment into the twenty-first century. The Vice President has agreed to become personally involved in working on a U.S. - China sustainable development initiative.

You have heard from my USTR colleagues about the status of our efforts to negotiate China's accession to the World Trading Organization. We also continue to address a number of trade issues bilaterally, most recently through the successful conclusion of negotiations on the protection of intellectual property rights.

Through our comprehensive engagement strategy we have played an active role in some of the above examples and provided positive encouragement in others.

Our foreign policy toward China continues to focus on three baskets of core concerns: human rights, non-proliferation and economic issues. Let me review where we stand on each.

Human Rights

The United States has very serious concerns about human rights abuses in China. In considering whether to renew China's MFN status last year, the key question was how the United States could best advance human rights and other vital interests in China. The President decided that extending MFN would promote broad engagement between the U.S. and China, not only through economic relations but through cultural, educational and other contacts. These contacts, combined with vigorous efforts to promote human rights, are more likely to encourage constructive change in China.

Frankly, we have not seen the kind of progress we would like on human rights in China over the past year. The recent detention of five dissidents is just the latest example of Beijing's continued defiance of internationally-recognized norms in this area. At the same time, however, we have made some progress on the four human rights related initiatives announced by President Clinton in May 1994.

We have continued our bilateral human rights dialogue with the Chinese. The seventh round took place in Beijing January 13-15, 1995. We again raised our core issues of concern--freedom of speech, association and religion and the treatment of prisoners and persons detained by the government in these dialogues, but also sought to broaden and make more substantive our engagement with the Chinese on rule of law issues and legal exchanges.

We have also continued our efforts to work for improvements in the human rights situation in China in multilateral fora. We joined with the E.U. and a number of other countries to introduce and pass a China resolution at the UNHRC in Geneva. In spite of intense Chinese lobbying, we and the co-sponsors were able to defeat China's procedural motion to block the resolution. For the first time in five years, the resolution came to the floor. Although it was defeated -- by only a single vote -- the resolution sent a strong signal that China's human rights practices are of global, not just bilateral, concern. Furthermore the vote laid down a marker that no country can avoid scrutiny of its human rights practices by the international community.

Thanks to their already high standards for international business practices, American businesses have become the employer of choice in China. Through their everyday operations, they are quietly contributing to the transformation of Chinese society. We have been consulting with U.S. businesses, human rights NGOs, Congress, and labor organizations on the development of a set of voluntary business principles for use in China and elsewhere in the world. These principles were informally released March 27 at the White House; consultations continue to further develop the principles and the plan for their implementation.

The Voice of America has increased its programming in China by one hour with a program called DATELINE, which consists of news reports, analysis and live correspondent interactive. A second weekly hour-long radio/TV simulcast program has also been added. Called CHINA FORUM, it addresses a wide variety of issues through news features, guest interviews, and comprehensive discussion organized around a weekly topic.

We are increasing our support for American NGOs that are working to promote a stronger civil society in China.

In enforcing our statutes on the prohibition against prison labor goods entering the United States, we have initiated investigations in over fifty cases and visited six suspected facilities this year already. We have twenty detention orders outstanding against products alleged to have forced labor content. In the past two weeks we have received reports of visits to two more suspected prison labor facilities. We have prosecuted where we thought we were justified and the Chinese have punished factory managers where we have found trade in forced labor products.

Through difficult, but successful negotiations, we are developing a workable system for investigating allegations of trade in forced labor products. We are constantly in touch with the relevant authorities in China and are establishing a relationship based on mutual trust and confidence.

Since the signing of the Statement of Cooperation on Implementation of the Prison Labor MOU in March of 1994, the Chinese have been cooperative in fulfilling their obligations under both the SOC and MOU. Although cooperation slowed down somewhat since January 1995 due to personnel changes in the Chinese Ministry of Justice (MOJ), the Embassy has recently had meetings with the MOJ and reports that the process is moving ahead again.

There is some concern that the Chinese, while allowing inspections of the "Reform through Labor" camps (Laogai), will not allow the inspection of "Reeducation through Labor" camps (Laojiao). Since both types of camps use forced labor, it is critical to proper enforcement of U.S. trade law that we be allowed to inspect both types of camps.

We continue to press the Chinese for access to those facilities and recently at least one responsible official has indicated that our concerns are being viewed positively.

We have made counternarcotics cooperation an element of our ongoing dialogue with the PRC and have received high level assurances from the Chinese authorities that they desire greater cooperation in this area. On our own initiative we have conducted training programs for Chinese drug enforcement officials. The DEA conducted an enforcement training course in Xiamen, Fujian last year. A group of Chinese customs officials were trained at the U.S. Customs detector dog school in 1994. More training by DEA is scheduled this year.

In addition, we have consistently encouraged China to urge Burma to take more initiative to control the production and trafficking of opium and heroin. The Chinese authorities have shown that they are willing to send a strong message to trafficking groups in Burma. In 1994, the Chinese tried and executed Yang Maoxian, the brother of the leader of a principal trafficking group, the Kokang. This was a clear signal to trafficking groups in Burma that China will act vigorously to stem the regional trade in heroin.

Economics and Trade

We have deep concerns over the current imbalance in our trade relationship with China. Last year our bilateral trade deficit was nearly $30 billion, second only to our trade deficit with Japan. You have heard from my USTR colleagues how we are vigorously promoting our trade agenda both bilaterally and multilaterally.

As in other areas of our China relationship, we base all of our trade initiatives on international rules and disciplines -- of the WTO and other international conventions.

-- Ongoing negotiations over accession to the WTO for China are part of our overall strategy of creating valid frameworks for our trade relations.

Through trade, U.S. concepts filter into the consciousness of all Chinese. Opening markets for America's idea industries -- movies, CDs, interactive software, television -- and for products that make communicating easier -- such as fax machines and copiers -- spread U.S. values and ideals.

We also continue to expand our export promotion efforts - one of the central responsibilities of what Secretary Christopher refers to as our "America Desk" - and cooperative programs in scientific and technical fields. For example, during Secretary O'Leary's visit to China in March, we not only witnessed the signing of commercial agreements that will facilitate billions of dollars in new U.S. exports, but also established the framework for scientific, technical and economic cooperation in developing China's sustainable energy development program.

Secretary Brown's visit to China last August was equally successful in helping to build long-term economic and business ties between China and the United States. Secretary Brown will return to China in July for the next session of the Joint Commission on Commerce and Trade (JCCT). Besides promoting American business opportunities and trying to resolve some of the problems American firms face in doing business in China, this year's JCCT will focus on a significant new training initiative which will help to further develop the infrastructure China needs to sustain its economic growth and transition to a rules based society.

Non-Proliferation

China is a significant producer of nuclear, chemical and missile-related equipment, materials and technology.

Since China is a major player in the international arms world, Chinese observance of the multilateral proliferation regimes is necessary to halt the spread of weapons of mass destruction and missiles. Proliferation is a high-level concern in our dealings with Beijing, and comprehensive engagement has helped us to move ahead on several fronts with the Chinese in this very important area of U.S. national interest.

We continue to work with the Chinese to bring their policies into line with prevailing world standards on the full range of nuclear and conventional weapons proliferation issues. As is the case in most issues with China, we are making varying degrees of progress in these endeavors.

The U.S. is concerned over China's nuclear cooperation with Iran. While China's cooperation does not involve nuclear weapons usable material, equipment, or technology, and is subject to safeguards, we oppose such cooperation because we are convinced that Iran is using its civilian nuclear program and its NPT status as covers for nuclear weapons development.

In October, 1994, the U.S. and China agreed to work together toward the earliest possible achievement of a multilateral, non-discriminatory, and effectively verifiable convention banning the production of fissile materials for nuclear weapons or explosive devices.

Such a convention will help prevent the proliferation of nuclear weapons, as it provides a vehicle for halting the production of nuclear weapons fissile materials in key threshold states.

Another major breakthrough in our proliferation dialogue with the Chinese is represented by the October, 1994 Joint Statement on Missile Non-proliferation.

The Chinese have agreed to a global ban on exports of MTCR-class ground-to-ground missiles. This exceeds the "strong presumption of denial" requirements of the MTCR guidelines. In addition, China has accepted the principle of "inherent capability" in defining an MTCR-class missile.

Both the U.S. and China affirmed their respective commitments to the Regime's original guidelines and parameters. We intend to engage the Chinese further with the goal of bringing their commitments fully into line with those of the Regime's members and adherents.

As a prelude to the Chinese commitments in the agreement, the U.S. lifted sanctions imposed against China in August, 1993 for transfers to Pakistan.

We are currently engaged in exchanges with China on missile proliferation, nuclear cooperation and nuclear proliferation, and export controls. China has agreed to a series of meetings with U.S. experts over the next few months to discuss these issues.

China supported indefinite and unconditional extension of the NPT and voted with the United States at the NPT extension conference earlier this month in New York.

We regret China's continued nuclear testing and have called on Beijing to stop its testing program immediately. In this regard we welcome China's statements that they will join the CTBT and cease nuclear testing. We will continue to engage the Chinese on these and other non-proliferation issues.

In the security area, we are moving ahead with military to military contacts. We believe these contacts, especially at high levels, serve to reassure both sides as to each other's intentions. Defense Secretary Perry visited China last year in October and we are continuing our ongoing program of exchanges of high-level military officers.

In sum, the Administration is committed to a policy of comprehensive engagement with China as the best means to advance U.S. national interests across a wide range of issues. That concludes my opening remarks, I would be happy to answer any questions you may have.

Chairman CRANE. Thank you, Mr. Wiedemann.

Ms. Barshefsky, has the President's decision to pursue human rights issues without linking them to MFN renewal enhanced your ability to negotiate with the Chinese?

Ms. BARSHEFSKY. I believe, Mr. Chairman, that the President's decision was the correct decision. As he stated last year, our linkage of trade and human rights had run its course in China. There was not only no leverage provided by that linkage at this juncture last year, but indeed the leverage was, to the extent there was activity, counterproductive.

We have found on trade issues this year, by and large, the Chinese to be more receptive with respect to U.S. concerns. Our negotiation of a very strong intellectual property rights enforcement agreement is one example. But most recently, just 3 weeks ago, we achieved breakthroughs on agricultural exports to China. China has now agreed to allow exports of U.S. cherries, as well as exports of U.S. apples, from a number of States. We also have negotiated a framework agreement and timeframe within which exports of U.S. citrus products will be considered for the Chinese market. These are important issues.

In addition, we have a market access Memorandum of Understanding with the Chinese. While the Chinese have not implemented it fully, and that is of concern, they have implemented many of the major aspects. This includes sharp tariff reductions, as well as the elimination of several thousand nontariff measures against U.S. and other foreign imports into China.

Chairman CRANE. Taiwan has been a long staunch ally of the United States and a good democratic friend, and they have essentially been blocked from joining the World Trade Organization or GATT because of the demands of the mainland government that they be granted access first.

I have had legislation in, as I think you are aware, for free trade agreements with Pacific rim countries, including Taiwan, which strikes me as a very highly eligible Pacific rim country to negotiate with. Do you think there are ways of expanding our trade relations with Taiwan without triggering some kind of backlash from the mainland government?

Maybe a free trade agreement is going too far. I do not know. I have talked to representatives from Taiwan, and certainly they are intrigued. I said even if we did not have it officially defined as an FTA (free trade agreement), if we just met the conditions and terms of trade, that it would be mutually beneficial. What are your thoughts?

Ms. BARSHEFSKY. Mr. Chairman, we have a very strong and healthy trade relationship with Taiwan. Taiwan is one of our major trading partners. We have had concerns from time to time with respect to market access barriers in Taiwan. The Taiwanese Government generally has been receptive, although we note one disturbing trend. U.S. companies are tending to lose out on recent infrastructure contracts in Taiwan, and this is an area we have brought to the Taiwanese attention.

May I say, sir, that it is really not accurate to say that Taiwan has been blocked from WTO accession in any way at this point. There are two elements to any country's WTO accession. One is the

negotiation of bilateral market access agreements with all of the country's significant trading partners. The other is a multilateral negotiation on the basic rules that would apply with respect to accession.

In the case of Taiwan, it is in bilateral negotiations with over 20 countries on market access. It has not yet closed out these discussions with either the United States, Japan, the European Union, or any one of a number of other major trading partners. In addition, with respect to the rules of the road, which is negotiated multilaterally, that negotiation has not yet occurred. The chairman of the WTO working party has recently asked for contributions to a protocol draft, and we will be active in that.

While we have made very significant progress bilaterally on the Taiwanese accession, neither the close out of that accession from our point of view bilaterally, nor the multilateral closeout has yet occurred.

Chairman CRANE. Thank you.

Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Madam Secretary, have you heard or read the allegations made by Congressman Wolf as relates to the selling of human organs of prisoners and the eating of fetuses, the transfer of kidneys and corneas from executed prisoners, and slave labor and these atrocious allegations?

Ms. BARSHEFSKY. Mr. Rangel, I have no personal knowledge of these incidents. I am as appalled, as I am sure every member of this subcommittee is, to the extent any of these might be true.

Mr. RANGEL. I really would hope that none of us would have personal knowledge of them, but it would appear to me that when these types of allegations are made, that somebody would have investigated it and would have a report related to whether there is any substance at all to these.

Mr. WIEDEMANN. Congressman Rangel, please allow me to comment. These atrocious allegations that we heard of this morning from Congressman Wolf have been of great concern to us ever since they came to light from various sources. With respect to the fetuses question that turned up in a Hong Kong journal recently, we are actively investigating that, as well as the other allegations with respect to trade in human organs.

Thus far, I can say that we have found no corroborating evidence for any of these allegations. There is a film to which Congressman Wolf referred that was produced by the BBC, and which Congressman Wolf will supply. The evidence we believe is not conclusive. The producer of the tape acknowledges that the film depicts open-heart surgery, not organ removal or transplants implied by the films narrative. Others would argue that it indeed details an operation that concerns the removal of an organ that would be consequently sold on the market.

All I can say at this point is we continue to look into the allegations of these heinous——

Mr. RANGEL. Let me try this again. When last have you had any written report showing an investigation to any of these types of allegations?

Mr. WIEDEMANN. In the past week, we are certainly quite pleased to turn over to you the results of our own reporting up to now. Our missions, both in Hong Kong and Beijing, as well as other missions around China——

Mr. RANGEL. Do they relate to these types of allegations?

Mr. WIEDEMANN. Yes, they have been sending in reports to us, the State Department and other elements of government here on what we have been finding out in the field as we have gone around and spoken to medical doctors, both Western medical doctors who are in China familiar with the——

Mr. RANGEL. What I am asking is that these specific types of allegations have been investigated and you found no credible evidence to support that, and that is in some type of an official report?

Mr. WIEDEMANN. We have made statements on the public record to that effect, but we do not have that to my knowledge in a report that we have distributed to this subcommittee or any other.

Mr. RANGEL. But such disgusting types of allegations, I would think that just to protect the reputation of the United States of America, that someone would look into it and say what the facts are. It is not just Members of Congress. This has been in the press.

Mr. WIEDEMANN. If I may, these are such sensational allegations——

Mr. RANGEL. Yes.

Mr. WIEDEMANN [continuing]. That I think we would not be responsible, if we were not to keep investigating until we were absolutely positive concerning the truth of the allegations. Up to this point, we have not found any evidence to corroborate these charges.

Mr. RANGEL. It is obvious that murders are being committed and you are saying that you will not give any type of report until you are absolutely certain. All we are asking is to look into it, check with our ambassador, get a report from him. What are we talking about?

Mr. WIEDEMANN. We have done that, sir. There is no evidence yet uncovered that shows murders have occurred in this context.

Mr. RANGEL. Well, are the reports to him so secret that you cannot share it? That is a report as far as I am concerned. Just say these allegations are made, Members of Congress are concerned and they would have us believe we are dealing with a heathen government.

Mr. WIEDEMANN. As I said earlier, we are quite pleased to share with you the results of the reports from our ambassador in China, of our consul general in Hong Kong——

Mr. RANGEL. Whatever you have done.

Mr. WIEDEMANN [continuing]. Any of our other missions which have developed information on these allegations.

Mr. RANGEL. I would appreciate that. Have you heard of these type of allegations occurring in Cuba?

Mr. WIEDEMANN. Sir, I have not. I am not familiar with any such allegations with respect to Cuba.

Mr. RANGEL. Do you find any consistency at all with our embargo against Cuba and our failure to investigate these allegations and recommendations for most-favored-nation treatment for the People's Republic of China? I see that as a real inconsistency in terms of our trading policy. How do you look at this, as a professional?

Mr. WIEDEMANN. Is your question, sir, similar to that which you posed to Congressman Kolbe earlier, that is to say whether there is a double standard in terms of the way we approach Cuba as compared with China?

Mr. RANGEL. Exactly.

Mr. WIEDEMANN. At least in terms of our human rights concerns, with respect to both countries?

Mr. RANGEL. You have got it.

Mr. WIEDEMANN. We address our concerns with any country in the world, whether in human rights or any other area, in ways appropriate to the situation at hand.

Mr. RANGEL. There is no question about that, different countries, different designs.

Mr. WIEDEMANN. Exactly. Clearly, the case with Cuba, with a relatively small economy and population, we believe very strongly and have found that the trade embargo does indeed have effect on Castro's regime.

Mr. RANGEL. How many years has the embargo been in effect?

Mr. WIEDEMANN. He took over from Batista in 1959.

Mr. RANGEL. You say that has had a real impact on the——

Mr. WIEDEMANN. I am no expert, sir, on Cuba, but——

Mr. RANGEL. I am just talking about policy generally and human rights and that it has to be tailored specifically to the country, and I just cannot vision where human rights would be more important as relates to Cubans or Chinese. Human rights are human rights.

Mr. WIEDEMANN. No question. We are every bit as concerned about human rights in Cuba. The embargo there, I think, demonstrably has caused the regime, Castro personally and his regime, to alter some elements of their policy. In China, with a large economy, as diverse as it is, and with as many diverse trading partners as it has, given that it is now increasingly involved in a market-based international trading system, an embargo or MFN withdrawal would not have intended effects.

Mr. RANGEL. But basically, as a professional diplomat, you do not see any inconsistency with our trading policy as relates to human rights, as relates to Cuba and the——

Mr. WIEDEMANN. I see no inconsistency in our concern with respect to human rights in Cuba and in China. There is clearly a difference in the way we approach the two, but I would not characterize that as an inconsistency.

Mr. RANGEL. You think it is an evenhanded approach?

Mr. WIEDEMANN. Yes, sir.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman CRANE. Thank you.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

I am having a difficult time separating some of these issues. We have heard some very lurid stories about atrocities. There have been statements that since MFN was approved, 10,000 people were killed, Catholic priests were taken away, there has been particular pressure on the Dalai Lama, and eating of the fetuses and things like this.

Obviously, those are repulsive to most of us to hear about. It is hard to know what to do. We have heard the same stories about

Rwanda and Burundi and other countries like that. But I find it difficult to get the link between MFN and things like this.

So let me ask you specifically. I have figured here with the information I have just gotten from the subcommittee staff that if we denied MFN status to China, the tariffs would go up between two and three times. Now, with the backdrop of all these atrocities and the things we do not like, not only in the human rights field, but also in terms of the peddling of nuclear weapons, is that withholding of the MFN going to affect these other things? It may or it may not. I would be interested in your reactions to this. Are we dealing with a reasonable tool, if we do not like what we see?

Ms. BARSHEFSKY. If I may respond, it was the judgment of this administration last year that withholding MFN would not demonstrably alter Chinese policy in the respects that you are indicating now. This was the view of the administration after looking at——

Mr. HOUGHTON. Are you going to break that down a little bit?

Ms. BARSHEFSKY. Pardon me, sir?

Mr. HOUGHTON. Break it down just a little bit. That is a general statement. Now why is that?

Ms. BARSHEFSKY. The concerns last year were with respect to extrajudicial detentions, arrests, most particularly those areas. The allegations that have since surfaced were obviously not under consideration last year, inasmuch as those allegations just recently came to light. As Mr. Wiedemann said, the State Department is investigating those.

But as of 1 year ago, concerning the question of detentions, arrests, release of prisoners who were ill, and so on and so forth, the Chinese did not appear to be moved in any respect with the threat that MFN would be withheld. Indeed, to some extent, the situation worsened during the course of the year.

Mr. HOUGHTON. Can I interrupt 1 minute. In other words, if you felt that the Chinese would be moved, you would suggest that MFN status not be given?

Ms. BARSHEFSKY. No. The administration believes that it has certainly in the case of trade and in the case of nonproliferation, where our statutes also provide for particular remedies, had ample other authority to deal with Chinese trade problems in those areas.

With respect to human rights, the situation, as the President said last year, is somewhat more complicated. These are difficult issues, and they are long-term issues. They are issues difficult to measure in terms of progress on a month-to-month basis or on a year-to-year basis. One instead must look over the longer term.

The question the President raised last year was what would the most effective policy be over the longer term, and he determined at that point that comprehensive engagement on all fronts, including specific engagement on issues pertaining to human rights, would do best to advance overall the human rights agenda, as would——

Mr. HOUGHTON. Let me put the words in your mouth then, if I can.

Ms. BARSHEFSKY. Yes.

Mr. HOUGHTON. In other words, you are saying if we withdraw most-favored-nation status and go back to Smoot-Hawley type tar-

iffs, that it would go counter to what we want to have China do as a responsible nation in this world?

Ms. BARSHEFSKY. Yes.

Mr. HOUGHTON. How do you feel, Mr. Wiedemann?

Mr. WIEDEMANN. I agree entirely with my colleague Ms. Barshefsky. I think the administration's approach really is, if you will, based upon two essential premises which I believe very strongly in. One, as Ms. Barshefsky has indicated, it is through the strategy of comprehensive engagement facilitated by the trading relationship and MFN we have that allows us to engage with China on all the issues of profound importance to this country, whether it be human rights, proliferation, or indeed the trade issues that we discussed.

At another level, second, but perhaps in the long run even more profoundly important, MFN and the trade between our two countries creates an environment for China to keep its door open and for it to become increasingly integrated with the global system, whether it is the economic, the trade system, the financial system, or indeed increasingly systems that we and other responsible nations have developed with respect to the control of weapons of mass destruction.

Mr. HOUGHTON. May I ask one more question, Mr. Chairman?

Chairman CRANE. Certainly.

Mr. HOUGHTON. I am sorry to interrupt you and to take over my time. I want to project a little bit, and this is all conjecture, that we export to China $9 billion roughly a year. We import from China $39 billion a year. Let us say in the next 10 years we export maybe $15 billion or let us double it to $18 billion, and China then brings in about $80 billion. Would you still feel the same way you do about most-favored-nation status?

Mr. WIEDEMANN. I would, sir, yes.

Mr. HOUGHTON. Thank you.

Chairman CRANE. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Ambassador Barshefsky, to what do you attribute the escalating trade deficit that we have with China, particularly since Tiananmen Square until now?

Ms. BARSHEFSKY. I think there are many causes to the trade deficit with China, part of which relates to our consumption patterns, our pattern of growth, part of which relates to the very substantial movement of manufacturing facilities from Taiwan and Hong Kong to the mainland, reducing our bilateral deficits with Taiwan and Hong Kong, and increasing those deficits with the mainland. The kinds of productive capacity that has in fact moved relate to textiles and to toys, the items of chief export from China.

With respect to the composition overall of the deficit with China, we look a little better than the trade numbers themselves would indicate. That is to say we tend to export to China aircraft and parts, very sophisticated machinery, power generation equipment and computers. They tend to export to the United States textiles, toys, footwear, and some electrical componentry.

So while the trade numbers are not good, they are very, very bad, they are not quite as bad as they appear because of some shift of the trade numbers from Taiwan and Hong Kong to the main-

land. The composition of trade is somewhat more favorable to the United States.

The question for the administration has been how to attack this deficit, which should not be allowed to persist to the extent that the deficit is due to trade barriers. We have been extremely aggressive with respect to market access on goods, market access on services, with respect to intellectual property rights protection, and very aggressive with respect to China's bid to join the WTO, in helping to ensure that those markets become more open and more receptive to U.S. goods, services, and agriculture.

Mr. COYNE. Is it the goal of the administration to have a reduced trade deficit with China? How do you think we can accomplish that?

Ms. BARSHEFSKY. Let me answer you in two ways. First, the goal of this administration is to have reciprocal access in foreign countries. If they can sell their goods here, if they can sell their services here, if they can sell their agricultural and other products here, we should have the same degree of access in those markets. That has been the premise for administration trade policy these past 2 years, not only with China, not only with Japan, but also with Europe and with Latin America, as well as the emerging Soviet Republics. So I cannot give you a number that we are looking for, but what we are looking for is a wholesale change in practice.

Second, the administration is sufficiently concerned about the issue of trade deficits, particularly deficits with Asia. The total U.S. trade deficit, about 70 or 80 percent is Asia, and most of that is Japan and China. The administration will shortly issue an Executive order setting out a commission to look at the causes of these trade deficits, particularly with Asia, and to make recommendations with respect to their elimination.

Mr. COYNE. Thank you very much.

Mr. HOUGHTON [presiding]. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

Ambassador Barshefsky, you mentioned that some of these difficult issues, the human rights issues, for example, that we are having to consider these days are long-term issues and will take a long time to work out.

That brings to my mind a concern that I have been bothered by as we go through this debate annually on MFN. Has the President considered asking for MFN for China for a period of years, 5 years, for example, so that we are not constantly washed one way and the other by the emotional involvements that come into this issue?

Ms. BARSHEFSKY. Ms. Dunn, I am not in a position to say at this juncture the precise contours of the President's announcement with respect to MFN in China. That is obviously for him to do. But administration policy has been thus far generally to look at the issue on an annual basis.

Ms. DUNN. Thank you, Mr. Chairman.

Chairman CRANE [presiding]. Thank you.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman.

Ambassador Barshefsky, related to WTO accession and China's potential accession to the WTO, I understand talks have occurred earlier this month on that subject. Specifically, China had asked

that they be considered a developing nation, as opposed to a developed nation. Would you comment on the status of those talks, and specifically the USTR's (U.S. Trade Representative's) position concerning the flexibility that China might have to declare itself a developing nation?

Ms. BARSHEFSKY. Let me respond to your questions as you have laid them out. We did have discussions with China last week in Geneva, both bilaterally, as well as in the multilateral WTO working party group. While the tone was much improved in those discussions with the Chinese, the Chinese showed no real new flexibility.

As I have previously informed this subcommittee, when we left this issue last December, China had put on the table market access offers with respect to goods, agriculture, and services. All of those offers were wholly inadequate and rejected outright, not only by the United States, but by every one of China's major trading partners.

While China has returned to Geneva with an improved tone, with improved rhetoric, we have not seen any demonstrable change in the positions they have laid out from this past December. That indicates to us one of two things: Either China has not yet completed an internal review with respect to where it might have greater flexibility, or China has not come to grips yet with the seriousness of WTO accession and the fact that it would have to make major concessions in order to be admitted into that organization. By major concessions, I mean concessions of a commercially meaningful nature to the United States, Europe, and its other major trading partners.

We have told the Chinese we will continue to work with them. We are always prepared to negotiate for greater market access, but it is market access that China is going to have to provide, as well as adherence to a rules-based regime on transparency, subsidies, government procurement, and on national treatment for goods to which all GATT members adhere.

With respect to whether China is a developing country or a developed country, we have told the Chinese that we will not engage in a debate on labels. The question is not what they will be called, but what their obligations will be. The question is how much market access will China provide. Those are the questions that we will turn our attention to, not the question of what shall China call itself.

Mr. PAYNE. So the issue of developing a developing nation status really primarily has to do with market access?

Ms. BARSHEFSKY. It has to do not only with market access, but it has to do with many rules. For example, developing countries have a lengthy transition period under the international property rights agreement in the WTO. Obviously, that is a transition period wholly inappropriate to China. There are many other such examples.

A key point from the U.S. perspective is that whether they are a developing country in some respects or a developed country in other respects is a red herring. That is not what the debate will be on in the WTO. From the United States point of view, what the debate on WTO accession will be is, is China willing and committed to play by international trading rules, first of all, and, second of all,

is China willing to provide commercially meaningful market access with respect to goods, services, investment, and agriculture.

Mr. PAYNE. I appreciate the job that USTR has done in terms of holding down textile exports from China to the $6 billion level, which is almost exactly what it was 1 year ago.

By the same token, we were only able to ship to China about 50 million dollars' worth of goods, and so the disparity there is 120 times more goods coming into our country than we were able to export to them. Our textile and apparel people in this country feel that that is a market that they can compete in and be successful in, and I really urge all efforts that might be made to continue to allow greater market access to China for that segment of our economy, as well as many others that you are negotiating on behalf of.

Thank you.

Ms. BARSHEFSKY. Thank you.

Chairman CRANE. Mr. Zimmer.

Mr. ZIMMER. No questions.

Chairman CRANE. If there are no further questions, I want to thank Ms. Barshefsky and Mr. Wiedemann for their testimony.

We will now ask for the next panel, Donald Lang, Willard Workman, William Manteria, and John Palafoutas.

Gentlemen, as I indicated before, if you can, please confine your opening statements to 5 minutes or less, and then if you have any further material, it will be submitted in the record.

Before we commence, I want to express my deep appreciation to you, Mr. Lang, for preparation of this business coalition trade letter that was submitted to the President. I just roughly counted the number of businesses or associations in that letter, and I think the number is approaching 500.

Mr. LANG. Nearly 700.

Chairman CRANE. Seven hundred. Congratulations to you.

We will begin by having you submit your testimony to us.

STATEMENT OF DONALD H. LANG, PRESIDENT, PRATT & WHITNEY OF CHINA, UNITED TECHNOLOGIES CORP., ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. LANG. Mr. Chairman and members of the subcommittee, thank you for allowing me to speak today. I am Don Lang, president of Pratt & Whitney China, and I am representing the 60 members of ECAT (Emergency Committee for American Trade), Pratt & Whitney Aircraft, and my parent corporation, United Technologies.

My statement and the documents that I will leave you really will express our unequivocal strong support for unconditional renewal of MFN and continuation of a policy of engagement and open discussion with China.

The first document that I am leaving you for the record is my full formal statement, which I will summarize and add some anecdotal statements and statistics. The other is the letter that you just identified.

I think a key quote from the letter from the U.S.-China trade coalition highlights our thinking when it says, "We are convinced

that American trade and investment with China advances long-term U.S. economic and strategic interests and American values."

My perspective may be a little unique for the hearing. As Ms. Dunn aptly described the strategy or the approach of engagement, you would have to consider me as one of those who is engaged. I spend 2 weeks a month plus in China. I am responsible for developing and implementing Pratt & Whitney's long-term strategy in China, and that includes a fundamental foundation of deepening engagement and discussion.

It includes sale of our engines to China's 25 airlines who operate large aircraft. The support of that equipment once it is in country involves joint ventures on overhaul and repair activities, joint ventures in equity positions in Chinese engine companies, as well as large-scale training of Chinese employees to be able to operate the high-technology equipment they are taking into the country.

We have been doing business in China as a company since 1972, shortly after President Nixon visited with Air Force One. We have since sold about 1.5 billion dollars' worth of aircraft engines in China. Our engines power one-half of China's commercial airline fleet that is in service today.

Within our industry, we are considered to be a leader in the whole strategy of engagement, and probably most notably engagement in creating win-win situations and relationships within China.

Everyone asks how important is the aerospace industry within China to the United States, and, in a few simple words, it is very important. China has already shown a very strong preference for buying Western aircraft in lieu of buying Russian equipment, as they had in the past. They have purchased virtually every existing type of modern Western commercial aircraft and have them in service.

Roughly 70 percent of those aircraft have come from the United States, and, in total, the U.S. aerospace industry last year enjoyed a trade surplus of about $1.9 billion, which is equivalent to about 35,000 jobs. That, frankly, is only the beginning. In the next 15 years, China will add another 600 to 800 new commercial aircraft to their existing 300 aircraft fleet. Those aircraft purchases will be worth $45 billion, again 70 percent of which will come from U.S. aerospace companies and their suppliers, $30 billion fundamentally in U.S. sales, which on an annualized basis is the equivalent of about 40,000 jobs per year.

Finally, what I would like to comment on is how our business relationships today are helping shape U.S.-China relations for the decades ahead, and the key word is engagement. China is a country that is in transition. They are developing the rules for this new economic system or political economic system they call "the socialist free market" system, and that development includes establishing the rules of engagement for international trade and business for the decades ahead.

We as American companies are in a very enviable position. The Chinese like us. They see us being in the lead in helping develop the rules. They tend to view American companies as in for the long haul, not having a "gold rush" mentality that is so common in that part of Asia. They see us as companies that are very open and hon-

est, and they see American companies as setting new standards for integrity. Frankly, I see us in the same way.

We have a very enviable position in the Chinese system. We have been able to help the Chinese truly understand Western business practices and we have caused them to adopt and implement rules which are favorable to Western companies. We have covered a wide range of diverse topics with them which I would view as the fundamental fabric of Western business principles and practices.

Just to name a few, we have talked with them about varying approaches to establishing equity positions with them, how to establish realistic property valuation, cost accounting standards and systems, how they can transition their state-owned industries into becoming private sector enterprises, how to get listed on stock exchanges, how to adopt U.S. environmental standards to our joint ventures—which we have insisted upon—how to impose U.S. worker standards, safety standards to our joint ventures, what contract law provisions are at work in the Western world, what should the living standards be for your employees and how to upgrade them, how to establish the supplier base systems which are foreign to their system today, and, fundamentally, in our industry, how to establish an industrial base that is essential to safely operate your airline fleet.

I could really go on, but the message is simple, that the business relationships we have are really an avenue or a conduit to setting favorable rules for the future and introducing Western values into the Chinese system. The Chinese will constantly remind a newcomer—in fact, many of us say, even after we have been there for a long time, that "everything in China starts with friendship," and that is the fundamental driver of their system. When you have the friendship, when you have the relationships, fundamentally anything is possible. You can discuss any issue you want openly and candidly with them.

In our minds, withholding MFN status would injure those relationships that we have developed and it would injure those friendships, and the forced disengagement that we think would likely follow would create a void which would be very quickly filled by foreign companies who today are quite envious of the positions that we as U.S. companies are filling and the role we are playing. I think with that forced disengagement, when we are finally able to reengage, at some time in the future, we are going to find ourselves playing on a very uneven playingfield and playing by someone else's rules.

I would just like to encourage you to support the unconditional renewal of MFN status for China. It is important to us to promote and protect our U.S. interests in this massive emerging country.

Thank you.

[The prepared statement follows:]

STATEMENT OF DONALD H. LANG
PRESIDENT, PRATT & WHITNEY OF CHINA
UNITED TECHNOLOGIES CORP.
ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. Chairman and members of the Subcommittee. I am pleased to testify on behalf of the Emergency Committee for American Trade (ECAT) in support of extension of Most-Favored-Nation (MFN) trade status for China.

The approximately 60 members of ECAT are large U.S. firms with substantial international business operations. They are among the country's largest exporters and employers. Worldwide annual sales of ECAT members are nearly $1 trillion, and ECAT members employ about 5 million workers.

ECAT members are all interested in expanding trade ties with China and believe that failure to extend China's MFN trading status would undermine the U.S.-China commercial relationship. Their exports to China would plummet and tens of thousands of U.S. jobs would be lost.

For ECAT and other U.S. companies to remain competitive into the twenty-first century, they will require access to the major overseas markets, such as China's, in which there will be major growth in demand for all types of goods and services. Were the U.S. to terminate China's MFN status, U.S. companies would find their place in China's market taken by European and Japanese companies whose governments do provide China with MFN status.

Just yesterday, we and other members of the Business Coalition for U.S.-China Trade, an organization of U.S. companies, trade associations, farm organizations, and consumer groups that support continued expansion of U.S.-China trade, wrote President Bill Clinton to express our strong support for unconditional renewal of MFN tariff treatment with China. I would like to ask that the letter be made a part of the hearing record.

As President, Pratt & Whitney of China, I represent the Pratt & Whitney unit of United Technologies Corporation (UTC) for its operations in China. Other well known companies within UTC are Sikorsky Aircraft, Otis Elevator, Carrier Corporation, Hamilton Standard and UT Automotive. United Technologies is one of the top exporting companies in the U.S. As the fastest growing market for U.S. exports, China is therefore a vital concern to our present and future business interests. United Technologies' divisions export products to China that total $165.8 million annually, supporting 2500-3000 jobs in the U.S. There are additional jobs for U.S. suppliers to UTC divisions which add a multiplier factor to this figure. In China, our UTC companies have 14 active commercial joint ventures and are currently negotiating others in the aerospace and building systems business sectors. In 1994, existing joint ventures and exports to China resulted in $500 million in sales within China.

China is the world's largest and fastest growing market. Access to that market by U.S. companies depends on the extension of MFN trading status. MFN constitutes the foundation of U.S.-China business relations and is critical to many thousands of U.S. jobs.

What is so pivotal about granting MFN approval in 1995? Simply stated, China is now forming the rules of its all new "socialist free market" system. Part of that system includes establishing the business rules of engagement which it will employ globally. Today in China, American businesses enjoy a relatively favored position. The Chinese openly state a preference for American firms because they are honest, in for the "long haul", and do not have an exploitive "gold rush" mentality so often seen in China. As a result, American firms have been very influential in the rule making process with China adopting rules favorable to American business. Denying MFN status would mean disengaging from the business relationships and influences that have been formed, thus placing U.S. companies

at a disadvantage for decades. Companies from other nations that today look with envy at what U.S. firms are accomplishing would instantly move into the void.

Some people say "China is awakening" - more correctly it is fully awake. China is in transition and going through a fundamental restructuring. The pace of change is accelerating, the structure is changing, the people are changing, the political system is changing, and the economic system is changing. I spend half of my time in China and find that every day is filled with new experiences. One needs to see and be engaged in China to appreciate the magnitude and scope of change taking place. Visually, the construction crane seems to be China's national symbol. The country is building at an unprecedented rate. New roads, high rise buildings, airports, mass transit systems, western class 5 star hotels, factories - all happening very rapidly, done by large numbers of motivated and hardworking people and massive amounts of foreign investment. Importantly, the United States is one of the largest investors.

China is an enormously important market for aerospace manufacturers now and well into the future. Aerospace trade from the U.S. enjoyed a $1.9 billion surplus in 1994 while overall U.S. trade with China reflected a deficit of $29.5 billion. The aerospace industry is important in keeping the U.S. competitive in the increasingly global marketplace. For example, China represented more than 10% of Boeing's total sales in 1994.

China is the world's fastest growing market for commercial aircraft. The 1993 rate of growth for passenger and cargo air traffic in China was 17 and 21 percent, respectively. Figures for 1994 increased 19 and 18 percent. The next five years are anticipated to average 14-18 percent growth annually. The market for aircraft in China is large, projected at $45 billion through the year 2010. Corresponding engine sales are estimated at $9 billion. In fact, on a country basis only the U.S. and Japan are projected to post sales which will exceed China's figures.

United Technologies' relationship with China has been enduring, long-lasting and deep -- we are viewed as leaders in establishing economic ties with China. We think it is the right thing to do. Our CEO, George David, set the tone for our dealings in an industry speech, in which he said, "Business relationships and ventures are the vehicle for technology transfer, for industrial development in these wounded economies, and for persuasion of their politicians and peoples that western, democratic and market economy principles are the right means of organizing human endeavor."

Pratt & Whitney (P&W) has a long history with the Chinese in the aviation industry. The first Pratt & Whitney powered aircraft was used to launch China's commercial airline industry in 1929, flying between Shanghai and Wuhan. In 1972, President Nixon opened China, arriving on Air Force One, which was a Boeing 707 powered by Pratt & Whitney JT3D engines. The Chinese were very impressed by this first exposure to a modern Western aircraft, immediately inviting Boeing and Pratt & Whitney to China. China bought 10 707s powered by our engines. They are still flying today. The modernization of China's airlines continued in 1979, when the Civil Aviation Administration of China (CAAC) bought Pratt engines to power new Boeing 747s. They have since purchased nearly every modern commercial aircraft model that is powered by Pratt & Whitney engines.

Today, our customers are China's airlines. Once there was one (CAAC), then 6, all centrally controlled. Now there are 40 registered airlines in China with varying degrees of central control, 25 of which are jet powered. P&W has a strong market position in China, powering half the commercial aircraft, including those of premier customers such as Air China, China Eastern Airlines, China Northern Airlines, China Northwest Airlines and Shanghai Airlines. We have technical representative offices in Beijing, Shenyang, Shanghai, Xian, Xiamen and Hong Kong. Pratt & Whitney has sold roughly $1.5 billion worth of engines and parts to China. Our engine and spare parts sales to China's airlines for the 1992-1994 time frame totaled $500 million, all paid for in convertible hard currency. We expect the Chinese airlines will triple the size of their fleets, buying 600 to 800 new aircraft over the next 15 years. Suffice it to say we will continue to aggressively sell and support our engines. The China market could be 10 percent of our sales.

Regionally they will be even higher if you consider, as we do, PRC, Hong Kong, Macau and Taiwan as an economic unit.

Today, fifty percent of China's modern aircraft are powered by Pratt & Whitney engines. But we face stiff competition from our European competitor. A serious disruption in commercial activities, such as the repeal of MFN status, would provide an opportunity for our European competitor to gain market share. Thousands of jobs would be lost in Connecticut, Georgia, Maine and elsewhere in the U.S.

Pratt & Whitney's business interests in China, besides the obvious engine sales, also include after market service, maintenance training, overhaul and repair joint ventures, manufacturing, industrial joint ventures, advanced technology R&D ventures, and engine development partnerships. In addition, P&W is pursuing training support activities targeted at strengthening China's aerospace infrastructure.

Pratt & Whitney joint venture negotiations are in progress with the Aircraft Maintenance and Engineering Corporation (AMECO) to establish an equity position in the aircraft engine overhaul shop. This is an important first step in establishing the long term commitments we think essential to prosper in China. If MFN goes, so will this venture.

During the past ten years, the Chengdu Engine Co. in Sichuan province has provided Pratt & Whitney with quality engine parts under a supplier manufacturing program. We want to carry this to the next stage, and have proposed to buy a majority share. The preliminary joint venture agreement was signed on September 23, 1994. The joint venture company will be 52% owned by P&W and 48% by CEC -- itself a major negotiating breakthrough in light of the Chinese government policy that foreign companies cannot have a majority share of joint ventures in strategic industries. Our exception was achieved only because of the close working relationships Pratt & Whitney has established over time: Without MFN, it would not have been possible. Sales targets are for $21 million per year, producing a wide range of machined and sheet metal parts. A new 8000 square meter factory building will be built adjacent to the current CEC facilities, employing 200 Chinese employees plus a small number of U.S. expatriates. We are also working on a similar program with the Xian Aero-Engine Company.

The Chinese have been looking for Asian and Western partners to participate in a 100-passenger aircraft project. This aircraft would mainly serve the Chinese and Asia/Pacific region. Many Western aerospace companies including Pratt & Whitney have expressed interest in participating in this project to maintain their access to this very promising market. Pratt & Whitney has offered to work with the Chinese in the development of the engine for this aircraft.

As has been noted in this testimony, Pratt & Whitney has participated and will continue to participate in the emergence of China's airline and aerospace industries. We are participating by example, by persuasion, by partnering, by investing, by training -- we are applying our corporation's standards successfully at all levels of the Chinese society in which we operate, and we are demonstrating that western, democratic, market economy principles work. In doing so, we know for certain we have had an important positive effect on the Chinese rule making process.

We have had some interesting experiences in the environmental area. Early in our internal company planning we established that U.S. environmental and worker safety standards would apply to any P&W joint venture in China. We intend to set a positive example for China, and to create a healthy, safe environment for our Chinese and expatriate associates who will be working within the joint ventures we are establishing. Many Chinese have visited our U.S. factories and have seen first hand what a well laid out, well lit, clean factory really looks like. We have found that our environmental policies distinguish us from our many foreign companies that have generally disregarded environmental considerations. Here, U.S. industry is in the lead.

Pratt & Whitney has historically provided substantial product specific training to Chinese airlines both in China and our U.S. Customer Training Center. In addition, we have had

discussions with the Chinese regarding the establishment of ongoing training programs in China. The types of training discussed include technical training as well as management training, all essential to the operation of today's modern Western equipment.

These are still formative years in China's commercial aviation industry. Airline and industrial relationships currently being formed will have a significant effect on future business. Disengagement at this critical time would be costly to the U.S. aircraft industry with near and long term consequences. China would adopt future business "rules of the road" without input from U.S. companies, rules and practices favorable to other countries. Once U.S. firms disengage, the competitive playing field will favor foreign participants.

Pratt & Whitney's vision for China is based on prolonged strong growth. We project an annual Chinese GDP growth rate of 10 to 12 percent. China is on its way to becoming one of the largest economies in the world. China is fast emerging on the global market. Pratt & Whitney, United Technologies, and other American businesses must be free to participate in this enormous opportunity to maintain U.S. competitiveness on a global scale.

Today's very competitive China marketplace is sensitive to a variety of issues. The Chinese want to work with companies that respect the Chinese people and are willing to put the time and energy into helping to develop China. The annual MFN guessing game hurts American business by portraying us as an unreliable supplier. Please be assured our foreign competitors use that argument to their advantage. We have seen it during engine competitions and joint venture negotiations. The terminology used by the Chinese is to state that, "U.S. companies are at risk by ex post facto rules set by the U.S. government. MFN must be unconditionally renewed to ensure the continued development of U. S. business interests in China and thereby gain the long term benefits for the American economy.

Trade has helped to liberalize China with U.S. business activity a springboard for Western ideas since the 1970's. U.S. business people have exposed many Chinese for the first time to Western business practices, American lifestyles and American values. The loss of U.S. presence would mean the loss of exposure to American ideals. The economic and cultural void would be quickly filled by other countries, other values, other standards. The U.S. would effectively be reduced from being a major player to sitting on the sidelines and watching the game as a spectator. And an uninformed spectator at that. We can't understand or influence China unless we are actively involved in the process during this critical time.

Chairman CRANE. Thank you, Mr. Lang.
Mr. Workman.

STATEMENT OF WILLARD A. WORKMAN, VICE PRESIDENT, INTERNATIONAL DIVISION, U.S. CHAMBER OF COMMERCE

Mr. WORKMAN. Thank you, Mr. Chairman.

I am Willard Workman. I am vice president, International Division, for the U.S. Chamber of Commerce. I am pleased to be here today. You have my statement and I will just briefly summarize it.

I would like to make basically five points. Why is American business interested in China? The statistics say it all, but I would like to bring the subcommittee's attention to an event that occurred at the chamber last November. We had a conference on China infrastructure development, and in 2 days American companies signed 2 billion dollars' worth of contracts with the Chinese. Depending on how you want to count it, that is between 36,000 and 40,000 new jobs that were created in 2 days.

The second point I would like to make is about China accession to the WTO. I would like to associate my views and the chamber's views with that of Ambassador Barshefsky. We fully support the administration's approach in dealing with the Chinese on this question, and we are very pleased with the actions that they have taken to date in trying to get China to join the WTO as a full-fledged member with all the duties and responsibilities that entails.

The third point I would like to make is about China MFN. I think it goes without saying this is the normal way we do business with most of the countries in the world. The United States trades with 263 countries. All of them have MFN. It is not a special arrangement. It is the normal course of doing business in the international economy.

The fourth point I would like to make has to do with intellectual property protection. I think the agreement that was hammered out this past February and March is a good agreement. As I stated earlier in testimony before the Senate Finance Committee, I think we have to monitor the implementation of that agreement by the Chinese very closely. You had a unique situation where practically all sectors of American business supported the administration's approach. We all understand in the new information age how vital the protection of intellectual property rights is to all segments of American industry.

The last point I would like to make is about the so-called code of conduct, voluntary code of conduct which has been run up the flag pole or trial ballooned over the past several weeks. We are opposed to even the administration floating out a voluntary code of conduct. We have been down this road before with the Sullivan principles vis-a-vis South Africa. Initially they were voluntary, then they became mandatory, then sanctions were associated with them.

We are not interested in going down that road again. We think that it proceeds from a fundamentally flawed premise, and that is that business is the problem in China. We think of it as being the solution. My colleague earlier stated much more eloquently than I how American business can be a positive force, a force for positive change in China and elsewhere.

I would also bring to the subcommittee's attention that we did a survey of all 72 American Chambers of Commerce around the world that are located in 65 countries, and we raised this issue of a voluntary code of conduct with them. By a 4-to-1 margin, they were opposed to any kind of voluntary code one-size-fits-all approach to doing this. The 20 percent who did not take as strong a stand said if we have to have a voluntary code of conduct, there has to be some kind of safeguard in there that says that it will not be mandatory some day down the road. So these are organizations that represent American companies in the field, and I just bring it to the subcommittee's attention.

I thank you for the time.

[The prepared statement follows:]

STATEMENT
on
U.S.-CHINA TRADE RELATIONS AND
RENEWAL OF CHINA'S MOST-FAVORED NATION STATUS
before the
SUBCOMMITTEE ON TRADE
of the
HOUSE COMMITTEE
ON WAYS AND MEANS
by
Willard A. Workman
May 23, 1995

Thank you, Mr. Chairman, for allowing me to testify before this Subcommittee on Trade. I am Willard Workman, Vice President, International, of the U.S. Chamber of Commerce. I appreciate this opportunity to present the U.S. Chamber's views on U.S. trade relations with China and renewal of China's most-favored nation status. The U.S. Chamber of Commerce represents 215,000 business members, 3,000 local and state Chambers of Commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad.

Business Interest in China

At the outset, Mr. Chairman, let me state that U.S. Chamber members are very interested in China's market. The economy of China has enjoyed explosive growth in recent years, and the future potential is staggering. Estimates of China's infrastructure requirements and the potential of a huge domestic market helped to make China the top international priority for many U.S. companies during the 1980s and early 1990s. Companies fear that they will miss the train if they fail to establish some sort of presence in the Chinese market, particularly given similar efforts by our European and other Asian competitors.

The U.S. Chamber has encouraged U.S. efforts to secure a fair share of that market through bilateral initiatives to improve market access. And we have worked to facilitate business development at the business-to-business level. Last November, the U.S. Chamber sponsored a large conference on business opportunities in China's infrastructure sector. The conference brought together several hundred U.S. and Chinese business leaders to talk about real commercial opportunities in development of telecommunications, energy, roads and ports.

At that conference, many companies reported disenchantment with the business climate in China: difficulty finding an appropriate Chinese business partner; the privileged position of Chinese companies with special relationships to powerful government entities; abrupt changes in policy and general lack of transparency; deficiencies in the legal structure; difficulties in enforcing contracts; difficulties in importing and exporting goods from China; and growing concern about graft among Chinese officials. Import restrictions and licensing requirements have remained significant barriers to the growth of U.S. exports. And protection of intellectual property remains a significant problem, particularly in the area of copyright protection.

For these reasons, the U.S. Chamber actively supports efforts to create and sustain a commercial environment in China that will make it possible for U.S. firms to compete and prosper. This is a big challenge that requires action on every possible level. At the multilateral level, U.S. Chamber members have strongly supported the Administration's firm

and judicious position on the terms of China's accession to the World Trade Organization (WTO). Those negotiations represent our most important opportunity to secure strong multilateral discipline in one of the world's fastest-growing trading nations.

At the bilateral level, we have supported and will continue to support the efforts of our government to improve transparency, Intellectual Property Rights (IPR) protection and market access. U.S. business leaders seek opportunities for dialogue directly with policymakers in China through organizations such as the American Chambers of Commerce in Beijing, Shanghai, Hong Kong, and in fora such as our business conference in November.

U.S. policy should be based on a clear-headed awareness of China's future role in global markets. Recent growth has been fueled by an explosive surge in exports, especially to the U.S. market. Our bilateral trade deficit has been growing at a rate of 25% per year, to a total of over $30 billion in 1994. Nevertheless, despite the overall deficit, American policy toward China must continue to rest on a clear view of our long-term interests. We should recognize that expansion of our commercial ties with China is important to America's future.

China's Accession Into the World Trade Organization

Let me now turn my attention to China's efforts to join the WTO and, in so doing, obtain access to its dispute resolution procedures and other benefits. China's bid to join the WTO represents an important opportunity to secure strong multilateral discipline on one of the world's fastest-growing trading nations. The commitments made by China in the WTO accession negotiations will demonstrate how far China is willing to go to open its markets to foreign goods and services. If China makes good on commitments to build a modern trade regime that would qualify it for WTO membership, it will gain the respect of the international business community.

Mr. Chairman, we also believe that the integrity of the WTO system is also at stake in China's WTO negotiations. Final accession terms will doubtless be used as a benchmark for accession negotiations for Russia, Vietnam and other economies that are still in the early stages of a difficult transition from a centrally planned to a market economy. Each of these countries, including China, will be tempted to reverse market reforms in the face of political or economic uncertainties that are virtually certain to occur in the process of market transition. As a consequence, we believe that the terms of WTO accession should be defined carefully to ensure that reforms in international trade policies are secure from threats to the reform process.

The U.S. Chamber understands that one of China's top trade priorities is to become a founding member of the WTO. And the U.S. Chamber fully supports China's accession to the WTO **but only** under a protocol consistent with its status as a major trading power and adherence to the market principles assumed of all WTO signatories.

China's huge trade surplus with the United States is second only to that of Japan and is growing at a faster rate. As mentioned above, U.S. products face formidable market barriers in China. The present commercial environment in China makes it difficult for U.S. companies to compete and prosper. China must take concrete measures to open its markets to foreign goods and services. At the same time, China needs to make additional progress on providing intellectual property protection and trading rights for American goods and services. China must also demonstrate that it will not use the WTO to reverse market reforms.

The U.S. Chamber is encouraged by the recently signed IPR accord, the eight-point general agreement on China's entry into the WTO and the satellite-launch accord committing the Chinese to apply market rules and fair competition. These bilateral accords, signed by Ambassador Kantor and his counterpart, Chinese Foreign Trade Minister Wu Yi, are aimed at giving U.S. exporters more access to China's market and should be viewed as steps in the right direction. But they alone will not make it possible for U.S. companies to compete and prosper. In our view, there remain a number of critically important

commitments China must make before the U.S. Chamber can support China's accession into the WTO. These include China's commitment to:

- bring its trade regime into conformance with WTO Agreements and Disciplines;
- extend national treatment on all goods and services to foreign companies that want to invest in China;
- extend MFN trade status to all WTO signatories who extend such treatment to China;
- sign the WTO Government Procurement Code;
- provide market access for textiles and agricultural products (where China uses standards and certification requirements as barriers to trade);
- reduce export subsidies;
- ensure protection and market access for U.S. intellectual property goods and services;
- liberalize access to its foreign exchange system for foreign exporters and investors;
- apply the provisions of the WTO uniformly throughout China; and
- eliminate restrictions on who may import or export products or services from China.

We recognize that one of the principal issues between China and the United States, in terms of WTO membership, is over whether China should be admitted as a developing or developed nation. Before considering China's accession as a developed or developing country (even on an issue-by-issue basis), we believe that United States Trade Representative (USTR) must insist that China adhere to basic WTO obligations, take "significant" steps forward on market access for goods, services, and agriculture, and agree to apply international trade rules and disciplines. And we are concerned that China has shown a reluctance to engage in serious negotiations on fundamental issues such as transparency of its regime, uniform application of trade rules and trading rights. We strongly believe that until the Chinese make concrete commitments, USTR should not show any flexibility over the status of China's membership.

Mr. Chairman, in the remainder of my testimony, I would like to address several bilateral trade issues. First, I would like to address why the U.S. Chamber believes that MFN should be extended unconditionally to China. Second, I would like to share briefly with you our concerns that China follow through on the recently signed bilateral accord on IPR protection and market access. Finally, I would like to make clear our objection to proposals by this Administration or others to require American companies doing business abroad to adhere to what are commonly referred to as "model business principles" or "codes of conduct."

Renewal of Most-Favored Nation Status for China

Last year, President Clinton renewed MFN for China without conditions. In taking this action, the President appropriately recognized that the United States should pursue a policy of "engagement" with China that advances long-term U.S. commercial, strategic, and national security interests.

The U.S. Chamber strongly supports renewing unconditionally China's MFN status and continuing this policy of comprehensive engagement with China. We believe that trade

with China is important to America's future. Last year, the United States exported over $9 billion in goods and services to China. These exports supported approximately 180,000 high-wage American jobs. As China continues to develop and embark on a massive infrastructure program, it will spend billions of dollars in sectors in which U.S. firms are very competitive. Over the next decade, China will be an important market for members of the U.S. Chamber that export high-technology equipment, aerospace, telecommunications, petroleum technology and consumer goods.

Withdrawing MFN would put American trade and jobs at risk. If China were to lose MFN status, China would certainly retaliate against U.S exports, putting at risk billions of dollars of U.S. sales and thousands of American jobs. Even limited sanctions linked to improvement on human rights would endanger economic ties between the two countries. This would place U.S. companies at a competitive disadvantage, since none of China's other major trading partners imposes such conditions on trade.

We further believe that our growing economic cooperation with China has fostered dramatic economic reforms and strengthened voices in China calling for political reforms. U.S. Chamber members help to promote fundamental rights wherever they operate by establishing benchmarks for corporate practice in such critical areas as personnel management, corporate citizenship, fairness and equal opportunity. Many U.S. Chamber members have also made their commitments explicit through a corporate statement of principles. U.S. Chamber members have been, and will continue to be, forces for positive change in China.

The U.S. Chamber supports the fundamental principles of human rights in China and throughout the rest of the world. Removing MFN, however, will not lead to progress on human rights. It would erode our economic relationship, harm those forces in China which are most sympathetic to political reform, and put more power into the hands of hard-liners who favor stronger government control. The best way for the United States to see a prosperous, free China is for U.S. companies to stay commercially engaged.

Recent Intellectual Property Rights Agreement

As I stated in testimony on protection of IPR in China before the Subcommittee on East Asian and Pacific Affairs of the Senate Committee on Foreign Relations on March 8, 1995, the U.S. Chamber welcomes the recent bilateral accord on IPR protection and market access. These were negotiations of fundamental significance for U.S. business. U.S. firms are global leaders in the broad range of products that depend upon inventiveness and creativity, whether in the design and function of the product itself or in patented production processes that allow companies to manufacture more profitably.

In the bilateral accord, China made substantial commitments regarding immediate steps and long-term enforcement. These will require radical and sustained changes in enforcement and fundamental business practice, and it will be challenging to monitor compliance. The U.S. Chamber supports governmental efforts to monitor compliance, but we believe that business will also play an important role in watching out for enforcement problems and in continuing to reinforce efforts to improve the business practices of Chinese firms.

Model Business Principles

Last May, when the President renewed China's MFN status, he made an unfortunate pledge to devise a specific set of principles for companies doing business in China. We understand that the Administration will soon announce its "model business principles," which do not mention China specifically, for U.S. companies operating in foreign markets.

Over the past two years, there have been a variety of proposals made by members of Congress which would require American companies doing business in China to adhere to "codes of conduct." An example of this is H.R. 5269, introduced by Representatives Lantos and others in the 103d Congress. That bill would prohibit U.S. government export assistance to U.S. companies not adhering to the principles. Similarly, early this year

Representative Evans introduced by H.R. 910, which would require U.S. companies to adhere to "socially responsible business practices" regarding the environment, labor and agriculture. Under this bill, the Secretary of State would promulgate regulations to govern the conduct of U.S. companies. As with the Lantos bill, if enacted, it would deny export assistance to U.S. companies not adhering to the regulations.

Mr. Chairman, the U.S. Chamber strongly opposes promulgation of the Administration's business principles and all other proposals to regulate the overseas activities of U.S. companies.

Beyond compliance with the laws of each host country in which they do business, and except for conduct that directly threatens U.S. national security interests, the principles and standards which best support an enterprise are fundamentally matters to be determined by that enterprise and are not an appropriate subject of a directive from any government. Moreover, U.S. companies are recognized worldwide leaders in promoting business ethics. Most operate under self-imposed principles which, in many cases, go beyond the laws of the host country. U.S. companies operating overseas already play an important role as a catalyst for positive social and economic change, just as they do in the United States. In their overseas operations, U.S. companies are helping to improve health care and training, donating to charitable causes such as schools and universities, and promoting sound environmental practices and workplace safety.

Even if the Administration's business principles are nonbinding, the U.S. Chamber is concerned that the principles will set a dangerous precedent for future mandatory action. They will also provide a pretext for foreign host governments to favor non-U.S. companies whose own governments do not suggest such internal intervention. In the absence of multilateral standards, this approach would only disadvantage U.S. companies, workers and products competing against other countries for overseas sales.

Conclusion

The U.S. Chamber supports continuing a U.S. policy that delinks trade and human rights and recognizes that a vibrant U.S.-China trade relationship promotes democracy, human rights, and high-wage jobs. We are encouraged by U.S. efforts to improve market access in China through bilateral initiatives. But much remains to be done. A great deal hangs on the multilateral negotiations with China. China is the largest country in the world and the terms of China's accession must expand market access for U.S. companies; strengthen the protection of IPR; and reflect a commitment to apply market rules and fair competition in accordance with the WTO and its economic stature.

Mr. Chairman, this concludes my formal presentation. Thank you, and I would be happy to respond to any questions you might have.

Chairman CRANE. Thank you, Mr. Workman.
Mr. Manteria.

STATEMENT OF WILLIAM MANTERIA, ASSISTANT VICE PRESIDENT FOR GOVERNMENT AFFAIRS, WOOLWORTH CORP., NEW YORK, N.Y., AND DIRECTOR, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. MANTERIA. Thank you, Mr. Chairman.

My name is Bill Manteria. I am an assistant vice president with Woolworth Corp., a multinational retail company that operates stores under more than 30 names, including Woolworth, Kinney, Champs Sports, Afterthoughts, Footlocker, Ladies Locker, and Northern Reflections.

I am also a director of the American Association of Exporters and Importers, known as AAEI, on whose behalf I am appearing today. AAEI is a trade association representing approximately 1,200 U.S. member companies who are engaged in all aspects of U.S.-China trade, including exportation, importation, distribution, and manufacture of a broad range of products. Many of our retail members import as much as 40 percent of their imports from China.

AAEI strongly supports renewal of China's MFN status. Renewal would ensure that American companies have access to the enormous economic opportunities which are being created as China opens its markets to foreign goods and services.

AAEI strongly supports the President's 1994 decision to delink human rights concerns from MFN renewal. We support the human rights objectives of the President and of Members of Congress. But as we testified last year, we believe that a unilateral threat to China's MFN status is neither an appropriate nor an effective tool for addressing those concerns and could in fact be counterproductive. We urge the members of the subcommittee to continue to delink trade and human rights concerns.

Our written testimony discusses many reasons to renew China's MFN status. My oral remarks will note only a few that are most important to AAEI's members.

The imposition of non-MFN import duties, which could range in some cases to 100 percent or more, would present both short-range and long-range financial problems for both U.S. importers and for consumers of imported products. Importers place noncancellable orders for goods many months in advance. Often the import payment obligations are guaranteed through irrevocable letters of credit.

The imposition of vastly higher duties on merchandise which is already in the pipeline would cause the price of that merchandise to rise, if the market will bear such a price rise, or it will cause extreme financial losses for importers if the products they import have no price elasticity.

Some importers, particularly smaller importers, might have to close their doors. It is American companies and American consumers, not Chinese exporters, who will suffer. In the longer run, importers will have to find alternative higher price sources for Chinese made products.

Some products are not reasonably available in the United States and are not reasonably available outside of China. Prices of those products will skyrocket and some of that merchandise may become

unavailable in the United States. In either event, the United States consumer will pay the price, either in higher costs or reduced choice.

Often the affected merchandise is low and basic necessity merchandise. The added cost of that merchandise will fall disproportionately on low-income consumers who can least afford this additional price. Higher import duties, in effect, are a regressive tax on American consumers.

Termination of China's MFN status would devastate American exporters. China would most likely retaliate against American imports. The $9 billion in United States sales to China and 150,000 American jobs at 1994 levels would be endangered. The promise of much larger export growth and related employment growth which would accompany China's eventual entry into the WTO would also be lost for the foreseeable future.

The unilateral revocation of China's MFN status is a lose-lose situation. American importers and consumers will lose the most cost-efficient source of many products. American exporters and their employees will lose market share in China to European and to Asian suppliers. Most ironically, human rights advocates will lose tools which could be enormously helpful in reaching those human rights goals. That is the liberalizing effect of prosperity and of American influence in China.

On behalf of the American Association of Exporters and Importers, I wish to thank the chairman and the Trade Subcommittee for this opportunity to present our membership's views on this subject, which is of vital importance to us.

[The prepared statement follows:]

TESTIMONY OF WILLIAM MANTERIA
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Good morning, Chairman Crane and members of the Trade Subcommittee. My name is William Manteria, and I am Asst. Vice President of Government Affairs, for Woolworth Corp. I am also a Director of the American Association of Exporters and Importers (AAEI).

AAEI is a national organization comprised of approximately 1,200 U.S. company-members who export, import, distribute and manufacture a complete spectrum of products, including chemicals, electronics, machinery, footwear, food, toys, specialty items, textiles and apparel. Members also include many firms and companies which serve the international trade community, such as customs brokers, freight forwarders, banks, attorneys, insurance firms and carriers.

U.S. businesses in these areas of international trade will benefit, either directly or indirectly, from a decision to extend Most-Favored-Nation (MFN) status for China beyond July of 1995. A substantial number of AAEI exporters and importers are currently engaged in direct trade with China, with many AAEI retailer members sourcing as much as 30% - 40% of imports from China. Overall, more than one-half of AAEI's membership is involved in trade with China in some capacity. Considering the importance of continued China MFN for U.S. industry, including AAEI's members, we urge the Administration and Congress to revamp U.S. policy in an effort to avoid the annual MFN debate. To this end, AAEI supports President Clinton's 1994 decision to de-link human rights concerns from MFN consideration and urges serious exploration of long-term or permanent renewal of China's MFN status.

U.S.-China trade has grown tremendously in volume and complexity since the U.S. first provided China with MFN status. Total trade has more than tripled since 1981 and nearly doubled since 1990. Total cumulative U.S. investment in China is now over $6 billion, and China is one of our fastest growing export markets, purchasing an estimated $9 billion in U.S. goods and services last year.

MFN status is the cornerstone of normal commercial trading relationships with countries worldwide, including China, and is a key aspect of the bilateral trade agreement with China negotiated in 1979. The term "most-favored-nation" is something of a misnomer, suggesting some sort of privileged trading relationship. In fact, we grant most of the world's nations MFN status, which merely entitles a U.S. trading partner to the standard tariff rates available to other trading partners in good standing. The U.S., like most other countries, maintains two complete tariff schedules -- one set of standard rates for MFN countries, and a second set of often prohibitive rates for non-MFN countries. The tariff differential between these rate schedules generally ranges from 10% to 50%, and can be as high as 100% or more for some products, so that the loss of MFN status can effectively price a country's exports to the U.S. out of the market. The additional cost associated with denying MFN status is paid for by U.S. companies and consumers.

AAEI Supports Unconditional MFN Renewal

AAEI strongly supports the President's 1994 decision to de-link human rights issues from the annual renewal of China's MFN status. As we testified last year, we believe that the threat of terminating China's MFN status is neither an appropriate nor effective tool for addressing human rights concerns. We urge the members of the Trade Subcommittee to take a strong stand in ensuring that human rights issues are kept separate from U.S. trade relations with China, as is the case with almost all of our other trading partners.

The Chinese market is already the world's third largest, according to an International Monetary Fund (IMF) study, and has continued to grow at an annual rate of more than 10%. This market is simply too important to our future international competitiveness and to the battle against inflation in the U.S. to ignore or to jeopardize through an unstable trading relationship. As President Clinton has

recognized, MFN is the essential cornerstone for a long-term, stable bilateral relationship with China in both the economic and foreign policy realms.

AAEI members agree that human rights issues warrant our attention and further bilateral negotiations between the U.S. and China. However, the Association does not believe that the threat of terminating MFN is an appropriate or constructive tool for pursuing this important U.S. foreign policy objective. History suggests that despite China's strong interest in trade with the U.S., efforts to impose our will on the Chinese government through a series of public demands will prove to be counterproductive. MFN is the foundation on which the U.S. bilateral relationship with China rests.

Terminating MFN for China would not simply result in higher tariff rates for some imported goods; it would sever the basic economic -- and, consequently, geopolitical -- relationship between the two countries. It would also strenghten those in China who desire to see the People's Republic turn inward again, away from ideologically threatening capitalist influences, and would weaken those liberalizing forces that we seek to encourage.

China's Post-June MFN Status Should Be Renewed

AAEI supports the President's human rights objectives. For reasons noted above, we do not believe that the unilateral threat to eliminate MFN -- and the uncertainty associated with annual MFN debates -- furthers either U.S. foreign policy or trade objectives. As an association of companies engaged in trade with China, the balance of our comments will focus on the trade and economic aspects of the debate. This, however, should not in any way be construed to suggest any lesser interest in the successful resolution of U.S. human rights concerns in China.

Over the last several years, the benefits of a more stable relationship with China based on extension of MFN status have become increasingly clear. In particular, China has made significant good faith efforts to respond to U.S. market-opening initiatives and concerns about the protection of U.S. intellectual property rights, having entered Memorandums of Understanding with the United States on both. Among other important developments, China has agreed to remove high tariffs on hundreds of U.S. imports and to increase transparency with regard to its trade operations.

There are a number of other reasons for supporting the continuation of MFN treatment for China. Trade with China must be kept open to maintain benefits to U.S. industry of a bilateral economic relationship with China. Failure to renew MFN would threaten the jobs of thousands of U.S. workers producing goods for export to China and would harm American businesses relying on Chinese imports for their livelihood. Tariffs, which are at an average 4% - 5%, would skyrocket to as high as 110% in some cases, increasing costs to American consumers by billions of dollars. In many cases, this increased cost would fall most heavily on those Americans least able to bear the burden.

An MFN Cut-Off Would Harm U.S. Importers

The loss of China's MFN status would also have both immediate and long-term consequences for AAEI members involved in importing from China. In the short-term, they would incur significant losses on merchandise already contracted for sale at a specific price, but not

yet delivered. Payment for these orders are often guaranteed by irrevocable letters of credit. If duty rates increased from Column 1 to Column 2 levels before Customs clearance, these companies would be required to absorb the increases or pass them on to American consumers. American companies and American consumers, not Chinese, are harmed by increasing duty rates for merchandise which was previously ordered.

Over the longer term, the cost of delays, lost time, and unavailability of alternative supply could be even more damaging to businesses than duty increases. Many consumer products imported from China are not available in the U.S., and alternative sources of supply overseas would likely be much more costly than Chinese goods, of lesser quality, or unavailable altogether. With the long lead times necessary for orders in many industries, some companies could easily lose a whole season, or even a whole year. This could cause major economic hardship. Companies would be forced to raise prices on goods, with consumers bearing the ultimate burden. In most cases, U.S. producers would not benefit from a cut in supply of Chinese goods because of their inability to produce competitively-priced products. Yet, a reduction in supply of these basic consumer items would cause considerable hardship for Americans with limited incomes who purchase basic-necessity consumer goods imported into the U.S. from China.

Termination of China's MFN status could also make it difficult for U.S. companies to obtain products which are not easily accessible from other countries. In the case of textiles and apparel, U.S. quotas limit the amount of merchandise which can be imported from each foreign country. Thus, many countries which have the ability to provide a competitive supply of a particular product may be unable to do so because they have filled their "quota" for the year. Furthermore, when quota is in short supply, as it most certainly would be if China MFN status were terminated, U.S. importers would pay a premium for quota itself.

An MFN Cut-Off Would Also Harm U.S. Exporters

Failure to renew China's MFN status would harm U.S. exporters as well as importers. China represents a significant, and very promising, market for U.S. exports, with approximately $9 billion worth of American goods purchased by the Chinese last year. The Department of Commerce estimates the value of U.S.-China trade and investments will be $600 billion in the next five to seven years. Historically, China has been quick to retaliate against foreign countries perceived as interfering with domestic issues. It would not be surprising for China to withdraw MFN for American goods and services and to limit U.S. investment and government procurement opportunities in response to elimination of MFN for Chinese goods. In fact, in 1987 during negotiation of a bilateral textile agreement with the U.S., China threatened to find another supplier for the nearly $500 million worth of annual U.S. agricultural exports to China.

Unilateral U.S. action against China would cause a severe blow to U.S. exports to China. In addition to a possible loss of $9 billion in U.S. exports, loss of the Chinese market would have a significant impact on some of our most competitive industries -- agriculture, aircraft and chemicals. And, with our Western allies keeping the door open for many of their goods to China, the hard-won U.S. market share could disappear overnight, resulting in lost jobs in the export sector of the U.S. economy and an increase in the trade deficit. It would be truly ironic if the net result of the last few year's hard-won Chinese market opening commitments expanded business for European and Japanese competitors because U.S. companies are effectively excluded from the market by a U.S.-China breakdown.

Beyond the immediate loss of business in China and Hong Kong, an MFN cut-off would significantly jeopardize long-term U.S. commercial interests in the region. A Sino-American trade war would deprive U.S. companies of important business relationships and opportunities at a critical time in the growth of the Chinese economy.

China's economy has grown rapidly in recent years, at an average annual rate approaching 10%, and is poised for major expansion over the next decade. According to an IMF study, China's economy is now the world's third largest. Some predict it will be the largest economy in the world by the year 2010, or the year 2020 at the latest. U.S. companies have established a major presence in China, providing an ideal foundation for future expansion. A trade breach would threaten this foundation. It would also provide U.S. competitors in Asia and Europe with a major advantage.

MFN Trade Sanctions Would Be Counterproductive

Unilateral Trade sanctions imposed for foreign policy purposes have a poor history of effectiveness. They serve mainly as symbolic gestures, often at great expense to U.S. economic interests, U.S. exports and foreign market share, and consumer prices.

Elimination of China MFN, and the resulting withdrawal of U.S. business from China, would limit Chinese exposure to Western values and free market ideas which have clearly played a part in China's move toward trade liberalization and a market economy. Liberalized, market-oriented sectors, such as those in South China, would be the first to be injured or even shut down if MFN were withdrawn, and Chinese authorities would direct business back to state-owned enterprises. Terminating MFN would merely enable Chinese authorities to blame the U.S. government for their current domestic economic problems, further strengthening hard-line, anti-Western elements in the government.

Furthermore, sanctions run counter to other U.S. foreign policy interests, including the stability of the Hong Kong economy and the future of the Hong Kong people. Hong Kong accounts for two-thirds of all foreign investment in China and one-third of China's foreign exchange, and is the port of entry and exit for much of the world's trade with China, especially that of the United States. Because of the unique combination of communications, financial and technical support, established and reliable legal system, and common language available in Hong Kong, more than 900 American companies have established a significant presence there, and of these, 200 have chosen Hong Kong as their base for business operations throughout the region.

The damage to Hong Kong resulting from an MFN cut-off -- which has been estimated at more than $21 billion in trade alone, a figure double the estimated impact on China itself -- would seriously jeopardize Hong Kong's continued ability to serve this important role for American companies as entrepot and investment "gateway" for China and the region. Damage to Hong Kong would also have counterproductive effects on political and economic reform in China. Hong Kong is South China's most important source of external investment, with Hong Kong companies providing employment to three million people in Guongdong Province alone. The impact of MFN removal would be felt disproportionately there, weakening the very forces of liberalization key to future economic and political progress in China, and Hong Kong's security and well-being.

Finally, the U.S. should not unilaterally act without the support of our major trading partners. Unless multilaterally imposed, sanctions are certain to be unsuccessful and the U.S. could run the risk of alienating its allies.

Conclusion

AAEI strongly supports renewal of MFN for China for another year. As stated, AAEI supports the President's 1994 decision to de-link human rights issues from the annual renewal of China's MFN status. Although we recognize the importance of focusing attention on human rights concerns in China, we do not believe that terminating China's MFN status will contribute to this worthy objective. We urge members of the Subcommittee to take a strong stand to ensure that human rights issues are kept separate from U.S. trade relations with China, as is the case with almost all of our other trading partners.

AAEI supports initiatives by the Administration and Congress to grant China MFN status on a permanent basis and urges serious consideration of a revision of the Jackson-Vanik Amendment toward this aim. A revision of Jackson-Vanik does not require a revision of U.S. human rights objectives in China. AAEI supports those human rights objectives and believes that President Clinton correctly determined that those objectives should not be limited to trade issues between the United States and China. The U.S. human rights objectives can, and should, be attained without terminating China's most MFN status. Terminating China's MFN status could only harm U.S. trade and foreign policy interests, and ultimately, the progressive forces in China on which future progress will depend.

On behalf of the American Association of Exporters and Importers, I wish to thank Chairman Crane and the Trade Subcommittee for this opportunity to present the views of our membership on this important issue.

Chairman CRANE. Thank you, Mr. Manteria.
Mr. Palafoutas.

STATEMENT OF JOHN P. PALAFOUTAS, DIRECTOR OF FEDERAL RELATIONS, AMP, INC., HARRISBURG, PA., ON BEHALF OF ELECTRONIC INDUSTRIES ASSOCIATION

Mr. PALAFOUTAS. Thank you, Mr. Chairman.

My name is John Palafoutas, and I am the director of Federal Relations for AMP, Inc. I am here today on behalf of the Electronic Industries Association.

AMP, Inc., is the world's largest producer of electronic interconnection devices and systems. We are headquartered in Harrisburg, Pa., where AMP employs nearly 30,000 people in 185 facilities in 36 nations, including China. With over $4 billion in sales, AMP ranks number 12 among electronic equipment manufacturers on the Fortune 500 list. AMP employs over 19,000 people in the United States, and of these U.S. employees, over 7,000 are directly related to export trade. AMP currently has about 200 employees in China.

The growing demand for quality electronics is especially visible in the highly competitive markets of Asia, and most importantly China. Our industry has succeeded in establishing itself in China and through investments is fast positioning itself to become a major international player there. We are a positive force in opening up China because we employ Chinese nationals and provide a venue for China's positive economic reforms.

U.S. companies operating in China contribute substantially to the well-being and human rights of their employees. U.S. companies set positive examples of worker treatment and discourage human rights abuses. These companies pay higher wages and provide many of the same employee benefits U.S. workers enjoy, including training, educational benefits, and specialized employee assistance. U.S. companies operating in China also expose workers to the social, economic, and political aspects of U.S. companies and individuals.

Overseas markets, in China in particular, are becoming increasingly important as sources of sales of U.S. electronics companies. U.S. electronics exports to China have increased 131 percent from 1991 to 1994. Today, the U.S. exports $1.3 billion in electronics to China each year. These exports translate into over 26,000 jobs in the United States. If MFN were to be revoked, large and small U.S. manufacturers would suffer. U.S. jobs would be lost and foreign competitors in Asia and Europe would fill the void.

Trade constitutes some 40 percent of China's economy and economic growth. Unlike many of the economies of the industrialized world, China is experiencing exponential growth which is expected to continue for years. These impressive figures point to great potential for continued expansion of electronics sales in China, sales that U.S. manufacturers cannot ignore.

Since China was first accorded MFN trading status in 1980, U.S. electronics manufacturers have devoted considerable resources to gain a foothold in this important market. It is only through an ongoing physical presence that companies can be viable competitors in position to supply their products in the long term.

Let me give you an example. During the fifties, about 1957, AMP, Inc., was one of the few American companies to enter the Japanese market and establish a presence. Over the many years that my company has spent in Japan, significant and lasting commercial relationships were developed. AMP established itself as a major manufacturing company and is now regarded by Japanese manufacturers, such as Toyota, Mitsubishi, and Honda, to be a reliable and trusted supplier.

Our success throughout Asia has led to the creation of over 2,500 U.S. jobs that export high-quality value-added products to this important region. To date, AMP is the largest domestic supplier of consumer electronic connectors to Japanese companies. We are proud of our success there and hope it serves to illustrate the importance of giving U.S. companies the opportunity to establish commercial relationships in China. MFN revocation for China could serve as a permanent disincentive for U.S. companies to establish a presence there.

We believe that China remains an important market for AMP and the U.S. electronics industry, and that it will become even more significant in the future. Renewal of unconditional MFN status for China is good for consumers, increases U.S. exports, and creates jobs in the United States. It helps U.S. companies and the U.S. Government to remain engaged in China, and it demonstrates the benefits of a free market society.

For these reasons, I urge you to renew unconditional MFN status for China.

Thank you.

[The prepared statement and attachment follow:]



Electronic Industries Association
2500 Wilson Boulevard • Arlington, VA 22201-3834
(703) 907-7500 FAX (703) 907-7501

STATEMENT OF JOHN P. PALAFOUTAS
DIRECTOR OF FEDERAL RELATIONS FOR AMP INC.
ON BEHALF OF THE
ELECTRONIC INDUSTRIES ASSOCIATION
ON CHINA'S MFN STATUS,
BEFORE THE HOUSE
WAYS AND MEANS SUBCOMMITTEE ON TRADE

TUESDAY, MAY 23, 1995

INTRODUCTION:

Thank you Mr. Chairman for the opportunity to testify today. My name is John Palafoutas and I am the Director of Federal Relations for AMP Inc. I am here today on behalf of the Electronic Industries Association (EIA). I would like to take the next few minutes to discuss the benefits of a strong U.S. business presence in China, to highlight the value of the Chinese market to the electronics industry, and to urge the Congress to renew unconditional Most Favored Nation status for China.

To begin, I congratulate the Office of the U.S. Trade Representative on the successful Intellectual Property Rights negotiations with China in late February. Recent improvements in the U.S.-China relationship are important for both countries and for EIA member companies like mine which are doing business in this exciting and growing market.

AMP Incorporated is the world's largest producer of electronic interconnection devices and systems. Headquartered in Harrisburg, PA, AMP employs nearly 30,000 people in 185 facilities in 36 nations, including China. With over $4 billion in sales, AMP ranks number 12 among electronic equipment manufacturers on the Fortune 500. AMP employs over 19,000 people in the United States. Of these U.S. employees, over 7000 are directly related to export trade. AMP currently has about 200 employees working in China.

For more than 70 years the Electronic Industries Association has been the national trade organization representing U.S. electronics manufacturers. Committed to the competitiveness of the American producer, EIA represents the entire spectrum of companies involved in the design and manufacture of electronic components, parts, systems and equipment for communications, industrial, government and consumer uses.

BACKGROUND -- The Electronics Industry and China:

The electronics industry has been a leader in the U.S. and abroad in developing high performance, high quality products. Our industry employs highly skilled and motivated people. In fact, many of our companies have been recognized for their success by winning the Malcolm Baldrige Award For Excellence. Moreover, the growing computerization of the world's economy means that electronics products will continue to be in great demand well into the next century.

The growing demand for quality electronics is especially visible in the highly competitive markets of Asia, and, most importantly China. Our industry has succeeded in establishing itself in China and, through investments, is fast positioning itself to become a major international player there. We are a positive force in opening up China because we employ Chinese nationals and provide a venue for China's positive economic reforms.

U.S. companies operating in China contribute substantially to the well-being and human rights of their employees. U.S. companies set positive examples of worker treatment

and discourage human rights abuses. Importantly, these companies pay higher wages and provide many of the same employee benefits U.S. workers enjoy, including training, educational benefits, and specialized employee assistance. U.S. companies operating in China also expose workers to the social, economic and political aspects of U.S. companies and individuals.

THE CHINESE MARKET:

Overseas markets, and China, in particular, are becoming increasingly important as sources of sales for U.S. electronics companies. As the attached chart indicates, U.S. electronics exports to China have increased 131%. Today, the U.S. exports $1.3 billion of electronics to China each year. These exports translate into over 20,000 jobs in the United States. If MFN were to be revoked, large and small U.S. manufacturers would suffer, U.S. jobs would be lost, and foreign competitors in Asia and Europe would most certainly fill the void.

High growth rates in China make it an attractive market. The U.S. Department of Commerce estimates that China's Gross National Product will increase by nine percent annually through the end of this decade. Today, trade constitutes some 40% of China's economy and economic growth. Unlike many of the economies of the industrialized world, China is experiencing exponential growth which is expected to continue for many years. These impressive figures point to great potential for continued expansion of electronics sales in China -- sales that U.S. manufacturers cannot ignore.

As China's economy modernizes and grows, the demand for information technology will be extraordinary. If U.S. information technology companies are prevented from investing and competing in China, market share and future growth will be lost to competitors from Japan and Europe.

Since China was first accorded MFN trading status in 1980, U.S. electronics manufacturers have devoted considerable resources to gain a foothold in this important market. EIA's members know that there is no substitute for a domestic presence in many of these markets. It is only through an ongoing physical presence that companies can be viable competitors and positioned to supply their products for the long term.

AMP'S EXPERIENCE:

During the mid-1950's, AMP Incorporated was one of the few American companies to enter the Japanese market and establish a presence. Over the many years that my company has spent in Japan, significant and lasting commercial relationships were developed. AMP established itself as a major manufacturing company and is now regarded by Japanese manufacturers such as Toyota, Mitsubishi and Honda to be a reliable and trusted supplier. Our success throughout Asia has led to the creation of over 2500 U.S. jobs that export high quality, value added products to this important region.

Today, AMP is the largest domestic supplier of consumer electronic connectors to Japanese companies. We are proud of our success there and hope it serves to illustrate the importance of giving U.S. companies the opportunity to establish commercial relationships in China. We believe that China (as well as Japan) is a promising market for our high quality products. The threat of MFN revocation for China could serve as a permanent disincentive for U.S. companies to establish a presence there.

CHINA'S MFN STATUS:

It is important to note that U.S. electronics manufacturers have benefitted from recent tariff reduction efforts by the Chinese Government. This has helped many EIA member companies achieve greater market access for their products. The immediate effect of a removal of Most Favored Nation trading status would likely be a reversal of these positive

developments. Such an action would jeopardize many of the investments of U.S. electronics firms, reduce our export trade with China and put us at a competitive disadvantage vis-a-vis our European and Asian competitors. Furthermore, many U.S. manufacturing jobs are dependent on imports of Chinese electronic components. Lastly, increased tariffs on Chinese goods would ultimately hurt U.S. consumers who would face higher prices for many of the everyday electronics products they enjoy.

Perhaps most important, the unconditional application of MFN to China promotes jobs here in the United States. U.S. companies doing business in China employ Chinese nationals, but more importantly, our industry creates many high paying jobs in the U.S. The creation of thousands of additional jobs in the U.S. to support AMP's foreign projects is only one example; there are many similar companies who have created domestic jobs to support exporting and foreign investment.

CONCLUSION:

In conclusion, we believe that China remains an important market for AMP and the U.S. electronics industry and that it will become even more significant in the future. Renewal of unconditional MFN status for China is good for consumers, increases U.S. exports and creates jobs in the U.S. It helps U.S. companies and the U.S. government to remain engaged in China, and it demonstrates the benefits of a free-market society. For these reasons, I urge you to renew unconditional MFN status for China. Thank you.

U.S. ELECTRONICS EXPORTS TO CHINA

Product	1991	1992	1993	1994	Percentage Change, 1991-1994
Electron Tubes	2.8	1.5	4.1	9.3	232%
Passive Components	36.8	40.7	35.3	44.6	21%
Solid State Products	8.3	9.7	15.9	31.1	275%
Total Components	*47.9*	*51.9*	*55.3*	*85.0*	*77%*
Consumer Electronics	4.8	6.3	18.1	12.9	169%
Telecommunications	119.9	304.0	607.5	639.1	433%
Defense Communications	25.3	64.1	44.6	37.9	50%
Computers & Peripherals	133.5	172.0	225.9	231.9	74%
Industrial Electronics	155.1	199.8	247.2	204.8	32%
Electromedical Equipment	67.8	87.3	89.6	66.4	-2%
Total - China	***554.3***	***885.4***	***1288.2***	***1278.0***	***131%***

Information compliled from EIA's *1994 Electronic Market Data Book* and EIA's *1994 U.S. Electronics Foreign Trade Summary.*

Chairman CRANE. Thank you, Mr. Palafoutas.

A question to all of you, and that is are there ways in which U.S. companies operating in China can ensure that subcontractors are not violating human rights laws or employing forced labor? Is there any oversight that you exercise in that category?

Mr. LANG. Let me start with that one. First, in China in our industry, you do not find the subcontractor base in place as you would see it here in the United States. These very large state-owned industries which are in the aerospace business have been both vertically and horizontally integrated and they darn near start by digging the ore and making the iron and making it into parts.

But one of the aspects that we are introducing to them as we work with them to transition from state-owned enterprises to private enterprises is to describe to them what it takes to develop that supplier base and, therefore, we are in turn bringing in our subcontractors and suppliers to help them to do that. There is oversight through the engagement process.

Chairman CRANE. Anyone else have any comment on that subject?

What in your experience is the central government of China able to guarantee? I know they are making their transition to free trade, but is that something that they can oversee with regard to provincial governments? In other words, as big as that country is, are we getting full cooperation from all the provincial governments and adherence to what may be policy of the National Government, but which the National Government may not effectively totally oversee?

Mr. WORKMAN. I think the reality is that they are not only going through an economic transition, they are going through a political transition that started some 16 years ago. The reach of the central government appears to expand and contract. In years past, there has been some difficulty at the county level and at the provincial level where they have gone their own way.

Increasingly, as the financing for some of these large, for example, infrastructure projects comes from the provincial coffers and not the central government coffers, they have more and more autonomy. You see periodic crackdowns from the central government, particularly on corruption, that occurs almost annually now, and I think that is an effort by the central government to maintain some of the control. But increasingly, as they make economic progress, there are some political transitions that are going on. That is why we have a lot of problems with corruption at the county level and the central government does not condone it and are trying to tackle that. So I think it is kind of a mixed record right now.

Chairman CRANE. I think you were probably here when our colleagues testified earlier and related some horror stories that I had never heard about, cannibalism, fetuses, and stabbing prisoners to death and selling their kidneys. Have any of you had any input whatsoever from your personal contacts over there on these kinds of horror stories?

Mr. LANG. The only time that I have ever heard them is when I come back home here and hear about them.

Chairman CRANE. Anybody else?

[No response.]

Charlie.

Mr. RANGEL. Thank you very much, Mr. Chairman.

All of you heard the testimony of Congressman Wolf, I assume. How do you handle those types of accusations, people that you have on the ground in China? Do you investigate? Do you report back with your membership, especially the Chamber of Commerce?

Mr. WORKMAN. We have soon to be three American chambers, one in Beijing, one in Shanghai, and the new one will be in Guangzhou, and we maintain pretty close communications relationship with those chambers. I have to tell you, these stories have not come up and they would be the first to let us know if those allegations surfaced, because it is in their interest to.

Mr. RANGEL. These things are in the papers in the United States, so it is not just a figment of the Congressman's imagination. I do not know the truth of these things. We all would like to believe that it does not happen. But certainly when the country and U.S. businesspeople are accused of working with these type of people, it would seem to me that it would come up. The allegations have to come up.

Mr. WORKMAN. It is a basic tenet of business to know your customer or know your supplier and try to bring them up to standards that you want all your suppliers to have. So I would agree with you, Congressman, that——

Mr. RANGEL. Mr. Workman, I am not talking about low wages and human treatment. I am talking about prisoners being executed and having kidney transfers, I am talking about fetuses being taken out of the mother's womb and being eaten, I am talking about things that are so disgusting, and I am not talking about raising the standard. Those are the normal complaints that we hear. I am talking about these accusations that affect us as human beings in the country. It would seem to me that Americans should have said I looked into this, Mr. Workman, and I want you to know that this to my knowledge is not occurring. You are saying it does not come up. I read it and you read it, and we read it, and if we are going to——

Mr. WORKMAN. Let me be precise about what I said. We have not had any communication from the American chambers, the three American chambers in mainland China.

Mr. RANGEL. I heard what you said and I think you ought to be ashamed of yourself for not encouraging at least some communication and hopefully it would reject these types of allegations. It takes away from the dignity and the standards that the United States have here and abroad. If they know about these things and no one sees fit even to talk about it, then something is dramatically wrong.

Let me ask this: Do any of your organizations take any public position as relates to the embargo on China, Mr. Workman?

Mr. WORKMAN. Embargo on China?

Mr. RANGEL. Strike that. On Cuba.

Mr. WORKMAN. Yes, we have a position. We oppose unilateral trade embargoes and the chamber has had that position since 1922.

Mr. RANGEL. Specifically as relates to Cuba?

Mr. WORKMAN. Specifically as it relates to Cuba. We opposed the Cuban Democracy Act of 1992, the Helms-Burton bill that is before—I presume it will come before this subcommittee, we are opposed to that bill, although I understand a new version is to be introduced tomorrow. So we are looking forward to see what that has to say.

Mr. RANGEL. Mr. Workman, send me your resolutions on that. I assume all of your committees have taken public positions against unilateral embargoes specifically as related to Cuba.

[The following was subsequently received:]

REPORT TO THE BOARD OF DIRECTORS No.____ page ____

Date Mailed to Board Members: Oct. 20, 1993 Date of Board Meeting: Nov. 10, 1993

Report of: International Policy Committee

On: Unilateral Economic Sanctions

The Board is requested to reaffirm the Chamber's opposition to unilateral economic sanctions as a matter of general principle.

Background:

On August 27, 1993, in response to certain missile technology transfers to Pakistan, the Clinton Administration announced the imposition of economic sanctions against certain entities in China. These sanctions have not been duplicated by other major trading partners. In addition, the United States continues to maintain, and in some cases actually strengthen, various unilateral restrictions on trade and investment with other countries, such as Cuba and Vietnam, with whom most of our major industrialized competitors trade and invest without comparable inhibition.

Results have included: (1) in the case of Cuba, protests, such as "blocking statutes" enacted by other countries which prohibit foreign subsidiaries of U.S. firms from complying with strengthened U.S. sanctions enacted last year, (2) continued investment by non-U.S. firms in the Vietnam market while U.S. firms simply look on, and (3) the very real possibility that European and Asian competitors will simply pick up where U.S. firms were forced to leave off in China.

The U.S. has long ceased to enjoy the clout needed to unilaterally impose sanctions and make them stick. Whether it is export controls or investment restrictions, the absence of multilateral compliance simply results in our competitors becoming more able to penetrate a market and reap commercial benefits that U.S. law denies U.S. companies -- without materially changing the behavior of the targeted country. The principal beneficiaries in such situations are our foreign competitors, with the major losers being U.S. business.

Applicable Policy:

"Foreign Trade and Investment Principles and Objectives," Policy Declarations, pp. 132-133.

Action Requested:

That the Board interpret policy as an adequate basis to reaffirm the Chamber's opposition to unilateral economic sanctions as a matter of general principle.

John Howard
Committee Executive
International Policy Committee

James K. Baker
Chairman
International Policy Committee

Other Board Members:

Ronald W. Allen
Albert C. Bersticker
James A.D. Geier
William C. Lowe
Toby Malichi
Peter F. McCloskey
Herbert A. Sklenar
Michael Starnes
David S. Tappan, Jr.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLARD A. WORKMAN
VICE PRESIDENT, INTERNATIONAL

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August 11, 1992

The Honorable Sam M. Gibbons, Chairman
Subcommittee on Trade
House Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am very pleased to share the following views of the United States Chamber of Commerce regarding H.R. 5323, the Cuban Democracy Act of 1992, on which your subcommittee held a hearing August 10.

The United States Chamber of Commerce, representing over 200,000 member companies and individuals, as well as 65 American Chambers of Commerce (AmChams) around the globe, advocates change through economic interaction, not isolation. We favor the lifting of unnecessary and unenforceable export controls, particularly when they are applied unilaterally and not supported by our allies and leading trading partners. Such controls do not achieve policy objectives and generally result only in harming the international competitiveness of American business.

While we agree with the intent of H.R. 5323 to help the Cuban people in their struggle for freedom, we strongly oppose sanctions proposed in section 6, which would strengthen the U.S. embargo against Cuba. The governments of Latin American countries and Canada, who will be most affected by these sanctions, will simply not accept the unwarranted extraterritorial reach of the U.S. government. Canada has already implemented legislation making it illegal for Canadian firms to adhere to the U.S. sanctions. Argentina has made it clear that it will take similar action if this legislation is enacted. Passage of this legislation will inevitably invite other retaliation against American business interests in these countries and will result only in further loss of competitiveness by American exporters. Not only would these sanctions be ineffective, but they would also engender sympathy for the Cuban government elsewhere in the Americas and further undermine the stated pro-democracy objectives of this legislation.

The issue of extraterritoriality is also a factor in the bill's provision on vessels docking at Cuban ports. In our opinion, the proposed 180 day period between leaving a Cuban port and docking in the U.S. is another unworkable attempt to legislate the trading patterns of

our allies. Furthermore, one would be hard pressed to identify any significant effect this legislation would have on Castro's economy. However, it would hinder American business access to numerous foreign markets that trade with Cuba.

The United States can no longer afford to formulate policy that is principally symbolic, without regard to the real-world consequences for U.S. commerce. Global competitiveness has forced American business to work harder and be more innovative than ever before. This legislation ignores that reality, and instead relies on the demonstrably flawed premise that unilateral U.S. sanctions will throw a foreign economy into turmoil and hasten a return to democracy. We do not believe that H.R. 5323 will achieve its laudable objective; instead, it would be counterproductive to overall American economic and foreign policy interests.

Sincerely,



Willard A. Workman

Mr. RANGEL. Mr. Manteria.

Mr. MANTERIA. We have not looked at the issue. Since we are not involved at this time in Cuba, although we once had stores there that were confiscated by the Castro regime. We just have not looked at the issue. We are in favor of free trade and——

Mr. RANGEL. Mr. Lang.

Mr. LANG. We are strongly in support of free trade relative to Cuba, and so forth. Clearly, we do not do any business with them.

Mr. RANGEL. Mr. Palafoutas.

Mr. PALAFOUTAS. We are opposed to using trade sanctions as a tool of U.S. foreign policy, especially unilaterally, so in that case we are opposed in China, we would be opposed in other places around the world.

Mr. RANGEL. I would appreciate what statements you have in support of this. Mr. Manteria, you may not be doing business in Cuba, but we have got to have one standard one way or the other, and I appreciate your association taking a look at this for continuity.

Thank you so much, Mr. Chairman.

Chairman CRANE. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman.

I am very concerned about our discussion of an issue like MFN, if we are actually moving toward a choice that would put the United States at a strategic disadvantage in our trade with China, and I believe that if we do the coupling with human rights and MFN, that is exactly what we would be doing to ourselves.

I am wondering if any of you gentlemen have had experience or information about what other nations like France or Germany or Japan are doing with regard to the issue of human rights and trade with China.

Mr. WORKMAN. In general, the Europeans take a much more pragmatic approach to trade in general and they have a fundamental difference in how they view trade. Trade to them is a right. Here in the United States, we look at trade as a privilege, and a lot of our laws are based on that premise. For example, the export licensing laws are premised on the fact that all exports from the United States require government approval.

The Europeans do not look at it that way. So they take a very pragmatic approach to trade with China. I think they share our values about human rights. They are all signatories to the various conventions on human rights, and they pursue that through parallel diplomatic channels, but they never do the linkage. They are a little more creative about how they use various levers available to them, either the security lever, the diplomatic lever, aircraft landing rights lever, rather than use a fundamental trading relationship lever.

Ms. DUNN. Are there any nations so far as any of you know that actually do link human rights with trade in their dealings with China?

Mr. LANG. I have never seen any of that done in all my travels through China.

Ms. DUNN. It begins to seem almost naive to me. I would like to ask you another question. I have some concerns, too, if we were to initiate this policy of withholding MFN from China, whether that

would not result in all kinds of retaliation to industries that are important to us in the United States, particularly to me in Washington State, for example, the aircraft industry, the timber industry, and so forth. What do you think the results of that sort of policy would be?

Mr. LANG. In my opinion, the MFN debate, that has gone on historically when it is put in the Chinese context, is put in the context that we as American companies are subjected to what they consider to be ex post facto rulemaking by the U.S. Government. So they look at this annual debate as putting us as at a disadvantage from the get-go. When you talk to your Chinese friends and say what happens if MFN is withheld, I think it is a mixed story.

I think what their response would be would be to target a few strategic industries to try to deliver the message to us, because I think, as it was said earlier, that their trade with us is as important to them as it is to us. But I do believe that we, for example, in the aircraft industry, which is to them one of their 50 identified strategic industries, would be targeted. I would think, for example, in the case of Boeing, you would probably see a shift to Airbus for a period of time. So, there would be some retaliation.

Ms. DUNN. The gentleman from the electronics industry, is that your sense?

Mr. PALAFOUTAS. I do not think there would be any question about it. One of the things that we in the United States do not take as seriously as perhaps Asians do is the saving of face. It is not that a big a thing for us. We can pretty well insult each other with impunity around here.

But in Asia, I think the Chinese would take offense at this and take retaliation very strongly. With the United States electronics industry, the opportunity to have that presence there would be seriously impaired and affect us competitively for decades to come.

Ms. DUNN. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Mr. Lang, in response to Chairman Crane's question, had you heard of any of the atrocities that were cited by some of the former panelists? You said the only time you heard them was when you came to the United States and not in China. Does that surprise you?

Mr. LANG. In a way it does, because I travel throughout China and I have been through many, many of their industrial establishments admittedly limited to the aerospace sector. I have people based all over China, from the extreme north to extreme south, as far west as Chengdu and along the coastline, and I have very bright people who are well educated, who speak the language and blend in with the local economy, and I believe that if they ever heard of this sort of thing or saw it in the local community in which they were dealing, that they would report it to me. In fact, we have talked about it, just in our circle, so to speak, we have just not seen it.

Mr. COYNE. Well, would it not surprise you to know that the Chinese people would not want to make this generally known if they were doing it? That does not surprise you, does it?

Mr. LANG. No, absolutely it does not.

Mr. COYNE. Thank you.

Chairman CRANE. Gentlemen, I want to thank you for your testimony this morning.

I will adjourn this panel and would like to convene the next one with Jeffrey Fiedler, Mike Jendrzejczyk, Charles Brown, and Rachel Lostumbo.

Mr. Fiedler, would you commence first.

STATEMENT OF JEFFREY L. FIEDLER, SECRETARY-TREASURER, FOOD AND ALLIED SERVICE TRADES DEPARTMENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AND DIRECTOR, LAOGAI RESEARCH FOUNDATION

Mr. FIEDLER. Thank you, Mr. Chairman.

I would ask permission, sir, that I enter my full statement in the record, and I am going to depart somewhat from my prepared text, in light of the government's testimony this morning.

Chairman CRANE. Without objection, so ordered. I might for the benefit of any who were not here earlier ask you to please try and keep your remarks under 5 minutes, and any additional information that you may have will be made a part of the record.

Mr. FIEDLER. Mr. Chairman, my name is Jeff Fiedler. I am secretary-treasurer, the Food and Allied Service Trade Department of the AFL–CIO (American Federation of Labor and Congress of Industrial Organizations), and I serve also as a director of the Laogai Research Foundation, which looks into forced labor in China and in China's gulag.

I was struck this morning not by Mr. Wiedemann's verbal testimony, but by his written testimony on forced labor, which unfortunately I can only characterize generously as misleading and less generously as disingenuous.

Mr. Wiedemann makes it appear by saying such things as "we," meaning the government, have initiated over 50 cases of forced labor investigations. That is a large number, and you can conclude from listening or reading his statement that something happened in those 50 cases. Whereas, the truth is in many of those cases, if not most, the Chinese gave one sentence responses months later, months after the government made the request.

They also talk about punishment of factory managers. We are not talking about factories here. We are talking about prisons. We are not talking about punishing factory managers. We are talking about prison wardens. It is a mischaracterization.

The MOU was originally conceived in the Bush administration as a means of putting the forced labor issue to bed, taking it away, saying that something had been accomplished. The Clinton administration for its part, when the Chinese did not comply with the MOU, negotiated a statement of cooperation just prior to MFN's renewal last year, where they then said—and the Secretary of State certified, and I would also characterize his certification as less than straightforward—that the Chinese had complied merely because they signed an agreement agreeing to comply with something they had never complied with, and then the administration called that compliance again.

If your position is strong on its merits, then one ought to articulate their position on its merits and not mislead the Congress or the American people.

One other sort of gentle mistake in Mr. Wiedemann's testimony, he states that the administration consulted with labor, NGO's, and human rights groups on a code of conduct. Yes, they consulted for a matter of a couple of hours months and months and months ago, but he never mentions what anybody said. We, for instance, said that they ought to forget it, that they ought not announce a code of conduct. They said, well, the President had promised that he would, and we pointed out that the President had made a lot of promises he had not kept.

We ought to forget about it. We are coming up on 1 year later. They have leaked but not announced a code of conduct because they have not gotten enough companies to sign on, and we in the labor community and others in the human rights and the NGO community have not looked upon the President's code of conduct as anything more than an interesting personal statement.

The AFL–CIO does not support renewal of MFN and will not support the renewal of MFN for China until a number of things are done.

One, that free trade unions exist in China—they do not today—that China recognize the Universal Declaration of Human Rights in fact and not in word, and that China abolish its forced labor system. Until then, we cannot in good conscience create a single American job based upon most-favored-nation status with China.

Thank you, sir.

[The prepared statement follows:]

TESTIMONY OF JEFFREY L. FIEDLER
SECRETARY-TREASURER, FOOD AND ALLIED SERVICE TRADES DEPT., AFL-CIO
AND DIRECTOR, LAOGAI RESEARCH FOUNDATION

BEFORE THE
SUBCOMMITTEE ON TRADE WAYS AND MEANS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

ON THE RENEWAL OF MOST FAVORED NATION STATUS FOR CHINA

Mr. Chairman, my name is Jeffrey Fiedler and I serve as the Secretary-Treasurer of the Food and Allied Service Trades Department of the AFL-CIO and as a Director of the Laogai Research Foundation. The Foundation is devoted to exposing human rights violations in China's gulag, known as the Laogai.

Since the President, last year, delinked human rights concerns from consideration when deciding to renew Most Favored Nation status for China, and since the Congress voted to go along with him by rejecting a targeted sanctions bill, the human rights situation in China has deteriorated significantly.

Others today will detail this situation. I will confine my remarks to the repression of independent worker activists, the continued export of forced labor products to the United States, and the trade deficit.

The only trade unions allowed to exist in China are controlled by the communist party. These unions exist in all state enterprises, and many joint ventures and wholly owned foreign companies. We find it perversely ironic that American companies, seemingly without any qualms, cooperate with communist unions inside their plants. Perhaps the American companies have gained a high level of comfort because these so-called unions exist primarily to exhort their members to ever higher levels of productivity, instead of representing their interests as workers.

Free and independent unions do not exist in China. They have been declared illegal. Over the past year dozens of independent workers activists have been arrested and condemned to the Laogai for doing little more than talking to each other and circulating their thoughts on paper. They join hundreds of other, most of whom are unknown to the outside world, who have been jailed since 1989.

The Chinese government's fear of worker leaders has been made evident by its continued refusal to allow Han Dongfang, a founder of the Beijing Workers Autonomous Federation, to return to China. Han, who spent two years in China following the repression in 1989, is a Chinese citizen. His exile, and the forcible return of Lu Jing-Hua, a young Chinese worker activist, now working for the International Ladies Garment Workers, when she flew to Beijing in an effort to visit her mother and daughter, are eloquent testimony about the Communist party's fear of legitimate labor leaders.

Last year, the Secretary of State certified that the Chinese had complied with the 1992 Memorandum of Understanding on Prison Labor. One can dance around the nuances of diplomatic language and twist within the vagaries of diplomatic con games, but the fact is that the Secretary of State was less than truthful. The Chinese have continued to ship forced labor products into the United States every day since they signed the MOU in August of 1992.

They must have seriously questioned American resolve to end this illegal practice when our government negotiated a "statement of cooperation on the implementation" of the MOU. What the Secretary of State did, and the Congress accepted without question, was to permit the Chinese to sign another diplomatic document promising to do what they have failed to do all along. As of today, they still have failed to comply.

The Laogai Research Foundation is nearly finished with its latest investigation which will demonstrate that American companies are still importing products from the Laogai. This information will be added to the stack of documentation gathered over the past four years about artificial flowers, handtools, chain hoists, tea, diesel engines, steel pipe, shoes, Christmas lights, medical gloves, rubber boots, and dozens of other forced labor products which are being sent into the United States by Chinese state-owned trading companies.

While the U.S. Customs Service had devoted some effort toward stopping these goods, current law, a lack of resources, and the Chinese practice of mixing the shipments with legitimate products as well as changing the trading companies who send the products to the U.S., make the seizure of these goods difficult, if not impossible.

We refer to the MOU as "The Meaning of Useless". If the same level of compliance allowed the Chinese was accepted by the United Nations in its relations with Sadam Hussein, Iraqi oil would be flowing through American refineries.

Last year, the business community argued vociferously in favor of renewing MFN for China. They argued that capitalism would bring greater democracy to China. They argued that renewing MFN would cause the Chinese to open their markets wider to American companies. They argued that rising U.S. exports would cut the trade deficit. Little evidence exists to substantiate these claims nearly a year later. The trade deficit increased nearly 25% in 1994, the business community is whining about the failure of the Chinese to establish acceptable laws for the normal conduct of business, and corruption continues to plague business at all levels.

Few new jobs have been created by our exports. Many are being lost as American companies announce the opening of join ventures in China to produce products there which previously had been exported, or would have been if the Chinese allowed the imports.

MFN has continued to benefit Chinese military and defense industrial companies whose exports to the U.S. have grown even as they continue to supply dangerous weapons to Iran and Pakistan. Allowing Chinese military companies to benefit from MFN is a conscious decision by the President and the Congress to have U.S. consumers directly subsidize the Chinese military. That this is being allowed, and that the Congress has not debated the issue, is in our view, a serious failure. But, it is understandable within the context of a China policy which has given the dollar primacy over decency and democracy, a policy which has been pushed by two Presidents and approved by members from both parties in the House and Senate.

Mr. Chairman, until China allows free and independent unions, abolishes the Laogai, respects the Universal Declaration of Human Rights, and is free from the oppression of its communist party, the AFL-CIO will not support the granting of Most Favored Nation status to China.

Thank you.

Chairman CRANE. Thank you, Mr. Fiedler.
Mr. Jendrzejczyk.

STATEMENT OF MIKE JENDRZEJCZYK, WASHINGTON DIRECTOR, HUMAN RIGHTS WATCH/ASIA

Mr. JENDRZEJCZYK. Thank you, Mr. Chairman. My name is Mike Jendrzejczyk. I am the Washington director of Human Rights Watch/Asia, formerly known as Asia Watch.

I want to first of all thank you for inviting us to appear this morning and ask that our written statement be included in the record.

Chairman CRANE. Without objection, so ordered.

Mr. JENDRZEJCZYK. Last July we testified before this subcommittee following the President's decision to renew MFN for China and to delink human rights and MFN. We then noted the serious consequences for human rights in China, and unfortunately the situation since then has only deteriorated further.

In addition to the points mentioned in our testimony, I would also like to highlight two others: No. 1, the detention of foreign businessmen who are increasingly also the victims of arbitrary arrests, detention, and imprisonment under a system which does not allow or respect the rule of law.

No. 2, Mr. Rangel this morning asked about Mr. Wolf's testimony on transplantation of organs from executed prisoners, and I would just note that last August we published a very extensive report with documentation on this procedure which we believe is widespread in China, and I would be happy to provide that documentation both to Mr. Rangel and to the subcommittee.

We believe that it is crucial that the administration develop a tough and credible human rights policy on China, which it promised to do, yet has failed to do since last May. We think that it is essential that China, as an emerging economic and political superpower, be held to its obligations to respect international human rights norms as well as norms regarding trade and proliferation.

I would like to focus the remainder of my brief remarks on our recommendations for current U.S. policy.

We do believe there is a double standard now in the administration's approach toward China. The administration is willing to exert major political and economic pressure on China to press Beijing to abide by global trading rules. But when it comes to moving China to respect international human rights norms, the administration has yet to develop a credible strategy.

We supported the administration's efforts at the U.N. Human Rights Commission this past March, which was an extremely important undertaking. But much, much more needs to be done throughout the year.

We would also note that while the President has delinked trade and human rights, the Chinese have not. During their fierce lobbying to prevent the adoption of this resolution by the Human Rights Commission, Beijing explicitly warned the Europeans that their support for the resolution might, in fact, jeopardize their prospects for enhanced economic cooperation.

As I mentioned, we believe we need a credible human rights policy, and we have laid out in our testimony a few recommendations for both bilateral and multilateral components for such a policy.

No. 1, we believe China should be a key item on the agenda when the G–7 meet in Halifax, Nova Scotia, next month. We proposed this to the administration several weeks ago. We believe this is the opportunity to get all China's key trade and aiding partners onboard with a long-term multilateral strategy to bring about compliance with international human rights norms.

No. 2, it is time to abandon the policy of secret diplomacy when it comes to China. We briefed the staff of Energy Secretary O'Leary when she led a huge delegation to Beijing last February. We are disappointed that though she raised human rights when she met with Premier Li Peng, she said nothing about human rights publicly during her time in China.

Similarly, Vice President Gore met with Li Peng in March in Copenhagen at a U.N. conference and again said not a word about human rights publicly. Once again, we think that policy should end.

No. 3, we think the administration should be urged by the Congress to use our leverage, voice, and vote at the World Bank. China now gets more loans from the World Bank in terms of dollar value than any other country in the world.

Last year the Foreign Aid Bill contained a provision saying we should use our voice and vote at the World Bank to promote worker rights. That is something we should do in China.

No. 4, we believe the President should politely but firmly decline the invitation to visit China this year until there is substantial and dramatic progress in improvement on human rights.

Finally, on the question of the Memorandum of Understanding on prison labor, I would agree with Mr. Fiedler that what you received this morning was a very sanitized picture. We know that the Customs Service has, in fact, been denied access to reeducation through labor facilities on the grounds and that these are not covered by the MOU. In the face of this kind of stonewalling, we think the administration should get tough, should rescind the MOU, and renegotiate it. That is the only way the Chinese are going to take us seriously, as they have on the issue of intellectual copyrights.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

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Statement by Mike Jendrzejczyk, Washington Director
Human Rights Watch/Asia
before the Subcommittee on Trade,
Committee on Ways and Means
U.S. House of Representatives

May 23, 1995

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Thank you, Mr. Chairman, for inviting us to testify on renewal of China's Most Favored Nation (MFN) trade status. My name is Mike Jendrzejczyk and I am the Washington Director of Human Rights Watch/Asia (formerly known as Asia Watch.) Since 1985, we have carried out independent monitoring of human rights in Asia, conducting investigations, publishing reports, engaging in dialogue with governments, and wherever possible, collaborating with and actively supporting the work of local human rights monitors. Human Rights Watch has consultative status at the United Nations.

Last July, we testified before this Subcommittee, approximately two months following the decision by President Clinton to renew MFN for China and to "de-link" human rights and MFN. We noted the serious consequences of this decision on the human rights situation in China, and here I quote from our written statement of July 28, 1994:

"Since the MFN decision, the Chinese government has begun long-delayed trials of human rights and labor activists. It has ignored its own criminal procedure laws by holding major dissidents in prolonged incommunicado detention...the government has just issued a new set of state security regulations that further restrict the ability of activists to meet, speak, and organize...To summarize, China has steadily tightened the noose on all forms of dissident activity. The authorities in Beijing have apparently calculated that there is no price to be paid for continued political repression in the name of guaranteeing "social stability" at a time when major economic reforms are underway."

Mr. Chairman, unfortunately, the deterioration of human rights conditions in China and Tibet we described last summer has continued, and in some areas, intensified. In addition, despite the President's announcement on May 26, 1994 that the Administration would launch an "aggressive" new, human rights policy, the White House has yet to develop a credible, effective strategy for exerting serious pressure on China to abide by its international human rights obligations.

We believe that it is essential that China, as an emerging economic and political superpower, be held accountable for its obligations to comply with international norms of behavior -- whether in the area of trade, or human rights. This is especially crucial as the post-Deng Xiaoping transition period approaches, and as China vigorously pursues its entry into the World Trade Organization.

HUMAN RIGHTS WATCH

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Human Rights Watch is a not-for-profit corporation monitoring and promoting human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

In our testimony today, we would like to briefly summarize recent human rights developments in China, and offer recommendations for U.S. policy.

HUMAN RIGHTS DEVELOPMENTS

Over the past year, we have documented the decline in human rights in China and Tibet since President Clinton's MFN decision last May . The worsening human rights conditions are well described in the State Department's own human rights country report for 1994 issued February 1, 1995. As Deng Xiaoping's death approaches, Chinese authorities have voiced increasing concern about maintaining "social stability."

-- In March 1995, as the National People's Congress convened in Beijing, dozens of intellectuals filed four separate petitions calling for basic human rights, an independent judiciary, abolition of China's "re-education through labor" detention system, and other reforms. While in Beijing on March 1, Assistant Secretary of State for East Asia and the Pacific, Winston Lord, called on China to refrain from rounding up "people who are expressing their views peacefully." Though some involved in issuing the appeals were detained briefly by the police and interrogated, arrests did not immediately occur. However, in recent days, a number of dissidents involved in drafting or circulating these petitions have been detained.

We are also concerned about a possible crackdown in the wake of the appeal issued on May 15, 1995 by forty-four leading scientists and intellectuals calling for the lifting of the "counterrevolutionary" verdict from those involved in the 1989 pro-democracy movement. They include Liu Xiaobo, one of four men who started a second hunger strike in Tiananmen Square on June 2, 1989 and successfully negotiated for the June 4 student withdrawal from the Square. He was detained on May 17. Also, Zhang Ling, the wife of the famous Democracy Wall poet Huang Xiang, was detained on May 18 at 4:30 A.M. Her husband had signed the May 15 petition; she had signed an earlier one.

We believe it is crucial that the international community speak up firmly in support of the internationally-guaranteed rights of China's citizens, especially at this critical time.

-- Wei Jingsheng, China's most prominent pro-democracy activist, has remained in detention since April 1, 1994. The authorities say he has "violated the rules governing his parole" and "committed new crimes," unspecified, since being released last September after spending 14 and one-half years in prison. His exact whereabouts are unknown. On January 27, 1995, the Chinese justice ministry denied Wei was being held in a prison under its control, but that may just be obfuscation: the public security ministry also maintains detention facilities. Last month, his sister, Wei Shanshan, who lives in Germany, went to China to try to locate him. She was refused permission to see him and was given no information about his whereabouts or current condition.

-- Tong Yi, Wei's assistant, sentenced to two-and-one half years in a "re-education through labor" camp in Wuhan, smuggled out letters to her mother in January 1995 to complain of beatings by "cell bosses" when she refused to work more than eight hours per day (the maximum provided by government regulations.) Her face and body were covered with bruises and scars. On March 2, it was revealed that her father and sister have been harassed by police and threatened with loss of their jobs if they did not stop protesting the young woman's mistreatment.

-- Last December, China handed down some of its harshest sentences since the prosecutions following the post-Tiananmen crackdown. Nine dissidents were given jail terms of up to 20 years. They were first arrested in 1992 for organizing pro-democracy and labor rights organizations. Their trials, which took place in July, were twice postponed until after the President's MFN decision last May.

-- Political prisoners continue to experience serious health problems, and no major releases on grounds of "medical parole" have taken place since last May. For example, Bao

Tong, sixty-two years old, sentenced to seven years for leaking state secrets, has experienced worsening health problems, including possible cancer; his family is even being denied access to his medical records. Gao Yu, a journalist arrested in October 1993 as she was about to leave for the U.S. to take up a fellowship at the Colombia School of Journalism, is serving a six year prison term. She was transferred to Yanqing Prison on January 6, 1995 -- an institution holding mostly mentally ill people -- but the authorities there initially refused to accept her because they did not want to take responsibility for a prisoner in such ill health. Gao Yu has a history of heart problems.

-- Criminal charges are being used against political dissidents. For example, a Shanghai human rights activist, Dai Xuezhong, was sentenced on December 22, 1994 to three years in prison on charges of tax evasion. Another dissident, Bi Yimin, was accused of embezzling money from a research institute he directed in the last 1980's, established by the well-known democracy activists Wang Juntao and Chen Ziming. Bi Yimin was sent to jail for three years last month. Using such charges seems part of a pattern by the authorities aimed at concealing the true number of political prisoners in China.

-- In Tibet, repression remains harsh. Since the beginning of 1995, there have been at least five confirmed pro-independence protests in Lhasa. Police have raided monasteries arresting Buddhist monks, nuns have been arrested for shouting pro-democracy slogans, according to unofficial sources, or for putting up pro-independence posters. On January 8, two monks were reportedly beaten severely until they could not stand up, at Gutsa Detention Center and were threatened with further punishment if they reported the beatings. When the U.N. Special Rapporteur on Religious Intolerance visited Tibet, from November 25-27, 1994, security forces were deployed to intimidate those who wanted to contact him.

U.S. POLICY

There is a clear double-standard in U.S. policy towards China. The Administration is willing to exert major political and economic pressure on China to press Beijing to abide by global trading rules. But when it comes to moving China to respect its international human rights obligations, the Administration has yet to develop a credible strategy, analogous to its stance on intellectual property rights and the use of the threat of sanctions to obtain results. The tactic of setting very concrete goals and then adopting a no-holds-barred approach to achieving them has been noticeably absent from administration policy, save for its work in Geneva at the U.N. Human Rights Commission in March 1995.

We strongly supported the Administration's efforts to pass a resolution criticizing China's human rights record at the U.N. Human Rights Commission. Though we were disappointed that the resolution was narrowly defeated, the fact that the measure was debated and attracted broad support -- including from governments in Eastern Europe, Latin America and Africa -- was a definite step forward, and we applaud the Administration's active campaign for several months leading up to the Commission meeting.

We would also note that while President Clinton has delinked trade and human rights, the Chinese government has not: during its fierce lobbying to prevent the U.N. resolution from being adopted, Beijing warned the Europeans that their support for the resolution might jeopardize prospects for financial cooperation.

The effort at the annual U.N. Human Rights Commission meeting, important as it was, must be complemented by a strong, outspoken human rights policy throughout the year, with bilateral and multilateral components. We would recommend the following:

1) Put China on the agenda for the G-7 summit meeting in Nova Scotia on June 15-17. As the post-Deng Xiaoping era approaches, it is crucial that China's key aid and trading partners develop a common strategy to encourage China to respect human rights. First, the G-7 should agree to a common human rights agenda they will promote, using a combination of bilateral and multilateral political and economic tools. Secondly, they should issue a formal statement --

modelled roughly on the U.N. Geneva resolution -- calling on China to take substantive steps to improve human rights, and calling for Wei Jingsheng's immediate and unconditional release.

2) Abandon the policy of "secret diplomacy" on human rights when Cabinet level officials visit China or during meetings with high-ranking officials. "Constructive engagement" should not mean limiting criticism of human rights practices to U.N. fora and closed door meetings. When Energy Secretary Hazel O'Leary visited China with a huge trade delegation in February 1995, and met with Premier Li Peng, she may have discussed human rights privately but she did not say a word about it publicly. Vice-President Gore held a lengthy meeting in March in Copenhagen with Premier Li Peng. But once again, any discussion of human rights took place only in private.

3) Congress could help by calling upon the Administration to use its "voice and vote" at the World Bank to promote internationally recognized worker rights in China. Generic language on worker rights, pertaining to the U.S. directors at all of the international financial institutions, was contained in the FY 1995 foreign aid legislation. But we are unaware of any plans by the Administration to implement this law, in the case of China at the World Bank. (By the Chinese government's own admission, there were over 15,000 labor disputes in 1994 alone.) In addition, Congress should indicate that any decision to reinstate the Overseas Private Investment Corporation's program in China -- suspended since 1989 -- can only take place if there is significant progress in respecting worker rights in China.

4) Congress could send a clear signal to the White House that President Clinton should politely but firmly decline President Jiang Zemin's invitation that he visit China this year until and unless there is dramatic, overall progress on human rights. Signs of such progress would include: releases of hundreds of political and religious prisoners; enactment of major legal reforms such as revocation of the 1993 state security law and end to all restrictions on freedom of religion; an agreement with the International Committee of the Red Cross, and so on.

5) Adoption of a meaningful "code of conduct" for U.S. businesses in China. It is one year since the President's announcement last May that he would develop "with American business leaders...a voluntary set of principles for business activity in China." But nothing has yet been officially forthcoming. A "model code" was unofficially circulated by the White House several weeks ago, but it does not even mention China. The Administration has backed away from its original commitment to such a code as part of the Administration's "new human rights program" for China, and has instead drafted a generic code for U.S. businesses worldwide. The language developed thus far is far too vague and broadly worded to have a significant impact on the specific human rights and worker rights violations in China. We welcome some positive elements in the draft code, such as recognition of the importance of the rights of association and collective bargaining in the workplace, and the right of free expression. But absent any details on how these principles will be promoted in China, where these rights are routinely denied, it is not clear what impact the "model code" will have. For example, we would like to see specific provisions on prison labor, suggesting language in all contracts with subcontractors prohibiting the use of forced labor and calling for unannounced inspections of supplier sites. If the Administration fails to develop a meaningful, China-specific code with clear transparency and reporting mechanisms, we would support Congress taking the lead.

6) Providing a human rights mandate for the new U.S. ambassador to China. In a recent speech in Beijing, the current U.S. ambassador, Stapleton Roy, urged China to establish the rule of law "as the most effective way of maintaining stability and social order without resort to repression." The American envoy in Beijing should be consistently outspoken on these issues. When a new ambassador is named and confirmed for Beijing, we would suggest that Congress adopt a concurrent resolution laying out a concrete human rights mandate for the U.S. envoy. The ambassador, for example, should be urged to press for diplomatic access to trials and trial documents in the cases of political, religious and labor dissidents; to provide guidance and suggestions of key human rights issues that visiting Congressional and business delegations should raise with Chinese officials; to place specific rule of law and governance questions high on the agenda of bilateral discussions with senior Chinese government officials; when

appropriate and useful, to meet with Chinese dissidents and their families to provide moral support.

7) If China continues to stonewall on compliance with the 1992 Memorandum of Understanding (MOU) on prison labor, the Administration should immediately rescind and renegotiate the MOU. The Customs Service has been denied access to re-education through labor camps on the grounds that inmates (including political detainees) sentenced administratively without trial are not technically "convicts," thus do not fall under the MOU. The Administration should adamantly refuse to accept this interpretation, and adopt the kind of tough posture it successfully applied when Chinese compliance with intellectual copyright agreements were at stake.

Thank you, Mr. Chairman, for the opportunity to appear before the Subcommittee.

Chairman CRANE. Thank you, Mr. Jendrzejczyk.
Mr. Brown.

STATEMENT OF CHARLES J. BROWN, CONSULTANT, ON BEHALF OF PUEBLA INSTITUTE

Mr. BROWN. Thank you, Mr. Chairman.

I am here on behalf of the Puebla Institute, which is an organization that works to monitor religious freedom around the world. I would also like to ask that my written statement be included in the record.

China has made impressive free market reforms, so that its citizens are freer in choosing jobs, housing, and diet. In the area of economic rights, progress has been made. But civil and political rights, what we Americans know as our Constitutional Bill of Rights, continue to be denied.

Freedom House's 1994–95 Comparative Survey of Freedom names China as among "the most repressive places on Earth." China remains a one-party state committed to suppressing political dissent and other perceived threats to its monopoly on power.

Dissidents and independent Christians are frequently rounded up and held without charge, trial, the rights to defense, appeal, or any kind of public record. In the Chinese laogai, or "reform-through-labor camps," dissidents are forced to work without pay as slaves in over 1,000 factories, mines, or on farms.

Roman Catholic priest Father Vincent Qin was forced to labor at No. 4 Brick Factory in the Chinese city of Xining as a "worker detainee" for 13 years after he had already completed a 13-year sentence as a prisoner at the same brick factory. Father Qin, age 60, was sentenced last month to 2 more years of hard labor for his apostolic work.

Beijing argues that there is no religious persecution today in China; that clergy are sometimes imprisoned for violating the law, not for religious reasons.

This is simply false. Religious repression in China is part of a political climate in which human rights and democratic freedoms are routinely abused. "I think; therefore I am guilty" remains the prevailing maxim.

Since China's Communist government failed to eliminate religion, it is now trying to control it. Under the new communism, the ruling party still views Christianity as a destabilizing force. "Patriotic associations," that are ultimately controlled by the Central Committee of the Communist Party, oversee all "legal" Christian activity.

In China, Roman Catholicism is by definition illicit, and thus banned. Clergy who maintain contact with the Vatican are often sentenced to labor camps. Of the hundreds of persecuted religious, 21 Roman Catholic bishops are under house arrest, administrative detention, or restricted to internal exile.

Protestants who worship in private homes not registered with the official church, or who evangelize without permission, also are persecuted. It is so bad in China that an 83-year-old mother is under house arrest simply because her son, a house-church Protestant, was arrested last year for "involvement with overseas Christian organizations." This at a time when China goes to great

lengths to attract involvement with overseas business organizations.

A country's respect for religious freedom offers a good barometer of its respect for human rights and democratic freedoms in general. A regime that fails to respect freedom of conscience, the starting point of all human freedoms, is unlikely to respect freedom of expression or association. A country unwilling to respect the rule of law is unlikely to respect the sanctity of the contract.

Mr. Chairman, last May the American business community argued that American commercial engagement would translate into greater political freedom in China. This has not happened.

U.S. companies have been implicated in gross ethical misconduct, usually through the actions of local partners and suppliers.

In my written testimony, we discuss the cases of both Chrysler and McDonnell-Douglas. I will not go into them in detail due to time. But I would suggest that you take a look at our suggestions in my testimony.

I would also like to suggest a few positive steps companies can take to promote democratic values. They could make their company premises available after hours for study sessions or religious meetings. They could provide a well-stocked library for mid-level management. They could use business contacts in the Chinese Government to appeal for the release of specific prisoners of conscience, a strategy that American businessman John Kamm has pioneered with notable success in China.

In sum, Mr. Chairman, commercial engagement will help expand civil and political rights only if American corporations themselves make a conscious effort to promote such values.

[The prepared statement follows:]

Statement of Charles J. Brown, representing
The PUEBLA INSTITUTE
Before the Subcommittee on Trade of the Committee
on Ways and Means of the U.S. House of Representatives
May 23, 1995

Thank you, Mr. Chairman. The Puebla Institute is honored to be invited to testify today.

Investment in China is very problematic for business leaders who take ethical standards seriously. Whether articulated in Judaism, Christianity, or secular humanism, the central ethical principle is the inherent dignity of the individual -- the individual who has inalienable rights.

On the one hand, China's new markets offer fabulous opportunities. The benefits of trade are not limited to profits and the opportunity to build on the extraordinary energy of Asian peoples. Trade also holds the possibility of opening up these countries, which for over 40 years have been tyrannized by the brutal and pervasive policies of Communism. The growth of the private sector and the expansion of individual financial independence make it more difficult for the Party and the government to dominate people's lives to the extent they did in the past.

But on the other hand, China dispenses with the rule of law, systematically tramples individual rights, and countenances rampant corruption both inside and outside of government. Those who do business in this environment run a great risk of complicity in unethical conduct.

Five basic misconceptions about human rights, fostered mainly by China itself but also sometimes by those in the business community, obscure the ethical conflicts posed by doing business there. I wish to address these misconceptions briefly. They are:

1. Since trade has opened with China, human rights have improved;

2. There is no religious persecution in China today. Religious leaders in jail are there for breaking the law, not religious reasons;

3. It is the companies of other countries that violate human rights, not American businesses;

4. American companies should not be in the business of promoting human rights; and

5. Human rights are Western values, not compatible with Asian cultures. Another way this is sometimes phrased is that Asians don't care about politics, they only want to make money.

I. First misconception: Human rights have improved in China with commercial engagement with the West.

China has made impressive free market reforms -- permitting its citizens to start and own businesses, to enter into joint ventures, and to own property, to name a few. This means that Chinese citizens are freer in choosing their jobs, their housing, and their diet. Their standard of living is higher. The government's totalitarian control over every aspect of daily life is eroding. In the area of economic rights, progress has been made.

But in China, civil and political rights -- what we Americans know as our Constitutional Bill of Rights -- continue to be denied, according to the most recent U.S. State Department reports. Freedom House's 1994-95 Comparative Survey of Freedom names China among "the most repressive places on earth." China remains a one-party state committed to suppressing political dissent and other perceived threats to its monopoly on power by means

of arrest, detention and internal exile. With political and police powers exclusively in the hands of the Communist Party, the government continues to ban or restrict independent religious expression, speech, press, association, and union organizing. China does not enjoy the rule of law. There exists no effective system of checks and balances. The judiciary, legislature and local governments all remain subordinate to the Communist Party.

Freedom of Expression: China employs a wide range of controls that suppress free expression and interfere with independent media. An extensive censorship bureaucracy licenses all media outlets and publishing houses and must approve all books, including the Bible, before publication.

In June 1994 a new blow was dealt to freedom of expression in China when Premier Li Peng signed the "Detailed Implementation Regulations" for the State Security Law. These Regulations criminalize peaceful acts of dissent (including working with foreign human rights organizations) as well as the use of religion, information or speech to endanger "state security." Chinese journalists, editors and publishers are expected to conform to Chinese Communist Party Propaganda Department guidelines. For example, news coverage is required to be 80 percent positive and 20 percent negative. Sanctions for infringement include firing and imprisoning those responsible and closing the offending publication. Foreign correspondents are not immune from censorship pressure. During 1994, correspondents from *The Wall Street Journal, The Washington Post, Newsweek*, UPI, CBS, NBC and others were detained and interrogated by police.

Among the estimated thousands now imprisoned in China for dissent, the most famous is Wei Jingsheng who has been detained incommunicado and without charge at an unknown location for a year. Mr. Wei was released in September 1993 after fourteen-and-one-half years in prison for writing about democracy. During his six months of liberty (between September 1993 and March 1994), Wei published articles on democracy outside of China and met with foreign government officials and journalists, acts for which the government has again jailed him.

Freedom of Association: China restricts the rights of association and assembly in law and practice. People wishing to gather in a group are required to apply for a permit, which local authorities can deny arbitrarily. With few exceptions, the government prohibits the establishment of private, independent organizations, insisting that individuals work within established, party-controlled ones. Chinese citizens cannot establish independent political parties, religious organizations, labor unions, or women's organizations. In practice, only organizations that are approved by the authorities are permitted to exist, and any organization that is not registered is considered illegal.

In December 1994, China sentenced nine dissidents and labor activists to up to 20 years. The harshest terms were given to those charged with forming non-governmental organizations.

Due Process and Political Prisoners: In China there are no reliable figures on the number of political detainees being held since the government often does not publicize arrests and frequently conducts secret trials and sentencing. The judicial system is not independent, and the judicial process lacks transparency. Prisoners of conscience can be detained in prison indefinitely while awaiting trial; kept in prison for years after their sentences have expired; or tried in kangaroo courts with a conviction rate of over 99 percent. In China the slogan "verdict first, trial second" is used to describe the judicial system. This absence of the rule of law has resulted in thousands -- a number of foreign businessmen -- being held without trial in China.

Using the tactic of administrative detention, authorities fail to afford even the pretext of due process. Dissidents and independent Christians are rounded up and held without charges, trial, the right to defend themselves, the right to an appeal or any kind of public record. They can be held indefinitely and without being allowed any contact with family or friends. In some cases, such as that of the dissident Wei Jingsheng, the prisoner simply

"disappears" into the detention system for years at a time. "Is Top Dissident Even Alive?" read the headline run by *The New York Times* on March 31st. Prisoners in administrative detention are especially vulnerable to abuse because they are often held incommunicado.

In China, independent Christians and dissidents once arrested are often administratively detained in the laogai, or "reform through labor camps," where they are forced to work without pay -- as slaves -- in factories, mines or on farms. Harry Wu, who spent 19 years in the laogai, estimates there are over 1,000 of these camps and their work product is sold, sometimes to foreign companies and for foreign export. In other cases, administrative detention can take the form of "shelter and investigation" in which police indefinitely detain suspects without any due process. Amnesty International reports that, according to Chinese government sources, the number of persons sent to "reeducation through labor" camps is 100,000, while the number "sheltered" each year is around one million.

Those charged with "counter-revolutionary" crimes -- a category that includes some religious leaders -- are not assured any greater due process. Political trials are not open to the public, and in some cases are held in secret, without even the defendant present. The court does not assume defendants' innocence but instead pressures them to "repent" of their errors and confess. The U.S. State Department concludes that "the emphasis on obtaining confessions as a basis for conviction" places prisoners awaiting trial at grave risk of torture. The Communist legal system gives defendants little opportunity to prepare an adequate defense, and some verdicts have been prepared in advance by the government. Defendants who maintain their innocence tend to receive harsher verdicts. Though allowed a right to appeal, in practice an original guilty verdict is rarely reversed.

Although Chinese law prohibits torture, it continues to be employed to intimidate, extract confessions and punish. Chinese torture techniques include electric shocks, pain inflicted with stun guns, dousing with boiling water, repeated stabbing, beatings and hangings by the ankles or wrists.

In China prisoners face brutal conditions, and food and health-care are often denied as a punishment. Political prisoners who at the end of their sentences are deemed unrepentant by prison officials can be kept indefinitely as "worker detainees" at the same labor camp where they served their sentences. Roman Catholic priest Fr. Vincent Qin was forced to labor at Number 4 Brick Factory in the city of Xining as a "worker detainee" for 13 years after he had already completed a 13 year sentence as a prisoner at the same brick factory. Qin, aged 60, was rearrested in November 1994 and sentenced in April 1995 to two more years of hard labor for his apostolic work. Others are released but denied all rights, including work and housing permits.

There has been no actual progress in human rights observance since the U.S. de-linked human rights from MFN a year ago.

II. Second misconception: There is no religious persecution today in China. Some clergy are imprisoned for breaking the law, not for religious reasons.

Religious repression in China is part of a political climate in which human rights and democratic freedoms are routinely abused. "I think, therefore, I am guilty," remains the prevailing maxim.

In the early days of China's Communist government, religion was considered a reactionary force to be eliminated. Clergy were labeled "counter-revolutionaries working under the cloak of religion," "imperialist lackeys," and "spies in religious garb." When the complete eradication of religion proved impossible -- in spite of mass arrests, "re-education," and torture of clergy and believers -- the government sought to bring it under total state control. Under the new Communism, ideological fervor has dissipated somewhat, but today the ruling party in China still views Christianity as a threat to its power -- a de-stabilizing force that must be strictly controlled. An internal Chinese Party document from earlier this

year that was leaked to the foreign Christian community named the Christian churches as one of the most dangerous sectors in the society.

As China has stepped up economic reforms over the last few years, it also has intensified repression of believers. Early in 1989 -- before the Tiananmen Square massacre -- Beijing renewed its campaign against Christians worshipping outside government-run "churches," In China religious repression does not show signs of abating. Today, Puebla has documented the cases of some 200 Chinese Christian clergy and lay leaders who are deprived of liberties because of their religious beliefs. Given China's closed press and tightly guarded penal system, these documented cases are certain to represent only a fraction of those now persecuted for their religious beliefs.

Regulations issued by China in 1994 reaffirm that registration with the government's religious associations is the government's main mechanism of control over the clergy and congregations. In China, state-run "churches" -- the Catholic Patriotic Association, which repudiates the authority of the Pope, and the (Protestant) Three-Self Patriotic Movement -- oversee all "legal" Christian activity. These Patriotic Associations are controlled by the Office of Religious Affairs, which is controlled by the Department for a United Front, which in turn is controlled by the Central Committee of the Communist Party.

Registration of church organizations with the government in China is based on the "three-fix" policy, requiring an applicant congregation to have a state-approved religious leader, a fixed meeting point and activities confined to a specific area. Those clergy who do not adopt the party line will not be able to register.

Because in China Roman Catholicism is by definition illicit, and thus banned, clergy who maintain contact with the Vatican, ordain priests, or conduct unauthorized religious education classes may be charged with treason, counter-revolutionary acts, or other crimes against the state and can be sentenced to re-education through labor. Among China's religious prisoners are 21 Roman Catholic bishops who are under house arrest, administrative detention, or restricted to internal exile in their home villages. One is 73-year-old Bishop Joseph Fan Zhongliang, the Roman Catholic bishop of Shanghai. He was arrested on June 10, 1991, reportedly in response to the Vatican's elevating Ignatius Kung to Cardinal. On August 19, 1991, he was transferred to a form of house arrest in Shanghai and is kept under close police surveillance. Police have not returned church and personal property seized from him at the time of his arrest. He was previously imprisoned for his faith for 25 years, between 1957 and 1982. Cardinal Kung himself spent 30 years behind bars, between 1955 and 1985.

Another is 76-year-old Bishop Peter Li Hongye, ill with stomach cancer, who was arrested on July 25, 1994, after offering Mass and is being held against his will and without due process at a Public Security Bureau "guest house" in Luoyang. Dozens of Roman Catholic priests are being held in administrative detention, or imprisoned in the *laogai* or "reeducation through labor" camps, where they are forced to work in factory jobs without pay; if they fail to meet state production quotas their food rations are reduced. Among the recent detainees is Rev. Gu Zheng of Urumqui, who was arrested on October 6, 1994 while teaching at a Roman Catholic seminary that refused to register with the government. He continues to be detained and the seminary was shut down at that time.

The three-fix policy of registration, of course, bars all processions. On the feast of the Assumption, last August 15, in Jiangxi province, several thousand soldiers, police and hired men, wielding sticks and electric batons, attacked a Catholic procession, injuring over 100 worshipers and ending the event. At least ten Roman Catholic church leaders are believed to remain in custody since their arrest at the procession. A similar mass arrest occurred during the Easter time in China last month at which over 30 Roman Catholics including two women, were arrested after they held an open-air Mass in Jiangxi Province. The women were so badly beaten that they could not feed themselves.

Re-education through labor is also the sentence given to Protestants who worship in private homes or "house churches" not registered with the official church, or who evangelize

without permission. Zheng Yunsu, the leader of a Protestant religious community called the Jesus Family, was arrested in June 1992, for holding illegal religious meetings and disturbing the social order. He is now serving a 12-year prison sentence. His four sons were sentenced up to nine years of hard labor in a coal mine after they made inquiries into his case with authorities in Beijing.

Puebla's documentation names 55 Protestant preachers and lay leaders persecuted at this time for religious reasons. Among the 25 women Evangelical leaders on our list is Dai Guillang, who is in prison serving a three-year sentence for "propagating the Book of Genesis." Another is Li Haochen, a female house-church preacher from Mengcheng county, northern Anhui province who was arrested in September 1993 and reportedly sentenced to three years' reform through labor for organizing a "healing crusade."

Others are imprisoned for "disturbing public order" through religious activities. A recent case against a Protestant house church leader occurred on April 1, 1995, in Zhejiang Province. The detained cleric, in his mid-50s, was arrested by Public Security Bureau officers in his home. Sources said local officials have accused the man of conducting illegal itinerant religious activities and inviting foreign Christians to Wenzhou without permission.

The abuse of the rule of law is given full meaning in the case of Xu Birui, the 83-year-old mother of an imprisoned house-church Protestant. Since her son's arrest in early 1994, she has reportedly been under house arrest and interrogated daily about religious activities simply because she is related to the prisoner, who himself is being held in the Zhangzhou Detention Center for "involvement with overseas Christian organizations." This, at a time when the Chinese government is going to great lengths to attract involvement with overseas business organizations.

It is the very heart of religious freedom -- the right to worship and follow the dictate of one's conscience -- that is criminalized in China. Roman Catholic priests are arrested for celebrating Mass, and administering the sacraments without state authorization. Protestant preachers are rounded up and tortured for holding prayer meetings and distributing the Bible without state approval. The Puebla Institute documented four torture deaths of Protestants in 1994.

Chinese laws restricting worship violate natural law and international human rights law, just as apartheid, which was codified, did in South Africa. Chinese regulations on religion, for example, criminalize the distribution of Bibles from abroad, meeting with co-religionists from abroad in prayer meetings or worship services, and holding outdoor processions or services.

Why does the Communist party of China, which has forsaken ideology in so many other respects, still repress independent worship? There exist major doctrinal differences between the independent churches and the Communist party of China. For example, the Roman Catholic Church opposes China's one-child family policy. China's population control program, reasserted by authorities early this year, aims at achieving zero population growth by 2040. In part it is designed to correct the national population growth campaign of Party Chairman Mao Zedong in the fifties and sixties. It is the latest in a long list of Chinese Communist Party campaigns that included the Great Leap Forward and the Cultural Revolution, in which millions of Chinese citizens were killed. This national population control campaign is being ruthlessly enforced through forced abortions, sterilizations, the destruction of homes, fines, denial of housing and education privileges and other draconian measures.

The international press has documented numerous acts of deliberate cruelty and mayhem by officials as they carry out the government's population control goals. For example, since March 1994, authorities have laid siege to two tiny villages in a Catholic enclave in Hebei Province 180 miles southwest of Beijing, in a sustained attempt to force the 2,000 inhabitants to follow China's birth control policy. In this area of the country, Roman Catholicism is at its strongest and it is not unusual for couples, especially farmers, to have three to five children. Using the slogan, "It is better to have more graves than more than one

child," local authorities repeatedly raid the Catholics' homes, confiscate their property and indiscriminately beat those unable to run and hide in the surrounding fields. Many have been tortured by being hanged upside down or burned in the mouth with electric batons. Over the past year, a popular tribunal has been set up to try those accused of violating the birth policy and a prison built to hold the guilty. In Beijing, officials who run the state's Catholic Patriotic Church have consistently refused to comment on the villagers' plight. So far, their only comment on the siege has been a single, terse pronouncement: "Catholics should follow the policies of the government."

A country's respect for religious freedom offers a good barometer of its respect for human rights and democratic freedoms in general. A regime that fails to respect freedom of conscience, the starting point of all human freedoms, is unlikely to respect freedom of expression or association.

III. Third misconception: American companies are not the problem.

The American Chinese Chamber of Commerce in Hong Kong recently published a set of "Business Principles," in which it proclaimed that "American companies already set the highest standards." No doubt American companies are boy scouts when compared to some businesses from other countries. But with all due respect to AmCham this isn't saying much. In April, for example, one South Korean manager was forced to apologize after ordering more than 100 Chinese factory workers to kneel down before her in homage.

U.S. companies have not been exempt from gross ethical misconduct, usually through the actions of local partners and suppliers who either are part of the government itself or who operate in de facto complicity with the Communist party's tyrannical policies. It is vital to have good information on one's partners, suppliers and subcontractors.

For example, a number of American companies are taking advantage of slave labor practices inside the Communist prisons. Harry Wu has amassed evidence documenting the existence of 1,168 such prison labor camps, where inmates are forced to work against their will in hazardous and inhuman conditions for unlimited numbers of hours each week without pay.

In December, a U.S. federal court ruled that 50 diesel engines could not be imported by the San Diego company China Diesel Imports because they were manufactured with slave labor. This was the second major court case involving slave labor-made goods. In 1992, the U.S. Customs Service imposed a fine of $75,000 on E.W. Bliss Company in Hastings, Michigan, for importing stamping presses made with Chinese prison labor; the company pleaded guilty.

The Washington Post reported on April 9, 1995, that a U.S. glove manufacturer that wanted some boxes last year called a middle-man offering the best price, no questions asked. A million boxes -- at a cost of less than a penny apiece -- were made at a prison and shipped to the U.S., according to the middle-man.

The press has also drawn attention to the Chrysler Corporation. Last summer, the Hong Kong daily, *Eastern Express*, linked Chrysler's joint venture partner in Beijing, Beijing Autoworks Industrial Corporation with sweatshops that use prison slave labor despite Chrysler's pledge not to use parts supplied by such sources. Reportedly Beijing Autoworks buys parts from Yaan Automobile Parts Factory and Shayang Automobile Manufacturing Factory -- both known to use parts made by prison camp labor. Associates of Harry Wu posed as buyers last November and were told by the managers at both plants that Yaan and Shayang supplied parts to Beijing Jeep, Chrysler's joint venture.

In a second media report, Chrysler's Beijing Jeep was found to be acting as a supplier rather than a buyer. According to the International Affairs Department of the AFL-CIO, from 1984 until the early 1990s, the Shayang forced labor plant bought chassis directly from Beijing Jeep for the production of criminal reconnaissance cars, legal propaganda vehicles,

convict transport trucks and police dog cars. In the early 1990s, Beijing Autoworks established a special chassis plant, which has since acted as the prison's direct supplier. Chrysler denied the allegations of a link to forced labor, but promised to investigate.

Harry Wu's Laogai Institute demonstrated in May 1994 that the publicly-traded Waxman Industries of Ohio was importing steel pipe from a labor camp in Shandong Province. Laogai also broke the story that the Ben Franklin Stores, headquartered in Illinois, and Universal Sun Ray of Missouri, were receiving artificial flowers made by Chinese prison labor camp. A former inmate of the labor camp, Chen Po Kung, smuggled the companies' labels out of the prison last fall.

At the heart of most of the human rights abuse taking place in American work-places in China is the fact that American firms fail to exert direct personnel management control. Many delegate the hiring, firing, promoting, rewarding and disciplining of workers to unsupervised and unethical middle-men and local partners, the government's labor bureau or other third parties. Such as the All-China Federation of Trade Unions, the country's only recognized trade union. In other cases, the regime-supplied partners may be representatives of executive branch ministries, townships, municipalities and even the army. These remnants of the Communist political structure must not, as corporate America's intermediaries with the work force, must not be charged with the important task of fostering democratic values.

Nor should American companies allow regime apparatchiks and their agents to conduct compulsory political indoctrination sessions on company premises. During past Chinese campaigns to combat "bourgeois liberalism," such mandatory sessions were led by the Communist Party or the Communist-controlled labor organizations.

When a U.S. hotel operator in Shanghai wanted to hire people, it ran the names by the local Public Security Bureau. On at least one occasion the bureau reported back to the hotel that an applicant had a criminal record. In China this can mean anything from theft to criticizing the regime, but the hotel personnel manager did not bother to ask which it was. The job application was turned down, according to *The Washington Post* on April 9, 1995.

At the Shanghai plant where McDonnell Douglas Corporation planes are assembled by more than 5,000 workers, company representatives told the press they do not get involved in work-place issues unless they directly affect the assembly of the planes. The workers are all employed by a company controlled by the Ministry of Aviation. The Chinese Communist Party has an office at the work-place upstairs from the McDonnell Douglas managers to monitor political activities and keep people hewed to the party line.

Chrysler's joint venture, Beijing Jeep, was also reported by the press to have fired a man for being jailed after he prayed without state authorization. Gao Feng missed work for a month last summer at Beijing Jeep. When he returned, the factory worker told his managers he had been arrested by Chinese authorities during a fifth-anniversary, private Christian memorial service for Tiananmen Square victims, and detained for four weeks without due process. After police failed to provide proof of his whereabouts during his absence, Beijing Jeep suspended Gao and told him to resign or be fired, according to reports in the Associated Press. The worker told reporters that he had refused to quit and was eventually reinstated by the company in part due to public pressure from international human rights groups. According to Tony Cervone, Chrysler's manager of international public relations, Gao was never suspended or dismissed but only thought his job was gone because he saw it posted, which is routinely done after two weeks of unexcused absence. Chrysler's mistake in this case was to conduct business as usual and not take Chinese repression seriously.

These companies present stark examples of the difficulty in dealing with a government that thinks nothing of trampling on rights considered basic in the U.S. -- including individual freedoms and contract obligations.

IV. **Fourth misconception: American companies should not be involved in promoting human rights.**

Some business people maintain that human rights and democracy building are the exclusive concerns of the Department of State. Business responsibility is demanded by our Judeo-Christian ethic. It will also boost morale in the work-force, and will ensure greater security for business in the society.

I wish to briefly add that in China, where no rule of law exists, it is in the interests of every business to adopt a policy of enlightened self-interest. Last year, the Chinese government broke a 20-year lease with McDonald's and evicted it from its site on Tiananmen Square to make way for commercial development. Lehman Brothers is suing two state-controlled Chinese trading firms for allegedly failing to repay loans of almost $100 million dollars. About 31 foreign banks are pressing Chinese authorities to help them recover $600 million in loans paid to Chinese state industries.

Commercial activity flourishes in the United States because laws are uniformly enforced and judicial decisions are respected. These principles -- respect for the rule of law and an independent judiciary -- are the very notions that also safeguards our individual freedoms. In China, neither exists. And without them, commercial transactions, like individual freedoms, will continue to be violated arbitrarily at the whim of the ruling elites.

While large companies have been hurt by breach of contract, worse treatment has befallen the operators of small businesses. According to a March report from the Government of Hong Kong, 14 businessmen with links to Hong Kong who were embroiled in commercial disputes had disappeared or been detained without charge in China, some for several years; only one had actually been tried and sentenced. Several were American.

It was the persistence of American businessman John Kamm that helped secure the release of Chong Kwee-sung, an American resident in Hong Kong, who was held in Henan province for 30 months without charge. Another U.S. citizen, Philip Cheng, was detained in China without charge between August 1993 and March 1994. His Chinese partner, Liu Xianyou, general manager of an export firm, had invested $165,000 in Cheng's factory but wanted the money back. Cheng was captured by Liu's friends in the judiciary and imprisoned by Liu's brother-in-law, who ran a detention center, according to the *Far Eastern Economic Review*.

Another case involving a U.S. businessman from Miami occurred in mid-March 1995. While being held captive in a hotel room Troy McBride reported by telephone to the press in mid-March 1995 that a local court in China's central Anhui province had seized his passport and he and his partner were barred from leaving their hotel by unidentified persons who had surrounded the hotel exit for the previous several days.

The foreign investor who created the first joint venture listed in China, Australian businessman James Peng, has now been imprisoned in China for a year and a half. His apparent offence was that he had won an action in the Supreme Court of Hong Kong against a former employee who had unlawfully transferred stock shares into her own company and who happened to be the niece of Chinese leader Deng Xiaoping. Peng's wife is afraid to visit him. The Chinese authorities are not above detaining the relatives of foreign businessmen where there is a business dispute. We know of several cases like this. As the *FEER* has noted, such detentions, many more of which probably have not been reported to Hong Kong authorities, are becoming ever more frequent with China's arbitrary and opaque law enforcement.

The U.S. State Department will not be of much help in defending human rights in China since the U.S. has largely forfeited its influence over human rights. In pressing for reform, U.S. Assistant Secretary for Human Rights John Shattuck is continually undercut by Commerce officials and government trade representatives. The Administration also did irreparable damage to its own credibility when it first passed an Executive Order in 1993

linking China's human rights performance with trade privileges, and then revoked it last May while publicly admitting that human rights had not improved. In announcing the MFN decision last May the Administration unveiled a new strategy towards China that would "implement a vigorous, multi-faceted human rights policy." The steps of this policy were to inaugurate Radio Free Asia, insist on a resolution condemning China in the United Nations Human Rights Commission and promote a business code of ethics. To date there is little to show; this then marks the second straight year of failed and forgotten promises to get tough with China on human rights.

With Beijing desperate for economic stimulus and the rules for business being quickly reinvented from region to region in these countries, American business can wield tremendous leverage at this time. There are a number of positive steps companies can take to promote democratic values, namely:

- Make available company premises after hours for religious or study meetings for employees.

  Provide a well-stocked library for mid-level management.

- Give donations or rewards of fax machines and video cameras to employees, local human rights activists, underground church leaders and other unofficial civic leaders.

- Make contributions to strengthen civic society by making charitable donations to promote the arts, culture or other private civic endeavors.

- Use business contacts in the government to make appeals for the release of specific prisoners of conscience -- a strategy that American businessman John Kamm has pioneered with notable success.

Ultimately, American commercial engagement will translate into greater democracy in China only if the American corporations themselves make a conscious effort to promote democratic values and be willing to implement them in their foreign business dealings.

V. Exporting democracy and human rights is cultural imperialism.

At the World Conference on Human Rights in Vienna in 1993, China was one of the many dictatorships from several continents, who argued that human rights were Western values, not applicable to their cultures. It was revealing that some 200 Asian non-governmental organizations, including some led by Chinese citizens, responded to this assertion by joining together in a statement to reaffirm the universality of human rights. The NGO statement exposed the governments' position as a self-serving justification for repressive measures needed to shore up fundamentally illegitimate regimes.

In the ten years since its founding, the Puebla Institute has never encountered a victim of abuse that felt being tortured, arbitrarily detained or prevented from following one's conscience in the search for truth was acceptable. Democracy and the ideology of human rights are Western in the same sense that communism and capitalism are Western -- they were first articulated and practiced in the West. There is no cultural reason why they could not take root in China.

Christianity in China traces its roots back 700 years to when Blessed John of Monte Corvino, a missionary from Italy and later the Archbishop of Beijing, introduced Catholicism. In China, Catholics and Protestants together are estimated by independent sources to number as many as 40 million, accounting for up to three percent of the population. The Christian churches are among China's oldest continual civic institutions. Even persecuted they are thriving. Their appeal stems in part to precisely their emphasis on the dignity of the individual.

Responsible business leaders can play a pivotal role in encouraging democratic rights and religious freedoms in China. There is a range of actions enterprises can take to help, and each company should select the measures most appropriate to its business. Beyond that the choices are unavoidable. If businesses fail to include human rights concerns as a small part of their overall corporate strategy, there is a very substantial risk that American investors will find themselves partners, unwitting or not, to the violation of the most fundamental of human rights.

* * *

What pressure can America exert to improve human rights and foster democracy in China? The Puebla Institute recommends the following:

1. The U.S. Congress should not grant trade privileges to those sectors of the Chinese economy that are producing and using slave labor;

2. Congress should legislate a detailed code of conduct for American companies doing business in China;

3. Congress should amend the Immigration and Nationality Act to guarantee asylum to anyone fleeing coercive birth-control policies, such as the "one-child" policy in China;

4. Congress should cease all U.S. funding of the United Nations Population Fund which supports China's coercive family planning program;

5. The Administration should renegotiate the terms and application of the Memorandum of Understanding with China so that U.S. Customs and State Department officials can be more effective in preventing the export to the U.S. of prison-slave-made goods.

6. The Administration should ensure that all U.S. government representatives raise human rights concerns in their discussions with China and on China so that Administration human rights representatives are not undercut by those in other offices of the Executive branch;

7. The Administration should take whatever measures are necessary, including appointing a board of directors, to inaugurate Radio Free Asia, whose funds have already been appropriated by Congress;

8. The Administration should raise China's human rights repression formally at the Fourth World Conference on Women in Beijing later this year; and

9. American businesses should inform themselves about the human rights practices in the region(s) in China where they operate, prevent the use of slave-made goods in their businesses, and select a range of positive steps, including those listed in this testimony, to expand human rights and democracy in China.

Chairman CRANE. Thank you, Mr. Brown.
Ms. Lostumbo.

STATEMENT OF RACHEL LOSTUMBO, DIRECTOR OF GOVERNMENT RELATIONS, INTERNATIONAL CAMPAIGN FOR TIBET

Ms. LOSTUMBO. Thank you, Mr. Chairman, for providing me this opportunity to testify before you today regarding the current situation in Tibet.

My name is Rachel Lostumbo, and I am director of Government Relations at the International Campaign for Tibet, a nongovernmental organization dedicated to promoting human rights and democratic freedoms for the Tibetan people. I ask that my written statement be included in the record.

Chairman CRANE. Without objection, so ordered.

Ms. LOSTUMBO. Thank you.

When the President extended China's MFN status last May, he acknowledged, "Serious human rights abuses continue in China, including the repression of Tibet's religious and cultural traditions."

However, he justified his actions by stating that extending MFN would "lay the basis for long-term sustainable progress in human rights."

I regretfully must tell you today that not only has there been no progress in China's policies toward Tibet over the past year, but the situation in Tibet has, in fact, deteriorated.

Over the past year, there has been a heightened campaign by the Chinese Government to repress the spread and practice of Buddhism in Tibet. This was first apparent last fall when the Chinese confiscated all photographs of the Dalai Lama on display in city markets and issued a ban on these photos in public places.

At the same time, the Chinese called back Tibetan children studying in India, stating that if they did not return they would lose their rights to residence permits in Tibet.

Most recently, the harsh reaction to the Dalai Lama's announcement last week that a new Panchen Lama had been identified brought criticism from the State Department, which acknowledged that the Chinese response "might raise additional doubts about the Chinese Government's commitment to respecting the religious beliefs and practices of Tibetan Buddhists."

Interference by the Chinese Government in the selection of this high-level religious figure is a clear example of interference in the practice of Tibetan Buddhism.

As of April 26, there were already more political arrests in Tibet in 1995 than there were in all of 1994. At least 106 people were arrested during demonstrations in February and March alone. This is compared to a total of 110 known arrests in 1994.

Reports of torture of Tibetan political prisoners continue. In fact, there was a report in December of Tibetan prisoners being tortured after they refused to clap for a visiting Chinese delegation.

In recent months, two nuns and a monk have died as a result of mistreatment while they were in prison.

The greatest concern of the Tibetan people continues to be the tremendous influx of Chinese settlers into Tibet. The number and

influence of Chinese now in Tibet is marginalizing the Tibetan people politically, economically, and culturally.

His Holiness, the Dalai Lama, has stated that the only way to bring about a peaceful resolution to the situation in Tibet is through a mutually acceptable negotiated settlement between the Chinese and Tibetan people. To this end, he has issued several forward-looking proposals in which he has agreed to not raise the issue of independence during negotiations. However, the Chinese have refused to respond positively to his proposals.

Mr. Chairman, the administration's policy of constructive engagement is not bringing any relief to the Tibetan people. While there were indications in 1993 and 1994 that the pressure created by the President's MFN Executive order could lead to some improvements in the Chinese Government's policies in Tibet, all such hope was lost when it became apparent that the President was likely to extend MFN, whether or not the conditions in his Executive order had been met.

Today the administration has yet to develop and maintain a policy that can pressure the Chinese to improve their human rights record. We remain convinced, however, that the United States is the only country that can have a real impact on China. A strong showing of support for human rights and the rule of law right now will help strengthen the hands of the more liberal elements of the leadership and can play a critical role in assisting a peaceful transition to a more democratic China.

If the Chinese Government is made to understand it cannot have the relationship it wants with the United States until there is a clear improvement in its human rights policies, we are convinced that China will take the necessary steps.

While we praise the administration for their efforts over the past 2 years to urge the Chinese to agree to begin substantive negotiations with the Dalai Lama or his representatives, the administration has not done so publicly or forcefully.

I would note that an example of this is in today's testimony by the administration where Tibet was not even raised once. When there was the Executive order in force, it was raised every time.

We urge the administration to raise its concerns about Tibet at every opportunity with the Chinese leadership and to work with the international community at such forums as the United Nations Commission on Human Rights to bring global pressure on China to change its repressive policies in Tibet.

The administration should strongly protest Chinese attempts to exclude Tibetan participation at the Fourth World Conference on Women to be held in Beijing this September and insist that organizations such as mine, the International Campaign for Tibet, be permitted to attend this important conference.

We also urge the President to refrain from visiting China until concrete steps have been taken to improve conditions in Tibet.

We also urge the President to meet openly and publicly with the Dalai Lama when he next visits Washington, D.C.

I would also like to call to your subcommittee's attention the legislation that is currently before the House to establish a special envoy on Tibet. The establishment of a special envoy on Tibet will send a very strong message to China that the United States re-

mains solidly committed to supporting peaceful change in China, and in Tibet.

Thank you, Mr. Chairman, for this opportunity to testify before you today.

[The prepared statement follows:]

INTERNATIONAL CAMPAIGN FOR TIBET

Testimony of

Rachel Lostumbo, Director of Government Relations
International Campaign for Tibet

before the
Subcommittee on Trade,
Committee on Ways and Means,
U.S. House of Representatives

May 23, 1995

Thank you, Mr. Chairman and distinguished members of this Committee, for providing me with the opportunity to testify before you today regarding the current situation in Tibet. My name is Rachel Lostumbo and I am Director of Government Relations at the International Campaign for Tibet, an American non-governmental organization dedicated to the promotion of human rights and democratic freedoms for the Tibetan people.

We have always been appreciative of the leadership of the U.S. Congress on the issue of Tibet. The numerous resolutions passed by you and your colleagues condemning human rights violations in Tibet and providing financial and other assistance to Tibetan refugees, have given great encouragement to the Tibetan people.

Mr. Chairman, last May the President made the decision to reverse his policy towards the People's Republic of China and to extend to them Most-Favored-Nation trading status (MFN), despite the Chinese government's clear lack of compliance with the conditions outlined in President Clinton's 1993 Executive Order. This Executive Order conditioned future renewal of China's MFN status on an improvement in human rights, including a specific condition calling on the Chinese to take significant steps to protect Tibet's distinct religious and cultural heritage.

When the President extended China's MFN status last May, he acknowledged that "serious human rights abuses continue in China, including... the repression of Tibet's religious and cultural traditions." However, he justified his action by stating that extending MFN would "lay the basis for long-term sustainable progress in human rights."

I regretfully must tell you today that not only has there been no progress in China's policies towards Tibet over the past year, but the situation in Tibet has in fact deteriorated.

Restrictions on Religious Practice

Over the past year there has been a heightened campaign by the Chinese Government to repress the spread and practice of Buddhism in Tibet.

This was first apparent in the fall when the Chinese confiscated all photographs of His Holiness the Dalai Lama on display in city markets and issued a ban on these photos in public places. At the same time the Chinese called back Tibetan children studying in India, stating that if they did not return they would lose their right to residence permits in Tibet. Chinese officials then declared their intention to stop the growth of Buddhism in Tibet by fixing the number of monks and nuns as well as the construction of new monasteries at their current number.

Most recently, the harsh reaction by the Chinese Government to the Dalai Lama's announcement last week that a new Panchen Lama had been identified, brought criticism from the State Department, which acknowledged that the Chinese response "might raise additional doubts about the Chinese Government's commitment to respecting the religious beliefs and practices of Tibetan Buddhists." Interference by the Chinese government in the selection of this Panchen Lama is a clear example of interference in the practice of Tibetan Buddhism.
The Panchen Lama, a high-level religious figure, stayed behind in Tibet after the March 1959 uprising was suppressed by the People's Liberation Army of China.

Political Prisoners
As of April 26, there were already more political arrests and demonstrations in Tibet in 1995 then there were in all of 1994. At least 106 people were arrested during demonstrations in February and March alone. This is compared to a total of 110 known arrests in 1994.

In addition in recent months 90 monks including senior monastic officials and religious teachers, were expelled from their monasteries, because the Chinese suspected their involvement in demonstrations against the Chinese government.

Torture
Several former prisoners have died over the past year as a result of mistreatment while in prison, including a 24 year old nun, Gyaltsen Kelsang, who died on February 20; another nun, Phuntsok Yangki, who died in prison over the summer; and a monk, Lobsang Yonten who died this October. He was the monk who was arrested with Gendun Rinchen, a well known dissident, for attempting to pass on human rights information to a visiting delegation of foreigners in 1993.

A new method of torture in Drapchi prison has also been reported, where Tibetan nuns are treated as "soldiers" and are given special "physical training" sessions which involve brutal beatings. There was also a report in December of Tibetan prisoners being tortured after they refused to clap for a visiting Chinese delegation.

Population Transfer
The greatest concern of the Tibetan people continues to be the tremendous influx of Chinese settlers. The number and influence of Chinese now in Tibet is marginalizing the Tibetan people politically, economically, and culturally.

This influx is likely to increase as a result of China's Third Work Forum on Tibet held last August which announced 62 new development projects in Tibet and the announcement this summer that the Chinese plan to build a railroad to Tibet. Many development projects in Tibet have been documented by the International Campaign for Tibet and other monitoring organizations to primarily benefit Chinese settlers, not the Tibetan people.

Negotiations
His Holiness the Dalai Lama has stated that the only way to bring about a peaceful resolution to the situation in Tibet is through a mutually-acceptable negotiated settlement between the Chinese and Tibetan people. To this end he has issued several forward-looking proposals in which he has agreed to not raise the issue of independence during negotiations. However, the Chinese have refused to respond positively to his proposals.

Conclusion

Mr. Chairman, the Administration's policy of constructive engagement is not bringing any relief to the Tibetan people. While there were indications in 1993 and 1994 that the pressure created by the President's MFN Executive Order could lead to some improvements in the Chinese government's policies on Tibet, all such hope was lost when it became apparent that the President was likely to extend MFN, whether or not the conditions in his Executive Order had been met.

Today, the Administration has yet to develop and maintain a policy that can pressure the Chinese to improve their human rights record. We remain convinced, however, that the United States is the country that can have the greatest impact on China. A strong showing of support for human rights and the rule of law right now will help strengthen the hands of the more liberal elements of the leadership and could play a critical role in assisting a peaceful transition to a more democratic China. If the Chinese Government is made to understand that it cannot have the relationship it wants with the United States until there is a clear improvement in its human rights policies, we are convinced that it will take the necessary steps.

We praise the Administration for their efforts over the past two years to urge the Chinese to agree to begin substantive negotiations with the Dalai Lama or his representatives. However, in order to bring about concrete results, these efforts must be made publicly and forcefully.

We urge the Administration to raise its concerns about Tibet at every opportunity with the Chinese leadership, and to work with the international community at such forums as the United Nations Commission on Human Rights to bring global pressure on the Chinese to change its repressive policies in Tibet. The Administration should strongly protest Chinese attempts to exclude Tibetan participation at the Fourth World Conference on Women to be held in Beijing this September, and insist that organizations such as the International Campaign for Tibet be permitted to attend this important conference. We also urge the President to refrain from visiting China until concrete steps have been taken to improve conditions in Tibet.

We also call to the Committee's attention legislation currently before the House to establish a Special Envoy on Tibet. The establishment of a Special Envoy on Tibet will send a very strong message to China that the United States remains solidly committed to supporting peaceful change in China and Tibet.

Thank you, Mr. Chairman for this opportunity to testify before you today.

Chairman CRANE. Thank you, Ms. Lostumbo.

Mr. Rangel, do you have any questions for the panel?

Mr. RANGEL. Let me thank all of you for your testimony. I regret that a domestic matter back home prevented me from reading your testimony, but I have listened to you, and I will be reading your testimony and getting back to you if I have any questions.

Thank you, Mr. Chairman.

Chairman CRANE. I thank you all for your presentations today. With that, we will adjourn this panel and convene our final panel with Robert Kapp; our former colleague, Beau Boulter; Robert Aronson, Joel Simon, and Martin Duggan.

Before we commence, I want to express my apologies, Mr. Aronson, to you from our distinguished colleague who represents your area, Clay Shaw. Clay had an unfortunate conflict and was not able to be here today, and he had a personal introduction of you, and so I would ask unanimous consent that it be made a part of the record.

[The following was subsequently received:]

It is my pleasure to introduce Robert Aronson to the committee today. Mr. Aronson is the President of Ross Engineering Corporation in Fort Lauderdale, Florida. Ross Engineering Corporation is a management services company in the import/export field with a concentration on China and Korea. Mr. Aronson founded Electric Fuel Propulsion Corporation (EFP) in 1966 and has spent his career in the development of electric vehicles and propulsion system components, especially high performance, fast charge batteries and chargers, and electric vehicle control systems. He has been issued 31 patents on batteries, electric vehicle systems and electric vehicles all of which were assigned to EFP. Under his leadership, EFP built over 100 highway electric vehicles which were sold primarily to electric utility companies. We look forward to your testimony.

Chairman CRANE. With that, we will start with Mr. Kapp first and work in order on the schedule.

STATEMENT OF ROBERT A. KAPP, PRESIDENT, U.S.-CHINA BUSINESS COUNCIL

Mr. KAPP. Thank you, Mr. Chairman. I am delighted to be here today and hope that you will permit me to submit my written testimony for the record.

I am Bob Kapp, president, U.S.-China Business Council, a private association of 300 major U.S. companies doing business with the People's Republic. We have about a 20-year history of dealing with China, and we are honored by the support of most of the major business organizations that are active with China.

I think since we are so late in the day, that rather than recapitulate my testimony, I would like to just make a couple of points that have come to mind in the course of the morning.

The first is that we are in the throes of the annual June 4 exercise which represents the unfortunate coincidence of the anniversary of Tiananmen and the required anniversary of the renewal of MFN.

There is a June 4 industry now, in which we are all participants—the press, the people in the public sector, and people in the business sector. It is predictable that in the weeks leading up to the combination of the Tiananmen anniversary and the MFN decisions, the atmosphere of discussions surrounding U.S. relations with China achieves a level of tension and flamboyance that is, I think, highly regrettable.

The second point that we would like to argue is that contrary to some people's views, the American business engagement with China is compatible with deeply held American values and, in fact, represents the cutting edge of the progressive engagement that the United States is able to maintain and develop with China.

The point is elaborated more fully in my written testimony. Suffice it to say that American business is engaged with China because of a decision that the Chinese made in 1978. That twofold decision was to move in the direction of a much greater role for the market economy, toward much greater engagement with the world—in business, science, and ideas. The progressive changes that few would deny in today's China as compared to the Maoist and the Stalinist era before 1978 are inseparable from the presence of foreign business in the Chinese economy, and especially from the presence of American business there.

The third thing I would like to say is that this annual resume of the issues as it relates to MFN is profoundly discordant with the timing and the shape of the growing American economic engagement and business engagement with China.

I point out in my written remarks that American companies now are taking China very, very seriously. They are engaged in the most serious wide-ranging thinking and planning for business relations with China that will extend 5, 10, 20, and 50 years out.

I find it regrettable—that perhaps is the best word—that every year, in the face of those engagements, the possibility of the utter disruption of U.S.-China economic and commercial relationships arises. It puts American businesses, as they think their long-term

thoughts, in a very difficult position and potentially at a very great disadvantage vis-a-vis their third-country competitors.

The American business community, I believe, is the strongest single constituency in the United States supporting stable and predictable relations with the People's Republic. It is not an easy relationship. It is and will be marked by repeated tensions and repeated disputes in both the commercial and noncommercial areas.

In the face of all those forces and all the submerged rocks just below the surface of the water that can and often do tend to disrupt the U.S.-China relationship, American business, for its own needs—and, I believe, in the recognition of the needs of the country as a whole—hopes to make the case as strongly as possible that stability and predictability in U.S.-China relations are absolutely vital.

Finally, let me just make one comment on the most striking of the testimonies this morning and the issues involved, and that is the issue of "outrages."

I am a Chinese historian. In fact, Congressman Crane, you and I are fellow historians. I look forward to chatting with you on that some day.

The United States and many Western countries have found cause for outrage with China many times over the 150 years. It used to be foot-binding, or the criminal justice system. There were lots and lots of things to be outraged about with China. There is a tradition of Western outrage with China.

If you look back to a book by Graham Peck called "Two Kinds of Time," which was published in 1950 and recounted Mr. Peck's experiences in China during World War II, have a look at his description over four or five pages of the anatomy of a Chinese famine and the point at which the sale of children and cannibalism begins.

We face a tradition in the United States of sometimes finding, in what we see in China, issues of enormous social distress and even in some cases horror.

The question before us now is whether or not the destruction of U.S.-China economic relations is any way to approach those offenses against our sensibilities—if, in fact, those offenses are proved truly to exist. That is a question on which I believe the answer is no. I would hope that all Members of Congress, as they approach the disapproval resolution this year, would answer in the same way.

Thanks very much.

[The prepared statement and attachments follow:]

Testimony of Robert A. Kapp, President, US-China Business Council
1818 N Street, NW, Suite 500, Washington, DC 20036
Before the Subcommittee on Trade of the Committee on Ways and Means,
U.S. House of Representatives, May 23, 1995.

Mr. Chairman, Members of the Subcommittee:

Thank you for the opportunity to offer testimony today with regard to the current and future condition of U.S. trade relations with China.

I am Robert Kapp, president of the U.S.-China Business Council. Founded in 1973, our Council--a private, nonpartisan, member-supported organization--is the principal organization of U.S. businesses engaged in trade and investment relations with the People's Republic of China. Our membership of nearly three hundred companies includes many of America's best-respected and best-established corporations, as well as smaller companies and services firms. Nearly all of our members have amassed significant experience in China and are heavily engaged in significant business activities with the PRC.

I hope the members of this Subcommittee will find useful the statistical and factual materials relating to recent U.S.-China trade developments that accompany this testimony. The US-China Business Council has long worked closely with this Committee, and with other key committees and Members of Congress, to provide reliable, factual information about U.S.-China trade and economic affairs, and we look forward to continuing cooperation with you in the future.

I am pleased to discuss with members of the Subcommittee any aspects of the U.S.-China trade scene, and specifically of the implications of MFN renewal today. In my prepared remarks for the record, however, I have chosen to limit myself to a set of broad observations that, I believe, represent the perspectives of the membership of my Council on basic points.

The first point, which I and others emphasized in the discussions of U.S. trade policy toward China last spring and in the months since then, is that **the broad and expanding engagement of U.S. business with China is profoundly consistent with deeply-held American values**.

China, in 1978, took the perilous decision to "open to the outside world," setting out to become a serious factor in world economic affairs and to engage fully with the developed market-economy nations of the globe including the United States. The results of that engagement have been economically striking, culturally unsettling, and politically complicated. The need to engage with American business, at least in part on American business' terms (even as we struggle to engage with China on its terms), has already helped to engender changes in China's economic and social environment that virtually all Americans would consider progressive, however much we might regret or deplore the persistence of some domestic practices. The United States should not declare itself on a national crusade to remake China; we have done that on and off for more than a century, and history has proved the idea to be both futile and self-deluding. But the United States--primarily because of the immense and growing interaction of our businesses with the Chinese economy and society--is unavoidably a part of the gigantic transformation now occurring in China. The transformation of China is uneven, sometimes chaotic, and certainly not tidy; policies shift, bureaucratic structures come and go, laws and regulations emerge and recede. But none of us can deny that in comparison to the Stalinist or fanatical Maoist society of the pre-1978 period, China has come a long, long way. China's "opening to the outside world" is central to that transformation, and the significance of the intensifying U.S.-China economic and commercial interaction in this context must be acknowledged.

As you might expect, **the Council has over the years made the strongest possible case for the maintenance of stable, predictable, and (whenever possible) cooperative relations between the United States and China. American success in business with China needs a stable and continuous U.S.-China relationship.**

In a small and shrinking world, where the United States and China simply cannot avoid constant interaction, it would appear self-evident that a bilateral relationship of regular communication, concerted efforts at mutual understanding, and ever-increasing peaceful contact in trade, academic life, and the many arenas of global cooperation is in the deepest interest of the United States. This is certainly the case with regard to the establishment and development of long-term economic relations between the United States and the People's Republic of China, and it becomes increasingly salient as China's own efforts produce unprecedented levels of national economic strength in the PRC.

Fifteen years after the first major flowering of U.S.-China trade opportunities, the U.S.-China business scene today presents a broad and varied picture -- of large and increasing U.S. exports, of large and increasing imports from China, of major U.S. investment projects in the People's Republic, of the laborious perfection of effective and profitable business ventures, of the improvement of many business conditions in China and the persistence of serious obstacles to business development, and of the resolution of some bitter trade conflicts at the government-to-government level and the persistence of other trade issues.

Fifteen years after the establishment of normal diplomatic relations between our two countries, the bilateral relationship as a whole similarly presents a picture of periodic difficulties and periods of rapprochement.

Through the years--and especially in recent years, when the size and the time span of U.S. business calculations regarding China both have increased so markedly--**our members remain convinced that stable, predictable relations with China--freed as much as possible from the roller coaster-like peaks and valleys of each country's alternating enchantments and disenchantments with the other--are crucial not only to U.S. firms contemplating long-term business commitments in China but to U.S. international interests and policies more generally.**

The US-China Business Council, on behalf of its members, thus warmly supports the unconditional continuation of normal trade relations with China--so-called "MFN Treatment"--this spring and in the future. If and when Congress has an opportunity to support the continuation of MFN-based normal trade relations with China, we warmly urge all Members to do so.

The members of my Council know full well that the development of enduring and profitable business relations with China is a long-term project. The slow, often painstaking, process of establishing one's business presence in that huge nation, whose domestic economic and social conditions are so fluid and so constantly changing, does not lend itself to the annual timetable of MFN renewal set by U.S. law. The process of training staff in China to perform effectively in U.S.-invested businesses--and to develop the new habits of thought that are the hallmark of progressive U.S. business influence in an alien cultural and political environment--is a long and difficult process of acculturation. In the PRC, the government is faced with the task of creating the huge mass of legislation in order to bring Chinese business and economic practices into line with U.S. and global practices. This, too, is the work of decades, in a society whose own entrenched traditions date back millennia.

These are the realities of our commercial and economic engagement with China today.

That China is economically advancing, rapidly growing, and already achieving historically unprecedented global economic stature is not in doubt; nor is it ours to guarantee or prevent. What is ours to grasp or to ignore is the opportunity that China's self-generated economic transformation offers to the United States and to American business.

Increasingly, from our Council's vantage point, we see the best-run and the most capable American companies embracing the inescapable conclusion that China must be a part of their futures; that major resources must be devoted to pursuing and realizing opportunities there; and that a broad and demanding engagement with the realities of China's history, its society, its governance, and its economic policies is vital to their interests.

Maintenance of normal trade relations with China year in and year out, then, is an obvious, prime prerequisite for the expansion of U.S. business interests with China.

But it is important to point out that the mere fact that normal trade relations with China are placed on the chopping block every spring in and of itself has a deleterious influence on the development of advantageous economic relations with the PRC. While the President and the Congress in turn made enormously important decisions in the spring of 1994 by re-establishing the tradition of unconditional MFN and by decisively turning back the effort to reverse the President's decision, the fact remains that each spring the future of U.S.-China trade and economic relations is placed in jeopardy by the MFN renewal ritual. **The future of U.S.-China economic relations, whose expansion should be measured in decades, is every single year rendered vulnerable to fundamental disruption.**

Thus, Mr. Chairman, I urge the members of this vital Trade Subcommittee to take the long view of the development of U.S.-China trade and economic relations. Recognize that the annual MFN exercise--which has never, in the case of China, really revolved around the freedom of emigration issues with which the original Jackson-Vanik legislation was primarily concerned--is both an enduring irritant to U.S.-China trade relations and a minefield in which U.S. commercial and foreign policy interests can every year be imperilled.

We urge this Committee to recognize that, however hard the bargaining over the specifics of China's admission to the World Trade Organization must be if China is to gain admission on the required commercially acceptable terms, the Chinese understandably wonder aloud why they should make the concessions we demand of them, when the United States under present law is not authorized to accord China the permanent unconditional MFN status that is the principal definition of GATT/WTO membership.

In short, while maintenance of MFN relations in 1995 is vital in the immediate term, it remains only a momentary treatment for a longer-term aberration in U.S.-China relations that ultimately prevents the fuller realization of the benefits of closer engagement between these two nations.

We at the U.S.-China Business Council thus hope and believe that Congress, the Administration, and the private sector can work together to achieve a more stable and enduring bilateral economic relationship than we have enjoyed thus far in the modern U.S.-China encounter. Will trade disputes continue to arise between us? Certainly, and they should be vigorously prosecuted, when necessary, through appropriate dispute-resolution mechanisms. Will China and the United States continue to differ widely on certain basic issues of human and political values? Very probably. Our societies stem from different historical traditions, and our material circumstances are widely disparate. Will China become a political issue in U.S. domestic politics again, as it has repeatedly (and with lamentable effects) over the past century? It could, if we're not all careful. Will a strong, honest, and yet respectful relationship be restored between the United States and China? It could be, and it should be. Maintaining normal trade treatment for China this year is a prerequisite to this, but the larger challenge lies ahead of all of us.

Thank you.

China Economic Statistics

	Full-Year 1994	% Change Over 1993
Gross Domestic Product	4,380 billion RMB	+ 11.8%
Gross Value of Industrial Output (GVIO)	4,257.3 billion RMB	+ 21.4%
GVIO Private and Foreign-Invested Enterprises	738.7 billion RMB	+ 42.2%
GVIO Collective Enterprises	1,655.7 billion RMB	+ 29.4%
GVIO State-owned Enterprises	1,862.9 billion RMB	+ 6.52%
Overall Inflation*	+ 24.2%	
Per Capita Income	$373	+ 13.4%
Money Supply		
M2 Supply	4,693.3 billion RMB	+ 34.4%
M1 Supply	2,055.6 billion RMB	+ 26.8%
Retail Sales	1,605.3 billion RMB	+ 31.2%
Total Foreign Direct Investment		
Number of Projects	47,490	- 43.1%
Amount Contracted	$81,406 billion	- 26.9%
Amount Utilized	$33.8 billion	+ 31.2%
US Direct Investment**		
Number of Contracts	4,027	- 40.3%
Amount Contracted	4.7 billion	- 31.1%
Amount Utilized	1.9 billion	- 8.2%
Foreign Trade	$236.7 billion	+ 21.0%
Global Exports	$121.0 billion	+ 31.8%
Global Imports	$115.7 billion	+ 11.4%
Balance of Trade	$5.3 billion	- $12.1 billion in 1993
US-China Trade***	$48.1 billion	+ 19.4%
US Exports	$9.3 billion	+ 6.0%
US Imports	$38.8 billion	+ 23.2%
Balance of Trade	- $29.5 billion	- $22.8 billion in 1993
Total Trade of Foreign-Invested Enterprises (FIEs)	$87.6 billion	+ 30.7%
FIE Exports	$34.7 billion	+ 37.6%
FIE Imports	$52.9 billion	+ 22.6%
Total Foreign Exchange Reserves Minus Gold	$52.9 billion	+ 136%

Sources: US-China Business Council, State Statistical Bureau, MOFTEC, World Bank, IMF, FBIS, US Dept. Of Commerce, China Economic News

** Represented by the consumer price index. Inflation statistics are, in effect, moving averages of price increases and understate true price increases during periods of accelerating inflation.*

***Straight line projection from January-October data*

**** US Dept. of Commerce official figures.*

US-China Business Council, April '95

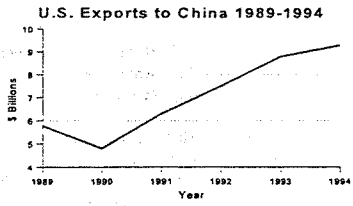
The United States-China Business Council

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U.S. COMMERCIAL INTERESTS IN CHINA

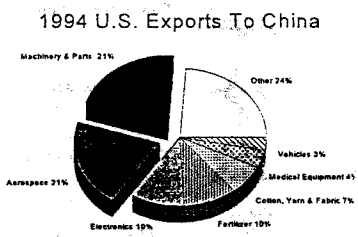
China is the United States' Fastest Growing Major Export Market

- America exported $9.3 billion worth of goods to China in 1994, an increase of 5.9 percent from 1993. Exports are expected to continue to grow in 1995.
- The annual rate of growth in U.S. exports was 20.4 percent in 1992, and 17.4 percent in 1993.

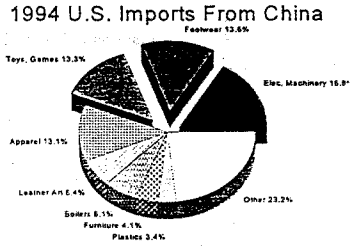


Trade with China Creates American Jobs and Benefits American Consumers

- American exports to China in 1994 supported approximately 187,000 U.S. jobs, many of which are in high-wage, high-technology fields.



- Leading U.S. imports from China are generally low-tech, low value-added consumer goods. These products do not displace U.S. production, but rather compete with products from other low-wage economies in East Asia.



formerly The National Council for U.S.-China Trade

Opportunities for U.S. Businesses

- In 1994, China's real GNP grew 11.8 percent. Between 1978 and 1994, China's annual real GNP growth averaged roughly 9 percent. By most calculations, this was the fastest growth of any country in the world during this period.
- The IMF now ranks China as the world's third largest economy behind the United States and Japan. According to many widely-respected projections, China will become the world's largest economy early in the next century.
- In 1994, China ranked second only to the United States in volume of incoming foreign investment. China ranks first among developing countries in attracting foreign direct investment. Since 1979, U.S. companies have signed roughly 16,000 investment contracts worth roughly $20 billion.
- In 1994 the U.S. Department of Commerce identified 10 emerging markets as those which hold the most promise for U.S. firms. China ranked #1 among these big emerging markets (BEMs).
- Many opportunities exist for increased U.S. trade and investment in China. According to estimates by private firms, the U.S. Foreign Commercial Service, and leading trade groups, the amount of potential investment in the Chinese market includes:



Power generation equipment: $90 billion over the next 7 years.



Commercial Jets: $65 billion over the next 18 years.



Telecommunications: $40 billion over the next 5 years.



Oil field and gas machinery: $18.2 billion over the next 3 years.



Computers: $4.3 billion over the next 3 years.

Sources: U.S. Department of Commerce and MOFTEC

Chairman CRANE. Thank you, Mr. Kapp.

Now our distinguished good friend and former colleague, Beau Boulter.

STATEMENT OF HON. BEAU BOULTER, ESQ., ARLINGTON, VA., FORMER MEMBER OF CONGRESS

Mr. BOULTER. Mr. Chairman, I do want to thank you for allowing me to testify before your subcommittee today, and I would like to submit my written testimony for the record, please.

Mr. Chairman, you know me a little bit better than Congressman Rangel does. But I listened to the testimony of my colleagues, former colleagues, this morning and especially Frank Wolf's, and I am going to actually visit with Frank about this, I think this coming Friday.

You know that in my heart I am from—I am a Republican, and I am from sort of what some people call the right wing of our party. I generally have been identified with the religious right, although I am not particularly happy with that identification.

But I certainly—I agree with so much of the concerns that Frank has. I stay in touch with people in China, with the missionary movement, the House Church movement. Last winter, I took a young Chinese Government official into a Sunday morning worship service. It was against the law. It was announced from the pulpit, as they had to do under the law, that no Chinese nationals were allowed in the service; nonetheless he was there.

So I am very concerned about all of these things that I heard Frank talk about. I am also involved in a very—I think, a very exciting prodemocracy project in China.

My point is, however, I just totally disagree with Frank's solution. I think if relinking MFN status to human rights considerations would promote human rights in China, I would certainly be for it. I have no commercial clients over there.

But it just will not work in my view. I base my view on the fact that I know so many individual people involved in the dissident movement or in the prodemocracy movement, many of whom were at Tiananmen Square. Not all of them, but most of them, as individuals want normal trade relations with China. They think that is the very oxygen for the very political reforms, democratic reforms, and market reforms that they all yearn for so much. That is why I support renewal of MFN on an unconditional basis.

To relink it with human rights considerations, especially during the succession period—things appear to be stable, but still it is a very dangerous situation, and we all know that.

I think that human rights does, in China more than most places, depend upon political stability. Relinking MFN to human rights right now, I think, would undermine political stability.

The other point I would want to make that I have not heard really talked about is that I think China is on the verge of financial collapse. It always teeters on that brink.

I met recently with the Vice Governor of the People's Bank of China, and he would never say that, but my impression was that there are so many loans that have been made by these specialized banks—now they are trying to convert them into regular commercial banks, but I do not know that they will succeed—there are so

many loans to the State on industries that are delinquent, a third of them or so.

Ten percent of those loans are just totally bad at least, and it is the export industry in China that keeps those banks going. It is the export sector of their economy that is lessening the dependence of the State on industries. If they do—if that financial house of cards were to collapse, then I think the People's Liberation Army might very well take over everything in China. What would that do to the balance of power in the region? What would that do to human rights?

So I strongly support normal trading relationships, even to the point of allowing China into the WTO once they agree to a schedule to reduce their tariffs.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. BEAU BOULTER, ESQ.
ARLINGTON, VA.

It is a privilege for me to testify before this subcommittee on the subject of U.S.-China trade relations, including China's MFN status and related issues.

MOST FAVORED NATION STATUS

The advocates of economic sanctions to spread democracy and human rights say that America's self-interest must give way to our belief in democracy and freedom. In their view, the US must have little or no economic activity with those nations they consider to be human rights abusers. They argue that the principle of nonintervention applies only to legitimate states and that nondemocratic regimes are illegitimate, and therefore harassment of all sort, short of actual invasion, including blockades, are appropriate. These "democratists" believe that such a policy of internationalism is in the interest of global security because, they say, democratic states do not fight each other.

The other view, to which I ascribe, is clearly articulated by Henry Kissinger, who contends that the United States cannot base its foreign policy on the hope of transforming other societies. Instead, U.S. foreign policy must aim for peace with nations whose systems are totally different from ours.

As a general rule, trade sanctions and embargoes do not help spread democracy or human rights. They only hurt the very people they are designed to help.

I believe that America's interests, goals and ideas will be better advanced if MFN is not only kept separate from human rights considerations, but if MFN is granted to China without Jackson-Vanick annual conditionality. The interests, goals and ideas which I have in mind specifically include maintaining a balance of power in East Asia, the nonproliferation of weapons of mass destruction, a vibrant trade relationship with China and the promotion of a more open society and human rights in China.

Originally, President Bill Clinton's policy toward China was to pursue security arrangements, economic growth, and human rights in a balanced manner. Before long, however, possibly due to the pressure of constituent human rights groups in the Democratic Party, the Administration began giving priority to the promotion of human rights, to the exclusion of the other two policy goals.[1] The weapon he chose to promote democracy and human rights was trade sanctions, and he pulled from that arsenal the most blunt weapon of all, MFN.

In the course of nearly a year, the Clinton Administration gradually learned that neither China, our allies nor American business would tolerate the Clinton tactics of trade sanctions to enlarge democracy and promote human rights in China.

Moreover, the Administration failed to distinguish between a country like North Korea, which maintains a totalitarian political system and has virtually no economic or cultural contacts with the rest of the world, and a country like China, whose political system was a much looser authoritarianism and whose economic and cultural ties with the West were developing rapidly.

After President George Bush announced renewal of MFN for China following the Tiananmen Square crackdown on June 4, 1989, candidate Bill Clinton campaigned against Bush's policy of "coddling the tyrants in Beijing". On May 28, 1993, President Bill Clinton issued his executive order extending MFN to China to July 3, 1994, conditioned on "significant progress" in the area of human rights.

In the President's statement, he said Americans were outraged by the killing of pro-democracy demonstrators at Tiananmen Square in June 1989 but that when Congress expressed that outrage by placing conditions on most-favored-nation trade status with

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[1] For an excellent discussion of the devolution of Clinton foreign policy toward China, see Harding, Harry, "Asia Policy to the Brink", Foreign Policy, No. 96, Fall, 1994.

China, President Bush had twice vetoed such legislation. Mr. Clinton then discussed the evidence of Chinese missile sales to Pakistan, then turned to a discussion of the growing U.S. trade deficit with China, and concluded that in order to promote democracy in China and open China's markets, the Administration would adopt a new policy toward China:

> The core of this policy will be a resolute insistence upon significant progress on human rights in China by extending most-favored-nation status for China for 12 months, but, whether I extend MFN next year, however, will depend upon whether China makes significant progress in improving its human rights record.[2]

With that statement, President Clinton adopted the congressional policy twice vetoed by President Bush and extended MFN to China conditionally, making MFN renewable on July 3, 1994 for 12 months, provided that China has made "overall significant progress" in the area of human rights. The order further committed the US government to make China abide by its commitment to fair trade practices and to adhere to the Nuclear Non-Proliferation Treaty and the Missile Technology Control Regime (MTCR).[3]

Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, testified before the Subcommittee on Trade of the House Ways and Means Committee on June 18, 1993, that:

> We are hopeful the Chinese Government will take significant steps in the human rights area which will permit the President next year to renew the P.R.C's MFN status in a positive fashion. But the President is prepared to revoke that status if satisfactory progress does not occur.[4]

Clearly, China did not make, nor has it made, any substantive changes in its human rights policy. Yet, on May 26, 1994, President Clinton totally reversed his policy and unconditionally renewed MFN for China by his executive order of July 3, 1994, thereby separating human rights from the issue of normal trade relations with China.

Thus did the President's foreign policy lurch from his idealistic, activist, moralistic, democratist position to a very pragmatic and mercantilist position. It swung from one designed to spread democracy and human rights, using trade as a weapon, to one designed to create jobs at home through expanding international trade and promoting U.S. investment in China. Contrast the statements by the President and Assistant Secretary of State above with subsequent pronouncements, such as:

> I will avoid political concerns altogether and carry out what is economically good for us and China and will not be diverted by political issues. The Bank's mission is to help American private sector companies to create jobs in America. This

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[2]Statement released by the White House, Office of the Press Secretary, Washington, DC, May 28, 1993, US Department of State Dispatch, June 14, 1993, Vol.4, No.24.

[3]Executive Order-Conditions for Renewal of Most-Favored-Nation Status for the People's Republic of China in 1994, released by the White House, Office of the Press Secretary, Washington, DC, May 28, 1993, US Department of State Dispatch, June 14, 1993, Vol.4, No.24.

[4]US Department of State Dispatch, June 14, 1993, Vol.4, No.24.

> means avoiding political controversy.[5]

And:

> I don't want a level playing field, I want a tilted playing field, tilted toward us.
>
> The United States government is now playing an activist role on your behalf, and we plant to turn up the heat.
>
> We are not ideological or philosophical about this. We are relentlessly pragmatic. Bottom-line oriented.
>
> We intend to compete in this environment and win.[6]

And from the President, himself:

> We do not seek to impose our vision of the world on others... Indeed, we continue to struggle with our own inequities and our own shortcomings. We recognize that in a world and in a region of such diverse and disparate cultures, where nations are at different stages of development, no single model for organizing society is possible, or even desirable.
>
> I will say again, even though we will continue to promote human rights with conviction and without apology, we reject that notion that increasing economic ties in trade and partnerships undermines our human rights agenda. We believe thy advance together and they must.[7]

Right though he was to totally change his position, this kind of wild fluctuation in American foreign policy has convinced world leaders that U.S. foreign policy cannot be taken seriously and that the President of the United States cannot be trusted.

Senator Bob Dole recently made that point in the following language:

> Leadership is ... saying what you mean, meaning what you say, and sticking to it....To state that North Korea "cannot be allowed to develop a nuclear bomb; and then one year later to sign an agreement that ignores the issue of the existing arsenal is confusing to the American people and to our allies. The threat to withdraw most-favored-nation trading status from China because of human rights violations and then to extend such status months later -- despite no change in Chinese human rights practices -- makes the world wonder whey the linkage was made in the first place.[8]

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[5]Press conference by U.S. Export-Import Bank Chairman Kenneth Broady in October 1994 attended by the author at the National Press Club, Washington, DC, just prior to Mr Broady's departure for China in his official capacity.

[6]Statements made by the Secretary of Commerce, Ron Brown, during his August 1994 trip to China as reported by Steve Mufson, Washington Post Foreign Service, Washington Post, p. A-1, August 30, 1994.

[7]Quotes attributed to Mr. Clinton at the APEC summit in Indonesia as taken from an article by Thomas W. Lippman, Staff Writer, Washington Post, p. A-36, November 17, 1994.

[8]Dole, Senator Bob, "Shaping America's Global Future," Foreign Policy, No. 98, Spring, 1995, p. 36.

Regardless of the President's motives for doing so, and precisely for the sake of human rights in China, I believe that he was correct to reverse his policy and separate China's trade status from human rights policy. My opinion is based on working with the Chinese dissident and pro-democracy community, both on mainland China and here in the U.S. All of the oppressed people of China want more freedom, and nearly all of them I have encountered also want permanent MFN status for China. They believe that normal trade is the very oxygen of the pro-democracy movement and a more open Chinese society. The flow of capital, goods and services, including U.S. intellectual property, will guarantee a loosening of the control both the Party and the State have over the people.

It would be a tragedy for this Republican Congress to revert back to the Democrat congressional leadership position as it was from June 1989 until May, 1993 when President Clinton adopted that congressional policy.

To the end of helping China into the world community of economic partners, the U.S. should grant China unconditional and "permanent" Most Favored Nation status. Originally aimed at the Soviet Union to force it to permit free emigration of Jews, Jackson-Vanick simply states that normal trade relations will be granted a Communist country conditioned upon free emigration rights. On technical grounds alone, it can be argued that Jackson-Vanick arguably should not apply to China because the vast majority of its citizens do not work for the government or for a State Owned Enterprise, and State Owned Enterprises make up only 50% of the country's GDP.

Furthermore, China received MFN status on February 1, 1980 without any controversy, and China's MFN status has never been challenged on the basis of the sole statutory condition, i.e., emigration.

Congress should not reestablish linkage. Linkage was a bad idea to begin with. It would be worse now, after China has come this far in its economic reforms and after it has opened up to the rest of the world to the extent it has. It would be especially disastrous to link MFN to human rights progress during the succession period. The appearance of stability notwithstanding, the succession period will be difficult and dangerous, and the fact is that re-linking MFN to progress in human rights would seriously undermine political stability and thus cause harm to the Chinese people themselves.

Chinese exports to the United States total about $32 billion per annum. About 95% of U.S. imports from China would be affected by higher tariffs. Tariffs on these exports would go up from about 3% to about 40% if MFN is not renewed. To the U.S. consumer, the price of losing MFN is estimated to be about $10 billion per year.

In effect, the U.S. market would be lost to China and it would take several years for the P.R.C. to replace that market. It would have a disastrous effect on China itself, especially the coastal areas. It would adversely affect Hong Kong, where so many overseas Chinese have investments in the coastal provinces and which also functions as a transit point for about 70% of China's exports to the United States. To a lesser extent, Taiwan would be adversely affected.

There would of course be swift and complete retaliation by China, which would mean that America's $10 billion export business to China would all but disappear.

The only thing that is preventing financial collapse in China right now is the rapid growth of the private sector which is heavily dependent on exports, over one third of which are to the United States. It is China's export industry which so dramatically reduces the country's dependence on the State Owned Enterprises (SOEs). All of the banks, including the four formerly known as "specialized banks" (and specifically including the People's Bank of China) have so many "loans" to the SOEs, that one-third of the loans are probably delinquent and at least 10% are hopeless, which makes China's banking crisis anywhere from three to 10 times as severe, proportionately, as the U.S. S&L crisis.

Only the rapidly expanding private sector, fuelled by exports to the U.S., keeps the banks going and prevents a financial collapse.

Today, the specialized banks (which are supposed to become regular commercial banks with the newly created policy banks taking over the SOEs) account for three fourths of China's assets, but fully two thirds of the Bank of China's lending has been policy loans. The reform plan, passed by this year's People's Congress by a relatively close margin calls for "policy banks" to take over these loans, but the Finance Ministry has not budgeted the money for the new policy banks and so they are issuing bonds to the old specialized banks at low rates and otherwise borrowing money from the specialized banks, so that in reality it is still the specialized banks, including the People's Bank of China, which are still rolling over the bad debts of the SOEs. Meanwhile, the new policy banks are trying to build their own empires and so they are loaning money to good infrastructure projects, power projects, and other finance projects.

This financial house of cards will simply collapse if MFN is denied. This would certainly result in the People's Liberation Army taking over the country, and who knows what all that would mean in terms of the balance of power in East Asia and beyond.

WORLD TRADE ORGANIZATION

As a part of our leadership role in the world, the United States should be building those international institutions that make for world peace and prosperity, such as the WTO. Concurrently, we should be assisting countries such as Russian and China to enter in and participate in the WTO.

We have been right to resist allowing China to enter the WTO during 1994 without further reforms, but now is the time for us to really work at getting China into the WTO by inducing it and assisting it to make the necessary trade reforms.

The principle dispute between China and the U.S., in terms of WTO membership, has been over the status of China's membership. China maintains that it should be admitted as a developing nation, a status that would give it greater leeway than a developed country such as the United States to subsidize its export industries and protect its basic and infant industries. The U.S. maintains that China should be admitted to WTO on essentially the same terms as a highly industrialized nation.

It is true, as the U.S. argues, that China has become a major force in the world economy. It is one of the top 11 exporting nations, fourth largest exporter to the U.S. after Japan, Canada and Mexico, and the world's third largest economy, by some measurements, after the U.S. and Japan. Also, there was a $23 billion trade deficit with China for 1993, and it is expected to be as high as $29.5 billion for 1994.

China may be an "export powerhouse", but with a per capita income of about $38.00 per year, it is a poverty stricken, developing nation. Therefore, China should be admitted as a lesser developed country. To do so would be in accord with the GATT philosophy that freer trade helps all economies grow, thus minimizing the specter of economic depression, and, worse yet, war itself. Implicit in the original idea behind GATT in 1947 was the belief that the new international economic order would allow the U.S. to increase its own wealth and power and thus to carry its values to every corner of the globe. In light of the Special 301 settlement of the IPR case, which will result in U.S. information penetrating China, it seems more true than ever that world wide economic stability and peace will be promoted by China's inclusion into the global trade community.

China's leaders know that continued progress in China's economic reforms and continued economic growth depend on increasing trade liberalization. As China's open door policy has progressed, the role of international trade has increased in China's economy. Whereas prior to the reforms, China's international trade system was extremely centralized and controlled by secret decisions of government officials, the economic

reforms have resulted in a progressive restructuring of China's foreign trade system.

Since the economic reforms were initiated in 1979, exports have increased 900 percent and imports 700 percent. In the process, China has become a relatively open economy, with merchandise trade constituting well over 30 percent of gross domestic product (GDP), making China's economy actually more open that of the United States, according to the World Bank.[9] Import penetration is extremely high in some sectors of the economy, such as machinery and transport equipment. The United States is the second largest exporter to China after Japan.

The central government still exercises too much control over imports, but these controls are definitely relaxing as China decentralizes its economy and continues with its macro and micro economic reforms.[10] As far as exports are concerned, the central government has by and large stopped direct subsidization.

China still has too many tariffs, and theirs is a very complicated tariff system. Ours is also. We now have 8,750 different rates in order to protect our domestic industries. The PRC cut rates on 225 separate items effective January 1, 1992, again lowered rates on 3,371 items in late 1992, and reduced rates on an additional 2,818 products at the end of 1993.[11]

Most of China's high tariffs are for the purpose of penalizing nonessential consumption and to protect its ever important textile industry, as well as others that are considered vital. Our tariffs seem to have no social policy whatsoever, except to also protect the textile and other industries. Mostly, our tariff system seems to simply reflect the lobbying efforts of American business. For example, the whole purpose of the multi-fiber arrangements (MFA) was to allow the U.S. to create a GATT- exempt non-tariff barrier to imported textiles and apparel in order to protect the U.S. textile industry.

It can actually be argued that American trade negotiators spend more effort, overall, in restricting U.S. markets rather than in opening them. They have negotiated 170 bilateral trade agreements since 1980 restricting exports to the United States. One authority has said, "U.S. trade law has turned incompetence into an entitlement, as any lagging American company has a right to seek relief from foreign competition. Foreign nations are increasingly denounced as unfair unless they take 'affirmativeaction' to force their businesses to buy more American products."[12]

As for non-tariff barriers (NTBs), Chinese authorities have recently announced the abolition of import substitution lists and phased elimination of import controls. There is still a heavy dose of NTB protection, mostly in the form of import licenses, for raw materials and products where domestic production is sufficient to meet the country's needs, such as iron, steel and textiles. Quotas are relied on to protect autos, electronics and some machinery. Import licenses, a highly opaque NTB, are being phased out in a timely manner consistent with the October 1992 Section 301 market access trade action, and this will accelerate now in the wake of the Special 301 IPR settlement.

China's position is that as much as it wants to be in the WTO, it must not risk a wave of unemployment now and needs time to phase out these tariffs and NTBs as it continues to restructure its economy and state owned enterprises.

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[9]China: Foreign Trade Reform, The World Bank (Washington, D.C., Feb. 1994.

[10]Ironically, decentralization may actually delay implementation of the 1992 MOU as the central government loses control over provincial and local governments. For example, there is less transparency at the provincial and local level than in the central government.

[11]China: Foreign Trade Reform, The World Bank (Washington, D.C., Feb. 1994.

[12]Bovard, James, The Fair Trade Fraud, (New York, St. Martin's Press, 1991).

Essentially, the United States has taken the same position in the past as China now takes concerning the textile industry. In fact, the American textile industry fears a surge of imports if China comes into the WTO and wants some protection from that anticipated surge. The subject of textiles will definitely be a contentious round of trade negotiations in the near future.

In an effort to satisfy the WTO negotiators and get its application for membership past the U.S., the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) has published in a central document hundreds of trade documents previously unavailable. China has agreed that only those rules, regulations, law, etc that are readily available to other governments are to be enforced.

China has even made important moves toward a convertible currency and stabilization of the currency exchange rate, though this is a very complicated issue.[13]

Successful economic reform must proceed step by step by step. This requires political stability. China has engaged in gradual, careful, sequenced reform, not all at once, start and stop. This approach has already resulted in about 80% of the employed population working outside the State-owned enterprise system, which now accounts for only about 50% of the economy.[14] Thus, China has been able to avoid, for the most part, the serious problems of economic, social and political chaos that, for example, Russia constantly faces.

Under Deng's economic reforms, China has become a major trading nation in rapid order -- number 10, 11, or 12, in the world, depending on who you want to believe. If China' reforms are to succeed, and if China is to find its role in the international community of nations, it will have to recognize the legitimate concerns of its trading partners and respond to them. That is what China in fact did on February 26, 1995 in the historic settlement of the Special 301 Intellectual Property Rights case. It just shows how important full and original membership in WTO is to China.

Just as now is the perfect time, economically and politically, for China to press on towards genuine trade liberalization, and just as China must intensify even further its resolve to abide by the basic GATT philosophy of free consumer decision, free markets and freer trade, so also is now the time for the U.S. to abide by its commitment in the October 1992 Market Access MOU and truly support China in its efforts to achieve WTO membership. Part of that process is allowing China a degree of the flexibility it asks for in its tariff reduction schedule.

After the Special 301 IPR settlement was announced on February 26, U.S. Assistant Secretary of State Winston Lord met on March 1 with Foreign Minister Qian Qichen and said that U.S. was ready to resume talks on China's application for membership. On March 12, in Beijing, U.S. Trade Representative Mickey Kantor announced at a joint press conference with Wu Yi, China's foreign trade minister, that, "As previously stated, the U.S. will support China's accession to the WtO as a founding member." Thus, the US agreed to resume its talks on WTO accession and appeared to drop its objections to China coming in as a lesser developed nation. In return, China

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[13]Traditionally, all exporters have been required to turn over all of their foreign exchange receipts to a specialized bank, the Bank of China, in exchange for domestic currency, thus depriving the exporter of all foreign exchange to finance imports. Instead, they were allocated foreign exchange quotas, just like all other importers. Thus, there has been virtually no ability of the People Bank (the closest thing China has to a Central Bank) to intervene in the foreign exchange market to stabilize the exchange rate. This system is a carry-over from the pre-Deng days and requires major reforms in the State-owned enterprises, the banking system, and the exchange regime itself. The process is under way, and the government's goal is to unify the exchange rates and make the renminby a fully convertible currency.

[14]The State Economic and Trade Commission just announced that the rate of non-profitable SOEs in China decreased from 45% to about 33%, so even in this area where there has been very little real reform, efficiency is improving.

agreed to resume implementation of the 1992 pact to lift almost 3,000 quotas, licensing requirements and other barriers to U.S. goods, and also to hold talks to further open insurance and telecommunications markets. In addition, China signed an agreement to allow more imports of U.S. agricultural products.

China should be admitted retroactively as a founding member once it agrees to a schedule for bringing down trade barriers over a period of one to 10 years. As Secretary of State Warren Christopher recently observed:

> [China is] "a permanent member of the United Nations Security Council, a nuclear power, and a growing military and economic force. If China is fully integrated into the international community, it could make a powerful contribution to regional and global stability and prosperity. If China chooses another path it has the potential to destabilize the region and harm America's interests. The choice is China's, but American engagement can help encourage it to enjoy the benefits - and accept the obligations - that come with membership in international institutions and adherence to international norms."

Thus, Christopher concluded, "We will continue to encourage China's participation in the global economy, including its accession to the WTO, if it undertakes the necessary obligations." [15]

CONCLUSION

The succession of Deng will undoubtedly be a severe test on the reform movement, as Jiang Zemin and his potential rivals feel the need to keep the lid on political dissent and not lose any face to the United States. Until the succession question is resolved with a degree of certainty, it would be very unwise for this country to take any action, either on the trade or human rights front, which would precipitate a hardening of position on the part of the Chinese leaders.

GATT and the WTO rely on the western neo-classic model of economics and geopolitics arising out of the Great Depression and two world wars as expressed at Bretton Woods. GATT/WTO assumes the MFN principle, and further assumes that free markets, free trade, and private ownership constitute the most productive economic system and will promote world peace.

President Clinton is not wrong to insist that China abide by free trading rules, and it appears that the IPR Special 301 initiative turned out well. Nonetheless, the administration should recognize that it is too much to expect China to immediately conform to the same set of rules the U.S. agrees to for WTO membership. The U.S. should accede to China's demand for flexibility and agree to phase in the rules over the next few years.

Having put economics, and hopefully security arrangements, rather than human rights, at the center of America's foreign policy toward China, the U.S. must recognize its challenge to invigorate the spirit of private enterprise and entrepreneurship in China. Such economic changes will continue to produce political changes toward a freer and more open society.

The New World Order will be built on economics and trade, rather than traditional foreign policy. It will be built on capitalism. In this new economic order, East Asia in general, and China in particular, are on the rise. This fact accentuates the need for good

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[15]Christopher, Warren, "America's Leadership, America's Opportunity", Foreign Policy, Spring 1995, p. 12.

U.S.-Sino relations and also the need for a genuine regional security framework, which certainly does not yet exist in East Asia, especially Northeast Asia.

China's rise will be tumultuous at times. The United States needs to be a partner in the process. It is in our interests economically and militarily. The best way to be a good partner is through economic cooperation and engagement, not confrontation. We should not view China as an enemy (though this is not to say that the P.R.C. should be viewed as an ally, either.)

Normal trading status, including unconditional MFN, and charter membership in WTO (even though granted retroactively) are important for China. These are important not just for the government, but for the people as well. They are especially important to the very people who are fighting for, and depending on, both economic and political reform. Their future depends almost as much on United States' trade policy toward China as it does on their own government's economic and trade policy. America's own well-being is inextricably linked to the furtherance of China's reforms. These two truths demand sober reflection and must serve as guideposts in our future dealing with the People's Republic of China.

Chairman CRANE. Thank you.
Mr. Aronson.

STATEMENT OF ROBERT R. ARONSON, PRESIDENT, ROSS ENGINEERING CORP., AND REVPOWER LIMITED, FORT LAUDERDALE, FLA.

Mr. ARONSON. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Robert Aronson, and I am president, Ross Engineering Corp., Fort Lauderdale, Fla., and Revpower Limited, an industrial battery business.

I want to thank you for inviting me here and giving me the opportunity to tell you about a major problem that I am having in China and one that the United States is having in China. My special thanks to you, Mr. Chairman, and Congressman Shaw for the assistance you have already given me.

I have submitted a detailed written statement and therefore will only touch on the highlights of my written testimony.

The bottom line is this. Revpower has suffered substantial financial damages at the hands of two parties in China—one, a state-owned branch of the Ministry of Aviation called Shanghai Far East Aerotechnology Import/Export Corp., and I will just call that Shanghai Far East, and the other, the State of China itself.

We have been damaged because the dispute resolution mechanism agreed to between Revpower and Shanghai Far East—that is, international arbitration—has been unilaterally abrogated by the Chinese Government, and as a result, all foreign companies doing business in China are at risk. Our losses to date exceed $8.4 million.

Here is a very brief history of our experience. In June 1985, I was invited to a meeting at McDonnell-Douglas Aircraft in Long Beach with Shanghai Aviation Industrial Corp., which is a branch of the Ministry of Aviation. Shanghai Aviation asked me to build a battery plant in China.

In June 1988, 3 years later, a formal agreement was signed with Shanghai Far East. Revpower was to provide machinery, equipment, raw materials, engineering knowhow for the battery plant, and was to buy the entire production of the battery plant. Shanghai Far East was to operate the plant.

The agreement called for fixed battery prices for a 3-year period and a performance guarantee by the Bank of China which would protect Revpower's investment. Revpower then brought in the machinery, equipment, raw materials, engineers; got the plant running; and after a successful production run, Revpower issued its first purchase order for batteries and opened an irrevocable letter of credit.

At this point, our problems began. At this point, everything was going great. We had done everything we were supposed to do. We had got the plant running. Now all of a sudden Shanghai Far East informed me that battery prices, which were supposed to have been fixed, would now have to be substantially increased, and the bank guarantee which we were supposed to get would no longer be available.

When Revpower protested this, Shanghai Far East closed the plant. Revpower then canceled the agreement and entered into an

18-month period of extended negotiations in an effort to get the program back on track.

The negotiations were unsuccessful. Shanghai Far East had, thus in effect, confiscated our battery plant.

Revpower then filed a complaint with the Arbitration Institute of the Stockholm Chamber of Commerce. After a 2-year battle, the Institute granted Revpower a $6.6 million arbitral award, plus interest. That amount today stands at about $8.4 million.

Now since this award was covered by the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards, to which China is a signatory, and since Shanghai Far East and the Ministry of Aviation had ample assets with which to pay the award, I thought that collection would be a routine matter. This is when I learned that we had a second problem.

The Government of China and its courts have absolutely refused to recognize or accept the award, and it has come to our attention that Shanghai Far East has transferred all of its assets to the Ministry of Aviation and to others.

The position of the Chinese Government seems to be as follows: There will be no adverse consequences to China for failure to pay the award or to comply with the 1958 New York Convention. So why bother?

This means that all American companies with investments in China are sitting on a time bomb. Virtually all U.S.-China agreements covering those investments contain arbitration clauses. As China and its courts will not enforce arbitral awards in favor of American companies, the relationship between American and Chinese companies is grossly one sided in favor of the Chinese.

Something should be done to make arbitral awards enforceable outside of China, since they are not enforceable inside of China. This is one of the five legislative recommendations that I have made in my written statement.

As far as MFN is concerned, simple fairness requires the subcommittee to consider the total lack of protection afforded to American companies in China as it decides whether to extend the benefits of U.S. laws to Chinese interests in this country. I believe that until the Chinese agree to live up to their obligations under the 1958 New York Convention, that MFN should be withheld.

There are several other recommendations in my written statement.

So I thank you very much for this opportunity to appear before you, and I would be happy to answer any questions.

[The prepared statement follows:]

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Statement of Robert R. Aronson
President
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and
Revpower Limited
Fort Lauderdale, Florida

Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.
May 23, 1995

On the Subject of U.S. Trade Relations with China and the Enforcement of International Arbitral Awards

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Mr. Chairman and members of the Subcommittee, my name is Robert Aronson. I am the President both of Ross Engineering Corporation of Fort Lauderdale, Florida, and Revpower Limited, an American-owned Hong Kong manufacturing company. I appreciate the Subcommittee's courtesy in inviting me to appear before you, and applaud your initiative in holding this timely hearing on China's most favored nation (MFN) status. I also want to thank you, Mr. Chairman, and Mr. Shaw at the outset of my remarks for your help to date and continuing interest in justice for American investors in China.

Today I propose to address four issues: First, I wish to bring to your attention Revpower's recent business experiences in China and its current efforts to enforce an international arbitral award against the Shanghai Far East Aero-Technology Import & Export Corporation ("SFAIC"), a branch of SAIC and the Chinese Ministry of Aviation and former subcontractor of Revpower. Unfortunately, Revpower's name must be added to that growing number of U.S. investors in China to have been victimized by the willful refusal of the Chinese government and judiciary to adhere to the rule of law.

Second, I describe the assistance given to Revpower by the U.S. Government in support of our effort to enforce our arbitral award. While much has been done by the administration and Congress -- and we are deeply grateful for that assistance -- it has proven insufficient to induce China to modify its behavior. More will have to be done.

Third, I discuss the broader policy significance of the Revpower case and seek to warn of the new threat posed to U.S. and other foreign investors in China because of the actions taken by the Chinese government in this matter. Currently, the international investor community relies overwhelmingly on international arbitration as a mechanism by which to settle disputes in China. It does so because it feels it can rely on the integrity of China's commitment to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), to which China became a signatory in 1987. We can now see this reliance is clearly illusory: by its actions in the Revpower case, China signals that it does not and will not honor its international treaty obligations under the Convention.

And fourth, I recommend a series of measures -- including sanctions -- for adoption by Congress and the administration designed to respond to the economic injury to Revpower and the threat to all other U.S. investors in China as a result of the Chinese government's de facto abrogation of the New York Convention. These recommendations are also informed by the conclusion that the Chinese government is becoming less, rather than more, observant of the rule of law. No one is served -- not the United States, not the international community, and not even China -- by permitting what is now chronic lawless behavior by China to be rewarded by tolerance. The United States should implement a series of measures designed to sanction swiftly and effectively Chinese behavior that, as with Revpower, unlawfully causes harm to U.S. economic interests.

I. Revpower's Problems in China

On June 4, 1988, after 36 months of negotiations, Revpower entered into a Compensation Trade Agreement (the "Agreement") with SFAIC under which SFAIC was to manufacture industrial batteries for Revpower to Revpower's specifications with machinery, equipment, raw materials and engineering expertise supplied by Revpower. Two key provisions of the Agreement provided as follows: the prices to be charged by SFAIC for the batteries were to remain fixed for a period of three years from the date of the Agreement, and SFAIC would obtain a performance guarantee in Revpower's favor from the Bank of China to protect Revpower's investment.

The subcontract arrangement proceeded relatively well for the first 18 months of the relationship. The machinery and equipment supplied by Revpower were installed in SFAIC's Shanghai factory and a trial production run was successfully conducted, with the batteries produced testing out to Revpower's specifications. Thus it was that, in the latter part of 1989, Revpower placed an initial order and opened an irrevocable letter of credit in favor of SFAIC to pay for the order.

Revpower's problems with SFAIC began in December 1989 when SFAIC informed Revpower that the battery prices would have to be increased substantially and the Bank of China could not issue the required performance guarantee -- each notification constituting a material breach of the Agreement. Following a number of meetings and exchanges of correspondence that did not serve to change SFAIC's position, Revpower gave SFAIC notice of breach in accordance with the provisions of the Agreement and cancelled the Agreement effective January 1990. Revpower then engaged in almost 18 months of what the Chinese refer to as "friendly negotiations" to change SFAIC's position by offering a number of concessions, including price concessions, without success.

Having exhausted all efforts to amicably resolve the dispute, on July 2, 1991, Revpower filed an arbitration claim against SFAIC with the Arbitration Institute of the Stockholm Chamber of Commerce as provided by the terms of the Agreement. The parties and the Institute selected an illustrious three-person panel to preside over the arbitration: Jeremy A. Cohen, an internationally recognized U.S. expert in field of Chinese law (who was appointed by SFAIC); the late Dr. J. Gillis Wetter, considered one of the world's leading experts in international arbitration; and Lars Rahm, a distinguished Swedish attorney. SFAIC's initial response in the arbitration was an objection to the proceedings on jurisdictional grounds, an argument that was rejected unanimously by the tribunal in July 1992. Subsequently, on December 11, 1992, SFAIC filed a Statement of Defense and a Counterclaim in the amount of $3.9 million, to which Revpower responded on March 1, 1993. The tribunal scheduled the final hearing for June 14, 1993.

Notwithstanding these pending arbitration proceedings and a clause in the Agreement stipulating the use of arbitration to settle all disputes, SFAIC improperly filed a lawsuit against Revpower through Chinese counsel in the Shanghai Intermediate People's Court on March 25, 1993. SFAIC's claim in the lawsuit was based on the same Agreement and the same issues that were the subjects of the arbitration. Revpower immediately objected to the suit and filed a motion to dismiss. This motion remains pending today -- more than two years later -- despite the requirements of Chinese judicial procedure, under section 135 of the PRC's Code of Civil Procedure (the "Code"), that the court respond within 180 days to any such motion.

On April 21, 1993, SFAIC notified Revpower that it had decided to withdraw from the arbitration proceedings without explanation. The arbitral panel, having earlier decided that it had jurisdiction to consider Revpower's arbitral claim and determining that it had a sufficient evidentiary record, proceeded with the arbitration. On July 13, 1993, following four days of hearings in June, a unanimous arbitral panel granted Revpower an arbitral award in the amount of US $6.6 million against SFAIC, plus interest from the date the case was submitted in 1991. (With interest, the award now totals more than $8 million.)

SFAIC refused Revpower's demand to abide by the results of the arbitration and pay the award. Thus, Revpower was confronted with the need to seek the assistance of the Chinese courts in order to obtain an enforcement of the award. Such enforcement actions are permitted under Chinese law, which conforms to the provisions of the New York Convention requiring signatory nations to enforce collection of arbitral awards unless the defendant can assert one of a few specified defenses to the enforcement action. (None of these defenses would be available to SFAIC.)

Revpower attempted to file its enforcement action on December 6, 1993, well within the six-month filing deadline under Chinese rules (Section 219 of the Code), in the Shanghai Intermediate People's Court, the same court that had failed to dismiss SFAIC's prior illegal law suit. Under Section 112 of the Code, the court was required to acknowledge Revpower's request for enforcement of the award within seven days of filing. However, court officials refused -- without explanation or apparent justification -- to accept the filing fee proffered by Revpower to satisfy the requirement that filing fees be paid in advance. This triggered the immediate suspicion that, as so many other foreign litigants in China have had the misfortune to find in similar circumstances, the doors of the Shanghai Intermediate People's Court were closed shut to any attempt by Revpower to obtain justice against the local defendant, SFAIC.

So it proved. Despite the efforts of the U.S. State Department through the U.S. Consul General in Shanghai, letters to the Chinese Ambassador to the United States by several Members of Congress, and personal contacts by U.S. Embassy officials in Beijing with officials of the China International Economic and Trade Arbitration Commission, the China Council for the Promotion of International Trade (CCPIT), and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), all during the first three months of 1994, the Shanghai court refused to adjudicate Revpower's enforcement action or even acknowledge that the suit had been filed. Indeed, repeated calls from the U.S. Consul General to the chief judge went unanswered and repeated additional efforts by Revpower officials to file the enforcement action failed to result in any judicial action. Soon thereafter, Revpower received reports that SFAIC, safe behind the shield unlawfully erected by the Shanghai court, was in the process of secreting or divesting assets by way of obtaining further protection against any collection action by Revpower.

II. Revpower's Efforts since March 1994 to Enforce its Award against SFAIC

Having exhausted all available avenues in China, we turned to the Congress and the administration for help in bringing this matter to the attention of Chinese officials who could right this clear wrong. In April 1994, our predicament was raised by the U.S. delegation in a meeting of the U.S.-China Joint Commission on Commerce and Trade in Washington. In June, Undersecretary of Commerce Jeffrey E. Garten wrote to MOFTEC Minister Gu Yongjiang transmitting a White Paper in which he made specific reference to Revpower's claim to illustrate complaints of U.S. firms with the enforcement of China's treaty obligations and its own laws. Mr. Garten also raised the Revpower matter among other outstanding business issues directly with Chinese trade officials while in China in July 1994. We further understand that Secretary of Commerce Ron Brown raised the dispute with MOFTEC Minister Wu Yi during his trip to China shortly thereafter to impress on Madame Wu our government's expectation that the case would be resolved satisfactorily in the near future. This, too, was unsuccessful.

In November 1994, I retained Washington counsel, Alberto Mora and Stephen Powell of Holland & Knight, to provide further advice and assistance. Since then, we have been in contact with and received excellent cooperation from many departments of the Administration including State, Commerce, and Treasury. This assistance, however, has been thus far limited to expressions of concern addressed to Chinese authorities. There is as yet no coordinated plan of action that has been adopted by the agencies to achieve the desired result, although we have been informed recently that the Office of the United States Trade Representative (USTR) has agreed to assume the inter-agency lead and Mickey Kantor has personally instructed his staff to devise a plan to respond to China's Revpower challenge to the extent permitted by USTR's authority. We await with interest the result of that effort and look forward to working more closely with USTR.

Beginning in January of this year, we also renewed our efforts through the Congress and have generated correspondence from a number of Senators and Members of Congress to the Chinese Ambassador. Curiously, of the almost three dozen letters from Members and our counsel to the Chinese Ambassador and other embassy officials since January 1994, we are aware of only three that ever received a response: on January 13, 1994, He Chengjun, First Secretary (Commercial), responded with identical letters to Congressman William F. Goodling's and Congresswoman Barbara F. Vucanovich's letters of January 6, and to Congressman Michael R. McNulty's letter of January 7 (all directed to Chinese Ambassador Li Daoyu), stating that the case had been accepted by the Shanghai Intermediate People's Court and "shall only be resolved through amicable negotiations or legal means."

Notwithstanding this representation, we received no word from anyone on the Chinese side until the afternoon of April 4, 1995, in the form of an invitation from Baoliang Sheng, a Third Secretary (Commercial) at the Chinese Embassy in Washington, to our attorneys to meet with him at the Embassy the following day. It seems too coincidental that this call came only hours after USTR Mickey Kantor testified before the Trade Subcommittee of the Senate Finance Committee, in response to a question on China's compliance with international arbitral commitments, that:

> . . . the Chinese have an obligation under the conventions, of course, to honor [international arbitral] awards . . . [w]e believe the Chinese must honor their obligations and frankly, as we re-engage our discussions in Geneva over China's accession to the WTO, the Chinese have to under stand, if they are going to join a world trading system,

> their opportunities also become responsibilities as well. That was part of the major discussion over protection of intellectual property rights. It's a discussion in this question of course . . . in hearings of these conventions and honoring arbitration agreements, and we will make sure, as we proceed, that they are made well aware . . . that we are committed to this and expect them to fulfill their obligations.

We would also call to your attention the testimony of Deputy USTR Charlene Barshefsky before a joint hearing of the Subcommittees on Asia and the Pacific and International Economic Policy and Trade of the House Committee on International Relations (February 2, 1995) and her several references to the failure of China to adhere to international norms and the rule of law in the context of international trade and China's practice of "selectively" upholding its trade agreements with the United States "including accepting international arbitration judgments."

Unfortunately, two meetings with Mr. Sheng have resulted in nothing we can describe as progress. The Chinese still maintain that there has been no violation of the New York Convention and that the Revpower dispute is a matter for the Chinese courts to decide. It was not until April 24, 1995, that Revpower received any word from the court relative to the case; and even that was indirect in the form of a telephone call from the Foreign Affairs Office of the Shanghai Municipal Government to the U.S. Consul General in Shanghai that the court was preparing to take up the case "in the near future." Of course, any action that the Chinese court might take at this point has been rendered moot by the passage of time. (Because of the fate of Revpower's initial enforcement action, there is no conceivable judicial action in China that can advance Revpower's interests.) In any event, the only effective remedy now would be for the Chinese government to acknowledge its obligations under the New York Convention and pay the award on behalf of its instrumentality, SFAIC.

III. The Significance of China's Abrogation of the New York Convention

Mr. Chairman, I realize that our claim is small in the overall scheme of things. Nonetheless, it is very important to us. As well, our experience is illustrative of the difficulties U.S. businesses face and the risks they run in doing business in China, risks which have now been expanded by the conscious decisions of the Chinese government in response to the Revpower case.

The critical significance of this case lies in the overwhelming reliance placed on international arbitration by U.S. and other foreign investors in China. Because of the complete unreliability of the Chinese judiciary (which the Revpower case also demonstrates), most foreign investors have inserted international arbitration clauses in the joint venture agreements with their Chinese partners. Reliance on such clauses, however, is dependent on China's observance of its obligations under the New York Convention. By its actions in this case, China signals that it is no longer bound by the terms of the Convention and, consequently, that there is no longer any impartial dispute resolution mechanism protecting foreign investors in China. This conclusion is warranted because once the Chinese government was warned, at the highest levels, of the miscarriage of justice occurring in the Shanghai court, it had an obligation to correct the injustice under both domestic and international law; its failure to do so when first notified two years ago or assume direct responsibility for SFAIC's debt makes it a knowing and willing accomplice in the injustice.

If these alternative dispute resolution mechanisms, and arbitration specifically, cannot be counted on to ensure a means

of working out disputes that arise from time to time in the course of ordinary business transactions, no foreign business will be able to operate with confidence in China and, at least with respect to U.S. companies, the United States Government has the obligation to set China straight or sound the alarm, or both.

Until the Revpower dispute is resolved -- which now can only occur if the Government of China directly satisfies the Revpower award -- and China reestablishes its commitment to honor the terms of the Convention, every U.S. investor in China runs a greater risk of loss from arbitrary government action. For companies such as mine, some impartial dispute resolution system must be adopted by China if we are to continue doing business there and to help develop the many opportunities that exist for the mutual benefit of the people of our two countries and the rest of the world.

IV. Recommendations

Mr. Chairman, simple fairness not only permits, but requires, the Subcommittee to weigh in the balance the degree of legal protection afforded -- or not afforded -- to American investors in China as it considers whether to extend the rights and benefits conferred by U.S. laws to Chinese interests in this country. China should not expect, nor should the United States confer, greater benefits in our trade and commercial relationship than China is willing to extend to us. Against this yardstick, Revpower's experiences suggest that China merits no entitlement to privileged treatment by Congress, and certainly no entitlement to a renewal of MFN status.

I recommend that the Subcommittee carefully consider the following actions to induce China to resolve the Revpower dispute and reconfirm its obligation to honor the New York Convention. I am aware that some of these measures may not fall within the jurisdiction of the Committee, but it is my opinion that a series of coordinated measures will have to be adopted by both Congress and the administration if the desired results are to be achieved.

1) Withhold China's MFN extension until China demonstrates its commitment to honor the New York Convention.

In our view, extension of MFN while China continues to cause injury to Revpower and raises the risk to other U.S. companies in China through its continuing abrogation of the New York Convention would be inappropriate. At a minimum, a delay in such extension until China clarifies its intentions vis-a-vis the Convention is called for.

2) Evaluate and adopt the proposed Mack legislation linking U.S. support for China's accession to the World Trade Organization to China's observance of the New York Convention.

Senator Connie Mack has drafted, but not yet introduced, legislation amending section 1106 of the Omnibus Trade and Competitiveness Act of 1988 to condition U.S. support for China's accession to the World Trade Organization to a Presidential certification that China is in conformity with the terms of the New York Convention. This draft legislation (which is attached) sanctions China in a particularly appropriate way: it espouses the principle that China should not be permitted to undertake any new international obligation until it demonstrates the willingness and ability to comply with its existing obligations and, specifically, those dealing with international arbitration. The Mack legislation merits the Subcommittee's endorsement and adoption.

3) Amend the Foreign Sovereign Immunities Act (FSIA) to permit law suits and the collection of judgments against foreign governments -- such as China -- whose abrogation of the New York

Convention deprive U.S. claimants of legal remedies for government-sanctioned economic injury.

When conjoined with the Chinese judiciary's failure to adjudicate Revpower's enforcement action, the Chinese government's point-blank refusal to honor its obligations under the New York Convention effectively stripped Revpower of any remedy to recover compensation for its economic losses against the assets of the arbitral defendant or from any other source. There is no equitable reason why a foreign government that fails to extend the protection of its law to a U.S. citizen should enjoy sovereign immunity protection against an action brought by the injured citizen in the United States against the government whose unlawful actions caused the injury. If the foreign government caused the injury, it should pay the cost. In such cases, the FSIA should not serve as a shield to protect the foreign government here from the consequences of its improper acts there.

Were the FSIA to be amended in this fashion, Revpower would be able to bring a lawsuit against, for example, the Chinese Ministry of Aviation (SFAIC's parent entity) and any of its non-diplomatic assets located in the United States, such as aircraft, to satisfy the arbitral award.

4) Adopt immigration and travel restrictions upon foreign officials whose actions -- such as in the Revpower case -- constitute the effective confiscation of U.S.-owned property.

Increasing Congressional attention has been focused recently on the anomaly of permitting foreign officials whose confiscatory actions abroad in violation of domestic or international law are the cause of economic injury to U.S. citizens to travel to the United States. Section 301 of the Cuban Liberty and Democratic Solidarity Act of 1995 (S. 381), a bill introduced by Senator Jesse Helms, addresses this problem by amending section 212(a)(9) of the Immigration and Nationality Act by classifying such behavior as an additional grounds for exclusion from the United States. In the Revpower case, the adoption of such legislation could be effective in excluding from the United States those officials whose actions in violation of Chinese law and China's obligations under the New York Convention are the proximate cause of Revpower's economic loss.

5) Encourage the administration to establish an interagency committee to adopt and pursue a coordinated U.S. Government strategy to address the Revpower case and related rule of law issues in China.

Although several U.S. agencies have registered their concerns with Chinese authorities regarding China's actions in the Revpower case, China's unwillingness to recognize its obligations under the New York Convention suggests that a more vigorous U.S. Government response -- including sanctions -- will be required to overcome China's intransigence. To get to this next level of response, and to coordinate this effort with other governmental initiatives seeking to encourage the development of the rule of law in China, the establishment of a coordinated inter-agency task force will be needed.

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Mr. Chairman, that concludes my remarks. I look forward to working with you and the Subcommittee to resolve our claim without further undue delay and to otherwise improve the business prospects for U.S. companies in China. I would be pleased to answer any questions you may have and pleased to submit for the record any documents or correspondence the Subcommittee requests.

SEC. ___. ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WTO.

Section 1106 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2905) is amended—

(1) by redesignating subsection (e) as subsection (f),

(2) by inserting after subsection (d) the following new subsection:

"(e) ADDITIONAL REQUIREMENTS FOR THE PEOPLE'S REPUBLIC OF CHINA.—

"(1) IN GENERAL.—In addition to the requirements described in subsection (a), before the United States agrees to the accession of the People's Republic of China to the WTO Agreement, the President shall determine whether the People's Republic of China is fulfilling its obligations under the Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

"(2) EFFECTS OF NEGATIVE DETERMINATION.—If the President determines that the People's Republic of China is not fulfilling its obligations under the Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958—

"(A) the President shall reserve the right of the United States to withhold extension of

the application of the WTO Agreement, between the United States and the People's Republic of China, and

"(B) the WTO Agreement shall not apply between the United States and the People's Republic of China until—

"(i) the President certifies to the Congress that the People's Republic of China is fulfilling its obligations under the Convention on Recognition and Enforcement of Foreign Arbitral Awards, or

"(ii) a bill submitted under subsection (c) which approves of the extension of the application of the WTO Agreement, between the United States and the People's Republic of China is enacted into law.", and

(3) in subsection (d), by striking "subsection (a)" and inserting "subsections (a) and (e)".

Chairman CRANE. Thank you, Mr. Aronson.
Mr. Simon.

STATEMENT OF JOEL K. SIMON, COUNSEL, FASHION ACCESSORIES SHIPPERS ASSOCIATION, AND RUSS BERRIE & CO., INC., OAKLAND, N.J.

Mr. SIMON. Thank you, Mr. Chairman, for giving us the opportunity to appear before you today, and I ask that our written testimony be added to the record.

I am Joel Simon, Customs and Trade counsel to FASA (the Fashion Accessories Shippers Association) and Russ Berrie & Co., Inc., of Oakland, N.J.

FASA is a trade association located in New York City and is comprised of 100-member companies located throughout the United States. Our members import handbags, luggage, small leather goods, umbrellas, gloves, belts, and other accessories from all over the world. China is by far the largest source of product.

Most of our member companies are small, privately owned companies who employ less than 500 workers each. Total employment for our members in the association is over 10,000 men and women in the United States.

Russ Berrie & Co. is an importer of giftware, toys, stuffed animals, and ceramic ware. The company is publicly held, and its shares are traded on the New York Stock Exchange. Russ Berrie employs more than 1,500 people in the United States and is unique in that it can say that it employs at least one person in each of the 50 States of the United States.

More than one-half of all products imported by FASA members and Russ Berrie are currently made in China.

FASA members and Russ Berrie are extremely concerned about the loss of most-favored-nation status for Chinese products. While we have tried to move production to other countries, it is just not possible to relocate the amount of production currently being done in China.

With regard to FASA and its members, many of the products imported are subject to quota limitations, and there is not enough quota for handbags and luggage available in other countries to allow for similar levels of production and sale in this market.

Once again, questions are being raised about human rights for the Chinese people, freedom of immigration, prison and labor abuses, and there are the horrific reports which we have heard this morning from Congressman Wolf about other alleged atrocities in China.

These are extremely difficult matters for us, as businessmen, to answer with any degree of certainty. However, we are certain that since the advent of U.S.-China trade relations in the late seventies, the life of the average Chinese worker, especially in South China, has increased dramatically.

As usual, there are many reports on human rights violations in China. We would hope that this subcommittee would find enough merit in maintaining most-favored-nation status for China, to dispel any doubt you might have with regard to China's treatment of its citizens, and to delink human rights from most-favored-nation status.

Millions of people in China are threatened with the loss of their economic livelihood should most-favored-nation status be withdrawn. Hundreds of thousands of American jobs also are in jeopardy with the absolute real prospect of losing their jobs should trade with China be destroyed.

While there are hundreds of thousands of export jobs in the United States involved in producing product for China, there may be many times that amount of jobs in this country for people working on the import side, dealing with products that come from China. These workers are designers, product planners, merchandisers, warehouse people, salespeople, secretaries, executives, and businessowners and investors.

They work for importers, retailers, transportation companies, and other businesses. Many of these people will lose their jobs should most-favored-nation status be lost. Russ Berrie and Co. alone estimates that up to one-third of their 1,500 employees may lose their jobs if trade with China ceases.

There is no question that the aim of improved human rights for the people of China is a laudable goal. But we do not believe that trade is the vehicle for forming that change.

We hope that the subcommittee will recommend continued MFN for China. The loss of MFN status, we believe, would create a worsening of human rights abuses in China. There are many in China who would like nothing more than to turn the clock 20 or 30 years when China was a closed society and did not have to deal with the interference of the U.S. Government. Four thousand years of Chinese history have given us ample evidence of the fact that some in the Chinese Government would have no difficulty in dropping the Bamboo Curtain and continuing to do business in China as they see fit.

We therefore hope that the members of this subcommittee will favor the continuation of MFN status for China.

Thank you very much.

[The prepared statement follows:]

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TESTIMONY OF RUSS BERRIE AND COMPANY, INC.
ON U.S. - CHINA TRADE RELATIONS
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
SUBMITTED BY: JOEL K. SIMON, ESQ., COUNSEL TO RUSS BERRIE AND COMPANY, INC.

MAY 23, 1995

Russ Berrie and Company, Inc. (Russ Berrie), of Oakland, N.J., is a public company whose stock is traded on the New York Stock Exchange. The company employs approximately 2000 men and women worldwide of which 1450 were in the United States. In addition to New Jersey, it has facilities in California, West Virginia, Pennsylvania and Ohio. The company employs a sales force in each of the fifty states. Last year its total net sales were $278,000,000.

The company develops and markets a vast selection of impulse gift products to retail stores in the United States, Canada, England and most of the countries in the world. Russ Berrie sells more than 11,000 different products, most of which are produced in the Far East.

We thank the Committee for affording us the opportunity to appear and offer this testimony today to express Russ Berrie's concern regarding the continued "Most Favored Nation" (MFN) status for the People's Republic of China in 1995-1996.

On June 8, 1993 the company offered testimony before this Subcommittee which supported the goals put forth by the President for future renewal of MFN status for China, while at the same time we stated our very strong concerns about the negative impact that would occur if MFN status was removed.

At this time, Russ Berrie has not changed its opinion, and continues to believe that in the long run, the maintenance of MFN for China will result in the achievement of the human rights goals that President Clinton has sought to achieve.

On January 20, 1994 then Treasury Secretary Lloyd Bentsen spoke before the Chinese Academy of Social Sciences, in Beijing. In his speech he stated that China has made "progress on human rights." But also cautioned that "much remains to be done".

In discussing the exporting of goods made from prison labor Secretary Bentsen stated:

> "I'm pleased to announce today that we've made some progress on the prison labor front. Our governments have agreed on measures to ensure more effective prevention of the export of goods made with prison labor. China has also agreed to permit inspections of five prisons alleged to be producing goods for export."

On February 9, 1994 the Journal of Commerce reported that Representative Robert Matsui, a member of this Subcommittee, had formed a bipartisan group of members of the House of Representatives, in an effort to promote a plan to drop human rights conditions from the decision to extend MFN treatment. We strongly support Congressman Matsui in his efforts.

In the Senate, Senator Max Baucus, has argued that "MFN is an outdated Tool". Speaking before the U. S. - China Business Council, on January 27, 1994 Senator Baucus also urged that we

cease threatening the removal of MFN for China, if China fails to make significant improvements in the area of human rights. Instead, he urged that the United States use all other means available to press for improvements in the human rights of the Chinese people. He correctly recognized that, "Perpetually threatening the economic equivalent of nuclear war is not sound policy."

There have been numerous reports in the press of China's actions in which it has sought to comply with the conditions set forth by the President for the next renewal of MFN. It is difficult for us to gauge how these efforts are viewed by the administration, but we would hope that the recent reports of Administration and Congressional support for a de-linkage indicates that there has been some recognition of an attempt to meet the conditions that were set forth by the President.

In addition, in August of 1993, the then members of the Subcommittee on Trade, travelled to China on a fact finding mission and to discuss a range of Trade related issues, including human rights and market access.

According to the Subcommittee report of that mission, dated January 26, 1994, the members of the delegation expressed their concerns about human rights in China and stressed the need for China to meet the conditions set down for obtaining a renewal of MFN in 1994.

As to the conditions set out by the President, two conditions, the cessation of exports of goods made by prison labor, and the freedom of emigration for Chinese citizens were "must meet" conditions. With regard to prison labor issues, as stated by Treasury Secretary Bentsen, significant progress has been made in this area, and we believe that this issue will be ended before June of this year. From our experience, we know of no toy or gift items that were made with prison labor, nor reported to be made by prison labor.

The question of freedom of emigration is one that we find extremely difficult to answer, since there does not appear to be any country willing to accept the millions of Chinese who might potentially wish to leave China. For the United States to demand freedom of emigration from China would mean that we would encourage people to leave China only to be faced with the specter of living in refugee camps, as there is no place for them to go. This would certainly be a cruel hoax to perpetrate upon the Chinese people.

We agree that the efforts to improve the human rights should continue, and hope that the Chinese government recognizes how important this issue is to the American people and its government. We also hope that the Administration and Congress takes into account the sensitive nature of this issue and recognizes the steps taken by China.

There is a great concern in the business community that action may be taken by Congress or the Administration, no matter their intentions, which will cause great hardship for many American workers and their families, as well as the workers and families in China.

While Russ Berrie has products manufactured in Korea, Taiwan, Hong Kong, Thailand, Indonesia, The Philippines, Mexico, and the United States, China is its single most important source of product at this time. It is estimated that Russ Berrie imported more than eighty million dollars worth of products from China during 1992. The possibility of the loss of MFN duty treatment for these products would be disastrous for the company and for the toy and gift industry as a whole if this legislation is passed.

Russ Berrie imports stuffed animals from China which currently enter the United States with duty at 6.8%. If MFN status were revoked the duty on these products would rise to 70%. This cost increase would have to be passed on to the ultimate consumer, usually families with small children and the grandparents of small children, people who we are certain would be unable to pay this huge cost increase. Russ Berrie would therefore have no choice but to cancel their orders and reduce their imports and sales.

There is no alternative source of supply presently available anywhere in the world that could fill the demand that would be created due to the loss of imports from China. The loss of imports from China would cause the company to lose a substantial amount of its sales. We estimate that some three to four hundred Russ Berrie employees would either temporarily or permanently lose their jobs. We do not believe that the story would be any different for others in this our industry, and we could easily foresee thousands of people unemployed in the toy and giftware industry alone.

Moreover, should MFN status be lost, Russ Berrie and other importers would be forced to look to other countries to make up for the lost production and sales in China. Due to the nature of the gift and toy industry, it is doubtful that any of this production would return to the United States. Since toys and impulse gift items are not necessities, price is always a consideration. Therefore, production will shift to those countries which can provide a large, inexpensive, but skilled workforce.

Once new facilities are established, we cannot foresee a return of production to China. The loss of the American market to Chinese goods would surely result in a loss of the Chinese market to American goods. Such an event would not be temporary, as once new facilities are established it would be unlikely that they would be shut down or moved. Moreover, the uncertainty of future action against MFN status for China would make a return to China unlikely once MFN status was lost.

Russ Berrie does not want the Congress or the Administration to think that it is unsympathetic to the human rights of the Chinese people, but we believe that the loss of China's MFN trade status in 1995 would be extremely damaging to the Chinese people and their fight for democracy. We estimate that the company's imports from China presently employ some 10,000 workers. If MFN is lost, Russ Berrie would have to cancel all of its outstanding orders and look for alternative sources of supply. We believe that all of the workers who make Russ products would lose their jobs. Add in all the other Chinese who are currently producing products for the United States market and we believe that well over a million workers would lose their jobs should China lose its MFN status.

These workers are our friends. They work with us and have learned about America and Democracy from the continuous contact that they have with Americans. Cutting business ties and putting the workers out of work could easily undo all the positive gains, economic, social and political, that China has made in the last ten years. It would give the leaders in Beijing ammunition to use against the United States by creating economic unrest within China. Russ Berrie is fearful that the workers in China, who are more concerned with feeding and caring for their families than they are with politics, would be the "victims" of the loss of MFN. We at Russ Berrie would be perceived as abandoning them after the promise of improved living standards that we have been giving them for the past ten years.

The people at Russ Berrie are not diplomats nor are they politicians. They cannot offer you alternative solutions that would force the Chinese leaders in Beijing to continue on the path towards democracy in China. But, as businessmen, their experiences in China over the years has shown them that as we expanded our economic contacts with the Chinese people, so have their lives improved. There has been more food, better living conditions and an easing of the political situation to the point where people found the courage to stand up to repression. Russ Berrie believes that the continuation of economic contacts with China and its people will, in the long run, aid in the growth of democratic ideals and bring about a peaceful democratic revolution as we see happening in Eastern Europe.

On behalf of Russ Berrie and Company, Inc. I would like to thank you for your consideration of its concerns and urge that you support the renewal of MFN, and not impose any additional requirements on the extension of MFN for China in 1994.

Chairman CRANE. Thank you, Mr. Simon.
Mr. Duggan.

STATEMENT OF E. MARTIN DUGGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SMALL BUSINESS EXPORTERS ASSOCIATION

Mr. DUGGAN. Mr. Chairman and members of the subcommittee, I want to thank you for holding the hearing and allowing the Small Business Exporters Association to testify on this most important question of continuing MFN status for China.

I am here today to express the concerns of my members, who are dedicated exporters and who strive each day to meet the extraordinary demands of marketing and selling products in different parts of the world.

The Small Business Exporters Association is an advocacy organization trying to represent the interests across the board of small and mid-sized exporters.

In the case of China, they are met with difficulties which should not exist between two countries which are economically strong and who should be self-confident enough to open trading partnerships. Some of these small and mid-sized exporters have made the following comments:

Most businesses are too closely tied to their government or are controlled by the government. The Chinese always want to talk about joint ventures, but a joint venture to them means long-term negotiations to establish a relationship and then very long-term financing which is seldom possible for a small business to offer.

Another, China does not understand small business. Their first question is always, How big?

A member from Illinois states: My customers are suspicious that U.S. companies will not be reliable as suppliers, and therefore manufacturers lose credibility. I think in this instance he is referring to the revolving question of MFN from year to year and his reliability under those circumstances as a supplier.

Another member was forced to sponsor a buying trip for several Chinese businessmen. It cost him $30,000 out of which he got the contract and hopefully had enough fat in the product he was selling to make up the difference. But they still owe him $27,000. The product has been paid for.

A South Carolina manufacturer reports: I will be participating in a trade show in China this September. My Hong Kong distributor warned me to be careful when I hire an interpreter. They are, in fact, Government-sponsored industrial spies.

Now maybe somebody who has got a little better insight into China than I do can refute that.

A Chinese-American member from New Jersey feels that China should at least allow U.S. companies to export its own brand name products in China without having to go through Chinese state-owned trading companies.

The experiences of those Americans show that the political and cultural climate in China has improved little in spite of years of most-favored-nation status. We give China preferential treatment on duty-free or greatly reduced tariffs for their goods entering the

United States, and it seems that all we receive in return is the right to continue treading water.

I am talking about small companies and their problems, not the multinationals who have the ability to confront just about any situation that seems to confront them.

In the May 17 issue of "Chemical Week," Minister Gu Xiulian restated that growth rates of 8 to 9 percent are established under the Ninth Five-Year Plan, with priority being given for such specific industries as electronics, automobiles, construction equipment, machinery, and agricultural chemicals, in particular. The Chinese seem to know where they are going.

With our trade deficit expanding from $1 billion in 1986 to more than $28 billion in 1994, we need a policy that addresses the shortcomings in our trade relationship with China now. In 10 years, it could be too late.

Why do we continue a relationship in which the rule of law, intellectual property rights, technology transfer, extortion, and bribery are more the norm than the exception?

Chiefly because Presidents Bush and Clinton have embraced the constructive engagement theory, and they are probably correct in believing that the only way to negotiate is to keep talking. We have this huge economic carrot being dangled in front of our faces, representing potential sales to China if we are patient. But clearly patience alone will not do the trick.

At the current rate, our deficit with China will surpass our deficit with Japan.

Mr. Chairman and members of the Trade Subcommittee, I am not here today to oppose most-favored-nation status for China, but rather to urge additional and stronger measures when dealing with this intransigent regime. We must overcome Chinese indifference to fair business practices and instill in them a desire to be respected in the global economy.

We have already demonstrated our patience and willingness to defer to a much different business culture, but soon we must begin to tighten the screw. We cannot allow them to grow strong if it means we grow weaker.

At this time, I would like to introduce a recent study authored by Greg Mastel for the Economic Strategy Institute, titled "China and the WTO." I think a good many of the questions that are being addressed here today are covered in this particular paper. It is titled "China and WTO: An Economy at the Crossroad," and it contains information pertinent to today's discussion as well as to the WTO.

The Small Business Exporters Association pledges its support of any diplomatic and economic changes which can continue constructive engagement but will demonstrate that trade concessions cannot be one sided indefinitely.

If doing business with friends is China's criteria, the United States should long ago have proved its willingness. How long is it going to take?

Thank you for allowing me to testify on this important issue, and I will be happy to take any questions.

[The prepared statement follows. The Mastel report referred to is retained in committee files.]

TESTIMONY OF E. MARTIN DUGGAN
SMALL BUSINESS EXPORTERS ASSOCIATION

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Thank you for allowing us to testify on this most important issue. We wish you well in finding a solution to this most perplexing of problems.

Chairman CRANE. Thank you, Mr. Duggan.

One quick question, Mr. Aronson. Has our embassy in China not been able to help you?

Mr. ARONSON. Yes, they have tried to help. Ambassador Stapleton Roy spoke to Minister Wui Yi about this problem, and Minister Wui Yi, as I recall, said that China would not pay the award.

The American Counsel General in Shanghai contacted the court in Shanghai where we attempted to lodge the arbitral award, and the court on several occasions said they knew nothing about it, and on other occasions they just would not return his calls at all.

So although the embassy and the consulate have tried, they have been frustrated at every turn.

Chairman CRANE. Well, I cosigned Clay's letter——

Mr. ARONSON. Yes.

Chairman CRANE [continuing]. To Mickey Kantor asking him to raise this issue with them.

Do you know of any other American businesses that have taken hits comparable to yours?

Mr. ARONSON. Yes. There is one in San Francisco that has had the same sort of a problem. Then there are a number of others. I have an article covering literally hundreds of U.S. firms who have gotten arbitration awards and have been unable to collect them through the courts.

The courts favor the local constituents in their cities, and American companies with arbitration awards just do not have a chance at all.

Chairman CRANE. Well, it would seem to me, at least, that with them seeking to become a member of the World Trade Organization, that they should be bending over backward to learn how to comply in normal business relationships. That kind of theft is incredible.

Mr. ARONSON. Yes. It is just deplorable, and it just really—it amounts to confiscation really.

Chairman CRANE. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Dr. Kapp, in your written statement, I do not know whether you said it, but that the council only supports the unconditional continuation of a normal trade relationship with China, the MFN. Is that your position, that there be no conditions attached to it at all?

Mr. KAPP. Certainly we support the unconditional renewal of—the renewal of unconditional MFN.

Mr. RANGEL. When it comes to human rights, I think that, at last rhetorically, Congressman Wolf took it to a much higher octane when he indicated that he had evidence that internal organs, kidneys and corneas, were taken from executed prisoners and sold for $30,000. Then he goes on to say that during the national holiday on May 1 that patients just go into the hospitals, and that prisoners' executions are delayed until the patients for the transplants are locked into place. Then he went on to selling human fetuses for internal consumption and slave labor and those types of things.

If I understand your testimony correctly, you were saying that these things did not happen. But even if they did, as a historian, there is a long historic record for it.

Mr. KAPP. Sir, I did not say they did not happen, because I do not know whether they did or not. I have read the report from the "Eastern Express" that Congressman Wolf mentioned and the followup statement by the "Eastern Express" a couple of days later.

What I did say was that America has kind of a love/hate relationship with China that long precedes the arrival of the Communists and that for 100 years and more, Americans have alternated between extremes of love and admiration for the people of China and their civilization and extremes of loathing and horror at the social and human conditions that they have encountered there.

What I am saying is that the MFN decision before us is rooted in an amendment to the 1974 Trade Act, which deals with very specific points, and that on the basis of that law, we feel that China should continue to receive normal trade treatment.

We all know that MFN is not preferential and is not special treatment; it is normal treatment.

So the question becomes whether or not this Nation should invoke—as other witnesses have suggested—the very broad-brush threat of the destruction of a massive trade relationship when it encounters domestic conditions within another country which it finds really opprobrious or unacceptable. My reaction is that the revocation of MFN would, in fact, have little, if any, effect on those conditions; it would instead be counterproductive.

Mr. RANGEL. Well, I misunderstood you. As a historian and somebody who has studied China, what is your position on the allegations about prisoners being executed for their organs to be sold to patients and about the human fetuses being extracted for human consumption?

Mr. KAPP. Well, Congressman, I am a former historian. You are a Member of Congress. I think we both have the same reaction, which is independent of our occupations.

In any country, our own included or anywhere else, where the abuse of the human body and the human person by another human, especially if it is for profit, is encountered, I think you and I would both agree we would personally deplore that and be disgusted by it. You do not have to be a historian to have that view.

Mr. RANGEL. But that would not detract from your statement that unconditionally that should not have any influence on whether we have a normal trade relationship?

Mr. KAPP. I am sorry to say, Congressman Rangel, that I do not think it should. The revocation of trade relations between these two countries, part of a massive global relationship from which, as I say in my paper, we cannot escape, is not and could not be the answer to the elimination of abuses like that.

Mr. RANGEL. Does everyone agree with Dr. Kapp, basically?

I assume all of you oppose the embargo that we have on Cuba. Is there anyone that supports the embargo on Cuba?

Mr. BOULTER. I have to say I do not know. I do think there are some differences, but I——

Mr. RANGEL. You support it, or you do not know whether——

Mr. BOULTER. I do not know if I currently do or do not.

Mr. RANGEL. You may be able to support a unilateral embargo against Cuba, but——

Mr. BOULTER. I have supported it. I am not——

Mr. RANGEL. But you do not have any problem if these facts here are accurate in saying that it should not restrict our relationship with China.

Mr. BOULTER. I think some of these allegations are true. Most of them are exaggerated. But I do not think revoking MFN or linking it to human rights would improve the situation at all; in fact, it would make it worse.

Mr. RANGEL. But you think that it is possible that our embargo against Cuba may be in our national interest?

Mr. BOULTER. I do not—I generally do not believe that embargoes, unilateral embargoes, work. So, I am sort of ambivalent, Congressman.

Mr. RANGEL. These are apples and oranges, two different things?

Mr. BOULTER. I think there are differences. But I generally do not like unilateral embargoes.

Mr. RANGEL. No. No one likes them.

Mr. BOULTER. I do not think they do any good. I think they hurt the people they are designed to help.

Mr. RANGEL. Well, in South Africa, obviously—you do not believe——

Mr. BOULTER. I am sorry. What is your question?

Mr. RANGEL. I said, in South Africa, obviously it did some good. At least the present administration thought so. You do not think it did good there either?

Mr. BOULTER. Are you saying a unilateral embargo did good?

Mr. RANGEL. Against South Africa. It was not multinational, but——

Mr. BOULTER. Well, I think the world community's opinion was brought to bear in South Africa in such a way that it did do good.

Mr. RANGEL. Well, world public opinion is brought to bear in Cuba, too, but it does not stop us.

Mr. BOULTER. You have different people in Cuba than you had in South Africa.

Mr. RANGEL. That is an observation I have to take another look at. Thank you.

Chairman CRANE. I thank you all for your patience, your endurance, and your testimony. With that, the subcommittee stands adjourned.

[Whereupon, at 1:31 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

The American Chamber of Commerce in Hong Kong

A Framework for U.S.-China Relations

Introduction

The People's Republic of China is the world's fastest growing economy, averaging 9% GDP growth since 1978. China's foreign trade has ballooned by an average of 25% for each of the last five years, and today China is the world's 11th largest trading economy. According to the World Bank, China's economy is the world's third largest if calculated on the basis of purchasing power parity.

Rapid economic development has transformed China into a catalyst for regional economic growth, as well as a major political, economic and military power in the international arena. One of the key challenges facing the United States is how to facilitate China's emergence as a stable and responsible world power.

China has begun a leadership succession process, during which the attitudes and outlooks of the next generation of Chinese leaders – a younger, better educated, and well travelled group – are now being shaped. This transitional era offers a window of opportunity for the U.S. to engage with the emerging leadership in directions beneficial to American interests. Aggressive confrontation, as opposed to constructive engagement, may result in a backlash against U.S. interests.

The goal of U.S. policy towards China should be to promote systemic change that is positive to U.S. interests – to create an open, prosperous, strong, and stable China which is integrated into the world economic system. This requires a long-term policy framework which emphasizes dialogue over sanctions. This policy should be flexible enough to recognize while our interests will diverge on certain issues, the U.S. can still move forward with China on many areas of mutual concern.

Trade Relations and Policy

Commercial relations are a cornerstone in the U.S.-China relationship. In 1978, annual trade volume between the U.S. and China totalled only US$2.3 billion. But by 1994 that figure had grown to over US$48 billion. The United States is the third largest investor in China after Hong Kong and Taiwan, with an estimated US$19 billion committed to about 16,000 projects.[2] While the growing trade and investment links have been a positive development in the relationship, some difficulties have inevitably arisen, necessitating the establishment of a forum whereby both nations can address problems in their commercial relationship.

The past several years have seen important agreements reached between the U.S. and China,

notably the intellectual property rights and market access MOUs of 1992 and the intellectual property rights accord signed in February 1995. Problems remain, particularly over market access and the trade deficit. While the U.S. should pursue economic interests with China through multilateral organizations wherever possible, it should also maintain an ongoing bilateral dialogue with China over issues in our trade relationship.

The Joint Commission for Commerce and Trade (JCCT) was originally formed in 1983 to act as a forum for high-level discussions on bilateral trade and investment issues. The Commission has four main goals: achieving greater market access for U.S. companies, expanding cooperative programs and projects in China's key growth sectors, assisting in the development of commercial law in China, and dismantling barriers to trade. The Commission was suspended after Tiananmen Square and revived during April 1994. A study group to investigate the differences in two-way trade accounting methods was recently formed and is making progress in clarifying legitimate and complex issues of methodology including the impact of changes in the U.S. country of origin definitions. The JCCT plays a productive role in facilitating greater U.S. business involvement in China and should be a principal forum for bilateral trade and investment discussions.

China and the World Trade Organization

It is essential that the U.S. facilitate China's entry into the international economic order through an appropriate and effective protocol agreement, enhancing her adherence to the new international trade order.

Over the past 17 years China has undergone unprecedented change in its economic system having instituted wide-ranging reforms. China has made significant progress in expanding market access to foreign companies, reducing and eliminating tariffs, improving intellectual property rights protection, and making its trade regime more transparent. There are still areas in which China must make further progress to comply with WTO standards; most notably further reductions of tariffs, market access for financial and agricultural sectors and national treatment for foreign companies.

Taiwan and China

A peaceful settlement of the China-Taiwan reunification issue is vital to the continued stability and prosperity for Greater China and the Asia-Pacific region. The past several years have witnessed considerable improvement in relations across the Taiwan Straits. Last year bilateral trade reached US$16.5 billion, and Taiwanese businesses are the second largest investors in China, with an estimated US$20 billion invested in approximately 20,000 projects.[1] Taiwan and China have begun a semi-official dialogue to address issues in their relationship, and progress in this effort was evident in 1995.

The U.S. can play a constructive role by quietly encouraging continued trade, investment, and travel flows between Taiwan and China, as well as applauding efforts to develop their relationship in a peaceful manner.

The U.S. should maintain a neutral position on the China-Taiwan reunification issue. Our relations with Taiwan over the past 17 years have been governed by the 1972 Shanghai Communique and the 1979 Taiwan Relations Act, in which the U.S. pledged to adhere to a "one-China" policy. While Taiwan's economic influence and close trade relations with the U.S. necessitate continued dialogue and cooperation with Taiwan on a number of bilateral and regional issues, the U.S. must be mindful that contentious attempts to upgrade relations will be interpreted by China as a violation of the precedent that has governed our relations with Taiwan for almost 25 years. A U.S. retreat from our "one-China" pledge would not only cripple our relations with China, but could result in dire consequences for the people of Taiwan.

U.S. Business Assistance Sanctions

After the Tiananmen Square incident almost six years ago, the U.S. imposed a wide range of sanctions on China to punish the leadership in Beijing. Many of these sanctions have since been lifted, but two prominent sanctions remain in place. These prohibit the Overseas Private Investment Corporation (OPIC) and Trade Development Agency (TDA) from operating in China. OPIC and TDA provide financing and other vital assistance to U.S. companies competing for contracts and operating in China. These sanctions do nothing to improve the human rights situation in China and damage the competitiveness of U.S. businesses.

The U.S.-Asia Environmental Partnership (US-AEP) assists U.S. companies specializing in environmental protection technology in the Asia-Pacific region; however, current policy prevents it from operating in China. China is facing serious environmental degradation, affecting not only China itself but its neighbors. U.S. companies are competitive in this sector and can provide technology and know-how to help China remedy its environmental problems.

China's Growing Military Strength

China's growing economic strength will translate into enhanced military strength. Given the leadership succession, weapons sales to unstable regions, and potential flashpoints in Korea, the Taiwan Straits, and the South China Sea, the U.S. should move to improve Sino-U.S. military ties and encourage China to play a more active and stabilizing role in regional security.

China wants increased military-to-military contacts with the U.S., and the good progress over the past two years should be continued. Contacts with the Chinese military function as a channel for military leaders from both sides to discuss pressing security issues and the important roles both nations can play in maintaining both regional and global peace and stability.

Exchanges covering areas such as training, doctrine, and technology should also be expanded. Such confidence-building measures help break down the barriers of suspicion and uncertainty by enhancing the transparency of both sides' military forces. The U.S. should encourage the Chinese to begin such exchanges with its neighbors as well, to assuage the suspicion among Asian nations about China's military capabilities and intentions.

China should be encouraged to enter regional security discussions, including efforts focused on the tension surrounding islands in the South China Sea. China is reluctant to engage in regional security fora, preferring quiet bilateral discussions. [3] The U.S. should continue efforts to persuade China to play a stabilizing role in the region, while at the same time encouraging the development of security fora such as the ASEAN Regional Forum.

Human Rights in China

The American Chamber of Commerce in Hong Kong applauds President Clinton's decision in May 1994 to delink human rights concerns from Most-Favored Nation (MFN) status extension. While human rights is a factor in Sino-U.S. relations, the U.S. should continue to promote human rights in China through bilateral discussion, multilateral organizations, and by expanding business, legal, cultural, and scientific ties.

The livelihood of the Chinese people has improved dramatically over the past 17 years. Once under the iron grip of the "work-unit" system, Chinese citizens today have considerably more freedom and control over their lives, with a widening spectrum of choice over issues such as employment, travel, housing, spending, family, and expression of ideas. These developments have been brought about by China's economic and administrative reforms and opening to the outside world and the influences and opportunities both have brought.

It is important to note the role played by foreign, particularly American, businesses in this process. Foreign investment can help to promote human rights. Foreign trade and investment have exposed the Chinese people and government officials to new ideas and ways of thinking. Employment opportunities with foreign companies have allowed millions of Chinese to break away from the work-unit system, to be trained in western management and business skills, and to receive significantly higher levels of remuneration, which provide the means to assert more control over their own lives.

American companies are leaders and role-models of standards in environmental protection, safety, worker training, ethical practices, respect for law, and upholding the dignity of workers. The American Chamber of Commerce in Hong Kong has taken the lead in approving a set of business principles that encourages all U.S. companies to adopt on a voluntary basis. AmCham believes it is counterproductive to legislate codes of conduct on U.S. businesses since most major U.S. companies already have their own corporate codes of conduct. Dialogue and education are also fostered by AmCham committee programs in business ethics, industrial safety, environmental issues and women in business.

The United States should expand educational, legal and cultural exchanges with China, continue its bilateral human rights dialogue, argue for International Red Cross inspection of prisons, express concern about political prisoners, and pursue multilateral human rights dialogue within the United Nations.

Hong Kong's Reversion to Chinese Sovereignty

In less than 800 days, Hong Kong will revert to China's sovereignty. It is in the interest of the people of Hong Kong and China that the stability and prosperity of the territory is maintained after 1997.

Apart from significant economic and investment interests, the smooth management of Hong Kong's transition is a prerequisite for China's success in advancing the process of reunification with Taiwan - a major national priority.

Hong Kong's tremendous success and prosperity has been founded on various unique characteristics, including: a strong and independent legal system, freedom of passage for people and goods, non-discriminatory government policies, freely convertible currency, the free flow of ideas and information, minimal levels of corruption and coercion, and a world-class infrastructure. The Sino-British Joint Declaration of 1984 and the Basic Law of 1990 provide that Hong Kong will enjoy a high degree of autonomy after 1997, and that its capitalist system will remain unchanged for at least 50 years following the transition.

There are several unresolved issues involved in the transition including: adaptation and localization of laws, establishment of a Court of Final Appeals, construction of new container terminals, financing for Hong Kong's new airport, nationality issues, and civil service morale. The U.S. must not become embroiled in the Sino-British dispute over democratic reforms, but should continue to encourage both sides to quickly resolve these issues, which are essential to maintaining business confidence in the territory.

The U.S. should also recognize the territory's importance as our 13th largest trading partner, and continue to promote the preservation of Hong Kong's social and economic systems in order to maintain the territory's prosperity and stability, the livelihood of the Hong Kong people, and the viability of American commercial and economic interests in Hong Kong.

April 1995
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Footnotes

1 Asian Business, April 1995, p. 26
2 MOFTEC, US-China Business Council
3 Sino-American Military Relations: Mutual Responsibilities in the Post-Cold War Era, National Committee on United States-China Relations, China Policy Series, No. 9, November 1994, p. 14

STATEMENT OF
THE AMERICAN FOREST & PAPER ASSOCIATION (AF&PA)

SUBCOMMITTEE ON TRADE
WAYS AND MEANS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

U.S.-CHINA TRADE RELATIONS AND
RENEWAL OF CHINA'S MOST-FAVORED NATION STATUS

June 2, 1995

The American Forest & Paper Association (AF&PA) appreciates the opportunity to advise the Subcommittee of our views on U.S.-China trade relations and the renewal of Most Favored Nation (MFN) status for China, in particular.

AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. AF&PA represents over 400 member companies and related trade associations (whose memberships are in the thousands) which grow, harvest and process wood and wood fiber; manufacture pulp, paper and paperboard products from both virgin and recovered fiber; and produce engineered and traditional wood products.

The vital national industry which AF&PA represents accounts for over seven percent of total United States manufacturing output. Employing approximately 1.6 million people, the forest and paper industry ranks among the top 10 manufacturing employers in 46 states, with an annual payroll of approximately $49 billion. Total sales of U.S. forest and paper products exceed $200 billion annually.

The U.S. is the world's largest producer of pulp and paper and paperboard. It provides 35 percent of the world's pulp, and satisfies 30 percent of global paper and paperboard demand.

In 1994, U.S. forest products exports totalled $18.4 billion. Using the yardstick adopted by the Department of Commerce, these sales support more than 360,000 direct and indirect jobs here in the United States.

THE CHINA MARKET

The PRC represents a significant current export market for the U.S. forest products industry, but the potential for future sales is even greater.

In 1994, U.S. exports of pulp, paper and paperboard products to China exceeded $197 million. In addition, shipments of recovered paper for recycling by China's paper and paperboard mills amounted to almost $35 million. According to a U.S. Department of Commerce report, in 1993, direct U.S. exports of pulp, paper and paperboard products to China represented approximately 21 percent of China's import market, the highest share of any foreign supplier. Just behind the U.S. was Hong Kong, which held a 19 percent share; a sizeable amount of Hong Kong's paper exports to China, though, are actually U.S. goods transhipped through Hong Kong.

For specific paper products, such as wood pulp and kraft linerboard, China is already an important market. In the case of kraft linerboard, used in the manufacture of corrugated shipping containers, China is the largest export market for U.S. producers. In 1994, direct exports of U.S. kraft linerboard to China were valued at almost $86 million. In addition, a major portion of U.S. kraft linerboard exports to Hong Kong -- more than $122 million -- is reshipped to China.

In 1994, direct U.S. exports of wood products to China totaled $63.5 million, including more than $55 million of softwood logs. The majority of U.S. wood products that eventually

reach China are transhipped through Hong Kong, Taiwan, or Canada. For instance, in 1993, between 60 and 80 percent of total U.S. hardwood products reached China after first going through Hong Kong.

Looking ahead, the China market for paper and wood products is expected to grow rapidly. Chinese consumption of paper and paperboard products posted double digit growth rates in 1992 and 1993, placing it third in terms of consumption of paper and paperboard products behind the U.S. and Japan. Even after this rapid growth, the Chinese market has not come close to exhausting its potential. By the end of 1993, China's per capita paper consumption was still only 17.2 kilograms (kg), much lower than the world average of 46 kg. The Chinese government has forecast that per capita consumption will almost double by the year 2010, rising to 32 kg. The government also plans to improve the quality of domestically produced paper by raising the proportion of wood pulp in the paper making furnish. These changes are expected to provide U.S. pulp and paper suppliers increased sales opportunities in the Chinese market.

On the wood products side, China's demand for panel products -- used in furniture and flooring -- has been increasing rapidly. As China has developed its economy, it has also developed a new, upwardly mobile middle class. These consumers are eager to purchase value-added wood products, such as flooring and furniture, because they are symbols of prestige. China's production of flooring and panel products is limited, however, and though China is focusing on building up its panel production, the efforts are not expected to satisfy the growth in demand. According to a U.S. Department of Agriculture (USDA) report, in 1993, the value of plywood imports was more than $700 million, accounting for over half the value of total wood imports. Meanwhile, imports of other panel products, while less significant, are growing rapidly.

The ability of the U.S. forest products industry to participate in the future development of the China market on a competitive basis will require a carefully calibrated U.S. trade policy which has as its objective the full integration of China into the global trading system -- with its attendant benefits and responsibilities. For this reason, AF&PA recommends an approach which, on the one hand, accords China full Most Favored Nation (MFN) access to U.S. markets and, on the other, applies an appropriately rigorous standard to the conditions for China's accession to the WTO.

EXTENSION OF MFN TRADE STATUS

AF&PA strongly supports the extension of MFN trade status for China.

Undeniably, there are commercial considerations behind this position. In the short term, we can anticipate that a denial of MFN status would inevitably lead to steps by Chinese buyers to reduce purchases from U.S. suppliers, including our forest products companies. It is also to be expected that our international competitors would act quickly to use a failure of the United States to renew China's MFN status at this critical period to improve their position in this developing market, putting us at a long-term disadvantage, even assuming more normal relations were restored at some point in the future.

But our position is equally based on a firm belief in the market as the ultimate instrument of global democratization. The recent history of political change around the globe has made the point that the spread of the global marketplace is the single most powerful liberalizing force operating in the world today. To the extent that the U.S. has invested heavily in the expansion of the global free trade system, it has paid handsome dividends in terms of the realization of our larger foreign policy objectives.

To encumber China's full participation in the world's most open, most robustly competitive market -- as the denial of MFN status would do -- would insulate China from the very forces of liberalization that we wish to foster. This is the underlying fallacy behind the use of market

sanctions as a means for changing illiberal behavior and the reason why the withdrawal of MFN status would not only fail to improve China's human rights record, but could actually have the contrary result.

AF&PA was strongly supportive of the President's decision to renew China's MFN status last year. We urge him to further extend MFN again this year.

GATT/WTO MEMBERSHIP

At the same time, AF&PA believes that China's participation in the GATT/WTO system must be based on an appropriately rigorous assessment of China's economic strength and its potential role in shaping the global trading system of tomorrow. China must not be permitted to enter the WTO on any basis other than substantial compliance with the full obligations of membership.

In terms of the market access problems confronting the U.S. forest products industry, this would mean that China would:

- agree to be bound immediately by all provisions of the GATT/WTO Agreement, including specifically those relating to national treatment and transparency,
- institutionalize changes ensuring significant permanent reduction of state control over the market and commit to strict adherence to internationally-recognized commercial practices,
- immediately reduce to, and bind at, 10 percent or less and, upon joining the WTO, agree to eliminate within five years, all tariffs on wood, pulp and paper products, and
- adopt significant market liberalization policies and phase out all non-tariff barriers to imports.

(A more complete explanation of specific Chinese trade barriers which adversely affect the sale of U.S. forest products and which must be addressed in the GATT/WTO accession negotiations is contained in the attached submission to the Office of the U.S. Trade Representative.)

AF&PA believes these conditions *must* be a prerequisite to China's membership in the GATT/WTO. If they are not, the world trading system will have effectively sanctioned China's mercantilistic trade policies as GATT consistent and squandered any leverage it otherwise would have to secure permanent, structural change in the Chinese system. Market access obstacles will become permanently embedded in China's trade regime and China will be allowed to escape many of the responsibilities inherent in participation in an open trading system.

AF&PA has been working closely with the Office of the U.S. Trade Representative and strongly supports the tough, principled and, we believe, realistic stand the U.S. has taken on this issue. As negotiations go forward, we urge the Administration to adhere to the solid foundation which the U.S. has laid to date and to ensure that China fully adheres to the very reasonable conditions which the U.S. has articulated before it is permitted entry to the WTO.

Thank you for your consideration of our views.

Attachment

PRC-MFN.95

ACCESSION BY THE PEOPLE'S REPUBLIC OF CHINA (PRC) TO THE GATT/WTO

The American Forest and Paper Association (AF&PA) would support accession by the People's Republic of China (PRC) to the GATT/WTO, subject to China's meeting several conditions. China must:

- agree to be bound immediately by all provisions of the GATT/WTO Agreement, including specifically those relating to national treatment and transparency,
- institutionalize changes ensuring significant permanent reduction of state control over the market and commit to strict adherence to internationally-recognized commercial practices,
- immediately reduce to, and bind at, 10 percent or less and, upon joining the WTO, agree to eliminate within five years, all tariffs on wood, pulp and paper products, and
- adopt significant market liberalization policies and phase-out all non-tariff barriers to imports.

These conditions *must* be a prerequisite to China's membership in the GATT/WTO. If they are not, the world trading system will have effectively sanctioned China's mercantilistic trade policies as GATT consistent and eliminated any leverage it otherwise would have to secure permanent, structural change in the Chinese system. Market access obstacles likely will become permanently embedded in China's trade regime and China will be allowed to escape many of the responsibilities inherent in participation in an open trading system.

Market Potential

The removal of tariff and non-tariff barriers to China's market through the GATT/WTO accession process can lead to significantly enhanced export opportunities for U.S. producers of wood, pulp and paper products. Because China is deficient in forest resources, with limited potential for expanding its own fiber supply, its need for imported wood, pulp and paper products is expected to increase substantially as it pursues its commitment to economic and industrial expansion.

Already, the PRC represents the largest national export market for U.S. kraft linerboard. In 1994, kraft linerboard exports to China exceeded 253,000 metric tons and were valued at almost $86 million. In addition, a major portion of U.S. kraft linerboard exports to Hong Kong -- which exceeded 333,000 metric tons and had a value of more than $122 million -- was reshipped to China.

In 1994, U.S. exports to China of wood products totalled $63.5 million. Also for 1994, exports of pulp, paper and paperboard products exceeded 434,000 metric tons and had a value of over $197 million. The U.S. also exported more than 291,000 metric tons of recovered paper, with a value of more than $35 million, for recycling by China's paper and paperboard mills.

The lack of transparent trade practices, predictability and consistency in China's market makes it impossible to learn or understand *current* market conditions, or to obtain useful inventory and consumption information. As a result, our members not only forego many existing opportunities to capitalize on China's market potential, they are unable to predict or plan with any level of certainty what *future* market conditions will be. This situation will not change until the Chinese government relaxes control over the market and adopts a more transparent trading system.

The enormous market potential for wood products has been well-documented in the literature.

Tariffs

Pulp and Paper Products. China's tariffs on pulp and paper products are among the highest in the world. In 1994, applied tariff rates ranged from a low of 2 percent for pulp and recovered paper and 20 percent for newsprint and kraft linerboard, to anywhere from 55-65 percent for most converted products. (Although some tariff reductions entered into force in 1994, China's tariffs remain much higher than those of other U.S. trading partners.) According to the U.S. Embassy in Beijing, as of January 1995, tariffs for three product categories were reduced: wood pulp reduced from 2 percent to 1 percent, newsprint reduced from 20 percent to 7 percent, and paper of cellulose fibers reduced from 20-30 percent to 10 percent.

Wood Products. Although wood tariffs were to have been reduced under the 1992 Market Access Agreement with China, there is no indication this occurred. According to the 1994 tariff schedule, tariffs on wood products generally range from 2 to 70 percent. For example, tariffs for hardwood lumber fall between 6 to 20 percent; builders' joinery, 40 percent; moulding, 35 percent; plywood, 20 percent; and 70 percent tariffs exist on wooden frames, tableware, and statuettes and other ornaments of wood. Tariffs on veneer range from 9 to 20 percent. (See the attached chart for 1994 tariffs on specific product categories of pulp, paper, and wood products.)

As a signal of its desire to be a full participant in the world trading system, and its commitment to a market-driven economy, China should immediately and substantially reduce its tariffs on paper and paperboard products to no more than 10 percent and bind them at these new levels (tariffs on pulp should be bound at the current 1 percent rate). Following admission to the GATT/WTO, all tariffs on wood, pulp, paper and paperboard should be eliminated in five years, through annual reductions of at least 20 percent.

In the interim, China's central government must commit to assuring that when preferential tariffs are extended they are made equally available throughout the country and to all importers. For example, we have received reports that tariffs on newsprint in particular can vary from province to province and that it is possible to petition the government in "special cases" to get the duty waived. Also, there may be no duty if newsprint is imported via the central government, i.e., through the China National Paper Material Corporation (CNPMC).

Non-Tariff Barriers to Trade

Several non-tariffs barriers also limit access by U.S. producers to China's wood, pulp and paper markets. Many of these practices are not unique to the forest products industry. They generally derive from China's long history as a non-market economy and will not be eliminated until China's government relaxes controls over the market and adopts more consistent and transparent trade policies. These developments also will enable exporters to better understand and anticipate future market conditions.

Import Quotas and Licensing Requirements. Import licensing requirements faced by U.S. exporters are onerous and those faced by wood products exporters are illustrative. They were detailed in our 1994 National Trade Estimate submission, and can be summarized as follows:

The Planning Commission strictly enforces a policy against the importation of all value-added wood products except in limited cases (e.g., remanufacturing for export, or political/economic opportunism). This policy is implemented through a quota system which allows only raw material imports. Under it, quotas are translated by the trade ministry into import licensing requirements, which are in turn implemented by the Ministry of Materials. The import regime also establishes quotas by country (country allocation), species, and product. (Because quotas are not established for processed or value-added wood products, the absence of administrative procedures makes importation impossible.) When evaluating requests for import licenses, the Ministry of Materials applies criteria including the requesting agency's access to foreign exchange and the availability of

country, product (i.e., logs, chips, pulp) and species quotas. If quotas are not available, the import license is not issued.

Besides being onerous, cumbersome and susceptible to discriminatory practices, import policies and requirements vary from one province, economic zone, or government entity to the next. They also distance the sellers from the end-user, making it difficult to meet the ultimate customers' needs. In addition, although China agreed under the 1992 Market Access Agreement to eliminate import license requirements and quotas on imported wood and paper products, import licenses and quotas remain.

Permits. U.S. exporters of paper products report that duty free importation is usually associated with a specific economic free zone and a permit is required to import into these zones. There are apparently two avenues for obtaining these permits. The first is through the central government and requirements, which are affected by both economic and political considerations, change every year. The second is through the economic free zones. Procedures for obtaining permits directly through the zones are inconsistent and the process is complicated because locally-obtained permits can be bartered or sold.

Another troublesome aspect of duty free importation is that access to duty free ports is inconsistent and unpredictable. As a result, sellers frequently must scramble at the last minute to rearrange shipping plans and local transportation for their products.

State Control of the Marketplace. A very large proportion of imported wood, pulp and paper products is centrally purchased by state-owned enterprises. This makes most of the market immune to typical supply and demand forces and makes it very difficult to obtain credible information about existing inventories and market conditions. Under these circumstances, planning and other market development activities are virtually impossible.

Additionally, government agencies importing paper products into China frequently do not pay duties and are able to obtain a preferential exchange rate.

Product Substitution Policies. Wood Product Substitution Requirement: Under the MOU, China "confirms that policies related to conservation of domestic wood products do not apply to imported wood products." To date, however, there has been no published confirmation that the "Regulations for Economical and Rational Applications of Wood and Wood Substitutes," of January 15, 1983 have been amended or abolished to allow for the use of imported wood in domestic building projects. This measure requires the use of steel, cement, plastic, or other materials in place of wood in most construction applications. In a January 1994 MOFTEC publication, wood products are included in "The Interim Method of Quota management for Imports of General Products," indicating continued Government of China's intransigence on liberalizing its wood products market.

Shipping. We have received complaints that access to certain duty free ports is frequently limited to smaller shipping vessels, forcing importers to incur the cost of transferring goods from larger ships at another port, such as Hong Kong. Additionally, many of the shipping vessels provided by the PRC for paper shipments are substandard by today's standards. They frequently require more time to load and almost always require "benching" or the installation of wood reinforcements to prevent paper from shifting and being damaged during shipment. The use of multi-product vessels increases loading costs and the potential for product damage.

Unless port demurrage fees are paid, vessels can sit in port for several days. Payment of the fee tends to guarantee discharge in a shorter period of time.

Fees and Taxes. Value-added taxes (VAT) are imposed on imported products on a discriminatory basis. The tax, which is in addition to the applicable duty (and may be as high as 17 percent), is not applied to locally-produced goods. The VAT rate is now set at 17 percent for all goods,

although some agricultural commodities may be assessed 13 percent or less. Forest products taxes are not all assessed in a uniform manner.

Financial Considerations. Inconsistent and widely-fluctuating monetary exchange practices and limitations on the exchange of currency also make business transactions very difficult. Further, our members report that returns on transactions with China are below the average realized in other markets. This may be due, in part, to centralized and non-transparent purchasing practices and required payments of commissions or similar charges to distributors.

Subsidies. Government subsidies to the domestic pulp, paper and paperboard industry provide an unfair competitive advantage for exports of an otherwise non-competitive industry.

In conclusion, AF&PA believes that China must be required to meet fully the responsibilities of participation in the international trading system before it is allowed entry into the GATT/WTO. Any failure in this regard could create a dangerous precedent for negotiations leading to the accession of other new members to the GATT/WTO.

American Forest & Paper Association
International Department
June 1995

PRC-MFN.95

PEOPLE'S REPUBLIC OF CHINA (PRC)

Tariffs for Key U.S. Pulp and Paper and Wood Exports

Harmonized Code	Description	1994 Tariff Rate
	PULP AND PAPER EXPORTS	
47	Wood Pulp	2
47	Recovered Paper	2
4801	Newsprint	20
4802.51 4802.52 4802.53	Uncoated Free Sheet	20
4802.60	Uncoated Groundwood	20
4804.11	Kraft Linerboard	20
4804.21 4804.31 4804.41	Kraft Paper	20
4804.42 4804.52	Uncoated Bleached Kraft Paperboard	20
4810.11 4810.12	Coated Free Sheet	28
4810.21 4810.29	Coated Groundwood	28
4810.32	Clay Coated Bleached Kraft Paperboard	28
4810.39	Clay Coated Unbleached Kraft Paperboard	28
4811.31	Plastic Coated Milk Carton Stock	30
4813	Cigarette Paper	75
4823.59	Cut-to-Size	55
Misc.	Converted Paper/Paperboard	generally 55-65
	WOOD EXPORTS	
4407.10	Softwood Lumber	6
4407.21	Hardwood Lumber	6-20
4408.20	Hardwood Veneer	9-20
4409	Flooring and Moulding	35
4410	Particleboard	25
4412	Plywood	20
4418	Builders' Joinery	40

STATEMENT OF AMERICAN TEXTILE MANUFACTURERS INSTITUTE

This statement is submitted by the American Textile Manufacturers Institute (ATMI), the national association of the textile mill products industry. ATMI's member companies are engaged in every facet of textile manufacturing and marketing. They range in size from small, family-owned enterprises with one producing facility and a few score employees to publicly-owned billion dollar corporations with several thousand workers. Collectively they account for over eighty percent of total textile mill activity in the United States.

Last year these companies suffered from the influx of 17 billion square meters' worth of imports of textile and apparel products. China is the single largest source of these imports, accounting for over two billion square meters or 12 percent of the world total officially and, according to U.S. government estimates, more than an additional one billion square meters in illegal shipments. Therefore, the United States' policy regarding trade with China is of keen importance to ATMI's members and some 700,000 U.S. textile workers. As the Subcommittee is aware, a key element of that policy, in fact, the single most important element, is the granting of most-favored-nation (MFN) status to China, the subject of this hearing.

ATMI believes that MFN status for China should not be renewed beyond its scheduled expiration on July 3 of this year and that there are compelling reasons for it not to be renewed.

Most of the debate surrounding China's MFN status and most of the testimony the Subcommittee will receive is concerned with China's human rights policies, nuclear proliferation and weapons sales. These are vitally important issues that should be considered, but they are not the only ones. From ATMI's perspective, a decision whether or not to continue China's MFN status should also be conditioned on China's conduct as a trading partner. In this regard, the record is clear: it is an understatement to say that China's conduct has been deplorable. To say that it has been resolutely criminal would be more to the point and in accordance with the facts.

Whether through false declarations to the Customs Service for the purpose of evading tariffs or through mislabeling of merchandise or transshipping through third countries in order to evade bilateral quota agreements, China has engaged in practically every type of Customs fraud repeatedly during the past several years. Of the many infractions that have been committed, the type that has received the most notoriety is transshipment -- falsely declaring goods to be the product of another country in order to avoid having them counted against the quotas which the United States maintains on textile and apparel imports from China -- even though these quotas are extremely generous by any measure. On not less than nine occasions the interagency Committee for the Implementation of Textile Agreements (CITA) has published notices in the *Federal Register* relating to charges against China's quotas for goods found to have been illegally transshipped. There have been indictments, trials, and convictions on both our East and West Coasts of firms and individuals controlled by the Chinese government for every kind of import fraud imaginable, not merely transshipment. In its trade relations with the United States, China has made a mockery of our laws and of international and bilateral agreements to which it is a signatory.

These transgressions alone are sufficient grounds for the revocation of China's MFN status, but the wrongdoing does not stop there. While evading tariffs and quotas on a scale that can only be described as colossal, China is at the same time one of the worst intellectual property pirates in the world. ATMI's members have been damaged by this behavior as well. Our member companies have had their copyrighted patterns and designs, creative works that are the result of much effort and considerable expenditure of money, stolen by Chinese textile mills, reproduced without their permission or knowledge and sold all over the world in competition with our members' legitimate merchandise. This theft costs American textile firms untold millions of dollars worth of lost sales every year.

There are other types of intellectual property piracy extant in China and the resulting economic harm to all American firms is undoubtedly even greater than it is to the textile industry. Who knows how many pirated and counterfeit sound recordings, books, video cassettes and computer software programs are produced in China each year? Suffice it to say that one can today buy copies of pirated American computer software on the streets of Beijing. All U.S. companies undoubtedly hope that the U.S./PRC agreement on intellectual property will help to remedy this.

Finally, to add insult to injury, while shipping to the United States $7 billion worth of textile and apparel products annually (and transshipping billions of dollars more), while flouting our laws and stealing our intellectual property, China keeps its market closed tight as a clam. China does not believe in bilateral trade, at least not in the area of textiles and apparel. It has failed to implement its own 1994 agreement to provide market access for U.S. textile and apparel products. In this sector, trade for China is a one-way street. Through a combination of high tariffs, import licensing schemes and a bewildering array of regulations which it refuses to disclose publicly, the Government of China keeps out of its market almost all textiles and apparel except those goods which it must import to produce goods for export. The U.S. sold China $44 million of textiles and apparel in 1994, while China exported $7 billion legally and another $2-3 billion illegally. If that illegal trade were curbed and half of those goods were produced here, over 100,000 job opportunities would be created in this country. If U.S. textile mills were allowed to export to the growing Chinese market, additional U.S. jobs would be created.

Last year while breaking our laws, stealing our ideas, flaunting our textile trade agreement and slamming their door in our face, China managed to run up a $29 billion trade surplus with the United States. Should China be given a $29 billion reward for its truly egregious behavior? As the Subcommittee and the House of Representatives consider the question of China's MFN status, it is essential to keep one important fact in mind: MFN status is not a right which is automatically granted to each and every country seeking it. It is a privilege granted by the United States, a privilege which must be earned. Simply put, China has not earned it; therefore, it should be withdrawn. ATMI earnestly recommends to the Subcommittee, the Committee on Ways and Means and the House of Representatives, that China's MFN status not be renewed and that it be withheld until China demonstrates conclusively, not through promises or "understandings", that it has achieved the reforms necessary to be treated as a co-equal trading partner.



China-America Trade Society
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May 17, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

The China-America Trade Society ("Society") is an organization of corporate representatives and individuals all of whom are interested in doing business in the Peoples Republic of China. All companies involved actively do business in China. All companies and individuals involved are residents of Western Pennsylvania. The number of Western Pennsylvania residents employed by these companies number in the thousands; gross dollar volume of the total businesses involved is in the millions.

The Society has directed that the Chairman of Board of Directors and I bring to your attention the desire of its members that there be a renewal of China's most favored nation (MFN) status.

I note, however, the concern of the membership with the imbalance of trade with China. Presently, China sells more to the United States than it buys and currently is making no effort to correct the disparity. Interestingly, China buys more from Taiwan than it sells. The correction of this imbalance of trade and/or a concentrated effort leading to a correction, we suggest, should be a condition of the MFN renewal.



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Our members believe that the best method of causing change in the business practices of the Chinese is by way of a continuance of contact between Chinese and American business people. We urge your consideration of our support for the renewal of the MFN status subject to specific effort to correct the trade imbalance.

Yours truly,

CHINA-AMERICA TRADE SOCIETY

By: Robert X. Medonis,
President

By: Robert P. Littlefield,
Chairman, Board of Directors

RXM:tag
Encls.

THE FERTILIZER INSTITUTE
501 Second Street, N.E., Washington, D.C. 20002
TEL: 202/675-8250
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GARY D. MYERS
President

May 25, 1995

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

On behalf of The Fertilizer Institute, I respectfully request that this letter be included in the printed record of the hearing on U.S.-China Trade Relations and Renewal of China's Most-Favored-Nation Status held on May 23, 1995 before the Subcommittee on Trade of the Committee on Ways and Means.

The Fertilizer Institute is a voluntary, non-profit association representing approximately 95 percent of the domestic fertilizer production in the United States. The Institute's membership includes producers, manufacturers, traders, retail dealers and distributors of fertilizer materials. Its members are a vital link in the Nation's agricultural system.

The Fertilizer Institute supports retaining unconditional most-favored-nation (MFN) trade status for the People's Republic of China. Revocation of MFN status for China will harm U.S. interests and will not achieve its intended goals.

China is a major purchaser of U.S. phosphate, potash, and nitrogen fertilizers. 1994 fertilizer sales to China totaled $944 million representing 6.3 million material tons. Of the $944 million in total fertilizer sales to China, 95%, valued at an estimated $900 million, was for phosphate fertilizer materials.

China typically buys anywhere from half to nearly all of their phosphate fertilizer imports from U.S. phosphate producers. China purchases its remaining needs from Morocco, Jordan, and Europe. The total U. S. market (domestic plus export) for phosphate fertilizers exceeded 11.1 million tons in 1994. Of this total, fully 60 percent was accounted for by exports. China purchased 42% of these exports and accounted for nearly 25% of the total U. S. domestic plus export market.

May 25, 1995

Over 80% of U. S. phosphate fertilizer material production is in the State of Florida, and most of the U. S. phosphate rock extraction is in Florida. If MFN trade status is not extended to China, China would inevitably retaliate and stop buying U.S. phosphate fertilizer. U.S. phosphate fertilizer exports would be cut nearly in half, and Florida would suffer the brunt of the resulting negative impact.

According to the latest information available from the U. S. Census Bureau, 10,200 people nationwide were directly employed in the phosphate industry in 1992. Over 8,000 of these people were directly employed in the Florida phosphate industry, providing Florida with a payroll of over $379 million. If the China export market is lost, nearly 4,000 Florida jobs would be in jeopardy. Also, phosphate fertilizer represents 67% of the freight tonnage out of the Port of Tampa. Port and transportation jobs would also be threatened.

China is also a major purchaser of U.S. potash, another primary agricultural nutrient. Revocation of MFN trade status would put this large amount of economic activity at risk, and could result in a substantial loss to the U.S. balance of trade.

Since phosphate and potash are major nutrients essential for growing crops, the interruption of this trade is tantamount to using food production as a tool of foreign policy. Recent U.S. history is filled with examples of instances where the government has failed when it attempted to achieve foreign policy objectives using food as a weapon. The United States implemented a grain embargo in 1980 which inflicted lasting damage on U. S. agriculture while failing to alter foreign behavior. The clear lesson from history is that singling out China will only hurt U.S. industry. China will easily find other sources of needed materials and feel no foreign policy pressure.

The Fertilizer Institute urges the Administration and Congress to recognize that the presence of U. S. companies in China promotes democracy and human rights, as well as American exports and jobs. Revocation of MFN status will only harm U.S. interests without helping the people of China.

Sincerely,

Gary D. Myers

Copy to: Members of the Trade Subcommittee
Committee on Ways and Means
U. S. House of Representatives

Before the
Subcommittee on Trade
Ways and Means Committee
U. S. House of Representatives
May 23, 1995

RENEWAL OF CHINA'S MOST-FAVORED NATION STATUS

TESTIMONY OF JAY MAZUR, PRESIDENT,
INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Thank you, once again, Mr. Chairman, for the opportunity to testify before this Committee on U. S.-China Trade Relations and on extending most-favored nation treatment for China. This status, first granted in 1980, has been renewed each year since then.

The International Ladies' Garment Workers' Union has a deep interest in our nation's trade relations with China. Our membership includes many thousands of Chinese workers and, therefore, is one of the largest of the many ethnic and racial groups that constitute the mosaic of our Union. In addition, the People's Republic of China continues to be the major exporter of apparel to the U. S.

Our specific concerns over U. S. trade relations with China have been voiced before this Committee on a number of prior occasions. There is no indication that conditions in China have changed. The regime in power continues to as brutal as ever and there is no reason to believe that it will change its policies in the foreseeable future.

Permit me to summarize our continuing concerns:

* Chinese workers continue to be denied basic freedoms, among them the right to join unions of their own choosing.

* Many Chinese workers who sought to create a free labor movement remain in jail.

* Garments and other products continue to be produced and exported to the U. S. and elsewhere by inmates of China's prison system.

* Apparel imports from China, produced by abysmally low wage workers, continue to flood the U. S. market, both legally and through transshipments, causing the loss of thousands of jobs in the United States.

* If the U. S. once again grants MFN status to the PRC, our nation will be condoning such practices as those cited above and will be saying that we are unconcerned about how China treats its citizens.

* The suggestion that we must renew the grant of MFN to China for another year because if we don't companies from other nations will benefit from the China trade belies our professed concern for human rights.

* Trade with China has been one-sided. Our trade deficit with that country, apart from transshipments, is second only to our trade deficit with Japan and is rapidly approaching the same level. We can expect that Administration and congressional leaders will soon be seeking some way of dealing with this growing trade deficit. We should face up to it now.

* Recent reports indicate that China expects to continue nuclear testing, a position that flies in the face of our nation's proclaimed policy. In addition, China's assistance to nations seeking to develop nuclear bomb capacity is in

direct contradiction to our nation's efforts to stem nuclear proliferation.

There is no reason to believe that China's policies are any less antithetical to our nation's beliefs in the year that has passed since the last one-year renewal of MFN status. The Jackson-Vanik criteria have not been met. There is no reason to waive once again that law's conditions relating to non-market economies.

In short, Mr. Chairman, we strongly believe that our nation should not once again grant MFN status to China because of its violation of some of the most basic principles of democracy and its huge increases in exports to the U. S. Our nation's primary obligation is not to help the Chinese autocrats move their economy into the twenty first century, regardless of the policies they pursue.

Oppression of any form of opposition and efforts to introduce democracy continue to be brutally suppressed. Critics of the regime are imprisoned or threatened with long jail terms if they dare to seek democratic solutions. Prison labor is widely used in making products that are exported to the United States under preferential MFN tariffs. The democratic aspirations of the Chinese people are submerged by a brutal dictatorship.

China has repeatedly violated its bilateral apparel and textile agreement with the United States and is the number one transshipper of these products. According to U. S. Customs, the PRC transships through more than forty countries as part of its effort to increase its share of the U. S. market and earn hard currency.

Despite an agreement with the U. S. on transshipments, the Chinese government admittedly has little or no control of what goes on its provinces. There is reason to believe that, despite the agreement with the U. S., transshipments will continue on a massive scale.

One of the anomalies in our trade relations with China is that the granting and renewal of MFN status gives the PRC all of the trading benefits it would have if it were a member of the World Trade Organization without having to live up to the requirements for WTO membership. Renewal of MFN status would continue this situation.

As asserted earlier -- and it bears repetition -- next to Japan, China has the largest unfavorable trade balance with the United States. It continues to grow year by year and can be expected in short order to equal or surpass that of Japan. China's wage levels make a mockery of the assertion that it has agreed to reciprocal market opening. We cannot anticipate that the average Chinese will shortly begin to purchase masses of U. S. consumer goods.

Loss of MFN status would show that our nation holds the Chinese government responsible for its inhuman, undemocratic and anti-worker behavior.

Presidents Bush and Clinton renewed China's MFN status annually, supposedly in the hope that offering a carrot wold lead to significant improvements in that nation's human rights practices. However, the record speaks otherwise. The U. S. State Department's annual human rights report notes that China still falls far short of internationally recognized norms.

Our nation's leaders seem to be suggesting that we look the other way and ignore China's continued violation of human rights. Trade, they say, should be decoupled from human rights. Profits from trade should replace concerns about the human condition.

I urge this Committee to take a forthright stand against China's anti-democratic, anti-human rights, anti-worker policies. The Congress must urge the President to deny continued MFN status for China until the PRC changes its policies. Congress must not allow private profit to come before human rights.

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

STATEMENT OF BARRY BRESLOW,
SENIOR VICE PRESIDENT,
KINETIC PARTS MANUFACTURING
HARBOR CITY, CALIFORNIA

JUNE 2, 1995

MR. CHAIRMAN AND MEMBERS OF THE WAYS AND MEANS COMMITTEE SUBCOMMITTEE ON TRADE

My name is Barry Breslow and I am senior vice president of Kinetic Parts Manufacturing Company (KMP) in Harbor, City California. KPM is a United States manufacturer of brake rotors for the automotive replacement market. We wish to relate to you our experiences with competing with the Chinese and why Most Favored Nation (MFN) Treatment should not be renewed.

Our company which employs 110 workers, producing brake rotors for sale to the automotive aftermarket. However, it is been practically impossible to compete with the products being imported from China that are sold at absurdly low prices. Our analysis of the Chinese pricing is that their U.S. prices are below our costs and must be below their costs. In fact they are engaged in unfair trading practices of the most egregious nature. While we realize that there are other trade laws that address these problems, we find it unthinkable that our country should be renewing a tariff preference to the Chinese when they are already underselling U.S. producers by large margins due to various unfair practices. In fact, our company KPM is probably one of the lowest cost U.S. producers and other companies in the industry must be hurt even more by the Chinese.

We know that the Congress may act in the form of a joint resolution to disapprove the continuation of MFN benefits for China and we urge you to do so. In the notice that was issued announcing this hearing(TR-9-May 2, 1995) the committee noted that it will "evaluate overall U.S. trade relations with the People's Republic of China . . . and the potential impact on China, Hong Kong and the Untied States of a termination of China's MFN status." We believe that it is quite relevant to all of these factors that the Chinese are able to compete quite well in the United States without MFN benefits. Although there has been some privatization of industry, many sectors such as the one we compete with, do not operate on a cost and profit system comparable to the United States. It is indeed frustrating when companies like ours, operate as efficiently as possible and still cannot meet the prices of the Chinese, even though they must ship heavy brake rotors thousand of miles further than we do. This indicates that their system is not one where the recovery of costs or earning a profit is the motivation for exporting. While we may not be able to change the system, there is no reason to reward them by giving them trade preferences.

It is not our intent to discuss all of the unfair trade, intellectual property and human rights violations that have occurred involving China. This committee has received testimony about this from others at the hearings on May 23, 1995. In addition, the committee is no doubt aware of the

recent investigation by the Office of the U.S. Trade Representative of Chinese intellectual property rights violations. There was extensive testimony presented to you about human rights violations in a region of China known as Laogai, sometimes referred to as the Chinese "gulog." There was testimony concerning the use of forced labor to produce many products exported to the United states. This year there are added issues concerning Chinese policy toward Tibet and to the freedom of religious practices there. Testimony was also presented about the failure of China to honor international arbitral awards and to treat U.S. investors in a fair and equitable manner.

We hope that you will add the Chinese practices in regard to brake parts to your list of various activities that justify the termination of MFN treatment for China.

Thank you.

WASHINGTON/7356.01

STATEMENT OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

U.S. semiconductor firms are making substantial commitments to expand their market presence in the Peoples' Republic of China. At the same time, China is seeking to foster its own electronics industry, with a particular emphasis on microelectronics, and is rapidly moving to integrate its economy more fully into the world trading system. As part of this process Chinese government and electronics industry are inviting closer contacts with the U.S. semiconductor industry, and significant opportunities and challenges have already become evident. Under these circumstances, the Board of Directors of the Semiconductor Industry Association (SIA) determined that an initial examination was needed of the issues confronting the U.S. semiconductor industry as a result of its growing presence in China and China's emergence as a major trading power with a rapidly emerging electronics sector.

The following is a summary of an SIA study on China released in February of this year. The study is intended to be a contribution to the information base necessary to support a constructive dialogue on issues of mutual interest and concern as commercial and technological ties grow between the U.S. and Chinese industries.

Introduction

In 1978, the People's Republic of China embarked on a long range program of economic reform. Since then China has experienced what is possibly the most explosive sustained economic growth of any nation in modern history. As China's industries have developed and its people have become more prosperous, the country's leaders have struggled to create and refine the institutional, legal and commercial structures required by a modern economy, and to integrate China more fully into the international trading system.

As would be expected given the magnitude of the effort, economic reform has been a disorderly process. Growth and entrepreneurial initiative have frequently run ahead of the establishment of institutional mechanisms needed to provide a regulatory framework for such activity.

Misappropriation of intellectual property, imposition of ad hoc taxes and charges, corruption, smuggling, frequent sweeping changes in laws and regulations, and the blurring of lines of authority among various national, regional and local power centers are among the challenges Chinese policy makers are attempting to address. There is little predictability or certainty for foreign enterprises doing business in China. This fluid environment -- dominated by the continuing rapid expansion of the economy itself -- holds out major opportunities for U.S. semiconductor firms, but also poses significant short and long term risks.

The SIA China study is intended to provide an overview of the main issues facing the U.S. industry, as well as the policy mechanisms which can be employed to address problems once they are identified. Significantly, Chinese officials and industry leaders are proving open to discussion of these issues of concern.

Market

While statistical data on Chinese semiconductor demand and output are inadequate, the market currently is estimated to be between $2 and $3 billion, and is growing at a rapid rate; year-over growth rates are estimated at between 10 and 20 percent. A number of observers believe that in light of China's growing domestic demand for electronics products, China will become the world's largest semiconductor market in 10-15 years.

Presently local production can only supply about 20 percent of China's semiconductor needs, and these represent primarily low-end devices used in consumer electronics products like refrigerators, washing machines, radios, and televisions. Virtually all sophisticated semiconductors needed by Chinese electronics firms must be

imported, a pattern that will not change significantly over the short run. This continuing shortfall creates a major commercial opportunity for U.S. producers.

The U.S. - China Relationship

As U.S. businesses enter China, the U.S. government is seeking to persuade China to adopt the laws, regulations, and administrative procedures that are necessary to promote a healthy bilateral trade relationship. The United States is engaged in an ongoing series of parallel negotiations and discussions with China which cover virtually all aspects of the Chinese system of interest to U.S. semiconductor producers:

- The United States and China signed a bilateral trade agreement in 1979. Since 1980, the United States has given China conditional most-favored-nation status, subject to annual extensions pursuant to the Jackson-Vanik Amendment to the Trade Act of 1974, which allows Communist or non-market economy countries to receive MFN status only if the president certifies that the country permits free and unrestricted emigration. The president is permitted to waive this requirement for successive 12-month periods if he determines that the waiver substantially promotes freedom of emigration.

- In 1992, the United States and China concluded bilateral Memoranda of Understanding on Market Access and Intellectual Property ("1992 MOUs"), which committed China to reforms in areas such as the reduction of import barriers and the provision of adequate protection for intellectual property rights.

- Earlier this year, the United States and China concluded a new agreement regarding enforcement of China's intellectual property laws. This agreement averted possible sanctions under Special 301.

- A bilateral forum, the U.S.-China Joint Commission on Commerce and Trade (JCCT), has been jointly established by the U.S. Department of Commerce and the Chinese Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to discuss bilateral trade and investment issues and to promote commercial relations.

China is currently negotiating to become a member of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). GATT/WTO accession will require China to modify a number of current practices in order to conform to GATT/WTO rules. However, the precise terms of China's accession have not yet been determined and are proving controversial. Perhaps the most contentious issue is whether China will join GATT/WTO as a "developing country," which would permit substantial delays in conforming its economic system to GATT/WTO disciplines, or as a developed country. The U.S. government has insisted that China enter GATT/WTO as a developed country.

The various U.S.-China bilateral agreements and ongoing discussions, and the multilateral negotiations over the terms of China's accession to the GATT/WTO, are the mechanisms through which China may be encouraged to modify policies or practices which may be problematic for U.S. semiconductor producers.

Semiconductor Specific Issues

The SIA study concentrates on three sector-specific issues of primary interest to the semiconductor industry: (1) Chinese targeting of semiconductors, including government pressure to transfer advanced technology to local producers; (2) intellectual property protection for semiconductor technology, and (3) semiconductor-specific trade concerns.

1. Targeting of the semiconductor industry may restrict U.S. market opportunities. The Chinese government has designated electronics as one of four "pillar" industries essential to the nation's long run economic future. Within electronics it has singled out microelectronics as the area of principal focus. Promotional measures are typical of those previously undertaken by many countries:

- Creation of several large national champions through consolidation of enterprises and the channeling of funds on a preferential basis to the favored entities.

- Acquisition of advanced technology from foreign companies, most commonly through joint ventures.

- Establishment of numerous Chinese versions of "Silicon Valley," encouraging clusters of high technology development within designated zones through a combination of tax preferences, trading and other commercial privileges, soft loans, and infrastructural assistance.

- Mobilization of the nation's research institutes toward specific commercially-oriented tasks designated by the microelectronics enterprises themselves.

China seeks to draw on the technology, capital, and international market channels of leading foreign semiconductor firms to foster the growth of its own industry. The Ministry of Electronics is developing an Electronics Plan which is likely to proscribe foreign majority ownership of semiconductor firms, establish export performance requirements for Sino-foreign joint ventures, pressure foreign firms to transfer advanced technology, and provide the basis for eventual displacement of foreign semiconductors in the Chinese market by domestically-made devices. Over the long run, such policies could curtail or eliminate U.S. market opportunities in China, and would prove counterproductive for China because they would discourage the foreign investment necessary to promote China's technological, economic and market development.

The 1992 U.S.-China Memorandum of Understanding on Market Access provides that China will eliminate the use of import substitution policies and measures. However, a number of elements of the forthcoming Electronics Plan are arguably inconsistent with this commitment. GATT/WTO rules may also limit China's ability to establish local content requirements (although the GATT did not prevent the European Union from implementing sweeping de facto local content requirements).

2. Intellectual property protection is inadequate. China has enacted patent, copyright, and trademark laws patterned on western models, but enforcement needs to be strengthened. Unauthorized use of U.S. intellectual property has been widespread and in some cases extremely harmful. Compulsory licensing is authorized under Chinese patent law when "necessitated by the public interest." China needs legislation extending copyright protection to semiconductor designs, although a chip protection law is reportedly being drafted. While some formal legal protection may be available under existing trademark, patent and copyright laws, at present the only real constraint on misappropriation of U.S. semiconductor designs is China's lagging technological level, which the Chinese are making major efforts to transform.

China confronts pressure to improve its intellectual property regime on several fronts:

- Bilaterally, the 1992 MOU and the 1995 Special 301 agreement commit China to improvements in its existing intellectual property laws and enforcement mechanisms.

- China's accession to GATT/WTO will require that it comply with the Code on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The code prohibits compulsory licensing of semiconductor technology

(except in limited circumstances) and requires all signatories to adopt a semiconductor maskwork law compatible with the code. However, the code allows "developing countries" 10 years in which to implement its provisions. China is seeking entry as a developing country, and the United States opposes this position.

3. China's trade regime needs restructuring and does not currently conform to GATT/WTO requirements. China's foreign trade regime is a complex system with many anomalies which hamper the operations of U.S. firms in China.

- Tariffs are high (20-30 percent) on low-end type semiconductors which the Chinese can make domestically, and lower (6-11 percent) on complex devices which must be imported. The tariff system is characterized by lower "preferential" tariffs (6 percent for most complex devices) for firms based in Special Economic Zones or which negotiate special arrangements with the Chinese government.

- "Trading rights," (e.g., the ability to import and export from China), are limited to designated enterprises, and U.S. firms doing business in China, lacking such rights, must conduct their business through firms that hold such privileges.

- Quotas and licensing requirements restrict imports of many electronics products, although semiconductors are not currently subject to quotas.

- Most semiconductors are imported through Hong Kong by Hong Kong-based trading companies using a variety of complex and circuitous channels. Smuggling is a major problem for Chinese authorities.

- Transparency is inadequate. Rules and procedures are frequently not published, and are subject to "interpretation" by individual officials. The Chinese government is struggling to eliminate corruption.

The 1992 U.S.-China Market Access MOU commits China to improving the transparency of its trade regime, phasing out licensing requirements, quotas, and other restrictions by 1997, and significantly lowering tariffs. Accession to the GATT/WTO will require China to accept bindings on its tariffs, and to eliminate preferential tariff policies (including the differential tariffs in the Special Economic Zones) that are inconsistent with the Most-Favored Nation principles of GATT Article I. China's desire to enter GATT/WTO as a "developing country" reflects, in substantial part, its desire to use high tariffs to protect its targeted industries, notably electronics, automobiles, machinery, chemicals and aviation.

General Issues

A number of aspects of doing business in China affect all U.S. industries, but have been cited as areas of concern by U.S. semiconductor executives. These issues are surveyed in the SIA study with an emphasis on those factors most likely to affect U.S. semiconductor firms.

- Decentralization and economic reform have produced a great deal of confusion over where ultimate authority resides within the Chinese system. Manifestations of decentralization include (a) increased autonomy by regional and local authorities, (b) the creation of a broad array of designated economic zones where special benefits and privileges are available, and (c) an apparent increase in corruption, although not yet to a degree which jeopardizes the reform program.

- Foreign investment is subject to rules which prescribe the forms which investment can take and which significantly limit the establishment of wholly-foreign-owned enterprises.

- The tax system has undergone a complete overhaul, which has created uncertainty among foreign firms and raised concerns that their tax burden will increase relative to that of Chinese enterprises. Blurred lines of authority between the central government and the localities leave foreign enterprises unclear as to their precise tax liabilities and benefits, and subject to imposition of ad hoc local taxes, fees, and charges.

- Foreign exchange is subject to restrictions which constitute a major impediment to business operations for many U.S. firms. Reforms have been implemented in 1994 but it is unclear whether they will result in a significant improvement.

- Technology import contracts in China are regulated not only by U.S. export control restrictions (which have been relaxed) but by Chinese regulations which limit the restrictions which sellers can place on technology licensed to Chinese entities.

Conclusion

The Chinese semiconductor market represents a major opportunity for the U.S. industry, but there are significant risks and hurdles to be addressed as well. In microelectronics, China could become one of the world's leading producers, and, as such, it warrants continued monitoring. Ongoing bilateral and multilateral negotiations with China over the terms of its full integration into the world trading system can be utilized to address those aspects of the Chinese system which are problematic from the perspective of the U.S. semiconductor industry. The U.S. government is actively pursuing resolution of U.S. industry issues of concern in the negotiations concerning China's WTO accession and SIA strongly supports U.S. government efforts in this regard. Meanwhile, the Chinese government and industry are also demonstrating receptivity to these U.S. industry issues of concern, and it is evident that the potential exists for a productive joint effort to address them.

FORTNEY PETE STARK
THIRTEENTH DISTRICT, CALIFORNIA

COMMITTEES:
WAYS AND MEANS
DISTRICT OF COLUMBIA

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

Statement of Congressman Pete Stark
Tuesday, May 23, 1995
Ways and Means Subcommittee on Trade
Hearing Concerning Extension of Most Favored Nation Trading Status for China

Mr. Chairman, Members of the Committee, I believe it is very important that we grant most-favored-nation trading status only to countries that cooperate with nuclear non-proliferation. Though the Cold War era is over, nuclear weapons stockpiles still exist, posing a great threat to international security.

One of the greatest dangers the world currently faces is the export of nuclear reactors and technology from the nuclear weapons states to countries with harmful intentions. There is strong and convincing evidence that China, a nuclear weapons state and a signatory of the Nuclear Non-Proliferation Treaty (NPT) since 1992, has aided Pakistan in developing nuclear weapons. Pakistan has not signed the NPT and is one of three countries believed to have undeclared nuclear arsenals.

Just as troubling as China's assistance to Pakistan is the proposed sale of nuclear reactors to Iran. On April 17, Secretary of State Christopher raised U.S. concerns over a proposed Chinese sale of nuclear reactors to Iran in discussions with Foreign Minister Qian Qichen in New York. Christopher said: "Iran is simply too dangerous with its intentions and its motives and its designs to justify nuclear cooperation of an allegedly peaceful character."

As a signatory of the recently extended Nuclear Non-Proliferation Treaty, it is China's responsibility to work to prevent the further spread of nuclear weapons. However, by exporting nuclear technology and reactors to Iran and helping Pakistan develop its undeclared nuclear arsenal, China is creating a dangerous situation in politically volatile Southeast Asia.

We should not reward China for its hazardous actions by granting them preferential trade status. Any country that is designated as a most-favored-nation trading partner should demonstrate that it is committed to peace and nuclear non-proliferation.

Statement of

Toy Manufacturers of America, Inc.

In Favor of the Renewal of
China's Most-Favored-Nation Status

June 2, 1995

Summary

America's toy industry and American toy consumers have a big stake in maintaining mutually beneficial economic relations between the United States and China. U.S. toy companies have helped China become the world's leading supplier of high quality, low cost, mass produced toys. This benefits both China *and* the United States. American trade and investment with China advances long-term U.S. economic and strategic interests vis-à-vis China and promotes American values. The alternative to a policy of "engagement" with China -- trying to isolate China with trade sanctions and handicapping American business in China -- is bound to fail and hurt the U.S. as well as China. *Engagement is the right policy.*

The Toy Manufacturers of America, Inc. (TMA) is the association that represents more than 260 U.S. manufacturers and importers of toys, games, dolls and festive articles that account for approximately 85% of total toy sales in the United States. These companies employ 42,000 American workers, approximately 70 percent in production jobs. Toys are a $50 billion global industry at the wholesale level and United States toy companies are the leaders in inventing, designing, producing, marketing, and selling toys around the world.

TMA strongly supports the unconditional renewal of MFN for China.

We urge Congress to support the policy of comprehensive engagement embraced by President Clinton last year. Efforts to punish and isolate China by denying China MFN treatment or imposing selective sanctions may assuage our indignation over China's human rights failings and other shortcomings but over the long term, the welfare of the Chinese people, the cause of building a civil, democratic society in China, and America's own economic and foreign policy interests will best be served by constructively engaging China. American firms, through their presence in China, have an important role to play in that effort.

TMA companies, and through them millions of American consumers, have an significant stake in the maintenance of mutually beneficial economic relations between the United States and China. In 1994 approximately 40 percent of all toys purchased in the United States, some $4.5 billion worth, were imported from China.

Over the past 12 years U.S. toy companies -- through wholly-owned direct investments in China, joint ventures with Chinese partners, and production contracts with Chinese firms -- have helped China build the world's most competitive toy manufacturing industry. As a result, China has become the world's leading supplier of high quality, low cost, mass produced toys.

U.S. consumers benefit greatly from access to China's high quality, low cost toy products. China benefits from the jobs that exports to the United States generate as well as from the ability to earn foreign exchange. American producers of aircraft, chemicals, agricultural products, power generation equipment, and other products benefit too because China has the foreign exchange with which to buy their products. U.S.-China toy trade is thus a "win-win-win" proposition.

Mutually beneficial economic relations between the United States and China are at risk because of misguided attempts to hold trade hostage to human rights and other political objectives. These efforts may be well-intentioned but they are mistaken. The United States should persevere in its policy of "engagement" with China and not try to isolate or punish China -- at the expense of American companies and American consumers.

- **MFN.** Most Favored Nation (MFN) trade treatment is the foundation of U.S. commercial relations with China and the foundation of the policy of engagement embraced by both the Clinton and Bush Administrations. Congress should support the renewal of unconditional MFN treatment. Congress should reject any resolution of disapproval that would revoke MFN for China and defeat legislation that would impose selective sanctions on trade with China.

- **Codes of Conduct.** U.S. firms, America's toy companies prominently among them, are world-wide leaders in business ethics. America's toy companies operating in China treat their employees with respect, comply with all local laws, and exercise due diligence to ensure that no convict, forced, or underage labor is used to produce toys. American investment in China exposes Chinese workers, suppliers, and customers to American capitalism and values, improves the living standards of Chinese people, increases their economic freedom, and expands their access to information and ideas. American investment and trade supports the entrepreneurial private sector in China that is driving the reform process.

  We strongly oppose legislation that would impose regulations governing the overseas activities of American firms. A "one size fits all" code of conduct would be a costly unfunded mandate for American business, could force U.S. firms to violate local laws, and could seriously disadvantage U.S. firms vis-à-vis competitors from Europe and Japan. We also harbor strong misgivings about even "voluntary" government "business principles." They could be the first step down a "slippery slope" leading to lost opportunities for U.S. business abroad and lost jobs at home.

- **Strategic Issues and Foreign Policy Concerns.** The United States has a broad and complex relationship with China and our interests will sometimes collide. When they do, it will be important for Congress to realize that trade constitutes weak leverage with which to try to modify China's behavior and America may pay as high or even a higher a price than China for trade sanctions. U.S. strategic objectives and concerns should be separated from trade policy. Trade sanctions should not be used for non-trade objectives.

Denying China MFN status would of course hurt China but it would also hurt American consumers, America's toy companies, and U.S. exporters to China.

Toys imported into the United States currently enter duty free for countries, such as China, that enjoy MFN status. If China were to lose MFN status, the majority of toys imported from China would be assessed "column two" (or "Smoot-Hawley") duty rates of 70 percent. Even for China with its low production costs duties that high would be prohibitive. Denying China MFN status would force

many American firms, including America's toy companies, to withdraw from China and establish production bases in other developing countries. Literally tens of thousands of Chinese workers whose livelihoods depend upon American demand for Chinese-produced toys would be devastated. How that could advance the cause of human rights and democracy or improve the welfare of the Chinese people is difficult for us to comprehend.

Since 40 percent of all toys consumed in the United States come from China, the effective embargo of Chinese toys from the U.S. market would be quickly felt by American consumers. Consumers would see their range of product choice severely constrained. The price of toys would rapidly escalate. The burden of sanctions would be felt most acutely by families with lower disposable incomes who would be faced with paying prices higher than they could afford or would be forced out of the toy market entirely. Toys may be, in the words of one Member of Congress who testified in opposition to renewing MFN before the subcommittee at its May 23rd hearing, "non-essential" but we wonder how that Member would explain the concept to a child on his or her birthday or on Christmas morning and to the child's parents.

In time, of course, the industry would adjust to the exclusion of toy imports from China as production shifted to other developing countries. That, of course, could not happen overnight. It is not likely that China would cooperate in the moving of expensive and sophisticated production facilities out of the country. In the meantime, supply would be severely disrupted and sales would plummet. The adjustment costs to the industry of replacing the huge investment it has made in China would be enormous. The jobs of many Americans in U.S. toy companies -- principally in Massachusetts, New Jersey, New York, Rhode Island, California, Oregon, and Washington -- would be placed in jeopardy. The preeminent global position of America's toy companies would also be put at risk.

In the aftermath of a denial of MFN, China's appetite for purchasing products from the United States would quite understandably diminish. Even it China wanted to buy American products, however, its ability to do so would be severely constrained without the $4.5 billion China now earns from its toy sales to the United States.

Denying China MFN treatment makes no sense. It would do enormous damage to China, to the United States, and to our relations with a country that is an increasingly important actor in global affairs. There is also no reason to believe that it would advance the cause of human rights or U.S. foreign policy objectives. There is every reason to believe that it would hurt most the people whose lives we all want to better. The policy of comprehensive engagement cannot promise instant results but it does hold the promise of achieving the results we want to see, the emergence of a civil, democratic society in China.

Engagement is the right policy.

MFN is the foundation for engagement.

Congress should support President Clinton's decision to renew MFN.

