

There have already been cases of discrimination as a result of an employer learning of an employee's genetic risk. In addition, cases have arisen where health insurance access was denied as a result of a genetic predisposition.

This is problematic because we are only in the first stages of understanding the human genome. Genetic testing has proven effective in some cases but it can be argued that the presence of a gene or certain genetic characteristics will not always result in the onset of the particular illness. The potential for discrimination is great. Although several States, including my own State of Oregon, have begun to address the issue of genetic information and health insurance, there are currently no Federal laws governing the use of genetic information.

The legislation that I am introducing today with my colleague, Senator MACK, is modeled on the Genetic Privacy Act recently passed by the Oregon Legislature. It also draws on recommendations made by the NIH-sponsored ELSI Working Group and the National Action Plan on Breast Cancer.

The purpose of the Genetic Privacy Act of 1995 is to establish some initial limitations with respect to the disclosure and use of genetic information with the goal of balancing the need to protect the rights of the individual against society's interests. The bill is intended as a first step—to ensure that there are some Federal standards in place in the most critical areas of concern. I see it as a working draft to be refined as the science progresses. The bill would define the rights of individuals whose genetic information is disclosed. In addition, it would protect against discrimination by an insurer or employer based upon an individual's genetic characteristics.

First, the bill prohibits the disclosure of genetic information by anyone without the specific written authorization of the individual. This disclosure provision could apply to health care professionals, health care institutions, laboratories, researchers, employers, insurance companies, and law enforcement officials. The written authorization must include a description of the information being disclosed, the name of the individual or entity to whom the disclosure is being made, and the purpose of the disclosure. This provision preserves the individual's ability to control the disclosure of his or her genetic information. There are several exceptions for the purposes of criminal or death investigations, specific orders of Federal or State courts for civil actions, paternity establishment, specific authorization by the individual, genetic information relating to a decedent for the medical diagnosis of blood relatives of the decedent, or identifying bodies.

Second, the legislation prohibits employers from seeking to obtain or use genetic information of an employee or prospective employee in order to discriminate against that person. In

March 1995, the U.S. Equal Employment Opportunity Commission [EEOC] released official guidance on the definition of the term "disability". The EEOC's guidance clarifies that protection under the Americans With Disabilities Act extends to individuals who are discriminated against in employment decisions based solely on genetic information. Issuance of the EEOC's guidance is precedent setting—it is the first Federal protection against the unfair use of genetic information. The provision included in the bill is intended to reiterate the ruling of the EEOC and make it clear that this practice would be prohibited under Federal law.

Third, the legislation prohibits health insurers from using genetic information to reject, deny, limit, cancel, refuse to renew, increase rates, or otherwise affect health insurance. This is in line with changes that are currently under consideration with regard to health insurance and preexisting condition exclusions.

A study of genetic discrimination prepared by Paul R. Billings, M.D. and cited by the NIH-DOE ELSI Working Group in their report entitled "Genetic Information and Health Insurance," indicates that there have been a number of cases of discrimination already as the result of an insurer learning of an individual's genetic predisposition. One woman who was found to carry the gene that causes cystic fibrosis was told she and her children were not insurable unless her husband was determined not to carry the cystic fibrosis gene. She went without health insurance for several months while this was determined. In another case, a man diagnosed with Huntington disease was denied health insurance on the basis that it was a preexisting condition, even though no previous diagnosis of Huntington had been made.

As the prevalence of genetic testing spreads, so does the risks of discrimination. Women found to carry the gene that indicates breast cancer susceptibility, BRCA1, fear they will lose health coverage if their insurer finds out. However, having this information may provide early treatment and prevention options for the woman. The provision relating to health insurance in the bill will provide much needed assurance to individuals with genetic predispositions. This will ensure that they will not risk losing their health coverage when they need it the most.

Finally, the bill requires the recently established National Bioethics Advisory Commission to submit to Congress their recommendations on further protections for the collection, storage, and use of DNA samples and genetic information obtained from those samples, and appropriate standards for the acquisition and retention of genetic information in all settings. This provision is intended to ensure that the social consequences of genome research are considered as the technology develops and not after the fact.

Madam President, as I said previously, this is a first step. This bill addresses the most pressing concerns surrounding genetic testing and the disclosure of genetic information as they relate to health insurer and employer discrimination. I believe this is a good beginning and I hope my colleagues will join me in supporting this important legislation.●

ADDITIONAL COSPONSORS

S. 881

At the request of Mr. PRYOR, the names of the Senator from Virginia [Mr. WARNER], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Indiana [Mr. COATS] were added as cosponsors of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 949

At the request of Mr. GRAHAM, the names of the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

S. 1028

At the request of Mrs. KASSEBAUM, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1150

At the request of Mr. SANTORUM, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1150, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the Marshall plan and George Catlett Marshall.

ADDITIONAL STATEMENTS

THE LIKELIHOOD OF A GATT CHALLENGE TO AN EMBARGO ON IRAN

● Mr. D'AMATO. Mr. President, I rise today to discuss the likelihood of a GATT challenge to an embargo on Iran.

On December 13, 1994, the Congressional Research Service did a Memorandum for Representative Peter DeFazio entitled "The Likelihood of a

GATT challenge to the Cuban embargo under the GATT 1994 and the WTO." This document further backs up my assertion that the United States, under Article 21 of the GATT, the United States has the broad authority to impose sanctions against another country for reasons of national security, and by connection we have that right to do so in the case of Iran. Mr. President, so that my colleagues can read this interesting memorandum, I ask that this memo be printed in the RECORD at the conclusion of my remarks.

I would also like to comment on section 8(a) of the Export Administration Act of 1979, as it relates to S. 1228, the Iran Foreign Oil Sanctions Act of 1995. For purposes of demonstration, I would like to comment on paragraph (1) of this section which reads as follows:

(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. . . ."

This paragraph is very instructive because it prohibits U.S. companies from dealing with a country that abides by an "unsanctioned" third-party boycott against another country. However, the stipulations of this paragraph are vital to the argument supporting a "sanctioned" third-party embargo against Iran. The intent here is to prevent support for " * * * any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation * * * ." The phrases "against a country which is friendly to the United States," and "which is not itself the object of any form of boycott pursuant to United States law or regulation" are key to the argument. In the case of Iran, I think everyone would agree that Iran is not friendly to the United States and equally so, it is certainly a matter of fact that Iran is subject to sanctions by the United States.

Therefore, the opponents of this legislation cannot argue against the Iran sanctions legislation because there are provisions in the bill that would require United States companies to avoid doing business with companies that sell oil and gas equipment to Iran. The "anti-boycott provisions in the EAA clearly permit the imposition of "sanctioned boycotts" against countries which are unfriendly to the United States.

The material follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, December 13, 1994.

To: Hon. PETER A. DEFazio.

(Attention: Peter Tyler).

From: American Law Division.

Subject: Likelihood of a GATT challenge to the Cuban embargo under the GATT 1994 and the WTO.

This memorandum is in response to your inquiry concerning the possibility of Cuba's bringing a challenge to the U.S. embargo against it before the World Trade Organization (WTO) under the terms of the General Agreement on Tariffs and Trade of 1994, the General Agreement as it emerged from the Uruguay Round.¹ Unless otherwise exempted by other provisions under the GATT 1994, the Cuban embargo is arguably inconsistent with the obligations to extend most-favored-nation (MFN) treatment under Article I: 1, of the GATT 1994,² to extend national treatment under Article II: 4, of the GATT 1994, and to eliminate quantitative restrictions generally under Article XI: 1, of the GATT 1994. The U.S. embargo against Cuba appears to be justifiable under the international law concept of fundamental change in circumstances, *i.e.*, Cuba's change to a communist regime and a non-market economy. The national security exception under Article XXI of GATT 1994 may also exempt the embargo as a national security measure. Also, the United States could request a waiver to permit the embargo, but this may be difficult to obtain. Apparently, there is some concern that the strengthened dispute settlement and enforcement mechanisms under the GATT 1994 may motivate Cuba to bring a challenge to the embargo. You also indicated concern about possible limitations on unilateral quantitative restrictions under the GATT 1994, but it seems these limitations generally involve limitations on quantitative restrictions that have been permissible in the past as a routine matter under textile arrangements, for balance-of-payments reasons, and the like, and not limitations on embargoes that are justifiable under other provisions of the GATT. This memorandum will briefly discuss the history of the embargo and the possible justifications for the embargo under the GATT.

Cuba is an original contracting party to the GATT,³ yet the United States has had an embargo on Cuba since 1962.⁴ Cuba has from time to time protested or commented negatively on the U.S. embargo as GATT illegal,⁵ indicating that the United States has never formally justified its actions in the GATT context. These comments or protests either concern the Cuban Democracy Act of 1992 or the support of other countries subjected to sanctions by the United States. It is unclear whether Cuba made a formal complaint about the original embargo in the GATT forum.⁶ The United States was apparently motivated by the communist coup and unresolved U.S. compensation claims arising from the expropriation and nationalization of U.S. property holdings in Cuba and also by concerns about human rights abuses and the lack of democracy in Cuba.⁷

THE CONCEPT OF FUNDAMENTAL CHANGE IN CIRCUMSTANCES

It appears that justification of the embargo was possible under the international law concept of fundamental change in circumstance. However, this requires notification to the other parties of action taken pursuant to the doctrine. Under the international law concept of fundamental change in circumstances, the United States and other GATT parties could have considered Cuba to no longer be a member of GATT

when Castro deposed the Cuban government that had been in power when the GATT 1947 was concluded. This concept, codified in the Vienna Convention on the Law of Treaties,⁸ states that where there has been a fundamental change from the circumstances existing at the time of the conclusion of an international agreement, which was not foreseen by the parties, this change may not be a ground for terminating or withdrawing from the agreement unless the circumstances were essential to the consent of the parties to be bound by the agreement and the change radically transforms the extent of obligations still to be performed under the agreement. A party may not invoke this doctrine if the fundamental change of circumstances was the result of the invoking party's breach of an obligation under the agreement or of any international obligation owed by that party to any other party to the agreement. If a party may invoke the doctrine for termination of or withdrawal from an agreement, it may also invoke it for suspension of the operation of the agreement. A party invoking this doctrine must notify other parties to the agreement.⁹

The original circumstances, that Cuba was controlled by a non-communist regime and was a market economy, were arguably essential to the Agreement. Although non-market economies have acceded to the GATT, they have done so under protocols specifying goals and measures to be met to ensure fair trade. Also, given the international political situation at the time, the Cuban change to a communist-style government and the resulting political and military tensions between the two countries could be considered by the United States to constitute a fundamental change of circumstances sufficient to terminate or suspend the operation of an agreement.¹⁰

The United States and other GATT parties could have notified, and may still be able to notify, the GATT that, under the doctrine, they consider the GATT terminated (or suspended) with respect to Cuba.¹¹ There apparently was never any formal declaration by either the United States or Cuba to the GATT Contracting Parties of any inability to continue the application of the General Agreement to each other. Although the United States has not declared a formal suspension regarding agreements with Cuba generally, apparently many agreements are not being applied.¹²

APPLICATION OF ARTICLE XXI

The United States could justify its embargo for national security reasons under GATT Article XXI(b)(iii), because of the acts of hostility between the two at the time the embargo was imposed. The national security reasons need not be formally stated to the GATT Contracting Parties.¹³ However, the presidential proclamation declaring the embargo against Cuba gave self-defense and national security as the reasons for it.¹⁴

Historically, the United States has suspended most-favored-nation treatment for various countries and justified its actions under GATT exceptions, particularly GATT Article XXI concerning security exceptions. Article XXI, provides that nothing in the Agreement shall be construed (1) to require a contracting party to reveal information the disclosure of which is contrary to its security interests; (2) to prevent measures, which a party considers necessary to the protection of its security interests and which are related to nuclear material, related to trade in arms, or taken in time of war or other international emergency; (3) or to prevent a party from taking action pursuant to its obligations under the United Nations Charter for the maintenance of international peace and security. The security exceptions have been

Footnotes at end of article.

applicable in several cases where the United States has suspended MFN treatment, although some parties have felt that the United States has relied excessively on Article XXI in justifying its actions. However, a GATT panel has decided that the underlying justification for a claim of the national security exception will not be questioned. This decision resulted from Nicaragua's GATT challenge to the embargo that the U.S. imposed on it.

Nicaragua became a GATT contracting party on May 28, 1950, under the terms of the 1949 Annex Protocol of Terms of Accession.¹⁵ In the late 1970s and early 1980s, relations between the United States and the Nicaraguan Sandinista-controlled government deteriorated as the United States cut off aid to the Nicaraguan government and supported Contra rebel efforts to bring about a free and independent government by deposing the Sandinista government.¹⁶ On September 23, 1983, President Reagan reduced the import quota for Nicaraguan sugar.¹⁷ Nicaragua brought a complaint before the GATT. A dispute settlement panel found that the quota reduction was in violation of GATT Article XIII, which provides that quantitative restrictions of a product are only permissible where similar measures are applied to all imports and exports of that product and where the import quota shares are distributed among the parties concerned in a way that approximates as nearly as possible the share each party would have had in the absence of restrictions.¹⁸ The United States did not invoke any exception and seems to have effectively refused to defend itself on GATT grounds, stating merely that any actions taken were not matters of trade policy and could not be properly evaluated in the trade context, and that the United States had not benefitted in any economic manner from the reduction in Nicaragua's quota.¹⁹ The panel report was adopted on March 13, 1984, but in November 1984, Nicaragua was complaining that the United States still had not restored its sugar quota.²⁰ The United States agreed that Nicaragua had rights, but maintained its position that the situation had to be viewed in a political context.²¹

President Reagan imposed an embargo on Nicaragua by executive order on May 1, 1985, pursuant to his authority under the International Economic Emergency Act and the National Emergency Act, among others.²² He found that the "policies and actions of the Government of Nicaragua constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with the threat." The embargo prohibited all imports of goods and services of Nicaraguan origin and all exports of goods and services destined for Nicaragua except for those destined for the democratic resistance organization. Additionally, Nicaraguan aircraft were forbidden from landing in or taking off from the United States and Nicaraguan vessels were prohibited from entering U.S. ports.

The embargo against Nicaragua is notable particularly because Nicaragua brought a formal complaint before the GATT and got the reluctant United States to agree to the formation of a dispute settlement panel.²³ Although discrete discriminatory measures had been challenged, a virtually total embargo apparently had never before been brought before a dispute settlement panel. Nicaragua also had previously sued the United States before the International Court of Justice (ICJ) and gotten a determination that the military and paramilitary actions taken against Nicaragua, including the embargo, were violations of international law.²⁴

The United States claimed an exception under the national security clause of GATT

Article XXI.²⁵ Nicaragua challenged the validity of the motives of the United States, complaining that it was improperly using a trade forum and trade measures to achieve political ends.²⁶ It wanted a panel to examine the validity of the United States' claim to the national security exemption by determining whether the Nicaraguan situation posed a valid national security concern for the United States.²⁷ But although the United States consented to the formation of a panel, it insisted that the GATT could not question the validity of a party's national security concerns.²⁸ It was a party's prerogative to decide what it considered a threat to national security. The GATT members agreed and did not authorize the panel to examine the justification for the invocation of GATT Article XXI. The panel could only decide whether the measures taken by the United States were consistent or inconsistent with the General Agreement. Therefore, the panel concluded that it could not determine whether the actions of the United States were inconsistent with or in compliance with its obligations under the General Agreement.²⁹

Thus, the United States successfully invoked the national security exception under GATT Article XXI and used trade sanctions for political purposes, which it maintained was permissible. However, although many other GATT parties agreed that GATT Article XXI properly left to each party the judgment of what constituted its essential security interests, the parties also regretted the expansive interpretation of the exception by the United States and were concerned that frequent resort to it as an all-purposes defense would erode the GATT rules.³⁰ They also noted the 1982 decision regarding GATT Article XXI, indicating that actions under Article XXI, should not be overly broad in scope.³¹ Free elections were held in Nicaragua in February 1990.³² President Bush restored the sugar quota in April 1990³³ and Nicaragua, stating that it had reached an agreement with the United States on economic relations, requested the discontinuation of proceedings to determine reparations in the ICJ case in 1991.³⁴

THE POSSIBILITY OF A WAIVER UNDER GATT ARTICLE XXV: 5 AND THE WTO AGREEMENT

Article IX:3 of the WTO Agreement³⁵ specifies a three-fourths majority vote for a waiver of a multilateral trade agreement obligation "in exceptional circumstances." Article XVI:3 of the WTO Agreement provides that in case of a conflict between a WTO Agreement provision and that of a multilateral trade agreement, the WTO Agreement prevails. GATT Article XXV:5 provides that the Contracting Parties may waive an obligation for a particular party "in exceptional circumstances not elsewhere provided for in this agreement" by a two-thirds majority vote of approval where such majority comprises more than half of the parties.³⁶ So under the terms of the WTO Agreement, a three-fourths vote is now required. Under GATT Article XXV:V, the GATT parties may also by such a vote define certain categories of exceptional circumstances to which other voting requirements shall apply for a waiver and may prescribe such criteria as may be necessary for the application of Article XXV:5. Article IX:4 of the WTO Agreement provides that a waiver granted for more than one year shall be reviewed annually by the Ministerial Conference which shall examine whether the exceptional circumstances justifying the waiver still exist and whether all terms and conditions for the waiver have been met. Possibly the United States could ask for a waiver of the MFN for Cuba, but the three-fourths majority required for the grant of the waiver would be difficult to

meet; the Contracting Parties are unlikely to relax the requirements for such a serious matter. Furthermore, the annual review of the waiver would make it necessary to satisfy the Ministerial Conference that the exceptional circumstances still existed in order to maintain an embargo pursuant to a waiver, thereby making it less likely that such an embargo could be maintained indefinitely. In the 1950s, the United States and Czechoslovakia were granted waivers to suspend application of the GATT to each other.

In 1951, the United States suspended application of the GATT to Czechoslovakia, although it was an original signatory to the GATT and accepted the Protocol of Provisional Application³⁷ and the United States had not invoked GATT Article XXXV, providing for non-application between parties upon accession, with respect to Czechoslovakia upon the accession of the two to the GATT. Czechoslovakia did not have a non-market economy at the time of its accession to the GATT on April 20, 1948.³⁸ But subsequent changes in the government of Czechoslovakia and friction with the United States over U.S. claims to compensation for post-war nationalizations led to a breach in trade relations.³⁹ The United States and Czechoslovakia each made declarations, using language found in GATT Article XXIII:1, that the other, through its actions, had nullified benefits which should have accrued to the declaring party.⁴⁰

Although the GATT parties apparently considered the issue to have been resolved through dispute settlement under GATT Article XXIII:2,⁴¹ it also appears that the Contracting Parties took joint action pursuant to GATT Article XXV:5.⁴² This provides that "under exceptional circumstances not elsewhere provided for in this Agreement, the Contracting Parties may waive an obligation imposed upon a contracting party by this Agreement; *Provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties [emphasis added].*" The Contracting Parties declared that, considering "that a contracting party may not be held subject to the provisions of the General Agreement when the fulfillment [sic] of its obligations is rendered impossible by *exceptional circumstances of a kind different from those contemplated under the General Agreement . . . the Governments of the United States and Czechoslovakia shall be free to suspend, each with respect to the other, the obligations of the [GATT]* [emphasis added]."⁴³

However, more recently where the waiver has been requested by a party for discriminatory treatment of a certain other party, the discriminatory treatment was to the benefit of the other party. For example, the original GATT authority for voluntary tariff preference programs for developing countries, e.g., Generalized System of Preferences (GSP), was done by waiver.⁴⁴ Also, Italy requested permission to give more favorable treatment to certain products from Libya and from Somalia; Australia asked permission to treat certain products of Papua-New Guinea more favorably.⁴⁵ The more developed country was trying to assist the economic development of the lesser developed country or to continue a traditional special relationship. So a waiver to deny MFN treatment to Cuba may be difficult to obtain, particularly since Cuba now, unlike Czechoslovakia in the 1950s, apparently has no interest in a mutual suspension of GATT application, as evidenced by its protests that the embargo is illegal.⁴⁶

CONCLUSION

The U.S. suspension of application of the General Agreement to Cuba, embodied by the

embargo, is probably justifiable under international law on the grounds of Cuba's change to a communist regime and a non-market economy. The United States may also invoke GATT Article XXI, the national security exception, on the basis of a concern for national security, with or without a mutual declaration of suspension authorized by the Contracting Parties. A waiver to permit the embargo may be requested under Articles IX:3 and IX:4 of the WTO Agreement and GATT Article XXV:5, but may not be readily granted.

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

MARGARET MIKYUNG LEE,
Legislative Attorney.●

FOOTNOTES

¹General Agreement on Tariffs and Trade of 1994 as defined in Annex 1A of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, concluded April 15, 1994 (reprinted at H. Doc. No. 103-316, Vol. I, 103d Cong., 2d Sess. 1339 (1994)).

²The article and paragraphs refer to the provisions of the General Agreement on Tariffs and Trade originally concluded Oct. 30, 1947, 61 Stat. (5) & (6), T.I.A.S. 1700, 55 U.N.T.S. 194, and annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee on the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application) as amended before the entry into force of the Agreement Establishing the World Trade Organization. Hereinafter, these provisions will be referred to as "GATT Article ____."

³It accepted the 1947 Protocol of Provisional Application on Jan. 1, 1948. M. Bowman & D. Harris, "Multilateral Treaties: Index and Current Status" 133 (1984).

⁴Proclamation 3447, 27 Fed. Reg. 1085 (1962) (embargo proclaimed pursuant to §620(a) of the Foreign Assistance Act of 1961, 75 Stat. 445, authorizing the President to establish and maintain an embargo against Cuba and also pursuant to the Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, which resolved that the present Cuban government was incompatible with the Inter-American system and urged member states to take those steps they considered appropriate for their individual and collective self-defense, in light of the offensive of Sino-Soviet communism with which the Cuban government was publicly aligned).

⁵"GATT Activities 1992" 57 (1992) (Cuba protested the Cuban Democracy Act of 1992 reinforcing the trade embargo of the U.S. against Cuba); Council Hears Cuban Complaint on U.S. Sugar Imports, EC Protest on Manufacturing Clause, 3 International Trade Reporter 723 (BNA 1986) (Cuba complained that the U.S. requirement that sugar beet imports through a Third World country must be certified as not being from Cuba discriminated against Cuba and termed the measure "a clear case of aggression against Cuba"); Nicaragua Charges U.S. is "Undermining" Trading System by Cuts in Sugar Quota, 8 International Trade Reporter 330 (1983) (Cuba supported Nicaragua's protest against the U.S. embargo against Nicaragua, saying "we, too, have suffered for more than 20 years from U.S. discrimination").

⁶There do not appear to be any statements recorded in the official supplements to the Basic Instruments and Selected Documents nor reference to unpublished documents concerning such a statement. However, at the time of the suspension of MFN treatment for Poland, some GATT parties recalled that the United States-Poland dispute was the first time a suspension of MFN treatment had been brought before the GATT since the United States-Cuba breach in trade relations. Poland Unsuccessful in Attempt to Get GATT Censure of U.S. for MFN Suspension, 7 International Trade Reporter 187 (1982).

⁷U.N. Adopts Resolution Favoring Free and Fair Trade with Cuba, 9 International Trade Reporter 2045 (BNA 1992). Although it may seem that expropriation of property requires some sort of compensation under international law, the developed and developing countries have not been able to agree on this point, with the developed countries insisting on an international minimum standard and the developing countries insisting that expropriation is a domestic matter to be regulated by the expropriating country under its own laws. D. Harris, "Cases and Materials on International Law" 422-433 (1983).

⁸Art. 62, May 23, 1969, UN Doc A/Conf 39/27, 8 I.L.M. 679, 63 A.J.I.L. 875 See also Restatement (Third) of the Foreign Relations Law of the United States §336 (Am. Law Inst. 1987) [hereinafter Rest. 3rd].

⁹Rest. 3rd, supra note 8, §337, cmt. f, and 337 (Am. Law Inst. 1987) [hereinafter Rest. 3rd].

¹⁰Rest. 3rd, supra note 8, at §336(a), cmt. e and Reporters' Note 4 (1987). Although even actual, overt acts of hostility do not necessarily constitute a fundamental change of circumstances sufficient to terminate or suspend the operation of an agreement between the parties engaged in hostilities, where the agreement at issue concerns trade relations and trade is essentially disrupted by political or military tension, the agreement probably could be considered terminated or suspended between the concerned parties. Other types of agreements probably would not be considered terminated by any of the parties because of either overt hostility or political and military tensions. For example, the U.N. Charter prohibits the use of force and was intended to end war as a solution to international disputes, but obviously force is still used to resolve disputes and the Geneva Conventions on the Law of War are considered applicable for humanitarian reasons during hostilities.

¹¹Ya Qin, China and GATT: Accession Instead of Resumption, 27 J. of World Trade 77, 95-97 and note 89 (1993); Rest. 3rd, supra note 8, at §336, cmt. f.

¹²Rest. 3rd, supra note 8, at §333, Reporters' Note 3.

¹³"Nothing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations. . . ."

¹⁴See supra note 4.

¹⁵M. Bowman & D. Harris, supra note 3, at 133.

¹⁶Philip Brenner & William M. LoGrande, Congress and Nicaragua: The Limits of Alternative Policy Making, in "In Divided Democracy: Cooperation and Conflict Between the President and Congress" 219, 222-225 (James A. Thurber ed., 1991).

¹⁷Proclamation No. 5104 of September 23, 1983, 48 Fed. Reg. 44057 (1983).

¹⁸Dispute Settlement, United States—Imports of Sugar from Nicaragua, 31 B.I.S.D. 66, 73-74 (1985).

¹⁹Id. at 72.

²⁰GATT Council Hears Attack on FSCs and Other U.S. Moves, Delays Work Program Evaluation, 1 International Trade Reporter 586 (1984); Impass Occurs at Opening of Annual Meeting as U.S. Threatens to Link Funding to Work, 1 International Trade Reporter 644 (1984).

²¹GATT Council Hears Attack on FSCs and Other U.S. Moves, Delays Work Program Evaluation, supra note 20, at 586.

²²Exec. Order No. 12513, 50 Fed. Reg. 18629 (1985).

²³U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, 2 International Trade Reporter 765 (1985); U.S. Again Blocks GATT Dispute Panel Sought by Nicaragua to Investigate Trade Embargo, 2 International Trade Reporter 965 (1985); GATT Council Appoints Panel to Study U.S. Nicaragua Embargo, Reviews Other Disputes, 2 International Trade Reporter 1313 (1985).

²⁴International Court of Justice: Judgment on Merits in Case Concerning Military and Paramilitary Activities In and Against Nicaragua (*Nicaragua v. United States*), June 27, 1986, 25 I.L.M. 1023 (1986); "GATT Activities 1986" 59 (1987).

²⁵"GATT Activities 1985" 47-49 (1986); "GATT Activities 1986," supra note 24, 58-59. See also supra note 23.

²⁶"GATT Activities 1985," supra note 25, at 47; U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, supra note 23.

²⁷"GATT Activities 1985," supra note 25, at 57-49; "GATT Activities 1986," supra note 24, at 58-59; U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, supra note 23.

²⁸Id.

²⁹"GATT Activities 1986," supra note 24, at 58-59. "GATT Activities 1985," supra note 25, at 48.

³⁰See also Decision Concerning Art. XXI of the General Agreement, Decision of 30 November 1982, 29 B.I.S.D. 23 (1983). The Decision stated that the Contracting Parties should consider the third party interests that may be affected in taking action under Article XXI. When such action is taken, all affected GATT parties retain full rights under the GATT (hereinafter Decision Concerning Art. XXI). GATT decisions will become part of the GATT 1994 according to the General Agreement on Tariffs and Trade 1994, ¶ 1(b)(iv), but this provision is hortatory.

³¹Philip Brenner & William M. LoGrande, supra note 16, at 242.

³²Proclamation No. 6120, 55 Fed. Reg. 17744 (1990).

³³International Court of Justice: Judgment on Merits in Case Concerning Military and Para-

military Activities In and Against Nicaragua (*Nicaragua v. United States*), June 27, 1986, supra note 24.

³⁴Agreement Establishing the World Trade Organization, as reprinted in H. Doc. No. 103-316, Vol. I, 103 Cong., Sess. 1327 (1994).

³⁵See also Article XXV—Guiding Principles to be Followed by the Contracting Parties in Considering Applications for Waiver from Part I or Other Important Obligations of the Agreement, Procedures adopted on 1 November 1956, 5 B.I.S.D. 25 (1957).

³⁶It signed the 1947 PPA on April 20, 1948. M. Bowman & D. Harris, supra note 3, at 133. The 1947 PPA was laid open for signature from Oct. 1947, to Nov. 15, 1947 for eight principal countries, and until June 30, 1948, for all other signatories to the General Agreement. None of the countries discussed in this section were among the eight who signed by Nov. 15, 1947.

³⁷M. Bowman & D. Harris, supra note 3, at 133.

³⁸Article XXI, United States Export Restrictions, Decision of 8 June 1949, II B.I.S.D. 28 (1952) (GATT parties rejected the complaint by Czechoslovakia under Articles I and XXI that U.S. export restrictions did not conform to Article I); Note, East-West Trade: The Accession of Poland to the GATT, 24 Stan. L. Rev. 743, at note 7 (1972); Czechoslovakia Renews Effort to Regain MFN, Says U.S. Firms Losing Out in Modernization, 5 International Trade Reporter 117 (BNA 1988).

³⁹Suspension of Obligations between Czechoslovakia and the United States under the Agreement, Declaration of 27 September 1951, II B.I.S.D. 36 (1952).

⁴⁰See the cumulative index at the back of all B.I.S.D. issues which list the suspension of GATT application between the United States and Czechoslovakia as an action under Article XXIII.

⁴¹J. Jackson & W. Davey, "Legal Problems of International Economic Relations: Cases, Materials and Text on the National and International Regulation of Transnational Economic Relations" 916 (2d Ed. 1988).

⁴²Suspension of Obligations between Czechoslovakia and the United States under the Agreement, supra note 40.

⁴³18th Supp. B.I.S.D. 24 (1972).

⁴⁴Australia and products of Papua-New Guinea, Decision of 24 October 1953, 2 B.I.S.D. 18, 93 (1954); Italy and products of Libya, Decision of 26 October 1951, II B.I.S.D. 10 (1952), Decision of 9 October 1952, 1 B.I.S.D. 14 (1953); Italy and the products of Somalia, Decision of 19 November 1960, 9 B.I.S.D. 40, 229 (1961) and other decisions listed in the cumulative index in every volume of the B.I.S.D.

⁴⁵See supra note 5.

MANUEL T. SANCHEZ

● Mr. BINGAMAN. Mr. President, it is with pleasure that I ask the Senate to recognize Manuel T. Sanchez for his service to my home State of New Mexico. Manuel has distinguished himself as a successful family man, businessperson, and community leader.

He was born on November 15, 1901 in Las Vegas, NM, 11 years before New Mexico was admitted into the Union. Needless to say, Manuel has witnessed New Mexico flourish and change during his lifetime.

In the early 1920's, Manuel and his family moved to a section of Albuquerque known as Martineztown. There they started a grocery store to serve the community. This store is still in operation today and it still serves as an unofficial meeting place for social and political gatherings.

In 1933, Manuel was elected Democratic ward chairman of Ward 11 B. During those early years he worked closely with my uncle John Bingaman in helping Governor Tingley succeed in his campaigns. For over 60 years, he has continued to serve in this capacity as ward chair. His success is a result of his dedication to the work ethic and in the belief that a person's word is as good as a written contract. It would