

Mike Jacobson, Clayton Lord, Joe Cronkright, Adam Hickson, Carmen Allen, Mike Jarvi, Daryl Johnson, Jack Applekamp, Gary Dinkel, Rick McVey, Jay Wittak, Robert Garrison Sr., Joel Enking.

Wayne Young, Mark Douglas, Donald Kuhr, Randy Bruntjens, John Mattila, Ellis Sutfin, Pat Halefrisch, Debbie Begalle, Terry Popour, Richard Annen, Gerald Mohlman, Chester Sartori, John Krzycki, Robert Burnham, Craig Farrier, John Johnston, Charles Vallier, Robert Ziel, Beverly Current, Jeffery Stampely, Gary Willman, Daniel Laux, Jeffery West, Otto Jacob, Kay Fisher, Jason Tokar, Paul Pierce, Brad Johnson, Jack Maurer, Jim Haapapuro, Byron Sailor, John Turunen, Scott Seberd, Michael Slade, Daniel McNamee, Patrick Olson, Steve Adkins, Pete Davis, Debra Huff, Richard Berkheiser, Roger Grinsteiner, Russ MacDonald, Amy Dover, Paul Gaberdiel, Jeff Noble, Chuck Lanning, Brian Mulzer. •

REFORM OF NAFTA CHAPTER 19 DISPUTE PROCESS

• Mr. CRAIG. Mr. President, in preparation for renewed consideration of adding countries to the NAFTA and of fast-track legislation for this purpose, it is imperative, in my view, that action be taken to resolve a serious problem with the NAFTA: The NAFTA Chapter 19 dispute settlement system for antidumping duty and countervailing duty appeals.

In August of last year, nine of my Senate colleagues, including the former majority leader and the chairman of the Trade Subcommittee of the Committee on Finance, expressed serious concerns about Chapter 19 in a letter to then-U.S. Trade Representative Michael Kantor.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. CRAIG. Mr. President, I wish to emphasize that I share the concerns of the authors of this letter and believe that addressing this failed system must be a priority for U.S. trade policy. Under Chapter 19, appeals of determinations that imports are subsidized or dumped into the U.S. market were, for NAFTA countries, transferred from domestic courts to panels of private individuals, which include foreign nationals. The system was introduced in 1988 as a provisional compromise for the United States-Canada Free-Trade Agreement. Although serious reservations were expressed about Chapter 19 at that time, it was accepted on an interim basis with Canada only until disciplines against Canadian subsidies and dumping could be negotiated. Although no such unfair trade disciplines were agreed to, Chapter 19 was, unfortunately, extended to the NAFTA. Its inclusion was a key reason for my vote against that agreement.

Chapter 19's infirmities are several. As the Justice Department indicated in 1988, there are major constitutional problems with giving private panelists—sometimes a majority of whom are foreign nationals—the authority to issue decisions about U.S. domestic law that have the binding force of law. These panelists, coming from different legal and cultural disciplines and serving on an ad hoc basis, do not necessarily have the interest that unbiased U.S. courts do in maintaining the efficacy of the laws as Congress wrote them. Moreover, the ad hoc, fragmented nature of Chapter 19 decision-making can lead to contradictory outcomes, even with regard to a single instance of alleged unfair trade.

In practice, Chapter 19 has revealed itself to be unacceptable. A foremost example is the Chapter 19 review of a 1992 United States countervailing duty finding that Canadian lumber imports benefit from enormous subsidies. Three Canadian panelists outvoted two leading United States legal experts to eliminate the countervailing duty based on patently erroneous interpretations of United States law—interpretations that Congress had expressly rejected only months before. Two of the Canadian panelists served despite egregious, undisclosed conflicts of interest. The matter then was argued before a Chapter 19 appeals committee, and the two Canadian committee members outvoted the one United States member to once again insulate the Canadian subsidies from United States law.

The U.S. committee member was Malcolm Wilkey, the former Chief Judge of the Federal Court of Appeals for the D.C. Circuit and one of the United States' most distinguished jurists. In his opinion, Judge Wilkey wrote that the lumber panel decision "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." Judge Wilkey and former Judge Charles Renfrew—also a Chapter 19 appeals committee member—have since expressed serious constitutional reservations about the system. While some have claimed that Chapter 19 decides many cases well, its inability to resolve appropriately large disputes, and its constitutional infirmity, demand a remedy.

Like my colleagues who wrote to Ambassador Kantor, I believe that something must be done about Chapter 19. I support returning appellate jurisdiction to the U.S. judiciary where it had long rested and still rests for non-NAFTA countries. Alternatively, Chapter 19 perhaps could be reformed to eliminate its constitutional and practical infirmities. It should, at minimum, be clear to executive branch officials that Chapter 19 cannot be extended to any additional country in its current form, be it Chile or any other NAFTA prospect. I look forward to working diligently in the upcoming Congress to correct this serious problem.

EXHIBIT 1

AUGUST 21, 1995.

Ambassador MICHAEL KANTOR,
*Trade Representative, Executive Office of the
President, Washington, DC.*

DEAR AMBASSADOR KANTOR: In light of the advent of the new trade and dispute settlement rules in the agreements establishing the World Trade Organization (WTO), we are writing to express our concern with the current system for reviewing antidumping and countervailing duty cases under the NAFTA.

As you know, the original intent regarding Chapter 19 was that: 1) it would be limited to Canada and quickly phased out; 2) panelist conflict-of-interest rules would be strictly enforced; and 3) panels reviewing U.S. determinations would be bound, like the U.S. Court of International Trade, by U.S. law and its deferential standard of review.

It is clear that these conditions have not been met. Despite earlier assurances to the contrary, the system was extended to Mexico and effectively made "permanent" with respect to Canada and Mexico in the NAFTA. Moreover, the U.S.-Canada softwood lumber case demonstrated serious inadequacies and problems with conflicts of interest and standards of review under the Chapter 19 system.

We believe that because of the intended temporary nature of Chapter 19 and the great controversy it has engendered, the Chapter 19 dispute settlement mechanism should not be extended in future trade agreements to any other country, including the present NAFTA accession negotiations with Chile. This belief is without regard to whether such agreements should be concluded.

Under Chapter 19, ad hoc panels of private individuals rule in place of judges on whether antidumping and countervailing duties have been imposed consistent with the domestic law of the importing country. This requires Chapter 19 panels to interpret and apply national law itself, rather than resolving disputes over the interpretation of international agreements as would normally occur in international dispute settlement like the WTO. These panel decisions are automatically implemented without judicial or political review of accountable government officials.

In light of the WTO's new binding international dispute settlement process, and the Uruguay Round's new agreements on subsidies and dumping, we question the need for a special NAFTA trade remedy. It is our belief, especially in light of past experience, that disputes about U.S. law are best left to the U.S. Court system.

Absent an outright elimination of Chapter 19, which we would certainly consider in a favorable light, substantial attention should be given to reforming Chapter 19 with respect to the current NAFTA. The United States should not agree to extend this fundamentally flawed system to any other country. We trust that you will consider our suggestion in your ongoing negotiations with Chile, and urge increased consultation with the Congress during the process.

We appreciate your consideration of this important matter.

Sincerely,

MAX BAUCUS, DAVID PRYOR, JOHN ROCKEFELLER, JOHN BREAUX, KENT CONRAD, CHUCK GRASSLEY, BOB DOLE, ORRIN HATCH, ALFONSE D'AMATO. •

TRIBUTE TO SHERRY KOHLENBERG

Mr. WARNER. Mr. President, exactly 2 weeks ago on September 16, I was privileged to join with Virginia's First

Lady, Mrs. Susan Allen, in the opening of the Face of Breast Cancer exhibit at the Regency Square Mall in Richmond, VA. This dramatic exhibition displays the photographs and life stories of 84 American women who have tragically become the victims of breast cancer. Of those portrayed, four were Virginians: Marianne Thatcher of Arlington, Lorraine M. Smusz of Buchanan, Kyong Ja Kim Pearce of Herndon, and Sharon Helen "Sherry" Kohlenberg of Richmond.

At the opening of the exhibit, the Virginia Breast Cancer Foundation, which together with the National Breast Cancer Coalition sponsored the exhibit, presented the 1996 Sharon H. Kohlenberg Healthcare Service Award to two outstanding individuals for their exceptional contributions in the fight against breast cancer. Those honored were Dr. Claire Carman, a surgeon from Tidewater, VA; and Katharine Spiegel, a nurse from the Medical College of Virginia.

Presenting the awards was Mr. Larry Goldman, husband of Sherry Kohlenberg, and their son, Sammy. In memory of Sherry, Mr. Goldman gave one of the most moving tributes which I have ever heard, and with his permission, I am today submitting it for the CONGRESSIONAL RECORD, not only to share with my Senate colleagues but indeed all of those who have loved ones or are themselves battling the scourge of breast cancer.

The tribute follows:

Sherry didn't want to be a "Face of Breast Cancer." When I met her, she was nineteen, I was twenty-one and we were students at the University of Wisconsin-Madison, she only wanted to be Sherry—happy, independent thinking, caring, life loving Sherry. She loved to just hang out with our friends, share a bottle wine, talk and laugh the night away.

School was important to her. Her interest and ability to master Romantic languages, and her interest in social justice led to her major in Iberio-American Studies. She also liked to get A's and would definitely stand up to a professor who had evaluated her work unfairly.

For her artistic outlet, Sherry was a photographer. She spent hours taking and developing photos that showed her perspective of herself and life. Each finished photograph had to have the perfect gradations of blacks and whites before it was matted as a finished work of art. These are a few of them. The hand-colored photo won first prize in the University of Wisconsin student art show.

Later in her life, Sherry saw a need and had a desire to enter what was at that time very male-dominated world of health administration. She decided to concentrate in the field of Risk Management, setting up policies that kept the costs of health care down so that no one in our society would ever be denied the health care that they needed. At the Medical College of Virginia, she defined the structure and policies of the Risk Management Department. Her warm, caring personality and sharp, quick intelligence made her the perfect person to balance complex issues between patients, doctors and more than once, lawyers. She understood, she cared and she was always fair.

Bright, artistic, professional, Sherry was also, of course, Sammy's mommy and my wife. We bought what was supposed to be our first house over in Lakeside, thinking we

would keep it for five years and move to another school district when Sammy was ready for first grade. Sam was suppose to be the first of three children. Sherry had the good job while I wrote, and took care of Sam but we had plans for Sherry to take some time off to spend with the children at some future date. Sherry had plans for a lifetime and when breast cancer started shattering her plans, she simply made more plans.

Sherry was never a victim of breast cancer. She was always a fighter and an advocate. She fought so that the fight against breast cancer would get the funding and attention that it deserved. She fought against policies that harmed women, against policies and attitudes that didn't go far enough in this war. When Sherry realized that the cancer was stealing her life, she didn't stop fighting. She fought for Sam, for me, for every person and family that was and will be forever battered by this horrible disease. She gave me the support I needed to finish my Masters and become a teacher. With her concern that she create strong memories for Sammy and that he would always know how much she loved him, Sherry contacted her friend, Hillary Clinton, and arranged a White House visit where Sammy met the President and Mrs. Clinton, and made sure that Sammy and I continued to be part of the "Faces of Hope" family. Sherry didn't even let the cancer stop her from taking a trip to Disney World and what she called "that smutzy Disney World" King's Dominion where Sammy remembers getting stuck in smurf mountain with his Mommy. Sherry made sure that the White House had the name and phone number of her close friend Mary Jo Kahn who she knew was an valuable resource in forming breast cancer policy. She cared and worried about all of us, not herself.

Sherry never wanted to be "A Face of Breast Cancer" and she wouldn't have wanted to have an award named after her, she wanted to live, but she would have been honored and proud of both. As a part of the "Faces of Breast Cancer" Sherry will continue being the advocate for breast health. And with this wonderful "Sherry Kohlenberg Healthcare Service Award" given by the Virginia Breast Cancer Foundation, Sherry will always be honoring those who continue the fight, and she would have been especially pleased when close friends like Kathy Spiegel, and those she would have wanted to know like Dr. Claire Carman, are honored. With these honors, Sherry is with us, her voice is heard, her strength supports us, her love is felt, as it always will be until this war against breast cancer is won. Thank you.●

TWIN CITIES-UPPER MIDWEST HUMAN RIGHTS CAMPAIGN AWARDS

● Mr. WELLSTONE. Mr. President, I recently had the honor of attending the annual Twin Cities-Upper Midwest Human Rights Campaign Awards Dinner honoring Ruth and David Waterbury of Minneapolis, and the Northern States Power Co. The work of the Human Rights Campaign, which is dedicated to combatting discrimination, ensuring equal protection for all under our laws, and advancing the interests of gay and lesbian persons in the United States, is one of the most effective organizations of its kind.

The Brian Coyle Leadership Awards, presented to the Waterburys and Northern States Power, are dedicated to the memory of Minneapolis City

Council Member Brian Coyle, a community activist and inspiration to many, including to me. He was a friend of mine, and his work to end discrimination is a lasting legacy to the gay and lesbian community in my State, and across the Nation. As a long-time social and political activist myself, I was humbled that night to be in the presence of so many individuals who stand on principle, often in the face of terrific odds and in the face of anger, misunderstanding, bias and even, in some extreme cases, violence against themselves or their loved ones.

Ruth and David Waterbury are two such people. They have contributed much to our community, both as a couple and as individuals. As I have come to know this wonderful family over the years, I continue to be amazed at their tireless and selfless work on behalf of others. Both were board members of the Minneapolis-St. Paul chapter of Parents and Friends of Lesbians and Gays, and Ruth was president for the year just ended. David was chair of the Governor's Task Force on Gay and Lesbian Minnesotans. Ruth is a current board member of District 202. Each has been instrumental in establishing scholarship funds for gay and lesbian students at their respective alma maters, Yale and Carleton.

The Waterburys have also been involved in the good work of the National Gay and Lesbian Task Force, It's Time Minnesota, Plymouth Congregational Church, Interfaith Coming Out Celebration, Minnesota GLBT Education Fund, and the Human Rights Campaign. Additionally, in part due to their great efforts, my State of Minnesota enacted an inclusive civil rights law that is a model for other States to follow. Together they have been visible and effective advocates on behalf of the gay and lesbian community in our State.

If I might, let me include an excerpt from Ruth and David's biography that speaks to their commitment not only to the campaign for human rights, but to each other as well. "Ruth and David Waterbury have been advancing the civil rights of gays and lesbians since shortly after their daughter came out to them. Margery gave them literature to read and expressed hope that they would eventually be glad she was a lesbian. Ten years later, they have now fulfilled her hope and feel privileged to have taken the journey."

For many parents, it is sometimes difficult to accept differences in their children that they did not foresee or wish for. For many others, it is not easy to accept people who are different from themselves—whether it be because of their gender, race, religion or sexual orientation. But the Waterburys chose a path of acknowledging their daughter's orientation, embracing it, and working to help other parents confronted by the same issues. Because of people like them, there is much hope, and even reason for joy. Because of the actions of those like the Waterburys,