Mr. Speaker, I rise in support of Senate Joint Resolution 5. As chairman of the Committee on Agriculture, I believe it is vital that the person representing the United States in trade negotiations and resolutions of disputes recognize that agriculture is an extremely important and essential issue to be considered in all trade negotiations and resolutions of disputes. American farmers and ranchers, the most productive in the world, can prosper only where there is free and fair world trade.

In fact, in 1996, Mr. Speaker, agricultural exports totaled $60 billion, and the agricultural trade surplus exceeded $26 billion. There is nevertheless ample opportunity for expansion. It is incumbent upon the administration, through the Office of Trade Representative and the Department of Agriculture, to make sure that opportunities exist for trade expansion and that trade disputes are resolved in a timely manner.

I had the opportunity to meet Ambassador Barshefsky, and she assures me that her knowledge of agriculture and her commitment to ensuring the proper emphasis will be on agriculture export issues. In our discussion we agreed that agriculture is the No. 1 high technology export and that it is also the No. 1 priority with the U.S. Trade Representative. In my discussions with the Ambassador, she assures me that agriculture will be her top priority, and that is why I support Senate Joint Resolution 5 and the waiver needed to assure that she will be indeed the next U.S. Trade Representative.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY].

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, I rise in support of Senate Joint Resolution 5 regarding the appointment of Charlene Barshefsky as U.S. Trade Representative. I had the opportunity to work closely with the Ambassador and Deputy Trade Representative Jeff Lang during negotiations on the WTO Telecommunications Agreement, and I must say that I was pleased with her determination to consult regularly with Congress during these talks, and I do mean regularly. They were most helpful.

Perhaps more to the point, I was deeply impressed by what was achieved in Geneva. The agreement covers 95 percent of rural telecom revenue, giving United States firms unprecedented access to markets in Europe, Asia, and Latin America, and covers some 70 countries in its sweep.

In my opinion, the agreement is proof that Charlene Barshefsky's reputation as a tough, stalwart negotiator is well-deserved, and I would certainly support the waiver. I am just sorry that we really have to have a waiver because I think the provision in current law is too xenophobic and unrealistic.

On a related matter I want to correct a continued misperception that was repeated on the floor of the other body during debate on this measure. The gentleman from South Carolina took a statement from the RECORD made by the chairman of the House Committee on Commerce, the gentleman from Virginia [Mr. BLILEY], and inferred from it that the administration, by inference USTR, asked this Member to amend section 310(b) of the Communications Act on their behalf.

□ 1430

This is simply not so. The statement alluded to our efforts during debate on the Telecommunications Act to satisfy the concerns of the executive branch regarding international investment in U.S. telecommunications firms. However, the chief changes made were in the area of national security, and we worked very closely with the FBI and National Security Agency and the CIA, and the effect was to tighten the law, not the loosen it.

The input we received from the executive branch came at the request of the cosponsor, the gentleman from Michigan [Mr. DINGELL], and the advice we received came primarily from the security agencies, as I recall, not from the Office of the Trade Representative.

Of course, I did consult with USTR on the effect my language would have on their negotiations, as any responsible legislator would, but these consultations came at my request, not the other way around, and I wanted to point that out for the record.

Mr. RANGEL. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, I oppose the resolution, I oppose the waivers.

Current law says that no one may be appointed as U.S. Trade Representative or Deputy Trade Representative if they have ever in their past represented a foreign government in a trade dispute or a trade negotiation with the United States. Now look, I think Charlene Barshefsky is a great woman, a great American, and may be doing a great job. However, one of the reasons we passed this legislation is some of these trade representatives, after they leave, go on the employ of some of these foreign governments and companies overseas.

Now, we just passed this law a year ago, and now we are about to waive it, with Japan approaching $70 billion in trade surpluses, China approaching $50 billion in trade surpluses. I have nothing against Charlene Barshefsky, but here is the question I pose to the Congress of the United States: Can we not find one qualified American to be the trade representative of our country that has never been in the employ of, represented a foreign interest, or had a connection in resolving or monitoring or negotiating or resolving a trade matter on behalf of a foreign country with our Nation? I think that is the issue.

I am certainly not going to ask for a vote, and I know this is going to pass overwhelmingly, but it is no surprise our young people are responding to ads in the newspaper box so-and-so where the job is in Mexico and overseas. There is not going to be a damn job left in this country.

The only thing that bothers me, I am beginning to wonder if we have anybody in the right circle that could actually apply for these positions that has never had a tie to a foreign nation. Beam me up, here. I am a ''no.'' I am not going to ask for a vote, but I am opposed to this waiver, and I think the Congress should follow the laws that they pass that have some common sense attached to them.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. (Mr. GOODLATTE). The Chair would remind all Members to refrain from the use of profanity in their speech on the floor.

Mr. CRANE. Mr. Speaker, I yield 2 minutes to our distinguished colleague, the gentleman from Louisiana [Mr. TAUZIN].

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, let me say no one needs to be beamed up on this vote. This is a vote to confirm not only the appointment of Charlene Barshefsky, who is now our Deputy Trade Representative, to the Trade Representative, but also to pass a waiver that is necessary for that confirmation to be complete.

I want to first congratulate her on a near unanimous confirmation in the Senate and the near unanimous vote in the Senate on behalf of this resolution.

Let me point out that Charlene Barshefsky was already at USTR as Deputy Trade Representative when the law in question was passed last year. So this grandfathering is in fact a recognition of her already and continuous service at the USTR.

Let me also state that as chairman of the Subcommittee on Telecommunications and Trade of the Committee on Commerce, we have all been extraordinarily impressed with the caliber of service that this ambassador has already provided to this country. She has worked cooperatively with our committee in keeping us informed and interacting with us throughout all the WTO negotiations in Geneva that led to the successful passage of the recent agreement in Geneva on telecommunications and opening up those markets all over the world to U.S. investment.

That action alone is going to create opportunities for American jobs and businesses throughout the world in telecommunications. It is patterned very much after the 1996 Telecommunications Act that this House and the Senate so unanimously joined in just 1996 to create an open market for the United States in telecommunications.

I look forward as chairman of the subcommittee very soon to receiving the testimony of Ms. Barshefsky before our subcommittee, in not only reporting on that successful negotiation of which we are all so proud, but on the continuing efforts to bring other countries in with new and improved offers so that we can continue to open up markets for telecommunications services throughout the world for American businesses and American jobs. I urge the adoption of this resolution.

Mr. RANGEL. Mr. Speaker, I have no further requests for time.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of Senate Joint Resolution 5 in the nomination of Ambassador Charlene Barshefsky to serve as U.S. Trade Representative. I have had the pleasure of working with Ambassador Barshefsky over the last few years. I cannot say enough about her toughness, her tenacity and her aggressive advocacy on behalf of U.S. interests.

I know Ambassador Barshefsky is tough because the companies in my district have benefited from her toughness. The Eighth Congressional District of Illinois, my district, is home to some of the leading high-technology companies in the country, and they have gained market share, increased their export sales, and hired new workers in part due to Ambassador Barshefsky's tenacity. It is because of her toughness that the cellular phone market in Japan is now more open than ever, that China has signed a rigorous agreement protecting intellectual property rights, and that Motorola, to take just one example from my district, has gained greater access to the Chinese market.

I have seen her in action. A year ago Ambassador Barshefsky started building support among the Quad nations for a landmark information technology agreement. At the WTO ministerial meeting in Singapore last December, I watched her work around the clock to hold together an alliance and put in place an unprecedented market-opening agreement. It was an honor and a pleasure to see her rolling up her sleeves, getting the nitty-gritty detail and coming out with a superior deal. She does not give up and she does not give in. I am very hopeful that under her leadership at USTR we would be able to pass fast-track legislation that would permit the negotiation of further market-opening initiatives.

It has been a real pleasure to work with Ambassador Barshefsky in large part because of her rare ability to reach across party lines and work with Members from both sides of the aisle to craft good deals that best serve our companies and our workers. Good jobs and a strong economy are American goals, not Republican or Democrat goals. Ambassador Barshefsky helps us reach those goals together by putting aside politics and hammering out good policy that opens markets, increases exports, creates jobs and strengthens the American economy so that we can remain the world's most competitive Nation into the next century and beyond.

Mr. Speaker, I agree with the gentleman from Texas [Mr. ARCHER], chairman of the Committee on Ways and Means, that we should not be forced to consider a waiver today because the underlining provision that we seek to waive is ill-advised and should not be in place. I would like to place in the RECORD a resolution and report recently adopted by the American Bar Association which clearly and cogently set forth the arguments in opposition to the preemployment restrictions imposed by the underlying provision.

Mr. Speaker, I strongly support the nomination of Ambassador Barshefsky as U.S. Trade Representative and urge my colleagues to vote for the waiver on Senate Joint Resolution 5.

AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL LAW AND PRACTICE RECOMMENDATION TO THE HOUSE OF DELEGATES

RECOMMENDATION

Be it resolved, That the American Bar Association urges the Government of the United States to proceed as follows:

I. Congress should avoid statutory provisions that disqualify senior executive or judicial appointees on the basis of clients they have previously represented.

II. Congress and the Administration should continue to utilize traditional mechanisms (including the Senate's power of confirmation), rather than special pre- or post-employment rules, to ensure that senior executive and judicial positions are filled only by highly qualified persons who will fulfill the responsibilities of their positions with complete integrity.

III. Ethics-in-government rules, whether addressed to pre- or post-government employment activities, should not single out foreign policy or trade functions for special, restrictive treatment. Congress should repeal the 1995 amendments to 18 U.S.C. §207 and 19 U.S.C. §2171(b), whose effect is to restrict the pre- and post-employment activities of U.S. Trade Representatives (''USTRs'') and Deputy USTRs on behalf of foreign interests, and should not extend those provisions to cover other senior government positions.

AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL LAW AND PRACTICE REPORT TO THE HOUSE OF DELEGATES

I. INTRODUCTION

On July 24, 1995, while debating the Lobbying Disclosure Act of 1995 (''LDA''),[1] the Senate accepted an amendment creating a new restriction on who could serve as United States Trade Representative (''USTR'') or Deputy USTR.[2] Specifically, the statute defining the positions of USTR and Deputy USTR, 19 U.S.C. §2171(b), was amended to disqualify from eligibility anyone who at any time in the past had directly represented, aided or advised a foreign government or political party in a trade negotiation or trade dispute with the United States. A related section of the LDA created new restrictions on the post-employment conduct of persons who have served as USTR or Deputy USTR. Prior law had contained a special restriction, enacted in 1992, against a former USTR's representing, aiding or assisting any foreign government within three years of having served as USTR.[3] The LDA extended the ban's duration to a lifetime ban and its coverage to include Deputy USTRs.

The Senate accepted these two provisions (hereinafter the ''USTR Amendment,'' reproduced in full at Appendix I to this Report) virtually without debate, and the provisions passed the House after some unsuccessful attempts to expand their reach. The President signed the Lobbying Disclosure Act, including the USTR Amendment, while recognizing the Justice Department's concern that the new pre-government employment restrictions may unconstitutionally impinge on the President's appointments power. In 1996, more bills were introduced to expand these restrictions to other government officials, but none were enacted.

The American Bar Association (''ABA'') urges repeal of the USTR Amendment. While both the pre- and post-employment restrictions are objectionable, as discussed below, it is the pre-employment disqualification that raises the most serious issues, and it is this provisions that most urgently should be repealed. The provision sets a dangerous precedent for limiting the availability of qualified candidates to serve in the U.S. Government. It automatically disqualifies potential nominees solely based on a prior relationship with a particular type of client. Such a rule, which effectively equates an advocate's personal views with those of his or her client, reflects an unwarranted and incorrect view of the lawyer/client relationship, especially in view of the ethical obligations of lawyers and the constitutionally-recognized right to counsel. In addition, such a rule takes no account of the nature, length, significance or contemporaneity of the relationship with the former client. With regard to the new lifetime post-employment restrictions for USTRs and Deputy USTRs, there has been no demonstration that such a ban is needed to address any real problem, and there are compelling reasons not to restrict the post-employment conduct of trade negotiators in such an unusual and severe manner.

In sum, the Report supports the accompanying ABA resolution urging that the Congress: avoid enacting disqualifications for service in the U.S. Government which presume that lawyers and other advisors take on the views of their clients; avoid singling out foreign policy and trade functions for extra-restrictive pre- or post-government employment rules; and promptly repeal the USTR Amendment.

II. THE PRE-EMPLOYMENT RESTRICTIONS

The new pre-employment restriction is unique among provisions in the U.S. Code creating ''primary officers'' of the U.S. Government (i.e., positions requiring nomination by the President and the advice and consent of the Senate). Of the hundreds of appointees in this category, only USTR and Deputy USTR candidates can be disqualified based solely on the identity of their former clients.

There is a serious constitutional objection to this new pre-employment restriction, in that it infringes on the President's appointments power. The ABA notes, but does not rest its concerns on, that objection. The new pre-employment restriction is also troubling on several policy grounds: (1) it arbitrarily limits the flexibility of the President to choose and the Senate to confirm, the best possible person for a particular government position; (2) it presumes, without justification, that a person advising a foreign government personally embraces and retains views antithetical to those of the U.S. Government; (3) it creates perverse anomalies unconnected to any legitimate interest in

Footnotes at end of article.

ensuring the loyalty of senior appointees; and (4) comparable disqualifications could easily be enacted, based on the same flawed rationale, for other government positions.

A. The New Disqualification Is of Doubtful Constitutionality

As mentioned above, there is virtually no legislative history accompanying the USTR Amendment and thus, unlike the debate surrounding provisions restricting post-government employment activities, no discussion by the Congress of the legality of the new pre-employment restriction. As also noted above, before the USTR Amendment there were no statutory provisions disqualifying any class of persons from service as USTR or Deputy USTR.

It is well accepted that the Congress has the constitutional responsibility for creating the various government offices not specifically enumerated in the Constitution.[4] Further, it is well accepted that the Congress can attach qualifications to those government offices:

While Congress may not appoint those who execute the laws, it may lay down qualifications of age, experience and so on. Sometimes these qualifications significantly narrow the field of choice. However, any Congressionally imposed qualifications must have a reasonable relation to the office. Otherwise, Congress would be, in effect, creating the appointing power in Congress, rather than in the President.

Congress may, in short, create the office but may not appoint the officer. To distinguish between these two powers, the Court has developed a germaneness test.[5]

The Department of Justice articulated just such serious constitutional concerns with the USTR Amendment as it relates to the President's appointments power:

The Department of Justice has long opposed broad restrictions on the President's constitutional prerogative to nominate persons of his choosing to senior executive branch positions. The restriction in the bill is particularly problematic because it operates in an area in which the Constitution commits special responsibility to the President, who ''is the constitutional representative of the United States in its dealings with foreign nations.'' *See, e.g., United States* v. *Louisiana,* 363 U.S. 1, 35 (1960). The officers in question perform diplomatic functions as the direct representative of the President, a fact that Congress itself has recognized by providing that they should enjoy the rank of ambassador. 19 U.S.C. §2171(b). Regardless of whether the President would, as a policy matter, be willing to accept this particular restriction, Congress would exceed its constitutionally assigned role by setting such a broad disqualification. *See, e.g., Civil Service Commission,* 13 Op. Att'y Gen. 516, 520–21 (1871).[6]

After passage of the Lobbying Disclosure Act by both the Senate and the House, Justice continued to express serious concerns about the new pre-employment provision, but did not recommend that the President veto the Act on this basis.[7] The President in signing the bill noted the constitutional issue.[8]

The new disqualification raises serious separation of powers questions. When such provisions are enacted without hearings, with virtually no floor debate or legislative history, and despite constitutional objections noted by the Department of Justice, the justifications underlying them should be carefully examined. Where such provisions are not only constitutionally suspect but also premised on a mistaken and troublesome view of the lawyer-client relationship, they should be removed.

B. It Is In The Public Interest for the President to Be Free to Appoint the Most Highly Qualified Nominees, Regardless of Past Clients

The new disqualification rules out many qualified individuals who could otherwise serve the nation effectively as senior trade negotiators. The best qualified candidate for a particular USTR or Deputy USTR appointment may be someone who has some experience advising foreign clients. (We note, in this regard, the adage that it is useful for a prosecutor to have experience serving as defense counsel.) Yet, the USTR Amendment would prevent such a person from serving.

While it is wrong to presume a link between advocacy and personal belief, it is even more wrong to freeze such a presumption into a statute. Categorical and difficult-to-amend statutory disqualifications cannot take into account the nuances of a particular candidate's history. These are precisely the factors that the President should weigh in choosing a nominee and the Senate should review in the confirmation process.

The new disqualification does not only restrict the President's appointments power. It also represents a failure to respect the Senate's constitutional role to consider, and where appropriate disapprove, the President's nominees. The Senate should preserve its prerogative to consider a particular nominee's record of advocacy for foreign clients, or foreign government clients, in the confirmation process and to determine whether anything in that record is sufficiently troubling to justify withholding confirmation.[9]

C. The Unstated Premise of the New Disqualification—That An Advocate is Either Tainted By or Continuously Captive to the Interests of a Former Client—Is Inconsistent with U.S. Traditions and Values

During the 1974 Senate consideration of legislation to establish the office of special prosecutor and to depoliticize the position of Attorney General, former Supreme Court Justice Arthur Goldberg described the attorney-client relationship in the following manner:[10]

One of the traditional concepts applicable to the bar at large is too often overlooked in senatorial confirmation hearings involving nominees for Attorney General, Assistant Attorney General, Deputy, and U.S. Attorneys. That concept—which I fear, Mr. Chairman, in the day of the organization man and big interests which lawyers are called upon to serve, is too often overlooked—is that the bar is independent, that it is not a servant of a client, but services a client; and that the men and women of the bar are independent and give counsel and advise independently. The principal law enforcement officers of the Government should be lawyers in that sense, ... Any nominee of a different mind or character should not be confirmed by the Senate.

For just such reasons, it is widely accepted that a lawyer should not be ineligible for nomination as a judge solely because of past representation of, for example, criminal defendants.

The USTR Amendment, and the proposals to extend the disqualification so that it applies to other government positions, adopts a different and inaccurate view of the relationship between advocates and their clients. It is wrong to assume that an outside adviser, such as a lawyer, necessarily concurs with the views or actions of his or her client, or will apply those views in carrying out the duties of a public office. Certainly, if someone represents more than one group of clients—for example, foreign governments in some matters and U.S. corporations in others—it cannot fairly be presumed that the foreign government representation determines or more accurately represents the person's own beliefs.

When an individual leaves the private sector and becomes a government official, he or she takes on totally new responsibilities and must move beyond all prior client interests—those of domestic and foreign clients alike. Other than preserving their confidences, an appointee has no continuing obligation to prior clients. The USTR Amendment wrongly ignores this aspect of public service.

Reflecting its inconsistency with U.S. traditions and values, the new disqualification is utterly without precedent in the U.S. Code. Appendix 2 to this Report identifies 126 statutory provisions, relating to U.S. Government civilian offices, that impose qualifications in addition to Senate confirmation.[11] As shown there, those 126 provisions fall into seven groupings: 3 provisions requiring that appointees be U.S. citizens; 19 provisions requiring that appointees be civilians at the time of their appointment; provisions that establish minimum representation on a board or commission of certain constituent groups; provisions requiring technical expertise; 6 provisions imposing ''cooling off'' periods to ensure civilian control of the military; 7 provisions imposing other temporary ''cooling off'' periods (e.g., sitting members of the U.S. Postal Service Board of Governors may not simultaneously be representatives of ''special interests using the Postal Service''); and 2 provisions containing permanent, uncurable, disqualifications. Of these, only the USTR disqualification is based on advocacy activities. The other provides that members of the permanent board of the Federal Agriculture Mortgage Corporation shall not be, or have been, officers or directors of a financial institution.

D. The New Disqualification Creates Perverse Anomalies

Before the USTR Amendment, there were no statutory qualifications upon who could be nominated and confirmed to serve as USTR or Deputy USTR. Not even U.S. citizenship, or a record free of criminal behavior, was (or is) statutorily required. Thus, the effect of the new pre-government employment restriction is that a non-citizen, a felon or even a juvenile could in principle be nominated and confirmed as USTR, while a highly skilled trade specialist who briefly advised a foreign government twenty years ago could not.

Such a rule could also deprive the nation of highly skilled and effective public servants. Had it been in effect at the time, the USTR Amendment might have disqualified one of President Reagan's USTRs, Dr. Clayton K. Yeutter, for activities that apparently did not dominate his pre-government professional work.[12] Extending the principle, as some have proposed, to representing, aiding or advising foreign private companies might have disqualified President Bush's USTR, Carla Hills.[13] Again, to the extent that questions arise in a particular case about the overlap between prior advocacy efforts and the advocate's own current beliefs, such questions can be effectively explored during the Senate confirmation process.

Broad and seemingly arbitrary interpretations of the USTR Amendment are possible given the lack of definitions, in either the statute or the legislative history, for crucial and open-ended terms such as, but not limited to, ''aided'' and ''advised.'' For example, if a Senator meets with foreign government officials in an attempt to find a mutually advantageous solution to a particular bilateral trade dispute, it could be argued that he or she has ''aided'' or ''advised'' the foreign government in such a manner as to trigger disqualification from future service as USTR. On the other hand, it has been observed that the USTR Amendment would not

prevent appointment of a corporate executive who, in order to increase profits at his ailing company, negotiates an enormous tax subsidy from a foreign government in order to move parts of his factory abroad and subsequently fires hundreds of his U.S. workers.[14]

E. The New Disqualification Sets an Undesirable Precedent for Other Government Positions

A significant danger of the USTR Amendment is that the same principle could be applied to other government positions involving disciplines other than international trade negotiation. Persons could be disqualified, by statute, from being federal judges because they had at some time in their past represented criminal defendants, even if their representations had been the result of occasional court appointment. Positions at the Environmental Protection Agency could be conditioned, by statute, on never having represented, aided or assisted clients in favor of, or opposed to, toxic dump cleanup. Positions at the Department of Energy could be conditioned, by statute, on never having represented, aided or assisted clients in favor of, or opposed to, offshore drilling. Positions at the Consumer Product Safety Commission could be conditioned, by statute, on never having represented, aided or assisted clients supporting, or opposing, specific product liability actions. More broadly, anyone who has given advice to entities in a regulated industry could be disqualified from putting his or her expertise to use as a regulator in that industry. Such a rule would dramatically restrict the pool of qualified regulators.

The ABA historically has advanced the view that rigid (*i.e.,* statutory) pre-employment restrictions for government appointments should be avoided. For example, in the wake of the perceived politicization of Justice Department functions during the Watergate period, during consideration of what eventually became the Ethics in Government Act of 1978, the ABA was asked to comment on possible eligibility restrictions for senior law enforcement positions:

Question. There have been many recommendations to set the statutory requirements for appointees to the Offices of Attorney General, Deputy Attorney General, Director of the FBI, and others. Do you generally believe it is a good idea to set rigid eligibility standards by statute, considering that many highly qualified individuals would be arbitrarily excluded from consideration by such standards? If so, what sorts of standards would you suggest?

Answer. The ABA has not suggested rigid standards for appointment to any of the above-mentioned positions nor does it believe rigid standards are advisable.[15]

The USTR Amendment, by contrast, fails the test of narrow drafting and scope. It reaches backward in time without limit, disqualifying otherwise qualified candidates by reason of any covered representation or assistance at any earlier point in their careers. The amendment reaches candidates who agreed to assist foreign governments with no idea that doing so might preclude later public service. The amendment applies not to a carefully circumscribed category of activities, but to any representation or assistance, whether significant or insignificant, to any foreign government on any trade ''negotiation'' or ''dispute'' involving the United States. Finally, the amendment confuses the advocate's required role with his or her personal views.

III. THE POST-EMPLOYMENT RESTRICTIONS

A. Post-Employment Restrictions of General Application

There have been restrictions on the post-employment activities of various categories of federal workers since 1872.[16] The earliest versions approximating the current provisions were adopted in 1962, as part of an overall revision of the conflict-of-interest statutes.[17]. In short, a full and generally effective array of government-wide post-employment restrictions has been in place for many years. Those restrictions, subjected to substantial revision and fine-tuning in the Ethics in Government Act of 1978[18] and the Ethics Reform Act of 1989,[19] include: a lifetime ban on appearing before or communicating with any U.S. Government body on behalf of a party other than the United States, on matters in which the official ''participated personally and substantially'' while a federal employee;[20] a two-year ban on appearing or communicating with any U.S. Government body on behalf of a party other than the United States on matters that were pending under his or her official responsibility in the year prior to departure from the agency;[21] a one-year ban for enumerated senior officials on all substantive contact with the former agency on behalf of a party other than the United States, which for Cabinet officers and certain other very senior officials extends to contacts with specified top officers of other agencies as well;[22] and a one-year ban prohibiting senior officials of all departments and agencies from (i) representing the interests of a foreign government or political party before any agency or department or (ii) aiding or advising a foreign government or political party with the intent to influence a decision of any department or agency.[23]

The last of these provisions, a special rule against senior officials' representing or advising foreign governments, drew a number of policy and constitutional objections prior to and at the time of its enactment.[24] This Report does not address the propriety of a broad, government-wide, one-year ban on post-employment activity for foreign governments. It is noteworthy, however, that this provision was justified against due process attack on the ground that it presented no absolute bar to pursuit of employment by covered officials, but ''merely imposed a waiting period'' of one year.[25]

These post-employment restrictions establish a comprehensive set of rules that apply across the board to federal officials and employees in all agencies and departments. For the most part, these rules appear to have worked successfully.[26] They apply with full force to USTRs and Deputy USTRs, and thereby provide a solid framework for protecting the public interest in regulating the post-employment activity of persons who occupy those positions.

B. Special Restrictions Placed Upon Senior Trade Negotiators

Beginning in 1992 and by expansion in the 1995 USTR Amendment, Congress created a special rule that singles out former USTRs and Deputy USTRs for special, more restrictive treatment than other, similarly-situated, former senior officials. Congress did so with virtually no meaningful deliberation or explanation. It is the ABA's view that, in so doing, Congress created a separate category of post-employment treatment for the senior U.S. trade officials that cannot be justified and should be eliminated.

The fist step along this path occurred in 1992, when Congress, as part of an appropriations bill, enacted a new Section 207(f)(2) which lengthened to three years the foreign entity ban as it applied to the USTR.[27] The Senate report describing this provision contained no meaningful explanation or justification of the longer period.[28] In signing the bill, President Bush took strong objection, noting that the change had been passed without any public discussion of the merits, without consideration of its relationship to the comprehensive amendments passed in the Ethics Reform Act of 1989, and without evaluation of ''the implications of targeting for coverage just one position.''[29] President Bush signed the bill because it was a necessary funding measure.

Continuing this pattern of acting without legislative hearings or development, the 1995 USTR Amendment enlarged this special USTR restriction to a lifetime ban, and expanded the ban to cover Deputy USTRs as well as USTRs. Like the initial 1992 creation of the special post-employment rules of the Ethics in Government Act of 1978 or the Ethics Reform Act of 1989, each of which underwent extensive legislative consideration—the USTR Amendment did so without any meaningful legislative background.

This action raises serious legal and policy questions. In departing from the ''waiting period'' rationale that underlay the general one-year ban on representation of foreign governments in the Ethics Reform Act of 1989,[30] the new lifetime ban raises the very constitutional questions that led the Justice Department and other witnesses to express concern during the 1989 reform legislation. One of the bills leading to the 1989 Act contained a lifetime ban on certain high ranking officials representing or advising foreign entities. In hearings on that bill, a Justice Department spokesman agreed that the lifetime ban raised a serious constitutional problem.[31] Another Justice Department official doubted that reducing the ban to 10 years would remove the constitutional problem.[32] Commenting on a substitute version of the bill, a spokesperson for Common Cause agreed with shifting away from a lifetime ban on representing foreign governments in favor of a shorter period. While believing that the period for the ban should be longer than for other representations, Common Cause was ''very troubled by a lifetime ban and would not recommend that.''[33] Others testified that even a 10-year ban was too long.[34] The ACLU suggested that ''[a]t the very least such a prohibition should expire if the party controlling the White House changes in the interim.''[35]

More importantly, no persuasive rationale has been advanced for applying special rules to senior trade officials. Former USTRs were barred by pre-1992 law, for example: from ever assisting foreign governments in any matter in which they had direct involvement while in government;[36] for communicating with USTR officials on my policy issue for a period of the one year;[37] from communicating with USTR officials within two years on any matter that was active within USTR during the last year of the former USTR's service;[38] and from appearing before any agency, within one year after leaving government, on behalf of a foreign government or political party.[39]

Taken together, these rules adequately protect against the possibility, and against the appearance of ''influence peddling'' or ''misuse of inside information'' by former trade officials on behalf of foreign interests.

There are at least three other compelling reasons to repeal the new post-employment restrictions. First, the restrictions could easily hinder advancement of U.S. interests by diminishing the pool of qualified senior trade negotiator candidates. Among the factors cited in discouraging people from public service are increasingly severe post-employment restrictions. Past USTRs and Deputy USTRs have not made a full career of public service; like other senior appointees, they have returned to their communities and their private practices after serving in public office. Qualified candidates may decline to serve if their livelihoods—often after a relatively short period of government service—would thereby by materially jeopardized.

Second, there has been no documented misconduct by former USTRs or Deputy USTRs which would justify the new, heightened restrictions. Third, there is no principled reason to single out trade negotiators; rather, the new restrictions simply penalize or demonize the representation of foreigners. Other government officials—e.g., the Secretaries of Defense or Transportation, or the Attorney General—could just as easily be subject to the same lifetime ban.

Meanwhile, there has been absolutely no showing that the general rules applicable to all other government officials insufficiently protect the interests of the United States. The public interest is in having nominees who become public officials adhere to the highest standards while executing the duties of their office. After someone leaves office, the government's interest is properly limited to preventing the misuse of its confidential information and the misuse of influence.[40]

IV. CONCLUSIONS AND RECOMMENDATIONS

For the reasons set out above, it is the view of the ABA that: Congress should avoid statutory provisions that disqualify senior executive or judicial appointees on the basis of clients they have previously represented. Congress and the Administration should continue to utilize traditional mechanisms (including the Senate's power of confirmation), rather than special pre- or post-employment rules, to ensure that senior executive or judicial positions are filled only by highly qualified persons who will fulfill the responsibilities of their positions with complete integrity. Ethics-in-government rules, whether addressed to pre- or post-government employment activities, should not single out foreign policy or trade functions for special, restrictive treatment. Congress should repeal the 1995 amendments to 18 U.S.C. §207 and 19 U.S.C. §2171(b), whose effect is to restrict the pre- and post-employment activities of U.S. Trade Representatives (''USTRs'') and Deputy USTRs on behalf of foreign interests, and should not extend those provisions to cover other senior government positions.

Respectfully submitted,

LUCINDA A. LOW,
Chair, Section of International Law and Practice.

FOOTNOTES

[1] Pub. L. No. 104–65, 109 Stat. 691 (1995).

[2] See 141 Cong. Rec. S10560–61 (daily ed. July 24, 1995).

[3] Pub. L. No. 102–395, 106 Stat. 1873, codified at 18 U.S.C. §207(f)(2).

[4] See generally Laurence H. Tribe, American Constitutional Law 244 (2d ed. 1988) (analyzing the wording of Art. II, §2, cl. 2).

[5] John E. Nowak & Ronald D. Rotunda, Constitutional Law 265 (5th ed. 1995) (footnotes omitted).

[6] Letter from Andrew Fois, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to the Hon. Henry Hyde, Chairman, House Committee on the Judiciary, concerning S. 1060 [the Senate bill pending before the House] 2–3 (Nov. 7, 1995).

[7] Letter from Andrew Fois, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to the Hon. Alice M. Rivlin, Director, Office of Management and Budget concerning S. 1060 2 (Dec. 18, 1995).

[8] See 51 Weekly Compilation of Presidential Documents 2205–06 (December 25, 1995).

[9] The unwarranted breadth of the new disqualification is demonstrated by the more narrowly drawn alternatives that Congress did not select. Even assuming arguendo that assertive use of the Senate's confirmation authority is insufficient, narrower solutions are available. One is mandatory recusal with penalties for failure to do so, combined with strict reporting of prior activities. See, e.g., 28 U.S.C. §528 (Justice Department employees). Recent USTR and Deputy USTR nominees have disclosed prior representations, including foreign representations, and have voluntarily recused themselves (temporarily or permanently, as appropriate) with respect to issues involving those particular clients. Hearing to consider nomination of Michael Kantor Before Senate Comm. on Finance, 103rd Cong., 1st Sess. (1993); Nomination of Carla Anderson Hills: Before Senate Comm. on Finance, 101st Cong., 1st Sess. (1989). Nominations of Rufus Hawkins Yerza, Charlene Barshefsky, Walter Broadnex, Avis Lavelle, Jerry Klegner, David Ellwood, Kenneth Apfel, Bruce Vladeck, Hariet Rabb and Jean Hanson: Before Senate Comm. on Finance, 103rd Cong., 1st Sess. (1993). Other trade officials have done likewise. See, e.g., Rick Jenkins, ''Trade Nominations Raises 'Revolving Door' Issue,'' Christian Science Monitor at 8 (Jan. 14, 1994). Another alternative is more extensive mandatory reporting of pre-employment activities over a set period before Senate confirmation, enhancing the Senate's ability to reject a nominee based on prior activities if it wishes. See, e.g., Hearings on S. 555 (Public Officials Integrity Act of 1977, Blind Trusts and Other Conflict of Interest Matters) Before the Senate Comm. on Governmental Affairs, 95th Cong., 1st Sess. 108–09 (1977) (testimony of Fred Wertheimer, Vice President for Operations, Common Cause). Requiring disclosure of clients is not without its problems. As noted by the ABA in 1977, such a regime could place a professional person in the position of having to violate the confidentiality of a privileged relationship. See Financial Disclosure Act: Hearings on H.R. 1, H.R. 9, H.R. 6954, and Companion Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 95th Cong., 1st Sess. 487, 490 (1977) (testimony of Prof. Livingston Hall and Prof. Herbert S. Miller on behalf of the American Bar Association).

[10] Removing Politics from the Administration of Justice: Hearings on S. 2803, S. 2978 Before the Subcommittee on Separation of Powers of the Senate Comm. on the Judiciary, 93rd Cong., 2d Sess. 62 (1974).

[11] These are all the provisions that could be identified through review of the U.S. Code, 1994 Edition, and Supplement I to that Edition. Some of these provisions are also subject to statutory requirements designed to ensure a balance of political affiliation on Boards and Commissions, e.g., an equal number of Democrats and Republicans on the U.S. International Trade Commission. Additionally, in some cases an office is required by statute to be filled by an existing federal, state or local government official. Appendix II largely ignores such requirements.

[12] Dr. Yeutter had served on the board of directors of the Swiss Commodities and Futures Association and had been the first American businessman invited to Japan (in 1982) under a Japanese government program to improve trade relations with the United States. See Hearing on the Nomination of Dr. Clayton K. Yeutter Before the Senate Comm. on Finance, 99th Cong., 1st Sess. 28–29, (1985) (vita submitted on behalf of Dr. Yeutter).

[13] According to third-party testimony at the time of her appointment, Ambassador Hills had previously been registered under the Foreign Agents Registration Act as an agent for Daewoo Industrial Co. See Hearing on the Nomination of Carla Anderson Hills Before the Senate Comm. on Finance, 101st Cong., 1st Sess. 32, 51 (1989) (testimony of Anthony Harrigan, President, U.S. Business and Industrial Council).

[14] See Donald DeKieffer, ''The 1995 'Irrelevant Qualifications Act''' Journal of Commerce at 7A (Dec. 30, 1996).

[15] Watergate Reorganization and Reform Act of 1975: Hearings on S. 495 Before the Senate Comm. on Government Operations, 94th Cong., 1st Sess., pt. 2 at 174 (1976) (testimony of William B. Spann, Jr., President-Elect Nominee of the American Bar Association and Chairman, American Bar Association Special Committee to Study Federal Law Enforcement Agencies). The ABA did recommend limited measures to address perceived problems of politicization of the Department of Justice. See also id. at 270–71, 295, 298.

[16] See S. Rep. No. 99–396, 99th Cong., 2d Sess. 13–14 (1986); S. Rep. No. 100–101, 100th Cong., 1st Sess. 8–9 (1987).

[17] Prior provisions had barred former employees from prosecuting claims against the United States for two years after terminating government employment. See H. Rep. No. 748, 87th Cong., 1st Sess. 2–4 (1961).

[18] Pub. L. No. 95–521, 92 Stat. 1824, 1864–66 (1978).

[19] Pub. L. No. 101–194, 103 Stat. 1716–24 (Nov. 30, 1989).

[20] 18 U.S.C. §207(a)(1) (1996).

[21] 18 U.S.C. §207(a)(2).

[22] 18 U.S.C. §§207(c), (d).

[23] 18 U.S.C. §207(f).

[24] H. Rep. No. 1068, 100th Cong., 2d Sess. 13 (1988) (regarding H.R. 5043); Post-Employment Conflicts of Interest: Hearings on H.R. 5097 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 79–80 (1986) (testimony of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice, on legislation leading up to the 1989 Act, arguing that post-employment restrictions could prohibit representations which were in the national interest). Similar views were forwarded by the ACLU, which maintained that a statute prohibiting the representation of foreign interests regulated political activity and, to be upheld, must withstand strict judicial scrutiny. See Post-Employment Restrictions for Federal Officers and Employees: Hearings on H.R. 2267 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 101st Cong., 1st Sess. 200, 204–06 (1989). See also Appendix III to this Report.

[25] S. Rep. No. 101, 100th Cong., 1st Sess. 14 (1987).

[26] The ABA may, of course, have occasion in the future to comment or suggest improvements that would enhance the effectiveness of these rules. That is not the subject of this Report.

[27] Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Section 609, Pub. L. No. 102–395, 106 Stat. 1828, 1873 (1992).

[28] See S. Rep. No. 102–331, 102d Cong., 2d Sess. 118 (1992).

[29] 28 Weekly Compilation of Presidential Documents 1874 (Oct. 12, 1992) (statement by President George Bush upon signing H.R. 5678).

[30] See supra, fn. 25.

[31] Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 37–38, 41–43, 66 (1986) (testimony of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice).

[32] Id. at 87–88 (testimony of Stephen S. Trott, Assistant Attorney General for the Criminal Division, Department of Justice).

[33] See id. at 179 (testimony of Ann McBride, Senior Vice President, Common Cause); Post-Employment Conflicts of Interest: Hearings on H.R. 5097 and Related Bills Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 99th Cong., 2d Sess. 103–04 (1986) (testimony of Ann McBride, Senior Vice President, Common Cause).

[34] See id. at 183, 186 (testimony of Norman J. Ornstein, American Enterprise Institute).

[35] Hearings on S. 2334 (Integrity in Post Employment Act of 1986) Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 199 (1986) (testimony of Morton H. Halperin and Jerry J. Berman on behalf of the American Civil Liberties Union).

[36] 18 U.S.C. §207(a)(1) (1989).

[37] 18 U.S.C. §207(c).

[38] 18 U.S.C. §207(a)(2).

[39] 18 U.S.C. §207(f).

[40] See Integrity in Post Employment Act of 1986: Hearings on S. 2334 Before the Senate Comm. on the Judiciary, 99th Cong., 2d Sess. 79–80 (1986) (testimony of David H. Martin, Director, Office of Government Ethics). The American Civil Liberties Union (''ACLU'') also opined that the misuse of inside information should be the focus of ethics laws, rather than the identity of the client. Id. at 198 (testimony of Morton H. Halperin and Jerry J. Berman on behalf of the American Civil Liberties Union); Hearings on H.R. 2267 and Related Bills (Post-Employment Restrictions for Federal Officers and Employees) Before the Subcommittee on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 101st Cong., 1st Sess. 200, 210–11 (1989).

Mr. HILL. Mr. Speaker, I rise today to express my deep concern about our action to waive provisions of section 21 of the 1974 Trade Act relating to the appointment of the U.S. Trade Representative. As you know, Senate Joint Resolution 5 waives the prohibition banning individuals who represent or have previously represented foreign governments from serving as America's top trade representative.

Mr. Speaker, the law we are asked to waive today is not some arcane law that has been in the books for decades which may have run its time. It is a law that was approved only 2 years ago to prevent lobbyists of foreign governments from obtaining an appointment to be our chief trade negotiator. While I do not doubt

the competency and ability of Ambassador Barshefsky to dedicate her best efforts as she has done as the Deputy U.S. Trade Representative, her association as a lobbyist for Canada touches a raw nerve in Montana.

Mr. Speaker, the farmers and ranchers of my home State of Montana are suspicious of the administration's commitment to ensure that NAFTA implementation is fair. To this point, evidence suggests it isn't. The Lobby Act says that anyone who has worked against the United States in trade negotiations ought to be excluded from U.S. Government service as trade representative. When the President signed the Lobby Act he singled out this provision for praise. Without being too political, it is an unusual request to waive the law just enacted. Though the issue is a material matter of law, it also goes to the heart of trust. For my farmers and ranchers in Montana, there is a constant threat of subsidized Canadian wheat and barley being dumped in United States markets. These actions threaten Montanan's livelihood and seriously question the free-trade agreements with our northern neighbor.

As you know, Mr. Speaker, I consider Canada a strong ally of the United States. We share the longest unfortified border in the world and a similar past of standing up against tyranny and for the values of democracy. However, many Montanans are greatly troubled by Canada's current trade practices. Despite the implementation of the North American Free-Trade Agreement [NAFTA], Canada continues to subsidize its various industries and commodities, including timber, beef, and grain.

Clearly, we need someone to vigorously negotiate and highlight American interests in our growing international trade. The stakes have never been higher for farmers and ranchers in my State of Montana. Our farmers need to find markets and secure agreements for free and fair trade. And they need to have confidence that Washington is behind them 100 percent. We passed a law to give them that confidence. Now is not the time to waiver.

Mr. Speaker, I believe that granting the waiver sends the wrong signal. Waiving the law only raises suspicion about our long-term dedication to free trade.

Mr. NEAL of Massachusetts. Mr. Speaker, I support the legislation before us which grandfathers Ambassador Barshefsky from certain provisions of the Lobbying Disclosure Act of 1995. When this legislation was considered in the Senate, Ambassador Barshefsky was grandfathered as Deputy U.S. Trade Representative [USTR]. This resolution would extend that grandfather to Ambassador Barshefsky as she moves up to the position of USTR.

I have served on the Subcommittee on Trade for 4 years and have had the opportunity to work closely with Ambassador Barshefsky. Prior to joining USTR, Ambassador Barshefsky specialized in trade law and policy for 18 years. She brings expertise to the position of USTR.

In her 4 years at USTR, Ambassador Barshefsky negotiated many major bilateral and multilateral agreements. With respect to Japan, Ambassador Barshefsky has been the key policymaker and negotiator. Her work has resulted in agreements on the following issues: Government procurement of telecommunications equipment and services, Government procurement of medical equipment and technology, insurance, flat glass, and cellular phones and equipment and agreements.

Ambassador Barshefsky was instrumental in reaching the intellectual property rights enforcement agreement with China. I admire her determination in reaching agreements when there were many skeptics. Several times it was down to the wire and she was able to come out with a solid agreement.

I urge you to vote for this resolution. I look forward to working with Ambassador Barshefsky in her role as USTR.

Mr. RANGEL. Mr. Speaker, I rise in strong support of Senate Joint Resolution 5, legislation to waive certain provisions of the Lobbying Disclosure Act of 1995 with respect to the nomination of Ambassador Charlene Barshefsky to become the U.S. Trade Representative. This legislation is necessary to complete the nomination process of Ambassador Barshefsky.

Ambassador Barshefsky has broad bipartisan support and deserves to be our next U.S. Trade Representative. Last week, the other body approved her nomination and the waiver legislation before us today by overwhelming votes of 99–1 and 98–2, respectively.

During her nearly 4 years of service at the Office of the USTR, first as Deputy USTR and since April of last year Acting USTR, Ambassador Barshefsky has compiled an impressive record opening foreign markets for U.S. exporters and defending U.S. trade interests. For example, she recently concluded successful multilateral agreements which will reduce or eliminate tariffs worldwide on trade in information technology products, and which will open foreign markets for basic telecommunications services. Last December she concluded a bilateral agreement with Japan on insurance which opens that market for U.S. insurance providers. Last year, she also struck an agreement with China providing for stronger enforcement of U.S. intellectual property rights in that country.

Clearly, Ambassador Barshefsky has shown that she is a tough and skillful negotiator internationally. More importantly, however, Ambassador Barshefsky understands that international trade and our Nation's trade policies have an impact on the lives and futures of Americans. For that reason, she consults closely with Members of Congress and the public at large on her actions. She clearly recognizes that trade policy is a shared responsibility of the executive and legislative branches and carries out her responsibilities accordingly.

For those who may have questions or concerns about this waiver, it must be noted that Congress has previously passed legislation to waive a statutory requirement on who may serve in a particular Government position with respect to a specific nominee. It should also be noted that, as Deputy USTR, Ambassador Barshefsky was specifically exempt from the provisions in question in the Lobbying Disclosure Act. The Senate Finance Committee carefully studies her record in the private sector and agreed unanimously that a waiver was entirely appropriate for Ambassador Barshefsky.

Mr. Speaker, in the past several years I have come to know and admire Ambassador Barshefsky's work and tireless dedication on behalf of the American people. I heartily endorse the legislation before us today and urge my colleagues to support it. Ambassador Barshefsky will be a U.S. Trade Representative of which we will all be proud.

Mrs. KENNELLY. Mr. Speaker, I rise today in support of Senate Joint Resolution 5 which waives certain provisions of the Trade Act of 1974. This resolution would grandfather Ambassador Charlene Barshefsky from the application of certain restrictive provisions of the Lobbying Disclosure Act of 1995. On occasion the Senate has granted similar waivers when a statutory provision would have barred a highly qualified nominee from serving our Nation's executive branch. Let me note, however, that this resolution applies only to Ambassador Barshefsky and in no way modifies the statute nor does it have implications for any other prospective nominees to serve as the U.S. Trade Representative or as Deputy USTR.

As a Member of the Ways and Means Committee, I have had the pleasure of working with Ambassador Barshefsky during her time at USTR, first as deputy to Mickey Kantor and recently in the acting capacity. Ambassador Barshefsky has been instrumental in developing and pursuing a strong international trade policy having successfully completed several multilateral trade and investment treaties. Not only has she demonstrated her commitment securing agreements beneficial to U.S. trade interests, she has also demonstrated her willingness to walk away from the table when other countries have made insufficient offers.

Given her tenacity and resolve on behalf of our country's trade interests, I firmly believe Charlene Barshefsky to be capable and well prepared for her role as Trade Representative. Her professional achievements, her tough negotiating skills and her knowledge of her subject are most remarkable. I have worked with few people who possess the ability to discuss both the intricate details of trade minutia and the whole picture with such clarity and coherence.

We are embarking on a new age in the global marketplace. If we are to remain competitive, we must be able to compete in foreign markets. The United States has vigorously pursued agreements and commitments from our trading partners to open their markets and reduce their trade barriers in both goods and services. These opportunities should benefit both American companies and consumers. That must be our goal in seeking expanded trade in the future; our economic well-being depends on it.

I am confident that Ambassador Barshefsky will continue to pursue a strong and fair trade agenda that seeks to promote our national interests abroad and at home. I urge my colleagues to support the waiver and vote for Senate Joint Resolution 5.

Mr. SMITH of Oregon. Mr. Speaker, I rise in support of Senate Joint Resolution 5, a joint resolution waiving provisions of the Trade Act of 1974 relating to the appointment of the U.S. Trade Representative. As the chairman of the Committee on Agriculture I believe that it is vital that the person representing the United States in trade negotiations and resolution of disputes recognize that agriculture is an extremely important and essential issue to be considered in all trade negotiations and resolutions of disputes. American farmers and ranchers, the most productive in the world, can prosper only where there is free and fair world trade.

In fact, if not for agriculture exports the U.S. trade deficit would be larger than it currently

is. In 1996, U.S. agriculture exports totaled $60 billion and the agriculture trade surplus exceeded $26 billion. There is, nevertheless, ample opportunity for expansion of agriculture trade into the 21st century. It is incumbent on the administration, through the Office of the Trade Representative and the Department of Agriculture, to make sure that opportunities exist for trade expansion and that trade disputes are resolved in a timely manner.

I have had the opportunity to meet with Ambassador-Designate Barshefsky and she assures me of her knowledge of agriculture and her commitment to ensuring the proper emphasis on agriculture export issues. In our discussions we agreed that agriculture is the No. 1 high-tech export and the No. 1 priority with the USTR. Historically, agriculture has been a leader in biotechnology, a process through which researchers develop improved seeds and crops, such as those naturally protected from diseases and insects. This process has enabled farmers and ranchers to increase yields and thereby exports. It has also brought challenges from our trading partners. These challenges must be vigorously defended by the administration and Ambassador-Designate Barshefsky assures me that she will do so.

The Uruguay Round agreement included provisions on sanitary and phytosanitary disputes and provided that sound science be the basis for resolution of such disputes. Countries' use of nontariff trade barriers to restrict imports, especially those related to sanitary and phytosanitary issues, do great harm to American agriculture exports and thereby the income of our farmers and ranchers. This must be a high priority with the administration.

The Committee on Agriculture will hold a hearing on March 18, 1997, to discuss agriculture trade and the barriers that face exporters. The Secretary of Agriculture and the U.S. Trade Representative have been invited to testify. This will be an opportunity for the representatives of the administration to discuss implementation of trade agreements, the monitoring of the implementation of these agreements by other countries, and to delineate how they will secure fair treatment for American commodities in world trade.

In my discussions with Ambassador-Designate Barshefsky she assures me that agriculture will be a top priority under her watch. That is why I will support Senate Joint Resolution 5 and the waiver needed to allow her to assume the position of USTR.

Mr. CRANE. Mr. Speaker, I yield back the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. ARCHER] that the House suspend the rules and pass the Senate joint resolution, Senate Joint Resolution 5.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the Senate Joint Resolution was passed.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 852, PAPERWORK ELIMINATION ACT OF 1997

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 105–15) on the resolution (H.Res. 88) providing for consideration of the bill (H.R. 852) to amend chapter 35 of title 44, United States Code, popularly known as the Paperwork Reduction Act, to minimize the burden of Federal paperwork demands upon small businesses, educational and nonprofit institutions, Federal contractors, State and local governments, and other persons through the sponsorship and use of alternative information technologies, which was referred to the House Calendar and ordered to be printed.

DEPARTMENT OF ENERGY STANDARDIZATION ACT OF 1997

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 649) to amend sections of the Department of Energy Organization Act that are obsolete or inconsistent with other statutes and to repeal a related section of the Federal Energy Administration Act of 1974.

The Clerk read as follows:

H.R. 649

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 ''Department of Energy Standardization Act of 1997''.

SEC. 2. STANDARDIZATION OF DEPARTMENT OF ENERGY REQUIREMENTS WITH GOVERNMENT-WIDE REQUIREMENTS.

(a) DEPARTMENT OF ENERGY REGULATIONS.—Section 501 of the Department of Energy Organization Act (42 U.S.C. 7191) is amended—

(1) by striking subsections (b) and (d),

(2) by redesignating subsection (c) as subsection (b) and by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively, and

(3) in subsection (c) (as so redesignated), by striking ''subsections (b), (c), and (d)'' and inserting ''subsection (b)''.

(b) SPECIAL REQUIREMENTS AFFECTING ADVISORY COMMITTEES.—

(1) SECTION 624.—Section 624 of the Department of Energy Organization Act (42 U.S.C. 7234) is amended by—

(A) striking ''(a)''; and

(B) striking subsection (b).

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 17 of the Federal Energy Administration Act of 1974 (15 U.S.C. 776) is repealed.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Colorado, Mr. DAN SCHAEFER, and the gentleman from Texas, Mr. HALL each will control 20 minutes.

The Chair recognizes the gentleman from Colorado, Mr. DAN SCHAEFER.

(Mr. DAN SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. DAN SCHAEFER of Colorado. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 649 is a very straightforward measure and simply seeks to eliminate some of the unnecessary duplication that we have now within the DOE.

Currently, DOE is subject to two different standards for public notification and response to public comment. One set exists in the governmentwide Administrative Procedure Act and a separate set exists in the DOE organizational act. Likewise, DOE's advisory committees are subject to a separate and more restrictive public participation than required of other Federal agencies.

This measure would simply put DOE on the same par with other Federal agencies for public notice and response to comments. DOE would be fully subject to the provisions of the Administrative Procedure Act for advisory committees. This change simply allows DOE greater flexibility in closing off advisory committees to the public, fully consistent with the provisions of the Federal Advisory Committee Act.

During my time in Congress, I have been a very strong supporter of public participation in the political process. H.R. 649 will in no way diminish the ability of the public to participate in DOE's decisionmaking process, and will relieve some of DOE's administrative burden in complying with two different sets of standards.

I would especially like to thank the ranking member of the Subcommittee on Energy and Power, and fellow sponsor of this bill, the gentleman from Texas [Mr. HALL], for working with me in a very cooperative mood. We will have many more chances to work together in such a bipartisan effort and spirit as we move on.

H.R. 649 is supported by the Department of Energy. It is a bipartisan bill, and is a good, commonsense piece of legislation. I would recommend its adoption by the whole House.

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume. I will be brief, Mr. Speaker, because the gentleman from Colorado, Mr. DAN SCHAEFER has pretty well closed in on the issue before us. However, I just want to say that I rise today very much in support of H.R. 649, the Department of Energy Standardization Act, which I had the pleasure of helping to introduce with my good friend and chairman of the Subcommittee on Energy and Power, the gentleman from Colorado, Mr. DAN SCHAEFER.

Actually, the DOE Standardization Act simply addresses the duplicative regulation being placed on the Energy Department in its public involvement process. This is a critical process, and it is a very critical process in any Federal decisionmaking, and it is defined within the boundaries of the Administrative Procedure Act and Federal Advisory Committee Act.