NOMINATION OF OTTO REICH

Mr. KENNEDY. Mr. President, on April 29, the Los Angeles Times printed a thoughtful op-ed article by former Costa Rican President Oscar Arias that raises troubling questions about President Bush's nominee to serve as Assistant Secretary of State for Western Hemisphere Affairs, Otto Reich.

President Arias discusses the important role played by the Assistant Secretary, and questions Otto Reich's suitability for this position, in light of his record as head of the State Department's Office of Public Diplomacy, his support of President Reagan's policies toward Central America, his involvement in lifting the ban on the sale of advanced weapons to Latin America, and his views on U.S. policy toward Cuba.

I urge my colleagues to read the article. The significant concerns raised by this distinguished Nobel Peace Prize recipient must be carefully considered. I ask unanimous consent that the article by President Arias be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[FROM THE LOS ANGELES TIMES, APRIL 29, 2001]

A NOMINEE WHO STANDS FOR WAR

(By Oscar Arias)

Given the importance of the role of the U.S. assistant secretary of State for Western Hemisphere affairs, many of us in Latin America are surprised and disappointed by George W. Bush's nomination of Otto J. Reich for this post. Reich headed the Office of Public Diplomacy, which was closed down by Congress in the wake of the Iran-Contra scandal because it had, to quote official investigations, ''engaged in prohibited covert propaganda activities designed to influence the media and the public.''

More than almost any other U.S. diplomat, the person in this post will have the power to shape the relationship between the United States and Latin America for better or worse. Virtually everything that the U.S. needs to do with Latin America, from establishing a free-trade area to dealing with drug policy and immigration, will require a bipartisan approach. Appointing someone of Reich's ideological stripe and experience would be a real setback in hemispheric cooperation.

I offer my experience as president of Costa Rica as testament to the importance of compromise on hard-line policies. With my region torn by civil wars in Nicaragua, El Salvador and Guatemala, I proposed a peace plan whose essence was democracy as a precondition for lasting peace. The plan was signed by five Central American presidents in August 1987, but President Ronald Reagan refused to support it. He would settle for nothing less than military victory over the Sandinistas in Nicaragua. It was not until George Bush became president in 1988 that the United States backed off its dogged support for war and let the Central American leaders give diplomacy a chance. It was Bush the elder and his foreign-policy staff, including Secretary of State James A. Baker and Bernie Aronson, then-assistant secretary of State for inter-American affairs, who changed U.S. policy from one of undermining our efforts to strongly supporting them, and thus contributed greatly to a peaceful solution to the Central American conflicts.

I am afraid that Reich will cling more closely to the Reagan model than that of the former Bush administration. There is plenty of evidence to suggest that this will be so. His involvement in the Office of Public Diplomacy until 1986 demonstrated his allegiance to the Reagan administration's hawkish policies toward Central America. The purpose of his office was none other than to get the American people to side with war over peace, using propaganda methods determined to be ''improper.''

Reich's support of militarism did not end with the wars in Central America. According to news reports, he has made his living in recent years as a lobbyist and consultant representing corporate interests in Washington, among which is the arms manufacturer Lockheed Martin. Reich apparently helped Lockheed overcome the executive ban on the sale of advanced weaponry to Latin America. As a result, the company is poised to sell a dozen of its F–16 fighter jets with advanced missile technology to Chile.

Ever since the ban was lifted in 1997, I have been active, along with former President Jimmy Carter, in trying to convince Latin American leaders to submit to a voluntary moratorium on buying such weapons. If a Latin American country goes shopping for sophisticated weaponry, it will touch off the last thing this hemisphere needs—an arms race. In the face of continued poverty, illiteracy, hunger and disease in so much of our region, investing in unnecessary military technology is an act of grave irresponsibility. That Reich has been an accomplice to this deal makes me feel very uneasy about what ends will be served by his potential leadership in our hemisphere.

One last example will illustrate the poor fit that Reich would be for the interests of hemispheric cooperation: his unwavering support for the long-running and unproductive embargo against Cuba. I believe many American farmers and businessmen are aware that U.S. economic warfare against Cuba harms broader U.S. interests, while at the same time injuring the people, but not the government, of Cuba.

To those who think it unbecoming for a foreigner to comment on the appointment of a U.S. official, I would say that although the assistant secretary of State for Western Hemisphere affairs will make little difference in the lives of ordinary people in the United States, he could have a profound effect on the lives of Latin Americans.

There is so much work to be done in our part of the world over the next four years, and enough inherent problems and strains in the relationship between the United States and Latin America, that we will be assuring ourselves of getting nowhere if we give in to hard-line ideology over flexibility and bipartisanship. On behalf of Latin Americans, I hope that the administration of George W. Bush can find another candidate for this job—one capable of building trust and earning respect from all the leaders of this hemisphere.

(Oscar Arias Was President of Costa Rica From 1986–1990 and Winner of the Nobel Peace Prize in 1987.)

TRANSIT ZONE STRATEGY

Mr. GRASSLEY. Mr. President, as Chairman of the Senate Caucus on International Narcotics Control, I want to draw attention to our interdiction efforts throughout the Caribbean and Eastern Pacific, commonly referred to as the ''transit zone.''

Although Plan Colombia is our primary counterdrug operation in Colombia and the emphasis in the Andean region, commonly called the ''source zone'', continued interdiction efforts in the transit zone are an important part of our overall ''defense-in- depth'' plan. I have noted for some time, however, that our defense in depth seems more like a defense in doubt. I want to be confident that the United States has a well-thought out, overarching national drug control strategy, involving all components of both supply and demand reduction, including eradication and fumigation, alternate development, trade incentives, interdiction, prevention, treatment, and education. I am very pleased the President is ready to appoint the new Director of the Office of National Drug Control Policy, ONDCP, to assist with reviewing our plans, programs, and strategy. But I am concerned that we lack coherent thinking on our interdiction efforts. I am concerned about rumblings from the Department of Defense, DOD, that it is going to duck and weave on supporting such a plan.

I desire our interdiction efforts to be integrated and balanced, both interagency and internationally, as well as between the source zone, transit zone, and arrival zones. We need balance, within the transit zone, between the Caribbean and the Eastern Pacific, as well as balance with in the eastern, central, and western portions of the Caribbean itself. We need to have adequate intelligence community and DOD support for both the source zone and the transit zone. We need to be balanced between our air and maritime interdiction efforts. We need to be equally dynamic and risk adverse as the smuggling organizations are, when route and conveyance shifts are detected. Our counterdrug forces on patrol should also be aware of the terrorism threats that are increasing focused against our country. It is not clear to me that we currently have these things I have outlined.

The Senate Drug Caucus is planning an upcoming hearing on the Transit zone on May 15, 2001 to discuss the broader questions of ''What is our transit zone strategy?'' and ''Do we have a balanced approach in the transit zone?'' I hope for a discussion on the current threat, agency capabilities, current shortcomings, the relationship with the source zone and Plan Colombia, the projected future threat, any needed improvements, interagency and international relationships, and DOD and intelligence community support to our transit zone operations. I am especially concerned about reports of aging aircraft and vessels in the both the Customs Service and Coast Guard fleet inventories. I am also particular interested in the countries of Haiti, Jamaica, Cuba, Venezuela, Mexico, and the Bahamas, as well as the Commonwealth of Puerto Rico. Success in the transit zone is so critical for both the United States as well as the many countries throughout the Caribbean, who are so dependent on trade and

tourism, and who struggle to avoid the dark influences of the narcotics threat.

I want to be sure we are doing our transit zone missions effectively and competently. I appreciate the difficult task of foreign investigations and interdiction, and appreciate the daily efforts of the Customs Service, Coast Guard, Drug Enforcement Administration, Department of Defense, Department of State, and our international allies. The mission is an important one and deserves our serious attention and sustained effort.

WTO APPELLATE BODY DECISION

Mr. BAUCUS. Mr. President, two weeks ago, the World Trade Organization's Appellate Body issued a decision affirming a Dispute Settlement Panel opinion from last December that ruled that the United States' imposition in July 1999 of restrictions on imports of lamb meat under Section 201 of the Trade Act of 1974 was inconsistent with our obligations under the WTO's Agreement on Safeguards. The December Panel decision was so obviously wrong in virtually every respect that one would have expected the Appellate Body to reverse the panel and recognize the U.S. International Trade Commission's decision for the well-reasoned and balanced determination that it was. Instead, the Appellate Body has once again taken it upon itself to substitute its judgment for the ITC's. This is a continuation of a troubling trend, in which WTO dispute settlement panels and the Appellate Body fail to give adequate deference to expert administrative bodies that have carefully reviewed the facts. This kind of decision risks eroding U.S. support for the WTO's dispute settlement procedures.

While there is a lot not to like in the Appellate Body's decision, I am particularly outraged by the Appellate Body's conclusion that the ITC erred in concluding that lamb farmers, ranchers, and commercial feeders are properly part of the domestic industry for purposes of determining injury and threat of injury. The Appellate Body concluded that growers and feeders produce a product—live lambs—that cannot strictly be considered ''like'' lamb meat within the meaning of the WTO Safeguards Agreement, and by implication, under Section 201 of the Trade Act of 1974; according to the Appellate Body, only packers and processors produce a ''like'' product. Had this been an antidumping or countervailing duty decision, such a conclusion would have precluded lamb growers and feeders from petitioning for relief along with packers and processors—a notion that I find intolerable. Fortunately, Section 201 and the Safeguards Agreement give standing to producers of both ''like'' and ''directly competitive'' products, and the Appellate Body's opinion appears to leave open the possibility that lamb growers and feeders could properly be counted as part of the domestic industry on the grounds that live lambs are ''directly competitive with,'' as opposed to ''like,'' lamb meat.

The WTO will lose all credibility if growers of agricultural products are disqualified from petitioning for relief when massive imports of food products create oversupplies and cause domestic price levels to plummet. Thousands of families in my home state have a long history of sheep ranching. Sheep ranchers and farmers are the very heart of the U.S. industry producing lamb meat, and the WTO needs to recognize such basic economic realities.

Predictably, the government of Australia and New Zealand, which brought the WTO appeal, have already called for the United States to immediately terminate the U.S. import relief program in response to the Appellate Body's decision. As bad as the Appellate Body's decision is, I believe that it is clear that it does not require termination of the United States' import relief program for the lamb industry. I am today calling on U.S. Trade Representative Robert Zoellick to reject Australia and New Zealand's demands and instead invoke the procedure prescribed by Section 129 of the Uruguay Round Agreements Act. Ambassador Zoellick should promptly request the ITC to provide him with an advisory report on whether it believes that its original decision can be brought into compliance with the Appellate Body's decision. If that advice is affirmative, I hope and expect that Ambassador Zoellick will take the further prescribed step of asking the ITC to issue a revised determination in conformity with the Appellate Body's decision.

The period of relief originally proclaimed by President Clinton is scheduled to run through July of next year, and I am confident that the ITC will be able to revise its original determination so that this badly needed relief can run its course. In the meantime, I call upon President Bush—whose own home state is the United States' largest producer of lamb—to direct USDA and other agencies to redouble their efforts to see that the industry gets the full measure of assistance that it was promised as part of the import relief package.

THE SMALL BUSINESS LIABILITY REFORM ACT

Mr. MCCONNELL. Mr. President, last Thursday, Senator LIEBERMAN and I introduced S. 865, the ''Small Business Liability Reform Act,'' which aims to restore common sense to the way our civil litigation system treats small businesses. In our legal system, small businesses, which form the backbone of America's economy, are often forced to defend themselves in court for actions that they did not commit and to pay damages to remedy harms they did not cause. These businesses also frequently find themselves faced with extraordinarily high punitive damages awards. These unfortunate realities threaten the very existence of many small businesses, and when American small businesses go under, our economy is harmed as new products are not developed, produced, or sold, and employers cannot retain employees or hire new ones.

Small businesses, those with 25 or fewer full-time employees, employ almost 60 percent of the American workforce. Because the majority of small business owners earn less than $50,000 a year, they often lack the resources to fight unfair lawsuits which could put them out of business. When faced with such a lawsuit, many of these entrepreneurs must either risk a lengthy battle in court, in which they may be subjected to large damage awards, or settle the dispute out of court for a significant amount even though they did not cause the harm in the first place. Either way, our current system jeopardizes the livelihood and futures of small business owners and their employees.

The Small Business Liability Reform Act remedies these ills with three common-sense solutions, all of which protect our nation's entrepreneurs from unfair lawsuits and excessive damage awards. First, it would award punitive damages against small business only upon clear and convincing evidence, rather than upon a simple preponderance of evidence, and would set reasonable limits, three times the total of all damages or $250,000, whichever is less, on the amount of punitive damages that can be awarded.

Second, our bill would restore basic fairness to the law by eliminating joint and several liability for small businesses for non-economic damages, such as pain and suffering, so a small defendant is not forced to pay for harm he did not cause. Under the current joint and several liability, small businesses, when found liable with other defendants, may be forced to pay a disproportionate amount of the damages if they are found to have ''deep pockets'' relative to the other responsible parties. For example, a small business who was found responsible for only 10 percent of the harm may have to pay half, two-thirds, or even all of the damages if his co-defendants cannot pay. Again, without altering a small business's joint and several liability for economic damages, such as medical expenses, the Small Business Liability Reform Act provides that small businesses are responsible for only the portion of the non-economics damages they caused. Thus, the bill partially relieves a situation where a small business is left holding the bag with respect to injuries it did not inflict.

Third and finally, our bill addresses some of the iniquities facing non-manufacturing product sellers. Currently, a person who had nothing to do with a defective and harmful product other than selling it can be sued along with the manufacturer. Under the reforms in the Small Business Liability Reform Act, a product seller can only be held