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FREE TRADE AREA OF THE AMERICAS

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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FREE TRADE AREA OF THE AMERICAS

TUESDAY, MARCH 31, 1998

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

The Subcommittee met, pursuant to notice, at 2:30 p.m. in room B–318, Rayburn House Office Building, Hon. Philip M. Crane (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
March 17, 1998
No. TR–22

CONTACT: (202) 225–1721

Crane Announces Hearing on Free Trade Area of the Americas

Congressman Philip M. Crane (R–IL), Chairman, Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the status and outlook for negotiations aimed at achieving a Free Trade Area of the Americas (FTAA). The hearing will take place on Tuesday, March 31, 1998, in room B–318 Rayburn House Office Building, beginning at 2:30 p.m.

Oral testimony at this hearing will be from both invited and public witnesses. Deputy U.S. Trade Representative Richard W. Fisher will represent the Administration. Also, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

BACKGROUND:

The goal of free trade in the Western Hemisphere was first put forward by President Bush in June 1990 when he proposed the Enterprise of the Americas Initiative. At the December 1994 Summit of the Americas in Miami, leaders of 34 Western Hemisphere democracies agreed to establish the FTAA in which barriers to trade and investment will be progressively eliminated. They committed to begin the process immediately, make concrete progress by the year 2000, and to conclude negotiations by no later than 2005. The Summit Declaration signed on December 11, 1994, identified 11 major areas that will be covered in the negotiations: market access, customs procedures and rules of origin, investment, sanitary and phytosanitary measures, standards and technical barriers to trade, subsidies, antidumping and countervailing duties, smaller economies, competition policy, government procurement, intellectual property rights, and services. Subsequent ministerial meetings held in 1995, 1996, and 1997 have established working groups, and laid other groundwork for these negotiations.

Since 1990, four sub-regional groups in particular have made considerable progress in breaking down intra-regional trade barriers. Mercado Común del Sur—"The Common Market of the South" (also called MERCOSUR) consists of Argentina, Brazil, Paraguay, and Uruguay and is the second largest preferential trading group in the Americas, after the North American Free Trade Agreement (NAFTA). The Andean Pact, consisting of Bolivia, Colombia, Ecuador, Peru, and Venezuela, ranks third. The Caribbean Community and Common Market, consisting of 13 English speaking Caribbean nations, has agreed to implement a common external tariff over a period of six years, although members will be able to maintain their own non-tariff barriers. The Central American Common Market, originally established in 1961, was reinvigorated in 1990.

In addition to work in these sub-regional groups, Latin American countries have participated in other trade negotiations, several of which fall outside the FTAA framework. MERCOSUR, as well as some of the other Latin American groups are engaged in ongoing negotiations with the European Union. Also, Canada and Chile recently concluded a bilateral trade agreement which does not involve the other two

NAFTA members. This occurred when Chile's accession to NAFTA, a key priority of the United States, was temporarily forestalled by delay in passing legislation to extend fast-track trade negotiating authority for President Clinton. As a result of the 1997 pact between Canada and Chile, U.S. exporters are at an 11 percent disadvantage in the Chilean market vis a vis their Canadian competitors.

Western Hemisphere Trade Ministers held their first meeting under the FTAA process in June 1995 in Denver, Colorado. At the third ministerial meeting in Belo Horizonte, Brazil, in May 1997, Ministers agreed that "FTAA negotiations should be initiated in Santiago, Chile, in April 1998" when President Clinton will join other Western Hemisphere leaders at the Second Summit of the Americas.

In announcing the hearing, Chairman Crane stated: "The Santiago Summit marks an important juncture in the path the United States has chosen towards reaching a FTAA agreement by 2005. Challenges to progress include the lack of fast track negotiating authority, and concern that exclusive sub-regional negotiations, which do not include the United States, may be detrimental to our interests. American leadership in the region is particularly critical now. As the Santiago Summit approaches, we must work to ensure that U.S. aims are adequately represented in these historic talks which have the potential to affirm and advance the expansion of freedom and prosperity in our hemisphere."

FOCUS OF THE HEARING:

The focus of the hearing will be to examine: (1) progress in the FTAA negotiations and how these talks affect the national economic and security interest of the United States, (2) prospects for the upcoming Santiago Summit meeting, and (3) the status of existing sub-regional trade arrangements in the Western Hemisphere. Testimony will be received on specific objectives for the FTAA negotiations, the results of the recent ministerial held in Costa Rica on March 19, 1998, and the anticipated impact of expanding trade in the hemisphere on United States workers, industries, and other affected parties.

DETAILS FOR SUBMISSIONS OF REQUESTS TO BE HEARD:

Requests to be heard at the hearing must be made by telephone to Traci Altman or Bradley Schreiber at (202)225–1721 no later than the close of business, Wednesday, March 25, 1998. The telephone request should be followed by a formal written request to A.L.Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. The staff of the Subcommittee on Trade will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee on Trade staff at (202)225–6649.

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

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

In order to assure the most productive use of the limited amount of time available to question witnesses, all witnesses scheduled to appear before the Subcommittee are required to submit 200 copies of their prepared statement and an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format, for review by Members prior to the hearing. Testimony should arrive at the Subcommittee on Trade office, room 1104 Longworth House Office Building, no later than 5:00 p.m., Friday, March 27, 1998. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) single-space legal-size copies of their statement, along with an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format only, with their name, address, and hearing date noted on a label, by the close of business, Tuesday, April 14, 1998, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Trade office, room 1104 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

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

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments. At the same time written statements are submitted to the Committee, witnesses are now requested to submit their statements on an IBM compatible 3.5-inch diskette in ASCII DOS or WordPerfect 5.1 format. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

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

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

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

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

Note: All committee advisories and news releaes are available on the world Wide Web at "http://www.house.gov/ways__means/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman CRANE. The Subcommittee will come to order. And on our schedule our witness was to be our colleague, Mr. Farr from California, but we cannot find Mr. Farr. Wait 1 second. Oh, here he is. All right, well. Then we will start with our colleague, Mr. Farr. And, Mr. Farr, please take a seat, and try to keep and your oral testimony, if you can, within the general range of 5 minutes.

All written material will be made a permanent part of the record. And you may proceed.

[The opening statements follow:]

Opening Statement for Chairman Crane
Hearing on the Free Trade Area of the Americas
March 31, 1998

Good Afternoon. This is a hearing of the Ways and Means Trade Subcommittee to consider the status and prospects for negotiations to establish a Free Trade Area of the Americas.

As my colleagues know, Ambassador Barshefsky recently returned from an FTAA Ministerial meeting San Jose, Costa Rica. At this meeting, Trade Ministers agreed to a Declaration which lays out a broad blueprint for the negotiations and recommends to Heads of State that FTAA talks be officially launched at the upcoming Summit meeting in Santiago Chile, where President Clinton will join thirty-three other leaders of countries in our hemisphere.

Our first witness today is Congressman Sam Farr from the State of California who will address the Andean Trade Preference Act, and then we will move on to the Administration and two panels of private sector witnesses. I yield to my distinguished colleague, Mr. Matsui.

I want to warmly welcome our new Deputy United States Trade Representative, Richard Fisher, to the Subcommittee for the first time. On behalf of my colleagues, we are impressed with your background and appreciate your willingness to serve in this important capacity at USTR.

You are joining the U.S. negotiating team at a critical time for the FTAA negotiations. The recent Trade Ministerial meeting in San Jose set the stage for an official launch of the negotiations on April 18 in Santiago, Chile, where President Clinton will join thirty-three Western Hemisphere heads of state.

I cannot overstate my frustration and disappointment that the President will attend this Summit without the authority that his counterparts have to negotiate trade agreements. All Americans need to consider the costs involved in having our head of state participate in an important international meeting without the fundamental tools he needs to strike the best deal possible for U.S. interests. There is no doubt that the recent delay in passing fast track trade negotiating authority lessens the strength of U.S. leadership in the FTAA process. It opens doors for other countries to exert additional influence in these historic negotiations.

In order to recover from the setback we have suffered, it is essential that USTR get back in the game with an ambitious trade agenda that refuses to abdicate the traditional U.S. role of world leader. While the recently announced transatlantic initiative with Europe has interesting possibilities, I must confess I am struck with how the U.S. is beginning to fall into a reactive posture. We are positioning ourselves so that we are only able to respond to trade agendas developed in Brussels, or in the case of the FTAA, in Brazil. This is not the role we have played historically in trade negotiations and it is not a role with which any of us -- Republicans or Democrats--should be comfortable.

Sadly, there is a danger that the agenda of our MERCOSUR trading partners to "go slow" in the FTAA talks in order to consolidate their own regional trade organization may win the day in Santiago. I urge you, Mr. Fisher, to do everything possible to ensure that the FTAA talks are launched with enough momentum to achieve real, tangible, trade liberalization by the turn of the century. In my view, this should include an airtight, standstill commitment not to increase levels of trade protection in the region. I also challenge you to bring back an accord from Santiago that will pave the way for concrete progress in the areas of transparency, harmonization of standards and tariff reductions before the year 2000. It is clear to me that interim agreements are necessary to maintain momentum in the FTAA process.

Absent an ambitious agenda, I am afraid that the interest of the private sector in the FTAA negotiations will fade, making it that much more difficult to garner the votes necessary to pass fast track.

I look forward, Mr. Ambassador, to hearing your plans for the FTAA Summit and to the testimony of the private sector witnesses on the two panels that will follow. I yield to the distinguished Ranking Minority Member of the Trade Subcommittee, Mr. Matsui

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Opening Statement of Hon. Jim Ramstad, a Representative in Congress from the State of Minnesota

Mr. Chairman, thank you for calling today's hearing to discuss U.S. trade with Latin America and the Free Trade Area of the Americas.

There exists a special relationship between the U.S. and our fellow nations in the Western Hemisphere. While trade with Latin America, excluding Mexico, currently accounts for only 7% of total U.S. merchandise trade, we know the potential for growth in this trade relationship is tremendous. Trade with Latin America rose by 20% in 1997, making it the fastest growing region for U.S. exports. When you include Mexico, trade with the region is expected to surpass trade with Europe and Japan combined by 2010.

Of course, this is our potential growth rate—and we must take the appropriate steps to realize this goal, which will contribute mightily to the U.S. economy and create more and better paying jobs for U.S. workers.

We have been watching closely the many regional trade agreements being negotiated in the region over the past few years, most of which do not involve the U.S. While these regional agreements certainly help the participating nations' economies, I am worried about the lack of U.S. involvement. Of course, many initiatives we

would like to be negotiating are on hold because we have not yet renewed fast track Authority.

fast track Authority is not only key to allowing our participation in regional agreements, but it is crucial for the success of the FTAA overall. The U.S. is, and should continue to be, the leader in our Hemisphere. Without the authority the administration needs to guide the direction of the negotiations, I fear the agreements will not be as aggressive as they could be to open markets for U.S. exports.

Yet, I have been told that the fourth ministerial meeting held in San Jose earlier this month set the stage for a successful launch of substantive negotiations at the upcoming Santiago Summit. I am certainly interested in learning more from Ambassador Fisher, Al Christopherson of the Minnesota Farm Bureau Federation and others about the progress made at that ministerial meeting, as well as what we can expect to happen at the Santiago Summit.

Thank you again, Mr. Chairman, for calling this hearing. I look forward to hearing from today's witnesses about the importance and implications of U.S.—Latin American trade and the FTAA.

STATEMENT OF HON. SAM FARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FARR. Thank you very much, Mr. Chairman. I'm sorry I'm late, I ended up looking for B–318 in the Capitol, so it shows how new I am to this place. [Laughter.]

I think the best way to try to bring this issue up is to show you how twisted I think our policy is regarding Colombia. Yesterday, on the floor, under the suspense calendar, there was a short discussion about an appropriation that we were making to Colombia of $36 million to buy three Black Hawk helicopters to assist their military in drug eradication. That all comes about because Colombia is still the largest grower and exporter of drugs to the United States.

Our policy regarding Colombia probably started back in 1991 when we gave preferential tariff treatment under the Andean Trade Pact Agreement, in which we intended Andean countries to develop legal alternatives to drug crop cultivation. This legislation that we adopted gave tariff-free status to a range of goods, including cut flowers. Since 1991, however, the number of hectares devoted to coca cultivation in Colombia has steadily increased. Therefore, we've had to appropriate money to assist them with helicopter purchases. We have, moreover—the President of this country, for the third consecutive year, has found Colombia uncooperative in its narcotic control efforts, and failed to fully certify it. They gave a waiver of national interest. This year, primarily, because it's an election year in Colombia, and they wanted to be able to maintain dialog with the Colombian Government.

How does this relate to what we're doing here today? Well, since 1991, the Colombian flower growers, where we gave them free entry of their product into the United States, and I might add that we don't do this for any other country. Holland is the second largest exporter of flowers to the United States and we do charge them a tariff. The Colombians now have 70 percent of the cut flower business in America. They have a $300 million business.

What I'm asking for is essentially a little bit of fair play. I'm for free trade. I voted for GATT. I voted for NAFTA. But I'm also a supporter of fair trade. Tariffs should be equal for everyone. We need a level playingfield. We charge tariffs when we have products

in this country that we make, and we try to level the playingfield. They charge tariffs for products they make. And, in fact, everything we export to Colombia, we pay tariffs on: the machinery, the produce, the chemicals, the oil, all pay a tariff of between 5 and 15 percent. Yet, we allow Colombians to export flowers to the United States for free.

I think trade agreements should also recognize and address potential impact on domestic industries. And this is one where we've failed. We're still involved in this drug problem with Colombia, but we failed to analyze what the impacts have been on our domestic products, and particularly, on our growers. With regard to the Andean Trade Pact—no one has taken a look at it until you, Mr. Chairman. We are beginning to ask these questions that have gotten us to the table.

The number of American flower growers has fallen 60 percent since 1989. California flower growers go out of the business at a rate of 10 percent a year. Cut flowers are now Colombia's fifth largest export. The dollar value in Colombian cut flowers imports has increased from $88 million in 1992, as I said, to $442 million in 1997, a fivefold increase. The Colombian cut flower industry currently controls 65 to 70 percent of the United States import market. The next largest importer, as I said, is Holland which only has 12 percent.

So we have to fix something that's broken here. It just isn't working, and I urge the Subcommittee to end this unfair flower trade by passing H.R. 54, and to consider the effect of the ATPA, the Andean Trade Pact Agreement, when it considers future trade agreements, like Free Trade Area of the Americas.

And let's just try to make some sense out of the kind of chaos of what's going on here between 1 day allowing all of these flowers in free. I was a Peace Corps volunteer in Columbia, so nobody loves Colombia more than I do. I think it's a great country, love the people there, and a lot of the people I know are in the flower business. They have a mature business now. This isn't 1991. This is 1998, and they have 70 percent of the American market. Is a tariff going to kill the market? Absolutely not. Are they still going to be competitive in America? Absolutely. But it makes no sense that they have this unfair advantage just so that when we go to Colombia, we have a business interest that we can talk to about the internal politics.

That's what's happening, the external foreign affairs of this country are being heard by the White House, and the internal economic devastation by that foreign policy is being ignored. The only way we can correct it is for Congress to act. We have the ability to level the playingfield. I think by our actions of yesterday, and this hearing today, we have the opportunity to do that. I urge this Subcommittee to do it—take a look at the legislation—it has bipartisan cosponsors, it affects many parts of America, and all the States that you gentleman represent.

Thank you very much. I would be glad to answer any questions you might have.

[The prepared statement follows:]

Statement of Congressman Sam Farr, a Representative in Congress from the State of California

Mr. Chairman, Members of the Subcommittee, thank you for holding this hearing on the progress of Free Trade Area of the Americas, the prospects of the Santiago Summit meeting, and existing trade agreements in the Western Hemisphere. I appreciate you giving me the opportunity to testify before you today on a failed foreign policy, the Andean Trade Preference Act.

I would like to reiterate, as I did when I testified last year, that I support free trade. I come from a state that remains the nation's largest producer of agricultural products and the nation's leader in exports, so I understand the need for free and open markets. The 17th District of California, which I represent, has proven itself innovative and resourceful, becoming one of the fastest growing exporters in the country. It is within this context of innovation and resourcefulness that I support free trade. In addition to good economic sense, it strengthens ties between countries and encourages the flow of information, knowledge, and understanding.

As a Peace Corps volunteer in Colombia I learned that Latin America was a strong and diverse region, and its economic potential was only just beginning to make itself felt. I look forward to a positive outcome from the upcoming Summit in Santiago. Properly structured, the Free Trade Area of the Americas (FTAA) could have tremendous economic, social, and political benefits. However, we are at a crossroads for trade between North, Central, and South America. Now is the time when we need to examine problems with other trade policies in the region, and that is why I am here today.

As I mentioned, I support free trade. I also support *fair* trade. As the Subcommittee considers the issue of trade in the Americas, and specifically the FTAA, it should review the impact of a trade agreement already on the books—the Andean Trade Preference Act. The ATPA has given one-sided trade benefits to several South American countries and has caused considerable hardship to at least one domestic American industry: cut flowers. The ATPA simply provides Colombian flower growers an unnecessary edge in a market they already dominate to the detriment of domestic flowers growers. The International Trade Commission acknowledged in 1995 and 1996 that the ATPA has had a greater impact on the U.S. fresh cut flower industry than any other market examined.

Since enactment in 1991, the Andean Trade Preference Act (ATPA) has provided duty-free access to the U.S. market for flower exporters in four Latin American countries: Colombia, Bolivia, Ecuador, and Peru. For seven years it has allowed flower growers in these four countries to avoid tariffs normally imposed on their product, tariffs ranging from 3.6% to 7.4%.

The purpose of this preferential treatment was intended to encourage Andean countries to develop legal alternatives to drug crop cultivation and production. However, coca eradication efforts to date in Colombia have been less than anticipated. This policy has failed. For the third consecutive year Colombia has failed in its efforts to be fully certified or reduce the production of illegal drugs. In order to maintain an open dialogue the Administration recently made the determination to put forward a national interest waiver with respect to Colombia. The results in Colombia are particularly disheartening, given that eradication is generally a bilateral effort in which the United States supplies the funding, fuel, and herbicides with the host government providing the personnel.

Cultivation of coca, the raw material used to make cocaine, has dropped significantly in all of the Andean region except Colombia. The Colombian coca crop expanded more than 30% from 1996 to 1997, from almost 51,000 hectares to over 67,000 hectares. Colombia now has the distinction of producing 80% of world's cocaine and over 70% of the cut-flower imports into the United States.

The latter has resulted in a steady weakening of the American flower industry. Since the enactment of ATPA, the number of American chrysanthemum growers has fallen by 25%, the number of carnation growers has fallen as by much as one-third and the remaining major commercial types have fallen in the double-figure range as well.

Last session, Congressman Tom Campbell and I introduced legislation, which has now garnered the support of 42 cosponsors, to repeal the preferential tariff treatment provided by the ATPA. H.R. 54 would restore tariff levels to the pre-ATPA levels of 3.6% to 7.4%. This will help to level the playing field that our growers are currently forced to compete on. Colombia growers will still have many advantages over their American counterparts. This legislation would end an ineffective drug control policy and restore a level playing field for the American cut-flower industry.

An additional concern that was not addressed is of an environmental and health nature. Imported flowers have a large advantage over domestic producers because

they can use a much broader range of chemicals than those that are allowed in the United States, yet still compete in the same markets. In other countries flower growers have no rules, no registration requirements, and no enforcements on the chemicals they use.

When flowers arrive from other nations there is little or no screening for pesticide residue. Out of sight means out of mind. This unchecked practice on imports could have significant implications for our planet. By not imposing the same chemical restrictions on imports, the United States is making domestic flower producers noncompetitive, allowing global pollution, and possibly endangering public health and safety.

The following is just a partial list of chemicals used by foreign growers that are unavailable to domestic growers: Pyramore, Afugan, Nomolt, Nack, Methanil, Lanate, Oxanil, Vidate, DDDP, Actellic, Qinalphos, Applaud, Azodrin, Kartap, Hostathion, Sulprofos, Curacron, Carzol, Plictran, Bendiocarb.

There are many other chemicals with no scrutiny, no restrictions, no enforcement, and no residue testing. Imported growers could even use DDT and get away with it. With the upcoming implementation of the Food Quality Protection Act (FQPA) the inequity will grow even more extreme.

In closing, the American flower growers are in a unique situation. They are the economic poster child for a failed trade policy and the sacrificial lamb in a failed foreign policy war to end drug trafficking.

Chairman CRANE. Thank you, Sam. And I was going to say we have a stacked deck up here, but I see there are some that are not from California. [Laughter.]

And I would like to yield first to our distinguished Ranking Minority Member, Mr. Matsui.

Mr. FARR. All the flower growers in Florida are affected by this policy. [Laughter.]

Mr. MATSUI. I want to thank the Chairman for yielding. Sam, do we have any statistics? I was just talking to staff, and I want to refresh my memory. In 1991 when this agreement was reached by the administration, the idea was to reduce the acreage of drugs and increase the acreage of flowers, and over time it was supposed to reduce significantly the drug production. It may be difficult to get statistics on illegal activities from Colombia, but do we have statistics in that particular area?

Mr. FARR. Yes, we do.

Mr. MATSUI. Can you recite them, if you have them?

Mr. FARR. The reason for this trade pact, remember, the underlying reason was to support drug eradication by moving from an elicit crop to a legal crop, and allowing the legal crop to come in. Drug cultivation in Colombia has grown by 55 percent since 1991. The amount of coca that escapes eradication has grown by 35 percent since the ATPA became law in 1991. So, we're missing on both sides. They are not eradicating the crop internally, and the number of hectares in production has grown by 55 percent—doubled.

Mr. MATSUI. I understand that our domestic industries have initiated some antidumping actions. And, of course, they haven't been successful. And I don't know if that's necessarily the appropriate approach because I think the original purpose was to trade off one type of production for another. And if it's not working, we obviously need to reexamine that policy, and it would be my hope that we do that, put a little pressure——

Mr. FARR. We have done antidumping suits, and, as you know, they're very expensive. They're essentially very costly to a small

business industry that we have of flower growers. We have won those suits but that doesn't really give you much remedy. The other problem we're going to be facing soon is this country has dealt very stiff tolerance levels for herbicides and pesticides that are on imported fruits and vegetables. And we do a lot of testing of that because we don't allow those commodities to come into the United States in violation of our excepted tolerance levels. We don't have any kind of testing for flowers, and they'd use some of the stuff that we outlaw in this country.

Mr. MATSUI. I think your comments are well taken, and certainly I'd like to work with the Chair in order to see if any further action should and can be taken, and I appreciate this.

Mr. FARR. I appreciate this Subcommittee's tough situation. A lot of people come here and sort of do this, you know, protectionism. I don't think it's protectionism. This is where we made some policy on the assumptions. And that's why I wish Tom Campbell were here, because he's very good—he was here and voted for that bill. And he voted at the time, and he's changed his position on it, because he thinks the intent of that bill has been totally thwarted.

Mr. MATSUI. Let me say this, I agree with you that this isn't protectionism you're seeking. What I'm suggesting is that if we made this original decision on foreign policy—for a foreign policy reason, and that foreign policy isn't working, then we have to reexamine this. So, I thank the Chairman. I thank you for your testimony.

Mr. FARR. Thank you.

Chairman CRANE. Mr. Thomas.

Mr. THOMAS. Very briefly, Sam, the fact that you're back in front of us again, I think, underscores the naivety that we have in terms of economics and dealing with our Western Hemisphere. I know it's important to you. I know it's important to a couple of congressional districts, cut flowers. Obviously, we come from a State in which specialty agriculture is affected in a number of different ways. This, and I don't mean to belittle it, pales in relationship to some of the other specialty crops in other parts of the world; almonds, for example, with the Europeans, raisins, as well as cut flowers.

The point I'm trying to make is that if you're still a victim of someone thinking that by knocking down a tariff on cut flowers, we could stem the cocaine trade to the United States, we're pretty naive. In the way in which we're trying to build a foreign policy, and a trade package, your leaving off the discussion on South American, Central American, Latin American trade. I do want to put it in perspective. It's important to you, and therefore, it should be focused on. But when we're looking at the larger trade practices, what has occurred to you has more often than not been passed off as our policy, which is unfortunate. And that we ought to look at a far more sensible, comprehensive program than to pick and choose these kinds of areas to punish or reward. Because I think at this date, we should have learned that when we try to mess with fundamental economic relationships as a punishment or a reward, after you've done it for some really good reason, several years later no one can remember why it was that we did it.

So you've been helpful in reminding us of why we did it, and more importantly, why we shouldn't do this sort of thing again. My hope is that you won't appear before us again, because we will have

solved your problem in the larger solution of a rational policy within the hemisphere.

Thank you very much.

Mr. FARR. Thank you, and you remember that with the commodities that you're interested in, there are other criteria, there's truth in labeling.

Mr. THOMAS. Surely.

Mr. FARR. We don't label flowers, where they come from. There are tolerance levels which we test for on edible commodities. There's no testing on flowers. So this is a specialty crop that has been given this incredible special privilege. If you just made sense, and said well, let's charge a tariff on these flowers, and let's earmark that money to turn around and use it for drug eradication. At least it would go back to Colombia, or assistance to Colombia. But here they've got both. They're getting the flowers in, putting our guys out of business——

Mr. THOMAS. Yes.

Mr. FARR [continuing]. And then we turn around and buy them helicopters.

Mr. THOMAS. But I would tell the gentleman that his solution is a compounding of the problem if we were to run the tariff, and then give it back. The solution is in the larger context, and your continuing to remind us of mistakes that we've made in the past hopefully will speed up the eradication of this and other attempts to link policy with trade.

Thank you.

Chairman CRANE. Mr. Camp. Mr. Ramstad. Mr. McDermott. Well, if not, we thank you again, Sam. And the comments that were made by Mr. Matsui and Mr. Thomas, I think, hit responsive chords with Members of the Subcommittee. And the question I was just putting to Mr. Matsui is, How, when its food products are coming in here, we're so paranoid about the use of chemicals in raising food crops that can be injurious upon consumption, and yet we don't apply the same standards with other products? You have a list on the back of your last page of testimony that's illustrative of this. We hope we can address that.

Mr. FARR. Thank you very much, Mr. Chairman. I appreciate the patience of the Subcommittee, and for my Florida colleagues, who receive most of the business from the imports, their flower growers are in support of this bill.

Chairman CRANE. Very good. Thank you, Sam.

I want to now warmly welcome our new Deputy U.S. Trade Representative, Richard Fisher, to the Subcommittee for the first time. On behalf of my colleagues, we are impressed with your background and appreciate your willingness to serve in this important capacity as USTR.

You are joining the U.S. negotiating team at a critical time for the FTAA negotiations. The recent trade ministerial meeting in San Jose set the stage for an official launch of the negotiations on April 18 in Santiago, Chile, where President Clinton will join 33 Western Hemisphere heads of state.

I cannot overstate my frustration and disappointment that the President will attend this summit without the authority that his counterparts have to negotiate trade agreements. All Americans

need to consider the costs involved in having our head of state participate in an important international meeting without the fundamental tools he needs to strike the best deal possible for U.S. interests. There is no doubt the recent delay in passing fast track trade negotiating authority lessens the strength of U.S. leadership in the FTAA process. It opens doors for other countries to exert additional influence in these historic negotiations.

In order to recover from the setback we suffered, it's essential that the USTR get back in the game with an ambitious trade agenda that refuses to abdicate the traditional U.S. role of world leader. While the recently announced Transatlantic Initiative with Europe has interesting possibilities, I must confess I'm struck with how the United States is beginning to fall into a reactive posture. We are positioning ourselves so that we are only able to respond to trade agendas developed in Brussels, or in the case of the FTAA, in Brazil. This is not the role we have played historically in trade negotiations, and it's not a role with which any of us, Republicans or Democrats, should be comfortable.

Sadly, there is the danger that the agenda of our MERCOSUR trading partners to go slow in the FTAA talks in order to consolidate their own regional trade organization, may win the day in Santiago.

I urge you, Mr. Fisher, to do everything possible to ensure that the FTAA talks are launched with enough momentum to achieve real tangible trade liberalization by the turn of the century. In my view, this should include an airtight stand-still commitment not to increase levels of trade protection in the region. I also challenge you to bring back an accord from Santiago that will pave the way for concrete progress in the areas of transparency, harmonization of standards, and tariff reductions before the year 2000.

It's clear to me that interim agreements are necessary to maintain momentum in the FTAA process. Absent an ambitious agenda, I'm afraid that the interests of the private sector in the FTAA negotiations will fade, making it much more difficult to garner the votes necessary to pass fast track.

I look forward, Mr. Ambassador, to hearing your plans for the FTAA summit, and to the testimony of the private sector witnesses on the two panels that will follow.

And now I'd like to yield to our distinguished Ranking Minority Member of the Trade Subcommittee, Mr. Matsui.

Mr. MATSUI. Mr. Chairman, I happen to agree with everything you're saying and as a result of that, I'll just submit my statement for the record.

Thank you.

[The prepared statement follows:]

OPENING STATEMENT OF CONGRESSMAN ROBERT MATSUI
SUBCOMMITTEE ON TRADE HEARING ON
FREE TRADE AREA OF THE AMERICAS
MARCH 31, 1998

THIS HEARING TODAY IS PARTICULARLY TIMELY IN LIGHT OF THE RECENT MEETINGS OF THE MINISTERS OF 34 COUNTRIES IN SAN JOSE, COSTA RICA TO PREPARE FOR THE SUMMIT OF HEADS OF STATE ON APRIL 18 AND 19 IN SANTIAGO, CHILE TO LAUNCH THE NEGOTIATIONS FOR A FREE TRADE AREA OF THE AMERICAS.

I WOULD LIKE TO CONGRATULATE THE ADMINISTRATION FOR ITS LEADERSHIP AND SUCCESS IN ACHIEVING THE KEY UNITED STATES OBJECTIVES AT SAN JOSE. THE AGREEMENT ESTABLISHES A WELL-BALANCED STRUCTURE FOR THE TALKS AND GENERAL PRINCIPLES AND OBJECTIVES THAT ENSURE A SOLID FOUNDATION FOR LAUNCHING COMPREHENSIVE SUBSTANTIVE NEGOTIATIONS IN ALL AREAS.

THE FTAA TALKS, IF SUCCESSFULLY COMPLETED, PROMISE TO BRING SUBSTANTIAL BENEFITS TO CONSUMERS OF THE AMERICAS. AMERICAN BUSINESSMEN AND WORKERS STAND THE MOST TO GAIN BECAUSE, AS MOST OF YOU KNOW, THE U.S. MARKET IS ALREADY VERY OPEN TO LATIN AMERICAN PRODUCTS AND THESE TALKS WILL SERVE TO PRY OPEN LATIN AMERICAN MARKETS TO OUR GOODS AND SERVICES. I HOPE THAT AN EVEN

MORE CRUCIAL RESULT OF THE FTAA WILL BE THE SOLIDIFICATION OF LATIN AMERICA'S EMBRACE OF DEMOCRACY AND MARKET ECONOMIC FORCES.

OF PARTICULAR IMPORTANCE IN MY VIEW IS THE AGREEMENT TO ESTABLISH A FORUM SPECIFICALLY FOR LABOR, ENVIRONMENT, BUSINESS, ACADEMIC AND OTHER SECTORS OF OUR DOMESTIC SOCIETIES TO PRESENT THEIR VIEWS AND INPUT TO THE GOVERNMENTS AS THE NEGOTIATIONS PROCEED. I URGE OUR GOVERNMENT AND OUR PRIVATE SECTOR TO TAKE ADVANTAGE OF AND UTILIZE THIS OPPORTUNITY FULLY IN ORDER TO DEVELOP A DOMESTIC AS WELL AS INTERNATIONAL CONSENSUS ON THIS IMPORTANT TRADE POLICY INITIATIVE.

I CONGRATULATE AND WELCOME AMBASSADOR RICHARD FISHER IN HIS FIRST APPEARANCE BEFORE THIS SUBCOMMITTEE AS A DEPUTY U.S. TRADE REPRESENTATIVE. I ALSO LOOK FORWARD TO THE TESTIMONY OF THE OTHER WITNESSES TODAY.

Chairman CRANE. Thank you. You may proceed, Mr. Secretary.

STATEMENT OF HON. RICHARD W. FISHER, DEPUTY U.S. TRADE REPRESENTATIVE, OFFICE OF U.S. TRADE REPRESENTATIVE

Mr. FISHER. Thank you, Mr. Chairman. Mr. Chairman, Members of this Subcommittee, I'm honored today to discuss the progress with you that we have made toward constructing a Free Trade Area of the Americas.

As you mentioned, this is my first appearance before this Subcommittee as Deputy U.S. Trade Representative. I want to tell you at the outset here that I consider it a privilege to be here before you, and I greatly appreciate this invitation to discuss this important initiative with you.

Chairman CRANE. Well, we recognize, Mr. Ambassador, that you may be appearing here for the first time, but you have strong, powerful input from back home.

Mr. FISHER. Well, thank you, Congressman, I appreciate that. [Laughter.]

Chairman CRANE. For those of you that aren't aware, his better half is the daughter of Jim Collins, a former colleague from Dallas that we served with for a number of years.

Mr. FISHER. You're right, "better half" by more than half. [Laughter.]

We'll see how much I learned, Congressman.

As you know, Mr. Chairman, this administration, the Clinton administration, is committed to opening up markets in the Western Hemisphere, and our objective is to create a free trade area that stretches from Nova Scotia to Tierra del Fuego. And our aim is to raise the standard of living and improve the working conditions of all the people of our hemisphere.

I think it's important to take note that the Western Hemisphere is now the largest destination for U.S. exports of goods. Over 40 percent of total U.S. merchandise exports went to this region in 1997. U.S. exports to the region grew three times faster last year than exports to the rest of the world. And these export increases in 1997 accounted for two-thirds of the export growth of the United States worldwide. This warrants repeating, Mr. Chairman. U.S. exports to our Western Hemisphere partners grew by $42 billion last year. That accounted for 63 percent of U.S. export growth worldwide.

United States exports to Latin America, Mexico, and the Caribbean in the second half of 1997 exceeded our exports to the European Union countries. And Mexico has now surpassed Japan to become our second largest export market, behind Canada, which is our largest market to the north, as you well know.

These impressive trade statistics are driven by a dramatic reorientation of trade policy in Latin America. In some instances, the changes in policy that have occurred in the southern half of the hemisphere, I believe, are as revolutionary as those which have occurred in Eastern and Central Europe at the beginning of this decade.

As democracy has spread through the Americas, so has a growing confidence in marketplace economics. Market-driven policies, open trade, greater transparency, as you referred to earlier, in rulemaking and regulation, increased privatization, sound fiscal and monetary policies, and efforts by the private sector to increase competitiveness have led to faster economic growth, lower inflation, and expanded opportunities.

This administration believes it is in the interest of the United States to maintain this momentum toward economic prosperity in Latin America, and we believe that the FTAA is an essential and vital tool for doing so.

Since the Miami Summit of the Americas 3 years ago, trade ministers of the 34 countries of the hemisphere have been hard at work laying the groundwork for the FTAA, or ALCA, as it is known in its Spanish acronym.

This work of building a foundation for the FTAA reached its culmination a week and a half ago in San Jose, Costa Rica. In San Jose, the ministers, the trade ministers of the 34 countries involved, unanimously approved a structure and a plan to have their heads of state initiate negotiation of the FTAA during the upcoming summit meeting in Santiago, Chile, on April 18 and 19. They provided recommendations on the initial structure of the FTAA, its objectives, its principles, and the venues for negotiations.

It was agreed that the United States will provide the venue for negotiating groups and the administrative secretariat of the FTAA for the first 3 years in Miami, Florida. There will be nine initial negotiating groups. These groups will cover market access, investment services, government procurement, dispute settlement, agriculture, intellectual property rights, competition policy, and subsidies antidumping and countervailing duties. Each of these nine groups will be chaired by a different country, and they will rotate the chairmanship of these groups every 18 months. The United States, by the way, initially will chair the government procurement group.

The negotiating group structure, incidentally, Mr. Chairman, is flexible so that it can be modified as required to ensure continued progress in the negotiations. The overall leadership for the FTAA was also established in San Jose with Canada in the chair for the first 18-month period, and the United States cochairing with Brazil, the final 2 years of the negotiations.

The Chairman will head the ministerial meetings, in what is known as the Trade Negotiating Committee, which is comprised of 34 vice ministers of trade, including the witness sitting before you, who will have the responsibility for oversight of the nine negotiating groups I referred to earlier. Thus, the negotiating groups will report to the vice ministers of the Trade Negotiating Committee who will, in turn, report to their ministers.

It was decided in San Jose that, subject to approval by the heads of state in Santiago, the Trade Negotiating Committee—this group of vice ministers—will begin its work by June 30, 1998. And the negotiating groups, the nine groups that I mentioned, will meet by no later than September 30 of this year.

There are other aspects of the San Jose declaration that I think are important and I'd like to bring to your attention here. The first is an establishment of a Committee on Civil Society. One of the greatest threats to hemispheric trade integration is not the difficulty of the negotiations per se, but the apprehension of our respective civil societies—that is our nongovernmental private sectors—about the negotiating process. And, thus, for the first time in any large trade negotiation, we have created a Committee reporting directly to the ministers to receive input from business, labor, and environmental groups, academics, consumer, and other noncentral government interests.

The second aspect I'd like to bring to your attention is the establishment of a Committee on Electronic Commerce. This Committee will be composed not just of government officials, but also of private sector experts, to develop the rules of electronic commerce in the hemisphere. I hasten to add, Mr. Chairman, that the electronic medium is not a new subject for the FTAA, and we have throughout this process used the Internet. We even have a home page, www.ac-la-ftaa.org, which includes all the products of the FTAA working groups, in all four languages of the hemisphere, so it will be transparent to the various cultures of our hemisphere.

In addition to securing transparency for the negotiations, another key objective, which we achieved in San Jose, is that the FTAA would not simply add yet another set of rules for business to contend with. We reached consensus that the bilateral and the sub-

regional agreements, such as MERCOSUR, and the Andean Community Pact, can coexist with the FTAA only to the extent that the rights and obligations under those agreements are not covered by, or go beyond those, of the FTAA. We agreed that the FTAA should improve upon WTO rules and disciplines, and in this way, we seek to ensure that we will reach a final comprehensive deal that breaks down the most serious trade barriers in the regions, and does not merely reiterate the accomplishments obtained at the end of the Uruguay round.

Let me summarize, Mr. Chairman, the most important objectives for the United States in the FTAA. They are as follows: To progressively eliminate tariffs, which I wish to remind you, are four times higher in the hemisphere than they are here in the United States; to progressively eliminate nontariff barriers, as well as other measures with equivalent effects which restrict trade; to bring under great discipline trade distorting practices for agricultural products, including those that have effects equivalent to agricultural export subsidies; to promote customs mechanisms and measures that ensure operations are conducted with transparency, efficiency, integrity, and accountability; to develop an efficient and transparent system of rules of origin, including nomenclature and certificates of origin; to eliminate and prevent unnecessary technical barriers to trade; to liberalize trade in services; to ensure adequate and effective protection of intellectual property rights; to guarantee that the benefits of the FTAA liberalization process are not undermined by anticompetitive business practices; to establish a fair and transparent legal framework for investment and related flows; to make our trade liberalization and environmental policies mutually supportive; and to further secure the observation and promotion of workers' rights by renewing the FTAA countries' commitments to the observance of internationally recognized core labor standards.

Mr. Chairman, let me conclude by saying that achieving a successful FTAA is very much in the interest of the United States. As you know, and you have been a champion of this cause, trade drives this economy. There is no greater trading nation than the United States of America. Thirty-eight percent of our GDP growth in the last 5 years has come from exports. Trade was a source of a significant portion of the 14 million jobs that our economy has created in the last 5 years.

Today, we have the strongest economy in the world, and the best balanced economy in the world. As you know, it's the best balanced in decades. We're enjoying growth without inflation, we have the lowest unemployment we've had in 30 years, and yet, even in these prosperous times, Mr. Chairman and Members of the Subcommittee, the people of America have one overriding concern, which is their financial security.

Yesterday, Mr. Chairman, I received from the Investment Co. Institute data that show that 65 million Americans, 65 million Americans, have now tied their financial security to their ownership of America's companies through their equity mutual fund investments. These investors are blue collar workers, they're farmers, they're white collar computer experts. They're women, as well as men, and they are of all races and creeds. These are your constituents, and the constituents of this Congress. The growth and secu-

rity of employer-sponsored retirement funds, Individual Retirement Accounts, 401(k) accounts, and all the other mutual fund holdings of some 37 million American households, over 65 million individuals depend on the growth of earnings of U.S. companies competing in the global marketplace. To generate these earnings, companies have to grow. In order to grow, they need to expand their businesses, and expand their sales. And that requires expanding markets, expanding the volume of exports of goods and services, to maintain and increase the prosperity and financial securities of our citizens.

Latin America is the premier growth area in the world today, and it is important that we continue to open up markets to U.S. goods and services in our own hemisphere. As our economy grows, as our neighbor's economies grow, the expansion of trade on both sides will help to perpetuate the growing prosperity that benefits all of our peoples.

To this end, we believe the FTAA is an important undertaking worthy of your congressional support.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Hon. Richard W. Fisher, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative

Thank you, Mr. Chairman and Members of the Committee. It is a great honor for me to be here to share with you the progress that we have made in constructing the Free Trade Area of the Americas (FTAA) and to discuss reasons that it makes so much sense for us to negotiate the FTAA.

FREE TRADE AREA OF THE AMERICAS

When President Clinton and his counterparts in the 33 democratic countries in the Hemisphere met just a little over three years ago in Miami, they recognized that the prosperity of the 750 million people in our hemisphere depends on continued growth in trade among us. They also understood that trade would expand only if we continue to build upon the market opening measures that already were being undertaken in the Western Hemisphere. They agreed, therefore, to move forward from the Uruguay Round and to go beyond the existing bilateral and sub-regional free trade agreements. They committed our countries to a revolutionary vision of open markets across the continents of North and South America—creating a free trade area that would raise our standards of living, improve the working conditions of our peoples and better protect the environment in the Americas.

The Dynamism of the Western Hemisphere

The Miami vision of an entire hemisphere moving cooperatively toward greater prosperity is being realized. The Western Hemisphere has been a truly dynamic region over the last three years. It has become the largest regional destination for U.S. exports of goods—over 40 percent of total U.S. merchandise exports went to the region in 1997.

U.S. exports to the region grew 17.4 percent last year, compared to 5.65 percent growth to the rest of the world. These export increases accounted for two-thirds of U.S. export growth worldwide in 1997. This warrants repeating, Mr. Chairman: U.S. exports increased by $42 billion to our trading partners in the Western Hemisphere, and accounted for 63 percent of U.S. export growth world-wide last year. U.S. exports to Latin America (including Mexico) and the Caribbean in the second half of 1997 exceeded our exports to the European Union. And Mexico surpassed Japan to become our second largest export market.

One of the principal reasons that we are experiencing this expansion of trade with Latin America is their dramatic reorientation in trade policy. In some instances the changes in policy are as revolutionary as those which occurred in Eastern and Central Europe at the beginning of this decade.

Even as countries in our region have been tested by economic and political pressures and even as countries in other regions have experienced serious economic setbacks, the overall course in the Western Hemisphere has been one of faster eco-

nomic growth, lower inflation, expanded opportunities, and growing confidence in facing the global marketplace. A major reason for this positive record has been our countries' steadfast and cooperative efforts, striving for more open trade, greater transparency in economic regulations, increased privatization, sound macroeconomic policies, and efforts by the private sector to increase its competitiveness. It is important to continue the forward momentum that has distinguished this Hemisphere. There is a consensus among the 34 countries that the FTAA is an essential ingredient in maintaining that momentum.

Americans' Stake in Trade Expansion

Even with this positive outlook in the Americas, however, there continues to be apprehension among our peoples about the road forward, and there is a lack of clarity about the benefits that will result from the monumental undertaking that was envisioned by President Clinton and the other 33 leaders in Miami. It's ironic because our economy today is one of the most prosperous in decades. Unemployment has fallen to the lowest levels in nearly 25 years. Our economy created over 14 million jobs in the last five years, over 1.7 million alone in the past six months. And yet our citizens as "Free Trade." The idea of "opening other markets" is too nebulous. To simply say that tariffs are four times higher in the rest of the Americas compared to the United States does not somehow resonate. The essential question is: what does this all mean to your constituents? How do we make clear that international trade has played an enormous role in our economic expansion? We know that economists tell us thirty-eight percent of our GDP growth in the last five years has come from exports. If we had given up on trade five years ago, how much of that thirty-eight percent would we have given up? How many of these 14 million jobs would we have failed to create? When times are good, these questions seem too academic.

Yet, even in these prosperous times, the people of America have one overriding concern: their financial security. Yesterday, Mr. Chairman, I received from the Investment Company Institute data that shows that 65 million Americans have now tied their financial security to their ownership of America's companies through equity mutual fund investments. These investors are blue-collar workers and farmers as well as white-collar computer experts. They are women as well as men, and people of all races. These are your constituents. The growth and security of employer-sponsored retirement funds, Individual Retirement Accounts, 401K accounts, and the other mutual fund holdings of some 37 million American households all depend upon the growth of earnings of U.S. companies competing in the global marketplace. To generate those earnings, companies have to grow. In order to grow, they need to expand their businesses and increase their sales. And that requires expanding markets and expanding the volume of exports of goods and services into the future to maintain and increase the prosperity we know today.

Latin America is the premier growth area in the world today. It is important that we continue to open up markets to U.S. goods and services in our own Hemisphere. As our economy grows and as our neighbors' economies grow, the expansion of trade on both sides will help to perpetuate the growing prosperity that benefits all our peoples. The greatest threat to this progress comes from a loss of public confidence in trade liberalization and market opening negotiations. We must reconcile public expectations with the economic necessity of moving forward.

The decisions taken at the San Jose Trade Ministerial just a week and a half ago bode well for continued progress. The 34 countries in the Western Hemisphere have built the foundation of this ambitious undertaking called the Free Trade Area of the Americas during the course of the last three years. The governments have completed the preparatory work that is needed in advance of any negotiation, namely, developing information on each other's international trade regulations and practices; identifying the range of interests among the 34 participants; and developing a sense of common purpose about the construction of the FTAA. The Ministers refined that work to ensure that, by their meeting earlier this month, they would be in a position to recommend the initiation of those negotiations by the Leaders at the upcoming Summit of the Americas in Santiago, Chile, in April. A Free Trade Area of the Americas among the 34 Western Hemisphere countries was unthinkable even a mere ten years ago. But we and the other 33 countries have kept faith with the vision of Miami and now are ready to move into the negotiating phase of the FTAA.

Initiation of Negotiations

In keeping with the cooperative effort of the last three years, the 34 Ministers responsible for Trade in the Hemisphere met a week and a half ago in Costa Rica to formulate the initial framework for the FTAA negotiations. The Ministers unanimously recommend that the Leaders initiate negotiations of the FTAA during the

Summit meeting in Santiago. They provided recommendations on the initial structure, objectives, principles, and venues of the negotiations. This unanimous decision is as important as the Leaders' mandate three years ago to begin this undertaking. For the 34 Leaders to get together again within a few short years and have a unanimous plan presented to them, with not only a structure, but leadership shared among countries from all regions in the Hemisphere is a phenomenal achievement.

The United States achieved its key objectives at that meeting: ensuring a comprehensive and successful launch of substantive negotiations could be made at the Santiago Summit, making important progress on labor and environmental issues within the FTAA, and playing a central leadership role in the FTAA. As a result of the San Jose Ministerial, there will be a credible negotiation launched by the Leaders in Santiago on April 18–19.

The San Jose Declaration is comparable to the 1986 Punta del Este Declaration that initiated the Uruguay Round negotiations. The United States will provide the venue for the negotiating groups and the administrative secretariat supporting those meetings for the first three years in Miami. A structure with leadership determined through end of negotiations in 2005 was established, with the United States serving as one of the co-chairs during the endgame of the negotiations. Canada, our neighbor, will be the Chair of the overall process for the first 18 months. The Chairman of the overall FTAA process will head both the Ministerial and the Trade Negotiations Committee (TNC), which will provide the overall direction and management to the negotiations. The Ministers, confident that their Leaders will approve the negotiating plan forthwith at their Summit meeting, set the date for the TNC's first meeting for no later than June 30, 1998. The TNC will be comprised of the 34 Vice Ministers for Trade.

The Ministers decided to start with nine negotiating groups, which cover all the areas identified by the Leaders at their Miami meeting in 1994, thus beginning negotiations simultaneously in all these substantive areas. They also recognized that this structure will be changed over time; they indicated that the negotiating structure would be flexible so that it could be modified as required to ensure continued positive progress in the negotiations. Again, we were able to reach consensus on setting a date for the initial meetings of the Negotiating Groups—no later than September 30, 1998.

We also were able to achieve the establishment of a Committee on Electronic Commerce, comprised of both government and private sector experts, to make recommendations on how to increase and broaden the benefits to be derived from the electronic marketplace. For the first time in the FTAA process, we have a created a joint government-industry group. This is in keeping with one of President Clinton's main principles in this area, having the private sector lead in developing the rules of global electronic commerce. This expert committee will look at the range of issues in this area and then report back to Ministers with recommendations on the approach that should be taken.

Of course, the electronic medium is not a new subject for the FTAA. Throughout the preparatory stage of the FTAA, we have used the Internet to provide greater transparency to the process. The FTAA Homepage (www.alca-ftaa.org) includes all of the final products of the FTAA Working Groups—in all four official languages of the hemisphere.

One of the greatest threats to hemispheric integration is not the difficulty of the negotiations but the apprehension of our respective civil societies about the negotiating process. The 34 Ministers were highly cognizant of this fact at the meeting last week. Thus, for the first time in any large trade negotiation, we have created a Committee on Civil Society. This is a major step forward in the FTAA process. The Committee will receive input at the hemispheric level directly from business and labor and environmental groups, and academic, consumer, and other nongovernmental interests. The Committee will analyze that advice, and then provide recommendations directly to the Ministers. We expect the organizational details of this committee to be worked out at the first meeting of the TNC this June. Establishing such a committee ensures that all stakeholders will have direct access to the FTAA process, with Ministerial consideration of their views. There is now a recognition in the Hemisphere that there has to be a process related to labor and environmental issues that ensures transparency in the FTAA negotiations and that allows for the views of all members of civil society to be considered in those negotiations.

Principles and Objectives of the Negotiations

In addition to transparency during the negotiations, another key objective which we achieved is that the FTAA would not simply add yet another set of rules for business to contend with. We reached consensus that the bilateral and sub-regional agreements (such as MERCOSUR and the Andean Community) can coexist with the

FTAA only *to the extent* that the rights and obligations under those agreements are not covered by or go beyond those of the FTAA. The FTAA seeks to provide a single set of rules throughout the hemisphere.

In addition, we agreed that the FTAA should improve upon the WTO rules and disciplines, wherever possible and appropriate. In this way, we will ensure that we reach a final comprehensive deal that breaks down the most serious trade barriers in the region and does not merely reiterate the accomplishments attained at the end of the Uruguay Round. We aim for the FTAA Agreement to be a balanced, comprehensive, state-of-the-art Agreement. The outcome of the negotiations will be a "single undertaking" in the sense that signatories to the final FTAA Agreement will have to accept all parts of it and cannot pick and choose among the obligations to which they will adhere.

Among the most important objectives from the standpoint of the United States are:

• To progressively eliminate tariffs, which are four times higher in the Hemisphere than those of the U.S.

• To progressively eliminate non-tariff barriers, as well as other measures with equivalent effects, which restrict trade.

• To bring under greater discipline trade-distorting practices for agricultural products, including those that have effects equivalent to agricultural export subsidies.

• To promote customs mechanisms and measures that ensure operations are conducted with transparency, efficiency, integrity, and accountability.

• To develop an efficient and transparent system of rules of origin, including nomenclature and certificates of origin.

• To eliminate and prevent unnecessary technical barriers to trade.

• To liberalize trade in services to achieve a hemispheric free trade area under conditions of certainty and transparency.

• To ensure adequate and effective protection of intellectual property rights, taking into account changes in technology.

• To guarantee that the benefits of the FTAA liberalization process are not undermined by anti-competitive business practices.

• To establish a fair and transparent legal framework for investment and related flows.

• To make our trade liberalization and environmental policies mutually supportive.

• To further secure the observance and promotion of worker rights, renewing the FTAA countries' commitments to the observance of internationally recognized core labor standards.

Santiago Summit

There is within Latin America a golden opportunity to build upon this progress and to make clear that the entire hemisphere is committed to free and open markets. The Santiago Summit is a perfect forum for doing so.

The Leaders will give impulse to the negotiations, which will conclude by December 31, 2004, with concrete progress by the end of the century. We expect them to approve the San Jose negotiating plan, which includes a mandate that the Negotiating Groups achieve considerable progress by the year 2000, including agreeing on measures for adoption before the end of the century.

CONCLUSION

It is with great determination, optimism and excitement that we and our 33 trading partners in this Hemisphere have recommended the commencement of negotiations on the Free Trade Area of the Americas at the Santiago Summit this April 18–19. We have come a long way together. Taken as a whole, the progress toward the FTAA is dramatic and significant. Small countries, large countries, island countries, countries of varied languages and backgrounds have come together to work toward an agreement that will ultimately bring the benefits of trade to all the people of the Hemisphere. We have learned more about each other—our economies, our aspirations, our fears, and, most important, our mutual commitment to improving the lives of our citizens. This commitment is what brought the Leaders of the Hemisphere to Miami in December 1994. It is the reason that they will announce the initiation of the negotiations in Santiago in two and a half weeks, and it is what will bring us to completion of the negotiations by 2005.

We certainly are grateful to you, Mr. Chairman, and to the members of this subcommittee for the support that you have given us during this process. We look forward to consulting closely and frequently with you and your colleagues in the Con-

gress as we move forward with the FTAA. Once again, I appreciate this opportunity to report to you on the progress that we have made to date and on the steps that we plan to take in the immediate future.

Thank you, Mr. Chairman. I am willing to answer any question you or the distinguished members on this Committee may have of me with regard to the FTAA.

Chairman CRANE. Thank you, Mr. Ambassador, and I want to congratulate you on a good meeting in San Jose. My understanding is that we can continue to have talks absent fast track renewal, and I'm curious though as to how much of the FTAA you believe can get done without fast track?

Mr. FISHER. Well, Mr. Chairman, first, we deeply appreciate your support on fast track. As you know, the President is a believer in fast track. He has asked for fast track. We will continue to pursue fast track.

The reality is that the Tokyo round and the Uruguay rounds were launched, that is, the negotiations began, without a similar fast track authority. And we believe it is in our interest to proceed with the launching of the FTAA discussion of these negotiations. Obviously, we would like to have that fast track authority. Not having it does not prevent us from initiating these negotiations. It's my personal hope that, by putting together a very good trade agreement, it'll enhance our ability to secure a fast track. But the point is, in summary, that we can begin the process, as we did twice before, with the Tokyo round and with the Uruguay round, to lay the foundation for this architecture and begin putting it in place without this authority. That having been said, we will continue to pursue this authority.

Chairman CRANE. Well, the President certainly made a firm commitment in his State of the Union Message to fast track renewal, but since that time, there's been basically silence from the administration. And I'm not saying that you hear a lot of clamor here, although behind the scenes we're still talking about it, and conspiring full time to figure out how we pick up that necessary handful of additional votes that we need.

And I still think it's doable. I think we could get fast track renewed this year, but we need a good working relationship with you folks in the administration to come up with innovative, creative ideas. Of course, our distinguished minority here has been firmly committed to it, including Mr. McDermott. And so we will continue to conspire, but we would like to talk to you more about involvement from the executive branch.

What can we do between now and 2005 in the negotiations that will sustain interest and momentum in achieving our long-term goals?

Mr. FISHER. Well, first of all, we can, and we will, work on business facilitation measures, concrete aspects that are visible, such as, customs procedures. There's nothing that prevents us, under the FTAA, from bringing these to fruition before the year 2005. One of the directives that the ministers have asked for, from the heads of state in Santiago, is that we make concrete progress before the year 2000. And I think it's a matter of staging the negotiations, activating the Trade Negotiating Committee that I men-

tioned before, the group of vice ministers, engaging the ministers, and making sure that they relay that information back to you, and back to our citizens in our country, and the other countries of the hemisphere. And that we aggressively pursue this matter.

And I think the aspect of transparency, that you mentioned at the outset, is very important here. We have to engage our country. I happen to believe, as I mentioned to you in my oral statement, that increasingly there is an interest of every size, shape, race, creed of American, in this whole process of how do our companies do abroad. They now have direct ownership claims. We have atomized capitalism in this country to a degree that has never been attempted in the history of the world. And I think by getting this message across, by making it clear that all of us, whether we are blue collar workers or white collars or whatever, have an interest in seeing America and American companies prosper, that we will engage their interest. And I will leave no stone unturned, Mr. Chairman, to get that done.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. I would only like to reiterate what you said in your opening comments about Mr. Fisher. I appreciate the fact that he's here working for the administration now.

And also I was a friend of Representative Jim Collins when he was in the House. I was on the Energy and Commerce Committee at that time. We served together. He was much more senior than I. It's interesting because somebody who was generationally different than me, and obviously the geographic issue, Texas and California, and from different parties. He was a wonderful person and certainly somebody we fondly miss, and I just want to mention that to you, and obviously convey that to your wife as well.

Mr. Crane talked about fast track. It seems to me, and obviously you're involved in these negotiations, that eventually the negotiations will reach an impasse because the countries that might be interested in working with us, negotiating with us, will finally come to the realization at some time that they can't show their whole card, or even get close to their whole card.

And Mr. Crane and I, and Chairman Archer, and others have been talking over the last couple of years about if we don't get it this year, we may not get it until beyond the year 2000, 2001, and, of course, by that time, much will have been done, and much will have been lost, I should say, in terms of the Free Trade Areas of the Americas.

When do you think these negotiations will reach a point where, just in terms of a timeline, that fast track becomes rather critical? Maybe you can't even say it, because obviously, it may stop tomorrow, but given the fact that Brazil, for its own reasons, will be somewhat reluctant to move forward. I think 5 years ago, we might have had an opportunity, but today it may be more difficult because they are obviously the big counterweight in MERCOSUR at this time.

What's your thoughts on all this? I think it's good to be optimistic, but eventually we're going to reach a point where optimism may not be enough.

And one of my concerns has been, and continues to be, that the defeat of fast track last year will go almost unnoticed and no one will be held responsible nor accountable for it because the impact on the U.S. economy will be slow and incremental, almost imperceptible, and it won't be for 3 years, or 4 years, or 5 years down the road when all of sudden it will be felt, and at that time we'll blame it on something else. And I think we need to keep a focus on it. And I don't think we should be reluctant to talk about it in terms of what this impact will be doing in the next 3, 4 years, into the 21st century on the U.S. economy.

Mr. FISHER. Well, as you know, Congressman, with your support and encouragement, we at USTR have not been reluctant to talk about this matter, and we will continue to pursue it vigorously.

You ask a very tough question, which is, at what point does this have to kick into the process? Again, at my level, we will start our meetings this June. The nine negotiating groups, I mentioned, will have to pull themselves together at our direction before the end of September. We have laid a great deal of groundwork just in the working groups that went into the San Jose ministerial.

But this is, when you think about it, a very revolutionary concept. When I was a graduate student—I met Jim Collins daughter at Oxford University 25 years ago—26 years ago, to even think about a trade agreement with Latin America, it was unthinkable. We were dealing with cold war paradigms. We had terrible leadership in that region of the world. We were not interested. We never saw it as the great market that it is today.

And so I'm reluctant to, as you say, be over optimistic. I want to be realistic about this. It will take us a couple of years to put this thing together and have it to a point where I think we will feel comfortable with the overall package. But I, personally, would like to get fast track secured as soon as possible, and we look forward to consulting with you on this matter. We defer to your views here. You have been a leader on this front. But I'm hesitant to pin down a specific date, Congressman, because I'm just not comfortable in doing so.

Obviously, again, as you know better than I, the fast track process really deals with how we vote up or down a trade agreement. Our job, until we can secure fast track, is to get the best trade agreement possible.

Mr. MATSUI. Yes, I think it's much more difficult given MERCOSUR because, for those that know this, it's obviously information that is redundant, but, for those who don't, any agreement we reach with the MERCOSUR countries will have to be with each of the countries individually. They all have to sign off, and it just makes it more and more difficult as MERCOSUR becomes stronger and stronger. And, you know, here we're losing an opportunity of 800 million people in terms of a free trade region which obviously would be one of the largest trade zones in the world.

Mr. FISHER. It's interesting to look at the statistics. The combined current purchasing power of Brazil and Argentina together is equal to that of the current purchasing power of all of China.

Mr. MATSUI. That's right.

Mr. FISHER. If you take the population and multiply it by the current income, and we do, and have argued, feel at a competitive

disadvantage vis-a-vis MERCOSUR because we have not been able to reach agreement, and use a fast track authority to negotiate with them.

Now, there is an interesting dynamic here, which is, we will cochair with Brazil the end of this negotiation, and I welcome that because it engages them at a level which I think will, obviously, help us determine the terms for the finality of this product. And I think that dynamic is something I hope to discuss with you over time, but I think it adds an interesting perspective to this overall discussion. They can't hide from us by being a cochairperson with us.

Mr. MATSUI. If I could just make one other observation. What I'm also hearing is that the lack of fast track and the inability to have this free trade agreement with the MERCOSUR countries may result in more United States companies going offshore—perhaps into Latin America—because you get lower tariffs by having your production company in these countries. So this really may be working against organized labor, and more importantly, against those that oppose fast track because they claim that it may lose jobs.

In conclusion, let me ask you a little bit about the Committee on Civil Society because, obviously, that's kind of a counterweight to what held up, at least among some members, the fast track issue in terms of labor and the environment. How seriously are the Latin countries taking this? I hope they do take this seriously because this may be one way, if we can show outside of the trade sanctions area, of getting labor and the environment on the table, perhaps we could make some progress here.

Mr. FISHER. Well, this is an initiative that we insisted upon, and was agreed to by the other 33 countries of the hemisphere. The purpose of the Subcommittee is to provide input at the ministerial level. Now this Subcommittee will pick its own chair at the right juncture. We assume that'll be done at the next meeting. And the purpose of it is to make sure that these views are heard.

We have learned from our experience with other negotiations that if we don't bring people along and, as Congressman Crane said, "make it more transparent up front," it makes it more difficult. We respect the views of labor, and the environmental groups, as well as consumers, and local governments, and others. I think the onus is on us to make this thing work. But I was very pleased to see the Latinos, as well as our Canadian partners, sign off on this. And our intention, having insisted upon, having negotiated for it, is to make it a working vehicle.

And I appreciate very much your comments, Congressman Matsui, because I think this is an important part of the process. As I said in my oral statement, and in my written statement, this has never been done before in a large trade negotiation. But it's there, and we will make it work.

Mr. MATSUI. Thank you, appreciate it.

Mr. FISHER. Thank you, sir.

Chairman CRANE. Thank you.

Mr. Thomas.

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

Mr. FISHER. Thank you.

Mr. THOMAS. One of the things I think a number of us have enjoyed about working with U.S. Trade Representative, regardless of which party controls the White House, is that this has been one organization that's played down on politics and focused on policy. The thing I liked about Jim Collins, in the time I worked with him, was that he was one of those people who was really smart, but had a lot of common sense to go with it. And neither one got out ahead of the other.

I cannot tell you how disappointed a number of us are about the failed opportunity on fast track. To argue that we didn't have it at the Tokyo round and we didn't have it at the Uruguay round, so, gee, it's OK now. There's supposed to be a learning curve in this business, and we're at a significant disadvantage going down to South America with the group of folks that we're going to have to deal with, principally Brazil and Argentina, thinking that we can get them to agree to any kind of a structure to which we cannot commit, but to assume we can be expected to deliver what it is that we negotiate.

So I understand your attempt and need to put a positive face on this, but I think we need to be pretty realistic. The administration failed miserably in its timing. Had they brought fast track in April, rather than October, we had an excellent chance to pass it. I don't know who was focusing on it or why they ordered it in the direction that they did. It is something that happened, we missed the opportunity. And I have an extremely difficult time seeing how to do it now, although, obviously, we'll support you in any way possible so that we can move forward with the kind of leverage necessary to negotiate with a couple of key folk, which, obviously, are critical to putting South America together.

But I have a question for you so I better understand what you meant by your statement on page 5, in which you said that you reached consensus—I don't know whether that was through a vote or nod of heads or agreement—that the bilateral and subregional agreements—and obviously MERCOSUR is the one that I'm looking at, principally the Brazilians and the Argentines—can coexist with the Free Trade of the Americas free trade zone, only to the extent that the rights and obligations under those agreements are not covered by or go beyond those of the FTAA.

I guess, conceptually, I have a difficult time understanding that we're dealing with a customs union versus a free trade area. What is there that is outside laying the one on top of the other, that would be outside the free trade or not covered by the free trade? Do you have any specific examples to illustrate how this is going to work?

Mr. FISHER. The general point is that we want to improve upon existing regional arrangements, and obviously——

Mr. THOMAS. No, no. But that isn't what it says here. It's not "improve upon." It said these agreements, the customs union and MERCOSUR can coexist only to the extent that the rights and obligations under those agreements are not covered by or go beyond the FTAA, not that we're going to improve upon them.

Mr. FISHER. MERCOSUR has a common external tariff. We seek to eliminate that common external tariff. There's an example of improving upon and going beyond MERCOSUR.

Mr. THOMAS. And then I would come back to the fact that you're going to ask them to give up the common tariff without an understanding that whatever the agreement is would not be subject to the amendment process in the U.S. Congress because we don't have fast track. And if your argument is that by putting the agreement together we'll have a greater chance of passing fast track I guess is to miss the fight we had over fast track, which was less the historic economic union structure and more the environmental and labor agreements.

And, if you're going to bring back to the Congress a package which includes very tough environmental and labor agreements, you're going to minimize your chances of getting fast track to put into place that kind of an agreement.

And that's what's so frustrating to me about not getting the order correct, and that is, fast track out front. That's a very great concern of mine, and I hope we deal with the policy more and less than the politics. To the degree the policy is right, the politics will take care of themselves. If we try to put too much of the politics in, we're simply not going to get the policy.

One last question: Can we put together a viable program, including the Caribbean, without Cuba?

Mr. FISHER. Cuba is not part of the process now and will not be until it's a democratic country.

Mr. THOMAS. That wasn't my question. I'll try it again. Can we put together a reasonable Caribbean package, including Central and South America, without Cuba?

Mr. FISHER. Within the process of FTAA, Yes, we can.

Mr. THOMAS. OK.

Mr. FISHER. Congressman, if I may, you made some awfully good points there. I agree with you fully. I arrived here, actually, I was sworn in December 18. I'm an aggressive advocate of fast track; I want to work with you and your colleagues in my capacity at my level to achieve that goal. I want to be realistic, I'm not totally naive in terms of the expectation that we could secure FTAA without it, and I want it, and my administration wants it, and we're eager to work with you on that front.

Mr. THOMAS. I guess, just finally, to express my real frustration that trying to deliver a product today in an environment that's significantly different than the Tokyo round and the Uruguay round world that we're dealing in—and those are not examples that I think are very useful on how we can get fast track corrected. It was a timing problem; the window was missed.

And we'll do everything we can to assist you but you've got to appreciate how frustrating not going in April versus October was.

Mr. FISHER. Sir, may I make one other comment on another point you made which is this Committee on Civil Society. It's not a negotiating group, this is a group that is to receive input and help the transparency of the process. I want to make that clear.

Mr. THOMAS. I understand, but people will make linkages whether you like or not.

Mr. FISHER. Well, we look forward to working with you to make this work, sir.

Mr. THOMAS. I'm here to help.

Mr. FISHER. Thank you. [Laughter.]

Chairman CRANE. Mr. Camp. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman. I too, Mr. Ambassador, want to congratulate you on your appointment, and welcome you to the Subcommittee, and certainly, like the Chairman and others who have spoken, I appreciate your aggressive advocacy on behalf of fast track and look forward to working with you. And I certainly join in the comments of the Chairman and Mr. Matsui and Mr. Thomas with respect to fast track and the importance of that. And I like the way you redefined that in the terms that you did because everyone wins with fast track, and we have to do a better job of educating not only the Congress but the American people, as well.

Let me, if I may, turn your attention to a matter that concerns the agricultural community in my home State, and I'm sure in other places, as well. This concerns a number of agricultural leaders in Minnesota, including one who's here today, probably the foremost leader in agriculture in our State, Al Christopherson, who is president of the Minnesota Farm Bureau and is testifying on behalf of the American Farm Bureau Federation.

These people raise concerns about a separate negotiating group on agriculture. Mr. Christopherson is on the next panel, and hopefully you'll stay to hear his testimony, but in his prepared testimony he states that, "Agriculture would be handicapped in later negotiations as we have already reduced our barriers and our market is open." He's also concerned like others that separating the group will tie U.S. agriculture to the agricultural negotiations under the WTO, and slow down the pace for improving access in this important area.

I certainly share these concerns, and I have two questions. First of all, Is it true that the United States has already agreed with the Brazil request for a separate agriculture negotiating group? And, second, What would the reasons be for separating out agriculture if this is factually true?

Mr. FISHER. Well, there is a working group, a negotiating group, on agriculture. It's one of the nine groups that I mentioned under the FTAA process.

The purpose of that group, again, we—as you state—we are a very open market, we have a productive agriculture sector. From our standpoint, we want to open up those markets to the south, in particular, and we want to reduce all the barriers, tariff and nontariff barriers in the region.

There's no conspiracy with Brazil on this. This was a negotiation that we had in San Jose, and this is one of the nine working groups that has come out of the process. It recognizes that agriculture, Congressman, is a critical portion of the whole trade agreement. And our purpose and our interest in securing an agriculture working group is to make sure we have a group that will contemplate how we need freer trade in agriculture in the hemisphere.

Again, this reference to a Brazilian preagreement, I'm not aware of.

Mr. RAMSTAD. But doesn't this put USA interests at a competitive disadvantage? Our barriers, as I said before, have already been knocked down for the most part. Our market is open. Aren't you concerned that this will hurt our agriculture community?

Mr. FISHER. I'm always concerned about our agriculture community. Again, the purpose of our wanting this particular negotiating group is to achieve what we seek to achieve for all other goods and services in the hemisphere. That is, knocking down the tariff barriers that we see; knocking down technical restrictions; making more transparent the whole process, scientific and phytosanitary impediments that might exist throughout the hemisphere; making a more transparent process.

I think, and I believe firmly, that U.S. agriculture can compete very effectively in these markets if we remove these barriers to our sales in the region. I don't believe it will put us at a disadvantage, and we will strive mightily to make sure it does not put us at a disadvantage.

Mr. RAMSTAD. In your judgment, then——

Mr. FISHER. It's pretty tough to compete with U.S. agriculture.

Mr. RAMSTAD. Well——

Mr. FISHER. And we want to secure additional markets for our agricultural products.

Mr. RAMSTAD. Yes, I'll put up our farmers against farmers any where in the world, as long as one hand isn't tied behind their back. And I am concerned that separating the group will tie U.S. agriculture to the negotiations under the WTO, and as I said before, slow the pace for improving access in this area. I trust that with that caveat, you'll proceed and you'll keep that in mind.

Mr. FISHER. May I just mention one other thing, Congressman?

Mr. RAMSTAD. Please.

Mr. FISHER. About 2 weeks before San Jose, we received from USDA a message encouraging us to advocate for a separate agriculture group. And, again, having run the traps on this, we know that there is concern; we're well aware of that. But, to summarize, the purpose of this exercise is to make for a Free Trade Area of the Americas in every sector, including agriculture. And if we're able to achieve that, which we seek to do, I think it will be good for U.S. agriculture.

Mr. RAMSTAD. Thank you, Mr. Chairman, Mr. Ambassador.

Chairman CRANE. Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Welcome.

Mr. FISHER. Thank you.

Mr. MCDERMOTT. When I went down to South America with the President on his trade mission, and I sat at the state dinner in Brazil, there were people at the table, and they all said, We hope you fail on fast track. [Laughter.]

It was pretty obvious where they were coming from and one of the things, as I sit and listen to this is, I am trying to put together in my own mind what all the interlocking pieces of this trade in the Americas is all about. And I'd like to hear you talk a little bit about how NAFTA and CBI and Cuba all interlock at the negotiating table.

You've got everybody at the table, some people have got some agreements. We're down there trying now to put one together with Chile. The President is going down shortly, and there's a whole bunch of moving pieces—then you have this other exercise that you're involved in which almost looks like it involves the entire re-

gion, that you've already got pieces put together. And I'm sort of interested to hear how you think that's all going to get worked out.

Mr. FISHER. Well, I'm glad you're not asking me about bananas, Congressman. [Laughter.]

That's a separate——

Mr. MCDERMOTT. I don't want to get specific yet.

Mr. FISHER. It's a difficult subject.

Well, first of all, we have learned from our own relationship with our two other trading partners within the NAFTA. United States merchandise exports to Mexico in 1997 increased by 26 percent, actually, to be specific, 25.8 percent. We're selling $71.4 billion in exports to Mexico now. We trade $1 billion a day across the Canadian border, two ways. And, by the way, if you take the exports and imports from Mexico, it's $1 billion every 2 days.

And it's a bit of an esoteric discussion, but I could make a strong argument for the fact that without NAFTA, the last Mexican financial crisis would have been much more difficult and perhaps even fatal to that economy.

So, we know from experience, and we know there are critics of NAFTA, but we know from experience that knocking down trade barriers is good, leads to more exports, and helps create jobs. And, obviously, we seek to extend that throughout the hemisphere. There are these subregional groupings. There is MERCOSUR, which Congressman Crane and Congressman Matsui had referred to. There's a Caribbean CARICOM group. There is the Andean Pact, and so on.

I think the broader purpose of this exercise is to make sure that those groups don't become disruptive in their own little units, in and of themselves. In essence we create one large organic mechanism that accomplishes the objective of free trade, reduces barriers to the inner sales of goods and services throughout the hemisphere.

And, again, as was discussed earlier with Congressman Thomas, the purpose of the FTAA is to go beyond what they have been able to achieve in each one of their regional subgroupings with an end goal of integrating the entire hemisphere.

It's important to note that if we don't do that, we could be sort of cherrypicked, as it were, by the Europeans, which Congressman Matsui referred to earlier. The European Union is in the process of discussing integration with MERCOSUR. They have recently reached agreement with Mexico, and you have all the subefforts that I think could put and do put our United States exporters at a disadvantage.

So, to tie it all together, leaving Cuba out of the equation, the purpose of the exercise is to, again, integrate these efforts into one large trading market, in the most dynamic and readily growing trade grouping of countries in the world.

It's not any more complicated than that, it's just difficult to accomplish. But that's the purpose of the exercise.

Mr. MCDERMOTT. Let me just go back to the Cuba issue because I think there's already a case which points to one of the problems. You read in the newspapers that Nelson Mandela says that he doesn't like the trade bill that we put together for Africa. But it turns out that if you look a little more closely at what the problem is, it has to do with an American company that bought a South Af-

rican company that had a contract with Cuba, which they then upon buying this South African company suddenly found out they couldn't fulfill that contract with Cuba because of Helms-Burton. So, Mr. Mandela says: Ah, you see there, look at that, this Africa trade bill is a bad idea, not making the distinction between Helms-Burton.

But the Helms-Burton law is sitting there, right in the middle of the table, and any of these countries that have anything to do with Cuba, one way or another, are, it seems to me, going to sort of put that card up on the table and say, Hey, what about this? How do you deal with that sort of sitting there in the middle of the table? Or is it such a small item, it's like in the Middle East negotiations, it's what we'll do with Jerusalem when we get to the end. Is that the view of the administration?

Mr. FISHER. No, I haven't thought it through to the degree that you have asked me. Clearly, countries that we currently deal with within our trading relationships, have different levels of relationship with Cuba.

Mexico, for example, which has been a difficult and sore subject with our Mexican southern neighbors. We still have a trade agreement with Mexico; we sell a lot of goods to Mexico as I mentioned earlier.

Cuba will not be part of the FTAA process under its current regime. The one thing that I want to make sure of is that we don't have an FTAA with two countries absent, Cuba and the United States. That would be a rather awkward and, I think, embarrassing situation, and it wouldn't be good for America.

Congressman, I will give that matter some thought and get back to you on it. I don't believe it presents a problem presently, but, to be honest with you, I haven't thought it through to the degree that I think would give you a satisfactory answer.

Mr. MCDERMOTT. Thank you. Thanks, Mr. Chairman.

Chairman CRANE. Thank you, again, for your testimony, Mr. Ambassador, and again, congratulations on your new position with the office of the USTR, and we all look forward to working closely with you. And with you in your current position, we're confident that we will make steady, ongoing progress toward our mutually desired objectives of hemispheric free trade.

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

Chairman CRANE. Thank you.

I would now like to welcome our first panel which is comprised of Hon. William Pryce, former Ambassador to Honduras, currently vice president of Washington operations for the Council of the Americas. Al Christopherson, president of the Minnesota Farm Bureau, who is testifying on behalf of the American Farm Bureau Federation. And Robert Vastine, president of the Coalition of Service Industries. And we'll begin with Mr. Pryce, and I would like to remind all of our witnesses here today to try and keep your oral testimony to 5 minutes with the assurance that your printed statements will be made a part of the permanent record. All right, we will proceed with you, Mr. Ambassador, and if you could try and keep your oral testimony to 5 or less, all printed statements will be part of the permanent record. And the little light here: green

light means go, the yellow light means get ready, the red light means stop, within some reasonable range. Fire away.

STATEMENT OF HON. WILLIAM T. PRYCE, VICE PRESIDENT, WASHINGTON OPERATIONS, COUNCIL OF THE AMERICAS; AND FORMER AMBASSADOR TO HONDURAS

Mr. PRYCE. Good afternoon Mr. Chairman, Members of the Subcommittee. I'm Bill Pryce, vice president of the Council of the Americas, and I appreciate the opportunity to testify before you.

The Council of the Americas is a business organization dedicated to promoting regional economic integration, free trade, open markets and investment, and the rule of the law throughout the Western Hemisphere. The Council supports these policies in the belief that they provide the most effective means of achieving the economic growth and prosperity on which the business interests of its members depend on, and on which the United States depends.

Mr. Chairman, the FTAA represents a potential of 800 million people to whom we can sell our goods and services. Our members look eagerly to Latin America and the Caribbean because of the enormous markets offered by the nations in this area.

U.S. trade within the region is already growing faster than in any other part of the world. Total United States exports to the world increased just over 10 percent in 1997, but exports to Latin America and the Caribbean increased 23 percent in this same timeframe. In fact, 40 percent of our exports now go to the region.

Latin America is one of the fastest growing regions in the world today and almost every government in the region has embarked on an economic program to encourage investment from abroad so the infrastructure needed to bring products to markets more efficiently can be built, so that services which bring down the cost of business are available, and so that formerly State-controlled industries can renew their capital base and modernize their production capacities in order to offer goods to consumers at less cost.

This economic strategy has involved the privatization of oil and gas industries, telecommunications, railroads, ports, and numerous other industries. In these privatization processes that are open to foreign participation, U.S. companies ought to have the potential to be the primary suppliers. U.S. industries have been and should be well placed to succeed in a competitive environment offered by the emerging markets of the Western Hemisphere.

However, countries like Canada are actually gaining an edge as they negotiate preferential trade agreements with the countries in the region and we in the United States continue to debate the benefits of free trade.

Two weeks ago I was in San Jose, Costa Rica, where over 1,300 business representatives from throughout the hemisphere gathered for the Fourth Business Forum and crafted recommendations regarding the FTAA framework, and these were submitted to the trade ministers. Mr. Chairman, the council is very pleased with many of the results of the Business Forum and the trade ministerial.

For example, having the FTAA secretariat in Miami through February 2001, and having the United States cochair the talks from November 2002 until the end of regulations, are positive

achievements, both from the negotiating perspective and from the greater visibility that will be afforded to the FTAA process here in the United States.

Although there is a hemispheric interest in creating a Free Trade Areas in the Americas, it's clear that not all the countries agree on the timing and structure of this area. There are two significant items where there's no consensus. First, the U.S. business community and U.S. Government had sought a commitment that the FTAA nations would negotiate several interim agreements by the year 2000 in order to achieve the concrete progress referred to in the Miami declaration. However, fearing that the United States would push its agenda items and then abandon the negotiating process, some countries judge interim agreements incompatible with the single undertaking and argued against the interim agreements. Therefore, the Trade Negotiating Committee has now been tasked to meet in June and define business facilitation measures. It's a much less ambitious goal to be achieved by the year 2000.

Second, there was no agreement that would commit counties not to impose any new trade restrictions during the course of the negotiations. The Business Forum reported to the trade ministers that no consensus was reached regarding the timing of the standstill agreement, but the trade ministers refused to take an outright commitment not to impose new trade barriers during the negotiations.

The trade ministers stated in their final declaration that they'll continue to avoid to the greatest extent possible the adoption of policies that adversely affect trade in the hemisphere. That's not really progress.

I mention these areas of disagreement to illustrate some of the challenges that our negotiators will face and to stress the importance of making sure our negotiators are able to establish a strong bargaining position which will enable them to push other hemispheric negotiators for trade liberalization. And right now, the government has to put the best face on it, but we're hurting without fast track. Although it does not directly hinder the launching of the FTAA negotiations, the lack of fast track negotiating authority did negatively affect the Business Forum and the Trade Ministerial.

Those countries seeking to slow progress and refrain from early progress pointed to the United States as ambivalent and noncommittal on trade, and they were able to compete with the United States for leadership of the process. Mr. Chairman, the Council of the Americas and its members recognize your exceptional record on fast track, and the distinguished Ranking Member, Mr. Matsui, and all the Subcommittee, but we want to stress again, for the record, how important this authority is for our President. Our neighbors should view the United States as a country willing and eager to trade.

In conclusion, I would like to mention the North American Free Trade Agreement. The latest figures confirm even more strongly than before that this trade agreement has been beneficial for the United States. In 1997, among NAFTA partners, the trade among NAFTA partners increased $55 billion to reach almost $500 billion. Moreover, since NAFTA's implementation, United States exports to

Mexico have grown 69 percent, and United States exports to Canada have grown 51 percent.

To sum up, as we look to the Second Summit of the Americas next month in Santiago, Chile, the Council of the Americas believes that the lack of a fast track is having a serious negative impact on the negotiations. Trade will not be as preeminent an issue as it would have been if we had this tool which is essential, absolutely essential, for tariff cutting negotiation.

The administration is already making the best of a bad situation by downplaying the role of trade at the summit. We see a direct link between this circumstance and the lack of fast track and the ground lost by the President's lacking the ability to negotiate freely. As I stated earlier, not having fast track at this point does not prohibit the start of the negotiations, but it does give the perception that we're not serious about hemispheric free trade.

The Council of the Americas, Mr. Chairman, will continue its efforts to educate the American people about the broad benefits of free trade, and we pledge our support to you, Mr. Chairman, and all the Members of the Subcommittee, in your continuing efforts to inform your colleagues and your constituents about the advantages of free trade of the Americas.

Thank you.

[The prepared statement follows:]

Statement of Hon. William T. Pryce, Vice President, Washington Operations, Council of the Americas; and Former Ambassador to Honduras

Good afternoon, Mr. Chairman and Members of the Committee. I am Bill Pryce, Vice President of the Council of the Americas in charge of our Washington operations. The Council of the Americas appreciates the opportunity to testify before you today regarding the Free Trade Area of the Americas (FTAA) and how the United States stands to benefit from hemispheric trade liberalization.

The Council of the Americas is a business organization dedicated to promoting regional economic integration, free trade, open markets and investment, and the rule of law throughout the Western Hemisphere.

The Council supports these policies in the belief that they provide the most effective means of achieving the economic growth and prosperity on which the business interests of its members depend—and on which the United States depends.

Mr. Chairman, the FTAA presents a potential market of 800 million people to whom we can sell our goods and services. Our members look eagerly to Latin America and the Caribbean because of the enormous markets offered by the nations of this area. U.S. trade with the region is already growing faster than with any other part of the world. The numbers for 1997 show a continued expansion of exports to the region. Total U.S. exports to the world increased just over 10 percent in 1997, but exports to Latin America and the Caribbean increased 23 percent for this same timeframe. In fact, 40 percent of our exports now go to the region.

Latin America is one of the fastest growing regions in the world today. Almost every government in the region has embarked on an economic program to encourage investment from abroad so that the infrastructure needed to bring products to markets more efficiently can be built, so that services which bring down the cost of business are available, and so that formerly state-controlled industries can renew their capital base and modernize their production capacities in order to offer goods to consumers at less cost. This economic strategy has involved privatization of oil and gas industries, telecommunications, railroads, ports and numerous other industries. These privatization processes that are open to foreign participation encourage investment, as well as the sale of materials, equipment and high technology, for which U.S. companies ought to have the potential to be primary suppliers.

Given the historic political and economic ties between the United States and our neighbors to the south, U.S. industries have been, and should be, well placed to succeed in the competitive environment offered by the emerging markets of the Western Hemisphere. However, countries like Canada are actually gaining an edge as they negotiate preferential trade agreements with countries in the region, and we in the United States continue to debate the benefits of free trade.

Two weeks ago, I was in San Jose, Costa Rica, where over 1,300 business representatives from throughout the hemisphere gathered for the Fourth Americas Business Forum. The U.S. delegation numbered over 260 people. The multinational business leaders crafted recommendations regarding the FTAA framework which were submitted to the trade ministers.

Mr. Chairman, the Council was very pleased with many of the results of both the Business Forum and the Trade Ministerial. For example, having the FTAA Secretariat in Miami through February 2001, and having the United States co-chair talks from November 2002 until the end of negotiations are positive achievements both from a negotiating perspective and from the greater visibility that will be afforded the FTAA process here in the United States.

Although there is hemispheric interest in creating a Free Trade Area of the Americas, it is clear that all the countries do not agree on the timing and structure of this free trade area. There were disagreements among both the trade ministers and the hemisphere's business community. There are two significant items on which there was no consensus. First, the U.S. business community and U.S. government negotiators had sought a commitment that FTAA nations would negotiate several interim agreements by 2000 in order to achieve the "concrete progress" referred to in the Miami Summit declaration. However, fearing the United States would push its agenda items and then abandon the negotiating process, some countries judged interim pacts "incompatible" with a single undertaking and argued against interim agreements by the year 2000. Therefore, the Trade Negotiating Committee has now been tasked to meet in June and define business facilitation measures—a much less ambitious goal—to be achieved by 2000.

Second, there was not agreement that would commit countries not to impose any new trade restrictions during the course of the negotiations, referred to as a "standstill agreement". The Business Forum reported to the trade ministers that no consensus was reached regarding when the standstill clause should be applied. Likewise, the trade ministers refused to make an outright commitment not to impose new trade barriers during the negotiations. The trade ministers stated in their final declaration that they "will continue to avoid to the greatest extent possible the adoption of policies that adversely affect trade in the hemisphere." This is not progress.

I mention these areas of disagreement to illustrate some of the challenges our negotiators will face and to stress the importance of making sure our negotiators are able to establish a strong bargaining position, which will enable them to push other hemispheric negotiators for trade liberalization that favors U.S. interests. However, the U.S. government can only lead successfully in this process if it is given the tools necessary to bargain with strength.

Although it does not directly hinder the launching of FTAA negotiations, the lack of fast track negotiating authority did negatively impact the Business Forum and Trade Ministerial. Those countries seeking to slow the process and refrain from early progress pointed to the United States as ambivalent and noncommittal on trade and were able to compete with the United States for leadership of the process. Mr. Chairman, the Council of the Americas and its members recognize your exceptional leadership on fast track, but, for the record, we want to stress again how important this authority is for our president. Our neighbors in the hemisphere should view the United States as a country willing and eager to trade. That would accelerate the FTAA process and open up these markets to U.S. products and services.

In conclusion, I would like to mention briefly the North American Free Trade Agreement. The latest figures confirm even more strongly than before that this trade agreement has been beneficial for the United States. In 1997, trade among NAFTA partners increased $55 billion to reach approximately $500 billion. Moreover, since NAFTA's implementation, U.S. exports to Mexico have grown 69 percent and U.S. exports to Canada have grown 51 percent.

To sum up, as we look to the Second Summit of the Americas next month in Santiago, Chile, the Council of the Americas believes the lack of fast track is having a serious negative impact on the negotiations. Trade will not be as preeminent an issue as it would have been if we had this tool which is essential for tariff cutting negotiations. The administration is already making the best of a bad situation by down playing the role of trade at the Summit. We see a direct link of this circumstance to the lack of fast track and the ground lost by the President's lacking the ability to negotiate freely. As I stated earlier, not having fast track at this point does not prohibit the start of FTAA negotiations, but it does give the perception that we are not serious about hemispheric free trade. The Council of the Americas will continue its efforts to educate the American people about the broad benefits of freer trade and pledge our support to you, Mr. Chairman, in your continuing efforts to

inform your colleagues and your constituents about the advantages of a Free Trade Area of the Americas. Thank you very much.

Chairman CRANE. Thank you.

Mr. Christopherson.

STATEMENT OF AL CHRISTOPHERSON, PRESIDENT, MINNESOTA FARM BUREAU FEDERATION; ON BEHALF OF AMERICAN FARM BUREAU FEDERATION

Mr. CHRISTOPHERSON. Thank you, Mr. Chairman and Members of the Subcommittee.

Chairman CRANE. Wait 1 minute, is it Christopher or Christopherson?

Mr. CHRISTOPHERSON. Christopherson.

Chairman CRANE. Right, I just noticed they took the "son" off of your little plaque. [Laughter.]

They said they ran out of space.

All right, I just wanted to make sure I had it right.

Mr. CHRISTOPHERSON. I recognize it's long. I was in eighth grade before I learned to spell it. [Laughter.]

Thank you, Mr. Chairman and Members of the Subcommittee. On behalf of the American Farm Bureau Federation and the 4.8 million member families in the 50 States and Puerto Rico, I thank you for the opportunity to share with you our concerns on the Free Trade Area of the Americas. This is a very timely and obviously a very important issue. I, too, participated in the Fourth Business Forum of the Americas that preceded the FTAA ministerial meetings in Costa Rica 2 weeks ago, and I will focus my comments on that experience.

The need to expand our access into the Latin American market cannot be overstated especially now as we in agriculture continue to see reduced sales in Asia. Logistically, Latin America is a region that we should have been focusing on long before the FTAA negotiations began. The Asian crisis makes these markets more important and emphasizes how our negotiators' hands are tied without fast track negotiating authority.

The International Monetary Fund obligations must be met to allow IMF to work with the Asian countries to stabilize their markets. We urge Congress to move quickly to fund the IMF and to provide the administration fast track negotiating authority. It was apparent that our trading partners, at least in the business sector, are leery of moving forward unless the United States has that negotiating authority.

The U.S. Government officials indicated before the meetings that governments would take directions from the Business Forum in what measures to implement. This process is to be highly commended, but we believe it can only work if our negotiators work with us before and throughout the process.

Although USDA's negotiators briefed the agricultural groups in Costa Rica just prior to the Business Forum, there was an apparent lack of industry-government interaction before the meetings. The United States position should have been determined with industry before going to Costa Rica.

There was heated debate in the market access working group about creating a separate negotiating group on agriculture. The Farm Bureau and other U.S. groups urge against a separate agricultural negotiating group at this time. We remain concerned that as a separate agriculture negotiating group, we may be handicapped in later negotiations as we've already reduced our barriers, as has been stated earlier, and our market is open. We need other sectors at the same table.

The ministers established nine separate issue areas for negotiation, as stated by Mr. Fisher. Agriculture is one of these. It was determined that the objectives of the negotiating group on market access shall apply to trade and agricultural products. Agricultural issues on rules of origin, customs procedures, and technical barriers to trade will also be addressed in the market access group. We are certainly hopeful that the administration will be able to provide the resources to fully participate in both of these negotiating groups on agricultural issues.

There is also concern that as a separate group, there will be a tendency to have the negotiations move at a parallel speed with the upcoming World Trade Organization negotiations scheduled to begin in 1999. This, we feel, could slow down the pace of improving our access into this important region. The FTAA negotiations hold promise for moving the entire hemisphere forward in global trade. Although USDA's recently released outlook report on the FTAA does not indicate a big increase in sales to this region, we view the FTAA as an important link in opening new markets.

For 1998, agricultural exports to the world are projected to reach $56 billion. This figure will be down $1.3 billion from last year due primarily to the slowdown in Asia. Still, agricultural exports will end this year 27.6 percent higher than just 4 years ago. Since the United States produces more commodities than we can consume, international trade is a necessity of economic life for farmers and ranchers.

On a more personal note, of the exported commodities produced in the Midwest, approximately 50 percent go into the Southeast Asian market. Consequently, I, as a corn, soybean, and hog farmer in Minnesota have an interest in the Asian crisis in particular, but world trade in general. Increased access into world markets affects the color of the ink on my bottom line.

The Farm Bureau continues to support fast track trade negotiating authority for the President that will address binding agreements to resolve sanitary and phytosanitary issues on the basis of sound, scientific principles in accordance with the Uruguay Round Agreement on agriculture.

Tariff equalization and increasing market access by requiring U.S. trading partners to eliminate tariff barriers within specific timeframes, and changes in international agreements, and U.S. law and practices that would facilitate and shorten dispute resolution procedures and processes.

While exports continue to rise, producers are concerned by potential impacts of the implementation of the Food Quality Protection Act by the EPA, a shortage of labor created by new immigration law and restrictions stemming from President Clinton's new food safety initiative designed to regulate microbiological hazards.

Therefore, we urge that the U.S. Congress advocate effective trade policies that will expand U.S. exports to the rest of the world. Such policies will include funding the IMF, passage of fast track authority, and the signing of an FTAA that works for all industries.

Thank you very much.

[The prepared statement follows:]

Statement of Al Christopherson, President, Minnesota Farm Bureau Federation; on Behalf of American Farm Bureau Federation

Mr. Chairman, members of the subcommittee, on behalf of the American Farm Bureau Federation and the 4.8 million member families in the 50 states and Puerto Rico, I thank you for the opportunity to share with you our concerns on the Free Trade Agreement of the Americas (FTAA). This is a very timely and important issue.

I participated in the IV Business Forum of the Americas that preceeded the FTAA ministerial meetings in Costa Rica two weeks ago and will focus my comments on that experience. The importance of the FTAA and the outcome of the negotiations to agriculture was underscored by the size of the U.S. agriculture delegation in Costa Rica. Farm Bureau's seven representatives were joined by representatives from feed grains, dairy, sugar and fresh fruit and vegetable organizations.

The first meeting of Ministers in 1994 set in motion the concept of the Business Forum. This was designed to be a parallel process by which the private sector, the ultimate protagonist in any flow of trade and investment, could debate its concerns and provide guidance to government counterparts who would be negotiating the agreement that traders will eventually have to abide by. We believe that this process, which includes industry, could and should be one of the most important steps in formulating any agreement. Governments should recognize that industry knows what will and will not work when it comes to the daily business of moving goods and services. The business forum presented 10 sets of recommendations to the ministers derived from 10 working groups. These working groups parallel the issue areas that shaped the substance of the work of the trade negotiators.

The need to expand our access into the Latin American market cannot be overstated especially now as we in agriculture continue to see reduced sales in Asia. The Asian fiscal crisis highlights just how critical it is that we have a working global trading system. I believe that industry must be a full partner in the process of creating a viable trading system.

The U.S. government officials indicated before the meetings that governments would take direction from the business forum on which measures to implement. This process is to be highly commended, but we believe that it can only work if our negotiators work with us before and throughout the process.

USDA's negotiator met with the agriculture groups in Costa Rica just prior to the business forum. However, there was a glaring lack of industry—overnment interaction prior to the meetings when the U.S. position should have been determined. During the debriefing session between all U.S. industry groups and U.S. officials it became apparent that not only had there been a lack of prior consultation with agriculture but that other industry sectors were not briefed prior to going to Costa Rica.

There was heated debate in the Market Access working group about creating a separate negotiating group on agriculture. Farm Bureau and other U.S. groups argued against a separate agriculture negotiating group at this time. We remain concerned that as a separate group we maybe handicapped in later negotiations as we have already reduced our barriers and our market is open. We need the other sectors at the same table.

There is also concern that as a separate group there will be a tendency to have the negotiations move at a parallel speed with the upcoming World Trade Organization negotiations scheduled to begin in 1999. This could slow down the pace of improving our access into this important region.

Brazil wanted a separate agriculture negotiating group and told us that the United States had agreed to this at an earlier meeting in Miami. If this is actually the case, USDA's negotiators did not know this decision had been made. The decision certainly had not been shared with the industry.

The ministers established nine separate issue areas for negotiations. Agriculture is one of these. It was determined that the objectives of the negotiating group on Market Access shall apply to trade in agricultural products. Agricultural issues on rules of origin, customs procedures and technical barriers to trade will also be addressed in the Market Access group. We are hopeful that the administration will

be able to provide the resources to fully participate in both of these negotiating groups on agricultural issues.

The FTAA negotiations hold promise for moving the entire hemisphere forward in global trade. Although USDA's recently released outlook report on the FTAA does not indicate big increases in sales to this region, we view the FTAA as an important link in opening markets. A copy of the USDA report is included with my testimony as is the *Ministerial Declaration of San Jose* from the March 19 meeting.

Following are some of the reasons Farm Bureau is committed to moving forward in an open global economy:

• Higher living standards throughout the world depend upon mutually beneficial trade among nations. As such, we urge that trade and other economic policies be developed that promote rather than retard the growth in world trade and the Free Trade Area of the Americas process can be an important and positive step in this direction.

• For 1998, agricultural exports to the world are projected to reach $56 billion. This figure will be down $1.3 billion from last year, due primarily to the slowdown in Asia. This slowdown will be felt mainly in bulk commodities and especially in exports of corn. All other agricultural commodities will see either flat or slightly higher exports for the year.

• Still, agricultural exports will end this year 27.6 percent higher than just four years ago. Since the United States produces more commodities than we can consume, international trade is a necessity of economic life for farmers and ranchers.

Table I includes the details concerning U.S. agricultural trade for the past five years.

TABLE 1.—U.S. Agricultural Trade

Billions of $, Fiscal Years

Item	1994	1995	1996	1997	1998
Exports	43.4	54.6	59.8	57.3	56.0
Imports	26.6	29.9	32.6	35.8	38.0
Trade Balance	17.3	24.7	37.2	21.5	18.0

Source: USDA, February 23, 1998

The United States continues to run a trade surplus with the rest of the world in agricultural commodities.

There are many goods that we buy from such areas as Mexico, Central America and South America that are very difficult to produce in the continental United States. Without trade with Latin America, it would be very difficult for U.S. consumers to purchase a cup of coffee or a cup of cocoa. Rubber tires on our automobiles would be in shorter supply, as well as tires for our tractors and combines. Supermarkets would have bananas in short supply as well.

Conversely, Latin America is an excellent market for our bulk agricultural goods, including wheat, coarse grains (corn), soybeans and soybean meal, and cotton.

If we define Latin America as Mexico, Central America, and South America, their trade with the United States since 1995 is impressive. Table II highlights both imports and exports between the U.S. and the Americas.

TABLE II—Trade with the Americas

Billion of $, Fiscal Years

	1995	1996	1997	1998
U.S. Ag Expots to Latin America	8.2	9.9	10.0	11.1
U.S. Ag Imports from Latin America	10.2	10.9	11.0	12.7
Excluding Mexico—U.A. Ag Exports	4.5	4.9	4.9	5.3
Excluding Mexico—U.S. Ag Imports	6.5	7.2	8.0	8.5

Source: USDA, December 1997

Over this four-year period, U.S. exports to Latin America increased by 35 percent, while imports to the U.S. rose by 24 percent. Trade to this region represents today about 20 percent of all U.S. agricultural exports. Excluding Mexico, U.S. ag exports to the rest of Latin America were still up by 18 percent and represented about 10 percent of all our ag exports.

Trade has been a two-way street with Latin America and should continue to be so. The signing of an FTAA will ensure that trade will continue with the least amount of barriers.

It was apparent that our trading partners, at least in the business sector, are leery of moving forward unless the United States has fast track negotiating authority.

Farm Bureau continues to support fast track trade negotiating authority for the president of the United States that will address: binding agreements to resolve sanitary and phytosanitary issues on the basis of sound scientific principles in accordance with the Uruguay Round Agreement on agriculture; tariff equalization and increasing market access by requiring U.S. trading partners to eliminate tariff barriers within specified time frames; and changes in international agreements and U.S. law and practices that would facilitate and shorten dispute resolution procedures and processes.

Farm Bureau would encourage the signing of an FTAA that would be consistent with these principles. We will work closely with U.S. international trade negotiators in all negotiations on trade and maritime agreements to see that all U.S. agricultural producers are treated fairly. We will support the use of qualified trade negotiators. We will seek representation at all negotiations that involve government export policies and maritime agreements in an effort to assure farmers unfettered access to world markets. We urge continued use of private commodity and policy advisory groups for input into international trade negotiations.

Passage of the North American Free Trade Agreement (NAFTA) was the starting point for greater and better trade relations with Canada, Mexico and other Latin American countries. Efforts should be made to build upon the principals in NAFTA to further enhance our trade relationships with these countries and enhance cooperative efforts on other important issues through the FTAA.

Long-term agricultural exports continue to rise. According to USDA's Foreign Agricultural Service rising incomes in many countries, tariff reductions around the world resulting from the Uruguay Round Agreement, and ongoing Market Access Program activities have continued to propel demand for U.S. ag products and diversified the number of large export markets, including Latin America.

While exports continue to rise, producers are concerned by potential impacts of the implementation of the Food Quality Protection Act by the EPA, a shortage of labor created by the new immigration law and restrictions stemming from President Clinton's new food safety initiative designed to regulate microbiological hazards.

This is a very critical time for U.S. agriculture and the American economy as a whole. Agriculture is expecting to lose as much as eight percent of its export market in Southeast Asia due to the fiscal crisis. We are disadvantaged in Latin America, our closest potential outlet, because the administration does not have the authority to negotiate new market access using fast-track authority and FTAA completion is not scheduled until 2005. Last week, the Senate Budget Committee moved to take away all of our funds to create markets by eliminating all funding for the USDA Market Access Program. Coupled with this, we have closed important markets with unilateral sanctions because we object to other countries' policies.

We urge that the U.S. Congress advocate effective trade policies that will expand U.S. exports to the rest of the world. Such policies should include funding the IMF, passage of fast track authority and the signing of an FTAA that works for all industries.

Thank you.

[The official Committee record contains additional material here.]

Chairman CRANE. Thank you.

Mr. Vastine.

STATEMENT OF ROBERT VASTINE, PRESIDENT, COALITION OF SERVICE INDUSTRIES

Mr. VASTINE. Thank you, very much.

Chairman CRANE. Let me mention one thing to you. The bells have just gone off and we will recess subject to call of the Chair. And my understanding is we will have two votes and then a third one, so I think it will probably be close to 4:30 before we get back.

Mr. Vastine, you proceed, and you guys monitor, will you, the time on the clock.

Thank you.

Mr. VASTINE. Now I'm really under the clock. Thank you very much, Mr. Chairman. I have a very simple message on behalf of the Coalition of Service Industries: The service sector is ready for the FTAA negotiations to start.

We have developed specific lists of business facilitation measures. We have developed specific lists of barriers that will require legislative implementation as pursuant to negotiations. We've essentially given blueprints to our negotiators, the technical specifications, if you will, to guide them in undertaking negotiations. Moreover, the businessmen of the hemisphere have organized to provide political business support for the negotiations. I believe, in this, we're well in advance of any other sector.

We came to this through a 10-month process of work with other service organizations in the hemisphere, beginning in Belo Horizonte last May in Brazil, where we passed in the work services workshop a work services declaration that was quite advanced. It called for the immediate beginning of the negotiations, it called for comprehensive negotiations, and it said they should be WTO-plus negotiations.

With our negotiators, we then organized a major conference of service industry representatives from across the hemisphere in Santiago in October last year. We took an extremely important step and we got beyond the generalities in the services. We divided the service sector into seven subsectors: telecommunications, information technology, financial services, professional services, express cargo, construction and engineering, and tourism. And in each of these sectors, businessmen met from those sectors, and came forward with a published list of barriers to service trade in those specific seven sectors.

Virtually 200 people from the hemisphere, businessmen from the hemisphere, participated in that, and we discussed those actually with the negotiators in the Free Trade Area of the Americas services working group. We actually met with government negotiators at that time in Santiago.

In San Jose we took the process a step further. We used the same sectoral format of seven subsectors to reinforce the Santiago conclusions and to add a list of new barriers that could be removed to achieve business facilitation. For purposes of supporting this entire negotiation, we have joined with businessmen from throughout the hemisphere in creating the Services Businesses Network of the Hemisphere, which is, in Spanish, "RedServ," in English, "ServNet."

Secretary Daily inaugurated this at San Jose, Minister Salazar of Costa Rica and Mr. Valdez of Chile were there as well to provide support.

In essence, we have concentrated in the service sector on getting into the nitty-gritty, on defining for negotiators what exactly the barriers are that need to be removed. These are long lists of barriers, and they're not organized by priority, so we need to do that part of it. But at least when the political will to begin this negotia-

tion in earnest is there, the service sector from the hemisphere is ready to begin.

I'd like to associate myself, as well, though, with the comments of my colleague Ambassador Pryce, and with you, Mr. Chairman, and with you, Mr. Thomas, and with Mr. Matsui. Fast track is really essential. It's a great pity that we couldn't have had that ready in time for these negotiations to begin and, Mr. Chairman, I very much hope that your feeling of optimism about possibly enacting it this year could come to pass.

We are also very grateful, I must say, to our negotiators because we have developed an extremely good relationship with Peter Alguire who heads the USTR effort at the working level and to others, Peter Collins in the services area, and also with our colleagues in the Commerce Department. They've worked very, very closely with the service sector. We have extremely good relationships with them.

Finally, Mr. Chairman, I'd like to associate myself and our association with your comments about the NTMP, the New Transatlantic Market Place, and the relative importance of that vis-a-vis the FTAA, at the outset, at your opening remarks. I think we share your view that the EU is now driving the international economic agenda, that we are in the process that, at least in the services, the transatlantic marketplace does not hold very much progress, really—promise, really. Nothing in comparison to what the FTAA could hold were it to be seriously prosecuted. So we support very much—the service sector supports very much the opening of markets to the south. Many of our companies are very committed to those markets for the long term, wish to exploit them, and wish to bring a very successful conclusion to these negotiations.

Thank you.

[The prepared statement follows:]

Statement of Robert Vastine, President, Coalition of Service Industries

It is a pleasure to contribute the views of the Coalition of Service Industries (CSI) to this useful hearing on the Free Trade Area of the Americas (FTAA). CSI was founded in 1982 for the precise purpose of ensuring that liberalization of trade in services was made a major focus of international trade negotiations. It represents US companies in global financial, telecommunications, professional, transportation, and information technology services, among others. The service sector racked up a trade surplus of almost $86 billion last year, while over the first eight months of 1997 services exports reached $166.5 billion. To give you an idea of the pace of growth of services exports, and its potential for US business and US jobs, the services surplus in 1985 was only $300 million.

SERVICES TRADE IN THE WESTERN HEMISPHERE

Trade in services within the Western Hemisphere is rapidly expanding. Between 1985 and 1995 hemispheric total trade in services grew by 247%. During this same period, total trade in services rose 247% in North America (excluding Mexico), 277% in Latin America, and 194% in the Caribbean.

US-Latin America trade in services has also been growing. From 1993 to 1996, US services exports to Latin America increased 21% while US services imports from that region rose 31%. During this same period, the average annual rate of US services exports to Latin America grew at 7%, while US services imports expanded at a rate of 10%.

Despite this strong growth, the full potential of services trade in the Western Hemisphere is unrealized due to existing trade barriers. Generally, the most significant barriers faced by services suppliers in Latin America are barriers to establishment, and national treatment, though the 1997 World Trade Organization (WTO)

agreements on financial services and basic telecommunications should bring improvements.

EXISTING WESTERN HEMISPHERE TRADE AGREEMENTS AND THE FTAA

There are a number of agreements among countries of the Western Hemisphere that provide some degree of liberalization of trade in services. According to the Trade Unit of the Organization of American States (OAS), a total of sixteen agreements contain provisions regarding trade in specific sectors.

Of these regional and bi-lateral agreements, only five, namely NAFTA, the Group of Three, and the bi-lateral agreements between Mexico and Bolivia, Mexico and Costa Rica, and Canada and Chile, have substantial provisions affecting virtually all services sectors. The other major existing regional trade and integration agreements including the Central American Common Market, CARICOM, MERCOSUR, the Andean Group, and the bi-lateral agreement between Bolivia and Chile, among others do not contemplate rules and disciplines for trade in services, or have not yet finished elaborating these.

In general, the regional agreements signed in the Western Hemisphere comply with WTO's General Agreement on Trade in Services (GATS). They provide new and more advanced elements that were not covered under the multilateral GATS framework.

The FTAA is an opportunity to go beyond regional trade agreements, and GATS commitments, and create one general framework for trade in services in the region.

PROGRESS IN THE SERVICE SECTOR

The service sector is well advanced in seeking liberalization of services trade in the Western Hemisphere, much more than any other sector.

For the last year, CSI has worked hard to build consensus among its peers in Latin America and Canada on how the liberalization of services trade within the FTAA should take place.

The Coalition of Service Industries approach to FTAA is based on several strategies.

One of these strategies was the creation of an alliance with the Santiago Chamber of Commerce in Chile, the Unin de Entidades de Servicios of Argentina, and the Federacin de Servicios de Sao Paulo in Brazil. This alliance has given us a hemispheric perspective on our role within the FTAA process, and helped us to understand how we, representing the US services private sector, can help it move forward.

The second strategy was to create and organize the First Services Business Forum of the Americas in Santiago, Chile last October. There, for the first time, the services private sector met with government negotiators, and provided them with concrete and specific liberalization recommendations. At this Santiago Services Forum, we divided the service sector in seven sub-sectors: telecommunications, information technology and electronic commerce, financial services, professional services, express cargo integrated transportation services, construction and engineering, and tourism.

The third strategy was to launch the Services Business Network of the Americas, "RedServ" (or in English, "ServNet"), a network we helped to create to achieve our Hemisphere liberalization goals (see attachment A). "RedServ" was formally launched by Secretary of Commerce William Daley last week at the San José Forum, along with José Manuel Salazar, Trade Minister of Costa Rica, and Juan Gabriel Valdés, Trade Vice-Minister of Chile. "RedServ" is a permanent network whose main purpose is to provide continuing private sector support for liberalization of services trade in the region.

These three strategies originated at the Third Business Forum of the Americas last May in Belo Horizonte, Brazil. At Belo Horizonte, representatives of financial, telecommunications, information technology, and other service sector companies, from a majority of countries of the Western Hemisphere, agreed in a joint declaration (see attachment B) "to start the negotiation process of the Free Trade Area of the Americas as soon as possible..." It stated that the negotiations "should cover all services...," that it "should be consistent with, and move beyond, the General Agreement on Trade in Services."

This services declaration was considered one of the most progressive of any of the business sector resolutions to result from the III Business Forum of the Americas. Not surprisingly, the private sector is leading governments in spurring the negotiations process.

At the next major event, the First Services Business Forum of the Americas in Santiago, Chile on October 6–7 last year, we laid the strongest foundations, so far, for the liberalization of trade in services in the region.

Organized by the Santiago Chamber of Commerce, this forum of service industry leaders from the Americas recommended (see attachment C) that governments eliminate trade barriers in the seven specific sectors mentioned above.

The more than 200 business leaders who participated during the Santiago Services Business Forum formulated precise recommendations facilitating future negotiations for the liberalization of services trade in the hemisphere, and discussed them in the presence of the FTAA Working Group on Services.

In the sectors discussed business leaders agreed on applying the principles of national treatment, non-discrimination, reciprocity, transparency, elimination of double taxation and of double benefits (social security, health care, etc.), freedom of mobility of personnel, and freedom of establishment or non-establishment. The elimination of unnecessary customs procedures, nuisance tariffs, non-tariff barriers and taxes was also requested. Requests were made for the harmonization of professional certification requirements, and facilitation of work visas.

FTAA SAN JOSÉ BUSINESS FORUM ADVANCES ON SERVICES

At the Fourth Business Forum of the Americas last week in San José, Costa Rica, CSI helped make progress together with businesses of the Western Hemisphere towards the liberalization of trade in services in the future Free Trade Area of the Americas (FTAA).

Again, the seven Services Workshops identified specific trade barriers for elimination. I would like to point out some of the more important conclusions that were agreed to by businesses of the hemisphere at the Services Workshop at the San José Business Forum (see attachment D).

In Professional Services: governments should grant national treatment to foreign professionals, adopt international accounting standards, revoke existing laws or rules regarding quotas for professionals within services firms, and eliminate all types of subsidies, exceptions, special conditions or exemptions that cause distortions in the professional services market.

In Information Technology and Electronic Commerce: governments should avoid the creation of monopolistic concessions, avoid restrictions imposed on the free flow of information through electronic networks, and avoid the adoption of legislation or regulations for privacy protection that would create unnecessary barriers to commerce.

In Telecommunications: governments should base competition and tariffs on cost, eliminate cross-subsidies, facilitate the readjustment of telephone rates, separate regulators from services operators, establish autonomous regulatory authorities, agree on procedures to grant licenses (permits, registrations or notifications), adopt rules to allow multiple competitors, guarantee right of way to all operators, provide a legal framework to promote financing of alternative national networks, liberalize telecommunications services by the year 2005, and request that those countries that have not signed the WTO agreement on Basic Telecommunication services, do so.

In Financial Services: governments should liberalize capital accounts immediately and completely, eliminate currency exchange controls, eliminate restrictions on foreign investment, promote the delivery of ample financial information, facilitate registration processes for foreign mutual funds; and with respect to the insurance sector, provide national treatment and freedom of establishment, and promote a greater degree of liberalization in rendering cross-border insurance services, while protecting consumer rights.

In Construction and Engineering: governments should grant uniform national treatment to foreign providers of engineering and construction services, and grant business and work travel visas allowing for free movement of professionals, goods, and services.

In Tourism: governments should not tax travel services; eliminate requirements for visas and burdensome customs procedures; and make hotel classification self-regulatory.

In Express Cargo Transportation: governments should abolish discriminatory measures, including application of postal rates and taxes to subsidize government agencies; and all 16 FTAA participating countries who signed the Cancun, Mexico, Charter of Commitments (signed June, 1996) relating to customs procedures should implement it before June 1999.

I would like to take a moment to highlight the achievements of the Express Cargo Transportation sector, where businesses agreed on some of the most concrete business facilitation measures that can and should be implemented right away by governments. The Air Courier Conference of America (ACCA), together with other representatives of the sector, have achieved a consensus in their recommendations that

should serve as a model to be followed by members of the private sector and by governments to further the pace of trade liberalization in the hemisphere.

The service sector, as you have seen, has been able to achieve region-wide consensus on many aspects of liberalization of trade in services. The private sector has essentially given government negotiators the blueprints in the form of specific requests for liberalization. These are elaborated in the Santiago Recommendations from the First Services Business Forum, and in the San José Recommendations produced at the Services Workshop of the Fourth Business Forum.

Despite all these efforts we still have a long way to go before we can achieve transparent, non-discriminatory, open trade in services in the Western Hemisphere. At the moment, there are two things we must focus on. First, we must achieve concrete progress, in the form of business facilitation measures by the year 2000, without losing sight of our larger liberalization goals by the year 2005. And second, we must obtain fast-track legislation authority for the President in the very near future, so that we can maintain the momentum on the FTAA. Without these, the private sector will have little incentive to focus its time and resources on the FTAA process.

Thank you, Mr. Chairman, for giving the Coalition of Service Industries this opportunity to express its views.

Chairman CRANE. Thank you very much. And we are now going to recess until, as I project, roughly 4:30. If anyone has time constraints, that's certainly understandable. Please let the staff here know about it if any of you can't wait until then. Otherwise, we'll get into the questioning process and our next panel at that time.

Thank you.

[Recess.]

Chairman CRANE. Folks, we will reconvene the Subcommittee.

Mr. Matsui and I are both here, and we don't know entirely what the schedule is going to be like. I think we've got a little time off now, though.

And I want to again express appreciation to you and apologies for these interruptions, but we don't control that. So if it were just a Committee meeting, then you would have been in and out of here with dispatch.

Ambassador Pryce, the United States, in my estimation, needs to achieve interim agreements before the year 2005 to try to maintain interest in the FTAA process. What types of early agreements do you think might be doable?

Mr. PRYCE. Right now, Mr. Chairman, without fast track, it's going to be very difficult to do anything, very frankly, but one of the things, we might get something on customs facilitation. We might get something on intellectual property. We might get something on government procurement. But people who are go-slow people on trade don't want any of these agreements. We got a lot of things in San Jose, but early agreement is one of the things we were not able to get agreement on. Those are the kinds of things we might get, but we won't get it without fast track.

Chairman CRANE. Chile, intelligently, went ahead and negotiated a free trade agreement with Canada and with Mexico, so we're the only ones that are left out at this point. I'm concerned about whether there might be a proliferation of this kind of activity not only with our two North American free trading partners, Canada and Mexico, but other Latin American countries going forward with those kinds of separate negotiations and just leaving us out of the process. Do you think there's a bona fide fear of that?

Mr. PRYCE. Yes, sir, I do. I think we've seen that—we've already been hurt by the Chile-Canada agreement, and we can expect to be hurt in other agreements. We're missing a good opportunity. I think the Canadians and the Mexicans would have been happy to go forward with us, but they weren't willing to sit around and wait while we went nowhere. It's a clear and present danger which will not diminish.

Chairman CRANE. Mr. Christopherson, what are the most significant barriers to increased agriculture exports to Latin America, in your estimation? Incidentally—oh, we'll notify Mr. Ramstad that that plaque is incorrect. [Laughter.]

Mr. CHRISTOPHERSON. If you would repeat your question again, I could try to address your——

Chairman CRANE. Yes. What are the most significant barriers to increased agriculture exports to Latin America, in your estimation?

Mr. CHRISTOPHERSON. Certainly, I think the fact that we don't have the agreement; that's certainly part of it. I suppose some of the other items that make trade agreements a little more difficult is the amount of trading commodities which are similar to what we have. The more similar the product, the more difficult it is to reach trade agreements, in other words, between two countries. If you had countries that are producing the same items, obviously, there's protectionist or at least the feeling that you need to protect your own industry.

But certainly the fact that we have not been a part of the trade agreements, I can only reiterate what the gentleman to my left said: We're losing out on them. Certainly, I, being part of the northern tier of States in the United States, very close to Canada, I'm very well aware of what Canada is doing, and I certainly don't blame them, but I'm somewhat jealous of what they have been able to do with some of those Latin American countries.

Chairman CRANE. Absolutely.

And Mr. Vastine, what business facilitation measures are the top priorities of the services industry?

Mr. VASTINE. Well, it's very difficult to speak for the service industry as a whole because every sector has its different priorities. I would say that, one, in a couple of different areas—for example, in professional services, if we could grant national treatment to foreign professionals, in some fashion arrive at arrangements, so that U.S. accountants, lawyers, and so forth, engineers, and other professional practitioners could practice their business in Latin America free, that would be certainly to our national advantage.

In the area of express cargo transportation, the harmonization of customs treatments, so that packages or letters being sent by Fed Ex, or whatever, can pass quickly through tariff barriers—through customs barriers. In all countries there ought to be harmonization of that.

In telecommunications, well, it's a long-term goal. It's not exactly business facilitation, but the essential requirement is to begin to base competition on cost of telecommunication services as opposed to inflated cost to reflect other societal needs.

So, Mr. Chairman, it's a complicated answer. It varies from sector to sector. I've summarized in my statement some of the precise areas in which we'd like to see progress made.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

I just want to make a general observation and get a comment from all three of you. It seems to me that all hearings lead to fast track. [Laughter.]

About 1 month ago, the Chair called a hearing on the agricultural services in trade, and it came down again to fast track, and certainly this one is as well.

It seems to me that you really can't go much further than you've gone. I've been particularly alarmed with what you said, Ambassador Pryce, in terms of the inability of the United States to offer to the negotiating countries interim agreements; in other words, kind of lock folks in on an interim basis as we proceed; and second, not to take any hostile actions in terms of increasing tariffs during this negotiating period. It seems to me at least those two should have been accepted by all the negotiating countries, and the fact that they're not would indicate many of the countries don't take this particularly seriously. Certainly, we have to. Obviously, Ambassador Fisher must maintain a very positive outlook on this. He has no reason not to, and he certainly must. But the fact is that we are somewhat constrained at this time.

One of our problems—I think two of our problems, and this is nothing you can really do anything about, but maybe you can think about it and try to work on this, because I think we do have a window, if not this year, early next year; then we lose it probably until 2001. And we keep throwing this date further and further back—1999, in the spring of 1999—who knows when it might be.

But I think, first of all, we need to begin to speak out when the opponents of NAFTA take NAFTA on. Right now I think the average citizen who is just aware of NAFTA thinks it was bad because of all the negative comments made, going unrebutted, essentially, and I take blame for that as well. We passed NAFTA, and all of a sudden now we're under something else, and the opponents are still fighting NAFTA.

And the second area is that we really need to communicate the importance of fast track, and I think your testimonies and the testimony that will come in the next panel, Ambassador Fisher's comments and observations, all this will move in that direction.

On the floor, as we were waiting for that second vote, I mentioned to one Member who is opposed to fast track—I said, we're just hearing some rather significant testimony of the impact of the lack of fast track on our Latin America opportunities, the fact that Europeans are moving in, and I don't know if that would change his vote, but at least it sensitized him a little bit that this isn't just a theoretical debate about labor and the environment.

Somehow over the next few months, if many of you in your associations and with your groups can begin to find ways to communicate this to the Members, perhaps in Members' home districts, I think it's critical if we have any desire at all to move this legislation.

I know last December and January and early February, the administration did make another quiet push for this. Obviously, they didn't want to be too public about it because they were talking to individual Members, Members that were opposed to fast track, and

again, they hit a brick wall. It's just very difficult. Somehow we need to change this discussion somehow, change the kind of synergy of this debate. And what that is, I couldn't tell you. I'm kind of at a loss myself. But perhaps you may want to comment on that or make an observation.

Ambassador Pryce.

Mr. PRYCE. Yes, sir. I think that a very good case in point, one of the things that we've sort of had some inward thoughts with our members and within the Council of the Americas is that we didn't really do as good a job as we might have in terms of education in the districts throughout the country. I mean, we did, I think, pretty well here, but there needs to be more support and we need to work more on that, and we're planning to do that.

On the NAFTA, the Council is updating State studies that we did to show that not only was NAFTA good the first 3 years, we've commissioned a new study that shows even better results the fourth year. There's nothing to be ashamed of there.

There are some people, frankly, within the administration who have said, Let's not talk about it. You can't not talk about it. It's the best free trade agreement we've had lately, and so we'll plan to do that.

Also, if I could say, sir, if there's a window next year, I think the administration needs to lead and say, OK, this is what we're going to try to do, and do that fairly early on, so that business can do their part to help educate the public.

Mr. MATSUI. Anyone else want to comment?

Mr. CHRISTOPHERSON. Just a short comment: I guess I share that opinion. We in our organization and other farm groups spent a lot of time waiting in the wings, waiting for another opportunity, and we recognize that the administration probably would have to take a lead on it, and we were waiting for early this year, and it never really came forward. We were somewhat frustrated by the fact that we lost it last year, and we've spent a lot of time second guessing what went wrong, but the long and the short of it was that education was part of it. Then certainly we probably didn't enter into the foray quite early enough—just a number of things that you can spend time second guessing about.

Mr. VASTINE. Mr. Matsui, I agree with my colleagues. There's no substitute for the private sector developing support at the grassroots, but neither, as the history of U.S. trade policy shows, is there any support, is there any substitute from strong Presidential leadership. In the end, public opinion is going to be swayed, I think, by leadership from the top on this issue, and that is really essential.

Mr. MATSUI. If I can just conclude, I think the President really did do a very good job on trying to move this. I think one of the problems—looking back on this now, I think all of us are doing this apology at what really happened, this may have been lost in the spring of 1997. It may have been too late by then.

I remember some of the opponents coming by my district office and in Washington, visiting with me, saying that this is our number 1 issue. It may have been something where we may not have been able to mount any kind of a challenge in terms of picking up additional votes. I just don't know, but it just seems to me that we

need now to move forward and see what we can possibly do. I do know you all are working at that grassroots level, which is so critical. I think we need to reexamine our whole strategy. Instead of assuming that Members are going to do the right thing in this area, we have to assume that they're probably not, and we have to start all over again and redebate the whole issue of comparative advantage and the benefits of trade, unfortunately.

Thank you for your testimony. I appreciate it.

Thank you.

Chairman CRANE. Mr. Ramstad.

Mr. RAMSTAD. Thank you, Mr. Chairman.

Gentlemen, I, too, want to thank you for your strong advocacy on behalf of fast track. All of us have to work harder and do a better job, and we do need that strong Presidential leadership. I hope at the right time—and I hope that time is sooner rather than later—we'll move forward and get it passed.

Mr. Christopherson, I just want to focus my line of questioning, directed to Ambassador Fisher today and applying to your testimony as well—about a separate negotiating group on agriculture. I'm concerned about tying the FTAA to the WTO negotiations on agriculture. I'm just wondering if you could expand upon your concerns and elaborate a little bit.

Mr. CHRISTOPHERSON. I think our biggest concern is the timing of it. As I indicated, we're concerned about the Asian crisis, economic crisis, and we had kind of hoped that we might have something that would fill in part of that void that we're seeing as a reduction in market sales to that part by the inclusion of trade agreements, and so forth, with Latin America. So that's probably our biggest concern, and then the other concern is, as we had stated, that we really don't have as much to trade, bargain with, from agriculture as what we would like to have maybe, and so therefore, we feel that we're at a disadvantage when we're standing there alone as a group, as opposed to being part of the total U.S. business sector.

Mr. RAMSTAD. Please, Ambassador.

Mr. PRYCE. Congressman Ramstad, I'd like to add a little bit from a different perspective. I'm not sure what went on in the negotiating groups with the ministers after the business forum met, but in bold terms, on that question of a separate agricultural group, from the private industry side of view, we got beat. There was the resilience in the Argentines, who obviously had wanted a separate group, and certainly our private enterprise agricultural people and we as Council of the Americas were trying to help not have it separated. We felt that we were better off without it, and we didn't have the horses. Not having fast track was a psychological part of not having the horses.

Mr. RAMSTAD. Yes, that was going to be my next question, Mr. Ambassador: What was the impact, if any, of not having fast track? And you've answered it.

Let me ask you also, any of you on the panel, how do you think the lack of fast track will affect the FTAA negotiations overall?

Mr. PRYCE. I think it is going to affect them seriously. It won't make it impossible, but it will make it very difficult. Someone asked earlier, when do you need fast track? And I understand Am-

bassador Fisher didn't answer. I wouldn't have answered in his case, either. He can't answer, because we have to tell everybody we don't need it, and we have to remind everybody that, even though we don't have it, we represent close to 80 percent of the GNP of the hemisphere, and even if we have one hand tied, even if we're disadvantaged, we still are a tremendous market. But when it gets down to actual negotiations, nobody's going to negotiate with us, if we don't have fast track. Chile wouldn't do it; no country will do it. When you get down to actual tariff cutting. We can try to do business facilitation; we can try to do a common customs agreement, but the actual lowering of tariffs, nobody's going to do it, if we don't have fast track.

Mr. CHRISTOPHERSON. If I can add just a little bit from agriculture's perspective, I'm not sure what kind of a signal it sends, but here we are, the biggest agricultural producer in the world, and yet we can't get our act together to trade with potential markets. I'm not sure what that says, but it doesn't make sense to me. So that frustrates us.

Mr. RAMSTAD. Thank you again. Oh, excuse me.

Mr. VASTINE. Well, I think we can obsess about the absence of fast track. It's very important and it does color the atmosphere, but, on the other hand, we have no choice but to begin these negotiations and do the best we can, and make progress in areas where progress is possible. So I would hope that we would not focus on the hole, but focus on the donut.

Mr. RAMSTAD. Certainly. And certainly nobody's obsessing, at least in a clinical sense, on the absence of fast track, albeit everyone recognizes its importance. I hope we do as you suggest, but at the same time try to push the ball forward with respect to getting fast track done.

Thank you, Mr. Chairman.

Chairman CRANE. Well, I want to thank this panel. Again, we apologize for the interruption, but, as I noted, we cannot totally control all those things.

With that, we will now invite our final panel, and we will hear from George Scalise, president of the Semiconductor Industry Association; James Clawson, president and chief executive officer of JBC International; John J. Audley, program coordinator for trade and the environment at the National Wildlife Federation; and Dennis Thies, executive vice president and chief financial officer for Southdown Inc., and vice chairman for the Southern Tier Cement Committee.

And we'll begin with Mr. Scalise, who will make his opening statement.

STATEMENT OF GEORGE SCALISE, PRESIDENT, SEMICONDUCTOR INDUSTRY ASSOCIATION, SAN JOSE, CALIFORNIA

Mr. SCALISE. Thank you, Mr. Chairman.

First of all, I would like to express our appreciation to you for having us here today to talk about the Free Trade Area of the Americas, and to point out again that we at SIA are a big supporter of fast track. We hope we can get fast track moving again, and we'll do what we can to help.

Let me just tell you a little bit about the semiconductor industry. It employs about 260,000 people here in the United States. It's also the enabling technology for the electronics world that we know today, particularly the information technology that we all hear about so much—an industry which employs about 4.2 million Americans.

A recently released study on the economics of the industry shows that the semiconductor industry is now the largest manufacturing industry in terms of added value in the United States. We have gone from 17th to 1st in about the last 7 or 8 years. We now contribute 20 percent more to the U.S. economy than the next leading manufacturing industry. The average wage in the industry is approximately $55,000, nearly twice the average of private industry overall. The industry continues to grow at about 17 percent compounded, and we now enjoy over 50 percent of the worldwide market.

Another important factor regarding the semiconductor industry is that its prices decline every year and have since the outset of the industry. As a result, the price of computers has been driven down to a point where a desktop computer, a laptop, is available to virtually anyone in this country today, and hopefully, around the world before too long.

According to the Economic Report to the President, without the faster-than-average recent rate of decline of computer prices, overall inflation in the country would have risen steadily since 1994. So, I think one of the major contributors to controlling inflation has been the semiconductor industry and its technology and innovation.

Roughly one-half of the industry's revenues come from outside the United States, and we have always been in support of the elimination of tariffs. We began by urging the elimination of United States tariffs back in 1985, and at that stage we encouraged Japan and Canada to go along with us. They did. That was certainly a major step forward. In 1993 Mexico also agreed to eliminate their tariffs as part of the NAFTA. In 1994 the Uruguay round resulted in a commitment by South Korea to eliminate their tariffs as well. Overall, we're making progress on the elimination of tariffs, which we think is critical.

In 1997 the USTR concluded the Information Technology Agreement, which eliminates tariffs on semiconductors and other information technology products in over 40 countries by the year 2000. This was a very successful agreement because the ITA member countries account for over 92 percent of the world information technology trade. Yet, the IT Agreement has one major weakness—only two countries in Latin America have joined, Costa Rica and Panama. Thus, elimination of Latin American tariffs on semiconductors remains important, unfinished business for United States trade policy.

Currently, tariffs on semiconductors in key Latin American markets, such as Brazil and Argentina, remain very high. They're bound at about 35 percent. Now these high tariffs are a significant barrier to our exports, which is important, but they're also, perhaps even more important, an inhibitor to the development of the electronics industry in Latin America. We think this is a major consid-

eration for Latin American countries to take into account during the FTAA negotiations.

Elimination of Latin American tariffs on semiconductors would help the Latin American countries develop competitive high-tech industries. The benefits of eliminating tariffs can be illustrated by comparing what has taken place in Latin America to that in some of the Asian countries—Singapore, Taiwan, and others. These Asian countries have eliminated their tariffs and have seen an explosion in their growth in the electronics world, while the Latin American countries have lagged far, far behind.

Expanding the ITA to include these Latin American countries would be the quickest way to accomplish this important reform. The FTAA provides another effective mechanism for reducing Latin American tariffs. While the FTAA is not scheduled to be concluded until 2005, the recent ministerial declaration in Costa Rica calls for concrete progress by the year 2000.

One important way to demonstrate concrete progress would be for the countries of Latin America to join the ITA now and agree to eliminate their information technology tariffs by the year 2000, as the other ITA member countries have done. We believe that the United States should make near-term Latin American participation in the ITA a key element of its overall negotiating strategy for the FTAA.

In addition, as the FTAA negotiations go forward, we urge you to press for strong provisions concerning the protection of intellectual property rights, removal of barriers to foreign direct investment, and maintenance of strong and effective antidumping remedies.

Mr. Chairman, the SIA believes that the FTAA holds much promise for promoting the continued growth of U.S. high-tech exports. Expansion of the ITA to include Latin American countries is one important way to achieve concrete progress in these negotiations by the year 2000.

Thank you.

[The prepared statement follows:]

Statement of George Scalise, President, Semiconductor Industry Association, San Jose, California

I appreciate this opportunity to appear before the Subcommittee on Trade of the Committee on Ways and Means to present the views of the Semiconductor Industry Association (SIA) on the Free Trade Area of the Americas.

Before discussing the SIA's position on this important issue, I would like to take a minute to give some background on the U.S. semiconductor industry.

THE U.S. SEMICONDUCTOR INDUSTRY

Semiconductors are an increasingly pervasive aspect of everyday life, enabling the creation of the information superhighway and the functioning of everything from automobiles to modern defense systems. A recently released economic study found that the semiconductor industry is now America's largest manufacturing industry in terms of value-added—contributing 20 percent more to the U.S. economy than the next leading industry. The average wage in the semiconductor industry is approximately $55,000, nearly twice the average of private industry overall. Furthermore, semiconductor price declines drive computer price declines. According to the Economic Report of the President, without the faster than average recent rate of decline of computer prices, overall inflation would have risen steadily since early 1994.

U.S. semiconductor makers employ about 260,000 people nationwide, and the presence of the industry is widespread—35 states have direct semiconductor industry employment. Semiconductor products are the enabling technology behind the

U.S. electronics industry, which provides employment for 4.2 million Americans, in all 50 states.

U.S. semiconductor producers are highly committed to maintaining their lead in both semiconductor manufacturing and technology. The U.S. semiconductor industry devotes on average 20 percent of its revenues to capital spending and another 11 percent to research and development—among the highest of any U.S. industry.

While investing heavily in the industry's future competitiveness and technological capabilities, SIA members also have actively sought open markets around the world. Because the semiconductor industry is so global in nature—roughly half of the U.S. industry's revenues are derived from overseas sales—the SIA has been dedicated since its inception to promoting free trade and opening world markets.

ELIMINATION OF SEMICONDUCTOR TARIFFS

SIA has long advocated the elimination of tariffs on semiconductors and related products. At SIA's request, the United States, Canada, and Japan eliminated duties on semiconductors and computer parts in 1985 without waiting for the conclusion of the Uruguay Round negotiations. SIA supported the elimination of tariffs in its home market because it believes that the U.S. semiconductor industry's health depends on the health of its customers in the electronics and information industries, and that its customers can produce the best products if they do not have the costs and administrative burdens associated with import tariffs.

In 1993, as part of the North American Free Trade Agreement (NAFTA), Mexico agreed to immediate elimination of its tariffs on semiconductors.

In 1994, the Uruguay Round negotiations resulted in a commitment by the Republic of Korea to eliminate its semiconductor tariffs, as well as a commitment to reduce semiconductor duties in the European Union. In 1995, at the request of the European semiconductor industry, the European Union further reduced its semiconductor duties from as much as 14 percent to a high of 7 percent.

In 1997, the United States and 40 other countries concluded the Information Technology Agreement (ITA), which will eliminate tariffs on semiconductors and other information technology products in these countries by the year 2000. The ITA, which was negotiated under the auspices of the WTO, represents a landmark achievement in the development of global free trade. It has dramatically sped-up the process of eliminating tariffs on information technology products by scheduling complete elimination for about 92 percent of world information technology trade by 2000 and establishing procedures for eliminating tariffs on additional products.

Despite its tremendous accomplishments, the ITA has one major weakness—only two countries in Latin America have signed onto this important agreement: Panama and Costa Rica. Thus, elimination of Latin American tariffs on semiconductors remains an important item of unfinished business for U.S. trade policy.

Semiconductor Tariffs in Latin America

Currently, tariffs on semiconductors in such key markets as Brazil, Argentina, and Venezuela, remain very high—with bound rates generally around 35 percent. Such high tariffs pose a significant barrier to U.S. semiconductor exports and also inhibit the development of information technology industries in these countries.

Elimination of these tariffs will spur development of competitive electronics industries in Latin America, as it has in other nations. It will allow U.S. producers to sell advanced semiconductors to their Latin American customers at the lowest possible price, thereby both increasing U.S. exports and strengthening developing Latin American electronics industries.

The benefit to Latin American countries of semiconductor tariff elimination is aptly illustrated by comparing developing countries that have pursued a high tariff strategy with those that have pursued a low tariff strategy for electronics. Looking around the world, those developing areas with low or no duties on electronics components and systems over the past two decades (Hong Kong, Taiwan, Singapore) have been successful in developing strong, vibrant economies with dynamic information technology industries. Meanwhile, those developing areas with high duties (Latin America, India) have not been successful in developing their domestic electronics industries. A special case was Korea, which built a narrow semiconductor industry in spite of its 8 percent duty. Korea's growth was largely based on exports of a single commodity product, not in supplying the broad range of products to its domestic electronic systems producers. It however has recognized that a zero tariff environment will best foster its future growth, and has also signed onto the ITA. Moreover, Korea agreed to accelerate the phase-out of its semiconductor tariffs so that those duties would be fully eliminated by 1999.

India has implicitly recognized the importance of open markets to the development of a competitive information technology industry and the failure of its earlier highly protectionist policies by signing onto the ITA.

Unfortunately, Brazil to date continues to protect its information technology sector, even though that approach has not worked, and has left Brazil uncompetitive in world information technology markets. As reported in the *Wall Street Journal*, the negative effects of the Brazilian model have been recognized even by some of its own industry executives:

"We made PCs before the Taiwanese and the Koreans," says Touma Elias, President of Microtec [a Sao Paolo microcomputer company]. "But instead of being a $1 billion company, like [Taiwan's] Acer or [the U.S.'s] AST or Dell, we're a $35 million one hoping to be a $100 million one. Why? Because our market wasn't open, which made components more expensive.[1]

Elimination of Latin American tariffs in semiconductors and other electronics goods would go a long way assisting the countries of Latin America in developing their own competitive industries. Joining the ITA would be the quickest way to accomplish this important reform.

THE FREE TRADE AREA OF THE AMERICAS

The FTAA provides another effective mechanism for reducing Latin American tariffs. While scheduled to be concluded no later than 2005, the FTAA calls for, among other things, the progressive elimination of tariffs and concrete progress toward achieving the agreement's objectives by 2000.

The SIA believes that one important way to demonstrate "concrete progress" in the information technology sector is for the countries of Latin America to join the ITA now, and agree to eliminate their information technology tariffs by 2000. Joining the ITA would not only allow the countries of Latin America to demonstrate their commitment to the FTAA process and enjoy the benefits of free trade more quickly, but would also demonstrate how the FTAA can support the WTO system, ensuring that regional trade liberalization would not proceed at the expense of cooperation with the broader world trading system. In fact, the business forum that preceded the most recent FTAA Ministerial meeting in San Jose, Costa Rica, explicitly endorsed immediate adoption of the ITA by Latin American countries. In addition, APEC's adoption of the ITA provides a precedent for immediate adoption of the ITA as a means to build momentum for a larger free trade region.

The SIA believes that the United States should make near-term Latin American participation in the ITA a key element of its overall negotiating strategy for the FTAA. In addition, as the FTAA negotiations go forward, we urge that the United States press for strong provisions in the FTAA on protection of intellectual property rights, removal of barriers to foreign direct investment (including forced technology transfer requirements) and maintenance of strong and effective antidumping remedies.

ELECTRONIC COMMERCE

Recently the hemispheric trade ministers met in San Jose, Costa Rica to agree on the principles and objectives that will guide the negotiations for the FTAA. The SIA is pleased that in their Ministerial Declaration, the trade ministers expressed interest in increasing and broadening the benefits to be derived from electronic commerce and called for a public-private working group to review proposals in this regard.

The SIA believes that the guarantee of tariff-free and tax-free trade over the Internet is essential to realizing the benefits of the electronic market and the information society. We urge the Congress and the Administration to continue to press both in the FTAA and in the WTO for agreements to ensure that the Internet remains free of barriers to trade, including both tariffs and other taxes on electronic commerce.

FAST TRACK

In addition, I would like to emphasize in the context of the FTAA that the SIA strongly believes that fast track negotiating authority is crucial to reducing trade barriers that impede the development and growth of high-value-added U.S. industries such as the semiconductor industry. In addition to reducing tariffs around the world, U.S. trade policy must continue to be focused on eliminating non-tariff bar-

[1] Thomas Kamm, "Brazil Set to Life Electronics Import Ban: Nationalsit Laws Backfire on Computer Industry," *Wall Street Journal* (August 8, 1991).

riers. Fast track legislation is essential to U.S. efforts to reduce complex non-tariff barriers that remain as significant obstacles to our exports in many countries around the world. We therefore urge the Congress to enact fast track legislation at the earliest possible opportunity.

CONCLUSION

The SIA believes that the FTAA holds much promise for promoting the continued growth of the U.S. high technology sector. Expansion of the ITA is one important way to achieve concrete progress in the FTAA objectives by 2000 as envisioned in the recent FTAA Ministerial Declaration.

I would be happy to answer any questions. Thank you.

Chairman CRANE. Thank you.

Mr. Clawson.

STATEMENT OF JAMES B. CLAWSON, CHIEF EXECUTIVE OFFICER, JBC INTERNATIONAL; ON BEHALF OF INDUSTRY FUNCTIONAL ADVISORY COMMITTEE ON CUSTOMS, AND JOINT INDUSTRY GROUP

Mr. CLAWSON. Thank you, Mr. Chairman, Mr. Matsui, Mr. Neal. It's a pleasure to be here again before this Subcommittee. You have my written remarks. I would like to just take a few moments to talk to the Subcommittee.

Particularly, I want to thank you, and all of you, for being the champions of expanded trade and for what you're doing. I particularly want to thank you from my perspective, as you can see from my written testimony, about the customs issues, for the interest you have shown over the years, and particularly now, on these very technical issues that, as many people say, your eyes glaze over and people wonder about rules of origin and how we do them, and the like. And that's really why I'm here today.

When we start talking about free trade, and we go about the importance of reducing the tariffs in all of these countries, my message to the Subcommittee, and I guess for the record, is that that is only the tip of the iceberg. What is really critical here for the businessman, and what we are finding, is to look at all of those backroom requirements and all of the issues with regard to clearance of the goods. You'll see in my written testimony that a number of years ago, not too long ago, the United Nations did a study that somewhere between 15 and 17 percent of the cost of goods traded today are related to the documentation requirements. That's an enormous cost. And of those, somewhere between 4 and 8 percent are related specifically to the customs clearance requirements.

We have, particularly in Latin America, still enormous problems with getting clearance through customs, the delays. We're living in an environment with just-in-time inventories, with supply chain management, with cycle times that are critical to us to get our goods into those countries and to our plants and to the consumers. I think it's really important that we have these customs administrations in these countries being ready for the next century and what is required of them.

Now what does that mean? I have in my testimony a list of a number of things we don't really need fast track authority to accomplish. By the way, I associate myself with everybody; we're very

much in favor of it, and we need it, and there's no question that we do, to negotiate these things. But there's an awful lot that can be done, and you've heard it already mentioned, short of having fast track to do it.

And some of those are to encourage these countries to adopt fully the harmonized system, to use the GATT value, to the use the ATA carnet system, which allows for the import and export of samples, and things for professional goods, and the like; to use the World Trade Organization's free shipment inspection agreement, the various other agreements that are available to them.

For example, Chile had a new Director General of Customs, and in 3 years has really modernized. It has automated. It's done wonderful things. They have not adopted, though, the valuations system for the appraisement of goods. The reason is that they don't have people who can manage it. They don't know how to do it. Because, up until recently, the Central Bank set all prices for imports. So they didn't have to do appraisement of goods. So now he's looking at the reason he can't do it. He says, I don't have anybody here that knows how to do appraisement of goods.

So one of the things that we're looking at through the WTO, and I think through the United States, and this Subcommittee could be helpful in your oversight, particularly of the trade agencies, is we need to provide some technical assistance and training to these folks in Latin America. I don't mean in a condescending way or a Big Brother way at all. What I'm talking about is there are a lot of things they just don't know how to do, and if we take a very constructive approach and do it in a partnership approach with them, there are some things that we can help them with, and they want it, and they want to do that.

So we do have working groups. It is one of the nine negotiating areas of the FTAA. We've had folks in the most recent business forum in San Jose. Customs is a major issue. Customs facilitation is going very well in the APEC forum, where we don't have fast track. We believe that the customs facilitation issues can do very well immediately in the FTA process, if the countries and the United States, showing leadership, will just step up and go about getting it done. We encourage this Subcommittee and all of those who are associated with it in hearings today all around to take that approach, of being constructive about it, to understand the importance of these issues with regard to the classification of the goods, the appraisal of those goods, and getting them cleared quickly through customs.

And I must admit that the difficulties of corruption and the integrity issues we have to address, we have to deal with this in our view. If you do things electronically, you can remove a lot of the risks that are associated with people contact where people can't accept bribes. If you do clearance and do the payments electronically, and you don't have to accept the cash at the border, you remove a lot of those kinds of risks.

So there are a number of very positive things that can occur here, and I'm appreciative of being able to come here and share this with you. We hope that we will continue to work with you in the Subcommittee's efforts with regard to customs here and in foreign countries.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of James B. Clawson, Chief Executive Officer, JBC International; on Behalf of Industry Functional Advisory Committee on Customs, and Joint Industry Group

It is a pleasure to be here today and to have the opportunity to testify before the Subcommittee on Trade of the Committee on Ways and Means on the Free Trade Area of the Americas (FTAA). As Chairman of the Industry Functional Advisory Committee that reports to Commerce Department and the Trade Representative and as Secretariat to the Joint Industry Group, I have concerned myself with international custom issues on behalf of U.S. companies exporting to foreign markets. Handled correctly, the FTAA is an excellent opportunity for the United States to fix many of the customs barrier problems facing U.S. exporters.

At the 1994 Summit of the Americas, the concluding declaration identified 11 major areas that would be covered in the negotiations that are to be completed by 2005. In the subsequent years, at ministerial meetings, these areas have been further developed into negotiating methodologies. Today, I would like to talk about 3 of these 11 areas: Customs, Rules of Origin, and Standards.

CUSTOMS

The goal of the FTAA is to improve trade—the engine of economic growth. To achieve this goal, the FTAA needs to harmonize and standardize customs procedures among the 34 countries. After all, customs regulations and procedures are one of the most significant non-tariff barriers to global commerce. A 1994 United Nations survey provided revealing data on the documentation costs of international merchandise transactions. The study found that between 15% to 17% of the cost of goods sold in an international transaction is related to the required documentation. Of that amount, 4% to 8% is due to Customs documentation alone. It was estimated that a ship transporting goods also carries 500 lbs of paper documentation that accompanies those goods.

For the FTAA, the U.S. should encourage all countries to adopt the 60 World Customs Organization/International Chamber of Commerce Customs Guidelines for an efficient customs service.

At a minimum, the U.S. should require as part of any agreement that member countries adopt, implement and enforce the following international conventions and agreements:

- The Harmonized Commodity Description and Coding System (HS)
- The WTO/GATT Value Agreement
- The Kyoto Convention (when revisions are competed next year)
- The ATA Carnet Convention
- The WTO Pre-shipment Inspection Agreement
- The WTO Rules of Origin Agreement

In addition, attention should be given in the agreement to customs automation. The FTAA will benefit by countries adopting existing automation systems such as UN/EDIFACT. The UN/EDIFACT provides for one electronic communication highway for automated systems. This means reduced transaction duplication and transaction costs to global business. A common data directory also needs to be adopted. A common data directory would satisfy the standard data requirements of a majority of international trade transactions. The U.S. is working on just such a system now called the International Trade Data System. With its G–7 partners, the U.S. hopes to develop a limited list of data elements required for the international transaction.

Customs procedures also apply to business professionals and their movement within the FTAA region. The FTAA must work to simplify customs clearance for professionals and their tools so those business professionals can move throughout the region without long delays.

RULES OF ORIGIN

The lack of consistency among the 34 FTAA countries' rules of origin is a major obstacle to global commerce. The San José Ministerial Declaration states that for rules of origin, the goal is to develop efficient and transparent rules of origin, including nomenclature and certificates of origin, in order to facilitate the exchange of goods, without creating unnecessary obstacles to trade. This goal needs to be fully implemented. The FTAA can move rapidly toward this goal through the adoption of the WTO Rules of Origin as a basis for the development of the preferential rules.

STANDARDS & NON-TARIFF BARRIERS

The third area of concern that has significant customs clearance implications is standards. These often become non-tariff barriers and cannot go overlooked in the FTAA. Product standards need to be harmonized or mutually recognized throughout the FTAA. NAFTA is already working on harmonization and mutual recognition of product labeling and certification standards. This effort should be expanded in the FTAA. In the absence of harmonized or mutually recognized standards, companies wishing to expand internationally are challenged to understand those multiple standards and make separate production runs to meet those different standards.

For the large, multinational companies, the issue of standards is troublesome, but it does not impede them from international trade. For the small and medium-sized businesses, such barriers can prohibit entry into the market. Small and medium-sized businesses do not have the resources to maintain multiple inventories or the money to find individuals who can interpret the regulations for them. As a result, these companies are unable to grow.

Conformity assessment bodies, another aspect of standards, are the entities that certify a product as being in compliance with the regulations governing a product's safety, performance, and compliance with standards. Companies depend on conformity assessment bodies to ensure their product is fit for sale. Today, the FTAA does not have mutual recognition of conformity assessment bodies. As a result, companies are forced to have their products tested for every country in which they want to sell the goods. Establishing mutual recognition of conformity assessment bodies would permit goods to be tested in one country and their approval would then be accepted in any of the 34 FTAA countries. Not only will this save both time and money; it also facilitates global commerce.

CONCLUSION

I thank the members for their time and remain confident that the areas of customs, rules of origin, and standards will be well served by the FTAA negotiations' process.

Chairman CRANE. Thank you, Mr. Clawson.

Mr. Audley.

STATEMENT OF JOHN J. AUDLEY, PROGRAM COORDINATOR FOR TRADE AND THE ENVIRONMENT, NATIONAL WILDLIFE FEDERATION

Mr. AUDLEY. Thank you, Mr. Chairman.

At the 1994 Miami Summit, the elected heads of state and government linked the advancement of human prosperity to three fundamental principles: a healthy environment, economic development, and representative democracy. To quote the Declaration, "Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly. We will advance our social well-being and economic prosperity in ways that are fully cognizant of our impact on the environment."

The Declaration links concretely economic development and hemispheric integration to three important environmental goals: sustainable energy development and use, conservation, and sustainable use of biodiversity, and a partnership for pollution prevention.

Nongovernmental organizations took seriously the Miami Declaration's call to link hemispheric integration to the principles of democracy, sustainable development, and trade liberalization. We attended the business forums and trade ministerial meetings. We responded with concrete recommendations to issues raised during the preliminary negotiations, and we worked to build our own com-

munity's capacity to engage as effective participants in trade negotiations.

We now have a blueprint for formal negotiations agreed to by our trade ministers at the IV trade ministerial meeting.

The San Jose Declaration makes two important statements on environment and trade. The trade ministers reiterated the commitment they made in Miami to negotiate the FTAA, taking into consideration the broad social and economic agenda contained in the Miami Declaration. This is largely a rhetorical statement, one that could be significant, if it was supported by a plan of action. Unfortunately, from our perspective, the ministers' commitment to include only those trade and environment issues agreed to at the WTO's Committee on Trade and Environment, and their desire to create a dispute mechanism and processes similar to that used by the WTO seriously weakens this commitment. Given its poor performance on trade and environmental policy over the past few years, NGOs are not supportive of regulating environmental issues solely to the WTO.

Perhaps more importantly, the ministers have not yet agreed on the terms of the second important statement made on the environment in San Jose; namely, the shape and procedures of what I now understand to be called the Civil Society Committee, which is charged with addressing issues raised by labor, environment, businesspeople, and academics.

We ask Members of Congress to work with the administration and nongovernmental organizations to develop a plan of action for this Committee, one that promotes green competition by leveling the playingfield for businesses in compliance with environmental law. As a starting point, a plan of action should reiterate the general objectives for environment and trade stipulated in the Miami Declaration.

We believe the terms of reference for both the Committee on Civil Society and the Trade Negotiating Committee should encourage FTA negotiations to place environmental policies on par with trade liberalization in such a way that would reinforce the Miami Declaration's commitments to advance and implement sustainable development.

Congress should urge agreement on a work plan for the Committee that ensures the following substantive issues are addressed within the framework of negotiations: How do we promote energy efficiency among nations of all the hemisphere and address the intersection between trade liberalization and climate change? How do we integrate strategies for the conservation and sustainable use of biodiversity into economic development activities? How do we explore the creation of appropriate parallel institutions, as was done during the NAFTA negotiations? How do we safeguard national laws designed to reward producers who operate in compliance with national environmental laws? How do we safeguard against competition that unnecessarily pollutes the environment and destroys natural resources? And how do we agree to the terms of and scope of an environmental impact assessment?

If properly constructed, we believe that the Committee should work closely with the Trade Negotiating Committee to identify the intersection between core negotiating issues and those raised by

members of Civil Society. We also believe that resources should be dedicated by the OAS and ECLAC to build the capacity of our Latin America colleagues to engage in the policy dialogs that will take place in the committees created by the FTAA.

The financial resources should be provided to build the capacity for these Latin American colleagues to engage in public discussions in their countries on the objectives and progress of negotiations. Resources should be available to enable members of Civil Society to meet regularly with Committee members and share their views in open sessions.

Finally, we also outline in our testimony specific recommendations for the creation of an information clearinghouse. Electronic and hard-copy access to information is fundamental to what we desire to be effective and constructive input into the negotiations.

In conclusion, let me say that I appreciate the difficult nature of the challenge that we place before this Subcommittee today. Responding to the nexus between sustainable development and trade liberalization is a difficult, but important task.

The National Wildlife Federation believes that U.S. leadership is essential if our Nation is to realize this goal. We offer NAFTA as evidence of the ability of the United States to take first steps toward sustainable environmentally sensitive trade. We fully respect this Subcommittee that when the administration and Members of Congress are united in their commitment to environment and trade, as in NAFTA, negotiating parties took seriously our concerns for labor and environment, and we passed an agreement that many members of the environmental community could accept.

Thanks.

[The prepared statement and attachments follow:]

Statement of John J. Audley, Program Coordinator for Trade and the Environment, National Wildlife Federation

Hello, my name is John Audley, and I am the Program Coordinator for the National Wildlife Federation's Trade and Environment Program. I am here on behalf of NWF Vice President for Federal and International Affairs Stephen J. Shimberg, who was called out of town unexpectedly and cannot testify.

For nearly ten years the National Wildlife Federation has been actively involved in trade policy negotiation and implementation. Our more than four million members and supporters believe strongly that, when properly balanced, trade and investment agreements are important tools for improving the quality of life for people around the world. Our comments today are grounded in the lessons taught us by the NAFTA and WTO experience, and by our active participation in the "Free Trade Area of the Americas" (FTAA) process.

As the United States and other countries prepare to enter into formal FTAA negotiations, NGOs throughout the hemisphere will urge their governments to negotiate trade rules that promote a just and equitable hemispheric integration process that improves the quality of life, reduces poverty, acknowledges the intrinsic value of nature, and promotes sustainable development for all people and nations without exception. We believe that U.S. leadership is critical to the successful realization of these goals, a challenge which we believe is inexorably tied to the successful outcome of the negotiations themselves. Unfortunately, the vast majority of government officials and members of the business community strongly resist our participation, a situation we believe threatens public support for the FTAA itself.

My testimony will proceed as follows. I will first review the commitment made at the 1994 Miami Summit to address environmental issues within the context of hemispheric integration. Next I will describe the NGO response to the Miami Declaration. Third, I will comment on the performance of governments relative to the broad commitment to link environment to trade negotiations. Finally, I will describe the environmental provisions of the San Jose Trade Ministerial Declaration, and con-

clude with specific recommendations to Congress and the Administration as they plan the U.S. negotiating strategy within the framework agreed to in San Jose.

I. Elected Heads of State Link Sustainable Development to Economic Prosperity

At the 1994 Miami Summit of the Americas, the elected heads of State and Government of the Americas linked the advancement of human prosperity to three fundamental principles. In the section entitled "Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas," government officials made clear that these three principles must be respected if people are to enjoy the benefits promised by hemispheric integration. To quote the Miami Declaration,

Social progress and economic prosperity can be sustained only if our people live in a healthy environment and our ecosystems and natural resources are managed carefully and responsibly.... We will advance our social well-being and economic prosperity in ways that are fully cognizant of our impact on the environment.

The Summit's Plan of Action calls upon governments to take concrete steps to realize social progress, economic prosperity, and a healthy environment. The following action statements taken from the Miami Summit Plan of Action are especially important to us:

- Cooperate fully in the development of sustainable energy development and use, including the promotion of efficient and non-polluting energy technologies, and the identification for priority financing and development of at least one economically viable project in non-conventional renewable energy, energy efficiency, and clean conventional energy;
- Integrate strategies for the conservation and sustainable use of bio-diversity into economic development activities; and
- Form a Partnership for Pollution Prevention.

Participating governments also recognized the importance of numerous international environmental agreements, including a commitment to support the Central American Alliance for Sustainable Development, Agenda 21, and the Global Conference on the Sustainable Development of Small Island States.

In addition to the commitment to balance trade with ecological priorities, throughout the Miami Declaration governments express their belief that a key element in the overall plan for hemispheric integration is the strengthening of democracies. To quote from the Miami Declaration,

. . . representative democracy is indispensable for the stability, peace and development of the region. It is the sole political system which guarantees respect for human rights and the rule of law; it safeguards cultural diversity, pluralism, respect for the rights of minorities, and peace within and among nations.

Because expanding the level of public participation in government activities is central to the goal of hemispheric integration, specific plans of action were developed by the Parties to strengthen the dialogue among social groups and invigorate society and community participation in governance. We believe strongly that democratic governance and the rule of law are essential components of national and international efforts to protect the environment, and we applaud our governments' commitment to these principles.

II. Citizens Respond to Government's Call to Link Environment to Trade

Non-governmental organizations (NGOs) around the hemisphere responded positively to the Miami Declaration's commitment to link comprehensively sustainable development with efforts to strengthen democracies and advance human prosperity. Despite strong opposition from many quarters in business and in government, NGOs participated in the business-oriented "pre-ministerial meetings" called Business Forums, and took part in Forum-sponsored workshops and panels on sustainable development and economic integration. NGOs prepared for the trade ministerial meetings by developing concrete recommendations on the scope and nature of the preliminary negotiations. In February, 1997 U.S. NGOs presented the Clinton Administration with a list of objectives for trade negotiations. We testified before this Committee three times last year to explain our objectives for trade and the environment, and to show that, when our concerns are integrated fully into negotiations, environmental groups can and will be active supporters of trade negotiating authority. We have also strengthened relationships with Latin American NGOs by sharing the trade and environment lessons taught by NAFTA, and by sharing our technical knowledge of trade rules and institutions. NGOs around the hemisphere now play a more direct and active role in trade deliberations with their own governments.

Our effort to promote responsible, constructive input into negotiations has begun to bear fruit. Over the past four months our community prepared two letters for the trade vice-ministers that offer concrete recommendations for public participation in negotiations. As ministers discussed establishing a "study group" for the environment, we commented on the various plans under consideration. And during the San Jose meeting, we worked with twenty-five NGOs from around the hemisphere to propose an action plan and formal mechanisms designed to integrate the principles of sustainable development into formal negotiations. A copy of each of these documents is appended to this testimony.

In short, NGOs took seriously the Miami Declaration's call to linked hemispheric integration to the principles of democracy, sustainable development, and free trade. We embraced fully the promise that, when economic integration was based upon the principles of sustainable development, it strengthened democracies, enhanced national capacities to set and implement effective environmental policies, and respected the individual rights of people throughout the hemisphere. We will continue to organize ourselves to play a responsible role in the development of new trade and investment agreements. Unfortunately, most members of the business and governmental communities have not been enthusiastic about our involvement.

III. Weak Response to NGO Input by Most Government and Business Officials

While NGOs have worked hard to offer negotiators concrete recommendations, most government officials and business executives have turned a deaf ear to our proposals. For example, NGO participation in the Denver and Cartagena Ministerial Meetings did not result in the adoption by the Parties of any concrete steps to ensure that the preliminary trade negotiations would include concern for clean energy or protecting bio-diversity. The initial work program and working group framework adopted during the Denver meeting made no mention of the important role for the environment and sustainability as articulated by the heads of state in Miami. And when NGOs expressed their concern over the lack of environmental provisions as a component of the preliminary negotiations at the Third Ministerial Meeting, the trade ministers responded by relegating all discussion of the environment to the World Trade Organization's Committee on Trade and the Environment.

Most members of the business community were no more supportive than governments for our efforts to participate responsibly in negotiations. In the Cartagena report to the trade ministers, business leaders stated that, ". . . environmental policy-setting can be a barrier to economic development and international trade." But they failed to recognize not only that this is rarely true in practice, but also that good environmental laws well enforced help to level the competitive playing field and reward businesses for operating responsibly. At the 1997 Belo Horizonte meeting, the Business Forum discussed the creation of a government working group on sustainable development, but its report emphasized the need to avoid adopting environmental laws that might restrict trade. Business officials meeting with U.S. government officials immediately following the San Jose Business Forum last month reacted bitterly to the presence of a small number of NGOs who attended some of the workshops. And while some members of the business community expressed support privately, not a single business person in that room publicly defended NGOs when one speaker argued that "NGOs have no place in trade negotiations." In fact, until officials from the government of Costa Rica intervened, the organizers of the San Jose Business Forum refused to create a workshop or a panel to discuss the environment in trade.

Back in the United States, the reaction of some Members of Congress to NGO involvement in trade has not been much better. In a speech he gave to elected officials from the Mercosur countries, Arizona Congressman Jim Kolbe demonized environment and labor groups, arguing that our irresponsible behavior caused fast track's defeat in Congress last year. He argued strongly against the inclusion of environment in trade negotiations, purportedly based on a threat of revamping environmental laws within the framework of trade negotiations.

To be quite honest, I do not understand this kind of response from business and government. NAFTA's implementing legislation did not change a single environmental law in any of the three participating countries. To make this statement to Mercosur officials sets up a false conflict and misrepresents environmentalists' intentions for the FTAA negotiations. More broadly, we consider the governments' decision to relegate to the WTO environmental matters that belong in the FTAA negotiations to be a serious flaw in logic. By considering only those environment and trade decisions developed by the WTO, FTAA governments are asking NGOs to place our faith solely in a Committee whose performance has been so disappointing

even WTO Director General Renato Ruggiero acknowledged its failure in recent speeches and meetings with NGOs.

Perhaps more importantly, removing the environment from the FTAA negotiations seriously jeopardizes the negotiators' ability to meet the commitments made to the people of the Western Hemisphere by our heads of state in Miami. It threatens the long term success of the integration process because legitimate voices are not heard. And if fast track's failure last fall and that of the Multilateral Agreement on Investment (MAI) this year, along with the problems facing re-funding of the International Monetary Fund (IMF) don't convince members of Congresses here and elsewhere that NGOs are involved and care about international trade and investment agreements and institutions, then I suggest that elected officials are not listening.

NGOs are prepared to articulate a positive message on environment in trade. We will support trade and investment agreements that take into consideration our objectives, and we will actively oppose those which do not. Opposition to the inclusion of specific goals for the environment in trade negotiations, and exclusion of NGOs as participants in negotiations, place us all on a path to greater conflict and disagreement.

IV. The Road Ahead

I conclude my presentation by reviewing the San Jose Trade Ministerial Declaration, and by offering the Committee some specific questions to ask of the Administration as they begin deliberations within the negotiating framework established at San Jose.

Trade ministers meeting in San Jose agreed to an initial structure for negotiations, leaving the form flexible enough to respond to unforseen needs or changes in negotiating agenda. First the ministers agreed to meet every eighteen months, and agreed to the negotiating locations through the year 2004. Nine negotiating groups, their chairs and vice-chairs, were selected. Canada was selected to be the Chair of the Trade Negotiating Committee (TNC) through the end of 1999, to be followed by Argentina (Nov. 1, 1999-April 30, 2001), Ecuador (May 1, 2001-Oct. 31, 2002), and finally, the negotiations will be co-chaired by the United States and Brazil (Nov. 1, 2002-Dec. 31, 2004). The Trade Negotiating Committee (TNC) will have the responsibility for guiding the work of the negotiating groups and of deciding on the overall architecture of the agreement and institutional issues. The TNC will identify and develop appropriate procedures to ensure timely and effective coordination between negotiating groups on interrelated issues.

The San Jose Declaration makes two important statements on environment in trade, statements to which we now turn our attention. In the introduction, the trade ministers reiterated the commitment they made in Miami to negotiate the FTAA taking into consideration ". . . the broad social and economic agenda contained in the Miami Declaration . . . " This is largely a rhetorical statement, one that can be significant if it is supported by a plan of action. Unfortunately the commitment to environment in trade is weakened by the ministers' commitment to the WTO Singapore declaration which identifies the WTO's CTE as the arena for full discussion of the trade and environment nexus, and by their desire to create a dispute mechanism and process similar to that used at the WTO. However, the ministers have not yet agreed on the shape and procedures of the Committee of Government Representatives (CGR) charged with addressing issues raised by labor, environment, businesspeople and academics. It is with this thought in mind that we urge members of Congress to endorse these recommendations:

1. Substantive Issues

We ask members of Congress to work with the Administration to develop a plan of action for the CGR that promotes green competition by leveling the playing field for businesses in compliance with environmental laws. As a starting point, the plan of action should reiterate the general objectives for environment in trade agreed to by the heads of state in Miami. FTAA negotiations should be dedicated to placing environmental policies on par with trade liberalization. If this objective shapes the work of the negotiating groups and the CGR, it reinforces the commitment made by the heads of state to advance and implement sustainable development.

More specifically, Congress should urge agreement on a work plan for the CGR that:

- Promotes energy efficiency among all the nations of the hemisphere, and addresses the intersection between trade liberalization and climate change;
- Integrates strategies for the conservation and sustainable use of bio-diversity into economic development activities;

• Explores the creation of appropriate "parallel institutions," as was done in the NAFTA;

• Safeguards national laws designed to reward producers operating in compliance with national environmental laws;

• Agrees to the terms of and scope of environmental impact assessments; and

• Safeguards against competition that pollutes the environment or destroys natural resources.

If properly constructed and effectively used, the CGR should work closely with the TNC to identify the intersection between the core negotiating issues and those issues raised by members of civil society.

2. Resources for Latin American Participation

One of the most important issues facing Latin American NGOs is that of resource access to enable citizens to participate effectively in negotiations. We believe that resources should be dedicated by the Organization of American States (OAS) and by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) to build the capacity of NGOs to engage in the policy dialogue that will take place in the CGR and TNC. Financial resources should be provided to build national capacity for NGOs to engage in public discussions in their countries on the objectives and progress of negotiations, and should be available to enable members of civil society to meet regularly with the Committee members and share their views in open sessions. We understand that the OAS has already prepared a budget of $2.8 million for all trade related projects in 1998; we feel that an equivalent budgetary effort must be developed to enable civil society to engage fully in the negotiations.

3. Access to Information

A final important obstacle to informed and productive participation is the lack of information; interested citizens around the hemisphere simply lack access to information detailing the negotiating timetable, objectives, and participants. In the February 8, 1998 letter from NGOs to the trade vice-ministers, we outlined specific recommendations for the creation of an information clearinghouse (see appendix documents). Electronic and hard-copy access to the information considered by the Committee, as well as the issues under consideration by the negotiating groups, is essential. We urge Congress to tell the President that information access is critical to successful participation in the Committee, and to achieving the Miami objective of strengthening democracy through expanded public participation in government business.

In conclusion let me say that I appreciate the difficult nature of the challenge we place before this committee today. Responding to the nexus between sustainable development and trade liberalization is a difficult but an important task. National Wildlife Federation believes that U.S. leadership is essential if our nation is to realize this goal. We offer NAFTA as evidence of the United State's ability to forge a path toward sustainable trade. When the Administration and Members of Congress were united in their commitment to environment in trade during the NAFTA negotiations, negotiating parties took seriously our national commitment not to advance trade agreements until environment and labor issues were also resolved.

* CENTRO DE DERECHO AMBIENTAL Y DE LOS RECURSOS NATURALES * CENTRO MEXICANO DE DERECHO AMBIENTAL * COMITE NACIONAL PRO DEFENSA DE LA FAUNA Y FLORA * CENTRO DE DERECHO AMBIENTAL DE HONDURAS * FUNDACION AMBIO * FUNDACION AMBIENTE Y RECURSOS NATURALES * FLACSO * INSTITUTO DE DERECHO AMBIENTAL Y DESARROLLO SUSTENABLE * NATIONAL AUDUBON SOCIETY * NATURAL RESOURCES DEFENSE COUNCIL * NATIONAL WILDLIFE FEDERATION * UNIVERSIDAD AUTONOMA METROPOLITANA * SOCIEDAD CONSERVACIONISTA AUDUBON DE VENEZUELA *

October 27, 1997

Mr. Carlos Murillo
President of the Preparatory Committee
Pro-Tempore Presidency
Free Trade Area of the Americas Office
Ministry of Foreign Trade
P.O. Box 96–2050
San Jose, Costa Rica

To the Honorable President of the Preparatory Committe of the Free Trade Area of the Americas Office:

As you prepare to discuss the appropriate role in the Free Trade Agreement of the Americas negotiations (FTAA) for private parties, we urge you to legitimize and institutionalize participation and input from a broad spectrum of civil society sectors.

Under the Joint Declaration from the Third Ministerial Meeting at Belo Horizonte, Brasil, May 16, 1997 all signatory countries stated that they "... consider[ed] the inputs from stakeholders of ... civil societies to be important to ... deliberations ... and ... encourage[d] all countries to take them into account through mechanisms of dialogue and consultation." We understand that a private-sector business forum has been institutionalized and held in conjunction with each FTAA ministerial. We also understand that business sector's recommendations have been reviewed and analyzed by the Working Groups. We believe that recommendations by the business sector are an important contribution to trade deliberations; however, they represent only one view from stakeholders of civil society.

Public participation in trade policy deliberations needs to be balanced to achieve the stated goals of the Joint Declaration. First, the inclusion of representatives from a diverse cross-section of civil society sectors, such as the environmental sector, will help ensure that negotiators take into consideration the broader views of civil society. Broader public participation in the trade policy dialogue will ensure involvement from those directly affected by economic integration. Second, formal dialogue and consultation with a broad selection from civil society will help to ensure that "[f]ree trade and economic integration ... [raise] ... standards of living, improving the working conditions of people in the Americas and better protecting the environment."[1] Third, public participation in trade deliberations is also crucial to advancing the signatory countries' "... commitment to transparency in the FTAA process."[2] Finally, public participation is a fundamental element of democratic practice and the cornerstone of effective decision making process. "[A] vigorous democracy requires broad public participation in public issues."[3]

As you work toward the completion of the March 1998 Declaration of San Jose, we urge you to incorporate the language of the Declaration of Principles, Summit of the Americas of 1994[4] to include "...the right of all citizens to participate..." in the decision-making processes surrounding FTAA negotiations by creating an effective avenue for public dialogue and input. Integration should guarantee adequate mechanisms for participation and interaction with negotiators, including the resources necessary to provide all members of civil society routine access to working

[1] *Summit of the Americas, Declaration of Principles,* subtitle "To Promote Prosperity through Economic Integration and Free Trade," (1994, page 2).

[2] *Joint Declaration from the Third Ministerial Meeting at Belo Horizonte, Brasil,* (May 16, 1997, paragraph 14).

[3] Plan of Action, Declaration of the Summit of the Americas, subtitle "Invigorating Society/Community Participation," (1994, page 4).

[4] *Declaration of Principles, Summit of the Americas,* (Santa Cruz de la Sierra, Bolivia, 1996, paragraph 8).

group meetings and negotiating sessions. Participation by the environmental sector should not depend solely on further developments at the WTO.

Economic development and environmental protection are two sides of the same coin and cannot be separated. We stand ready to work with you to develop and advance a coherent Western Hemispheric agenda for sustainable development.

Thank you for your attention to this important matter.

Respectfully submitted,

GUSTAVO ALANIS ORTEGA
Centro Mexicano de Derecho Ambiental
(Mexico)

LUIS CASTELLI
Fundacion Ambiente y Recursos Naturales
(Argentina)

JOHN J. AUDLEY
National Wildlife Federation
(U.S.A.)

On behalf of the following:

FLACSO (Argentina), Comite Nacional Pro Defensa de la Fauna y Flora (Chile), Centro de Derecho Ambiental y de los Recursos Naturales (Costa Rica), Instituto de Derecho Ambiental y Desarrollo Sustenable (Guatemala), Centro de Derecho Ambiental de Honduras (Honduras), Universidad Autonoma Metropolitana (Mexico), National Audubon Society (U.S.A.), Sociedad Conservacionista Audubon de Venezuela (Venezuela), Natural Resources Defense Council (U.S.A.), Fundacion AMBIO (Costa Rica)

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* CENTRO DE DERECHO AMBIENTAL Y DE LOS RECURSOS NATURALES *CENTRO LATINO AMERICANO DE ECOLOGIA SOCIAL * CENTRO MEXICANO DE DERECHO AMBIENTAL * COMITE NACIONAL PRO DEFENSA DE LA FAUNA Y FLORA * CENTRO DE DERECHO AMBIENTAL DE HONDURAS * FUNDACION AMBIENTE Y RECURSOS NATURALES * FUNDACION AMBIO * FUNDACION SALVADORENA PARA EL DESARROLLO ECONOMICO Y SOCIAL * NATIONAL AUDUBON SOCIETY * NATIONAL WILDLIFE FEDERATION * PRONATURA, MEXICO * PRONATURA, REPUBLICA DOMINICANA * RAINFOREST ALLIANCE * RED MEXICANA DE ACCION FRENTE AL LIBRE COMERCIO * PATRICIA GAY, ENVIRONMENTAL CONSULTANT * MARIE-CLAIRE SEGGER, TRADE RULES AND SUSTAINABILITY IN THE AMERICAS PROJECT * MINDAHI CRESCENCIO, PLURAL GROUP OF INDIGENOUS PEOPLES * PAULO GUILHERME RIBIERO, UNIVERSIDADE DE BRASILIA *

FEBRUARY 8, 1998

Pro-Tempore Presidency
FTAA Office
Ministry of Foreign Trade
P.O. Box 96–2050
San Jose, Costa Rica

To the Honorable Vice Ministers of Trade attending the Third FTAA Vice Ministerial Meeting:

When government officials meet this February in San Jose, Costa Rica for the Third Free Trade Area for the Americas (FTAA) Vice-Ministerial meeting, we again urge you to take concrete steps to legitimize input and participation in trade negotiations from a broad spectrum of civil society. Public participation in trade and investment negotiations holds the key to successful completion of the proposed FTAA negotiations.

Since the First FTAA Trade Ministerial in 1995, negotiators have used the Business Forum proceedings to work directly with business community members on issues directly related to the scope and nature of trade negotiations. Some of the individual "working groups" have even developed more formal consultancy processes with the business sector, such as the meeting between the Services Working Group and the business community held on October 7, 1997 in Santiago, Chile. Unfortunately, similar opportunities to meet with negotiators do not exist for other sectors of civil society.

We believe that public participation should be integral to any trade or investment negotiations. Such a linkage confirms the relationship between open markets and democratic principles, and provides citizens with the information they need to make sound and informed choices about policies that affect their future. But despite the fact that clear mandates which strongly support the full integration of civil society in the decision-making process, including policies and programs design, implementation and evaluation, exist in the Miami and Bolivia Summit Plans of Action, and in the Belo Horizonte Trade Ministerial Declaration, no such steps have yet been taken. The time has come to follow up on those commitments and make public participation a cornerstone of the FTAA process. We therefore urge the negotiators to adopt and implement the following recommendations as part of the Declaration of San Jose:

PLACE PUBLIC PARTICIPATION ON A PAR WITH OVERALL TRADE NEGOTIATION OBJECTIVES

A general objective on public participation sends a strong signal to participating countries and to business interests that democratic decision making is integral to good trade and investment policy.

PROVIDE A SPECIFIC WORK PLAN DESIGNED TO OVERCOME THE OBSTACLES THAT RESTRICT CITIZEN PARTICIPATION

While members of the business community enjoy the financial resources, technical skills, and personal and professional relationships required to engage government officials in useful policy dialogue, citizen groups—especially those working in emerging economy nations—do not possess such resources. To overcome these obstacles to effective participation, we suggest the following specific work plan:

1. Establish an Information Clearing House

One of the biggest obstacles to participation is the lack of information; interested citizens around the hemisphere simply lack access to information detailing negotiating timetable, objectives, and participants. Because most citizens group now have access to information available through the Internet, posting documents on a website or maintaining a communications "list-serve" are an inexpensive means of overcoming most information obstacles. A list-serve would also keep citizens abreast of upcoming meetings, workshops, and conferences, and encourage dialogue among stakeholders.

The current official FTAA website provides useful information such as a chronology of the FTAA process; the official documents from the Ministerial meetings; information on the twelve Hemispheric Working Groups and access to some of the official documents prepared for the Working Groups. But, for citizens to be fully informed, information that states the different countries positions towards specific concerns on the trade agenda; the minutes of the past Vice Ministerial meetings; the agenda and issues of discussion for the future Vice Ministerial meetings, the future Ministerial meeting, and the Hemispheric Working Group meetings; as well as, points of contact; links to related home pages; and access to position papers presented during negotiations, will better help understand the process itself, the challenges and promote public access. Because of the diversity of languages spoken in the Hemisphere, we applaud and continue to encourage the current effort in providing this information in English, Spanish, French, and Portuguese.

We recommend you review both the websites and list-serves maintained by the North American Commission on Environmental Cooperation (CEC), and the North American Development Bank and Border Environmental Cooperation Commission (NADBank/BECC), for two examples of how to establish and maintain two important vehicles for citizen outreach and communication. We also recommend that you establish a single official FTAA website, and avoid rotating responsibility for maintaining it between ministerial meeting hosts. The United Nations Economic Commission for Latin America and the Caribbean (ECLAC) or the Organization of American States (OAS) would be good candidates for such an important and permanent role in trade and investment negotiations.

2. Establish National Advisory Committees

Another obstacle blocking citizen participation in negotiations is the lack of formal access. National Advisory Committees, consisting of members of government and civil society, would be responsible for developing concrete negotiating recommendations, and responses to the recommendations offered by other countries. Committee appointments should be made in a transparent manner, with the objective of ensuring broad representation of citizen groups and community perspectives.

3. Promote Research, Training, and Capacity Building

A third obstacle to effective citizen participation is the lack of popular understanding of the implications of expanded trade. The OAS recently allocated approximately $2.8 million for all trade-related projects in 1998, a portion of which is dedicated to government training programs. Equivalent budgetary efforts must be included into the Inter-American Strategy for Participation (ISP) of the OAS, regarding technical assistance and training addressed to civil society. Better understanding of the issues affecting citizens lives caused by economic integration will ultimately produce better policies that advance a sustainable development strategy for the Hemisphere.

Workshops and forums should also combine participation of environmental agency representatives to discuss trade issues as a way to establish communication between government agencies.

4. Fund Civil Society Participation in Trade and Investment Negotiations

The final major obstacle blocking citizen's participation in trade and investment negotiations is money; attending negotiating sessions, meeting with other stakeholders, and preparing useful position papers and analyses require resources most emerging economy NGOs do not have. By providing participation funds to NGOs, multinational institutions such as the Inter American Development Bank (IDB) and the Organization for the American States (OAS), could play an important role ensuring that trade liberalization benefit the largest number of people possible.

Important steps need to be taken under the FTAA negotiations to expand the level of information dissemination and guarantee transparency. The objective recommendations would help to establish a minimum mechanism necessary to make public participation a reality under the FTAA process. We urge you to act now, and help citizens prepare to take part fully in potentially the most significant political events affecting their lives today.

Respectfully submitted,

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NATIONAL WILDLIFE FEDERATION
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1400 16TH STREET, NW, SUITE 501
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Mr. Peter Allgeier
Associate US Trade Representative for the Western Hemisphere
US Trade Representative
Washington, D.C. 20508
Fax #: 202 3954579

Dear Mr. Allgeier:

As you prepare to discuss with your counterparts next week the structure for the Free Trade Area of the Americas negotiations, and particularly the establishment of a Study Group on Trade and the Environment, you have asked for our reactions to a couple of recent conceptual proposals for inching toward a discussion on trade and the environment.

I. National Mechanisms for Public Participation.

A proposal to have the US and Mercosur jointly to develop a set of national consultative fora, which would probably rely on the Mercosur model for discussion processes, could have some useful potential. Nevertheless, recognizing that we do not have enough information to make concrete recommendations, we want to flag some potential pitfalls in such an approach. We have consulted with our counterparts in Mercosur countries and they have indicated several important limitations of the existing Consultative Fora for Economic and Social issues that should be remedied if you pursue this model:

1). They do not feed into the Mercosur process. We believe it is important that if similar fora are created between the US and Mercosur they should develop clear mechanisms that enable them to feed their recommendations throughout the FTAA framework. Developing national consultative mechanisms are just one of a series of steps that need to be taken to encourage citizen participation. We recommend that you look at the letter we sent you on February 10, 1998 for other concrete recommendations.

2).The Mercosur fora do not involve environmental NGO's, only business and labor. Of course we assume that your proposal would ensure environmental NGO participation.

3). The Mercosur groups are for consultation only and do not have an advisory role. There are presently many different fora that hold dialogues on trade and the environment, so we would not want this to be just another one. It would be very important to ensure that participating environmental NGO's can play an appropriate role in trade negotiations. You probably are aware that many NGO's need financial support to access documents and attend meetings. Such fora will need to mechanism to address this.

The proposal you are considering, to have a similar fora for the US and Mercosur, could be a step in the right direction to start a dialogue. But, as you know, we will continue to encourage you to make sure similar steps are taken within the FTAA framework itself.

Others have suggested the OAS as a potential forum. But, we as well as other NGO's in Latin America are concerned that this would be an inadequate solution. At this time the OAS has a limited capacity to encourage citizen participation in trade negotiations, and even less to strengthen the trade and environment nexus. Nevertheless, encouraging this institution to develop a training and capacity-building project on trade and environment issues around the hemisphere could help produce a more positive atmosphere to advance a trade and environment agenda within the framework of the FTAA.

Encouraging regular meetings between the trade and environment ministers from the region would help build national and regional strategies to advance a sustainable development agenda for the Western Hemisphere. As we have found in our discussions with government officials in Latin America, most of the fear of the trade and the environment agenda is based on misunderstanding, which such meetings could begin to alleviate. But as we must continue to reiterate, making sure that a clear mechanism is devised which allows this process to feed into the FTAA negotiations would be of utmost importance.

The Central American countries, motivated by the Central American Commission for Environment & Development (CCAD) and the Permanent Secretary for the Central American Economic Integration Agreement (SIECA), have already taken this step, and have crafted a Declaration signed by both the Trade and Environment Ministers of each country geared towards incorporating the environmental dimension into trade liberalization and economic development in Central America. A copy of the first draft is attached to this document, but we understand there is a more recent version. A person to contact on this issue is Mr. Marco Gonzalez and Jorge Cabrera from the CCAD, tel.502 3605426; fax: 502 3343876.

As we have said, any of these alternative fora for a trade and environment dialogue should be encouraged, but should not preclude the establishment of the Study Group or a formal working group within the context of the FTAA.

II. Study Group on Trade and the Environment.

Please remember that we applaud and continue to encourage your effort to keep environment in the trade dialogue. Nonetheless, it is probably obvious to you that a Study Group, at least the little we so far understand about it, would not meet our definition of fully integrating environmental priorities in trade negotiations. Nor does it reflect the agenda for trade negotiations articulated by President Clinton in his November 1997 "Statement of Executive Initiatives".

Therefore, although we fully understand the difficulties you have encountered in promoting a more straightforward negotiation on trade and the environment, we hope you will understand, in turn, that we would not be in a position to publicly support this concept, since we cannot see at this time how it would advance our goals.

On that basis, we offer the following observations:

a) There is a need to articulate stronger terms of reference.

1). As you know, we believe this Study Group could play a key role in defining the relationship between the Western Hemisphere trading system and the environment, but only if it feeds into the negotiating framework of the FTAA, including all the relevant negotiating groups. A balance needs to be struck between "centralizing" the trade and environment discussion in a Study Group on Trade and the Environment and promoting the integration of environmental concerns into all aspects of the negotiating groups. While a dialogue on trade and the environment issues requires a focal point to ensure that they are advanced continuously, this will only work if trade and environment becomes an integral part of the agenda of all parts of the FTAA negotiating framework. We appreciate your efforts to secure a foothold for this dialogue, but we must continue to push for full integration.

2). The terms of reference should include the concrete steps for citizen participation and information dissemination that we listed in the letter we sent you dated February 10, 1998.

3). We are prepared to accept the need for the Study Group to begin in an oblique manner, with an evaluation of the linkages between trade and the environment contained in existing regional agreements (i.e., Mercosur, Andean Pact). This would certainly be an improvement over the Belo Horizonte agreement, which maintained that the issue of the environment and its relation to trade would only be kept under consideration "...in light of further developments in the work of the WTO Committee on Trade and the Environment" (Declaration of Belo Horizonte, paragraph 15.).

That formulation would severely limit the possibilities of developing national and regional strategies to deal with the topic, and it would also reduce any possibility of dealing with each country's specific environmental peculiarities. Of course, the Belo Horizonte formulation would also limit citizen participation, contrary to what is encouraged under Agenda 21, the Summit of the Americas Declaration and the Declaration of Santa Cruz de la Sierra.

4). The terms of reference should include developing a real agenda for trade and the environment. For example, one topic could be developing a set of environmental indicators that would be comparable to economic indicators for the hemisphere.

5). The Study Group on Trade and the Environment should aim to develop concrete steps to enhance the capacity of national governments to have a constructive domestic dialogue and to create their own programs on trade and environment. It should also foster a working relationship between trade and environment ministers, as well as among their own relevant national agencies.

Nevertheless, please keep in mind that we await a Study Group that grapples with real trade and environment issues of this hemisphere, and that is linked to the negotiations. We urge you to work toward this in future steps.

b) As you know, we have the long term goal of linking the development of appropriate parallel institutions, dedicated to balancing trade and environment priorities, to the trade negotiations themselves. We are unclear how the Study Group might advance this goal; but perhaps this can be built into the formulation of that entity.

c) A clear commitment to make the Study Group on Trade and the Environment a reality should also include a budget proposal to realize its stated objectives.

III. We continue to encourage you to ensure that the following objective and principle are part of the framework of the Declaration of San Jose:

- A general objective which places Trade Liberalization and Environmental Policies on a par as mutually supportive. This will reinforce the commitments made at the United Nations Conference on Environment and Development (Agenda 21) held in Rio de Janeiro in 1992; at the Summit of the Americas held in Miami in 1994; and those made at the Summit of the Americas in Santa Cruz de la Sierra, Bolivia in 1996. Trade agreements our nation enters from now on should be engines for sustainable development.
- Procedural transparency in trade institutions and participation in the negotiations constitute fundamental principles for the way the negotiations will be led. Increased transparency and scope for participation play a key role in the attainment of basic goals of trade policy, such as ensuring that trade contributes to sustainability. The "right to know" and the "right of all citizens to participate" are fundamental elements of democratic practice and the cornerstone of effective decision making process.

We again strongly encourage you to promote a stronger trade and environment agenda for the Western Hemisphere and to ensure effective steps will be taken so that a Free Trade Area of the Americas Agreement not be reached at the cost of environmental harm.

Thank you for your attention to this important matter.

Respectfully yours,

BARBARA BRAMBLE
Senior Director International Affairs
National Wildlife Federation

Declaration by Non-Governmental Organizations of the Hemisphere on the Occasion of the IV Ministerial of the Free Trade Area of the Americas

We, the undersigned representatives of civil society organizations from countries throughout the hemisphere, gathered here today, March 18, 1998, in San Jos, Costa Rica:

Recognize that our governments are concluding their preliminary discussions on hemispheric economic integration here at the Fourth Trade Ministerial of the Americas, and are about to launch formal negotiations for a Free Trade Area of the Americas (FTAA) at the Second Summit of the Americas in Santiago, Chile;

Support a just and equitable hemispheric integration process that improves the quality of life, reduces poverty, acknowledges the intrinsic value of nature and promotes sustainable development for all people and nations without exception;

Recognize that our governments have committed to the principles of sustainable development, including environmental protection, poverty alleviation and democra-

tization, as established at the Miami Summit of 1994 and reaffirmed in Santa Cruz, Bolivia in 1996;

Recognize that trade agreements, when properly structured, can be consistent with the principles of sustainable development;

Are concerned that economic integration has advanced without effectively integrating environmental, labor, social, cultural and political components which are indispensible to achieving sustainable development;

Recognize that fair competition cannot be based on spurious competition that does not take into account environmental and social costs and recognize that there are transition costs associated with economic integration that must be taken into consideration.

Therefore, we call on our governments to establish an action plan and formal mechanisms to integrate the principles of sustainable development, including a formal negotiating group on trade, environment and sustainable development with equal status to other negotiating groups established in the FTAA process. Moreover, the protection and enhancement of environmental quality must become part of the negotiating objectives of all FTAA negotiating groups.

PUBLIC PARTICIPATION

Public participation is fundamental to the sustainable development of the Hemisphere, and as such must be placed on the same level as the other negotiation objectives. To that end, in the design of the FTAA we call on governments to:

1. Strengthen the participation of civil society in judicial and administrative proceedings within a domestic environmental law framework and in the formation, negotiation, and implementation of trade and investment policies and agreements.
2. Provide timely access to information, relating to trade policy as well as trade agreement and integration processes.
3. Establish formal processes to permit and encourage timely contributions of a broad spectrum of civil society in the development of the FTAA. This must include the right to make verbal and written submissions and attend national and hemispheric meetings involving policy deliberations.
4. Implement dispute settlement mechanisms and other proceedings that allow for public participation.
5. Provide access to adequate financial resources to achieve the the above goals.
6. Make available Inter-American integration process-related documents to the public at the same time as they are circulated to governments to ensure timely and meaningful participation of the public in policy deliberations; these should be at no cost and in a variety of forms, including printed and electronic formats, and should also include the creation of a Data Center, at no cost.
7. Establish National Advisory Committees, with governmental and non-governmental representatives, that, among other objectives, should promote cross-sectoral dialogues and that are responsible for developing concrete recommendations for negotiations, and responses to recommendations offered by other countries.
8. Promote research, training and capacity building in the area of sustainable development.
9. Finance the participation of civil society in the trade and investment negotiations.

TRADE, INVESTMENT, AND SUSTAINABLE DEVELOPMENT

We further call on governments to:

1. Implement national and regional measures to ensure that economic integration in the Western Hemisphere promotes conservation of cultural and biological diversity and ecosystems in the hemisphere.
2. Ensure that the Negotiating Group on Intellectual Property Rights provides guarantees that rights, access and benefits are shared in an equitable manner.
3. Ensure that research on environmental, social and other effects of trade and investment is undertaken and that the results are distributed in a timely and effective manner to all interested parties.
4. Implement and enforce regulations and policies that ensure environmental protection, including cooperation to ensure the upward harmonization of standards.
5. Implement and enforce regulations and policies that ensure equitable distribution of benefits from trade and investment.
6. Reduce and eliminate unsustainable patterns of consumption and production within and among countries, recognizing the strains placed on the environment by the disproportionate consumption of resources by many industrialized countries.
7. Remove subsidies that encourage the unsustainable use of natural resources, as well as ensure the internalization of environmental externalities and promote in-

centives for sustainable production and consumption, including the development of national environmental accounting systems.

8. Ensure that Multilateral Environmental Agreements (MEAs) and their dispute resolution mechanisms have at least equal status to trade agreements in the conduct of international trade and in dispute resolution. Environmental disputes arising out of trade agreements should be resolved in multilateral negotiations.

ENVIRONMENTAL STANDARDS AND TRADE

As part of the FTAA negotiations we call on governments to:

1. Incorporate the precautionary principle, as well as the principles of environmental prevention and legal and financial responsibility of polluters for damages to the environment.

2. Create and strengthen administrative and judicial mechanisms for implementing environmental laws and policies, as well as mechanisms to denounce cases where national and international environmental norms are not applied.

3. Harmonize minimum standards, consistent with each ecosystem, that assure the protection of human health and environmental integrity. At the same time, include financial and cooperative mechanisms to ensure the transfer and creation of appropriate technologies, including endogenous technologies, essential for the implementation and sustained improvement of environmental standards.

4. Establish mechanisms to periodically update and improve environmental standards with the participation of all interested parties (NGOs, business, labor, academics, etc.).

5. Ensure that nations, in their regulatory capacity, maintain the ability to set higher environmental standards.

6. As agreed to in the 1994 Miami Summit of the Americas, establish mechanisms for intergovernmental cooperation for the exchange of information, training, technology transfer and policy formulation; as well as the creation of green markets.

Institutions that participated in the drafting of this document: IBDPA (Brasil), Canadian Institue for Environmental Law and Policy (Canada), Red Nacional de Accion Ecologica y Corporacion Participa (Chile), Fundacion Natura (Colombia), CEDARENA (Costa Rica), PRONATURA (Rep. Dominicana), Centro Ecuatoriano de Derecho Ambiental, CLD, Fundacion Natura y Fundacion Futuro Latinoamericano (Ecuador), IDEADS (Guatemala), CEMDA y Red Mexicana Accion Frente al Libre Comercio (Mexico), Fundacion M. Bertoni (Paraguay), Fundacion ECOS y CLAES (Uruguay), National Audubon Society, National Wildlife Federation, Environmental Law Institute y Center for International Environmental Law (Estados Unidos), International Institute for Sustainable Development (Suiza).

Chairman CRANE. Thank you, folks.

Again, we're going to be interrupted here, but, Mr. Thies, I think we have enough time to hear your testimony, and then we will run over to the floor, and I would estimate we should be back here by 5:30.

Mr. Thies.

STATEMENT OF DENNIS M. THIES, EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, SOUTHDOWN, INC., HOUSTON, TEXAS; ON BEHALF OF SOUTHERN TIER CEMENT COMMITTEE

Mr. THIES. Thank you, Mr. Chairman. I'm executive vice president and chief financial officer of Southdown, Inc., headquartered in Houston, Texas. Southdown is the largest domestically owned cement producer in the United States. I am testifying on behalf of the Southern Tier Cement Committee, a coalition of 26 U.S. cement producers operating 74 production facilities across the United States.

During 1990 and 1991, the U.S. cement industry obtained favorable rulings from the Department of Commerce and the Inter-

national Trade Commission that dumped imports flooding into the United States market from Mexico, Japan, and Venezuela caused material injury to domestic cement producers. The Commerce Department imposed antidumping orders on imports from Mexico and Japan and entered a suspension agreement regarding imports from Venezuela.

As a result of the application of U.S. antidumping laws, domestic cement producers became profitable again and have made significant investments during the nineties to modernize facilities and to expand production capacity. Thus, left alone, the free market, absent unfairly priced imports, has encouraged additional investment in cement capacity and increased U.S. jobs.

The Cement Committee supports free trade, provided that the conditions of fair trade are maintained. With respect to the negotiations for the FTAA, I want to raise two concerns.

First, the Cement Committee strongly opposes any weakening of U.S. antidumping laws during the FTAA process. Several countries have advocated eliminating the use of antidumping laws in the Western Hemisphere when free trade is established. This is a proposition that the United States must reject at the outset. The antidumping laws represent one of the few remaining measures, consistent with U.S. obligations under the World Trade Organization, for remedying injury to U.S. industries caused by unfairly traded imports. Congress should urge the administration to vigorously oppose any effort to weaken the ability of U.S. industries to respond to unfair trade practices under U.S. antidumping laws.

Second, the cement industry strongly opposes the extension of the chapter 19 binational panel dispute settlement system under NAFTA to additional countries under the FTAA. During the final stages of negotiations of the Canada-United States free trade agreement, the United States agreed to a temporary dispute settlement system that authorizes ad hoc, five-member panels of United States and foreign nationals to substitute for United States courts in reviewing the consistency of United States antidumping determinations with United States law. This temporary agreement with Canada was extended to Mexico and made permanent under NAFTA.

Chapter 19 has caused unnecessary dispute resolution delays. The pool of panelists that have the necessary expertise and don't have a conflict of interest is small in Mexico and Canada, and would be negligible in most Latin American countries.

In the cases involving the U.S. cement industry, for example, NAFTA panels under chapter 19 have been suspended and otherwise delayed for 7 months because of the difficulty in finding qualified panelists from Mexico that don't have conflicts based on an association with CEMEX, the monopoly Mexican cement producer. According to GAO statistics, NAFTA panel cases have taken up to almost 2 years to complete. Similar delays are expected when sunset reviews of 23 transition orders against Canada and Mexico all reach NAFTA panels at about the same time.

Since its inception, the chapter 19 dispute settlement system has raised serious constitutional concerns. The system precludes judicial review by article III courts, contravenes the appointments

clause of the Constitution, and raises other due process concerns. These concerns have never been tested in the courts.

The application of the binational panel system has also led to erroneous results. The system requires individuals from diverse legal cultures to interpret and apply concepts from legal systems with which they lack any experience. As a result, Congress has been forced to correct interpretations of U.S. law, notably in the swine and lumber cases.

Finally, chapter 19 risks inconsistent results in multicountry cases involving the same product. For example, if the system is extended under FTAA in an antidumping case involving imports from Chile, Mexico, and Japan, a United States-Chile panel, a United States-Mexico panel, and the U.S. Court of International Trade could issue three differing decisions interpreting the same provision of United States law.

Accordingly, Congress should take this opportunity to prevent the problems generated under NAFTA from being extended to the FTAA and should deny the administration the flexibility to cut any last-minute deals that weaken U.S. antidumping laws or that divest U.S. courts of their constitutional jurisdiction to decide matters of U.S. law.

Thank you.

[The prepared statement and attachments follow:]

Statement of Dennis M. Thies, Executive Vice President and Chief Financial Officer, Southdown, Inc., Houston, Texas; on Behalf of Southern Tier Cement Committee

My name is Dennis M. Thies. I am Executive Vice President and Chief Financial Officer for Southdown, Inc., headquartered in Houston, Texas. Southdown is the largest domestically-owned cement producer in the United States. I am testifying on behalf of the Southern Tier Cement Committee (the "Cement Committee"), a coalition of 26 U.S. cement producers. The Cement Committee represents approximately 65 percent of U.S. production capacity and 75 percent of capacity located in the southern tier states extending from California to Florida. A list of the members of the Cement Committee, together with the locations of their headquarters offices and their 74 production plants, is attached to this statement.

INTRODUCTION

The Cement Committee respectfully provides comments on two aspects of the negotiations for the Free Trade Area of the Americas "FTAA." First, the Cement Committee strongly opposes any weakening of U.S. antidumping or other unfair trade laws during the FTAA or any other free trade negotiations. Second, the Cement Committee strongly opposes the extension of the Chapter 19 binational dispute settlement system under the North American Free Trade Agreement ("NAFTA") to additional countries under the FTAA or future free trade agreements.

In preparatory negotiations for the FTAA, several countries have advocated eliminating the use of antidumping laws in the Western Hemisphere when free trade is established. These countries have introduced a dangerous proposition into the FTAA negotiations—a proposition that the United States must reject from the outset. The antidumping laws represent one of the few remaining measures consistent with U.S. obligations under the World Trade Organization ("WTO") for remedying injury to U.S. industries caused by unfairly traded imports. The existence of "free trade" in the Western Hemisphere will not remove the incentives for foreign producers to dump in the United States and will not remove the non-tariff barriers preventing U.S. producers from responding in kind. Congress should urge the Administration to oppose vigorously any effort to weaken the ability of U.S. industries to respond to unfair trade practices under U.S. antidumping and other unfair trade laws. If foreign producers do not dump or do not injure U.S. industries, U.S. unfair trade laws will not effect them. If they do, even with an FTAA, U.S. industry needs a remedy.

During the final stages of negotiations of the Canada-U.S. Free Trade Agreement ("CFTA") and the NAFTA, the United States agreed to a dispute settlement system

that authorizes ad hoc five-member panels of U.S. and foreign nationals to substitute for U.S. constitutional courts in reviewing the consistency of U.S. antidumping and countervailing duty determinations with U.S. law. This dispute settlement system, now provided under Chapter 19 of NAFTA, is unnecessary, raises serious constitutional and national sovereignty concerns, has led to erroneous results, and has proven unworkable. The multitude of problems experienced under Chapter 19 will be exacerbated if such a system is extended to additional countries under the FTAA. Although the Cement Committee strongly supports the elimination or substantial revision of Chapter 19 of NAFTA, it is especially concerned that the problems associated with the system are not extended under the FTAA. Congress should take this opportunity to prevent the problems generated under NAFTA from being extended to the FTAA and should deny the Administration the flexibility to cut any last minute deals that divest U.S. courts of their constitutional jurisdiction to decide matters of U.S. law. A more detailed discussion of this issue was provided by a broad and diverse coalition of 30 companies and industry groups in a written statement filed with the Office of the U.S. Trade Representative on April 23, 1997. A copy of this statement will be submitted under separate cover for the Subcommittee's review.

II. Dumped Imports From Mexico, Japan, and Venezuela Caused Serious Injury to the U.S. Cement Industry in the 1980s

The U.S. antidumping laws provided the U.S. cement industry with an effective remedy in response to injurious dumping during the 1980s by Mexico, Japan, and Venezuela. During the 1983–89 expansion of construction activity in the United States, dumped cement imports flooded the U.S. market and suppressed prices. Average import prices for cement declined from $45.13 per ton in 1981 to $34.42 per ton in 1989, a 24 percent decline. This rapid decline in import prices drove down the U.S. price for cement.

The sharp increase in unfairly priced imports in the 1980s removed U.S. producers' normal investment incentives and led to a net disinvestment in cement assets during a period of sharply increasing demand. Domestic production capacity declined 10 percent between 1980 and 1990, even though demand for cement increased 40 percent. In addition, employment in the industry declined 19 percent between 1986 and 1989. Due to the market distortion of unfairly priced imports, cement prices in the United States did not increase to signal the need for investment in additional capacity. Meanwhile, foreign producers in Mexico, Japan, and Venezuela maximized their returns by exporting their excess capacity to the United States at dumped prices.

III. The Application of U.S. Antidumping Laws Has Stimulated Substantial New Investment and Job Creation

During 1990–91, the U.S. cement industry obtained favorable rulings from the U.S. Department of Commerce and the U.S. International Trade Commission that dumped cement imports were materially injuring and threatening additional material injury to U.S. cement producers. The dumping margins averaged in excess of 50 percent. That is, the exporters' prices in their home market were over 50 percent higher than their export prices to the United States.

During the expansion phase of the construction cycle that began in 1993, the U.S. market has been able to function without the distortion of unfairly priced imports. As economic theory would predict, during the 1990s, U.S. cement producers have experienced increasing capacity utilization, which has led to higher cement prices. The higher prices have induced capital investment and job creation in the industry. As shown in the second attachment to this statement, the U.S. cement industry has made significant investments in the 1990s to modernize facilities and to expand production capacity. According to the Portland Cement Association, new cement plants and plant modernizations announced in 1996 will increase U.S. cement production capacity by over 9 million tons per year. Thus, left alone, the free market—absent unfairly priced imports—has resulted in additional and planned cement capacity to support future construction activity and additional U.S. jobs.

IV. The United States Should Maintain its Ability To Enforce Vigorously its Unfair Trade Laws

During meetings in preparation for the initiation of the formal FTAA negotiations, several countries advocated eliminating the use of antidumping laws. In a Draft FTAA Ministerial Declaration, the parties included the following provision as a negotiating objective in the area of Subsidies, Antidumping and Countervailing Duties:

Assess the feasibility of eliminating the use of antidumping measures within the Hemisphere once free trade has been achieved.

Although this language was rejected in the final Ministerial Declaration of San José, the Cement Committee is concerned that the United States will not vigorously oppose such a position as the negotiations progress.

An agreement providing for "free trade" in the Western Hemisphere is meaningless without the discipline of antidumping laws to remedy discriminatory pricing that is injurious to domestic industries. As the NAFTA demonstrates, free trade has not reduced the instances where home market conditions in Mexico or Canada, such as excess capacity, non-tariff barriers, anticompetitive activities, or subsidized production, have created economic incentives for Mexican and Canadian producers to dump into the United States, with the resultant injury, declines in investment, and job losses to U.S. industries. For example, during administrative reviews of the antidumping order on cement from Mexico, the Commerce Department has found that the monopoly Mexican cement producer, CEMEX, is still dumping into the United States at margins ranging from 36 to 109 percent. Thus, the only remedy for U.S. producers and the only potential disincentive for foreign producers is the application or threatened application of U.S. antidumping laws.

Advocates for eliminating the use of antidumping laws in free trade areas contend that the situation between countries would be no different than exists between the states of the United States. In other words, if producers in State A sell at dumped prices in State B, the producers in State B will simply sell in State A at similarly low prices to gain market share from producers in State A. In trade between countries, however, the absence of tariffs normally does not provide the opportunity to respond in the same manner to dumping, given the existence of significant non-tariff barriers. For example, the absence or ineffective enforcement of antitrust laws in other countries denies U.S. producers the necessary access to foreign markets to respond to discriminatory pricing, subsidies, or other anticompetitive practices.

During the FTAA negotiations, the ability of the U.S. cement industry, and other U.S. industries, to defend against unfair trade practices should not be sacrificed. The General Agreement on Tariffs and Trade 1994 specifically provides that "dumping . . . is to be condemned if it causes or threatens material injury to an established industry." The WTO Antidumping Agreement provides specific international obligations regarding the application of antidumping measures, and the WTO Dispute Settlement Understanding provides a binding forum for enforcing these obligations. The United States should not concede its right to apply antidumping measures consistent with its international obligations. The United States should vigorously oppose any attempt to undermine the application and enforcement of U.S. antidumping laws during the FTAA negotiations.

V. The United States Should Oppose the Extension of the NAFTA Binational Panel Dispute Settlement System to Additional Countries Under the FTAA

A. The Original Conditions For Congressional Approval Of The Binational Panel System As A Temporary Compromise With Canada Have Been Violated

In the final stages of the negotiations of the CFTA, the parties agreed to implement a binational panel dispute settlement system for the review of domestic antidumping and countervailing duty determinations. The system was established as a temporary compromise in the wake of disagreements between Canada and the United States regarding the extent to which substantive antidumping and countervailing duty provisions should be included in the agreement.

The binational panel dispute settlement system under the CFTA provided that ad hoc five-member binational panels substitute for U.S. constitutional courts in reviewing the consistency of antidumping and countervailing duty determinations with national law. The panels did not rule on whether these domestic agency decisions are consistent with the international obligations under the CFTA; they solely interpret and apply domestic law of the United States or Canada. Thus, this system represented the only international dispute settlement system that reviews and interprets the domestic law of signatory countries.

During the Congressional debate over the CFTA, the system was extremely controversial. At the time, officials from the U.S. Department of Justice advised that the system would be unconstitutional if panel decisions were implemented automatically, as is now the case. Several Members of Congress also expressed serious reservations about the constitutionality and workability of the system. Ultimately, the system was accepted based on executive branch commitments to Congress that (1) panels reviewing U.S. agency determinations would be bound by U.S. law and its governing standard of review, (2) there would be strict and fully enforced conflict-

of-interest rules, and (3) the system would be in place only a short time and only with Canada. These commitments have not been satisfied.

In the final stages of NAFTA negotiations and despite assurances to the contrary, the binational panel dispute settlement system was extended to Mexico under Chapter 19 of NAFTA. Although negotiators of the original CFTA system stated that it was only workable with Canada because of the similarity between the U.S. and Canadian legal systems, Chapter 19 now provides for binational panel review by Mexican nationals who are not trained in the U.S. legal tradition, including the proper application of the standard of review under U.S. law. Thus, in violation of the commitments made at its inception, the system was made permanent and extended to a country with different legal traditions.

The nature and experience of binational panels also demonstrates that conflict-of-interest rules have been ignored. Chapter 19 panels are composed of private individuals, each with his or her own clients and interests, empowered to interpret provisions of U.S. law, direct the actions of U.S. government officials, and dictate the outcome of U.S. cases involving billions of dollars in trade. In addition, the panelists often review decisions of the agencies where they may have ongoing cases. The most notable example of problems relating to conflicts is the Canadian softwood lumber case where two of the three Canadian panelists and their law firms had previously represented Canadian lumber interests. The Canadian government and the panelists did not disclose all of these conflicts prior to the Canadian majority rendering an adverse decision against the U.S. industry. Thus, the final commitment regarding enforcement of conflict-of-interest rules has also been violated.

B. The Chapter 19 System Raises Serious Concerns Regarding Its Constitutionality And Workability

Over the past 10 years, disputes under the Chapter 19 system (and its CFTA predecessor) have demonstrated that the system has constitutional flaws and is otherwise unworkable, especially when it is extended to additional countries. *First*, since its inception, the Chapter 19 dispute settlement system has raised serious constitutional concerns. The system precludes judicial review by Article III courts, contravenes the Appointments Clause of the Constitution, and raises other due process concerns. These concerns have never been tested in court, and the most recent constitutional challenge to Chapter 19 was dismissed based on the plaintiff's lack of standing.

Second, the application of the binational panel system has led to erroneous results. The system requires individuals from diverse legal cultures to interpret and apply concepts from legal systems with which they lack any experience. As a result, Congress has been forced to correct clearly erroneous interpretations of U.S. law, notably in the swine and lumber cases. In fact, in the NAFTA Extraordinary Challenge Committee review of the softwood lumber panel decision, former Federal Appeals Court Judge (and former Ambassador) Malcolm Wilkey commented that the underlying panel decision "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read."

Third, Chapter 19 risks inconsistent results in multi-country cases involving the same product. For example, if the system is extended under the FTAA, in an anti-dumping case involving imports from Chile, Mexico, and Japan, a U.S.-Chile panel, a U.S.-Mexico panel, and the U.S. Court of International Trade could issue inconsistent decisions interpreting the same provision of U.S. law.

Fourth, Chapter 19 delays justice. The ad hoc panelists selected in each country are often trade lawyers that have other cases pending before the agency being reviewed. The pool of panelists that possess the necessary expertise and lack any conflict of interest is small in Mexico and Canada and is negligible in most Latin American countries. For a case involving a large, integrated domestic company in a Latin American country, virtually all qualified panelists in that country will be conflicted based on some association with the company. Several panel proceedings under NAFTA have faced extraordinary delays because of the absence of qualified panelists without actual or apparent conflicts. In the cases involving the U.S. cement industry, for example, NAFTA panels under Chapter 19 have been suspended and otherwise delayed for months because of the difficulty in finding qualified panelists that did not have conflicts based on an association with CEMEX, the monopoly Mexican cement producer. According to GAO statistics, NAFTA panel cases have taken up to 654 days to complete. Additional delays are expected when sunset reviews of 23 "transition orders" against Canada and Mexico reach NAFTA panels at about the same time.

C. Chapter 19 Is Unnecessary

The Chapter 19 system's intrusion into U.S. sovereignty is now unnecessary because the WTO provides substantive international disciplines applicable to dumping and subsidies and provides for binding dispute settlement to enforce such international disciplines. The WTO Antidumping Agreement includes detailed procedural and substantive provisions for the application of antidumping remedies, and the WTO Dispute Settlement Understanding now makes these obligations effectively binding on Members.

In addition, Chile, Canada, and Mexico have demonstrated that Chapter 19 is not important in future trade agreements. These countries have not extended the Chapter 19 system in their recent bilateral trade agreements. The failure to include such a system in these agreements indicates that any demands for such a system under the FTAA is simply a method for extracting additional concessions from the United States without justification.

D. Leading Members Of Congress Have Expressed Opposition To The Extension of Chapter 19 In Future Trade Negotiations

On December 1, 1997, fourteen Senators sent a letter to U.S. Trade Representative Charlene Barshefsky stating, inter alia, that given the intended temporary nature of Chapter 19 and the great problems it has engendered, we believe that this fundamentally flawed system should not be extended in future trade agreements to any other country. No trade agreement, particularly one considered on a "fast track," should divest U.S. courts of their constitutional jurisdiction to decide matters of U.S. law.

In late 1997, Senator Charles Grassley (R–IA) and Senator Larry Craig (R–ID) also filed amendments to the Senate fast track legislation to prevent the ceding of U.S. courts' jurisdiction in future trade agreements under fast track procedures.

IV. Conclusion

The Cement Committee urges the Subcommittee to monitor the progress of negotiations to ensure that the Administration does not make any concessions that will weaken U.S. antidumping laws. The experience of the domestic cement industry demonstrates that dumping may continue despite the existence of "free trade." Congress should ensure that U.S. industry and its workers have a remedy available to combat injurious dumping from all foreign countries, consistent with its WTO rights and obligations.

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The Southern Tier Cement Committee

Company/Headquarters	Plant Locations
Alamo Cement Company, San Antonio, TX	San Antonio, TX
Arizona Portland Cement Co., Glendora, CA	Rillito, AZ
Ash Grove Cement Company, Overland Park, KS.	Chanute, KS
	Durkee, OR
	Foreman, AR
	Inkom, ID Nephi, UT
	Louisville, NE
	Clancy, MT
	Seattle, WA Blue Circle
Blue Circle, Marietta, ...	Atlanta, GA
	Harleyville, SC
	Sparrows Point, MD Calera, AL
	Ravena, NY
	Tulsa, OK Calaveras Cement Co.
Calaveras Cement Co., Concord, CA	Redding, CA
	Monolith, CA
California Portland Cement Co., Glendora, CA	Colton, CA
	Mojave, CA
Centex Construction Products, Inc., Dallas, TX	LaSalle, IL
	Laramie, WY
	Fernley, NV
Florida Crushed Stone Co., Leesburg, FL	Brooksville, FL
Florida Rock Industries Inc., Jacksonville, FL	Gainesville, FL
Giant Cement Company, Summerville, SC	Harleyville, SC
Kaiser Cement Corp., Pleasanton, CA	Cupertino, CA
Lafarge Corporation, Reston, VA	Alpena, MI
	Davenport, IA
	Fredonia, KS
	Grand Chain, IL
	Independence, MO Paulding, OH
	Tampa, FL
	Palmetto, FL
	Whitehall, PA Lehigh Portland Cement Company
Lehigh Portland Cement Company, Allentown, PA.	Gary, IN
	Leeds, AL
	Mason City, IA
	Mitchell, IN
	Union Bridge, MD
	Waco, TX
	York, PA
Lone Star Industries, Stamford, CT	Cape Girardeau, MO
	Greencastle, IN
	Sweetwater, TX
	Oglesby, IL
	Pryor, OK
Medusa Corporation, Cleveland, OH	Charlevoix, MI
	Clinchfield, GA
	Demopolis, AL
	Wampum, PA
National Cement Co. of Alabama, Inc., Birmingham, AL.	Ragland, AL
National Cement Co. of California, Inc., Encino, CA.	Lebec, CA
North Texas Cement Company, Dallas, TX	Midlothian, TX
Phoenix Cement Company, Phoenix, AZ	Clarkdale, AZ
RC Cement Co., Inc., Bethlehem, PA	Stockertown, PA
	Chattanooga, TN
	Festus, MO
	Independence, KS RMC
RMC, Pleasanton, CA	Davenport, CA

The Southern Tier Cement Committee—Continued

Company/Headquarters	Plant Locations
Southdown, Inc, Houston, TX	Louisville, KY 1Pittsburgh, PA Fairborn, OH Brooksville, FL Knoxville, TN Lyons, CO Odessa, TX Victorville, CA
Tarmac America, Inc., Medley, FL	Medley, FL TXI Corporation
TXI Corporation, Dallas, TX	New Braunfels, TX Midlothian, TX Riverside, CA Oro Grande, CA
Texas-Lehigh Cement Company, Buda, TX	Buda, TX

Recent Investments To Expand Capacity In The U.S. Cement Industry

Company	Investment Project
Ash Grove	Increasing capacity of Leamington, UT plant from 650,000 to 825,000 tons. Increasing capacity of Durkee, OR plant from 500,000 to 985,000 tons (est. $85 million).
Blue Circle America	Installing new finish mill to increase cement grinding capacity at Roberta, AL plant ($22.5 million).
Capitol Aggregates	Installing new finish mill to increase cement grinding capacity at San Antonio, TX plant.
Florida Crushed Stone	Building second kiln at its Brooksville, FL plant to double clinker capacity (est. $60 million).
Florida Rock Industries	Building 750,000 ton plant near Gainesville, FL (est. $100 million).
Holnam	Doubling capacity of its Devil's Slide, UT plant to 700,000 tons by replacing the existing wet kiln with a dry kiln (est. $75 million). Adding 950,000 tons of capacity in Midlothian, TX plant. Modernizing and upgrading clinker coolers in Theodore, AL, and Santee, S.C. plants. Replacing raw mill separator with high-efficiency separator at Theodore, AL plant.
Lafarge	Investing $135 million in a new facility at an existing cement plant site near Kansas City, MO, increasing capacity by 400,000 tons annually. Modernizing heating and cooling processes in Davenport, IA and Fredonia, KS plants to increase production and reduce fuel consumption. Investing $9.7 million in modernization of Paulding, OH plant.
Lehigh Portland Cement	Modernizing and expanding project at the Union Bridge, MD cement plant, increasing capacity from 1.0 to 1.5 million tons ($180 million). Upgrading kiln preheater and clinker cooling systems at Leeds, AL plant. Upgrading Macon City, IA plant to increase capacity.
Lone Star Industries	Investing $15.5 million in a new finish mill and storage facilities at Greencastle, IN plant, increasing cement capacity by 11 percent.
North Texas Cement	Building 1.0 million ton plant.
Roanoke Cement	Investing $37 million to modernize Roanoke, VA cement plant, expanding capacity from 1.0 to 1.2 million tons.
Southdown	Investing $48 million in expansion and modernization of Fairborn, OH cement plant, increasing cement capacity by 120,000 tons per year. Increasing cement capacity of Victorville, CA plant by 300,000 tons per year.

Recent Investments To Expand Capacity In The U.S. Cement Industry—Continued

Company	Investment Project
Southdown & Lone Star Industries.	Investing $50 million in expansion of jointly-owned Louisville, KY cement plant, increasing cement capacity from 875,000 to 1.4 million tons per year.

Statement of Chapter 19 Coalition (AK Steel Co., American Beekeepers Association, American Honey Producers Association, American Textile Manufacturers Institute, AMT—The Association for Manufacturing Technology, Bethlehem Steel Corp., California Forestry Association, Coalition for Fair Atlantic Salmon Trade, Coalition for Fair Lumber Imports, Cold-Finished Steel Bar Institute, Copper and Brass Fabricators Council, Ferroalloy Association, Footwear Industries of America, Fresh Garlic Producers Association, Independent Forest Products Association, Inland Steel Industries, Inc., Intermountain Forest Industries Association, Leather Industries of America, LTV Steel Co., Municipal Castings Fair Trade Council,National Steel Corp., National Association of Wheat Growers, Northeastern Lumber Manufacturers Association, Southeastern Lumber Manufacturers Association, Southern Tier Cement Committee, USX Corp., Valmont Industries, Western Wood Products Association

THE NAFTA CHAPTER 19 BINATIONAL PANEL DISPUTE SETTLEMENT SYSTEM

INTRODUCTION

Chapter 19 of the North American Free Trade Agreement ("NAFTA") extended to Mexico the novel and unprecedented system for resolving antidumping duty ("AD") and countervailing duty ("CVD") appeals that was introduced by the U.S.-Canada Free Trade Agreement ("CFTA") in 1989. Under this system, AD and CVD determinations made by NAFTA-countries' government agencies are appealable to *ad hoc* panels of private individuals from both countries affected, rather than impartial courts. The international panels do not interpret agreed NAFTA AD or CVD rules; rather, they review agency determinations solely for consistency with national law.

This system departs radically from traditional international dispute settlement principles whereby international bodies resolve disputes over the interpretation of internationally agreed texts. Unlike any other international dispute mechanism in which the United States participates, the Chapter 19 system entails *direct interpretation of U.S. law and implementation under national law* of decisions rendered by non-judges and indeed by non-citizens. In practice, this system has led to the implementation of decisions that contravene U.S. laws.

The Chapter 19 system should be reformed or eliminated from the NAFTA. It certainly should not be extended to additional U.S. trade agreements. Indeed, doing so would compound its problems. Language should be included in fast-track legislation to prevent this from occurring. (Proposed legislative text is attached to this statement.) Statutory containment of Chapter 19 would not only prevent the compounding of a major policy mistake but also improve the prospects for fast track negotiating authority and expanded free trade.

II. SUMMARY

Established as an interim measure only for U.S.-Canada trade, the Chapter 19 system is fundamentally flawed and undemocratic. It places far-reaching decision-making power in the hands of private individuals who do not have judicial experience and who are not accountable for their performance. Under this system, international panels—with foreign nationals frequently in the majority—are allowed to interpret and implement U.S. law, and their decisions have the force of law. Constitutional safeguards to assure judicial impartiality are lost when such panels replace U.S. courts. Justice Department officials warned Congress in 1988 that, for this very reason, the proposed system was unconstitutional.

In addition, the system's *ad hoc* and fragmented nature dooms it to failure as a replacement for domestic courts. Especially if the system were extended to additional countries, industries attempting to exercise their rights against unfair trade from different points of origin would end up facing a multiplicity of panel and court

proceedings likely to yield divergent rulings on identical issues. Neither industry nor the government agencies involved could afford to prosecute so many litigations. The result would be incoherent bodies of law, an unpredictable environment for litigants and businesses, and even the possibility of most-favored-nation problems resulting from unequal application of AD and CVD laws. In short, the system would become unworkable (and congressionally-mandated U.S. trade remedies unusable).

The Chapter 19 system has already failed in some of its most critical disputes. As Congress has noted, panels reviewing U.S. Government determinations have repeatedly disregarded the requirement that they behave like a U.S. court and apply U.S. law, and they have impaired implementation of U.S. trade remedies. Panel decisions have created an environment in which U.S. industry can have little faith in U.S. trade remedy policies as applied to imports from Canada and Mexico, much less to imports from an even broader array of countries.

The Chapter 19 system need not, and should not, be extended to other countries since the WTO dispute settlement system satisfies U.S. importers' and exporters' need for international dispute resolution. Unlike the Chapter 19 system, the WTO system is based on traditional international dispute settlement principles, i.e., international bodies interpreting international rules. The unprecedented impairment of sovereign legal functions entailed by Chapter 19—with foreign nationals interpreting and implementing domestic law—is unworkable in the United States and, in the long term, in any other country.

Congress should direct the Administration to negotiate the reform or elimination of Chapter 19 from the NAFTA. In addition, any legislation renewing fast-track procedures should expressly prohibit agreements that extend the Chapter 19 system to trade with additional countries and make negotiating authority and fast track procedures inapplicable to implementation bills for such agreements.

Precluding extension of Chapter 19 is needed to limit the deterioration of U.S. trade remedies and the administration of justice. In addition, doing so would enhance prospects for fast track and expanded free trade by removing a widespread concern about them. Consequently, containment of Chapter 19 would lead to broader support for fast track negotiating authority and expanding free trade.

III. Background on the Chapter 19 System

A primary Canadian goal in negotiating the CFTA was exempting Canadian exports from the United States' AD and CVD laws. The United States maintained a contrary and more cautious position: the agreement should establish disciplines on unfair trade practices rather than permitting them to go unsanctioned.

U.S. and Canadian officials reached a compromise on this issue as the negotiations drew to a close in the Fall of 1988. The CFTA provided that after the agreement came into effect the United States and Canada would pursue negotiations on subsidy disciplines and a "substitute system" of AD and CVD rules. CFTA at Art. 1907. Pending achievement of the "substitute system," and for a maximum of seven years, the countries would operate under the Chapter 19 system of AD/CVD review by panels. *Id.* at Art. 1906.

Chapter 19 was revolutionary and extremely controversial. First, judicial review of disputes involving customs duties by impartial courts created under Article III of the Constitution has a long history in the United States.[1] Replacing impartial courts with binational panels raised the specter of unfair decisions and the circumvention of U.S. law.

Second, during Congress's consideration of the CFTA, U.S. Justice Department officials advised that the system would be unconstitutional if panel decisions were implemented automatically, as is now the case. *United States-Canada Free Trade Agreement: Hearings Before the Senate Judiciary Committee*, 100th Cong. 76–87 (1988) ("Senate Judiciary Comm. Hearing"). Several Members of Congress expressed serious reservations about the constitutionality and workability of Chapter 19, including Senators Grassley and Heflin. *See id.* at 89–98; S. Rep. No. 100–509, at 70–71 (1988).

The Chapter 19 system was ultimately accepted as part of the CFTA based on executive branch commitments to Congress that: 1) panels reviewing U.S. agency determinations would be bound by U.S. law and its governing standard of review, just as the U.S. Court of International Trade is so bound; 2) there would be strict and fully enforced conflict-of-interest rules; and

[1] Reported cases include, for example, *United States v. Tappan*, 24 U.S. (11 Wheat.) 418 (1826) and *Elliot v. Swartwout*, 35 U.S. (10 Pet.) 137 (1836).

3) the system would be in place only a short while and only with Canada. According to one of the primary U.S. negotiators on this issue, the system could only work for Canada. It was:

not, and [was] not intended to be, a model for future agreements between the United States and its other trading partners. Its workability stems from the similarity in the U.S. and Canadian legal systems. With that shared legal tradition as a basis, the panel procedure is simply an interim solution to a complex issue in an historic agreement with our largest trading partner.

United States-Canada Free Trade Agreement: Hearings Before the House Judiciary Committee, 100th Cong. 73 (1988) (Testimony of M. Jean Anderson).

Although the Chapter 19 system was accepted, negotiations with Canada to create disciplines on unfair trade practices, including subsidies, failed. Nonetheless, with little additional discussion, and contrary to executive branch commitments to industry, the system was made a permanent part of the NAFTA in 1994.

IV. Chapter 19's Design Is Flawed in Several Respects and Has Serious Constitutional Problems

Under the Chapter 19 system, panels are formed on a case-by-case basis to review the consistency with national law of AD and CVD determinations issued, in the United States, by the Commerce Department ("DOC") and the U.S. International Trade Commission ("ITC"). The panels contain five members—three from one country involved in the case and two from the other—who are private-sector trade experts, usually lawyers.[2]

The System is Undemocratic and Unaccountable

On its face, the system is, at minimum, anomalous. A group of private individuals, each with his or her own clients and interests, is empowered to direct the actions of government officials and dictate the outcome of cases involving billions of dollars in trade. These panelists do not have judicial training. Nor are they insulated, as judges must be, from outside pressures and conflicts. Once a case is over, the panelists simply return to their occupations—many of them practicing before the very agencies whose decisions they recently were reviewing. They are not accountable in any way for their decisions as panelists.

This process is contrary to traditional principles of representative governance. Indeed, as indicated above, Justice Department officials advised Congress that the Chapter 19 system contravenes a constitutional provision intended to establish accountability among U.S. decision-makers (the "Appointments Clause").[3] Congress cannot "sanction" or "correct" erroneous decisions because the "judges" are not part of a standing judiciary.

The System Violates Principles of Impartial Judicial Review

Article III of the Constitution establishes safeguards to assure an impartial federal judiciary, e.g., life appointment and freedom from salary diminution. As noted above, review of trade cases by Article III judges has a long tradition in the United States, and dispensing with Article III protections for reviews of AD/CVD determinations is unwarranted. In fact, and as further explained below, conflicts of interest on the part of panelists were a major problem in the Chapter 19 review involving Canadian softwood lumber. Even holding constitutional infirmities aside, the conflict-of-interest prone Chapter 19 setup creates a serious perception problem damaging to the credibility of the international trading system.

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[2] Each country involved in the dispute appoints two panelists. NAFTA Chapt. 19, Annex 1901.2. The two countries are then to agree on a fifth panelist. *Id.* If they are unable to agree, the two countries decide by lot which country will select the fifth panelist. *Id.*

[3] U.S. Const. art. II, 2, cl. 2. Ironically, the Appointments Clause emerged, in part, from the Founders' experience with the British colonial government's selection of Royal officials, a preponderance of which were customs officials. The Founders included as a grievance in the Declaration of Independence that the King "has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance." The reference is to customs officials. Barrow, *Trade and Empire* 256 (1967).

The constitutionality of the Chapter 19 system has been discussed in numerous articles. *See, e.g.*, Barbara Bucholtz, *Sawing Off the Third Branch: Precluding Judicial Review of Anti-Dumping and Countervailing Duty Assessments Under Free Trade Agreements*, 19 Md. J. Int'l L. & Trade 175 (1995); Alan B. Morrison, *Appointments Clause Problems in the Dispute Resolution Provisions of the United States-Canada Free Trade Agreement*, 49 Wash. & Lee L. Rev. 1299 (1992).

The System's Premise is False and Objectionable

The Chapter 19 system is premised on the outrageous assumption that domestic courts are incapable of resolving these cases in a fair and impartial manner. There is no evidence to support this proposition. In any event, this type of extraordinary device is not viewed as necessary in other litigation contexts in which foreign interests frequently participate, such as appeals of agency determinations in the communications arena. There is no basis to single-out trade remedies as requiring this mechanism.

The System's Ad Hoc, Fragmented Nature Renders it Unworkable

The Chapter 19 system contemplates that a separate panel proceeding is to resolve each AD/CVD appeal on a country-bycountry basis. In practice, this cannot work, especially if Chapter 19 is extended to many different countries. An industry seeking a remedy against unfair trade from several countries—as is often the case—would end up facing proceedings before panels for each of the countries from which unfairly traded merchandise is imported and, potentially, another proceeding at the Court of International Trade. The resulting decisions could relate literally to identical issues.

Neither the affected industry nor the U.S. agencies involved could afford to engage in this multiplicity of litigations.[4] Even if this were manageable procedurally, the panels would inevitably come to different interpretations of U.S. law on the same underlying facts and issues. Such an atomized judicial mechanism cannot retain (and indeed has never gained) credibility. The inevitable result is an unworkable system, leading to the effective neutralization of U.S. trade laws.

V. In Practice, Chapter 19 Has Resulted in Bad Decisions With Out Remedy

Before it came into effect, Senator Grassley expressed deep concern about the novel experiment in replacing the U.S. judiciary with panels and whether it could, in practice, earn the respect of private parties. *Senate Judiciary Comm. Hearing* at 89–90, 94, 96. Unfortunately, Senator Grassley's concerns have been vindicated. Based on the panels' track record, private parties cannot have faith that the trade laws will be administered fairly or correctly as regards imports from Canada and Mexico.

Were they to adhere to the standard of review mandated by the NAFTA and U.S. law, panels would reach exactly the same results as the Court of International Trade and be very deferential to DOC and ITC trade determinations. In particular, they would sustain the agency's findings unless they have no "reasonable" factual basis or are grounded on a legal interpretation that is "effectively precluded by the statute." *PPG Indus., Inc. v. United States*, 928 F.2d 1568, 1573 (Fed. Cir. 1991).

As recognized by Congress, the reality has often been to the contrary.[5] Panel decisions involving Canadian pork and swine imports were so flawed that the U.S. Government sought review by appellate Chapter 19 panels ("extraordinary challenge committees" or "ECCs"). The swine ECC virtually conceded that the lower panel erred but declined to take corrective action. *Live Swine from Canada*, No. ECC–93–1904–01–USA, slip op. at 6 (Apr. 8, 1993) ("the Committee felt the Panel may have erred").

The Chapter 19 system also failed conspicuously in the last case involving subsidized Canadian softwood lumber, where:

Both the lower panel decision and the ECC decision were decided by bare majorities divided by nationality. *Certain Softwood Lumber Products from Canada*, No. USA–92–1902–190401, slip op. (Dec. 17, 1993); *Certain Softwood Lumber Products from Canada*, No. ECC–1904–01–USA, slip op. at 37 (Aug. 3, 1994) ("*Lumber ECC*").

Two of the three Canadian members of the lower panel and their law firms had previously represented Canadian lumber interests and governments but did not disclose all of their conflicts. *See Lumber ECC* at 71–86, Annex 1 (Wilkey opinion).

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[4] Indeed, a recent Canadian survey indicated that a Chapter 19 appeal can cost $100,000 to 150,000, while an appeal to a federal court costs only $25,000 to 40,000 to litigate. *See* Laura Eggerston, "Costs Deter NAFTA Dispute Settlements," *The Globe and Mail*, Mar. 20, 1997, at B–9.

[5] *See* North American Free Trade Agreement Implementation Act, Joint Senate Report, S. Rep. No. 103–189, at 42 (1993) ("[t]he Committee believes . . . that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review. . . ."); *see also* North American Free Trade Agreement Implementation Act, House Ways & Means Committee Report, H.R. Rep. No. 103–361, at 75 (1993).

The panels disregarded extensive case law and explicit Congressional committee reports which specified the proper interpretation of the CVD law on litigated issues. *See Brief of the United States*, No. ECC–1904–01–USA, at 69, 79–80 (May 3, 1994).

An ECC member expressly chose to ignore the review standard for panels that is established by the NAFTA and the applicable U.S. statute. *See Lumber ECC* at 28 (Hart opinion) (indicating that panels need not apply the review standard of the Court of International Trade).

The dissenter in the lumber ECC decision was former Federal Appeals Court Judge (and former Ambassador) Malcolm Wilkey. According to Judge Wilkey, the underlying panel majority opinion "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read." *Lumber ECC* at 37 (Wilkey opinion). Moreover, Judge Wilkey concluded that the lumber case violated all of the safeguards on which Congress based its conclusion that the Chapter 19 system is consistent with constitutional due process protections. *Id.* at 69–71, *citing* H.R. Rep. No. 100–816, Pt. 4, at 5 (1988).

VI. Recently Concluded Trade Agreements Demonstrate That Chapter 19 Is Unnecessary

The infirmities in Chapter 19's design and its failures in practice demonstrate that the U.S. Government should not extend the Chapter 19 system to other countries. Even setting aside these problems with Chapter 19, however, it should not be part of future U.S. free trade relationships because it is not needed.

First, the new WTO system fulfills any legitimate need for international AD/CVD dispute settlement. Unlike the Chapter 19 system, WTO dispute settlement operates under standard principles of international dispute settlement: WTO panels resolve disputes over the meaning of the WTO agreements, deciding whether the importing country has complied with its international obligations. This process, coupled with access to domestic courts, should satisfy any concerns about securing unbiased review of AD/CVD determinations. There is simply no need for the intrusive system under which panels hand down controlling dictates on the application of domestic U.S. law.

Even if Chapter 19's theoretical benefit to U.S. exporters showed real signs of materializing, that benefit would be vastly outweighed by the systemic problems described above and the undermining of U.S. trade remedy policies that would inevitably result. Moreover, the benefit to U.S. exporters would be marginal indeed since, with respect to ensuring that foreign governments' AD/CVD determinations comply with national law, the WTO agreements include provisions on effective judicial review. These provisions present an opportunity to achieve by more legitimate means the goals Chapter 19 was allegedly designed to promote.

Finally, our current NAFTA partners and prospective new partner have indicated that Chapter 19 is unnecessary in future trade agreements. Mexico omitted Chapter 19 from trade agreements with several Latin American countries. Canada and Chile omitted the system from the trade agreement that they signed late last year as a precursor to NAFTA expansion, choosing expressly to rely instead on WTO dispute settlement.[6] Furthermore, the Association of American Chambers of Commerce in Latin America, citing many of the concerns identified in this statement, has warned that at least U.S. business interests in Chile are likely to oppose inclusion of Chapter 19 in any agreement with that country.[7]

Given these developments, there is no credible argument that Chapter 19 is needed to secure expanded free trade. Indeed, as discussed below, efforts to extend Chapter 19 are impeding the cause of expanded free trade.

VII. Statutory Containment of Chapter 19 Is Needed

Since Chapter 19 is harmful and unnecessary, measures are needed, at minimum, to ensure that it is not extended to additional trading partners. The most straightforward means of enacting such measures would be through the fast-track bill itself. The statute should direct the executive branch not to further alienate federal juris-

[6] Canada and Chile did not alter their CVD policies, but did reportedly agree to phase out AD remedies for bilateral trade. Weakening AD policies is not an option for the United States given the many U.S. industries that have suffered grievous injury—sometimes elimination—at the hands of dumped merchandise. In any case, the Canada-Chile agreement demonstrates that Chapter 19 is unnecessary in any new agreements.

[7] Letter from Vincent M. McCord, Vice President of the Association of American Chambers of Commerce in Latin America and Executive Vice President of the American Chamber of Commerce in Chile, to Donna R. Koehnke, Secretary of the International Trade Commission (July 19, 1995).

diction and authority to decide cases under U.S. law through international agreements and should withhold trade agreements negotiating authority and fast-track procedures from any such agreements.

Ensuring that the problem of Chapter 19 will not be compounded through the trade agreements program will significantly benefit the prospects for fast track and expanded free trade. It will remove impediments (e.g., concerns about diminished sovereignty, constitutional problems) for those inclined to be supportive. At the same time, it is highly unlikely that any Member of Congress or any constituency will withhold his or her support from fast track, an expanded NAFTA or the FTAA if Chapter 19 is excluded from the resulting agreements.

VIII. CONCLUSION

The U.S. Government should negotiate elimination of the Chapter 19 dispute settlement system as it exists with Canada and Mexico; under no circumstances should it be extended to new participants under the NAFTA or the FTAA. Congress should:

ensure that fast-track legislation prevents extension of Chapter 19 to additional countries;

hold hearings on the Chapter 19 system to investigate

(1) whether the system is unconstitutional; (2) whether the system is necessary in light of WTO rules and the WTO dispute settlement system; (3) the suitability of the system as a permanent replacement for judicial review of trade cases; and (4) the past administration of the system; and

direct the Administration to negotiate the elimination or reform of the Chapter 19 system from the NAFTA.

DRAFT SECTION OF FAST TRACK BILL

1. Notwithstanding any other provision of law, the U.S. Government shall not enter into any treaty or other international agreement that, in whole or in part, would have the purpose or effect of transferring any jurisdiction or authority to decide cases under U.S. law away from the federal judiciary.

2. The trade agreements negotiating authority of———[formerly Sec. 1102 of the 1988 Act] shall not apply to the negotiation of any trade agreement that would have the purpose or effect of transferring any jurisdiction or authority to decide cases under U.S. law away from the federal judiciary, and the procedures of Section 151 of the Trade Act of 1974 [fast track], or any similar successor provisions, shall not apply to implementing legislation submitted with respect to any such trade agreement.

Chairman CRANE. Thank you.

Mr. Neal.

Mr. NEAL. A quick question for Mr. Clawson.

Mr. CLAWSON. Surely, I'd be happy to answer.

Mr. NEAL. Tell me about drug trafficking.

Mr. CLAWSON. Surely. A terrible problem—we know that it is, and Customs—in fact, our view is, particularly on the commercial side, if we can do some of the things we talked about here in terms of making the commercial clearance facilitated, that will free up inspectors to do a better job of looking for drugs and contraband, instead of spending time ruffling through papers and saying if the things are in the right order. Because it is a terrible problem; there is no question.

Mr. NEAL. In your humble opinion, could the Mexicans be doing more, much more—

Mr. CLAWSON. Yes, much more. Absolutely, there's no question. They could do a lot more. In fact, there's no question that there's a lot more that they can do, both as a government and I think

some of the businesses, the Mexican businesses, in helping in a partnership to try to deal with this problem.

Mr. NEAL. Has the Mexican Government slipped backward, in your opinion?

Mr. CLAWSON. No, I don't think they've slipped backward. They haven't made enough progress, though.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman CRANE. Mr. Matsui.

Mr. MATSUI. Mr. Chairman, I'm not going to ask a question. I know we're going to relieve all of you of the pain of having to stay around. I think the Chairman plans to make an announcement right after this. But I want to thank all four of you.

I'd like to follow up with Mr. Audley sometime, because I appreciated some of your comments, and I kind of want to get a little bit more into that with you, because there may be some opportunities. But, again, I would prefer to do that at some later date. I don't want to create confusion——

Mr. AUDLEY. I'd be happy to do so. Thanks.

Mr. MATSUI. Thank you. We thank all of you as well.

Chairman CRANE. Again, I thank you for your testimony, and that will conclude this session. The record will remain open until April 13, and that concludes the meeting.

[Whereupon, at 5:15 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Submissions for the record follow:]

Statement of Air Courier Conference of America, Falls Church, Virginia

This statement is submitted for the printed record by the Air Courier Conference of America (ACCA) in conjunction with the March 31, 1998 hearing by the Subcommittee on Trade of the Committee on Ways and Means regarding the Free Trade Area of the Americas (FTAA). ACCA is the trade association representing the express consignment industry. Our members include large firms with global delivery networks, such as DHL, Federal Express, TNT and United Parcel Service, as well as smaller businesses with strong regional delivery networks, such as Global Mail, Midnite Express and Quick International.

The express transportation industry specializes in fast, reliable transportation services for documents, packages and freight; our operations encompass a variety of express delivery services. Because express companies provide integrated, door-to-door delivery, we are affected by all governmental policies that apply to the distribution chain, and liberalization of international trade for the express transportation sector necessarily involves addressing trade restrictions and trade distortive measures that affect any element of distribution, including air and ground transportation, air auxiliary services, warehousing, customs brokerage, electronic commerce, telecommunications, and freight forwarding.

A major hallmark of the express transportation service sector is the support of time-definite, or just-in-time (JIT), shipment of goods and services. Government measures that impede this expedited flow of goods severely limit the economic growth in key high-tech industries, such as computers and electronics. Although the JIT concept is not new, the emergence of the express transportation industry has revolutionized the way companies do business worldwide and has given a broad-based application to the concept. Producers using supplies from overseas no longer need to maintain costly inventories, nor do business persons need to wait extended periods of time for important documents. Waste due to obsolescence and seasonality is almost entirely eliminated. In addition, consumers now have the option of receiving international shipments on an expedited basis.

The express transportation industry plays a key role in FTAA economies. The U.S. sector reports revenues of over $50 billion and employs more than 400,000 workers. The industry has averaged 20 percent annual growth for the past two decades. As the industry is labor-and capital-intensive, its expansion creates more jobs and investment in all countries serviced by the sector. The industry's explosive

growth is reflected in the rapid expansion of international air express shipments, which have doubled since 1993 and now average 1.2 million shipments per day.

The express transportation industry is essential to the future growth of the Western Hemisphere's trade and commerce, as more and more of the region's trade is centered on the type of high-value goods that are carried by this industry, such as electronics, computers and computer parts, software, optics, precision equipment, medicine, medical supplies, pharmaceuticals, aircraft and auto parts, avionics, fashions and high-value perishables. In addition, the industry encourages small and medium-sized businesses to grow by enabling them to participate in international trade. The express transportation sector, with its integrated services that provide door-to-door delivery, frees small businesses from the burdensome and costly tasks of arranging for the transportation of their goods through a myriad of unrelated and often uncommunicating parties.

In an effort to enhance our ability to operate throughout the Western Hemisphere, the express sector has participated actively in the FTAA process. We were present at the III Americas Business Forum held in Belo Horizonte, Brazil on May 12–13, 1997 which, among other things, called for FTAA negotiations to include all service industries and to allow for sectoral agreements. We also participated in the meeting held in October, 1997 by the FTAA Working Group on Services in Santiago, Chile. This was the first official joint meeting between the private sector and an FTAA working group, and was a direct outgrowth of the directive in the Summit of the Americas Action Plan calling for a partnership between government and the private sector.

The joint meeting explored the FTAA objectives of seven specific service sectors, including express integrated transportation. The sectoral commission for our industry developed detailed recommendations which reflect a strong consensus among industry members throughout the hemisphere regarding our objectives for the FTAA negotiations, including:

• the express integrated transportation service sector should be the subject of sectoral negotiations in the FTAA process;

• Customs procedures for express services should be streamlined and applied on a non-discriminatory basis;

• the services working group should create a liaison with the Customs working group regarding the simplification of customs procedures;

• the FTAA services agreement should contain the following disciplines with respect to postal services and the express integrated transportation sector: elimination of price regulation, discriminatory taxes and fees, abusive monopoly practices, cross subsidization and preferential customs agreements; binding of government postal services to the same measures applied to the private sector; and requiring government postal authorities to maintain separate fiscal organizations with respect to revenue from postal business and revenue from express services;

• the FTAA services agreement should contain disciplines on postal services to eliminate unfair trade practices and trade distortion resulting from the use of exclusive service providers;

• the FTAA should contain disciplines to eliminate discriminatory treatment with respect to ground transportation regulations and the express integrated transportation sector, particularly regulation of: vehicle weight and size, use of highways and roads, documentation, type of goods that may be shipped, parking, operating hours, and price regulation; and that FTAA countries should strive to achieve upwards harmonization with respect to these areas;

• the FTAA should contain a mechanism for the effective protection and enforcement of intellectual property rights in services, particularly service marks;

• the FTAA services agreement should apply the same rights and obligations contained in the WTO Agreement on Subsidies and Countervailing Measures;

• the FTAA services agreement should contain a national treatment provision as well as transparency and most-favored-nation obligations; and

• the FTAA services negotiations should be conducted on a "negative list" basis.

Our sector was able to build on this hemispheric-wide consensus at the Americas Business Forum in Costa Rica by targeting as a business facilitation measure implementation of the so-called Cancun Accord by June, 1999. The Accord, which is a comprehensive statement of obligations applying to both customs authorities and private operators with respect to express procedures, resulted from a meeting in June, 1996 in Cancun, Mexico of the Customs Directors and private sector representatives of 16 FTAA countries. Among other things, the agreement addresses the type of merchandise that may be transported by express service, the modalities of transportation that may be used for express service, obligations incumbent upon express service providers, and customs procedures for clearing and entering express shipments. Immediate implementation of the Cancun Accord would be an initial

step towards the ultimate goal of trade liberalization for the express sector as outlined in the above measures.

The effectiveness of the Cancun Accord has been limited by the fact that very few of the signatories have implemented it. This, along with the fact that all 16 FTAA countries present at Cancun signed the accord, makes immediate implementation of the Cancun Accord as a business facilitation measure a logical action for FTAA trade ministers and one that would have immediate benefits for the hemisphere.

In Costa Rica, the express integrated transportation sector also called for implementation within one year of any future agreements on customs reforms for our sector. We also endorsed adoption by FTAA countries of the express customs guidelines approved by the World Customs Organization and the express customs guidelines of the International Chamber of Commerce.

At the Fourth Americas Business Forum, our working group also called on FTAA members to eliminate anti-competitive measures and practices by postal and customs authorities in the area of express integrated transportation services and international deliveries of goods and services. The working group also called on FTAA members to abolish discriminatory measures, including application of postal rates and taxes to subsidize government agencies. We recommended that the laws, regulations and government practices related to these measures and practices be amended by January 1, 1999 to provide for the elimination of these policies by January 1, 2000.

As noted in the November, 1997 issue of *The Economist,* "the vast expansion in international trade owes much to a revolution in the business of moving freight." If implemented, the steps outlined above would significantly enhance our industry's ability to operate throughout the Western Hemisphere. More important, they would facilitate the free movement of goods and services across FTAA borders, which is critical to realizing the benefits of liberalized trade. It simply makes no sense to reduce certain barriers to trade throughout the hemisphere but to continue to maintain archaic customs, postal and other policies that obstruct the efficient distribution of goods and services. Dismantling these barriers will remain ACCA's principal focus throughout the FTAA process, and, in this effort, we will seek to build on the groundwork laid at Belo Horizonte, Santiago and San Jose.

Statement of American Electronics Association

INTRODUCTION

As the millennium comes to a close, international trade and investment have become increasingly important components of global integration and prosperity. Indeed, in this century alone, the evolution in developed and developing economies from isolationist policies which proved to intensify economic inefficiencies to free trade regimes has prolonged profound periods of economic expansion and opportunity.

The Americas Work Group of American Electronics Association (AEA) welcomes the opportunity to submit its views on the negotiation of the Free Trade Area of the Americas (FTAA) before the House Ways and Means Subcommittee on Trade.

AEA represents more than 3,000 member companies across the broad spectrum of electronics and information businesses—from semiconductors and software to computers and telecommunication systems. As the largest high-tech trade association in the U.S., AEA represents American high-tech companies nationally through 17 council offices and globally through offices in Brussels, Tokyo, and Beijing.

CHALLENGES TO NEGOTIATION

Despite the lack of Fast Track, the Administration can begin negotiations of the FTAA, but cannot commit to any provisions requiring a change to U.S. law. Unfortunately, this limitation caters to the "go-slow" approach of many South American economies looking to protect their domestic industries as long as possible. Even without Fast Track, AEA urges the Congress to support the Administration's efforts to continue momentum of the United States' international trade agenda by pursuing an aggressive, comprehensive FTAA. Further, AEA supports the identification and implementation of interim agreements in order to stimulate and drive trade liberalization Hemisphere-wide. Finally, whenever possible, the Trade Ministers should strive to exceed the trade and investment disciplines reached in other trade fora.

TRADE AND INVESTMENT

Trade and investment between the U.S. and Latin America has increased substantially in recent years. Between 1990–1996, U.S. electronics exports to Latin America tripled from $3 billion in 1990 to over $9 billion in 1996, according to the recently-released AEA report CyberNation. During the same period, U.S. imports of electronics products from Latin America doubled, from $242 million in 1990 to $506 million in 1996.

KEY ISSUES

In order to further the growth of trade and investment in high-tech products and services between the U.S. and Latin America, a few key areas must be examined and addressed. The main issues critical to the growth of the information technology (IT) industry in the 34 member economies of the FTAA are:

I. Market Access
II. Government Procurement
III. Investment
IV. Standards, Testing and Conformity Assessment
V. Intellectual Property
VI. Services
VII. Private Sector Participation

I. MARKET ACCESS

Objective

• *Elimination of tariffs and non-tariff measures on electronics products within the Hemisphere.*

Principles

The elimination of duties, import charges and non-tariff barriers accelerate the introduction of IT products to the market, and as a result, increases customer choice, allows the supplier to reduce costs to the customer and expedites the introduction of products to the market. The guiding principles behind the reduction of tariffs are:

• *the reduction and timely elimination to tariff and non-tariff barriers, resulting in lower costs and greater benefit to the consumers of IT products; and*

• *the promotion of transparency of applicable rules and regulations, with the opportunity for comment by all interested parties.*

Agenda for Progress

The FTAA countries are encouraged to identify the non-tariff measures and business facilitation issues to improve Hemisphere-wide market access, including the acceptance by all countries of the ATA Carnet for temporary duty-free importation of products. AEA further recommends that the 34 economies of the FTAA eliminate duties on IT products consistent with the terms of the North American Free Trade Agreement (NAFTA), the GATT "zero-for-zero" package for medical devices and semiconductor fabrication equipment, and the Information Technology Agreement (ITA). While Panama and Costa Rica have joined the ITA, those countries which do not yet adhere to the Agreement should immediately do so and consider involvement in the second-phase of the ITA which is projected to expand product coverage and address non-tariff measures.

II. GOVERNMENT PROCUREMENT

Objective

• *Promote a Hemisphere-wide government procurement agreement based on transparent and competitive government procurement practices.*

Principles

Government procurement practices should be non-discriminatory throughout the Hemisphere, transparent in their administration and free from corrupt practices. In addition, AEA recommends that the Trade Ministers consider the following guidelines for procurement transparency:

• *Adequate Notice:* Timely notification of opportunities is essential to unbiased and open procurement. Bidders must be given adequate time to evaluate projects and prepare bids. In large or complex contracts, pre-qualification of bidders is advisable.

• *Neutral Standards:* Bid specifications should be stated in terms of internationally recognized standards, wherever possible. Performance standards should be used to ensure that equivalent products are treated equally.

• *Objective Criteria:* Bidding documents should specify the relevant factors in addition to price to be considered in bid evaluation, and the formula by which they will be applied. All bidders should be able to determine whether the objective criteria have been followed in the final award.

• *Public Bid Opening:* To ensure accountability in the application of these procedures, bids should be opened in public, in the presence of all bidders.

• *Award of Contract:* Contracts should be awarded to the lowest compliant bidder on the basis of objective criteria.

• *Intellectual Property (IP): The rights of the seller in its technical data and its patents and copyrights need to be considered and respected in the process of government procurement if the process is to be considered fair and open. Failure to address the legitimate concerns of the IP holders is a significant deterrent to open procurement and it grieves the purchasing government by culling participants who own the best technology. Even where development is funded as part of the procurement, there are mutual benefits to be gained by permitting the contractor to own and use the funded technology, and the opportunity to own and use the funded technology is an attractant to the best-qualified participants.*

• *Dispute Settlement:* Contracting agencies should provide unsuccessful bidders access to independent review of compliance with the bid process in accordance with the aforementioned principles, including adequate remedies for non-compliance.

Agenda for Progress

AEA supports a Hemispheric government procurement agreement based on the guidelines detailed above. Once the procurement transparency agreement is in place, AEA recommends that all Hemispheric economies develop and subscribe to an agreement for non-discrimination in public procurement based on the principles of the WTO Government Procurement Code.

AEA notes that the Organization for American States (OAS) has recognized that corruption of public officials is a problem in government procurement which frequently denies both companies and domestic consumers the full benefits of international competition, particularly in the development of national infrastructures. The OAS anti-bribery convention is an important new international agreement aimed at reducing this problem; however, only a few member countries, have ratified the Convention. Given the relationship between questions of bribery and the procurement process, AEA suggests that all OAS members complete the ratification process as soon as possible. In addition, AEA encourages all Western Hemisphere governments to review the international anti-bribery convention concluded by the OECD, with a view to subscribing to this Agreement as well.

III. Investment

Objective

• *Ensure an open and competitive investment environment, prohibit performance requirements, and divorce investment determinations from procurement decisions through an intra-Hemisphere investment agreement.*

Principles

AEA believes intra-Hemispheric investment flows should be supported by principles of:

• *non-discrimination,*
• *MFN,*
• *national treatment,*
• *fair and equitable treatment, and*
• *impartial and fair dispute settlement.*

Agenda for Progress

AEA recommends a Hemispheric investment agreement, based on the above principles, which includes investor-state arbitration for dealing with disputes between private parties and States and among private parties, in addition to State-to-State dispute settlement. AEA suggests that a Hemispheric investment agreement draw upon the principles of the Multilateral Agreement on Investment (MAI) under the auspices of the OECD, while remaining consistent with the WTO Agreement on Trade-Related Investment Measures (TRIMs).

IV. Standards, Testing and Conformity Assessment

Objective

- *Promote regulatory structures that reference:*
1) internationally-accepted standards or suite of standards;
2) one test or suite of tests to meet those standards;
3) acceptance of a supplier's test results or a third-party's; and
4) acceptance of supplier's declaration of conformity or third-party certification.

Principles

Standards, certification and regulatory policy often create unintended barriers to trade. Accordingly, the principle *"One Standard—One Test, Supplier's Declaration of Conformity"* should guide the negotiators in their discussion on standards, testing and certification issues as a regulatory reform model that goes beyond the initial model calling for the mutual recognition of test results and certification regimes.

Agenda for Progress

Internationally-accepted standards (de facto or created by international standards bodies), based on performance criteria, should be adopted whenever possible. Specifically, with regard to the telecommunications and medical device sectors in conformity assessment, there should be the intra-Hemisphere mutual recognition of test results, provided by suppliers or third-party labs, and of type-approval, allowing for manufacturers' self-declaration of conformity. An intermediate goal in the telecommunications sector should be to continue development of the Yellow Book on equipment certification processes and to provide educational seminars on the benefit of Mutual Recognition Agreements (as planned under CITEL—the Inter-American Telecommunications Committee). An intermediate goal in the medical device sector should be to implement common registration and Good Manufacturing Practices (GMP) requirements, moving toward harmonization and recognition of certificates generated overseas (e.g., FDA certificate of free sale or EU certificate of conformity) in lieu of local testing. An immediate goal for computers should be the establishment of a Hemisphere-wide pilot program to investigate and test the implementation of the principle "One Standard—One Test, Supplier's Declaration of Conformity."

In addition, AEA recommends the reduction of product marking requirements to a single global system for demonstrating conformity.

V. Intellectual Property

Objective

- *Extend and enforce a strong intellectual property rights (IPR) protection regime throughout the Hemisphere.*

Principles

A balance must be struck between satisfying the interests of numerous parties: right holders, manufacturers, distributors, consumers and network operators. It is essential that industry and government cooperate to protect intellectual property rights. Producers rely on legal protection of their products and activities. Therefore, as the market develops and as cross-border product and information flow increase,

- *a harmonized, secure and stable legal regime is necessary both internationally and within the Hemisphere.*

Agenda for Progress

AEA urges the implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and suggests the development of a Hemispheric Agreement which goes beyond the TRIPs measures.

AEA urges the member countries of the WTO to promptly pass legislation providing IP protection for computer and telecommunications products including software and electronic information products under both copyright laws and patent laws. The copyright laws should specifically provide that computer programs and computerized databases are literary works, within the meaning of the Berne Convention, and that every kind of information processing product be protected under the patent laws, even when such products comprise software components. The problem with the patent laws of many Latin American countries is that they expressly exclude "computer programs" from patentability. This exclusion is often interpreted to mean that products having a principal function implemented with software are not patentable. Thus, the "computer program" exclusion has the effect of excluding a large class of computer-related technologies from protection under the national patent laws. This

is in contravention of the provision in Art. 27 of TRIPS which provides that patents shall be available in all fields of technology. Further, AEA urges all countries to adopt the World Intellectual Property Organization (WIPO) Treaties of December 1996 on Copyrights and Performances and Phonograms. AEA also recommends the international protection of databases (again, under WIPO auspices).

With respect to telecommunications equipment, many of the product features are embedded in software; therefore, IP exists past layer-one of system software and should be equally protected Hemisphere-wide.

VI. Services

Objective

• *Promote the unfettered growth of electronic commerce, support the liberalization of telecommunications infrastructure and encourage pro-competitive policies Hemisphere-wide.*

Principles

The principles encouraged to promote business facilitation efforts are based on industry leadership, predictability, consistency and fairness.

In order for countries to maintain and improve their competitive position in the services sector, they must hasten deregulation and privatization efforts in telecommunications and aggressively promote competition in the industry.

In the area of electronic commerce, the following principles should guide the Ministers:

• *Electronic Commerce should be market-driven:* Increased innovation, expanded participation, broader services and lower prices result in a commercial environment where market forces prevail.

• *Electronic Commerce should remain unfettered by undue government intervention and/or regulation:* Governments have a responsibility to understand the unique nature of the Internet as an electronic medium and should refrain from any undue regulation. The successful Internet economy will have a significant multiplier effect on economic development, job growth and competitiveness.

• *Electronic Commerce should feature protection of the security and of the integrity of data:* Rapidly expanding markets for information technology demand the privacy and integrity of data be secured through encryption technology. These global market opportunities will not be realized if encryption technology cannot be used, imported and exported freely to protect information exchanged over public and corporate global networks. AEA supports efforts to reach these objectives within the Hemisphere and at the international-level using the OECD Cryptography Guidelines.

• *Electronic Commerce should allow the global free flow of data:* Data protection standards should not be utilized to erect new trade barriers which could frustrate the development of electronic commerce. AEA is supportive of industry-developed answers to issues of privacy and market-driven solutions to insure customer satisfaction regarding how private data is handled.

• *Electronic Commerce should be tax-neutral:* The electronic commerce environment must not be subject to a more onerous tax regime than traditional forms of commerce. It is crucial that any minimal regulatory approach be globally-harmonized and technology-neutral.

Agenda for Progress

All countries should, at minimum, adopt the Reference Paper, with the ultimate objective to ratify and implement the WTO Agreement on Basic Telecommunications. Those countries that have not done so, should make market-opening commitments in basic telecommunications and remove foreign ownership restrictions on telecommunications operators.

In the area of electronic commerce, countries should respect the OECD Cryptography Guidelines, as well as those Governing the Protection of Privacy and Transborder Flows of Personal Data. Further, Ministers are urged to abide by the principles outlined in the U.S. *"Framework for Electronic Commerce."*

VII. Private Sector Participation

Objective

• *Create a sectoral work group to address issues specific to the high-technology industry.*

Principles

Since U.S. and Latin American businesses are the practitioners of international commerce, industry leaders have the unique ability to recognize the practical impacts of trade policy and therefore, should be consulted in the policy-making process.

• *Meaningful discussion among business serves as a basis for understanding within industry itself with regard to identifying common objectives and addressing barriers to trade and investment in the Hemisphere.*

If commonalties can be found and transmitted in a coherent, consistent manner to the Ministers, this exercise could provide valuable information in the decision-making process.

Agenda for Progress

Create a regular, predictable framework for business leaders from the high-technology industry of the Hemisphere to meet, discuss and present unified recommendations to the Ministers of the FTAA. AEA proposes that the private sector be consulted before and/or after negotiating group sessions as well as at Ministerial meetings. The regularity of bi-annual Ministerial meetings affords an opportune time to consult with industry. Every effort should be made to incorporate private sector consultations into these meetings.

CONCLUSION

The negotiation of the FTAA presents many opportunities to companies and workers in the Western Hemisphere. With the dynamic and rapid growth of information technology in the region, it is critical for the U.S. to lead and engage our Hemispheric trading partners into an arrangement beneficial to all. AEA looks forward to working with the Congress and the Administration to ensure that the efforts to construct a comprehensive and meaningful FTAA are successful.

Statement of Carolyn Cheney, Washington Representative, Sugar Cane Growers Cooperative of Florida; and Chairman, American Sugar Alliance

Thank you for the opportunity to submit testimony for this important hearing. I am Carolyn Cheney, Washington Representative for the Sugar Cane Growers Cooperative of Florida. I also serve as chairman of the American Sugar Alliance, of which my cooperative is a member. The ASA is a national coalition of growers, processors, and refiners of sugarbeets, sugarcane, and corn for sweetener.

I am proud to present the views not only of the Sugar Cane Growers Cooperative of Florida, but also of the American Sugar Alliance.

SUMMARY

The U.S. sugar industry has long endorsed the goal of global free trade because we are efficient by world standards and would welcome the opportunity to compete on a genuine level playing field. Until we achieve that free trade goal, however, we must retain at least the minimal, transitional sugar policy now in place to prevent foreign subsidized, dump market sugar from unfairly displacing efficient American producers. This policy was substantially modified by Congress in the 1996 Farm Bill, but remains highly beneficial to American taxpayers and consumers.

Despite its free trade goal, however, the sugar industry has some serious concerns about the structure of future multilateral or regional trade agreements.

Multilaterally, we are concerned that, while U.S. agriculture unilaterally far surpassed its Uruguay Round commitments through huge government cutbacks in the 1996 Farm Bill, many foreign countries have yet to even minimally comply with their Uruguay Round commitments.

Regionally, we are facing serious problems with both Canada and Mexico. Canada is exploiting a loophole to circumvent the U.S. tariff-rate quota for sugar and threaten the no-cost operation of U.S. sugar policy. Mexico, four years after the NAFTA went into effect, is calling into question the validity of special sugar provisions to which it agreed before the NAFTA was voted upon and approved.

American sugar farmers want free trade. But we have trouble moving further in that direction when past free trade agreements are being ignored, or circumvented, by our trading partners, to the possible detriment of our farmers.

I would like to provide some background on the United States' role and standing in the world sugar economy and on U.S. sugar policy's effect on American consumers and taxpayers and discuss the U.S. sugar industry's trade policy goal, concerns, and

recommendations, with special focus on the proposed Free Trade Area of the Americas (FTAA).

BACKGROUND ON U.S. SUGAR INDUSTRY, POLICY

Size and Competitiveness. Sugar is grown and processed in 17 states and 420,000 American jobs, in 40 states, are dependent, directly or indirectly, on the production of sugar and corn sweeteners. The United States is the world's fourth largest sugar producer, trailing only Brazil, India, and China. The European Union (EU), taken collectively, is by far the world's largest producing region. It benefits from massive production and export subsidy programs.

Despite some of the world's highest government-imposed costs for labor and environmental protections, U.S. sugar producers are among the world's most efficient. According to a study released in 1997 by LMC International, of Oxford, England, American sugar producers rank 19th lowest in cost among 96 producing countries, most of which are developing countries. According to LMC, fully two-thirds of the world's sugar is produced at a higher cost per pound than in the United States.

Because of our efficiency, American sugar farmers would welcome the opportunity to compete against foreign farmers on a level playing field, free of government subsidies.

Unfortunately, the extreme distortion of the world sugar market makes any such free trade competition impossible today.

World Dump Market. More than 100 countries produce sugar and the governments of all these countries intervene in their sugar markets in some way. The most egregious, and most trade distorting, example is the EU. The Europeans are higher cost sugar producers than we are but they enjoy price supports that are 40% higher—high enough to generate huge surpluses that are dumped on the world sugar market, for whatever price they will bring, through an elaborate system of export subsidies.

World trade in sugar has always been riddled with unfair trading practices. These practices have led to the distortion in the so-called "world market" for sugar. These distortions have led to a disconnect between the cost of production and prices on the world sugar market, more aptly called a "dump market." Indeed, for the period of 1984/85 through 1994/95, the most recent period for which cost of production data are available, the world dump market price averaged just a little more than 9 cents per pound raw value, barely half the world average production cost of production of over 18 cents. (See chart, Attachment A.)

Furthermore, its dump nature makes sugar the world's most volatile commodity market. Just in the past two decades, world sugar prices have soared above 60 cents per pound and plummeted below 3 cents per pound. Because it is a relatively thinly traded market, small shifts in supply or demand can cause huge changes in price.

As long as foreign subsidies drive prices on the world market well below the global cost of production, the United States must retain some border control. This is our only response to the foreign predatory pricing practices that threaten the more efficient American sugar farmers.

The reformed sugar policy of the 1996 Farm Bill does retain the Secretary of Agriculture's ability to limit imports, and also provides a price support mechanism, though only when imports exceed 1.5 million short tons. We are currently only 240,000 tons above that critical trigger level.

Sugar Reforms. The 1996 Farm Bill drastically changed U.S. sugar policy, as it did other commodity programs. All American farmers, including sugar farmers, now face a less certain future, with less government intervention, higher risk, and the prospect of lower prices.

There were six major reforms to U.S. sugar policy in the 1996 Farm Bill:

1. Marketing allotments eliminated. With no production controls, we now have a domestic free market for sugar. Less efficient producers are more likely to go out of business; more efficient producers are free to expand. Just last month the only sugarbeet processing company in Texas announced it is closing, ending sugarbeet production in that state, because of low returns.

2. Guaranteed minimum price eliminated. Sugar is the *only* program crop that has lost the guarantee of non-recourse loans and a minimum grower price. Sugar producers will have access to non-recourse loans only when imports exceed 1.5 million short tons.

3. Minimum imports effectively raised. Under the Uruguay Round of the GATT, the U.S. was required to import no less than 1.256 million tons of sugar per year. The non-recourse loan trigger of 1.5 million tons effectively raises our import minimum to that level, a unilateral increase of 20%.

4. Marketing tax raised. The special marketing assessment, or tax, sugar producers must pay to the government on every pound of sugar was raised by 25%, to 1.375% of the loan rate on every pound produced. This added burden on sugar farmers will generate about $40 million per year for the U.S. Treasury, with all this money earmarked for federal budget deficit reduction.

5. Forfeiture penalty initiated. To discourage forfeiture of loans to the government when non-recourse loans are in effect, and to raise even more money for the U.S. Treasury, a 1-cent per pound forfeiture penalty was initiated.

6. Commitment to further reductions. A provision called "GATT Plus" requires that the U.S. will reduce its sugar supports further if, and when, foreign countries surpass their Uruguay Round commitments, as the U.S. has done.

Effect on Consumers. American consumers and food and candy manufacturers benefit from high-quality, dependable, reasonably priced supply of sugar. Consumer prices in the United States are fully 32% below the developed-country average, according to a world survey by LMC International. Compared with consumers worldwide, and taking varying income levels into account, LMC found that *in terms of minutes worked to purchase one pound of sugar, American consumers are the second lowest in the world,* trailing only the tiny country of Singapore. (See charts, Attachments B and C.)

Consumer Cost Myths. The food manufacturer critics of U.S. sugar policy repeatedly point to a severely flawed 1993 General Accounting Office study that estimated a consumer cost of U.S. sugar policy at $1.4 billion per year. Experts at the U.S. Department of Agriculture have twice vilified this flawed report, as have noted academicians. More recently critics are citing a Public Voice "update," which mimicked the faulty methodology of the GAO report and dropped this supposed cost to $1.2 billion.

Both of these absurd studies assumed that: 1) All U.S. sugar needs could be supplied from the world dump market at a price well below the world average cost of production; 2) We could fulfill our needs from this thinly traded, highly volatile world market without that price increasing at all; and 3) Every penny of the food manufacturers' and retailers' savings from the lower dump market sugar prices would be passed along to consumers.

For reasons I have already outlined, it is clear that if the United States destroyed its sugar industry and shifted all its demand for sugar to the thinly traded world dump market—which would increase demand on that market by about 50%—the price would skyrocket, as it has in the past with far smaller surges in offtake.

To address the third and most outrageous of these assumptions, one need only examine price behavior of the past year, or the past decade. *History shows absolutely no passthrough.*

No Passthrough to Consumers. Since Farm Bill reforms went into effect in October 1996, both raw cane and wholesale refined beet sugar prices to producers have dropped dramatically, wholesale refined prices by a whopping 12%. But at the retail level, not even the price of sugar on the grocery shelf has dropped at all. And prices for sweetened products, such as candy, cereal, ice cream, cakes, and cookies have all risen by 1–5%. Looking back to price changes since 1990, the story remains the same: producer prices *down,* but consumer prices for sugar and products *up.* (See charts, Attachments D and E.)

Effect on Taxpayers. Not only has U.S. sugar policy been run at no cost to the government since 1985, but since 1991 it has been a *revenue raiser.* The marketing assessment burden on sugar farmers will generate an estimated $288 million for federal budget deficit reduction over the seven years of the 1996 Farm Bill.

U.S. Sugar Industry's Free Trade Goal

Because of our competitiveness, with costs of production well below the world average, the U.S. sugar industry supports the goal of genuine, global free trade in sugar. We cannot compete with foreign governments, but we are perfectly willing to compete with foreign farmers in a truly free trade environment.

We were the first U.S. commodity group to endorse the goal of completely eliminating government barriers to trade at the outset of the Uruguay Round, in 1986. We understand we are the first group to endorse this same goal prior to the start of the 1999 multilateral trade round. We described our goals and concerns to the Administration in a letter last May to Trade Representative Barshefsky and Agriculture Secretary Glickman. A copy of that letter is attached to this testimony (Attachment F).

The U.S. sugar industry does not endorse the notion of free trade at any cost. The movement toward free trade must be made deliberately and rationally, to ensure fairness and to ensure that those of us who have a global comparative advantage

in sugar production are not disadvantaged by allowing distortions, exemptions, or delays for our foreign competitors.

SUGAR AND THE URUGUAY ROUND

Little Effect on World Sugar Policies. More than 100 countries produce sugar and all have some forms of government intervention. Unfortunately, these policies were not significantly changed in the Uruguay Round Agreement (URA) of the GATT.

- The agreement failed to reduce the European Union's lavish price support level and requires only a tiny potential drop in their massive export subsidies.
- Developing countries, which dominate world sugar trade, have little or no labor and environmental standards for sugar farmers, have no minimum import access requirements, and often have high import tariffs. Nonetheless, developing countries were put on a much slower track for reductions, or were exempted altogether.
- Important players such as China and the former Soviet republics are not GATT members, and need to do nothing.
- State trading enterprises (STE's) that are prevalent in sugar-producing countries were ignored.

Furthermore, many countries have not yet even complied with their URA commitments. U.S. Sugar Surpasses URA Requirements. The United States is one of only about 25 countries that guarantees a portion of its sugar market to foreign producers and it has far surpassed is URA commitment on import access. The URA required a minimum access of 3–5% of domestic consumption. The United States accepted a sugar-import minimum that amounts to about 12% of consumption. In practice, U.S. imports the past two years have averaged 24%—*double* the promise we made in the GATT, and about six times the global GATT minimum.

All this sugar imported from 41 countries under the tariff-rate quota enters the United States at the U.S. price, and not at the world dump price. Virtually all this sugar enters duty free. Just five countries (Argentina, Australia, Brazil, Gabon, and Taiwan) that lack Generalized System of Preferences (GSP) status pay a duty, and that is quite small, about 0.6 cents per pound.

The United States calculated its above-quota tariff rate in the manner dictated by the URA. These tariff levels are totally GATT consistent, and are dropping by 15%, as we promised they would in the Uruguay Round.

SUGAR AND THE NAFTA

Canada. Sugar trade between the United States and Canada, which imports about 90% of its sugar needs, was essentially excluded from the NAFTA. U.S.-Canadian sugar trade is governed mainly by the U.S.-Canada Free Trade Agreement and by the WTO.

Currently, Canada is threatening the integrity of U.S. sugar policy by circumventing the quota with a new product referred to in the trade as "stuffed molasses"—a high-sugar product not currently included in U.S. sugar TRQ classifications. USDA has estimated imports of this product could add 125,000 tons of non-quota sugar to the U.S. market this year. That amount could grow if this loophole is not closed.

Mexico. Mexico had been a net importer of sugar for a number of years prior to the inception of the NAFTA. Nonetheless, the NAFTA provided Mexico with more than three times its traditional access to the U.S. sugar market during the first six years, 35 times its traditional access in years 7–14, and virtually unlimited access thereafter. The NAFTA sugar provisions are summarized on the attached table (Attachment G).

These provisions were negotiated by the U.S. and Mexican governments and contained in a side letter signed by Cabinet officials of both governments before the U.S. Congress took action on the NAFTA in November 1993. Nonetheless, Mexico is now undermining the integrity of the NAFTA by claiming the sugar side letter is somehow invalid.

CONCERNS REGARDING THE FTAA

Consistent with our desire for genuine, global free trade in sugar, the U.S. sugar industry supports the goal of free trade for the Americas. Because of the uniqueness of sugar, particularly in terms of the highly distorted world market for sugar, a number of concerns must be taken into account as the FTAA is negotiated.

Compliance with Past Agreements. While the United States has far surpassed its Uruguay Round commitments, many other countries have yet to even minimally comply. Numerous examples exist where export subsidies, internal supports, and import tariffs for many crops are not in compliance with WTO commitments.

Despite the generous additional access to the U.S. market Mexico receives, Mexico is casting doubts on the validity of the NAFTA sugar provisions to which it agreed in 1993. Now, four years after the agreement's inception, Mexico has filed for a dispute panel resolution. Furthermore, counter to both WTO and NAFTA rules, Mexico has imposed extremely high duties on imports of U.S. corn sweeteners. The United States has been forced to seek redress through both WTO and NAFTA channels.

Unfortunately, foreign countries' failure to comply undermines the credibility of past agreements and jeopardizes the public's ability to support the negotiation of new ones. Foreign countries must be brought into full compliance with past agreements before the United States considers additional concessions in new agreements.

Minimum Access Commitment. In the Uruguay Round, the United States agreed it would import no less than 1.26 million short tons of sugar per year. In the NAFTA, the United States agreed it would import up to 275,000 tons (250,000 metric) of sugar from Mexico during transition years 7–14. The U.S. Administration has committed that the additional Mexican imports would count toward fulfillment of the URA import minimum.

We are concerned about how any additional access granted under the FTAA would be reconciled relative to our WTO minimum import commitment, and we are concerned about the possible effect on non-FTAA quotaholding countries that have come to rely, economically, on access to the preferentially priced U.S. sugar market.

Widely Varying Levels of Support. Unilateral reforms to U.S. agriculture policy in the 1996 Farm Bill far exceeded U.S. commitments made the year before in the Uruguay Round. Furthermore, developing countries, which dominate world agricultural trade and particularly sugar trade, were subject to a slower pace of reductions, if any.

As a result, the United States is way out in front of the rest of the world in removing its government from agriculture and has placed its farmers in a domestic free market situation. This gap makes American farmers uniquely vulnerable to continued subsidies by foreign competitors.

In sugar, two examples come to mind: 1) The EU sugar support price is approximately 40% higher than the stand-by U.S. support price. The Uruguay Round's formula-driven percentage reductions in support levels do *not* reduce the gap between the EU and the U.S. at all. 2) Actual U.S. sugar imports the past two years have been *nearly double* the 1.26-million-ton minimum import commitment the U.S. made in the Uruguay Round and about *six times* the URA global minimum.

It is key that American farmers not be penalized for attempting to lead the rest of the world toward free agricultural trade. American farmers must be given credit for the reforms they have endured.

Labor and Environmental Standards. The gap in government standards—and resulting producer costs—between developed and developing countries is well documented and immense. In sugar, the gap is particularly pronounced because, while the EU and the U.S. are major players, production and exports are highly dominated by developing countries, especially in the cane sector. The contrast is pronounced in the potential FTAA, in which the United States is the only major developed-country sugar producer.

American sugar producers comply with the world's highest standards for environmental protection—at a price. For example, the Everglades Forever Act (EFA) mandates that Florida farmers pay at least $232 million in taxes for Everglades preservation activities—on top of the many costs borne by farmers to monitor and clean water leaving farm areas. In Hawaii, extremely high environmental compliance costs have been a factor in driving two-thirds of the state's sugar growers out of business in the past 10 years. In many developing countries, by contrast, sugar mills face no restrictions, or no enforcement of restrictions, on the quality of water or air emissions.

American sugar farmers are proud to raise sugar with the highest possible regard for workers and the environment. But we should not be penalized in multilateral or regional trade negotiations for providing these costly protections. And foreign countries that do not provide such protections should not be rewarded.

If we are attempting to globalize or regionalize our economy, we should do the same with our food safety and worker and environmental protection responsibilities.

State Trading Enterprises (STE's). STE's are quasi-governmental, or government-tolerated organizations that support domestic producers through a variety of monopolistic buyer or seller arrangements, marketing quotas, dual-pricing arrangements, and other strategies. These practices were ignored in the Uruguay Round, but are, unfortunately, common in the world sugar industry. Major producers such as Australia, Brazil, China, Cuba, and India have sugar STE's, but were not required to make any changes in the Uruguay Round.

In addition to Brazil, other FTAA countries allow practices similar to those characteristic of STE's. We are studying the sugar trading systems in these countries, and will share our findings with Congress and the Administration. These, and other, foreign trade-distorting practices will have to be taken into account as the FTAA is negotiated.

RECOMMENDATIONS FOR THE FTAA NEGOTIATIONS

To address these concerns, we have several recommendations for U.S. FTAA negotiators.

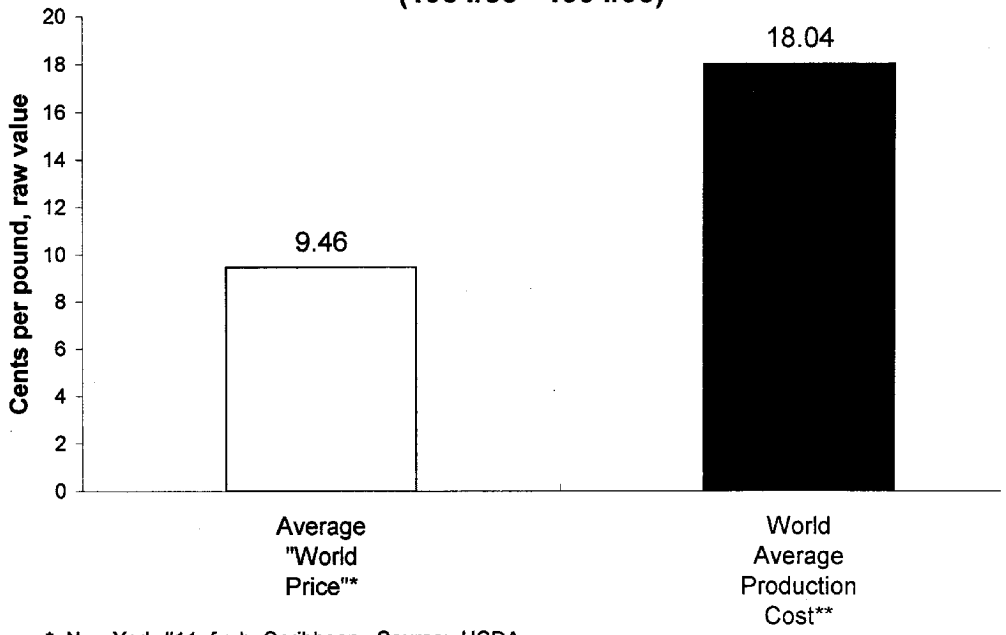
1. The United States should not reduce its government programs any further until other countries have complied with their Uruguay Round commitments and have reduced their programs to our level. Nor should the United States agree to expanding the NAFTA to the rest of the hemisphere until Mexico complies with the NAFTA.
2. The wide gap in labor and environmental standards between developed and developing countries must be taken into account in the FTAA, and addressed in a manner that ensures foreign standards rise to U.S. levels, rather than providing an advantage to developing countries with despicable labor and environmental standards.
3. Because of the uniqueness of the world sugar market and the huge differences between the nature of the U.S. sugar economy and those of developing nations that dominate the potential FTAA, sugar should receive special consideration, as it did in the NAFTA.

CONCLUSION

In conclusion, Mr. Chairman, thank you for convening this timely and important hearing. U.S. agriculture is extremely vulnerable as we approach new multilateral and regional trade negotiations. If we negotiate carefully and rationally, however, there is enormous potential for responsible American sugar producers to compete and prosper in a genuine free trade environment, free from the need for government intervention. We are anxious to work with you to resolve problems with past agreements, and then move ahead to forge, and enforce, new ones. Thank you for the opportunity to submit our views.

ATTACHMENT A

"World Price" for Sugar: Only Half World Average Cost of Producing Sugar (1984/85 - 1994/95)



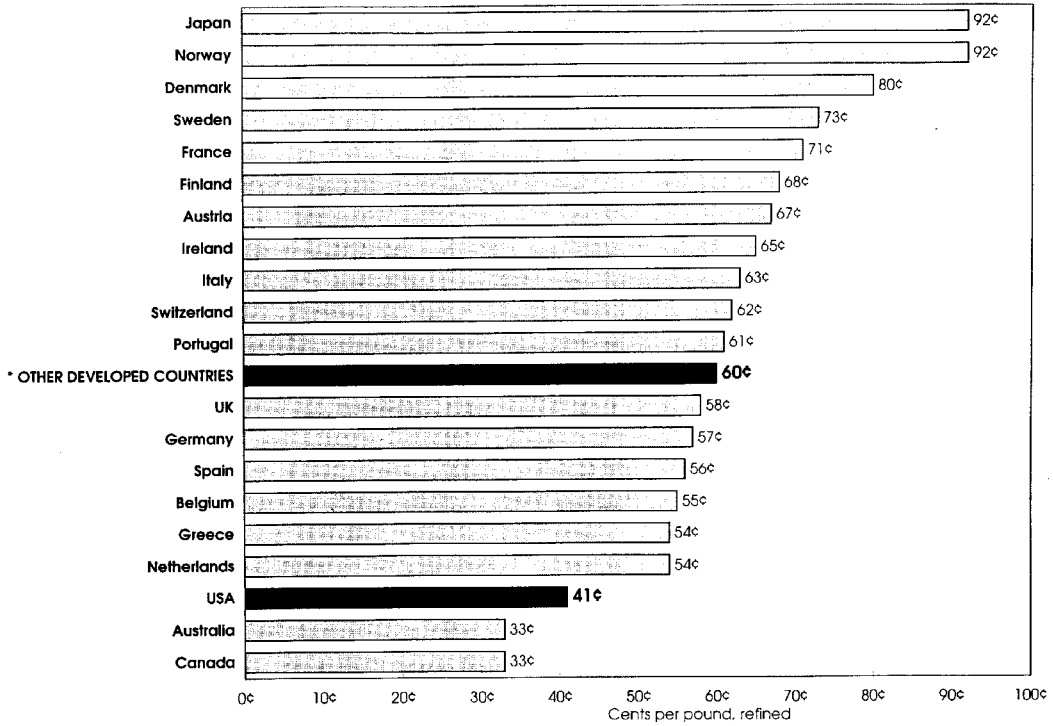
* New York #11, f.o.b. Caribbean. Source: USDA

** "A World Survey of Sugar and HFCS Field, Factory and Freight Production Costs: 1997 Report" LMC International Ltd., Oxford, England

wld$vscop2-98

ATTACHMENT B

Developed Countries' Retail Sugar Prices: USA 32% Below Average

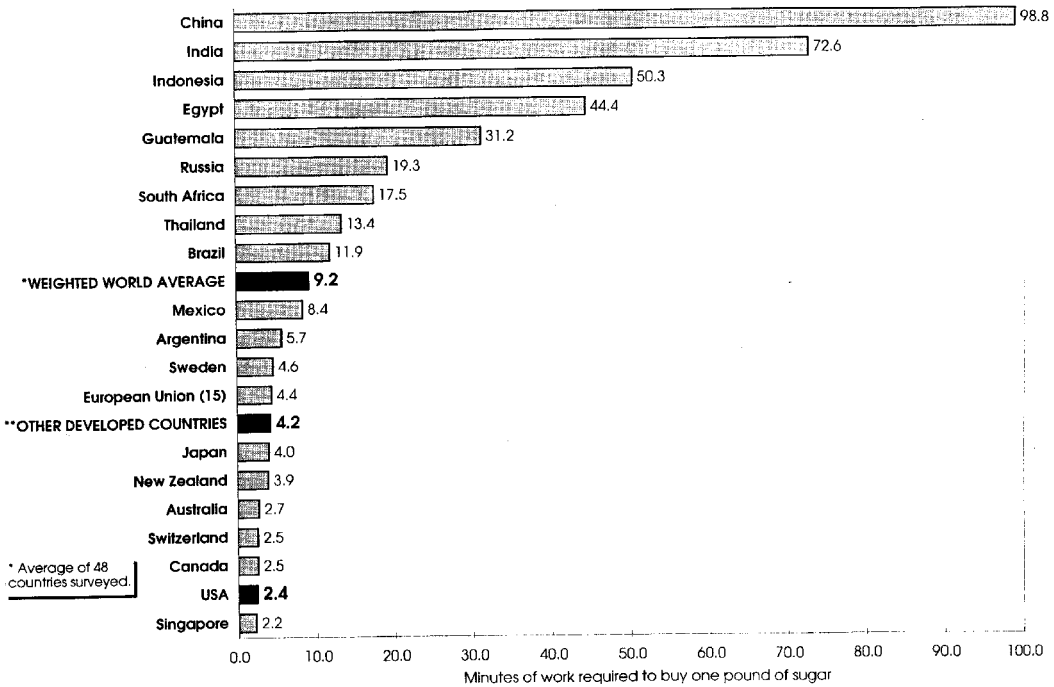


Source: LMC International Ltd., Oxford, England, June 1997.
Study of 48 countries, accounting for 76% of global sugar consumption: 1996 prices.
* "Other Developed Countries" is the average of the Organization for Economic Cooperation and Development (OECD) excluding the United States.

ASGA/ R0563

ATTACHMENT C

Minutes of Work to Buy One Pound of Sugar: USA Second Lowest in World

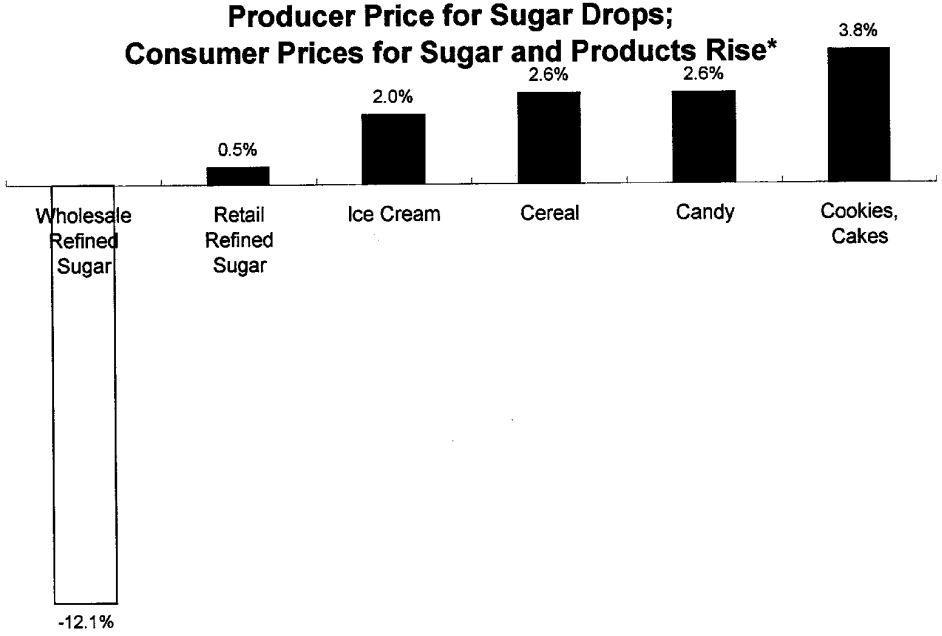


Source: LMC International Ltd., Oxford, England. June 1997. Study of 48 countries, accounting for 76% of global sugar consumption. 1996 prices.
NOTE: Calculations assume that the average person works for 2,500 hours per year and earns the average GNP per head. These calculations are based on 1994 World Bank population and per capita GNP data.
**"Other Developed Countries" is the average of the Organization for Economic Cooperation and Development (OECD) excluding the United States.

ASGA 6/97 0564

ATTACHMENT D

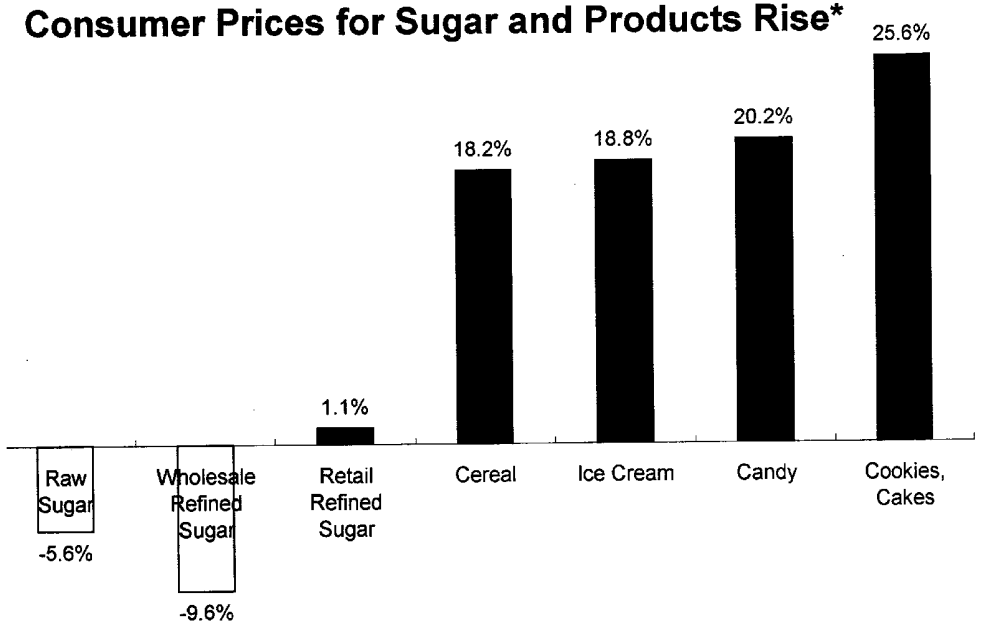
Since Start of 1996 Farm Bill: Producer Price for Sugar Drops; Consumer Prices for Sugar and Products Rise*



* Monthly average price changes from September 1996 to December 1997. Raw cane sugar: #14 contract, New York. Wholesale refined beet sugar: Midwest markets. Retail prices: Bureau of Labor Statistics consumer price indices. Data source: USDA.

ATTACHMENT E

Since 1990: Producer Prices for Sugar Drop, Consumer Prices for Sugar and Products Rise*



* Change in annual average prices from 1990 to 1997. Raw cane sugar: #14 contract, New York. Wholesale refined beet sugar: Midwest markets. Retail prices: Bureau of Labor Statistics consumer price indices. Data source: USDA. rawvsret5-2/98

Vickie R. Myers
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Washington, DC 20005

ATTACHMENT F

BACKING AMERICA'S BEET, CANE AND CORN FARMERS

Jack Roney
Director of Economics
and Policy Analysis
(tel) 202/457-1438

Joseph L.S. Terrell
Director of Public Affairs
(tel) 202/457-1438

May 21, 1997

The Honorable Charlene Barshefsky
U.S. Trade Representative
Office of United States Trade Representative
Winder Building, 600 17th Street N.W.
Washington, D.C. 20506

The Honorable Dan Glickman
Secretary of Agriculture
U.S. Department of Agriculture
Whitten Building, Room 200-A
Washington, D.C. 20250

Dear Ambassador, Dear Mr. Secretary:

With the start of the new round of multilateral agricultural negotiations growing closer, and with the beginning of the Geneva process of analysis and exchange of information, we thought this would be an appropriate time to share with you our views on U.S. objectives for this next round of negotiations.

The American Sugar Alliance is a coalition of U.S. growers and processors of sugarbeets, sugarcane, and corn for sweeteners. We are efficient, with costs of production below the world average. We have long supported the goal of genuine, multilateral elimination of all barriers to agricultural trade.

The world sugar market is one of the most highly distorted and most volatile markets in agricultural trade. All of the more than 100 countries that produce sugar exhibit some form of government intervention, including internal supports; import barriers; massive export subsidies, such as those by the European Union; state trading enterprises; and two-price systems.

These practices literally make the world sugar market a dumping ground, to the extent that the so-called "world price" has averaged only about half the world average cost of producing sugar over the past 15 years. It is only the continuation of tariff protection in the United States that prevents these enormous distortions from undermining the efforts of our efficient and non-subsidized producers.

We are fully committed to working toward an open trading system, but not at any price. As the Administration has said on many occasions regarding China's bid to accede to the World Trade Organization, trade must take place on a commercially viable basis. That is clearly not the case now in world sugar trade.

With this background in mind, we offer the following suggestions on objectives for the next round of negotiations:

* The United States should continue to insist on the elimination of all export subsidies. This objective should encompass appropriate disciplines on policies which essentially circumvent export subsidy commitments, such as pooling arrangements and dual pricing systems.

* State trading enterprises, which allow countries to control all facets of trade and extend monopolistic pricing practices to world markets, need strongly enhanced disciplines to provide price transparency and prevent predatory and discriminatory pricing.

* The passage of the FAIR Act has reduced U.S. agricultural support by far more than the Uruguay Round required. Other countries should match this reduction in terms of an aggregate measure of support before any additional reduction would be required in the United States.

* Countries which have not fulfilled their Uruguay Round commitments, or which have used various means to avoid or diminish these commitments, must be brought into full compliance with their obligations. This effort should also include arbitrary and capricious sanitary and phytosanitary restrictions which are not based on sound scientific principles. We urge that you aggressively pursue countries that have not complied and that no further concessions be negotiated with these countries until full and complete compliance is achieved.

  We point out in this regard that sugar imports into the United States have far exceeded -- in fact, nearly doubled -- our Uruguay Round commitment. Very few, if any, other commodities in the world can make this statement, a fact that needs to be taken into account in the negotiations.

* On market access, the United States should pursue a request/offer strategy to maximize our negotiating leverage to achieve these objectives. Developing countries do not have to make any further concessions until after the year 2004. Therefore, a formula-driven approach, such as was followed in the Uruguay Round, would give developing countries a free ride and would minimize our negotiating strength.

We hope you will seriously consider these suggestions, as you begin your preparations for the next round of trade negotiations. We would be happy to meet with you, at your convenience, to discuss these objectives in more detail.

Sincerely,

Carolyn Cheney

Carolyn Cheney, Chairman

ATTACHMENT G

ACCESS	ORIGINAL NAFTA	SIDE LETTER
Years 1 - 6 (1994-99)		
Mexico *not* surplus producer	Greater of 7,258 mt or "other country" share of TRQ	Same
Mexico surplus producer	25,000 mt	Same
Years 7 - 14 (2000-07)		
Mexico *not* surplus producer	Greater of 7,258 mt or "other country" share of TRQ	Same
Mexico surplus producer *one* year	Year 7: 150,000 mt; Years 8-14: 110% of previous year	Mexican surplus production, *up to 250,000 mt,* each year
Mexico surplus producer *two consecutive* years	*All* Mexican surplus production	This provision deleted
Year 15 (2008)	U.S. - Mexican common market; same internal supports, external tariffs; rules of origin remain	Same
Surplus Producer Definition	Sugar production minus sugar consumption	Sugar production minus the sum of sugar consumption *and* HFCS consumption

Statement of Dr. Steven Cord, Research Director, Center for the Study of Economics, Columbia, Maryland

Let us start by agreeing that free trade between nations is a good idea; then why not free trade within a nation. A tariff is a tax on imports, but if it's no good then aren't all taxes no good?

If we do away with taxes on producers (e.g., workers and businesses), how will government subsist? Easy—by taxing locations, many of which are quite valuable and are not produced by human labor. The value of these locations is exactly ex-

pressed by the value of land, which can be assessed with a high degree of accuracy. Land values are right now widely taxed and 16 U.S. cities are taxing land more than buildings and with uniformly good results.

Imagine if we had real free trade within our country—if land values were more fully taxed in place of taxes on workers and businesses. Wouldn't production be spurred and wouldn't land have to be more efficiently used?

Can the federal government do this? Yes! This organization has done extensive research to find out how and invites inquiries.

Client listing: The Center for the Study of Economics is a non-profit organization supported by two private foundation grants, and contributions and bequests from about 500 members across the country, but we are testifying on our own behalf.

Incentive Taxation
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(web page) http://www.smart.net/~hgeorge

SUMMARIES OF TWO-RATE PROPERTY TAX STUDIES

The Proposal - Shift the property tax on buildings to land assessments by taxing land assessments at a higher percentage rate than building assessments ("two-rate rather than one-rate").

Why Do It - (1) If buildings are taxed less, they'll be more profitable to construct and operate, also more affordable to rent or buy; and if land-sites are taxed more, they'll be developed more fully, thereby creating jobs and new construction as well as a revenue for local government (which will re-coup the property tax revenue lost by not taxing buildings so much because it will be taxing land more). (2) All tenant-voters and most homeowner-voters will pay less tax.

- **Over 700 cities** in the world are taxing buildings less than land or not at all, and ALL studies indicate good results.
- **Dozens of C.S.E. studies** show that most homeowners and all tenants pay less with a building-to-land shift in the property tax.
- **Another C.S.E. study** showed that the average property tax on buildings is equivalent to a 14.6% sales tax.
- **Pittsburgh is** now taxing land assessments at 18.45% and building assessments at only 3.2% instead of both at about 5.9%; in 1979, when it first started to jump its land tax rate more than its building tax rate, its new construction increased **293%** in the three years after the initial building-to-land switch as compared to the previous three years, whereas new office-building construction nationwide increased only **54%**.
- **New Castle, Pa.'s** building-permits issued jumped **+70%** in the three-year period after it shifted some of its property tax from buildings to land, whereas neighboring and comparable Farrell experienced a **-66%** decline, and neighboring and comparable Sharon experienced a **-90%** decline during the same time periods.
- **McKeesport, Pa.** likewise out-constructed its neighboring and comparable cities of Duquesne **+38%** to **-20%** and Clairton by **+38%** to **-28%**.
- **Scranton, Pa.** likewise out-constructed neighboring and comparable Wilkes-Barre by **+23%** to **-47%.**
- **Clairton, Pa.** likewise exceeded the national average for new construction after its building-to-land tax shift (**+8.5%** to **-5.8%**).
- **Aliquippa** likewise experienced a **+97%** increase after its building-to-land property-tax shift; neighboring but better situated Ambridge and Beaver Falls experienced declines.
- **Victoria, Australia**: 24 cities in this state switched from taxing land and buildings to taxing land only; they ALL experienced a construction spurt exceeding that of their statistical district.
- **Sydney, Australia** (3.7 million population) uses land value taxation successfully, according to Urban Land Institute research monograph #19.
- **Many more studies** indicate that if buildings are un-taxed, they will be more affordable and profitable-to-construct, and when land assessments are up-taxed, sites are used more efficiently, thereby creating jobs and new construction.

November 1991

Incentive Taxation

Seven Nobel Prize Winners Endorse Land Value Taxation

The headline is correct. If we had eight, would you be more impressed, and even more important, moved to action?

Milton Friedman: "I share your view that taxes would be best placed on the land, and not on improvements."

Herbert Simon: "Assuming that a tax increase is necessary, it is clearly preferable to impose the additional cost on land by increasing the land tax, rather than to increase the wage tax - the two alternatives open to the City (of Pittsburgh). It is the use and occupancy of property that creates the need for the municipal services that appear as the largest item in the budget - fire and police protection, waste removal, and public works. The average increase in tax bills of city residents will be about twice as great with wage tax increase than with a land tax increase."

Paul Samuelson: "Pure land rent is in the nature of a 'surplus' which can be taxed heavily without distorting production incentives or efficiency." A land value tax can be called "the useful tax on measured land surplus."

James Tobin: "I think in principle it's a good idea to tax unimproved land, and particularly capital gains (windfalls) on it. Theory says we should try to tax items with zero or low elasticity, and those include sites."

James Buchanan: "The landowner who withdraws land from productive use to a purely private use should be required to pay higher, not lower, taxes."

Franco Modigliani: "It is important that the rent of land be retained as a source of government revenue. Some persons who could make excellent use of land would be unable to raise money for the purchase price. Collecting rent annually provides access to land for persons with limited access to credit."

Robert Solow: "Users of land should not be allowed to acquire rights of indefinite duration for single payments. For efficiency, for adequate revenue and for justice, every user of land should be required to make an annual payment to the local government equal to the current rental value of the land that he or she prevents others from using."

The current president-elect of the American Economics Association, **William Vickrey,** also endorses land value taxation: "It guarantees that no one dispossesses fellow citizens by obtaining a disproportionate share of what nature provides for humanity."

The endorsements from the last three economists named above were taken from a letter dated November 7, 1990 to Mikhail Gorbachev signed by 30 prominent U.S. economists.

Statement of Chemical Manufacturers Association, Arlington, Virginia

The U.S. chemical industry is a leader in free trade and U.S. exports. The chemical industry is America's largest exporter, and in 1997, accounted for over $69 billion in U.S. exports. For the same year, U.S. imports of chemicals and allied products were $50 billion, for a U.S. trade surplus in the sector of over $19 billion. Cumulatively, the industry's trade surplus in the chemicals sector over the last 10 years amounts to $172 billion.

The negotiations to create the Free Trade Area of the Americas (FTAA) are of critical importance for the future of our industry. U.S. companies have long been the preferred suppliers in Latin American markets, but this situation is rapidly changing, as the MERCOSUR member countries of Brazil, Argentina, Uruguay and Paraguay move to negotiate agreements with the European Union, and strengthen linkages with other trading partners in South America. The Free Trade Area of the Americas would be a powerful means to retain America's ability to be the preeminent supplier to the Hemisphere. Considering just the markets of Central and

South America, these countries provide the U.S. chemical industry with market potential of 400 million persons and combined Gross Domestic Products of $2.7 trillion.

The U.S. chemical industry is very much a global industry. Our exports to Europe are strong, yet the European market is mature. The emerging markets in Asia and Latin America will be our fastest growing export markets, and with the current financial crisis still burdening many of the markets in Asia, Latin America becomes an even more significant destination for America's chemical exports.

The Chemical Manufacturers Association supports the goal of negotiating the FTAA by 2005. We believe this goal is realistic and achievable. Although we recognize that the 34 economies participating in the FTAA are diverse as to size, economic strength, and overall competitiveness, we are firmly convinced that the key to continued prosperity is trade without barriers, subsidies and other unfair practices. Eliminating impediments to market access for goods and services fosters economic growth which, in turn, will raise standards of living in the region, and will improve working conditions for people throughout the Americas.

Key aspects of the FTAA of importance to the U.S. chemical industry include:

Consistency with the WTO. The U.S. chemical industry supports the principle that the FTAA should be consistent with all aspects of the WTO. At the same time, the FTAA should seek to improve upon WTO disciplines and agree to implement trade-liberalizing rules that go beyond the basic WTO requirements.

Tariffs and non-tariff barriers. Free trade is good for U.S. chemicals exports. In NAFTA, for example, Canada is our single largest market for U.S. chemicals, accounting for 19 percent of the industry's total exports. Under NAFTA, U.S. exports of chemicals and allied products to Canada more than trebled from 1989–1997, rising from $4.3 billion to $13.1 billion. Export growth to Mexico has been nearly as rapid rising in 1997 to $6.3 billion, just short of triple the 1989 total of $2.2 billion.

Rules of origin. These need to be clear and easy for the industry to understand. At the same time, the rules must ensure that the benefits of the FTAA accrue to producers within the Hemisphere.

Intellectual Property Rights. The FTAA should aim to create strong rules for the protection of intellectual property rights in the Hemisphere. Enacting TRIPs-consistent laws and regulations throughout the Hemisphere by 2000, for example, would be a desirable step and could certainly be considered "concrete progress."

Standards and Conformance Testing. Chemical products are often highly regulated and subject to numerous standards and certification requirements. Harmonization of product standards and testing requirements throughout the Hemisphere is critical to ensure safe handling and at the same time avoid increasing compliance costs and creating new barriers to trade.

Environment and Labor. Although CMA supports individual country efforts on environmental and labor initiatives, governments should not be compelled to adopt policies through the inclusion of unrelated or inappropriate measures in trade agreements. For example, the Chemical Manufacturers Association is concerned over the U.S. government's promotion of environmental elements in the Multilateral Agreement on Investment (MAI) now under negotiation in the Organization of Economic Cooperation and Development (OECD). In the MAI, the U.S. is proposing to single out the chemical industry in an agreement with broad implications for U.S. business. If adopted, CMA believes this proposal will unfairly stigmatize chemical industry investments, as well as possibly infringe on MAI member states' authority in the area of environmental protection. In short, environment and labor issues should not be a required element in a trade agreement.

Role of the business community. We support a regular and formal role for the participation of the business community in the formation of the FTAA, and beyond. The agreement may be among governments, but businesses are the drivers for a strong economy. Industry should be able to provide views to the negotiators, and to the officials of the 34 participating governments in an organized fashion. The Administration's proposal for a Committee on Civil Society, while interesting, does not appear to adequately fulfill this need.

Finally, the members of the Chemical Manufacturers Association strongly support the renewal of the President's fast-track negotiating authority. We view such authority as critical to the ability of the United States to demonstrate leadership on international trade questions. In the context of the FTAA, it is evident that renewed fast-track authority is needed as soon as possible in order to infuse real momentum into the Hemispheric negotiations.

Statement of Rufus E. Jarman, Jr., President, and Patrick C. Reed, Chairman, International Trade Committee, Customs and International Trade Bar Association, New York, New York

ANY NEW TRADE AGREEMENTS SHOULD NOT INCLUDE BINATIONAL PANEL DISPUTE RESOLUTION

The Customs and International Trade Bar Association ("CITBA") is pleased to submit this statement for the record in connection with the above captioned hearing. CITBA is a national Bar Association comprised of attorneys who practice customs and international trade law. All active members are members of the Bar of the United States Court of International Trade. CITBA has no political or ideological affiliations or motivations. CITBA's members represent every manner of party from individuals to multi-national corporations both domestic and foreign.

CITBA has continuously, and strongly, opposed the institution of binational panel review of disputes arising under the antidumping and countervailing duty laws since such procedures were first seriously suggested in connection with the negotiation of the U.S./Canada Free Trade Agreement ("CFTA") in 1987. CITBA's opposition to these procedures is based both on policy grounds and on legal/constitutional grounds.

I. *Chapter 19 Binational Panel Review is Bad Policy*. Even if there were no legal objections, there exist no rational policy objectives served by the present binational panel review, much less extension of such procedures to any proposed agreement on a free-trade area of the Americas or otherwise. To the contrary, for a number of reasons, the binational panel review system represents extremely bad public policy with great potential for mischief, particularly to the extent that it might be extended beyond its present limited existence in NAFTA.

The binational panel review system was never the result of any coherent and cohesive policy objective. Rather, it was strictly the result of political compromise resulting in a system which was probably worse than that desired by either the Canadian or United States negotiators. This was clearly reviewed by Hon. Gregory W. Carman, Chief Judge of the United States Court of International Trade at an address delivered to CITBA at its annual dinner on April 16, 1997.[1]

Not surprisingly, each side [Canada and the United States] had different objectives it hoped to accomplish in the negotiations. In an article published in the Spring 1995 issue of *Law and Policy in International Business,* Charles Gastle and Jean-G. Castel, two Canadian lawyers, discussed the "awkward compromise" that brought about the CFTA/NAFTA mechanism for settling disputes. They state:

The Canadian goal had been to eliminate existing antidumping and countervailing duty rates [in the United States] and to negotiate a new set of laws modeled on competition law principles with a binational tribunal to enforce them. This goal proved elusive because U.S. trade officials wanted strict limits placed upon what they considered to be trade distorting practices through Canada's improper use of subsidies.

While the Canadians sought to exempt or ameliorate the effect of the United States' dumping and countervailing duty laws on its products, there was strong opposition in Congress to weakening these laws.

To resolve the conflict resulting from these polarizing points, the parties agreed not to change United States or Canadian countervailing or dumping laws, and substituted binational panels for judicial review. While the CFTA's adoption of the binational panel dispute resolution system was designed only as an interim measure, this compromise was materially significant in securing approval of the treaty in both countries. (Footnotes omitted.)

What else but political compromise could explain the creation of a system the purpose of which is to apply U.S. law, but which usurps specialized constitutional courts established for that purpose in order to substitute non-judicial "experts for tenured judges?"

When the binational panel system was first adopted, it was expressly understood that the system was to be temporary and was not to be continued or expanded into other contexts. Again, this aspect was succinctly reviewed by Judge Carman as follows:

The United States and Canada agreed to suspend CFTA upon NAFTA's entry into force on January 1, 1994. nevertheless, Chapter Nineteen of NAFTA substantially

[1] The excerpts contained herein are taken from the version of Judge Carman's speech as published at Volume XXVII, Stetson Law Review 643. A similar version also appears at 21 Fordham Int'l. L.J. 1 (1997).

replicates the binational panel mechanism. NAFTA, however, ... contains no language indicating the panel process is intended to be temporary, as was expressly stated in the CFTA.

One problem which is virtually unavoidable in the binational panel review system is that it is virtually impossible to select panels composed of individuals who do not at least have the appearance of lacking impartiality as a result of their professional activities. Many panelists are lawyers who, of necessity, have represented companies or governments on one side or the other, sometimes in industries closely associated with those involved in the dispute. Indeed, the panel mechanism unavoidably involves the built-in dilemma that in order to find competent and qualified individuals who understand the subject matter sufficiently well to serve as panelists, it is necessary to select persons with specific experience representing participants in other disputes. This, of course, is one of the very reasons for lifetime tenure and an independent judiciary. Many CITBA members refuse, on principle, to participate in panel proceedings as this would be, they believe, incompatible with their roles as advocates in their day-to-day activities in the international trade areas.

II. *The Binational Panel Procedure is Unconstitutional*. Whether or not the binational panel procedure represents acceptable policy, CITBA is of the strong opinion that the procedure is impermissible under basic constitutional principles. CITBA's basic position was set out in an *amicus curiae* brief filed in 1997 in *American Coalition for Competitive Trade v. United States*, No. 97–1036 (D.C.) Cir. filed Jan. 16, 1997. This case was dismissed on the basis of lack of standing by the plaintiff. No court has ever addressed the fundamental constitutional issues involved. CITBA's position is summarized below.

A. Elimination of Article III Judicial Review Of Antidumping Duty And Countervailing Duty Determinations Is Unconstitutional.

1. *Antidumping And Countervailing Duty Determinations Result In The Assessment of Federal Taxes*. The U.S. antidumping and countervailing duty statutes are intended to remedy injury to U.S. industry caused by imports which are sold at less than their normal value ("dumped") or which have been subsidized. The statutory remedy consists in imposing a special import duty, payable to the United States, on the dumped or subsidized imported merchandise. *See* 19 U.S.C. 1671 *et seq.* (codifying Tariff Act of 1930, 701 *et seq.*, as amended).

Thus, in assessing whether the system of binational panel review in antidumping and countervailing duty matters under NAFTA is constitutional, it is important to understand that the underlying administrative decisions result in the assessment of import duties, a form of federal taxation. The system of binational panel review means that the government can assess taxes without having the lawfulness of its tax-assessment decisions judicially reviewed by an Article III court. Responsibility for reviewing the lawfulness of tax assessments is assigned to panels of five private individuals, of whom two or three are not U.S. citizens.

CITBA maintains that the system of binational panel review is unconstitutional because, contrary to the requirements of Article III, it precludes Article III judicial review in cases contesting the government's assessment of antidumping and countervailing duties.

2. *The Drafting History Of The Constitution Shows That The Federal Judicial Power Was Intended To Apply To Federal Customs Cases*. One of the main purposes of the Constitution was to provide the Federal Government with the authority to raise revenue through import duties (*see* U.S. Constitution, Article I, Section 8). The drafters also intended to create federal courts, which had not existed under the Articles of Confederation.

At the constitutional convention, each of the major initial plans provided that federal courts be established to hear the customs cases that would arise under the new federal taxation power. Thus, for example, the "Virginia Plan," proposed by Governor Randolph of Virginia, provided:

9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature ... that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all ... cases ... which respect the collection of the National Revenue ....

Farrand, I *Records of the Federal Convention of 1787* 21–22 (New Haven, 1911, 1936, 1986) ("Records"). Competing plans submitted by New Jersey, Hamilton, and Pinckney also each provided for similar new federal judicial review over tax matters. *See id*. at 136, 223–224, 230, 232, 237, 243, 244, 293 & 305. As the convention granted more powers to Congress, the functions of the federal courts encompassed more subjects, and the judicial power that we know today in Article III became more

generalized. Thus, as James Wilson stated in reference to Congress's control over duties and trade, "the Judicial should be commensurate to the legislative and executive authority." *Id.* at 237, n.18; *see also* George Washington's letter of transmittal at II *Records* 666.

The foregoing drafting history of the Constitution establishes that the Article III judicial power was intended specifically to extend to cases involving import duties. The system of binational panel review improperly withdraws cases of this kind from Article III courts.

3. *Case Law Does Not Support The Constitutionality Of Binational panel Review*. The seminal case on whether it is constitutional to preclude Article III judicial review in customs duty cases is *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1846). In that four-to-three decision,[2] the Court interpreted a statute (Act of March 3, 1839, ch. 82, 2, 5 Stat. 339, 348–49) so as to extinguish use of the common law action in assumpsit for obtaining judicial review of customs duty assessments and, instead, to vest authority to resolve customs disputes in the Secretary of the Treasury. The Court further ruled that the statute as interpreted was constitutional. However, within 36 days after the Court's decision, Congress amended the 1839 statute to overrule the Court's interpretation and restore the right to obtain judicial review in federal court by action in assumpsit to determine the legality of customs duty assessments. (Act of February 26, 1845, ch. 22, 5 Stat. 727.)

Cary v. Curtis has been miscited for the proposition that claims for refunds of customs duties "ha[ve] at times been confided to the Secretary of the Treasury, with no recourse to judicial proceedings." *Ex parte Bakelite Corp.*, 279 U.S. 438, 458 (1929). On the contrary, in a passage from *Cary v. Curtis* that often seems to have been overlooked, the Court majority emphasized that it did not intend to condone the constitutionality of eliminating Article III judicial review entirely in import duty cases. The Court noted the argument that, under the statute as interpreted by the Court, "the party is debarred from all access to the courts of justice, and left entirely at the mercy of an executive officer ...." 44 U.S. (3 How.) at 250. The Court rejected the premise of the argument: "[n]either have Congress nor this court furnished the slightest ground for the above assertion" that judicial review was precluded. *Id.* Rather, the Court felt that other procedures for obtaining review besides an action in assumpsit remained available. *Id.* (suggesting "by replevin, or in an action of detinue, or perhaps by an action of trover ....").

In fact, although the common law action in assumpsit was often used in customs litigation before *Cary v. Curtis*, it was not only the procedure available at the time. As the Court accurately stated, judicial review in nineteenth century customs cases was sometimes obtained by other common law forms of action, such as the writ of trover, *e.g.*, *Tracy v. Swartwout*, 35 U.S. (10 Pet.) 80 (1836), or the writ of trespass, *Sands v. Knox*, 7 U.S. (3 Cranch) 499 (1806) (reviewing decision of New York courts in action in trespass). And judicial review was also sometimes obtained by the importer's refusing to pay the duties demanded by the government or to pay the customs bond given to secure the duty. This refusal forced the government to sue to obtain payment on the bond or to hold the importer personally liable for the duty. *E.g.*, *United States v. Kid*, 8 U.S. (4 Cranch) 1 (1807) (action on customs bond); *Meredith v. United States*, 38 U.S. (13 Pet.) 486 (1839) (holding that customs duty is personal obligation of importer).

Thus, as the Supreme Court later noted, *Cary v. Curtis* "specifically declined to rule whether all right of action might be taken away from a protestant, even going so far as to suggest several judicial remedies that might have been available." *Glidden Co. v. Zdanok*, 370 U.S. 530, 549 n.21 (1962) (citing 44 U.S. (3 How.) at 250). This ruling in *Glidden* criticized the miscitation of *Cary v. Curtis* noted above in *Ex parte Bakelite Corp.*, and the plurality opinion in *Glidden* expressly overruled *Bakelite*.

B. The System of Binational Panel Review Violates the Appointments Clause.

CITBA maintains that the system of binational panel review in antidumping and countervailing duty matters under Chapter Nineteen of NAFTA is unconstitutional because it violates the Appointments Clause in Article II, Section 2 of the Constitution. Members of binational panels are officers of the United States under *Buckley v. Valeo*, 424 U.S. 1, 126 (1976) and, therefore, they are required to be appointed in accordance with the Appointments Clause.

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[2] Justices Story and McLean filed written dissents, but scholarly research has revealed that Justice Wayne dissented without opinion. *See* Roger W. Kirst, *Administrative Penalties and the Civil Jury: The Supreme Court's Assault on the Seventh Amendment*, 126 U. Pa. L. Rev. 1281, 1334 n.258 (1978) (citing the minutes of the Supreme Court).

Customs jurisprudence does not support the constitutionality of the method for appointing binational panelists under Chapter Nineteen. In *Auffmordt v. Hedden*, 137 U.S. 310 (1890), the Supreme Court ruled on the constitutionality of the system of "merchant appraisers" used, prior to 1890, to review certain administrative decisions on the appraised value of imported goods under the customs laws.

Under the customs laws before 1890, if an importer was dissatisfied with the customs appraiser's determination of the appraised value of imported goods, the dissatisfied importer could request a reappraisement by giving notice to the local Collector of Customs, the senior customs official at reach port of entry. *See Auffmordt v. Hedden*, 137 U.S. at 312 (citing Rev. Stat. 2930). The reappraisement was conducted by two persons: a government official known as a General Appraiser, and a "discreet and experienced merchant, ... [a] citizen[] of the United States, ... familiar with the value and character of the goods in question ...." who was selected by the Collector of Customs. *Id*. The General Appraiser and the merchant appraiser would "examine and appraise" the imported goods, and if they disagreed, the Collector would decide between them. Under the statute, the "appraisement thus determined [was] final, and [was] deemed to be the true value" of the goods. *Id*. (Alternatively, if a General Appraiser was not available, the Collector selected two merchant appraisers to conduct the reappraisement. *Id*.)

In *Auffmordt v. Hedden*, the importer contended that the reappraisement procedure violated the Appointments Clause because the merchant appraiser was an "inferior officer" of the United States who could only be appointed by the President, a court, or the head of a department, and not by the local Collector of Customs. The Supreme Court ruled that the merchant appraiser was not an "inferior officer' within the meaning of the Appointments Clause and, therefore, was not required to be appointed in accordance with its provisions. 137 U.S. at 326–27. The Court explained that the merchant appraiser was "an expert, selected as such." *Id*. at 327. He was "an executive assistant, an expert assistant to aid in ascertaining the value of the goods, ... and selected for his special knowledge in regard to the character and value of the particular goods in question." *Id*. His "position [was] without tenure, duration, continuing emolument, or continuing duties, and he acts only occasionally and temporarily." *Id*.

The nineteenth century merchant appraiser is materially different from the members of binational panels under NAFTA. Therefore, the Supreme Court's holding in *Auffmordt* that a merchant appraiser is not an "officer" of the United States should not be extended to binational panelists. First, the merchant appraisers made fact-finding decisions based on their expertise on particular imported goods. In contrast, binational panelists perform a judicial-type function by adjudicating questions of law based on an underlying administrative record. Second, unlike binational panelists whose decisions are not subject to judicial review at all, the reappraisement decisions in nineteenth century customs law were subject to judicial review in federal court for errors of law, jurisdiction, and procedure. *See*, *e.g.*, *Stairs v. Peaslee*, 59 U.S. (18 How.) 521 (1855) (reappraisement judicially reviewed on issue of statutory interpretation); *Greely v. Thompson*, 51 U.S. (10 How.) 225 (1850) (reappraisement judicially reviewed on issues of procedural irregularity and statutory interpretation). *But cf. Hilton v. Merritt*, 110 U.S. 97, 106 (1884) (reappraisement is final and not subject to judicial review on factual determination of value; "the valuation made by the customs officers [is] not open to question in an action at law as long as the officers acted without fraud and within the power conferred on them by the statute."). Moreover, so long as the reappraisement was conducted by a General Appraiser and a merchant appraiser (as in *Auffmordt*), the decision by the merchant appraiser had no effect unless one of the relevant government officials (either the General Appraiser or the Collector) agreed with the merchant appraiser.

Accordingly, the members of binational panels exert materially more authority pursuant to the laws of the United States than nineteenth century merchant appraisers. This makes the binational panelists "officers" or "inferior officers" of the United States within the meaning of the Appointments Clause.

III. *Conclusion*. The United States has a well functioning system of qualified constitutional courts to apply United States law in antidumping and countervailing duty disputes. Replacing these courts with binational panel review is bad policy and of dubious constitutional validity. Thus, binational panel procedures should not be extended under any new trade agreements.

Respectfully submitted,

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
By Rufus E. Jarman, Jr., President

Statement of Dresser-Rand Co., Corning, New York

I. Introduction

These comments are submitted on behalf of the Dresser-Rand Company pursuant to the Honorable Philip M. Crane's March 17, 1998, announcement of a public hearing on the Free Trade Area of the Americas (FTAA). Dresser-Rand is a leading global supplier of centrifugal and reciprocating compressors, gas expanders, gas and steam turbines, and related equipment. The Dresser-Rand Company is a partnership between Dresser Industries, Inc. of Dallas, Texas and Ingersoll-Rand Co. of Woodcliff Lake, New Jersey. Dresser-Rand combines the facilities and expertise of these two companies, along with that of Worthington Steam Turbine Division, Turbodyne, and Terry Corporation, in the design, manufacture, sale, and servicing of turbines, compressors, and other equipment. Dresser-Rand's headquarters are located at 1 Baron Steubon Place, Corning, New York 14830 (tel. (607) 937–6441)[1] These comments address the specific objectives for the FTAA negotiations that are likely to benefit Dresser-Rand and the domestic turbo-compressor and steam turbine industry.

II. Market Access: The United States Should Negotiate Reciprocal Tariff Rates for Turbo-Compressor and Steam Turbine Products Traded Within the Americas

Dresser-Rand markets and exports turbo-compressor systems, compressors, steam turbines, and allied products throughout the Americas and the world. Exports accounted for over half of company sales over the past several years. To date, Dresser-Rand systems are installed and operating in Argentina, Aruba, Brazil, Canada, Chile, Colombia, Mexico, Trinidad and Tobago, and Venezuela. This year, Brazil and Venezuela have been particularly active potential export markets. As shown by Attachment 1, however, the tariff rate differential between Brazilian and U.S. tariffs, for example, is substantial. Duties imposed on U.S. imports in 1997 ranged from 0.7% to 7.0%. By comparison, Brazil imposed duties from 5% to 20%.

In terms of overall trade, Brazil has traditionally been the United States' largest trading partner of the South American countries.[2] Brazil's trade reform since 1990 is expected to increase opportunities for U.S. exporters.[3] In recent years, Dresser-Rand has booked major system contracts for installation in Brazil. Indeed, with the current financial crisis in Asia, Brazil and other South American countries are vital markets for Dresser-Rand's exports. But, current Brazilian tariffs on turbo-compressor and steam turbine products, represent a significant trade barrier.

The United States, Mexico and Canada negotiated zero-for-zero tariff concessions under the North American Free Trade Agreement (NAFTA), with respect to imports of turbo-compressors and steam turbines. Certain compressor parts are subject to duties when imported from another NAFTA country into Mexico, until 2003. The United States unilaterally provides duty-free access to imports from FTAA countries under the Generalized System of Preference Program, the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act. With the exception of NAFTA, however, duty-free access to the U.S. market under these programs, and reciprocal duty-free treatment, is not guaranteed or permanent. Therefore, in the context of the market access negotiations, the United States should negotiate to obtain reciprocal tariff treatment with all FTAA countries so that duties on U.S. exports of turbo-compressor and steam turbine products are at the same levels as duties on U.S. imports from FTAA countries.

In the global market for turbo-compressors, steam turbines, and allied equipment, competition is fierce and the price is critical. Contractors building large-scale chemical or petro-chemical plants or refineries will typically award the contract to the lowest-price qualified bidder. Jobs are bid by manufacturers invited from around the

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[1] The primary manufacturing facilities for turbines and compressors are located in the state of New York (Olean, Painted Post, Wellsville) with additional facilities in Broken Arrow, Oklahoma. Electronic control systems for these products are manufactured by Dresser-Rand in Houston, Texas. The company manufactures electric motors for use in turbo-compressor trains and generators for turbine-generators in Minneapolis, Minnesota. Dresser-Rand's international operations include compressor and turbine manufacturing facilities in LeHavre, France; Kongsberg, Norway; and Oberhaussen, Germany.

[2] USTR, *Future Free Trade Area Negotiations: Report on Significant Market Opening* 6 (May 1, 1997).

[3] *Id.*

world. Because of the open U.S. market, the dependence on exports, and the fierce competition among global manufacturers, U.S. producers are sensitive to even small changes in price. The U.S. turbo-compressor industry in 1997 obtained relief under the antidumping law with respect to certain imported turbo-compressor systems from Japan. A predicate for such relief was the finding of the International Trade Commission that dumped imports materially injured the U.S. industry.[4] And, the Commission found that "the record demonstrates the importance of price in most purchasing decision once a technical fit is established."[5]

More recently, workers in Dresser-Rand's manufacturing facilities, engaged in the production of reciprocating compressors, qualified for adjustment assistance as a result of the adverse effects of "increased imports."[6] Increased market access and export opportunities within the FTAA region offer the potential to reverse such setbacks.

Negotiation of duty-free or reciprocal access is particularly important in view of the various negotiations between the European Union and countries within the Americas. There are only a few turbo-compressor manufacturers in the world, and several of our largest competitors are located in Europe. The remaining manufacturers are in Japan. To the extent that these multi-national producers obtain more favorable tariff treatment, U.S. exports are at an unwarranted competitive disadvantage.

III. Competition Policy: The United States Should Negotiate Competition Rules That Define Actionable Anti-Competitive Practices and Procedures

Among the negotiating objectives identified by the San José Ministerial Declaration of March 19, 1998, were the following objectives with respect to competition policy: (1) to advance towards the establishment of juridical and institutional coverage at the national, sub-regional or regional level, that proscribes the carrying out of anti-competitive business practices, and (2) to develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within countries of the Hemisphere. In general, the negotiations aim to guarantee that the benefits of the FTAA liberalization process will not be undermined by anti-competitive business practices.

Prior to establishing these negotiating objectives, the FTAA Working Group on Competition Policy received an inventory of the various national laws governing competition in the 34 countries expected to participate in FTAA negotiations. According to an August 30, 1997, report, only 12 countries have legislation and institutions governing competition policy while another 8 countries are in the process of drafting legislation.[7] A review of existing legislation in the 12 FTAA countries reveals that a significant number of those countries agree with the United States that, inter alia, abuse of dominant positions (or monopolies), predatory pricing, and tying arrangements should be considered anti-competitive practices.

Many of the FTAA countries have also participated in regional trade and integration arrangements that include provisions governing competition policy: (1) North American Free Trade Agreement, (2) the U.S.-Canada Agreement Regarding the Application of Their Competition and Deceptive Marketing Practices laws; (3) the Canada-Chile Free Trade Agreement; (4) the Group-of-Three Treaty Between Mexico, Colombia, and Venezuela; (5) the Andean Group; and (6) the Protocol for the Defense of Competition of Mercosur.[8] Only two of the six agreements, however, provide substantive standards that define anti-competitive practices: (1) the Decision 285 of the Andean Group; and (2) the Protocol for the Defense of Competition of Mercosur. For example, both Decision 285 and the Mercosur Protocol consider abuses of a dominant position to be anti-competitive.[9]

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[4] *Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Final), USITC Pub. 3042 (June 1997).

[5] *Id.* at 25.

[6] *Dresser-Rand Company, Painted Post and Corning, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance*, 63 Fed. Reg. 17,893 (April 10, 1998); *see also* 63 Fed. Reg. 8211 (February 18, 1998).

[7] OAS, *Inventory of Domestic Laws and Regulations Relating to Competition Policy in the Western Hemisphere (Final Version)*, SG/TU/WG.COMPOL/DOC.1/97/Rev.5/Corr. 1, at i (August 30, 1997).

[8] *See* OAS, *Inventory of the Competition Policy Agreements, Treaties and Other Arrangements Existing in the Western Hemisphere (Preliminary Report)*, SG/TU/WG.COMPOL.DOC.3/96/Rev.4, at Summary (Aug. 30, 1997).

[9] OAS, *Inventory of the Competition Policy Agreements, Treaties and Other Arrangements Existing in the Western Hemisphere (Preliminary Report)*, SG/TU/WG.COMPOL.DOC.3/96/Rev.4, at Summary, 38, 48–49 (Aug. 30, 1997). The Mercosur Protocol also includes among its anti-competitive practices the following forms of conduct:

According to the WTO's review of competition laws, most countries with competition laws consider the following types of conduct to be anti-competitive: horizontal agreements, mergers, vertical market restraints, and abuse of a dominant position.[10] Included in the definition of "abuse of a dominant position" or "monopolization" are the following types of conduct: (1) exclusive dealing, (2) market foreclosure through vertical integration, (3) tied selling, (4) the control of scarce facilities and vital inputs or distribution channels, (5) price and non-price predation, (6) price discrimination, (7) exclusionary contractual arrangements, (8) charging higher than competitive prices, or (9) imposition of other "exploitative" abuses.[11]

Given the global nature of the market, the small number of world-wide manufacturers and the importance of low prices in securing contracts, much of the competition in the market takes place outside the jurisdiction of the country of exportation. Many of the countries in which turbo-compressors are installed have no local manufacturers. Hence, there is no local interest in enforcement of competition policy norms. Given that existing regional trade and integration arrangements covering competition policy do not provide a comprehensive definition of anti-competitive practices, the United States should take a leading role in drafting a definition of anti-competitive practices to cover all FTAA countries. The Dresser-Rand Company supports the Business Forum of the Americas' suggestion that negotiations focus on the development of general principles prohibiting abuse of a dominant position and practices restraining competition (vertical as well as horizontal).[12] At the very least, negotiators should strive to define anti-competitive practices and to work toward the establishment of principles to cover competition policy within the region.

IV. Subsidies, Antidumping and Countervailing Duties: The FTAA Should Provide Separate Remedies for Dumping and Anti-Competitive Activity and Should Strengthen Third-Country Dumping Provisions

In the Ministerial Declaration of San José of March 19, 1998, the trade ministers specifically agreed to permit the relevant negotiating groups to study issues relating to the interaction between trade and competition policy, including antidumping measures. The purpose of such study is to identify any areas that may merit merged negotiation or consideration. It has been suggested that the FTAA's efforts should include harmonization of competition laws and adoption of a harmonized competition policy that would replace antidumping laws.[13] In the international community, there is a perception by some that competition laws can address the pricing practices which are specifically addressed by the antidumping law.[14] This view, however, is incorrect.

The fundamental purposes of competition and antidumping laws differ. Both in United States law and in the WTO Antidumping Agreement, a limited remedy import duties-is provided to redress price discrimination that results in material injury (or threatens such injury) to a domestic industry. The goal of competition law is to preserve competition, principally for the benefit of consumers, but also for the benefit of competitors. The different requirements and relief available under competition laws and antidumping laws do not necessarily address the same practices or concerns. For example, although some have argued that predatory pricing is covered under competition law, a remedy is particularly elusive under the standards applied in U.S. precedents.[15]

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to procure or contribute to the adoption of uniform business practices or concerted action by competitors

to limit or prevent access of new enterprises to the market

to subordinate the sale of one good to the purchase of another good or to the use of a service, or to subordinate the supply of a service to the use of another or to the purchase of a good

to sell merchandise, for reasons unfounded on business practices, at prices below the cost price

Id.

[10] WTO, *Trade and Competition Policy*, 1 Annual Report 1997 30, 40–42.

[11] *Id.* at 42.

[12] Business Forum of the Americas, *Workshop IX: Competition Policy, Subsidies, Antidumping, Countervailing Duties and Safeguards* (San José, Costa Rica, March 16–18, 1998).

[13] *See, e.g., Brazil: Report on Developments and Enforcement of Competition Policy and Laws 1994–96, in* OAS, *Report on Developments and Enforcement of Competition Policy and Laws in the Western Hemisphere (Preliminary Report)*, SG/TU/WG.COMPOL/97/DOC.4/Rev.1, at 25, 38 (Sept. 2, 1997).

[14] *See* WTO, *Trade and Competition Policy*, 1 Annual Report 1997 at 68.

[15] *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993). Commentators and the Supreme Court have warned that successful predatory pricing claims are uncommon. *See* S.W. Waller, International Trade and U.S. Antitrust Law at 2–18–23 (1997); *Matsushita Elec. Indus. Co. v. Zenith Radio*, 106 S. Ct. 1348, 1357 (1986); R.A. Givens, Anti-

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Depending on the facts, the collection of antidumping duties on imports, in the context of an administrative proceeding, may be preferable or more appropriate than cease-and-desist orders, injunctions, fines, damages, or criminal penalties available under competition law. Because the antidumping laws afford limited relief in the case of a specific type of pricing practice, without regard to intent, a comparable remedy is not available under competition laws as they now exist in the United States. Both types of remedies have been separately established by law in the United States for over seventy-seven years. For these reasons, the United States should argue against replacing or merging antidumping law and competition policy.

Separately, Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 permits countries to address third-country dumping complaints. Third-country dumping occurs when an industry producing an exported product in one country is being injured by imports from another country to the same ultimate market. Article 14 permits the exporting country to petition the importing country for relief. However, the procedure for obtaining relief under the WTO Agreement is not automatic or readily available. After Dresser-Rand's experience as a petitioner in an antidumping case involving turbo compressors from Japan in 1997,[16] Dresser-Rand remains concerned that discriminatory pricing will affect competition in the FTAA in the absence of strong rules against third-country dumping. In order to protect our domestic industry's interests in obtaining a expeditious and fair review of all third country dumping petitions, the United States should ensure that the FTAA strengthens third country dumping provisions in the Hemisphere. Petitioners should have access to relief whether or not there is a local producer. Moreover, the rules should provide for automatic initiation of an investigation upon request of a complaining country that has adjudged the petition to state a prima facie case.

V. Conclusion

In the FTAA market access negotiations, the United States should negotiate for reciprocal tariff treatment for turbo-compressors, steam turbines and allied products. In the competition policy negotiations, the United States should negotiate competition rules that provide a comprehensive definition of anticompetitive practices based on existing definitions in most countries with competition laws. Finally, in the subsidies, antidumping, and countervailing duty negotiations, the United States should ensure that the FTAA provides separate remedies for dumping and anti-competitive activities as well as strengthens third country dumping provisions in the hemisphere.

1998 BRAZILIAN IMPORT DUTIES ON TURBO-COMPRESSORS AND STEAM TURBINES

HS	Description	Duty
8406.81	Turbines, over 40 MW	5%
8406.82	Turbines, not over 40 MW	20%
8406.90	Parts (of turbines)	20%
	as compressors, other than air:	
8414.80.31	Piston type	20%
8414.80.32	Screw type	20%
8414.80.33	Centrifugal	5%
8414.80.39	Other	20%
	parts of compressors:	
8414.90.31	Pistons	20%
8414.90.32	Piston rings	20%
8414.90.33	Cylinder blocks, cylinder heads, sumps and housings	20%

trust: An Economic Approach 3.04 (1997) ("predatory pricing is one of the most common complaints made by competitors but one of the least likely to succeed").

[16] *Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 Fed. Reg. 24,394 (Dep't Comm. 1997) (Final LTFV Deter.).

1998 BRAZILIAN IMPORT DUTIES ON TURBO-COMPRESSORS AND STEAM TURBINES—Continued

HS	Description	Duty
8414.90.34	Valves	20%
8414.90.39	Other	20%
8419	Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change in temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric:.	
8419.60.00	Machinery for liquifying air or other gases	20%
.	**other machinery, plant and equipment:**	
8419.89.99	Other	5%
8419.90.90	Other (parts)	20%

Source: U.S. Department of Commerce.

1998 U.S. IMPORT DUTIES ON TURBO-COMPRESSORS AND STEAM TURBINES

HS	Description	Duty
8406.81.10	Steam turbines, over 40 MW	7.0%
8406.82.10	Steam turbines, not over 40 MW	7.0%
8406.90.20	Parts (of steam turbines)	7.0%
8406.90.30	Parts (of steam turbines)	7.0%
8406.90.40	Parts (of steam turbines)	7.0%
8406.90.45	Parts (of steam turbines)	7.0%
.	**as compressors, other than air:**	
8414.30.80	Compressors for refrigerating ammonia	0.7%
8414.80.20	Other gas compressors	0.7%
.	**Parts of compressors:**	
8414.90.30	Parts of compressors for refrigerating ammonia	0.7%
8414.90.40	Parts of other gas compressors	0.7%
8419.60.50	Machinery for liquifying air or other gases	0.8%
.	**Other machinery, plant and equipment:**	
8419.89.90	Other machinery for a process involving temperature change.	4.2%
8419.91.90	Parts of items under subheadings 8419.81 or 8419.89	4.0%

Source: Harmonized Tariff Schedules of the United States (1998).

Statement of Floral Trade Council, Haslett, Michigan

I. Introduction

These comments are submitted on behalf of the Floral Trade Council, pursuant to the Honorable Philip M. Crane's March 17, 1998, announcement of a public hearing on the Free Trade Area of the Americas (FTAA). The Floral Trade Council is a U.S. trade association the majority of whose members are domestic producers or wholesalers of fresh cut flowers in the United States and is located at 1152 Haslett Road, Haslett, Michigan 48840 (telephone 517–339–9765). These comments address

the specific objectives for the FTAA negotiations that would benefit the U.S. fresh cut flower industry.

II. Existing Trade Relationship With FTAA Countries

Among the 34 FTAA countries are some of the largest flower producing and exporting countries in the world. The following twenty FTAA countries exported fresh cut flowers to the United States during the 1990's: Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Panama, Peru, St. Vincent and the Grenadines, Trinidad and Tobago, and Venezuela. Of those countries, the major flower producing countries have historically been Colombia, Ecuador, Guatemala, Mexico, Costa Rica, and Canada. No other country, however, has had the impact that Colombia has had on the domestic fresh cut flower market.

The domestic market for fresh cut flowers has been besieged with imports from Colombia over the last five years. Since 1991, Colombia's imports of the major cut flower categories have almost doubled for most categories:

Table 1.—Columbian imports

(F.A.S. value U.S.$)

Flower Type	1991	1997	% Change from 1991 to 1997	% Colombia of Total in 1997
other roses	65,808,342	132,076,796	101	64
sweetheart roses	1,734,753	169,613	−90	12
pompom chrysanthemums	40,438,520	60,262,390	49	90
standard chrysanthemums	8,277,383	9,402,155	14	87
standard carnations	47,707,635	73,754,726	55	93
miniature carnations	20,212,738	35,858,959	77	95
other cut flowers	18,615,100	48,051,143	158	28

Source: TIOS as compiled from U.S. Dept. Commerce, Bureau of the Census tapes which may differ from adjusted annualized data.

As a result, the U.S. fresh cut flower industry has lost growers at alarming rates in each of the major cut flower categories. The total number of fresh cut flower growers (in the 36 states surveyed) plummeted from 1548 in 1992 to 1216 in 1996: a decline of 21 percent:

Table 2.—Domestic Grower Loss

(number of growers)

Flower	1992	1995	1996
other roses	224	179	165
sweetheart roses	133	97	90
pompom chrysanthemums	172	135	116
standard chrysanthemums	152	116	112
standard carnations	139	93	80
miniature carnations	123	100	78
other cut flowers	605	596	575
Total	1548	1316	1216

Source: USDA, Floricultural Crops Summary at 18–32 (1993), at 14–28 (1995), at 14–28 (1997).

Flower-producing FTAA countries have duty-free access to the U.S. market under the Generalized System of Preference Program, the Caribbean Basin Economic Recovery Act, and the Andean Trade Preference Act in addition to the North American Free Trade Agreement (NAFTA). With the exception of NAFTA, duty-free access to the U.S. market under these programs, however, is not necessarily permanent. One of the causes of the dramatic increase in imports in the 1990's, however, was the enactment of the Andean Trade Preference Act (ATPA) which eliminated all duties on fresh cut flowers from Colombia, Ecuador, Bolivia, and Peru. Since its enactment in 1991, the chief beneficiary of the ATPA has been Colombian flower growers.[1]

[1] *Andean Trade Preference Act: Fourth Report 1996, Inv. No. 332–352*, USITC Pub. 3058, at xvi (Sept. 1997).

The removal of duties on fresh cut flowers under the NAFTA, ATPA, and the Generalized System of Preferences Program has also undermined the effectiveness of the antidumping and/or countervailing duty orders on certain fresh cut flowers from Colombia, Mexico, Ecuador, Chile, and Peru.[2] The mere existence of those orders, however, is a testament to the strong interest FTAA flower producers have in capturing the U.S. fresh cut flower market. Indeed, even with MFN duties in place, prior to passage of the ATPA, imports from Colombia steadily increased for well over ten years. In part, the relentless surge in imports reflects dumping; in part, however, off-shore producers enjoy cost advantageous bought about by the lack of protection for workers and the environment that inheres in existing standards for pesticide and fungicide use.

III. The United States Should Seek Harmonization of Pesticide and Fungicide Use for Flower Production and Routine Screening for Pesticide Residues on Imports

At the April 1998, Summit of the Americas, Heads of State and Government are expected to initiate negotiations of the FTAA.[3] According to the Miami Declaration of Principles and Plan of Action, the 34 countries agreed to focus on improving the working conditions of all people in the Americas and better protecting the environment.[4] The Plan of Action specifically calls on the various governments to address issues such as the environmental impact of pesticides and fungicides, as well as their misuse. Specifically, the governments pledged to:

- strengthen and build technical and institutional capacity to address environmental priorities such as pesticides.
- strengthen national environmental protection frameworks and mechanisms for implementation and enforcement.
- undertake national consultations to identify priorities for possible international collaboration.
- convene a meeting of technical experts, designed by each interested country, to develop a framework for cooperative partnership, building on existing institutions and networks to identify priority projects which initially will focus on, inter alia, the health and environmental problems associated with the misuse of pesticides.
- develop compatible environmental laws and regulations, at high levels of environmental protection, and promote the implementation of international environmental agreements.

In the March 19, 1998, Ministerial Declaration, the trade ministers committed to identify trade-distorting practices for agricultural products to bring them under greater discipline. Consistent with these objectives, therefore, the U.S. government should propose in the context of the market access negotiations that countries harmonize their pesticide standards for flower production, as well as the standards applied to screen fresh cut flowers for pesticide residues.[5]

Disparate use of pesticides in the production of fresh cut flowers affects the relative costs of production for U.S. and Colombian growers and distorts trade flows. California growers are subject to the most restrictive environmental regulations in the country and, therefore, have the highest pesticide use-related costs.[6] California growers are permitted to use only about of the number of approved pesticides for use elsewhere in the United States. Yet, these growers account for the major proportion of U.S. fresh cut flower production. Obviously, then, the use of harmful pesticides is not a requirement for growing or marketing fresh cut flowers.

Nevertheless, reducing the dependence on pesticides and fungicides has its costs. Costs associated with the use of pesticides in the United States account for approximately 6 to 8 percent of total production costs, including costs of materials, licensing, training, regulatory compliance measures, labor, and record-keeping. Hence, the additional costs of pesticide use to the U.S. grower are significant. U.S. growers are

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[2] *Certain Fresh Cut Flowers from Colombia*, 52 Fed. Reg. 6842 (Dep't Comm. 1987) (Final LTFV Deter.); *Certain Fresh Cut Flowers from Mexico*, 52 Fed. Reg. 6361 (Dep't Comm. 1987) (Final LTFV Deter.); *Certain Fresh Cut Flowers from Ecuador*, 52 Fed. Reg. 2128 (Dep't Comm. 1987) (Final LTFV Deter.); *Standard Carnations from Chile*, 52 Fed. Reg. 3313 (Dep't Comm. 1987) (Final CVD Deter.); *Standard Carnations from Chile*, 52 Fed. Reg. 8939 (Dep't Comm. 1987) (AD Order); *Certain Fresh Cut Flowers from Peru*, 52 Fed. Reg. 13,491 (Dep't Comm. 1987) (CVD Order).

[3] Ministerial Declaration of San José, Summit of the Americas Fourth Trade Ministerial Meeting, at para. 8 (San José, Costa Rica, March 19, 1998).

[4] *Id.*; Summit of the Americas, Declaration of Principles.

[5] Fresh cut flowers are classified under Harmonized Tariff Schedules of the United States Number 0603.10.

[6] California Cut Flower Commission Statement to Subcommittee on Trade, *Impact of NAFTA on U.S. and California Cut Flower and Foliage Industry* 2 (April 5, 1993).

also restricted from entering greenhouses for a specific period of time during and after fumigation.[7] The immediate result is lost production.

Colombian flower growers' use of more effective, yet extremely toxic, pesticides reduces Colombian costs of production and enhances their export potential. Not only are Colombian flowers less susceptible to disease or damage, but application of powerful pesticides reduces the incidence of pest infestation on exported flowers. Upon importation, there is no routine screening of dangerous pesticide residues. The following list includes some of the pesticides available for fresh cut flower production in Colombia but not in the United States:

A LIST OF PESTICIDES AVAILABLE FOR COLOMBIAN, BUT NOT U.S., FLOWER PRODUCTION

1. Actellic
2. Afugan
3. Applaud
4. Azodrin
5. Bendiocarb
6. Carzol
7. Curacron
8. DDDP
9. Fonofos
10. Hostathion
11. Kartap
12. Methanil or Lanate
13. Nack
14. Nomolt
15. Oxanil
16. Plictran
17. Pyramore
18. Qinalphos
19. Sulprufus
20. Vidate

As recently as July 1994, a *Financial Times* article reported that a fifth of the pesticides used in Colombian flower production are banned or not registered in the United States and Europe because of their toxicity.[8] In recent years, there have been widespread reports that Colombian flower producers misuse pesticides and have endangered workers' rights, in some cases causing death and disfigurement:

• On February 14, 1995, an "American Journal" television broadcast reported instances of worker illness caused by pesticide use in Colombian greenhouses, including the death of one woman sprayed directly with pesticides.

• On July 12, 1994, Christian Aid, a U.K. aid agency, reported use of pesticides banned in the United States and Europe as well as instances of adult Colombian greenhouse workers stricken with paralysis causing death. Pregnant women working in greenhouses have given birth to children with bronchial illness.

• On June 1, 1993, the International Labor Rights Education and Research Fund (ILRERF) asserted that the Colombian flower industry is the "setting for gross and criminal mismanagement of toxic chemicals in the workplace." Greenhouse workers have been forced to work while pesticides are sprayed and training in pesticide application or protective measures was nonexistent. Workers have suffered from diseases, headaches, nausea, and have given birth to children with an abnormally high number of stillbirths and severe birth defects. Pesticides used include some banned by Colombian law. In 1993, USTR rejected ILRERF claims because the Colombian government was taking some measures to improve enforcement of existing laws. The GSP Subcommittee, however, expected that any necessary enforcement measures would be taken. *See* GSP Subcommittee Decision (002–CP–93) at 5, 7 (Nov. 1993). As shown above, however, the pesticide application practices of Colombian flower growers continued.

• On October 12, 1992, a "National Public Radio" report cited use of pesticides banned in the United States and instances of pesticides spraying while workers were in Colombian greenhouses, pesticide hoses spraying workers in the face, hands turning black from immersion into bags of chemicals, and chronic illness.

In this manner, Colombian producers spread their costs over increased production due, in part, to more effective pesticides as well as inadequate worker safety con-

[7] *See Pesticide Worker Protection Standard; Administrative Exception for Cut-Rose Hand Harvesting*, 62 Fed. Reg. 51,994 (EPA 1997) (Admin. Exception Decision).

[8] Maitland, *Colombia "misusing pesticides"*, Fin. Times, July 13, 1994, at 4.

trols. Not only does misuse of pesticides endanger workers, but it can also endanger the environment by contaminating the water table.[9]

The United States should address these trade distorting practices in the context of the FTAA market access negotiations. The United States should demand harmonized pesticide use for flower production and routine screening for dangerous pesticide residues on imports. Not only would such safeguards benefit the domestic industry and workers, but, more importantly, these measures would safeguard consumers and the environment. Given that the Californian growers have continued to operate even under the most severe restrictions, there is no legitimate argument that the costs of safety are too great.

In his testimony before the House Committee on Ways and Means, Subcommittee on Trade, Congressman Sam Farr protested the inequitable treatment of imported and domestic fresh cut flowers as a result of the lack of control or enforcement with respect to chemical use and residues present on imported flowers. As noted above, the stated pledge of the Summit of the Americas was to strengthen environmental protection, explicitly with respect to pesticide use. In concert with this goal, the United States should seek harmonization of pesticide and fungicide use and residue screening to enforce the harmonized rules.

IV. Conclusion

The U.S. market is a highly desirable destination for exported fresh cut flowers from FTAA flower-producing countries. The ability of major flower producing FTAA countries to use pesticides and fungicides that are more effective, yet more toxic, than U.S. growers places U.S. growers at an unwarranted disadvantage in U.S. and export markets. The consequent misuse of those dangerous chemicals has also jeopardized worker safety and the environment. Therefore, the United States should address these trade distorting practices in the context of the FTAA market access negotiations.

Specifically, the United States should seek harmonized pesticide and fungicide use for flower production and routine screening for dangerous pesticide residues on imports. Because there are no significant export markets, and because U.S. growers must in any event comply with adequate safety standards, Under no circumstances should the United States accept partial tariff reductions or exempt any FTAA country from harmonized standards and adequate clearance procedures.

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[9] *See Morning Edition*, National Public Radio (Oct. 12, 1992); Kendall, *Financial Problems Take the Bloom off a Colombian Success Story*, Fin. Times 28 (9/14/93) ("The heavy use of pesticides—required if flowers are to meet most import standards—has caused health and environmental problems.").

STATEMENT OF FLORIDA FRUIT & VEGETABLE ASSOCIATION

Reginald L. Brown
Director, Marketing and Membership

Mr. Chairman, members of the Committee, my name is Reggie Brown. I am Director of Marketing and Membership for the Florida Fruit & Vegetable Association. FFVA is an organization comprised of growers of vegetables, citrus, sugarcane, tropical fruit and other agricultural commodities in Florida. I am here today to review agricultural issues relating to the 1999 World Trade Organization Multilateral Trade Negotiations.

Florida's fruit and vegetable specialty crops have had a highly unfavorable experience with previous multilateral and bilateral trade negotiations. On numerous occasions, including during the recent fast-track debate, FFVA has expressed its concerns about the inadequacies of the Uruguay Round Agreement for Florida agriculture and the need to correct, rather than compound, those inadequacies as we move forward in the various trade arenas. We appreciate the opportunity to address these concerns once again today.

I. The Uruguay Round did Not in all Cases Lead to Access Gains.

A. Dirty Tariffication.

Although in theory the Uruguay Round multilateral trade negotiations were to reduce tariffs for all agricultural products in all countries by a minimum of 15% (10% for developing countries), this exercise did not in many key instances produce access parity for a variety of Florida specialty fruit and vegetable commodities that were already subject to low tariffs. This is because the EU and other countries interested in protecting their domestic industries used "dirty tariffication" to increase, rather than decrease border protection. That is to say, non-tariff barriers

were replaced with prohibitive tariffs that made access impossible, even with the mandated 15% reductions.

B. *Barriers in Asian Countries.*

Many important Asian markets, especially those that were considered developing countries in the Uruguay Round (i.e., Thailand), now have bound tariffs of 50% or higher even after Uruguay Round tariff reductions are fully taken. Because the pre-Uruguay Round rates in these countries were so high and in some cases unbound, and many of those rates were increased even more through the tariffication exercise, the Uruguay Round reductions have had no effect at all on the applied rates, which remain at 30% and higher.

C. *Administration of TRQs.*

Under the Uruguay Round commitments, access for many specialty fruit and vegetable crops is governed by tariff rate quotas. Many countries, including the EU, have adopted onerous licensing requirements and other non-transparent procedures to administer their TRQs, which make access more restrictive and distortive than that which is provided by the TRQ itself. Thus, TRQs have not always been a move forward. They may simply be another form of non-tariff barrier.

II. The Safeguard Measures Contemplated by the Uruguay Round Have Not Been Effective.

A. Uruguay Round Safeguard Provisions.

During the Uruguay Round negotiations, FFVA argued strongly for an effective price-based safeguard measure for sensitive, perishable crops. The priced-based mechanism contained in the Uruguay Round agreement, however, covers only products that had non-tariff border measures (quotas, etc.) in place prior to the implementation date of the agreement. Since no U.S. fruit and vegetable had such measures in place, Uruguay Round safeguard relief does not protect our industries. The Uruguay Round safeguard measures do, however, apply to certain fruit-and vegetable-producing competitors, particularly in the EU. This inequity means that, at key times of the year, our competitors can keep U.S. fruit and vegetable exports out of their markets, but no such protection against surges of imports exists for our domestic producers.

B. Section 201/202 Trade Relief.

The Uruguay Round Agreements (and NAFTA) contemplated that existing trade remedies, such as Section 201/202, would provide temporary adjustment relief to industries like Florida's fruit and vegetable sectors that have been seriously injured by increased imports caused by the reduction and/or elimination of trade barriers. In application, however, those laws have not provided needed relief. Florida's tomato and pepper industries (with the encouragement of USTR) have undertaken expensive, but unsuccessful, efforts to use the Section 201 law to protect against import surges from Mexico. Injury proved impossible to show, since the law does not adjust for the unique seasonal and perishable nature of fruit and vegetable production. Future

multilateral trade negotiations need to strengthen existing safeguard measures so they are meaningful to seasonal, perishable commodities.

III. The WTO May Not Have Created Sufficient Disciplines Governing Sanitary \ and Phytosanitary Restrictions.

The SPS agreement was touted as a significant win for U.S. agriculture -- the first time countries would be required to scientifically justify their phytosanitary and sanitary import bans and other restrictions. It has yet to live up to those expectations, however.

- SPS barriers are now the barriers of choice for many countries.

- Since the Uruguay Round, progress on many plant quarantine issues has been slow to non-existent. Significant disputes remain -- such as Florida citrus access to Mexico.

- Following the recent Appellate Body decision in the U.S.–EU beef hormone case, it remains highly uncertain whether the SPS agreement will be an effective tool in resolving sanitary and phytosanitary disputes. Some believe that that decision may make it more difficult for countries to succeed in challenging sanitary measures that are stricter than international standards, since it appears to give a country broad leeway in defining the scope of a risk assessment analysis and would shift the burden of proof to the complaining country to show that the standard is not scientifically justified.

IV. It Remains to be Seen Whether Key Signatory Countries will Comply with WTO Rulings.

During the Uruguay Round, the United States gave up its authority to act unilaterally against unfair trading partners (i.e., Section 301) in favor of a new, so-called " full-proof" WTO dispute settlement system. There are still questions, however, as to whether WTO rulings are in fact full-proof. The EU, for example, is now making it known that it may not be willing to come into full compliance with recent rulings against it. No matter how good WTO procedural and substantive disciplines may look on paper, they have no meaning if countries refuse to abide by them.

V. Conclusion.

Because previous trade negotiations have not been favorable for Florida fruits and vegetables, there is great skepticism about what a new round of multilateral negotiations would bring for our sector.

It is our belief that a good number of the problems created by these negotiations can and should be corrected by the U.S. legislative and executive branches before ambitious new negotiations are undertaken that may compound existing trade pressures.

Disclosure of Federal Grants and Contracts

In the 105th Congress, Rule XI (2)(g)(4) of the House of Representatives provides:

> *Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial oral presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.*

This rule is not intended to require individuals to disclose the amounts of Federal entitlements they have received, such as from Medicare or Social Security or other income support payments or individual benefits, or to require farmers to disclose amounts received in crop or commodity price support payments.

Instead, this disclosure requirement is designed to elicit information from those who have received Federal grants or contracts for the purpose of providing the government or other individuals or entities with specified goods, services, or information. *For example, if you owned a construction business and contracted with the Federal Government to build a post office, then you would have to disclose the amount of that contract.*

The purpose of this rule is to give committee Members, the public, and the press a more detailed context in which to consider a witness' testimony in terms of their education, experience, and the extent to which they or the organizations being represented have benefited from Federal grants and contracts related to their appearance.

Failure to provide this information will not result in a witness being unable to testify. However, the testimony of a witness who does not provide this information will not appear in the official hearing record if an objection is raised at the time of the testimony.

To summarize, farmers and producers who are public witnesses are not required to disclose amounts of farm program-related payments from USDA (including, for example, production flexibility contracts, price support loans, crop insurance, disaster payments, or Agricultural Conservation Program payments).

Therefore, if this rule is applicable to you or the organization you represent, you may choose to list the Federal grants or contracts received since October 1, 1994.

Source:_____ Amount:_____

Organization: Florida Fruit & Vegetable Association

Signature: _____ Check here if form is not applicable to you:____

Reginald L. Brown, Director
Marketing & Membership
Florida Fruit & Vegetable Association

Florida Fruit & Vegetable Association, nor I, have received any type of Federal Grants in the current or previous two fiscal years.

Statement of Michael J. Stuart, Executive Vice President, Florida Fruit & Vegetable Association, Orlando, Florida

The following comments on the outlook for negotiations aimed at achieving a Free Trade Area of the Americas (FTAA) are submitted on behalf of the Florida Fruit & Vegetable Association (FFVA). FFVA is an organization comprised of growers of vegetables, citrus, sugarcane, tropical fruit and other agricultural commodities in Florida. Florida's unique geographical location in the United States affords growers an opportunity to provide American consumers and export markets with fruits, vegetables and seasonal crops during the months of the year when other domestic producers cannot grow and harvest these crops. Historically, competition for Florida's fruit and vegetable industry in the U.S. marketplace has come from Mexico, other areas that have farmland suitable for winter production in the northern hemisphere, and from Latin America. In export markets, Florida's crops compete against low-cost, often subsidized producers from Latin America, Europe, and elsewhere.

Under recent trade agreements, Florida's fruit and vegetable specialty crops have lost, rather than gained, competitive ground. With competition from Mexico increasing under the North American Free Trade Agreement (NAFTA), many of Florida's producers have been forced to curtail their operations; others have been closed down altogether. Special provisions negotiated in both NAFTA and the Uruguay Round Agreement that were intended to protect Florida agriculture and offer expanded export opportunities have not had their intended effect.

Like NAFTA, the FTAA promises to create more domestic competitive pressures than export opportunities for Florida fruit and vegetable producers. As discussed in more detail below, before an FTAA agreement can be struck, Congress and the Administration must first seek to correct the inadequacies of prior agreements through Legislative and Executive Branch action, as well as through the relevant regional and multilateral working groups that are already established, so that growers of Florida specialty crops do not continue to have their interests negotiated from a position of weakness.

I. Florida's Specialty Fruit And Vegetable Industries Have Not Fared Well In The Post-NAFTA, Post-Uruguay Round Period.

A. In The U.S. Market, Florida's Industries Have Faced Increased Competition From Their Principal Competitor, Mexico.

Since the NAFTA Agreement took effect, Florida's fruit and vegetable industries have experienced a substantial increase in competitive pressure from Mexican imports. Statistical data show that in many specialty crops, Florida growers have lost significant domestic sales to Mexico. NAFTA has contributed to this increased competition in two ways: first, by reducing U.S. tariffs, making low-priced Mexican imports even more price competitive; and, second, by spurring investment in Mexico's agricultural industries from non-traditional sources. Increased investment in the export-oriented agricultural sectors in Mexico has dramatically advanced Mexico's technology, increased Mexico's production in those sectors, and reduced the per-unit costs of those commodities. Those advantages, combined with the cost advantages Mexican industries derived from the devaluation of the peso in 1994, have materially enhanced the competitive position of Mexican agricultural exports in the U.S. marketplace. The result has been steady increases since 1994 of Mexican fruits and vegetables into the United States to the detriment of Florida producers.

This trend has been most dramatic in the Florida tomato sector. Since the 1992–93 season (the last complete season prior to NAFTA's implementation), Florida's tomato acreage, shipments, crop value, and market share all have declined. In the 1992–93 season, Florida enjoyed a 56.4 percent market share. In the most recent full season for which statistics are available, market share had declined to 35.1 percent. Meanwhile, Mexico's share of the U.S. market has increased from 28 percent in 1992–93 to 49.5 percent in 1995–96.[1] Mexico's sales of tomatoes below fair market value during that period had a serious impact on Florida's position in the marketplace.

The increase in Mexican exports of tomatoes to the United States at predatory prices prompted the filing of an antidumping petition by the domestic tomato industry in March, 1996. The Department of Commerce's investigation found sales at below fair value during the period of investigation and established preliminary dumping margins at a weighted average of 17.56 percent, with individual exporter

[1] *Competitive Growing Season Shipments, Annual Change and U.S. Market Share*, Florida Department of Agriculture and Consumer Services, November 5, 1996.

rates as high as 188 percent.[2] A suspension agreement establishing a floor price for Mexican tomatoes was reached between the Department of Commerce and the Mexican industry in October, 1996, and is currently in place.

Other Florida commodities have suffered similar pressures. Mexican shipments of bell peppers, cucumbers, squash, eggplant, beans and sweet corn increased substantially during the period, particularly in the 1995–96 season.[3]

Florida's import-sensitive fruit and vegetable industries are concerned that a free trade agreement with other countries of this Hemisphere, many of which are highly competitive in specialty fruits and vegetables, will only compound the pressures precipitated by NAFTA, further eroding the economic stability of the Florida industry.

B. In Export Markets, Florida's Specialty Crops Have Also Lost Ground, In Part Because The Uruguay Round Did Not Achieve The Market Access Gains For Florida That Were Promised By That Round.

The Uruguay Round was widely billed as a major win for U.S. agriculture. U.S. growers and industries, because of their superior quality and technical advances, were expected to benefit more than most foreign producers from increased global market access. For Florida, the global market access gains have been minimal, offering little offsetting relief against increased competition in the U.S. domestic market from Mexico and elsewhere.

In many markets, tariffication of non-tariff barriers on several fruit and vegetable crops resulting from the Uruguay Round has increased, not decreased, border protections. Increased border restrictions combined with onerous, non-transparent procedures adopted to administer the new tariff rate quotas in Europe and elsewhere have meant that old market access barriers have been replaced by new, often less transparent ones.

II. THE INADEQUACIES OF NAFTA AND THE URUGUAY ROUND AGREEMENT HAVE LEFT FLORIDA GROWERS SKEPTICAL ABOUT A HEMISPHERIC-WIDE FREE TRADE AGREEMENT.

During the negotiations leading up to NAFTA and the Uruguay Round Agreement, Florida fruit and vegetable growers sought special accommodation in three areas to protect the import-sensitivity of their crops. One area related to tariff treatment. The second related to safeguard measures designed to provide temporary relief to injured import-sensitive U.S. industries. The third area related to the adoption of a strong sanitary and phytosanitary agreement that would eliminate the use of unfounded sanitary and phytosanitary restrictions as market access barriers. For the most part, FFVA's requests were inadequately addressed. Florida's growers are more vulnerable today to import increases and export competition than they were before those agreements were reached. Some of the defects contributing to these pressures, particularly those found in U.S. import relief laws, should be addressed and corrected prior to negotiating a new, more expansive free trade area in the Western Hemisphere.

A. Tariff Phase-Out Periods Have Generally Not Provided A Sufficient Transition Period For Florida Agriculture.

In NAFTA, despite the extreme import-sensitivity of Florida fruit and vegetable products, most of those sectors did not receive the maximum tariff phase-out period of 15 years provided for under the NAFTA Agreement. Of Florida's major fruit and vegetable commodities, only frozen concentrated orange juice and, for part of the year, cucumbers received that treatment, with most of the other products falling into the 5-or 10-year phase-out category.

Although the tariff-phase out periods have offered some protection in limited areas, Mexican exports to the U.S. market in many Florida product areas have enjoyed immediate and substantial increases as U.S. tariffs have been reduced. Even in product areas for which U.S. tariffs are being eliminated over ten years, such as fresh tomatoes, peppers and cucumbers, Mexico has already been able to increase imports and improve its competitive position in the U.S. marketplace. This is due not only to insufficient transition periods, but also to currency devaluation, which was not taken into account in structuring the NAFTA "protections."

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[2] *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico*, Federal Register, Department of Commerce, November 1, 1996.

[3] *Competitive Growing Season Shipments, Annual Change and U.S. Market Share*, Florida Department of Agriculture and Consumer Services, November 5, 1996.

Because many South American countries covered by the FTAA are also major competitive producers of fruits and vegetables, including citrus products, FFVA is equally concerned about tariff elimination and import penetration in the case of a Hemispheric free trade area.

B. The Special Safeguard Provisions Included In Both The NAFTA And Uruguay Round Have Not Worked For Florida's Growers.

To offset the effects of tariff reductions that were expected to result in increased U.S. imports, both the NAFTA and Uruguay Round agreements promised to provide safeguard provisions that would deliver temporary relief to injured, import-sensitive U.S. industries. These measures have failed to function as intended for Florida's producers.

The fruit and vegetable industries in Florida and elsewhere in the United States argued strongly during the negotiation phase of both the NAFTA and Uruguay Round that an effective price-based safeguard be provided for sensitive, perishable crops. The safeguard contained in the NAFTA is a volume-based tariff-rate-quota mechanism that restores the original tariff on a limited number of products if certain volume targets are reached. The mechanism has been entirely ineffective as a safeguard. Tariffs are restored only when the volume targets are reached—usually very late in the tariff rate period. By that time, the increased volume in the market has already depressed prices and injured domestic growers. The Uruguay Round Agriculture Agreement contained a price-based mechanism, but only for those products that had non-tariff border measures (quotas, etc.) in place prior to the implementation date of the agreement. No U.S. fruit or vegetable had such measures in place, so safeguard relief does not apply in these sectors. It does apply, however, to certain of our fruit and vegetable producing competitors, particularly in the European Union.

Both the NAFTA and the Uruguay Round agreements also contemplated that existing trade remedies such as Section 201/202 of the Trade Act of 1974 would provide temporary adjustment relief to industries seriously injured by increased imports caused by the reduction and/or elimination of trade barriers. The NAFTA implementing legislation reinforced this by requiring the International Trade Commission (ITC) to monitor the impact of trade in the domestic tomato and bell pepper industries for 15 years after enactment. These monitoring and safeguard mechanisms were supposed to expedite the filing of an import relief action should any U.S. industry find itself in jeopardy. In application, however, Section 201/202 and the monitoring provision have failed to provide relief for the Florida industry, largely because the law does not adjust for the unique seasonal and perishable nature of fresh fruit and vegetable production. As a result, it has been impossible for the ITC to find serious injury on seasonal industries. Florida's vegetable industry has twice made extremely expensive attempts at seeking relief under these provisions with no success. The Clinton Administration is on record supporting amendments to Section 201/202 that would address the inadequacies. We urge this Subcommittee to support such changes in the law before further Hemispheric access to the U.S. market is allowed.

Even in the area of antidumping remedies, which have been used to assist the Florida tomato industry, Chile and other countries in the Hemisphere are now seeking to eliminate that remedy in favor of a more general competition policy. This provides all the more reason why FFVA is concerned about future FTAA negotiations.

C. Neither NAFTA Nor The Uruguay Round Has Created Sufficient Disciplines Governing Sanitary And Phytosanitary Restrictions.

In addition to the inadequacies of the safeguard mechanisms, the sanitary and phytosanitary provisions (SPS) of the NAFTA and the World Trade Organization (WTO) have not lived up to expectations. SPS obstacles are now the non-tariff barrier of choice of many countries.

Progress on many plant quarantine issues, such as Florida citrus access to Mexico and access for Florida citrus to Chile and Argentina, has been excruciatingly slow since the enactment of both the NAFTA and Uruguay Round agreements. In many cases, countries have simply had no incentive to move quickly to resolve these problems. It remains highly uncertain whether the WTO's SPS Agreement will help in the resolution of such disputes. The EU has made clear, for example, that it will maintain its beef hormone ban despite a WTO ruling against it. Hence, before pushing forward with yet another trade agreement, which would be patterned largely after NAFTA and Uruguay Round SPS disciplines, the United States must make sure that existing agreements on the issue of how better to clarify and enforce the principles of "sufficient scientific evidence," "risk assessment," and other related benchmarks actually work.

III. EXISTING TRADE AGREEMENTS, ON WHICH THE FTAA IS TO BE BASED, DO NOT ESTABLISH ADEQUATE DISCIPLINES FOR SETTLING COMMERCIAL DISPUTES.

NAFTA failed to establish a system for the prompt and effective resolution of private commercial disputes in agricultural trade, opting instead to create a joint government/private sector advisory committee to develop recommendations on this matter. The continuing absence of such a system has become another problem for Florida producers, who need a viable commercial dispute settlement mechanism to handle the unique marketing characteristics of perishable crops. The Perishable Agricultural Commodities Act (PACA) in the United States provides such a system for the domestic industry and for international traders who market their products in the United States, but no such system is in place for U.S. exports marketed in other Western Hemispheric countries. Before another trade agreement is forged, FFVA recommends that the implementation of the voluntary dispute settlement process recommended by the NAFTA Advisory Group be closely monitored to determine if it functions as envisioned.

IV. NAFTA HAS NOT ADEQUATELY HARMONIZED DISPARITIES IN PESTICIDE REGULATIONS.

In the Canada/U.S. Free Trade Agreement (CUSTA), the two countries agreed to seek the harmonization of pesticide regulations in order to reduce non-tariff trade barriers. That led to the creation of a bilateral pesticide working group, which was expanded to include Mexico following the passage of the NAFTA. Although some progress has been made in identifying issues to be resolved in this area, significant differences in the pesticide regulatory framework remain between the three countries. These differences have adverse competitive and trade implications for Florida's producers. Here as well, before new agreements are created that will only compound the pressures created by existing regulatory inconsistencies, substantially more should be done by the NAFTA working group to harmonize disparities and inequities with those countries for which agreements have already been reached.

V. CONCLUSION

In short, many of the future FTAA countries in the Hemisphere pose competitive threats to the Florida industry similar to those already experienced with Mexico under NAFTA. Brazil, Argentina, and Chile are highly competitive producers of fruits and vegetables and enjoy competitive advantages over their counterparts in the United States. Those advantages include significantly less restrictive and less costly labor and environmental requirements.

Before an FTAA is reached that would only aggravate the pressures, inequities, and remedial defects created by NAFTA and the Uruguay Round, FFVA growers ask that the concerns identified above first be corrected by internal U.S. actions, or through the review mechanisms of NAFTA and the Uruguay Round, so that Florida's import-sensitive fruit and vegetable producers do not continue to lose competitive ground as a result of Hemispheric initiatives.

INTERNATIONAL TRADEMARK ASSOCIATION
1990 M STREET, N.W., SUITE 340
WASHINGTON, D.C. 20035
April 14, 1998

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The International Trademark Association (INTA) is pleased to submit the following comments for the record of your March 31, 1998 hearing on the status and outlook for negotiations aimed at achieving a Free Trade Area of the Americas (FTAA).

INTA is a 119-year-old, worldwide membership organization with over 3,400 members in 120 countries. We represent trademark owners, as well as those who serve trademark owners. INTA's members, which cross all industry lines and include both manufacturers and retailers, are united in our goals of supporting the

essential role trademarks play in promoting effective commerce, protecting the interests of consumers, and encouraging free and fair competition.

FTAA negotiations in the intellectual property area continue to proceed at a painfully slow pace. In fact, there has been little, if any, progress since the Subcommittee's last hearing in July. Despite this slow beginning, INTA believes the FTAA process is an important vehicle to move recalcitrant nations more quickly towards compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other "TRIPS-Plus" goals. That is why it is critical for the FTAA intellectual property discussions to be accelerated—both to ensure TRIPS compliance by the year 2000 and to stimulate consideration of ways in which the nations of the Western Hemisphere can go beyond the minimum requirements of TRIPS.

THE ROLE OF TRADEMARKS IN TRADE

Trademark rights are an essential element of trade and development. INTA believes that trademarks in the Western Hemisphere must be viewed in terms of:

protecting the public;

protecting the valuable rights of owners; and

developing the political, legal and administrative infrastructure appropriate to each nation of the region that will encourage investment and trade.

INTA recognizes that the nations of the Western Hemisphere are developing at different rates and in different ways. We nevertheless believe that all FTAA nations must meet certain minimum standards of trademark protection. This is essential to secure the rights of trademark owners, to avoid public confusion and deception about the products being purchased, and to enhance trade and investment in the nations of Latin America.

EXISTING PROTECTIONS OF INTELLECTUAL PROPERTY RIGHTS

The greatest impediment to trade and investment in a number of Latin American countries is their inadequate protection and enforcement of intellectual property rights (IPR). Companies—particularly pharmaceuticals, telecommunications, electronics and other technology-based companies—will continue their reluctance to provide their latest and best efforts to the Latin American market unless the IPR regimes in those nations are significantly and dramatically improved, both prior to and as a result of the FTAA. Thus, inadequate IPR protection not only deters domestic incentives to develop new technology and create products and services, but will also result in a loss of access to foreign know-how and capital.

At the ever-increasing rate at which investment capital flows from place-to-place, the nations of Latin America cannot afford to wait until the year 2000 or thereafter to begin fully integrating into the established norms of intellectual property protection, as set out in the TRIPS agreement under the World Trade Organization (WTO). If the Latin American nations do not act effectively and soon to fully protect intellectual property, the current growth they are experiencing will slow, and the knowledge-based businesses which are the future of the developing nations will pass them by.

TRADEMARK ISSUES IN THE FTAA PROCESS

INTA recognizes the significant changes that have occurred in the political, social and economic landscape of Latin America in the last decade. Democratic institutions have continued to grow in virtually every nation. Both promise and challenge are presented by these changes. We are, therefore, enthusiastic about the opportunities that the FTAA offers for strengthening the protection of trademark rights in the Western Hemisphere.

From the perspective of trademarks, INTA has identified the following specific issues as the most important as the FTAA negotiations proceed:

1. Protection of "Well-Known" Marks: Many companies in a variety of industries face enormous problems in stemming the rising tide of piracy and counterfeiting throughout Central and South America. The problem is especially severe for the owners of "well-known" marks (those that are most distinctive, enjoying widespread consumer recognition and the goodwill created by the associated product or service), particularly those that may not have been registered in a Latin America country before they were pirated.

Countries that are members of the Paris Convention should implement Article 6bis, which provides that the Member Nations protect well-known marks. Moreover, these countries should begin to move towards the broader protection afforded to well-known marks by Article 16(2) and (3) of the TRIPS Agreement. Effective implementation of Article 6bis should be a condition placed on FTAA membership.

2. Effective Enforcement: A corollary to the protection of well-known marks is timely and effective enforcement of trademark rights. Even the most well-crafted treaties and laws are of little value if trademark owners cannot obtain prompt action by customs authorities, the courts and other agencies of Latin American governments. Many nations have no effective border enforcement. Also exacerbating enforcement efforts is the extreme inefficiency of many courts in processing even the most blatant cases of counterfeiting. In many instances, the courts have permitted the illegal activity to continue or resume pending trial (which may be three to six years after the action is filed). Effective preliminary relief, in the form of injunctions and seizure orders, is necessary for all nations of the Americas if intellectual property rights are to be adequately enforced.

3. Barriers To The Full Use Of Trademark Rights: Certain Latin American countries have erected barriers to the full use and enjoyment of trademark rights. For example, some countries require mandatory recordal of trademark license contracts which, in turn, disclose to the public highly confidential business information between a trademark owner and its licensee. Even worse in some nations, if a U.S. trademark owner fails to record its license, the trademark registration will be canceled, thus exposing valuable trademark rights to be misappropriated by trademark pirates. INTA takes the position that trademark license recordal should be voluntary, not mandatory, and that this principle should be part of any FTAA intellectual property agreement. Further, the FTAA negotiating process should result in an end to these and other inappropriate barriers to the full use and protection of trademark rights.

4. Implementation of GATT–TRIPS And Other Trademark Agreements: The FTAA process should emphasize full and timely implementation of GATT–TRIPS. Also important is the adoption of the Trademark Law Treaty, which is intended to reduce the burden of disparate and seemingly endless requirements and formalities to authenticate filings and perfect trademark rights in most Latin American countries.

Similarly, adoption of the Madrid Protocol—an international agreement which will greatly enhance timely, efficient and cost-effective international registration of trademark rights—should be a centerpiece of the FTAA process. There has been some discussion within the FTAA working groups of a "trademark application mailbox" and other means for facilitating trademark registration within the Western Hemisphere. While such discussions help to focus attention on the benefits of easy registration across national jurisdictions, the Madrid Protocol's registration system, which is administered by the World Intellectual Property Organization, already exists. Accordingly, the Madrid Protocol should be an essential building block for IPR infrastructure improvements in the hemisphere and thus is essential to the success of the FTAA initiative.

CONCLUSION

INTA fully supports the FTAA process. To facilitate the improved protection of trademarks in Latin American countries, we have developed Model Trademark Law Guidelines that incorporate TRIPS-compliant provisions. We are willing to provide these guidelines to any nation of the hemisphere and work with the executive, legislative, judicial and administrative branches of the governments of these nations to assist them in adopting and implementing TRIPS-compliant laws and regulations.

In addition, INTA continues to work with the U.S. government and other interested groups, to explore possible funding sources to help countries develop the infrastructure to implement effective IPR protection regimes. Our goal is to eventually work with the governments of interested countries to develop grant and loan packages that will build the legal frameworks and institutions necessary to enforce their IPR protection laws.

Thank you for your consideration of INTA's comments. INTA would be pleased to provide this Subcommittee with any additional information you would find helpful. We look forward to working with you in the months ahead as the FTAA negotiating process continues.

Sincerely,

DAVID C. STIMSON
President

Statement of Dr. Richard L. Bernal,* Ambassador, Government of Jamaica [By Permission of the Chairman]

Thank you for providing me an opportunity to submit testimony on the participation of the smaller economies in the Free Trade Area of the Americas (FTAA).

INTRODUCTION

The world is involved in a profound process of globalization that is both requiring and creating multi-country, transnational economic spaces. At the same time that there is expansion to larger units in the global economy there is the complementary and simultaneous contradictory process of political fragmentation, resulting in smaller states. The number of countries/states has increased significantly in recent decades in particular there has been a proliferation of small countries/states. At the time of the First World War there were 62 independent countries. By 1946 there were 74 countries but this has grown to 193 at the present time. Most of these are small states. Indeed 87 countries have a population of less than 5 million, 58 have fewer than 2.5 million people and 35 with less than 500,000 people.

The majority of countries are small countries and therefore this issue is one which must be addressed both at the political and economic levels. It is a particularly important in international groupings that include both large and small states. For example, the Commonwealth maintains a Ministerial Group on Small States. In their most recent report they emphasized "the need for the international community to recognize the multidimensional nature of the vulnerability of small states" and called for "action to ensure that small states fully shared in the benefits from globalisation, regionalism and international trading arrangements, and were not marginalized."

The majority of countries in the Western Hemisphere are small countries/economies, hence their participation in the FTAA is an issue which must be examined and accommodated in any hemispheric wide political organization or economic integration arrangements. The issue of the integration of small economies into the Free Trade Area of the Americas (FTAA) is a complex one which must be addressed if all countries in the Hemisphere are to participate in the FTAA in a way which is beneficial to themselves and to the process as a whole.

This statement examines this issue and makes recommendations on what constitutes a small economy and what measures should be included in the FTAA, to address the disparity in size between participating countries and adequately take account of the characteristics of small economies. Part I examines the question of what is a small economy and discusses the implications of small size for economic growth and participation in trade arrangements with larger economies. Part II makes recommendations on how the interests and concerns of small economies can be incorporated into the design of the FTAA.

PART I

A. Defining a Small Economy

There is no single definition of small economy, indeed, any definition in quantitative terms would be unscientific as size is a relative concept. The question of defining a small economy is not a new one, and definitions have varied widely. A small economy is conceptualized as an economy that is a "price-taker" in the world market/international trade, i.e. it cannot influence world prices for goods, services and assets. This is too vague and all encompassing because in some situations, even the largest, most developed economies are price-takers. Definitions based on quantitative criteria vary considerably, as they employ different criteria and exhibit a significant arbitrariness in the selection of cut-off points. Kuznets and Streeten used population as the criterion, selecting an upper limit of 10 million, while Chenery and Syrquin used 5 million. A recent ECLAC study chose Gross National Product of less than $15 billion. Demas opted for a population of 5 million or less, and less than 20,000 square miles of usable land. The extent of the arbitrariness can be reduced by examining a distribution of economies based on a particular quantitative measure and identifying a cluster at the "small" end of the spectrum. Another problem is that the definition of small economy/state may have to be revised over time, if GDP or population are employed as measures. For example, the Commonwealth

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Secretariat in 1985 used the cut off point of 1 million but by 1997 had revised the upper limit to 1.5 million.

Various international organizations classify countries into categories according to selected indicators for operational and analytical purposes. The classifications used by international organizations mainly relate to per capita income levels, indicators of development status, and some selected concept of "size." While the main classification criterion used by institutions such as the International Monetary Fund, the World Bank, and the United Nations for establishing country categories is that of per capita income levels, these institutions also classify countries by aggregate income levels, by the type of goods exported (e.g. fuels, non-fuel primary products, manufactures or services) and by fiscal structure. The World Bank also groups economies with populations fewer than one million in a separate table of the World Development Report. Along with basic economic indicators, particularly per capita income, the United Nations categorizes countries according to an additional human development indicator. The U.N. "human development index" (HDI) combines various economic and social indicators in order to achieve a more comprehensive measure of development.

Under the GATT system and now under the World Trade Organization (WTO), the principle of "self-selection" is applied, i.e. members themselves choose their development status. However, in their publications the WTO follows the UN country classification and for budget purposes also makes use of the income criterion adopted by the World Bank. Under the WTO classification, countries with less than US $1,000 of income per capita may consider themselves as falling in the "least developed" category in terms of the obligations and disciplines set out in the Uruguay Round Agreement.

B. Indicators of Economic Size

The definition of the concept of "small" in relation to economic size, is usually based on one or more of the following criteria; population, land area, Gross Domestic Product are commonly used. These indicators relate to the measurement of the magnitude of an economy, in terms of its fundamental resources: human, land, and capital.

1. Population.—The most commonly-used indicator is the size of a country's population. More than three quarters of the people in the Western Hemisphere live in five countries. Nine countries account for nearly ninety percent of the Hemisphere's population. The largest economy in terms of population is over 6,000 times more populous than the smallest. Of the countries with less than 1.5 percent of the Hemisphere's population, 15 are the islands of the Caribbean and the Central American countries. Four South American countries—Uruguay, Paraguay, Bolivia and Ecuador—also fall into this category. These South American countries are those which are considered relatively less-developed within their respective subregional integration schemes (Mercosur and the Andean Group). Thus, the countries which are shown here to be small in population terms correlate with those countries which are generally considered to be the smaller countries of the Western Hemisphere.

2. Land Area.—The second commonly used indicator is the size of a country's territory. Land mass may be used as a proxy for both the amount and diversity of natural resources. The five largest countries comprise over 82 percent of the territory of the Hemisphere, and the ten largest countries cover over 95 percent of the land of the Western Hemisphere. The largest country of the Hemisphere, Canada, is over 30,000 times as large as the aggregate land mass of the fifteen smallest. With the exception of Bolivia, which is the eighth largest country in terms of land size, the smallest countries are the same as those ranked smallest according to population: the countries of the Caribbean and Central America and the ALADI members which are considered relatively less developed.

3. Gross Domestic Product (GDP).—A third indicator of economic size, the level of Gross Domestic Product (GDP), measures the aggregate wealth or aggregate output produced in an economy. GDP measures the magnitude of a country's domestic market, thereby offering some indications as to the possible limitations to specialization of production and exploitation of economies of scale. The data used here is the level of GDP normalized for exchange rate fluctuations. GDP figures are expressed in 1990 US dollars.

The two largest countries comprise 85 percent of the Hemisphere's GDP; the five largest countries make up 96 percent of the Hemisphere's GDP and 99 percent of the Western Hemisphere's GDP is generated in nine countries. The largest economy, which is ten times larger than the second largest economy, is over 850 times larger than an aggregate of the ten smallest countries' GDP. Not surprisingly, countries that are small in terms of population and land size also tend to be small in terms

of GDP. Thus, the same Caribbean and Central American countries, as well as the four smaller South American countries have the lowest gross domestic product.

C. Characteristics of Small Economies

Small economies have certain characteristics such a high degree of openness, limited diversity in economic activity, export-concentration on one to three products, significant dependency on trade-taxes and small size of firms.

*1. High Degree of Openness.*all economies are characterized by a degree of openness, i.e. external transactions are large in relation to total economic activity. Smaller economies tend to rely heavily on external trade as a means of overcoming their inherent scale limitations, i.e., a narrow range of resources and an inability to support certain types of production given the small scale of the market. Economic openness is measured by imports and exports of goods and services as a percentage of Gross Domestic Product (X+M/GDP). This measure indicates the proportion of the economy which is involved in external trade.

Three of the largest countries in land area, the U.S., Argentina and Brazil, exhibit the lowest reliance on external trade and the least openness, less than 5 percent trade/GDP. Canada, which is the largest territorial entity, the second largest in GDP terms and in the top six in terms of population is the eighteenth most reliant on external trade. Chile, also not among the smallest in the previous three categories, is a very open economy with a 57 percent trade/GDP ratio. Haiti, which is among the smallest in the other three categories, has low dependence on trade because of poverty. Two other countries, Uruguay and Guatemala, which are relatively small in terms of the size indicators, exhibit a relatively low dependence on trade. Otherwise, there appears to be a nearly perfect correlation between countries of the Caribbean and Central America and a high openness to trade. Twelve countries have trade dependency ratios of over 100 percent, ten from the Caribbean.

2. Limited Diversity and Export Concentration.—This limitation in the range of economic activity is mirrored in the concentration on a one to three exports. Accompanying this characteristic is the relatively high reliance on primary commodities in the economy. Most of the economies which exhibit the characteristics of small economies are relatively undiversified in terms of their exports, and exports are concentrated on one or two products for over one quarter of their total exports. In extreme cases, one primary product export accounts for over 50% of exports, e.g. bananas in Dominica, St. Vincent, and St. Lucia.

3. Dependence on Trade Taxes.—Smaller economies, which a lack economic diversity, tend to have a high dependence on trade taxes as a percent of government revenue. Larger economies measured by population size rely more heavily on forms of tax such as income tax rather than trade taxes such as customs duties, and this pattern is not related to income levels. Those countries which are small in population, land, and GDP terms, and which depend heavily on external trade, also rely heavily on external trade taxes for government revenue. There is a relatively strong correspondence between the countries which could be considered small and a high reliance on revenues from import duties. All of the Central American and Caribbean countries, with the exception of Barbados, El Salvador, St. Vincent, Trinidad and Tobago and Panama, obtain more than 20 percent of their government revenues from trade taxes. Trade taxes account for more than one half of government revenue in St. Lucia, Belize and the Bahamas and over one-third of government revenue in Guatemala and the Dominican Republic.

. *Small Size of Firms.*—It is not countries that trade, it is firms which conduct international trade, including a substantial amount which is intra-firm transfers. Nationally owned firms from small countries are small by global standards and by comparison with firms in large economies and multinational corporations owned and/or based in large countries. Except for a few sectors where economies of scale are not a significant factor, size of firm makes a significant difference in the ability of firms to survive and compete in the global marketplace. Small firms are at a disadvantage because they cannot realize economies of scale, are not attractive business partners and cannot spend significant funds on marketing, market intelligence and research and development. This is reflected in an examination of the huge difference between the top 20 Companies in the United States and those in the English-speaking Caribbean. Wal-Mart stores, the largest employer in the United States has a staff complement of 675,000 compared to the Caribbean's top employer, Lascelles Demercado (Jamaica) which employs 6,800. Total sales of General Motors is 328 times larger than that of Neal & Massey (Trinidad & Tobago). The seven largest US companies each have sales revenue which is larger than the combined GDP of the 21 Caribbean and Central American countries.

D. Size and Development

A direct relationship cannot be established between size and development. More specifically, small economies exhibit a range of development levels, from relatively poor to highly developed, using GDP per capita and the United Nations' human development index as an indicator of level of development. Similarly, there is no direct correspondence between small economies and level

1. GDP per Capita.—The most widely used indicator of or proxy for development is the GDP per capita, which converts the aggregate level of output into the monetary wealth per individual. When ranked by the level of Gross Domestic Product per capita, there is no direct correlation between GDP per capita and indicators of economic size. Some of the countries which are small in terms of population, land and level of aggregate national product rank highly when ordered according to the level of GDP per person. The ten countries with the highest per capita GDP include five of the islands of the Caribbean, while two countries, Colombia and Peru, which are relatively large in other indicators rank relatively low on this list. Per capita GDP in the Bahamas (0.16% of Brazil's land area) is three times larger than GDP per capita in Brazil.

2. Index of Human Development.—Along with basic economic indicators, the United Nations Development Programme (UNDP) categorizes countries according to an additional human development indicator—a basket measure of wealth, education and health. The Human Development Index (HDI) measures the average achievements in a country in three basic dimensions of human development—life expectancy, educational attainment and literacy, and real GDP per capita. Several of the countries considered small in population, land, and aggregate GDP terms are highly ranked in their level of education, health and standard of living, while some of the larger countries occupy lower rankings in terms of this indicator. Among the 15 lowest-ranked countries, 12 would be considered small according to population and size criteria.

3. Implications of Small Size.—There is no direct correspondence between size and the level of development attained by a country and no correlation between size of economy and growth rates. This fact is often used as a basis for the erroneous proposition that size has no significant impact on growth or development. Srinivasan argues that many of the problems which small economies are "alleged to confront are either not unique to them or can be adequately addressed through suitable policy measures." However, more penetrating analyses have revealed that size is an additional dimension to economic growth and development which give these processes a qualitatively different character, indeed, some have argued that small size is an additional constraint on growth.

The implications of small size for growth and the capacity to adjust to economic change include the following:

1. Small economies have severe constraints on their material and labor inputs both in amount and variety, because of their limited land area and small populations. These constraints prevent the attainment of economies of scale for a wide range of products and lead to high unit costs of production. Small economies tend to have a narrower range of domestic and export production because of the small size of the market and the limited range of resources. Small market size also tends to cause high costs because there is often a lack of competition, in fact, in many instances the market can only support a single producer i.e., monopoly.

2. There is a high degree of openness, i.e. trade/GDP ratio is high. Several important consequences follow from such a high degree of openness to trade. These include (a) The overall domestic price level is dominated by movements in the price of imports. The prices of non-traded goods also tend to adjust rapidly through the impact of foreign prices on wage and other cost movements. (b) Exchange rate changes tend to produce immediate effects, similar to those of foreign price changes, on domestic prices.

3. The high degree of openness and the concentration in a few export products, particularly some primary products and agricultural commodities, whose prices are subject to fluctuations in world markets, makes small economies vulnerable to external economic events and exposes small economies to real shocks of an intensity unparalleled in larger countries. This concentration of export production exposes small economies to real shocks of an intensity unparalleled in larger countries. Economic vulnerability can be a feature of an economy of any size and level of development, but is compounded by size, proneness to natural disasters, and remoteness and insularity. Briguglio in a recent study constructed a "vulnerability index" encompassing all three aspects. His calculations reveal that there is a direct relationship between vulnerability and size, with the smallest countries being the most vulnerable. Canada, Brazil, Argentina and the United States have vulnerability indices of

0.2 or less, while Caribbean and Central American economies exceed 0.4. The 10 smallest economies range from 0.595 for Barbados to 0.843 for Antigua

4. Trade theory as explained in textbooks assumes that international trade takes place between countries in an environment of perfect competition and trade occurs because of differences in comparative advantage which in turn derive from differences in resource endowment or technology. All firms are price-takers i.e. each firm is too small to influence price in the world market, therefore, international trade is due to differences between countries but size of country does not matter. By taking account of economies of scale i.e. increasing returns to scale, size of country and size of firm become important considerations. When there are economies of scale, large firms have an advantage over small firms, resulting in imperfect markets, including oligopoly and even monopoly market situations.

Small firms in small economies, especially small developing economies are at a major disadvantage. These firms cannot attain either internal economies of scale i.e. where unit cost is influenced by size of firm or external economies of scale, i.e. where unit cost depends on the size of the industry, but not necessarily the size of any one firm. Small size of economy, and thereby small size of industries, including export sectors is unlikely to foster the competitive dynamic necessary for firms in small economies to achieve competitive advantage. This is more likely where the economy is large enough to sustain "clusters" of industries connected through vertical and horizontal relationships. Krugman and Obsfeld warn that "trade in the presence of external economies may not be beneficial to all countries," and "it is possible that trade based on external economies may actually leave a country worse off than it would have been in the absence of trade."

Small firms in small, developing countries have severe difficulties in attaining "economies of scope" i.e. economies obtained by a firm uses its existing resources, skills and technologies to create new products and/or services for export. Exposure to global competition requires small firms to invest heavily just to survive in their national market, and more so in order to export. Larger firms are better able to generate new products and sources from existing organization and networks. Very large firms such as multinational corporations (MNCs) operate internationally in ways very different from small firms. Most of the trade of MNCs is intra-firm trade, rather than traditional "arm's length" international trade conducted by smaller firms. It is estimated that intra-firm trade accounts for 50 percent of the trade of the United States, and is also significant in developing countries.

5. Small economies pay higher transportation costs because of the relatively small volume of cargo, small cargo units and the need for bulk breaking. Small economies pay an average of 10% of the value of merchandise exports as freight costs compared to a world average of 4.5% and 8.3% for developing countries.

6. The public sector in small economies account for a larger share of GDP, which reflects a certain indivisibility of public administration structures and functions e.g. every country no matter how small has a prime minister, parliament, police force, etc. The growth of the public sector has been due in part to an enhanced role for public sector investment in the economy, which has however been associated with reduced growth.

7. Small economies have traditionally experienced export instability because they depend on a few primary product exports. It could be argued that many small economies have reduced the export instability associated with dependence on primary product exports by shifting to services, in particular, tourism and financial services, e.g. the Bahamas and Barbados. However, some studies have indicated that the change in the composition of exports toward a dominance of services has been accompanied by higher instability in export earnings. e.g. in Jamaica.

8. The process of adjustment in small economies is more difficult, larger relative to GDP and of necessity slower, because of the undiversified economic structure.

PART II

A. The Issue of Small Economies in the FTAA

The Summit of the Americas Declaration of Principles, which launched the Free Trade Area of the Americas (FTAA) process, recognized that the formation of a free trade area among thirty-four countries would be a complex and unprecedented undertaking, "particularly in view of the wide differences in the levels of development and size of the economies existing in our Hemisphere." Recognizing the need to address this issue in the design of the FTAA, the heads of state/government committed the participating countries to "facilitate the integration of the smaller economies and increase their level of development."

Subsequent Ministerial Declarations have noted the necessity of facilitating the integration and the importance of increasing the opportunities for the smaller econo-

mies to participate fully in the FTAA in a manner which promotes their growth. This reflects an extended debate regarding the characteristics of small economies and factors affecting their participation in the FTAA. For the Working Group on Smaller Economies, whose principal mandate is to "identify and assess the factors affecting the participation of smaller economies in the FTAA and the expansion of trade and investment stimulated therefrom" this is a core issue.

One of the issues, which proved difficult to decide, was the definition of a "small economy." This is not surprising, as within the extensive literature and among the international organizations that categorize economies using various economic indicators, the definition of what constitutes a "small" economy is one which has not been empirically determined in a universally accepted manner, and it is widely accepted that no single indicator can fully describe a country's size. This dilemma was recognized by heads of state and government when they referred to the concerns of "smaller economies" rather than "small economies."

The FTAA Working Group on Smaller Economies held eight meetings since it was first convened in Kingston, Jamaica in August, 1995. The activities of the Working Group were supported by the technical expertise of the Organization of American States, the Inter-American Development Bank, the United Nations Economic Commission for Latin America and the Caribbean, the World Bank and the Sistema Economico Latinamericano. The discussions in the Working Group also benefited from submissions by the governments of Caricom and Central America as well as from a study by a group of independent experts. The Working Group completed its deliberations in September, 1997 having executed its work programme, which consisted of:

1. Preparation of a bibliography of existing studies on smaller economies.
2. Examination of the current treatment of smaller economies in integration systems: (a) a survey of existing international, regional, and sub-regional agreements and arrangements to assess their treatment of smaller economies, e.g. transitional measures; (b) a comparative compendium of the treatment of smaller economies in such agreements and arrangements.
3. Identification of the characteristics of smaller economies that could affect their effective participation in the Free Trade Area of the Americas (FTAA).
4. Evaluation of the effect of size of economy on trade liberalization and economic growth.
5. Identification of the specific problems faced by smaller economies that might affect their integration into the FTAA, e.g. technical barriers to trade, lack of transparency, inadequate human and financial resources, lack of physical infrastructure and transport, fiscal dependence of smaller economies on tariff revenues, external debt, participation of small and medium enterprises.
6. Examination of opportunities to facilitate integration of the smaller economies and to increase their level of development: (a) The internal adjustments that smaller economies might undertake to prepare for full participation in a hemispheric free trade area; (b) Identify the mechanisms/measures that might be considered to facilitate the participation of smaller economies in the process of integration, e.g., the pace of the process.
7. Evaluation of the technical assistance requirements of smaller economies to: (a) Facilitate their participation in the FTAA process; (b) Ensure their integration in the FTAA.
8. Examination of the need for and feasibility of a regional integration fund.

B. Ensuring Effective Participation of Small Economies in the Negotiation Process

As stated in the Summit of the Americas Declaration of Principles, and reiterated in the Denver Ministerial Joint Declaration, one of the main objectives of the FTAA negotiations should be "to provide opportunities to facilitate the integration of the smaller economies and to increase their level of development." This mandate reflects insistence of the Caribbean and Central American governments that small economies do not suffer adverse consequences from participation along with larger, in some cases more developed economies in the FTAA. In order to ensure that this issue was kept under review and recommendations made, the Working Group on Smaller Economies was established.

The concerns of the small economies must be kept under continuous review during the negotiating stage of the FTAA, because small economies constitute the majority of the FTAA participants and small economies are a particular genre of national economy. Given the uniqueness of the subject matter, it does not seem appropriate for the Working Group on Smaller Economies to transform itself into a negotiating group during this negotiation phase of the FTAA process. However, there is a need to devise an appropriate mechanism that will periodically review and assess

the negotiation process from the standpoint of the smaller economies. This could be achieved by:

1. Placing the issue of small economies permanently on the agenda of the body which will have the main responsibility with regard to the negotiating process.

2. Establishing a consultative or advisory committee of smaller economies with formal lines of reporting within the negotiation process.

(a) Whose functions would be to:

(i) follow the FTAA process, keeping under review the concerns and interests of the small economies;

(ii) bring to the attention of the supervisory body of the negotiations, issues of concern to the smaller economies and proposals to address these issues;

(iii) provide a forum for small economies to discuss the negotiations as a whole.

(b) The rationale for the consultative/advisory committee is to:

(i) ensure a forum, which can permit (as far as possible) a common position of this constituency. This would simplify and make more expeditious the negotiations since it could reduce the number of negotiating positions and perspectives.

(ii) many small countries cannot afford to attend all the meetings given the duration of the negotiation (possibly even beyond the projected deadline of 2005), the number of meetings and multiple locations of meetings. The consultative/advisory committee is very likely to be the principal institutional forum in which many of the smallest countries will participate. This of course is not a precedent, e.g. the procedure was employed by the African countries during the Uruguay Round negotiation. This approach proved to be both cost-saving and successful for this group of countries as well as contributing to the overall negotiation process.

Meetings of the consultative/advisory group would be convened at specific intervals, to evaluate the progress within the FTAA process with regard to the smaller economies. For example, periodic reviews could be held to assess the work done to take into account the needs and interests of the smaller economies and to make recommendations where and when necessary.

3. Ensuring that adequate technical assistance is provided to smaller economies to strengthen their participation in the negotiations and to increase their capability to implement the objectives and disciplines of the FTAA. Smaller economies should make their needs known and identify the specific areas in which they will require technical assistance. The FTAA process should include a mechanism or mechanisms on which the smaller economies will be able to rely for the provision of such technical assistance. Such technical assistance could be made available from multilateral institutions and bilaterally.

4. Agreeing on the general principles which will guide the negotiations in all areas under consideration in the FTAA, these tenets must include the following:(a) participation in the negotiation must be open to all countries that are participating in the Summit of the Americas process; (b) negotiations will be transparent; (c) decision-making will be on a consensus basis; (d) the outcome of the negotiations will constitute a comprehensive, single undertaking which embodies the rights and obligations mutually agreed upon; (e) results of the negotiations will be consistent with the WTO; (f) countries may participate individually or as groups, whether as members of sub-regional trade agreements, e.g. MERCOSUR or by commonality of interests, e.g. small economies; (g) negotiators will take into account, in their deliberations, the needs and circumstances of the smaller economies.

C. Recommendations for Integrating Small Economies into the FTAA

Every effort should be made to ensure that the FTAA is truly hemispheric; including all countries whatever the size of their economy. In order to integrate small economies the following measures are recommended:

1. Smaller economies should have the scope to negotiate as a group, if they so desire, as this would allow them to pool scarce human and material resources.

2. Smaller economies, in particular, should consider early implementation, to the extent possible, of internal adjustments such as stable macroeconomic policies and measures to promote a business climate that encourages local and foreign investment.

3. In the negotiating stage of the FTAA, the smaller economies may require additional assistance with respect to the issues under negotiation.

4. Smaller economies should examine their special vulnerabilities and needs, with a view to formulating specific requests for technical assistance.

5. The proposals for the negotiations and construction of the FTAA should recognize the vital importance of technical assistance and technical cooperation, depending on the country's requirements, for full and effective integration of smaller economies into the FTAA. This would include measures to: (a) develop appropriate legislation; (b) strengthen national institutions/agencies; (c) conduct public workshops on

key issues in the WTO and related international organizations, and possibly the FTAA.

6. The needs of smaller economies, both in terms of technical assistance and in measures to facilitate their implementation of an FTAA, should form part of the work program of each negotiating group that will ultimately be established.

7. Negotiations and other consultations should be organized in a manner which economizes on human and financial resources.

8. Measures that may be accorded or negotiated to facilitate the participation of the smaller economies in the FTAA process, should be transparent, simple and easily applicable, yet should recognize the degree of heterogeneity among them.

9. All countries will share the FTAA's rights and obligations. In order to provide opportunities to facilitate the integration of the smaller economies into the FTAA, during the negotiations various measures could be included, on a case by case basis, such as: Technical assistance in specific areas such as intellectual property and technical standards; rules of origin and customs documentation which should be as simple, clear and transparent as possible for all FTAA countries; longer periods for implementing obligations; possibility of implementation at the regional or subregional level to save on scarce human/financial resources, e.g. technical standards bodies.

10. In the design of the FTAA, efforts should be made to reduce the transitional costs and minimize internal dislocation in the smaller economies. Smaller countries should be expected to implement all the provisions contained in the FTAA. However, suitable transitional arrangements (in the form of longer periods for the implementation of general rules and disciplines applicable to all) must be designed for those smaller economies which are not yet ready for immediate and full assumption of FTAA provisions, having not yet attained the level of development or level of liberalisation commensurate with the far-reaching obligations that are likely to be part of the FTAA. This asymmetrically-phased assumption of universally applicable obligations and disciplines is compatible with the evolving environment in which trade relations between larger and more developed countries and smaller developing nations has been taking place, both at the multilateral level (as was the case in the Uruguay Round), and in the context of regional and subregional trade arrangements in the Western Hemisphere. It is not desirable to apply "special and differential treatment" to all countries across all sectors and products. All economies will need differentiated treatment on some products and in regard to some sectors. The application of this principle will provide the flexibility necessary to accommodate the concerns of smaller economies.

D. Preparation by Small Economies for the FTAA

Smaller economies should not simply view the FTAA in isolation, but as part of their global strategic repositioning plans. The objective is repositioning a country in the global economy by proactive strategic adjustment in anticipation of, and in response to, global changes in demand and technology. Such plans must be designed to consolidate and improve existing production lines while reorienting the economy toward new types of economic activity aligned to global trends. Among other things, this includes producing what is demanded globally; pursuing structural transformation to achieve economic diversification; revitalizing traditional exports (i.e. looking downstream in traditional commodity production), and modernizing international marketing techniques to keep abreast of world demand. Smaller economies must undertake global strategic repositioning in response to developments such as globalization. This, in addition to helping them to avoid becoming marginalised from the world economy, will allow them to prepare themselves for the FTAA, to better participate in the FTAA, and to benefit from the FTAA. FTAA participation, in turn can act as a catalyst for the adoption of global strategic repositioning policies by smaller states.

CONCLUSIONS

The issue of integrating small economies into the FTAA must be addressed, if not there will not be a genuine FTAA. Small economies make up the majority (25 by some estimates) of the countries in the Hemisphere, hence their absence would make it impossible to have a seamless hemispheric economic space. There is no single, universally accepted method for classifying economies as small or large. Different methods yield different definitions of what is a small economy. Some indices suggest that certain countries within the Western Hemisphere most often exhibit the characteristics usually associated with being small. These are the countries of the Caribbean and Central America. It is therefore suggested that when dealing with this issue, the smaller economies be thought of as the countries in the Carib-

bean and Central America as well as those other countries that consider themselves small and expressly declare their status as such. In permitting self-selection, the FTAA would be following an approach applied in the GATT and now the WTO, whereby members select their own development status. Special measures will have to be included in the design of the FTAA to accommodate small economies and allow their participation to be beneficial to themselves and the process of free trade as a whole. The necessity for these measures arises from the characteristics of small economies and their implications from the growth and development of this type of economy. Certain principles, as well as technical assistance will ensure meaningful participation by small economies in the negotiation process. The FTAA must include appropriate treatment of small economies based on the principle of "differentiated treatment." This will permit a process of asymmetrically-phased assumption of disciplines in which small economies must have longer adjustment periods. Meanwhile, given the high degree of openness, undiversified structure and export concentration, small economies must immediately commence a preparatory process of strategic global repositioning.

National Association of Manufacturers

INTRODUCTION

The National Association of Manufacturers (NAM) supports the goal of attaining a Free Trade Agreement of the Americas (FTAA), as first set forth at the Miami Summit of the Americas in January 1995.

At the Miami Summit of the Americas, it was not only agreed to target the conclusion of negotiations for 2005, but the 34 participating countries also collectively agreed "to make concrete progress towards the attainment of [a Free Trade Agreement of the Americas] by the end of this century." In order to maintain the momentum of long-term negotiations and to achieve interim concrete results, the notion of attaining an FTAA "early harvest" has been discussed.

The NAM supports the concept of an early harvest, as set forth below. Moreover, NAM strongly recommends that the Ministers at the March 1998 San José Ministerial formally agree to pursue an early harvest strategy and that they make the issues listed below part of the formal FTAA early harvest agenda.

EARLY HARVEST GENERALLY

"Business facilitation issues" have been a central theme of early harvest discussions. These proposals are considered realistic and achievable as they do not require formal negotiation or legislation, but instead lend themselves to voluntary adoption unilaterally or collectively by businesses and governments alike. Even if negotiations or legislation are required, these issues are generally not considered controversial and thus implementation should not be hindered. In fact, their implementation is key to the facilitation of international business transactions and the NAM urges that they be pursued with vigor. NAM-supported business facilitation issues are detailed below.

An early harvest strategy should definitely focus on more than just business facilitation, however. For example, to advance concrete and integrated economic development in the region, transparent investment rules, regulations and practices are a must. Latin America should not be painted with the "Asian flu" brush, but must demonstrate discipline and transparency in this area to assure its trading partners of liquidity, stability and predictability.

In order to anchor actual trade negotiations, a formal Standstill Agreement should be reached immediately to ensure there is no backsliding as formal negotiations begin in earnest. In addition, de minimis duties (2 percent or lower) could be eliminated as a show of good faith. Finally, hemispheric adoption of multilaterally agreed zero-for-zero commitments, as well as a balanced and early duty reduction and elimination package, would be instrumental in shoring up FTAA progress. (See further details below.)

As transparency is one of the most important issues for trading partners, one goal might be to agree to hemispheric adoption of an FTAA provision mandating transparency in all participating countries' administrative and regulatory procedures (e.g., something striving to encompass such core principles as those embodied in, for example, the US Administrative Procedures Act).

Another early harvest item might include a hemispheric agreement regarding public procurement that incorporates the core elements of the WTO Government

Procurement Agreement and the NAFTA Chapter 10 government procurement provisions. Adoption of the Reference Paper on basic Telecommunications would be another important step towards early liberalization in the hemisphere. Finally, recognition and ratification of the OAS convention, and adoption of the OECD convention (following the example set by Argentina, Brazil and Chile) on anti-bribery would be a key hemispheric early harvest item.

A defined and useful role for the Private Sector should be set forth as soon as possible. The business sector obviously has the hands-on experience of hemispheric transactions and has much to contribute to the process. Furthermore, formal and productive hemispherically-integrated discussion and submission of business proposals will not only strengthen the content of any final FTAA agreement, but produces its own early harvest of closer hemispheric business ties.

BUSINESS FACILITATION ISSUES

The following is a non-exclusive list of business facilitation issues that US manufacturers would like to see pursued in an FTAA early harvest:

**Distribution of Information:* NAM supports the compilation and publication of as much information as possible to enhance the ability to conduct free and fair hemispheric transactions. That information should be made available through a myriad of mediums, including an FTAA homepage. The information should be as comprehensive as possible and up-dated regularly to make it useful. Information to be disseminated should include:

- data regarding hemispheric trade flows, foreign direct investment flows, tariffs (for individual countries and for hemispheric regional blocs), non-tariff barriers, subsidies and national payment instruments for commercial transaction;
- guidelines for customs procedures;
- an inventory of hemispheric laws and regulations regarding competition;
- an inventory of regulations and a list of agencies responsible for public sector procurement, and a list of goods and services frequently purchased by governments;
- an inventory of hemispheric consumer-based market-research, and market-needs analysis for goods and services;
- an inventory of regulations and a list of agencies responsible for administering dumping and countervailing laws and regulations;
- an inventory of regulations and a list of agencies responsible for intellectual property rights;
- an inventory of regulations pertaining to, and a list of agencies responsible for, electronic commerce;
- an inventory of regulations and a list of agencies responsible for industrial standards and sanitary and phytosanitary regulations;
- an inventory of regulations and a list of agencies responsible for foreign direct investment;
- an inventory of corporate tax policies, updated regularly to reflect any changes made thereto;
- an inventory of regulations and a list of agencies responsible for environmental policies, updated regularly to reflect any changes made thereto;
- a progress report on WTO rules compliance by the 34 participating countries within the hemisphere;
- a continually updated inventory of infrastructure projects and invitations to international tenders;
- official written comments on the progress, including recommendations and conclusions of, the governmental Hemispheric Working Groups (HWGs), as they proceed with formal negotiations, and in response to proposals of the Business Forum of the Americas; and
- the effective date and details for operation of any business facilitation measures generally agreed to.

**Education:* US manufacturers support the promotion of a symposium on business facilitation with international organizations (including the UN), governments (including customs agencies) and the private sector to update the participants on developments and present suggestions on business facilitation, and to promote increased cooperation between sister agencies such as customs and standards certification entities.

**Customs Procedures:* NAM supports a harmonized, efficient, hemispheric customs system. To that end, NAM supports early hemispheric agreement on the following:

- collective adoption of the WCO Harmonized System;
- collective adoption of internationally accepted customs forms and procedures;
- agreement to harmonize and simplify customs procedures on the basis of the Kyoto convention;

• collective adherence to the UN Electronic Data Exchange System (EDE) that includes the exchange of structured message EDIFACT/UN;
• collective adoption of an advanced classification ruling system providing certainty regarding classification information prior to importation;
• collective adoption of customs rules and procedures to speed processing and effectively facilitate voluntary compliance, including electronic filing and pre-shipment clearance;
• the establishment of simplified customs procedures for low-cost shipments;
• collective adoption of simplified customs procedures, including the ATA CarnetConvention, for temporary duty-free importation of products;
• adoption of the principles of the WTO Intellectual Property Agreement (TRIPS) to implement border enforcement of standard procedures for administering intellectual property rights;
• agreement to implement the Agreement on Interpretation of Article VII (Customs Valuation) of GATT 1994 to prevent against the burgeoning of differing import-price determining regimes;
• collective agreement to facilitate the creation and use of free trade zones and bonded warehouses; and
• collective adoption of a clear appeals provision to provide a means for business to challenge Customs decisions which they feel are erroneous or inequitable;

**Public Procurement:* Government procurement practices throughout the hemisphere should be non-discriminatory, transparent in their administration, and free from corrupt practices. To that end, the NAM strongly urges:
• adequate notice for evaluating projects and preparing bids, and in large or complex contracts, pre-qualification of bidders;
• the use of neutral or internationally recognized standards wherever possible, and the use of performance standards to ensure that equivalent products are treated equally;
• that objective criteria should be specified, as should be the formula by which they will be applied, which formula should be ascertainably followed in the selection process;
• that bids should be opened in public, in the presence of all bidders;
• that contracts should be awarded to the lowest compliant bidder on the basis of objective criteria, or in appropriate sectors (e.g., control processes, measurement and medical equipment), on the basis of a "best overall value" approach anchored by transparent criteria and evaluation procedures;
• that contracting agencies should provide unsuccessful bidders access to independent review of the bid process and its compliance with these principles, including adequate remedies for non-compliance by such agencies with such principles; and
• that the rights of the seller in its technical data and patents are considered and respected as is necessary in any fair and open government procurement process.

**Standards, Testing and Conformity Assessment:* NAM supports:
• where applicable or appropriate (e.g., the computer industry), promoting regulatory structures which reference: internationally-accepted standards or suite of standards; one test or suite of tests to meet those standards; acceptance of a supplier's or third-party's test results; and acceptance of a supplier's declaration of conformity, without precluding the supplier from choosing the third-party certification route;
• the adoption of international standards, where they exist, or standards widely accepted within an industry;
• pursuit of sector-specific hemispheric Mutual Recognition Agreements (e.g., telecommunications), not as an end in themselves, but as an interim step towards regional harmonization;
• basing all standards on sound scientific research and evidence;
• the establishment of a hemispheric central registry to which existing, proposed, and newly created standards would be notified; and
• the reduction of product marking/labeling requirements to a single hemispheric system for demonstrating conformity.

**Services:* NAM supports the following:
• collective adoption of international accounting standards for use in the preparation of financial statements;
• improved hemispheric securities market clearance and settlement procedures;
• streamlined procedures for the unrestricted provision of financial information, particularly on a cross-border basis;
• streamlined procedures for the approval of foreign mutual fund investment;
• eliminating economic means tests and publishing clear, transparent rules for the establishment of financial entities;

• increasing the number and types of financial services that can be provided or consumed on a cross-border basis; and

• open participation in distribution services within and between countries.

**Other:* NAM supports early hemispheric agreement on the following:

• simplification of visa issuing procedures for business travelers, including not requiring visas for short visits;

• the expedition of immigration procedures for business visitors;

• hemispheric participation in institutions such as ISO, Codex Alimentarius and the Pacific Economic Consultation Council (PECC);

• the adoption of "Principles for International Contracts" developed by the International Institute for the Unification of Private Legislation (UNIDROIT);

• the adoption of informal mechanisms to mediate and arbitrate trade disputes;

• requesting the Inter-American Development Bank (IDB) to prepare a "White Book" showing the deficiencies of existing hemispheric infrastructure, including regional transportation difficulties and energy integration issues, outlining the investment needed to solve them, and listing the agencies responsible for project management and construction; and

• strengthening institutional consultation mechanisms between the HWGs and Ministerials and the private sector, by channeling information through a formal organization such as the BNHI.

ADDITIONAL DETAILS FOR EARLY HARVEST ISSUES

**Investment:* It is critical that Western Hemispheric investment regimes be nondiscriminatory and transparent. Financing strategies must be based upon sound investment criteria. To avoid unfair competition in the attraction of international direct investment, there should be hemispheric agreement to only use incentives accepted by the WTO. Finally, intra-hemispheric investment flows should be supported by principles of MFN, national treatment, fair and equitable treatment and impartial and fair dispute settlement.

**Tariff and Non-Tariff Measures:* As was suggested in the Business Forum recommendations from Belo Horizonte, a hemispheric Standstill Agreement, covering both tariff and non-tariff measures, should be reached as soon as possible. Additionally, NAM urges early commitment to duty elimination through the adoption of GATT "zero-for-zero" packages (currently in effect for medical devices and semiconductor fabrication equipment). Such agreement could be part of a larger balanced duty reduction or elimination package comprised of the following type of concessions: undertakings to consider reducing high tariffs to levels which do not exceed a maximum duty rate or to levels to at least allow a minimal amount of trade to flow; elimination of "nuisance duties" (de minimis duties of 2 percent or below); and hemispheric adoption of multilaterally agreed zero-for-zero commitments. An early package could tackle tariffs in each of the three categories, and seek to achieve hemispheric results modeled after agreements such as the ITA.

Such an early package could be agreed to on a non-contractual basis, providing that the country be bound only in the final FTAA package. The major contributions of countries such as the United States and Canada would be in the elimination of nuisance duties. The major contributions of countries such as Brazil would be in reducing some of their high duties. If actual implementation was prevented by the free rider problem associated with MFN requirements, it could be agreed early on that such reductions would be implemented as soon as the FTAA went into effect or as soon as third countries agreed to pay for their implementation.

**Role of the Private Sector:* Establishing the role of the private sector should be done as soon as possible. It is important to define specific mechanisms for full private sector participation that provide a regular, predictable and useful framework for input. While it is recognized that formal trade negotiations are conducted on a government-to-government basis, parallel business community input will enhance both the content and the implementation of an FTAA.

To that end, at the national level, the NAM endorses regular and continuous briefings for the business community on the status of FTAA negotiations, and recommends that the views of all private sector advisors, official and otherwise, be taken into consideration. At the hemispheric level, the NAM endorses the continuation of the Business Forum of the Americas, understanding that it may have to be modified to reflect that the FTAA process is entering the formal negotiating stage. NAM would be interested in seeing procedures for formal government responses to consensus forum recommendations, perhaps through set briefings from, or meetings with, Chairpeople of the HWGs, and at intervals of less than 12 months.

CONCLUSION

The NAM supports the launching of formal hemispheric trade negotiations at the Second Summit of the Americas to be held in Chile in April 1998. It is hoped that such negotiations will based upon WTO disciplines and agreements as the floor for further progress.

The NAM strongly supports the concept of an FTAA early harvest to move the region concretely and progressively towards the goal of hemispheric trade integration. To that end, NAM urges the Ministers to explicitly direct the Vice Ministers to define and pursue an early harvest agenda by mid-1998, with first concrete results to be achieved by 2000 at the latest. Should early harvest issues be achievable before and after the year 2000, NAM supports a "rolling harvest" scenario as well.

It is hoped that all 34 participant countries will be diligent and creative in pursuing business facilitation and other easily achievable early harvest items. Hemispheric private sector participation is crucial to this goal, and the NAM stands ready to assist in the endeavor.

This paper was prepared by Dianne Sullivan, director of international trade policy, of the NAM's Economic Policy Department, in close coordination with the NAM's member companies and the following associations: American Electronics Association, American Forest and Paper Association, American Iron and Steel Institute, Chemical Manufacturers Association, Coalition of Service Industries, Distilled Spirits Council of the United States, Grocery Manufacturers Association, Information Technology Industry Council, JBC International, Motor and Equipment Manufacturers Association, National Electrical Manufacturers Association, Telecommunications Industry Association, Transparency International USA, and the United States Council for International Business.

This paper was also prepared closely in conjunction with the North-South Center of the University of Miami and its Adjunct Senior Research Associate, Stephen Lande.

Statement of Rubber and Plastic Footwear Manufacturers Association

On July 14, 1997, the Rubber and Plastic Footwear Manufacturers Association (RPFMA), the spokesman for manufacturers of most of the rubber-soled, fabric-upper footwear, waterproof footwear and slippers made in this country submitted a Statement to the Trade Subcommittee in connection with the hearing the Subcommittee was then conducting on negotiations for a free trade area in the Americas. The concerns we expressed in that Statement remain valid today and this submission, responding to the Subcommittee's request for testimony on "the anticipated impact of expanding trade in the hemisphere on United States'... industries....", is essentially the same as our Statement of July 14, 1997.

Rubber footwear is a labor-intensive, import-sensitive industry: Labor constitutes more than 40 percent of total cost, and imports of fabric-upper footwear and of slippers take in excess of 80 percent of the U.S. market and imports of waterproof footwear in excess of 40 percent. These imports come from countries where wages are from one-fifteenth to one-twentieth of the level in the domestic industry.

In December 1997, the United States Department of Commerce issued a report on trends and trade issues affecting the domestic rubber footwear industry. In its overview of that report the Department stated "[b]oth rubber-canvas and rubber protective footwear are standardized products that are produced using mature, labor-intensive technologies commonly available throughout the world. Capital requirements are low and production requires no unusual skills or education. These economic characteristics make it difficult for U.S. producers to compete with producers in lower-wage countries."

A free trade agreement with Latin America is unlikely to enhance export opportunities for the products of this domestic industry because of the difficulty of competing anywhere in the world with such low-wage producers as China, Indonesia, Malaysia, and now Vietnam. On the other hand, the elimination of duties on imports of rubber footwear and slippers from Latin America would cause havoc to what is left of this domestic industry, particularly since countries like Chile, Brazil and Argentina already have a significant number of rubber footwear and slipper plants. Duties on fabric-upper footwear with rubber soles average in excess of forty percent and duties on protective footwear and slippers are, for most products, thirty-seven and half percent. The elimination of these duties would have a more serious impact than in the case of the elimination of virtually any other duty.

In the early 1970s, there were some 26,000 production employees making rubber and plastic footwear and 10,000 making slippers in the U.S. By the end of 1996,

these figures had shrunk to 4,500 and 2,100 respectively. This downsizing is attributable to the growth of the industry abroad.

The dozen or so rubber footwear and slipper companies left in this country represent survival of the fittest. These companies believe that they can continue to survive if there is no further erosion in the present levels of their tariff protection. Although they have already found it necessary to do a significant amount of importing in order to remain competitive, a majority of their production still occurs in this country.

A dramatic example of the effect on this industry of duty-free trade is what has happened in the Caribbean. Until 1990, rubber footwear was excepted from duty-free treatment under the Caribbean Basin Initiative. The 1990 amendment to the CBI eliminated the exemption for footwear when that footwear is made with American components. As a result of that elimination of duties, rubber footwear imports from the Caribbean rose from 200,000 pairs in 1990 to in excess of 12 million pairs in 1996.

Accordingly, any agreement for a free trade area in the Americas should provide for an exception for the very few domestic industries, such as rubber footwear and slippers, whose continued survival would be endangered by the elimination of duties. Surely it was a recognition of the need for such limited exceptions which accounted for the language of paragraph eight in article XXIV of the GATT which defines a free trade agreement as one where "the duties and other restrictive regulation of commerce ... are eliminated in *substantially* all the trade between the constituent territories or products originating in such territories" (emphasis added). The benefits which accrue from a free trade agreement would not be diminished by protecting the minuscule fraction of one percent of the country's trade represented by rubber footwear and slippers.

RPFMA urges the Trade Subcommittee, in its report on the current hearings, to adopt a view that the negotiation for a free trade area in the Americas should have as its objective the elimination of *substantially* all duties and that exceptions may be made in those extraordinary situations where the survival of domestic industries are at stake.

Appendix I. Rubber and Plastic Footwear Manufacturers Association

American Steel Toe
P.O. Box 959
S. Lynnfield, MA 01940–0959

Converse, Inc.
One Fordham Road
North Reading, MA 01864
(with a plant in North Carolina)

Draper Knitting Co.
28 Draper Lane
Canton, MA 02021

Genfoot
673 Industrial Park Road
Littleton, NH 03561

S. Goldberg and Co.
20 East Broadway
Hackensack, NJ 07601–6892

Hudson Machinery Worldwide
P.O. Box 831
Haverhill, MA 01831

Kaufman Footwear
Batavia, NY

LaCrosse Footwear, Inc.
P.O. Box 1328
LaCrosse, WI 54602
(with plants also in New Hampshire and Oregon)

Frank C. Meyer Co.
585 South Union Street
Lawrence, MA 01843

New Balance Athletic Shoe, Inc.
38 Everett Street
Allston MA 02134–1933
(with plants also in Maine)

Norcross Safety Products
1136 2nd Street
P.O. Box 7208
Rock Island, IL 61204–7208

Spartech Franklin
113 Passaic Avenue
Kearney, NJ 07032

Tingley Rubber Corporation
200 South Avenue
P.O. Box 100
S. Planfield, NJ 07080

Statement of U.S. Express Integrated Transportation Services Sector

I. Introduction

This statement is submitted on behalf of the following companies who are members of the U.S. express integrated transportation services sector ("ExITS").

- Airborne Freight Corporation
- Burlington Air Express, Inc.
- DHL Worldwide Express
- Emery Worldwide Express
- Federal Express Corporation (FedEx)
- TNT Express Worldwide
- United Parcel Service (UPS)

These companies comprise a large majority of the U.S. express integrated transportation services sector, representing more than ninety percent (90%) of the value of trade provided by the U.S. companies making up this industry. In addition, this statement is submitted on behalf of the Air Courier Conference of America and the Cargo Airlines Association, two related U.S. trade associations.

II. Summary

The U.S. ExITS sector has been actively involved in the FTAA process and its experiences to date have been positive. Through the Americas Business Forum process, and the Joint Meeting of the FTAA Working Group on Services and Private Sector (Santiago Chile, Oct. 1998), the U.S. ExITS sector has been instrumental in the development of a series of sector specific recommendations for consideration in the FTAA process. If adopted, those recommendations would result in meaningful trade liberalization for the sector, and a quantifiable positive economic benefit to the U.S. companies of the ExITS sector.

One recommendation of the ExITS sector represents an area where early concrete progress may be had. At the IV Americas Business Forum held at Costa Rica in conjunction with the fourth FTAA Ministerial Meeting, industry representatives from throughout the Western Hemisphere (including MERCOSUR) recommended by unanimous consent that the FTAA countries adopt and fully implement by June 1999 the so-called Cancun Accords. The Cancun Accords is a document that sets forth a comprehensive model of customs related procedures for express integrated transportation services. Customs officials, and industry representatives, from 16 Latin American countries signed the Cancun Accords. The Cancun Accords precisely represent the type of business facilitation measures that upon early adoption in the FTAA process would expand trade, promote economic prosperity throughout the hemisphere, and facilitate across the board trade in goods and services. The U.S. ExITS sector is eager to work with Congress, the U.S. Administration, and governments and industry throughout the Western Hemisphere towards the early adoption of the Cancun Accords.

The U.S. ExITS sector recognizes that USTR representatives, in particular those involved in the FTAA and trade in services, have been particularly instrumental in creating opportunities for private sector input.

III. Purpose of Submission

In its March 17, 1998, notice, the Subcommittee announced a hearing "on the status and outlook for negotiations aimed at achieving a Free Trade Area of the Americas (FTAA)." The Subcommittee noted that it was interested in examining the "progress in the FTAA negotiations and how these talks affect the national economic and security interest of the United States," as well as the "anticipated impact of expanding trade in the hemisphere on United States workers, industries, and other affected parties."

The U.S. ExITS sector has been actively involved in the FTAA process, including in several of the Americas Business Forum meetings that have convened in conjunction with FTAA Trade Ministerial Meetings. Given its interest and active involvement, the U.S. ExITS sector appreciates the opportunity to submit this statement to address the issues identified by the Subcommittee, and to provide the Subcommittee its views concerning its experience and vantage point as both a participant in, and potential beneficiary of, the FTAA process.

IV. Overview of U.S. ExITS Sector

The U.S. express integrated transportation services sector is made up of companies that provide express integrated transportation services ("ExITS"), that is, the provision of fast, efficient, and reliable pick-up, transport, and delivery of a wide variety of goods of all sizes, shapes, and weight. The distinguishing characteristic of the service provided by the sector is the *just-in-time* shipment of goods and services. The "just-in-time" concept not only implicates the timely delivery of goods to production facilities, it also encompasses the "time-definite" needs of the customer—either the shipper, the recipient, or both. Every day in the United States and around the world, consumers determine for a variety of reasons to pay a premium for either shipping or receiving goods or services on a *just-in-time* basis. U.S. ExITS companies transport and deliver on a time sensitive basis such items as business, commercial, educational and official documents; packages; finished goods; parts and components necessary for the manufacture of industrial goods; raw materials; high-value items; perishable goods; and emergency supplies and medical equipment.

The U.S. ExITS sector is a key contributor to the economic prosperity of the United States. The ExITS sector employs more than 400,000 people and has a combined annual revenue of more than $45 billion. One of the U.S. ExITS companies is the fifth largest private employer in the United States. The ExITS companies operate more than 1,000 aircraft and 184,000 vehicles in providing express integrated transportation services. On a daily basis, they deliver more than 4.1 million packages by air to more than 211 countries. The U.S. ExITS sector also significantly contributes to the economies of other countries. The two largest ExITS companies employ more than 50,000 people outside the United States.

The ExITS sector involves more than just simple "courier" or freight services. What distinguishes the service provided by ExITS companies from that of regular freight companies is that the ExITS sector offers door-to-door, integrated, time-sensitive shipment of goods and services. To provide this service, ExITS companies handle all aspects involved in the express shipment, including pick-up of the item, ground and air transport, delivery, warehousing, distribution, customs brokerage and customs clearance, and the completion of all types of required administrative and customs procedures. With the increase in the "just-in-time" method of manufacturing, the services provided by ExITS companies will become even more essential in the future. As discussed below, the service provided by the ExITS sector is both essential and necessary to the conduct of international trade and commerce.

V. The Benefits of Trade Liberalization Under an FTAA

The services provided by the express integrated transportation services sector are a key facilitator to international trade. The world trading community is increasingly bound together by international aviation. On a value basis, thirty seven percent (37%) of the goods and cargo in world trade are transported by means of air express. If bulk commodities such as oil and agricultural products are excluded from this calculation, nearly fifty percent (50%) of all global trade (by value) is transported by air. It is expected that the importance of air cargo transport will increase in the future. Industry analysts have estimated that the growth rate for air cargo (measured in revenue ton miles) will exceed the growth rate of world passenger traffic (measured in revenue passenger miles) over the next twenty years.

As the world advances into the twenty-first century, more and more of world trade will be represented by the kind of goods transported by the ExITS companies, high-value items such as electronic goods, computers and computer parts, optics, precision equipment, medicine and medical supplies, pharmaceuticals and chemicals, aircraft and auto parts, avionics, fashions, high-value agricultural and perishable goods, and intellectual property. Thus, the services provided by the ExITS sector are vital to trade liberalization and trade expansion in the Western Hemisphere and throughout the world, and will be increasingly essential to the future growth of international trade and commerce.

Unfortunately, the ability of the ExITS sector to provide efficient and reliable service is impeded and adversely affected by a large number of governmental measures applied to services other than so-called "courier" services. In order to provide its service, the ExITS sector performs a large number and variety of services, such as, air and ground transportation, air auxiliary services, distribution, warehousing, customs brokerage, telecommunications, and freight forwarding. Thus, effective trade liberalization for the sector necessarily involves the reduction or elimination of all trade restrictions and trade-distorting measures applied to various services performed by the ExITS sector in providing express integrated transportation services.

Under the FTAA process, the removal of trade barriers and other impediments to the efficient operation of ExITS services will stimulate trade expansion and have a dynamic effect on other international business sectors in the Western Hemisphere. Meaningful trade liberalization in the ExITS sector will act as a catalyst in encouraging small and medium-sized businesses to grow through expanded exports by freeing them from the burdens associated with otherwise arranging for the transport and delivery of their goods in international trade.

In addition, U.S. ExITS companies doing business in Central and South American countries expand the economies of those countries through the local sourcing of goods and services, *e.g.,* fuel, equipment, telecommunications, and technical labor. Hence, the express integrated transportation service sector is important because it does more than just facilitate trade, it also acts as an expander and promoter of international trade. Consequently, the elimination and reduction of trade impediments and other measures restricting the services provided by the ExITS sector should be a primary objective in the FTAA process.

VI. Major Goals for ExITS Sector in an FTAA

As noted in detail below, the U.S. ExITS companies have been actively involved in the FTAA process. The U.S. ExITS sector has advanced the following major objectives and principles.

A. All pertinent services should be included in negotiations in the express integrated transportation services sector.

The FTAA negotiations should address all measures which affect and encumber trade in express integrated transportation services. As noted above, in order to provide their service, ExITS companies must undertake activity in a number of service sectors and sub-sectors. Hence, meaningful trade liberalization cannot be achieved only by addressing, for example, "courier" services. Instead, trade restrictions applied in all services performed in the provision of express integrated transportation services must be addressed in order to achieve meaningful trade liberalization for the ExITS sector. For this reason, all pertinent services should be included in negotiations in the ExITS sector.

B. The FTAA process should conduct sector specific examinations in the context of negotiations on services.

As noted above, as a facilitator and promoter of international trade, the ExITS sector plays a key role in trade expansion in the Western Hemisphere. As the ExITS sector must perform a wide variety of services in order to provide express integrated transportation services, the trade restrictions encountered by the sector represent governmental measures applied in an equally broad segment of service sectors and sub-sectors. As in other service sectors, e.g., financial services and telecommunications, the governmental measures that restrict trade in express integrated transportation services are of such a diverse and complex nature that meaningful trade liberalization will occur only to the extent that sector specific rules and principles are developed for the ExITS sector. This means that the sector must receive sector specific treatment/examination during the negotiations.

A sector specific approach for the ExITS sector would accord with the structure of the FTAA negotiations agreed to at the most recent FTAA Trade Ministerial Meeting, held in San José, Costa Rica in March 1998. In the Joint Declaration issued at that meeting, the Trade Ministers established nine negotiating groups, including one for services, and stated that each of the negotiating groups may establish *ad hoc* working groups with respect to issues that it determines are deserving of focused consideration. The express integrated transportation services sector merits, and should be accorded, such concentrated treatment within the services negotiating group. Specifically, Congress should require as a U.S. negotiating objective that the U.S. Administration ensure negotiations for the ExITS sector be undertaken on a sector specific basis.

C. The FTAA process should immediately address certain business facilitation measures.

The trade ministers of the 34 countries engaged in the FTAA process have recognized that certain business facilitation measures that enhance trade may, and should, be agreed to and implemented in advance of the conclusion of the FTAA process.

At the third FTAA Trade Ministerial Meeting, held in May 1997 at Belo Horizonte, Brazil, the trade ministers directed their vice-ministers to "review the reports of the [FTAA] Working Groups and approve as appropriate their recommenda-

tions on work programs, areas for immediate action and *business facilitation measures." Joint Declaration* (May 16, 1997) at ¶ 7 (emphasis added).

In their Joint Declaration issued at the fourth FTAA Trade Ministerial Meeting, the trade ministers declared that the FTAA process, which envisions the conclusion of negotiations by the year 2005, should achieve concrete progress by the year 2000, especially in the area of business facilitation measures. The Joint Declaration of the San José Ministerial (at ¶ 18) states:

We reaffirm our commitment to make concrete progress by the year 2000. We direct the negotiating groups to achieve considerable progress by that year. We instruct the TNC [Trade Negotiations Committee] to agree on specific business facilitation measures to be adopted before the end of the century, taking into account the substantive work that has already emanated from the FTAA process.

In the field of international trade, "business facilitation" is similar to "trade facilitation," which has been defined as the systematic rationalization of procedures, information flows, and documentation to facilitate international trade. In concept, "business facilitation" measures include trade facilitation measures, but also cover a broader field of measures. Thus, business facilitation measures would not focus merely on trade in goods alone, but would include any measure that facilitates international transactions and the cross-border movement of goods and services.

One obvious application of a business facilitation measure that would expedite the import, export, and trade of goods and services would be the simplification and harmonization of customs procedures and other measures that regulate transportation procedures. For the ExITS sector in particular, such business facilitation measures would represent a means for effecting immediate trade liberalization. The implementation of relevant business facilitation measures, such as the Cancun Accords described below, which expedite the clearance of express shipments would represent meaningful trade liberalization for the ExITS sector.

1. Cancun Accords.—In October 1997, following the Belo Horizonte Summit of the Americas Trade Ministerial Meeting, the FTAA Working Group on Services and the private business sector held a joint meeting in Santiago, Chile. At that meeting, a sectoral commission focused on the ExITS sector issued specific recommendations to the FTAA Working Group on Services, which included the following recommendations regarding customs procedures:

Customs procedures for express integrated transportation services should be elaborated in the FTAA process based on the International Customs Guidelines of the International Chamber of Commerce, the Customs Guide of the World Customs Organization, the Columbus Accords, the Cancun Accords, and the Kyoto Convention.

The U.S. ExITS sector believes that the relevant customs provisions contained in the referenced guidelines and arrangements, in particular the Cancun Accords, constitute business facilitation measures relevant to the FTAA process. The Cancun Accords is a document that resulted from a meeting of Customs Directors and private sector representatives of 16 Latin American countries held in June 1996 at Cancun, Mexico. At that meeting, the customs officials from the 16 Latin American countries signed a *Memorandum of Obligation on Latin American Customs Procedures for International Express Service Companies,* which is known as the "Cancun Accords." The Cancun Accords is a comprehensive regulation of "the work of express service companies." It addresses, *inter alia,* the type of merchandise that may be transported by express services, the modalities of transport used, the formalities to be complied with, authorization to operate as an express service company, and the customs procedures required to enter express service shipments.

Given that the Cancun Accords were agreed to and adopted by private sector representatives and customs officials of a majority of the Latin American countries, the U.S. ExITS sector strongly urges that the Cancun Accords be adopted and implemented by the FTAA countries at the outset of the FTAA negotiations as business facilitation measures manifesting concrete progress in trade liberalization within the FTAA process.

D. Prior work of the ExITS sector in the FTAA process.

The establishment of an FTAA would result in the world's largest free trade area. Given the FTAA's huge scope and potential implications for trade, the leaders of the Western Hemisphere have foreseen from the very beginning of the FTAA process the need to fashion a partnership with the private sector in order to achieve a meaningful and beneficial result. Consequently, the trade ministers of the 34 nations participating in the FTAA process have expressly solicited and welcomed the participation of the private business sector.

At the First Summit of the Americas held in Miami, Florida in December of 1994, the leaders of 34 Western Hemisphere nations issued a declaration of principles and

objectives that included the establishment of a free trade area by the year 2005. In an action plan accompanying the declaration, the leaders stated that they would "strive to maximize market openness" and "strive for balanced and comprehensive agreements," including agreements that addressed "tariffs and non-tariff barriers affecting trade in goods and services." In addition, the leaders noted that while the "primary responsibility for implementing" the Action Plan would fall to the governments, they also declared that it was their intention that *"some of these initiatives be carried out in partnerships between the public and private sector."*

Subsequently, at each of the four FTAA Trade Ministerial meetings which have been held so far since 1994, the trade ministers have endorsed the participation of the private sector in the FTAA process. At the First Trade Ministerial, held at Denver, Colorado, in June 1995, the trade ministers announced that they would establish a Working Group on Services at the second ministerial meeting and welcomed the participation of the private sector:

We are committed to transparency in the FTAA process. As economic integration in the Hemisphere proceeds, *we welcome the contribution of the private sector ....*"[1]

At the Second Trade Ministerial Meeting, convened at Cartagena, Colombia, in March 1996, the trade ministers reiterated the importance of the private sector's input in the FTAA process:

We recognize the importance of the role of the private sector and its participation in the FTAA process. We have also agreed on the importance of Governments consulting their private sectors in preparation for the Trade Ministerial Meeting to be held in 1997. We reaffirm our commitment to transparency in the FTAA process.[2]

Similarly, at the Third Trade Ministerial Meeting in May 1997, at Belo Horizonte, Brazil, the trade ministers again recognized the importance of the private sector's participation, noting that:

We received with interest the contributions for the Third Business Forum of the Americas relating to the preparatory process for the FTAA negotiations, which we consider may be relevant to our future deliberations. *We acknowledge and appreciate the importance of the private sector's role and its participation in the FTAA process.*[3]

Most recently, at the Fourth Trade Ministerial, held at San José, Costa Rica in March 1998, the trade ministers again declared that the private sector has played, and should continue to play, a valuable role in assisting development of an FTAA:

We recognize and welcome the interests and concerns that different sectors of society have expressed in relation to the FTAA. Business and other sectors of production, labor, environmental and academic groups have been particularly active in this matter. We encourage these and other sectors of civil societies to present their views on trade matters in a constructive manner. ...

In this regard, we value the contributions made by the business sector through the Business Fora of the Americas of Denver, Cartagena, Belo Horizonte and San José.[4]

As shown, the trade ministers engaged in the FTAA process have repeatedly recognized that the private sector plays an integral role in trade liberalization in the Western Hemisphere, and have thus welcomed and encouraged the input and participation of the private business sector in the development of an FTAA.

The U.S. ExITS sector, among others, has taken up this invitation and has worked to assist the FTAA process make measurable advances by addressing pertinent issues, including sector-specific issues, approaches to the negotiations, trade principles and obligations, and the structure of the free trade agreement. The following describes the progress of the ExITS sector in the FTAA process.

1. Santiago, Chile.—In October 1997, following the Belo Horizonte Trade Ministerial meeting, the FTAA Working Group on Services and the private business sector held a joint meeting in Santiago, Chile. This meeting was significant for two reasons. First, it was the first official joint meeting between the private sector and an FTAA Working Group. Second, the joint meeting involved examinations of seven specific service sectors, including the express integrated transportation services sector.

At the Santiago meeting, sector-specific commissions were established for the seven sectors examined. The Sectoral Commission for the ExITS sector developed

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[1] Summit of the Americas, First Trade Ministerial Meeting, Denver, Colorado, *Joint Declaration* (June 30, 1995) at ¶ 11 (emphasis added).

[2] Summit of the Americas, Second Trade Ministerial Meeting, Cartagena, Colombia, *Joint Declaration* (March 21, 1996) at ¶ 15 (emphasis added).

[3] Summit of the Americas, Third Trade Ministerial Meeting, Belo Horizonte, Brazil, *Joint Declaration* (May 16, 1997) at ¶ 14 (emphasis added).

[4] Summit of the Americas, Fourth Trade Ministerial Meeting, San Jose, Costa Rica, *Joint Declaration* (March 19, 1998) at ¶ 17 (emphasis added).

detailed sector-specific recommendations which were then presented to the FTAA Working Group on Services. The ExITS Sectoral Commission was composed of representatives of companies and regional and national trade associations of the ExITS sector and, as such, reflected the interests of the ExITS sector throughout the Americas. The following are excerpts from the Preamble to, and a summary of, the recommendations developed by the ExITS Sectoral Commission at the Santiago joint meeting:

PREAMBLE

The express integrated transportation service sector more than facilitates trade: it expands and promotes both trade in goods and trade in services. The hallmark of the service provided by the sector is the *just-in-time* shipment of goods and services. . . . Government regulations that impede the just-in-time nature of the service effectively prevent the provision of the service."

Due to the door-to-door and integrated nature of this sector, a large number of service sectors are involved in the supply of *just-in-time* shipments, including air and ground transportation, air auxiliary services, distribution, warehousing, Customs brokerage, telecommunications, and freight forwarding. . . . [L]iberalization of international trade in the express integrated transportation sector necessarily involves addressing the issues of trade restrictions and trade distortive measures that are applied in all pertinent service sectors."[5]

RECOMMENDATIONS

1. the sector should be defined as the "Express Integrated Transportation Service Sector," not as "courier services";
2. the FTAA negotiations should be conducted on a negative list approach;
3. the FTAA services agreement should contain a national treatment provision as well as transparency and most-favored-nation obligations, which specifically address services;
4. Customs procedures for express integrated transportation services should be elaborated in the FTAA process based on the International Customs Guidelines of the International Chamber of Commerce, the Customs Guide of the World Customs Organization, the Columbus Accords, the Cancun Accords, and the Kyoto Convention;
5. the Services Working Group should create a liaison with the Working Group on Customs in the elaboration of customs procedures;
6. the FTAA Services Agreement should contain the following disciplines with respect to postal services and the ExITS sector: elimination of price regulation, discriminatory taxes and fees, abusive monopoly practices, cross subsidization, and preferential customs agreements, binding of government postal services to the same measures applied to the private sector; and requiring government postal authorities to maintain separate fiscal organizations with respect to revenue from postal business and revenue from express transport services;
7. the FTAA Services Agreement should apply the same rights and obligations contained in the WTO Agreement on Subsidies and Countervailing Measures;
8. the FTAA should contain disciplines on postal services to eliminate unfair trade practices and trade distortion resulting from the use of exclusive service providers;
9. the FTAA should contain disciplines to eliminate discriminatory treatment with respect to ground transportation regulations and the ExITS sector, in particular, regulation of: vehicle weight and size, number of shipments, shipment weight and size, use of highways and roads, documentation, type of goods that may be shipped, parking, operating hours, and price regulation; and that FTAA countries should strive to achieve harmonization with respect to these areas;
10. the FTAA should contain a mechanism for the effective protection and enforcement of intellectual property rights in services, in particular, service marks;
11. the express integrated transportation service sector should be the subject of sectoral negotiations in the FTAA process.[6]

12. San José, Costa Rica.—The Fourth Americas Business Forum was held in March 1998 at San José, Costa Rica, in conjunction with the Fourth FTAA Trade Ministerial meeting. As in prior Forums, workshops were for various trade areas, including international trade in services. The services workshop was divided into seven service sector workshops, one of which was devoted exclusively to express in-

[5] First Services Business Forum of the Americas, *Sectoral Commissions Recommendations to the FTAA Services Working Group,* Santiago, Chile (Oct. 1997) at 15.
[6] Id. at 16–17.

tegrated transportation services. Representatives from the ExITS sector from throughout the Western Hemisphere met and developed the following recommendations.

EXPRESS INTEGRATED TRANSPORTATION SERVICES

On the basis of the work undertaken by this sector in the FTAA process, including at the III Americas Business Forum, Belo Horizonte, Brazil, and the Joint Meeting of the FTAA Working group on Services and the Private Sector, Santiago, Chile, the representatives of the express integrated transportation service sector at the IV Americas Business Forum recommend the following:

RECOMMENDATIONS: BUSINESS FACILITATION MEASURES

1. As there exists an accord on customs procedures for this sector signed by all 16 of the FTAA countries present at Cancun, Mexico, in June 1996, it is strongly urged that the Cancun Accords be implemented by the FTAA countries prior to June 1999, and that future revisions to the Cancun Accords be incorporated within one year from the date of revision, and that the express clearance guidelines of the WCO (World Customs Organization) and the international customs guidelines of the ICC (International Chamber of Commerce) be implemented on a scheduled basis.

GENERAL RECOMMENDATIONS

2. The members of the FTAA should eliminate anti-competitive measures applicable to the international transportation and delivery of goods and services, including anti-competitive practices by customs and postal authorities, and eliminate taxes and fees used to subsidize government owned or operated services. Specifically, it is recommended that the laws, regulations, and governmental practices related to the aforementioned measures and practices be amended prior to January 1, 1999, to ensure the elimination of such measures and practices by January 1, 2000.

VII. THE U.S. SHOULD ADOPT AS A FTAA NEGOTIATING OBJECTIVE THAT NEGOTIATIONS FOR THE EXITS SECTOR BE UNDERTAKEN ON A SECTOR-SPECIFIC APPROACH

In the case of previous multilateral trade negotiations in which the United States has participated, such as NAFTA and the GATT Uruguay Round, Congress has in the course of granting fast-track authority to the President outlined and issued specific negotiating objectives and principles to guide the trade negotiations. Congress should follow this practice with respect to the FTAA and require that the Administration pursue as a U.S. negotiating objective that a sector-specific approach be undertaken with respect to the ExITS sector.

VIII. CONCLUSION

The U.S. ExITS sector has been actively involved in the FTAA process and its experiences to date have been positive, including in the development of business facilitation measures which represent an area where early concrete progress may be established in the FTAA process.

The U.S. ExITS sector appreciates the opportunity to present this statement of its views and recommendations to the Subcommittee on Trade with respect to the progress and potential impact of the FTAA negotiating process.

Respectfully submitted, By:

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DHL WORLDWIDE EXPRESS
EMERY WORLDWIDE EXPRESS
FEDERAL EXPRESS CORPORATION (FEDEX)
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AIR COURIER CONFERENCE OF AMERICA
CARGO AIRLINES ASSOCIATION

Statement U.S. Integrated Carbon Steel Producers

This statement sets out the views of five major integrated U.S. producers of carbon steel products—Bethlehem Steel Corp., U.S. Steel Group a Unit of USX Corp., LTV Steel Co., Inland Steel Industries, Inc., and National Steel Corp.—on the ongoing negotiations aimed at achieving a Free Trade Area of the Americas. We commend the Subcommittee for holding this hearing and appreciate the opportunity to express our views.

We support the concept of free trade in the hemisphere, so long as the proper safeguards, trade remedies, and dispute procedures are included to ensure that U.S. industries have both effective access to the markets in the hemisphere and recourse in the event of unfair trade practices.

Many different aspects of the FTAA will affect trade in steel, as well as downstream products such as automobiles and oilfield equipment. This submission addresses only those FTAA issues that we consider most significant. If these issues are properly handled during the negotiations and at the implementation stage, we believe that the resulting FTAA will be one our industry can support.

ANTIDUMPING AND COUNTERVAILING DUTIES

An acceptable FTAA must not create new restrictions on the use of WTO-authorized trade remedies. There is no reason why a regional free trade agreement, such as the FTAA, should contain "GATT-plus" rules on AD and CVD. In fact, there are sound policy reasons why the negotiation of such rules should not even be attempted. These remedies are inherently multilateral in their application, and applying different standards to different exporting countries (*e.g.*, special rules for FTAA partners) would not only lead to massive confusion, but also undermine the enforcement of the laws. For example, authorities performing an injury analysis could be inappropriately precluded from cumulating imports from different exporting countries if a free trade agreement provided special injury standards for some of those countries.

Furthermore, the multilateral rules regarding AD/CVD were just recently renegotiated, and a new institutional structure was established within the WTO for ongoing review of AD/CVD measures and policies. These new arrangements must be given a chance to work. In the future, it may be appropriate to consider new proposals relating to AD/CVD rules, but only on a multilateral, rather than regional, basis.

"Convicted" dumpers and subsidizers of steel in the Western Hemisphere include Brazil, Argentina, Venezuela, and Trinidad and Tobago, as well as our NAFTA partners Canada and Mexico. As shown by experience under the CFTA and NAFTA, a "free trade" agreement will not by itself eliminate the underlying causes of all this unfair trade. Unfortunately, as discussed below, the U.S. has given other FTAA governments reasons to believe it is willing to negotiate over antidumping rules on a regional basis. This would make it impossible for domestic industry to support an FTAA.

Finally, the United States should learn from past mistakes and block any adoption or extension of NAFTA Chapter 19-type dispute settlement procedures. Just as there is no need for GATT-plus substantive rules in a free trade area on AD/CVD, so there is no need for GATT-plus dispute settlement procedures on AD/CVD—especially when those procedures are used, as in the case of Chapter 19, only to decide questions of *national* rather than international law, which are more appropriately adjudicated by national courts. In practice, the Chapter 19 mechanism has failed its most important tests, and the problems that have surfaced—panelist bias, improper refusal to apply national law, failure to implement, inconsistent decisions, *etc*.—will only increase if additional countries are brought into this deeply flawed system.

COMPETITION POLICY

The FTAA parties should strive to make affirmative progress to curb private trade restrictions that distort trade in industrial goods like steel. Private restraints are a significant source of trade problems in the steel sector, and in other sectors as well. Accordingly, we recommend that measures be adopted in the FTAA to identify, and provide recourse to those industries harmed by, such restrictions. Given the significance of private restraints outside this hemisphere that have caused steel trade problems, the precedent established by such provisions would be beneficial.

However, FTAA competition policy discussions must focus on trade restraints resulting from private conduct, and not on public measures taken by governments that may affect competition within their markets. It is particularly important that competition policy be kept separate from antidumping, as the issues raised in each

sphere are fundamentally separate. Unfortunately, recent developments apparently are inconsistent with the Administration's commitment to prevent trade-and-competition discussions from becoming a forum for attacks on antidumping.[1] The starkest example appears in the March 1998 FTAA Ministerial declaration, in which Ministers agreed "to give the mandate to the relevant negotiating groups to study issues relating to: the interaction between trade and competition policy, including antidumping measures . . . ."

Written Response to Questions from Senator Rockefeller: WTO Trade and Competition Policy Working Party (Feb. 1997).

Unfortunately, it puts the United States in an unnecessarily difficult position from the outset of the FTAA negotiations, and it creates an inaccurate expectation on the part of FTAA participants that the United States will entertain proposals to subject antidumping rules to antitrust standards which were designed to address altogether different problems. Antidumping is not a competition policy issue. The Administration should reaffirm this and should refuse to countenance any further misuse of international competition policy discussions.

SUBSIDIES

The FTAA countries should consider strict new hemispheric disciplines on subsidies. While national CVD remedies should, as discussed above, remain in place, the FTAA partners should seek to add new *international* disciplines as well. As a general matter, FTAA members should eliminate existing, and commit not to institute any new, subsidy programs. Any sectoral derogations from this principle should be narrowly confined, and should certainly not include steel manufacturing. The United States does not subsidize its manufacturers, and other countries participating in the FTAA should agree not to do so either.

RULES OF ORIGIN

Finally, we recommend that the FTAA not undermine the special rules adopted under the NAFTA for automobiles. These rules require that a significant amount of the value of an automobile be attributable to components originating in North America in order for the automobile to qualify for duty-free treatment under the NAFTA. The rules therefore encourage the use of North American-made components, including U.S. manufactured automotive steel products. These rules, which help to ensure that the free trade area benefits its participating members, should not be undermined as the free trade area expands.

CONCLUSION

Carbon steel producers welcome the Subcommittee's active oversight of what promises to be one of the most significant U.S. trade policy initiatives over the next several years. As stated above, we support the concept of free trade in the hemisphere, so long as the proper safeguards, trade remedies, and dispute procedures are included to ensure that U.S. industries have both effective access to the markets in the hemisphere and recourse in the event of unfair trade practices.

West Indies Rum and Spirits Producers Association

I. RUM EXPORTS ARE CRITICALLY IMPORTANT TO THE CARIBBEAN

Rum is a product of special importance for many Caribbean Basin Initiative ("CBI") countries. Rum has been produced in the Caribbean for centuries, providing important contributions to local economies as well as to the culture and folklore of the region. Under the CBI, Caribbean rum producers have increased their U.S. market penetration, earning much-needed foreign currency and creating new jobs for the region. In no small part, this success reflects substantial Caribbean investments which were made in reliance on the CBI tariff structure—and with a long-term perspective, given the time required to establish such beverages in the U.S. market. The U.S. International Trade Commission ("ITC") has identified rum as one of the products benefiting most from duty-free treatment under the CBI, although some

[1] Regarding the WTO trade and competition program, USTR Charlene Barshefsky has stated:

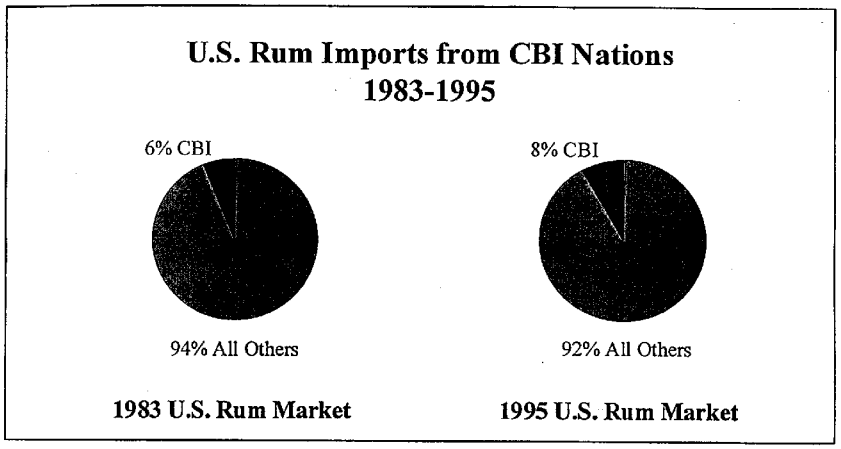
[T]his is not an appropriate forum in which to discuss the legitimacy or application of WTO-sanctioned trade remedies, such as antidumping. . . . [W]e will block any attempt to use this as a vehicle to renegotiate or weaken the WTO's rules against dumping.

CBI suppliers have only recently established a foothold in the large U.S. rum market. A very substantial percentage of CBI rum imports are in the low-valued segment of the market.

II. U.S. Trade Policy Has Long Recognized the Unique Status and Special Needs of the Caribbean Rum Industry

Since 1984, the United States has enjoyed a special relationship under the CBI with the Caribbean and the small countries of Central America. This relationship has served important U.S. foreign policy interests while providing valuable trade preferences to the CBI nations.

The initial decision to include rum in the CBI was not an easy or automatic one. The sensitivities of producers in the U.S. territories (Puerto Rico and the U.S. Virgin Islands ("USVI")) led not only to a restructuring of the excise tax arrangement between the territories and the U.S. Government (as discussed below), but also to a request for annual rum market monitoring by the ITC [1] coupled with a grant of authority to the President to re-impose controls on CBI rum if necessary.[2] In actuality, Caribbean suppliers have utilized CBI duty-free status to gain a foothold in the U.S. market without generating any disruptive import surges or negative consequences for the economies of Puerto Rico or the USVI.



In the 14 years since that initial CBI debate, Congress and the Executive Branch have continued to recognize the unique role that rum plays in the legal, economic and political relationship between the United States and the Caribbean. On several occasions, they have acted to protect Caribbean rum producers from competitive harm. In 1987 and 1990, for example, the Administration rejected petitions submitted under the Generalized System of Preferences for duty-free entry of rum originating in non-Caribbean countries.

Similarly, in 1991, rum was specifically excluded from the list of eligible articles under the Andean Trade Preferences Act, which contemplated duty-free access to the U.S. market for a number of other products originating in Bolivia, Ecuador, Colombia and Peru. This outcome reflected the considered judgment of both Houses of Congress as well as the Administration. In explaining the exclusion of rum, the House Committee on Ways and Means stated:

The Committee added rum to the list of articles that would be ineligible for duty-free treatment under the Act in order to preserve the benefits that the Congress has provided to Puerto Rico, the Virgin Islands, and the Caribbean Basin countries.

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[1] The Senate Finance Committee requested annual monitoring under section 332(b) of the Tariff Act of 1930. On January 13, 1984, the ITC instituted investigation No. 332–175, *Rum: Annual Report on Selected Economic Indicators.* This investigation terminated in 1995 at the request of the Senate Finance Committee.

[2] Section 214(c) of the Caribbean Basin Economic Recovery Act provides that "[i]f the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands . . . is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title."

Rum is a product which the ITC has identified as benefiting most from duty-free treatment under the CBI. . . . Andean rum producers have significant natural resources and cost advantages over their Caribbean and U.S. Territorial counterparts as well as large excess production capacity. H.R. Rep. No. 102–337 at 15 (1991) (emphasis added). The concern over "cost advantages" and "excess production capacity" in the case of the Andean countries is heightened several fold when one looks at some of the other, much larger South American countries such as Brazil and Venezuela.

This concern over rum also extended into the North American Free Trade Agreement ("NAFTA"), where rum was one of products designated by the U.S. Government for an extended duty phaseout.

More recently, the unique concerns and vulnerabilities of the Caribbean rum industry were recognized in a U.S.–EU tariff agreement executed in connection with the December 1996 WTO Ministerial in Singapore. The agreement initially contemplated would have quickly eliminated both territories' tariffs on all white spirits. However, after focusing on the negative implications for the Caribbean of such a drastic change, negotiators fashioned a tariff phaseout package that more appropriately balanced trade liberalization with regional and developmental concerns. Specifically, a pricing mechanism was developed that preserves MFN tariffs on (and thus the duty preference for Caribbean suppliers of) inexpensive bulk and bottled rum. This price mechanism limits displacement of Caribbean exports, which continue to enjoy duty-free access to both markets (under CBI in the United States and under LOME in Europe).

III. U.S. Rum Trade Is Also Critically Important to the U.S. Territories in the Caribbean

The governments of Puerto Rico and the USVI are dependent upon the continuing health and vigor of their rum industries for their financial self-sufficiency. Congress has provided that federal excise taxes collected on rum manufactured in Puerto Rico or the USVI shall be returned to the treasury of the appropriate territory. This special treatment was reinforced and expanded as part of the 1983 CBI legislation when Congress provided that rum excise taxes would be covered over to Puerto Rico and the USVI whether the rum was produced in the territories or imported (*e.g.,* from CBI beneficiary countries.) This modification illustrates the history of sensitivity in U.S. tax and trade policy where rum is concerned, and the need for a careful approach that balances multiple policy goals.

Today, the excise tax cover-over accounts for nearly 10% of the total budget of the USVI government (about $44 million annually) and nearly 7% of the total budget of Puerto Rico (about $220 million annually). But the impact of these funds is not limited to the actual dollars transferred. Particularly in the USVI, cover-over revenues have been pledged as security for much larger amounts of public borrowing, so that they indirectly finance a variety of construction projects including schools, health care facilities, airports and much of the island's capital infrastructure.[3] The number of direct jobs generated by these capital expenditures runs into the thousands—far outpacing the number of jobs in the rum industry, which is itself one of the largest export industries in the territories. As such, the rum industry remains one of the most important sources of revenue for the governments of the USVI and Puerto Rico.

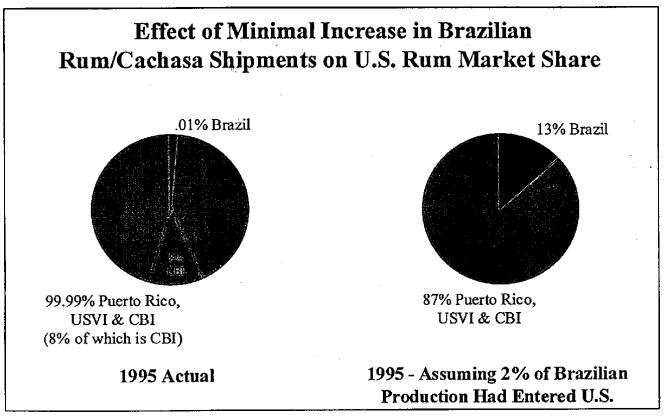
IV. Hemispheric Trade Discussions Should Not Be An Occasion to Eliminate What Has Been So Painstakingly Accomplished—Deference to the Traditions and Economic Importance of Caribbean Rum

The Singapore tariff package containing the price mechanism for rum is the result of intensive diplomatic negotiations and represents a balanced accommodation which should be preserved. This balance—between the goal of trade liberalization and the equally important goal of developing and sustaining unique regional industries, such as the Caribbean rum industry—should not be lightly abandoned in FTAA discussions or new WTO discussions.

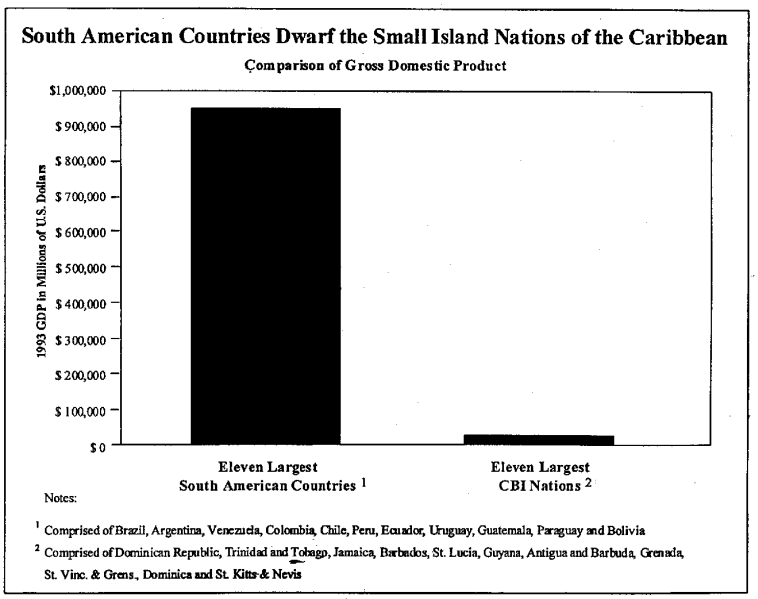
Yet, this balance will be destroyed if rum does not receive careful treatment in the FTAA. South American producers enjoy tremendous cost and competitive advantages—including plentiful raw material supplies and low energy prices—over their counterparts in the Caribbean. In fact, if one excludes the NAFTA countries (Mexico, Canada and the United States), the hemisphere's 11 largest economies in terms

[3] Estimates of the public debt secured by cover-over revenues as high as $300 million in the USVI alone.

of gross domestic product are South American countries, led by Brazil, while the smallest are all Caribbean island nations. The combined gross domestic product of the large South American countries exceeds that of even the largest CBI countries by a factor of more than 47 to 1.



As a result, South American producers will quickly overwhelm Caribbean producers of low-valued rum if the existing U.S. tariffs on such rum are eliminated under the FTAA. The U.S. duty has been critical to the continued viability of producers of low-valued rum in CBI beneficiary countries and in the USVI in particular. Because low-valued rum generally lacks name brand identification and a well-developed distribution network, it must compete almost exclusively on the basis of price. In this segment of the rum market, pennies can literally make or break a sale. If displaced by South American rum producers, Caribbean producers will lose their foothold in the U.S. market, and important aspects of Caribbean economic stability will be jeopardized. The following chart demonstrates the impact on the U.S. rum market of the potential diversion of just 2% of current Brazilian production into the U.S. market.



For *CBI rum producers,* such a blow would be particularly difficult as it would coincide with potential disruptions in the EU, where the current LOME arrange-

ment, which provides the Caribbean its duty-free status, is set to expire on January 1, 2000. One lesson of the Singapore tariff negotiation and other recent events is that U.S. and EU authorities must take care to coordinate their approach to all trade initiatives affecting such sensitive Caribbean products as rum—ensuring policy coordination even though the United States is not a formal participant in LOME discussions nor the EU in FTAA discussions.

For the *Caribbean governments,* any developments relating to rum will naturally be seen in the context of other recent U.S. trade policy actions widely believed to undermine the special U.S.-Caribbean relationship that has developed over many years. In particular, U.S. credibility in the region is suffering from the failure to extend NAFTA-like trade benefits to the Caribbean, and from the recently concluded WTO dispute settlement case against a European Union banana import regime benefiting Caribbean banana production. In light of these recent developments, it is especially important that the United States approach the FTAA/rum issue with great sensitivity. In addition, there has always been a strong bond between the allure of the Caribbean as a tourist attraction and the cachet of its rum industry. Tourism remains the most critical of Caribbean industries both for jobs and currency, and, in many ways, the vitality of these two industries will always be intertwined.

Finally, for the *U.S. territories,* and especially the USVI, an increase in U.S. imports of low-end rum would have a profound negative impact. The USVI relies on cover over of federal excise taxes on low value rum for a significant portion of its annual budget. To the extent that USVI shipments are replaced by imports, the net cover-over payment to the USVI will be sharply reduced since the USVI gets only a small share of the cover-over on non-USVI rum. Removal of the price mechanism would create severe budget problems for the USVI.

V. Conclusion—The Existing U.S. Tariff Structure for Rum Should Be Preserved

The United States has long recognized the unique status and economic importance of Caribbean rum exports. U.S. trade policy toward the Caribbean generally reflects the need to balance trade liberalization goals with other legitimate regional, political and developmental goals. Rum is a particularly deserving candidate for application of that enlightened policy.

The recent Singapore tariff package was a watershed event, when officials of all concerned governments focused closely on the issue and fashioned a creative and balanced solution. That solution—a pricing mechanism that preserves the Caribbean duty preference at the low-priced end of the market while phasing out tariffs in the higher-priced market segment—allows both large and small producers in all producing regions to benefit. *It should not be undermined in the context of FTAA discussions. Furthermore, the commercial value of this negotiated agreement should be protected, through indexing, from eroding over time as a result of inflation.*

While standing by the Singapore price mechanism and the important principle it represents, the United States can continue to phase out its tariffs on high-priced rum from all sources, both within and outside the Western Hemisphere, as called for in the Singapore agreement. This approach is consistent with WTO rules, since a free trade agreement that leaves tariffs in place on low-priced rum can still qualify under the GATT Art. XXIV test for liberalizing "substantially all" trade. Meanwhile, preserving the rum duty structure will maintain continuity with current U.S. trade policy and will avoid delivering yet another economic blow to the fragile economies of the Caribbean.

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